

POSSESSION AND USE AGREEMENT
US 195 Project

STATE OF TEXAS	§
	§
COUNTY OF WILLIAMSON	§

WHEREAS, APW, Inc., a Texas corporation, and BOBBY STANTON hereinafter referred to as "GRANTOR", whether one or more, is the owner of that certain pieces, parcels or tracts of land in Williamson County, Texas, being more particularly described by metes and bounds in Exhibit "A", which is attached hereto and made a part hereof (the Property); and

WHEREAS, WILLIAMSON COUNTY, TEXAS, THE STATE OF TEXAS, PEDERNALES ELECTRIC CORPORATION and the LOWWER COLORADO ELECTRIC COMPANY ("collectively GRANTEE"), plan to acquire fee simple and easement interests in the Property, whether through contract and conveyance or through eminent domain proceedings; and

WHEREAS, the GRANTEE must have possession of said-described tract of land for the purposes described below,

Construction of the Highway 195 roadway improvements and related utility location and relocation activities (Project).

NOW THEREFORE, BE IT KNOWN:

That in consideration of the non-refundable payment ("Entry Payment") of TWO HUNDRED THOUSAND AND 00/100 Dollars (\$200,000.00), which amount represents the portion of the estimated compensation for the acquisition of the Property to be acquired that is not currently in dispute between the parties, GRANTOR has GRANTED and CONVEYED and by these presents does GRANT and CONVEY unto the GRANTEE, its employees, agents and assigns an irrevocable right-of-entry, possession, and construction easement, with the right of exclusive possession over, upon, and across those tracts of land described in Exhibit "A", along with the additional right to temporarily enter the remaining property of GRANTOR solely for the purposes of installing a city of Georgetown water line. Additionally, within one (1) year of the approval of this Agreement by Grantee, Grantee shall convey an additional EIGHTY-FIVE THOUSAND TWO HUNDRED AND THIRTY-NINE AND 00/100 DOLLARS (\$85, 239.00) to Grantor as an additional Entry Payment.

GRANTOR warrants and represents by, through, and under the GRANTOR, but not otherwise, that the title to the Property is free and clear of all liens and encumbrances on the title to the Property, or that any necessary and proper releases will be executed for the Property prior to or simultaneously with the first payment of funds being disbursed under this agreement. The GRANTOR further agrees to indemnify the GRANTEE from all unreleased or undisclosed liens, claims or encumbrances that are known to GRANTEE and that affect the Property.

It is expressly agreed, acknowledged, and understood that the consideration paid hereunder shall be credited against, applied towards, and offset from any consideration to be paid in satisfaction of an agreed purchase price under a contract and conveyance or in satisfaction of the award of the Special Commissioners or subsequent judgment in any condemnation proceeding for the acquisition of the property interests described in Exhibit "A", and any other real property situated on Exhibit "A". In the event that a subsequent award of the Special Commissioners or subsequent judgment in any condemnation proceeding is less than the Entry Payment provided by this agreement, GRANTOR is nonetheless entitled to keep the full amount of the Entry Payment.

It is expressly agreed, acknowledged, and understood that the easements, rights, and privileges herein granted are assignable and shall be used by the GRANTEE, its employees, agents, and assigns, for the purposes of entering upon the above-described property, before the closing of the contemplated real estate transaction or the acquisition of title through condemnation, and proceeding with surveying, site review and analysis, utility relocation, actual construction on the Project, and all manner of preparation and work attendant thereto. Utility relocation, if any, shall include, but not be limited to, the relocation of water lines, electrical lines, and their attendant facilities from the existing roadway right-of-way on the property described in Exhibit "A".

The GRANTEE, its employees, agents, and assigns shall have the full and exclusive right to control and use the above-described tracts, including the right to erect and maintain fencing and traffic and pedestrian control and devices and signs, the right to clear trees and vegetation, and the right to excavate, trench, fill, and grade the real property itself.

At no time during the possession of the property by GRANTEE for the purposes described herein shall GRANTOR be denied reasonable access and/or ingress to or egress from the remaining property.

The easement, rights, and privileges herein granted shall automatically terminate upon the contemplated closing of the above-described real estate transaction or the rendition of a final judgment in condemnation proceedings. However, this grant shall survive the termination of any purchase contract agreement and shall also survive any institution of condemnation proceedings.

The parties further agree as follows:

1. **THAT BY VIRTUE OF THE GRANTING OF PERMISSION TO THE GRANTEE TO TAKE TEMPORARY POSSESSION OF THE PROPERTY IN ACCORDANCE WITH THIS AGREEMENT, GRANTOR DOES NOT WAIVE ANY LEGAL RIGHTS OR DEFENSES UNDER THE CONSTITUTION OF THE UNITED STATES, THE CONSTITUTION AND STATUTES OF THE STATE OF TEXAS OR ANY OTHER PROVISIONS OF THE LAW THAT GRANTOR MAY HAVE IN CONNECTION WITH THE ACQUISITION OF ANY RIGHTS TO THE PROPERTY BY THE GRANTEE.**

2. That this Right of Entry, Possession, and Construction Easement is irrevocable by GRANTOR but only valid until sixty (60) business days after the filing of a Special Commissioners' award in the Cause. Thereafter, continued possession, if at all, will be pursuant to a deposit of a Special Commissioners' award according to Texas law governing possession in a statutory eminent domain case.
3. The date of valuation for purposes of determining the value of the just compensation for the Property to be acquired shall be the date that deposit of the Special Commissioners' award is made. If the Special Commissioners award is less than or equal to the Entry Payment so that no additional deposit is required, the date of valuation shall be the date of the Special Commissioners' hearing.
5. This Agreement shall be binding upon the heirs, devisees, executors, administrators, legal representatives, successors and assigns of the parties. Specifically, Grantor's heirs, devisees, executors, administrators, legal representatives, successors or assigns are bound by terms of this agreement which state that the consideration paid hereunder to Grantor shall be credited against, applied towards, and offset from any consideration to be paid in satisfaction of an agreed purchase price under a contract and conveyance or in satisfaction of the award of the Special Commissioners or subsequent judgment in any condemnation proceeding for the acquisition of the property described herein, whether said Grantor is or is not the owner of said property, now or in the future.
6. The easement, right, and privileges granted herein are exclusive, and GRANTOR covenants that it will not convey any other easement or conflicting rights within the area covered by this grant. This grant shall be binding upon legal representatives, successors, and assigns of GRANTOR for the term of this grant.
7. GRANTEE agrees that once the GRANTOR, in writing, asks for a special commissioner's hearing to be scheduled, a Petition in Condemnation will be filed within thirty (30) days after said written request is received. Furthermore, both parties will undertake all reasonable efforts to hold a special commissioners' hearing within ninety (90) days after the GRANTOR asks for a special commissioners' hearing to be scheduled. Any award that exceeds \$285,239.00 will be deposited in the registry of the court within twenty (20) days following the award made by the special commissioners. If the compensation issue is settled through negotiations, a fixed date for receipt of the additional funds, if any, will be agreed upon as part of the negotiation process.
8. GRANTEE agrees to indemnify and hold GRANTOR harmless from any damages or other losses to third parties resulting from any acts or omissions of the GRANTEE, its employees, agents or assigns, in carrying out the activities and tasks permitted by this Agreement on the Property.

TO HAVE AND TO HOLD the possession of the above-described tracts of land for the purposes and subject to the limitations described above, and GRANTOR warrants that he knows of no persons or business entity that owns a present possessory interest in the fee title to the above-described premises other than GRANTOR, and that there are no parties in possession of any portion of the referenced real property as lessees other than identified herein.

Executed this the ____ day of _____, 2010.

GRANTOR:

APW CORPORATION

By: _____

Address: _____

Its: _____

BOBBY STANTON

GRANTEE:

WILLIAMSON COUNTY, TEXAS



County Judge Dan A. Gattis
Williamson County, Texas

ACKNOWLEDGMENT

STATE OF TEXAS
COUNTY OF _____

This instrument was acknowledged before me on this the ____ day of _____, 2010 by _____, in the capacity and for the purposes and consideration recited herein.

Notary Public, State of Texas
Printed Name: _____
My Commission Expires: _____

STATE OF TEXAS
COUNTY OF WILLIAMSON

This instrument was acknowledged before me on this the ____ day of _____, 2010 by Dan A. Gattis, Williamson County Judge, in the capacity and for the purposes and consideration recited herein.

Notary Public, State of Texas
Printed Name: _____
My Commission Expires: _____

After recording return to:

Don Childs
Sheets & Crossfield, P.C.
309 E. Main St.
Round Rock, Texas 78664

EXHIBIT "A"

DESCRIPTION FOR 3.568 ACRE TRACT OF LAND, BEING 0.384 ACRES (TRACT A) AND 3.184 ACRES (TRACT B), SITUATED IN THE W. ROBERTS SURVEY, ABSTRACT NUMBER 524, WILLIAMSON COUNTY, TEXAS, BEING A PORTION OF A 50.55 ACRE TRACT OF LAND CONVEYED AS TRACT 1 TO APW CORPORATION BY INSTRUMENT RECORDED IN DOCUMENT NO. 2002066778 OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS, AND A PORTION OF A 49.45 ACRE TRACT OF LAND CONVEYED AS TRACT 2 TO APW CORPORATION BY INSTRUMENT RECORDED IN DOCUMENT NO. 2002066778 OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS, SAID 0.384 ACRE TRACT CONTAINING A 0.368 ACRE PORTION OF A 6.085 ACRE EASEMENT CONVEYED TO LOWER COLORADO RIVER AUTHORITY BY INSTRUMENT RECORDED IN DOCUMENT NO. 9803455 OF THE OFFICIAL RECORDS OF WILLIAMSON COUNTY, TEXAS AND SAID 3.184 ACRE TRACT CONTAINING A 1.753 ACRE PORTION OF SAID 6.085 ACRE EASEMENT, SAID 3.568 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

TRACT A

COMMENCING at a found concrete highway monument (Grid Coordinates **Northing** 10234985.44 U.S. ft. **Easting** 3135283.14 U.S. ft.) on the southwesterly line of said 49.45 acre tract, same being an angle point in the existing northeast right-of-way line of SH 195 (R.O.W. width varies);

THENCE N32°05'12"W, with the common line of said 49.45 acre tract and said SH 195 right-of-way line, a distance of 35.09 feet to the west corner of said 49.45 acre tract, same being the south corner of a 17.55 acre tract conveyed to Bobby G. Stanton by instrument recorded in Document No. 2002066777 of the Official Public Records of Williamson County, Texas;

THENCE N32°05'12"W, departing the southwesterly line of said 49.45 acre tract, with the southwesterly line of said 17.55 acre tract and the northeasterly right-of-way line of SH 195, a distance of 61.52 feet to the south corner of said 50.55 acre tract;

THENCE N45°13'42"E, departing the northeasterly right-of-way line of SH 195, with the common line of said 50.55 acre tract and said 17.55 acre tract, a distance of 7.74 feet to the **POINT OF BEGINNING** (Grid Coordinates **Northing** 10235077.73 U.S. ft. **Easting** 3135237.33 U.S. ft.);

THENCE N34°07'37"W, departing the common line of said 50.55 acre tract and said 17.55 acre tract and through said 50.55 acre tract, a distance of 217.38 feet to a point on the northeasterly right-of-way line of SH 195;

THENCE departing the northeasterly right-of-way line of SH 195 and through said 50.55 acre tract, the following two (2) courses and distances:

- 1) N56°41'56"E, a distance of 80.01 feet to a point;
- 2) S34°07'37"E, a distance of 201.19 feet to a set 1/2 inch iron rod with plastic cap on the southeasterly line of said 50.55 acre tract, same being the northwesterly line of said 17.55 acre tract, from which a found 1/2 inch iron rod with plastic cap on the common line of said 50.55 acre tract and said 17.55 acre tract bears N45°13'42"E, a distance of 277.38 feet;

THENCE S45°13'42"W, with the common line of said 50.55 acre tract and said 17.55 acre tract, a distance of 81.40 feet to the **POINT OF BEGINNING** hereof, and containing 0.384 acre of land within the bearing and distance calls contained herein.

TRACT B

COMMENCING at a found 1/2" iron rod with aluminum cap (Grid Coordinates **Northing** 10233570.89 U.S. ft. **Easting** 3136221.79 U.S. ft.) on the southeasterly line of said 49.45 acre tract, same being on the proposed northeast right-of-way line of SH 195 (R.O.W. width varies), also being on the northwesterly line of a 54.3 acre tract of land conveyed to Scott R. Wood and wife, Shannon L. Wood by instrument recorded in Document No. 2005076662 of the Official Public Records of Williamson County, Texas;

THENCE N47°10'42"E, departing the northeasterly right-of-way line of SH 195, with the common line of said 49.45 acre tract and said 54.3 acre tract, a distance of 15.20 feet to the **POINT OF BEGINNING** (Grid Coordinates **Northing** 10233581.22 U.S. ft. **Easting** 3136232.94 U.S. ft.);

THENCE departing the common line of said 49.45 acre tract and said 54.3 acre tract and through said 49.45 acre tract, the following three (3) courses and distances:

- 1) N33°30'35"W, a distance of 646.67 feet to an angle point;
- 2) N33°36'10"W, a distance of 617.80 feet to an angle point;
- 3) N34°07'37"W, a distance of 467.95 feet to a point on the northwesterly line of said 49.45 acre tract, same being the southeasterly line of a 17.55 acre tract conveyed to Bobby G. Stanton by instrument recorded in Document No. 2002066777 of the Official Public Records of Williamson County, Texas, from which a point on the common line of said 49.45 acre tract and said 17.55 acre tract, same being on the proposed northeast right-of-way line of SH 195, bears S45°14'11"W, a distance of 9.97 feet;

THENCE N45°14'11"E, with the common line of said 49.45 acre tract and said 17.55 acre tract, a distance of 81.40 feet to a point, from which an angle point in the common line of said 49.45 acre tract and said 17.55 acre tract bears N45°14'11"E, distance of 292.50 feet;

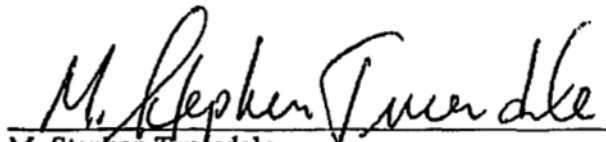
THENCE departing the common line of said 49.45 acre tract and said 17.55 acre tract and through said 49.45 acre tract, the following three (3) courses and distances:

- 1) S34°07'37"E, a distance of 483.34 feet to an angle point;
- 2) S33°36'10"E, a distance of 618.24 feet to an angle point;
- 3) S33°30'35"E, a distance of 633.62 feet to a point on the southeasterly line of said 49.45 acre tract, same being the northwesterly line of said 54.3 acre tract, from which a found iron rod on the common line of said 49.45 acre tract and said 54.3 acre tract bears N47°10'42"E, a distance of 236.05 feet;

THENCE S47°10'41"W, with the common line of said 49.45 acre tract and said 54.3 acre tract, a distance of 81.07 feet to the **POINT OF BEGINNING** hereof, and containing 3.184 acre of land within the bearings and distance calls contained herein.

BEARING BASIS: Texas State Plane Coordinate System Grid, Central Zone, NAD83/NGS93. All distances are surface values; to obtain grid values multiply surface distances by a Combined Scale Factor of 0.99989. All distance units are U.S. Survey feet.

This description and plat attached hereto represent an on-the-ground survey made under my direct supervision during the months of June 2009.

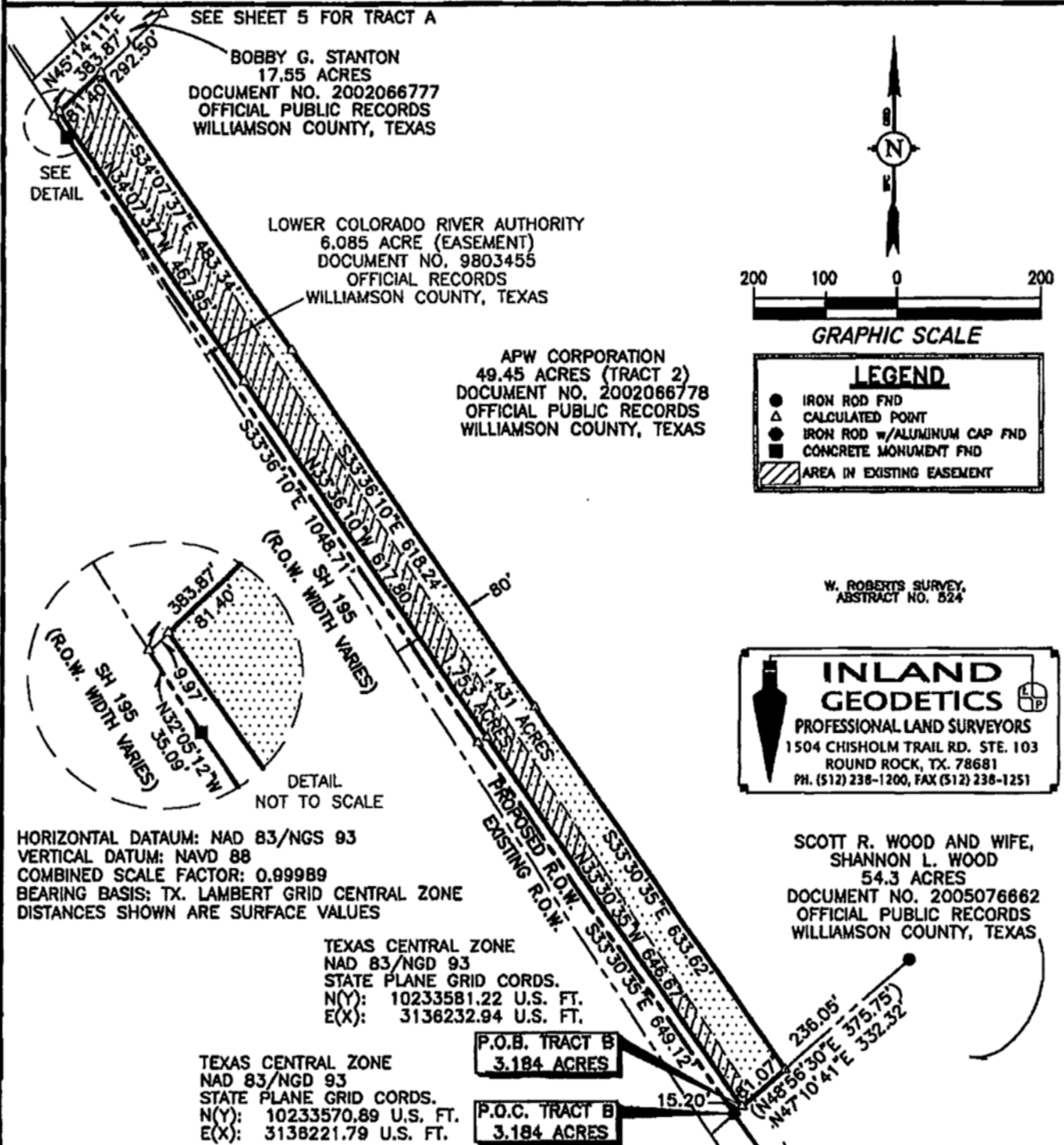

M. Stephen Truesdale

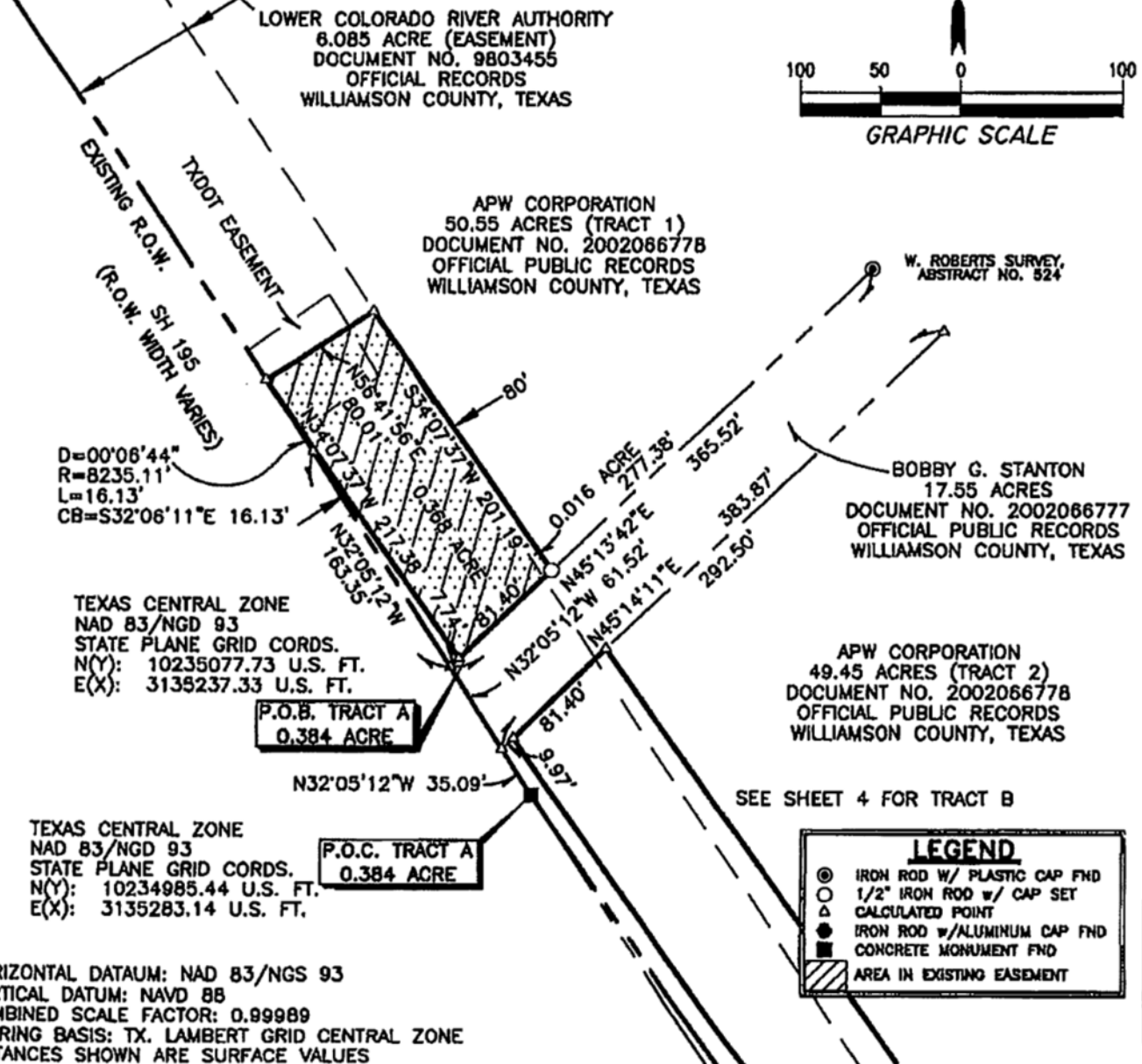
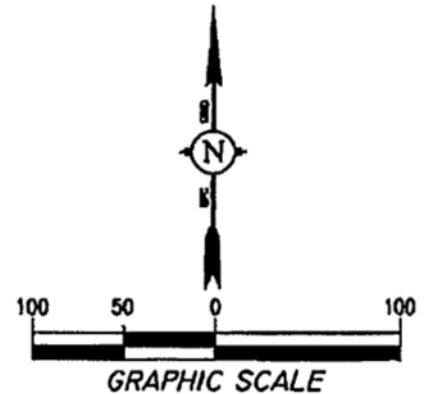
3 SEP '09
Date:

Registered Professional Land Surveyor No. 4933
Licensed State Land Surveyor
Inland Geodetics, L.P.
1504 Chisholm Trail Road, Suite 103
Round Rock, Texas 78681
Phone: (512) 238-1200 Fax: (512) 238-1251

WORD FILE: T359002A-0005A.DOC
ACAD FILE: T359002A-0005A.DWG







ACAD FILE: T359002A-0005B.DWG
WORD FILE: T359002A-0005A.DOC
REVISION:
SCALE: 200
DATE: 07-15-2009
WO NO.:
FIELD BOOK: 257 PG. 65
DRAWN BY: BJM

PLAT SHOWING A 3.568 ACRE, 0.384 ACRE
(TRACT A) AND 3.184 ACRE (TRACT B),
EASEMENT TRACT SITUATED IN THE
W. ROBERTS SURVEY, ABSTRACT NO. 524,
WILLIAMSON COUNTY, TEXAS

T-359 TRANSMISSION LINE

LCRA
ENERGY • WATER • COMMUNITY SERVICES
3700 LAKE AUSTIN BLVD. AUSTIN, TX 78703
(512) 473-3200 www.lcra.org

EXHIBIT "A"

DESCRIPTION FOR A 0.112 ACRE TRACT OF LAND SITUATED IN THE W. ROBERTS SURVEY, ABSTRACT NUMBER 524, WILLIAMSON COUNTY, TEXAS, BEING A PORTION OF A 17.55 ACRE TRACT OF LAND CONVEYED TO BOBBY G. STANTON BY INSTRUMENT RECORDED IN DOCUMENT NO. 2002066777 OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS, SAID 0.112 ACRE TRACT CONTAINING A 0.101 ACRE PORTION OF A 6.085 ACRE EASEMENT CONVEYED TO LOWER COLORADO RIVER AUTHORITY BY INSTRUMENT RECORDED IN DOCUMENT NO. 9803455 OF THE OFFICIAL RECORDS OF WILLIAMSON COUNTY, TEXAS, SAID 0.112 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a found concrete highway monument at an angle point on the existing northeasterly right-of-way line of SH 195 (R.O.W. width varies) (Grid Coordinates **Northing** 10234985.44 U.S. ft. **Easting** 3135283.14 U.S. ft.) on the southwesterly line of a 49.45 acre tract (Tract 2) conveyed to APW Corporation by instrument recorded in Document No. 2002066778 of the Official Public Records of Williamson County, Texas;

THENCE N32°05'12"W, with the common line of SH 195 northeasterly right-of-way and said 49.45 acre tract, a distance of 35.09 feet to the south corner of said 17.55 acre tract, same being the west corner of said 49.45 acre tract;

THENCE N45°14'11"E, departing the northeasterly line of SH 195, with the common line of said 17.55 acre tract and said 49.45 acre tract, a distance of 9.97 feet to the **POINT OF BEGINNING** (Grid Coordinates **Northing** 10235022.19 U.S. ft. **Easting** 3135271.59 U.S. ft.);

THENCE N34°07'37"W, departing the common line of said 17.55 acre tract and said 49.45 acre tract and through said 17.55 acre tract, a distance of 61.06 feet to a point on the northwesterly line of said 17.55 acre tract, same being the southeasterly line of a 50.55 acre tract (Tract 1) conveyed to APW Corporation by instrument recorded in Document No. 2002066778 of the Official Public Records of Williamson County, Texas, from which the westerly corner of said 17.55 acre tract, same being the on the northeast right-of-way line of SH 195, bears S45°13'42"W, a distance of 7.74 feet;

THENCE N45°13'42"E, with the common line of said 17.55 acre tract and said 50.55 acre tract, a distance of 81.40 feet to a set 1/2 inch iron rod with plastic cap, from which a found 1/2 inch iron rod with plastic cap bears N45°13'42"E, a distance of 277.38 feet;

THENCE S34°07'37"E, departing the common line of said 17.55 acre tract and said 50.55 acre tract and through said 17.55 acre tract, a distance of 61.07 feet to a point on the southeasterly line of said 17.55 acre tract, same being the northwesterly line of said 49.45 acre tract, from which an angle point on the common line of said 17.55 acre tract and said 49.45 acre tract bears N45°14'11"E, a distance of 292.50 feet;

THENCE S45°14'11"W, with the common line of said 17.55 acre tract and said 49.45 acre tract, a distance of 81.40 feet to the **POINT OF BEGINNING** hereof, and containing 0.112 acre of land within the bearing and distance calls contained herein.

BEARING BASIS: Texas State Plane Coordinate System Grid, Central Zone, NAD83/NGS93. All distances are surface values; to obtain grid values multiply surface distances by a Combined Scale Factor of 0.99989. All distance units are U.S. Survey feet.

This description and plat attached hereto represent an on-the-ground survey made under my direct supervision during the months of July 2009.

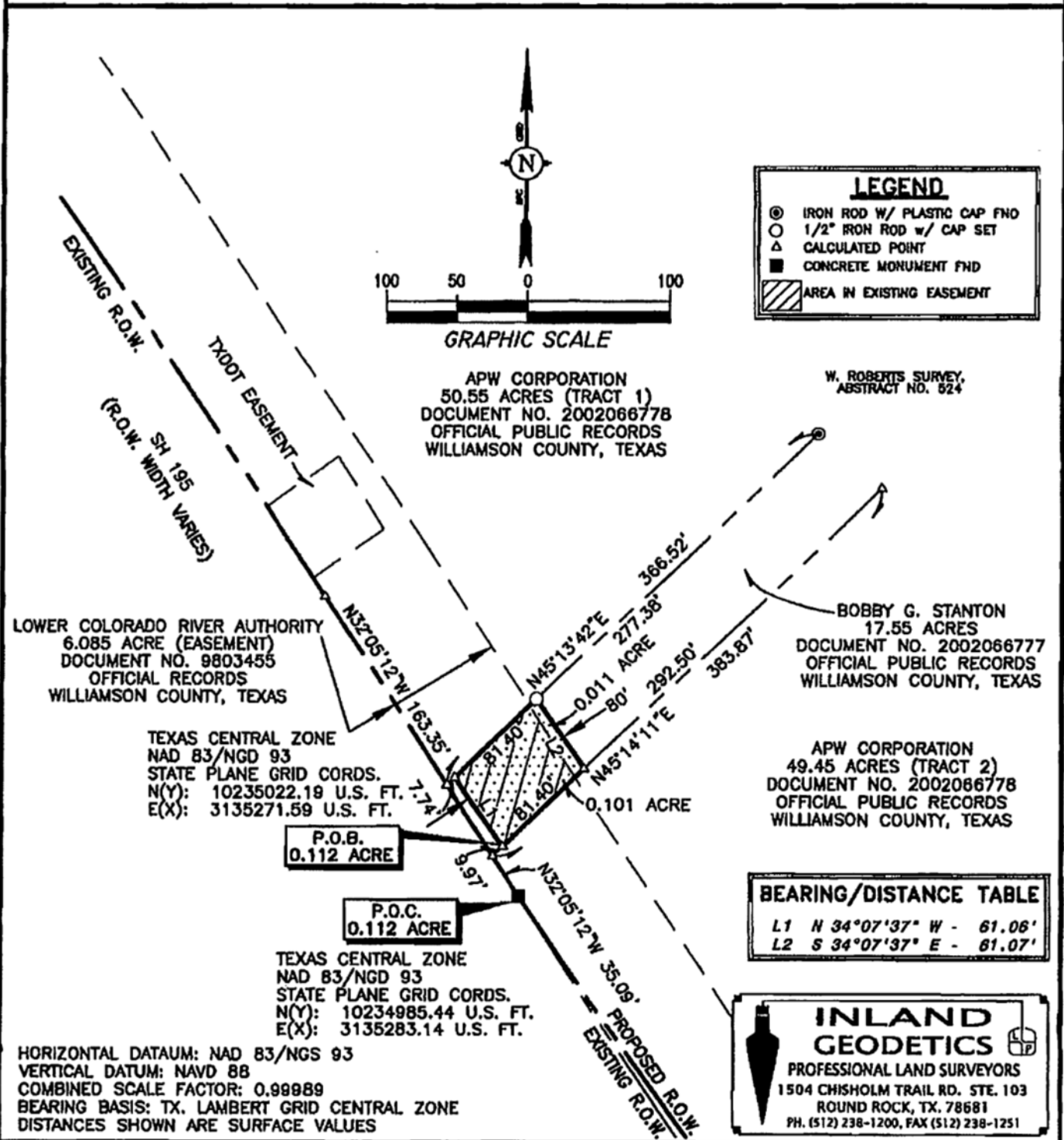
M. Stephen Truesdale *5 AUG 09*

M. Stephen Truesdale Date:

Registered Professional Land Surveyor No. 4933
Licensed State Land Surveyor
Inland Geodetics, L.P.
1504 Chisholm Trail Road, Suite 103
Round Rock, Texas 78681
Phone: (512) 238-1200 Fax: (512) 238-1251

WORD FILE: T359002A-0006A.DOC
ACAD FILE: T359002A-0006A.DWG





ACAD FILE: T359002A-0006A.DWG
WORD FILE: T359002A-0006A.DOC
REVISION:
SCALE: 100
DATE: 07-15-2009
WO NO.:
FIELD BOOK: 258 PG. 67
DRAWN BY: BJM

PLAT SHOWING A 0.112 ACRE,
EASEMENT TRACT SITUATED IN THE
W. ROBERTS SURVEY, ABSTRACT NO. 524,
WILLIAMSON COUNTY, TEXAS

T-359 TRANSMISSION LINE

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3700 LAKE AUSTIN BLVD. AUSTIN, TX 78703
(512) 473-3200 www.lcra.org