

R31923

County of Hunt
Tract No. 703
Project: Dent to Shelby

Possession and Use Agreement

This Possession and Use Agreement (the "Agreement") between the City of Garland (the "City") and Joe N. Peters (the "Grantor" whether one or more), grants to the City, its contractors, agents, and all others deemed necessary by the City, an irrevocable right to possession and use of the Grantor's property for the purpose of constructing an electric transmission line, and all attendant facilities and appurtenances thereto (the "Project"). The property subject to this Agreement is described more fully in the survey attached as Exhibit A, and made a part of this Agreement by reference (the "Property").

1. For the consideration paid by the City which is set forth in Paragraph 2 below, the receipt and sufficiency of which is acknowledged, the Grantor grants, bargains, sells, and conveys to the City the right of entry and non-exclusive possession and use of the Property for the purpose of constructing an electric transmission line, and all attendant facilities and appurtenances thereto and the right to remove any trees, shrubs, vegetation, and improvements. Authorized activities include surveying, inspection, environmental studies, archeological studies, clearing, demolition, construction of permanent improvements, and all other work required to be performed in the sole discretion of the City, in connection with the Project. This Agreement will extend to the City, its contractors and assigns, and all others deemed necessary by the City for the purposes of the Project. In addition to the foregoing rights and without limiting the same, the City shall have the right of ingress and egress on, over and under the Property for the above stated purposes. If immediate access is not reasonably available over the Property for the above purposes, then the City shall have the right of ingress and egress over existing roads across the adjacent or remainder property of Grantor for the above-stated purposes. In the event that access is not reasonably available over the Property and not available over existing roads, and only in that event, the City shall have the right of reasonable ingress and egress over the adjacent property of Grantor along any route that is reasonable and appropriate under the circumstances then existing in order to obtain access. The City shall have the right to install or maintain appropriate gates along and in any fence, as necessary or appropriate for the exercise of the City's right to access the Property or adjacent property of Grantor, provided that gates will be installed in such a manner that it will not weaken fences, and Grantor will have access to and have the right to install Grantor's own locks on such gates so that both the City and Grantor have access to gates.

2. The City will be entitled to take possession and use of the Property on the date that this Agreement is signed by all parties (the "Effective Date"). In full consideration for this irrevocable grant of possession and use and other Grantor covenants, warranties, and obligations under the Agreement, the City will tender to the Grantor the sum of FORTY-ONE THOUSAND FIVE HUNDRED SIXTY-FOUR AND 00/100 Dollars (\$41,564.00) (the "Entry Deposit") with a check made payable to Grantor, which payment shall be made within thirty (30) days from the date this Agreement is executed by all parties. The Grantor agrees that this sum represents adequate and full compensation for the possession and use of the Property. The parties agree that the Entry Deposit represents 100 percent of the City's appraised value, which assumes no adverse environmental conditions affecting the value of the Property. The appraised value is the City's determination of the just compensation owed to the Grantor for the real property interest to be

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acquired by the City in the Property, encumbered with the improvements thereon, if any, and damages to the Remainder, if any, save and except all oil, gas, and sulphur.

3. The parties agree that the Entry Deposit will be deducted from any final settlement amount, Special Commissioners' award, or court judgment. In the event the amount of a Special Commissioners' Award is less than the Entry Deposit, then the parties agree that the Grantor is entitled to keep the Entry Deposit, and the City will not seek a refund of the overpayment. Notwithstanding the foregoing, if Grantor files timely objections to the Special Commissioners' Award and the final judgment of the court awards to the Grantor less than the Entry Deposit, then Grantor shall reimburse the City the difference between the amount of the final judgment and the Entry Deposit.

4. The Grantor warrants and represents that the title to the Property is free and clear of all liens and encumbrances or that proper releases will be executed for the Property prior to funds being disbursed under this Agreement. The Grantor further warrants that no other person or entity owns an interest in the fee title to the Property and further agrees to indemnify the City from all unreleased or undisclosed liens, claims, or encumbrances affecting the Property.

5. Grantor and the City agree to and hereby designate the date of taking to determine just compensation owed to Grantor, and for all other purposes, including the date the prejudgment interest will begin to accrue, as being the date that the funds are deposited into the registry of the Court by the City following a Special Commissioners' Hearing. If the Special Commissioners' Award does not differ from the amount of the Entry Deposit, then the parties agree that the date of taking and the accrual of prejudgment interest will be the date that the Special Commissioners' Hearing is held.

6. This Agreement is made with the understanding that the City will continue to proceed with acquisition of a real property interest in the Property, including by filing a petition if and when the City deems it necessary to do so. The Grantor reserves all rights of compensation for the title and interest in and to the Property which the Grantor holds as of the time immediately prior to the Effective Date of this Agreement. This Agreement shall in no way prejudice the Grantor's rights to receive full and just compensation as allowed by law for all of the Grantor's interests in and to the Property to be acquired by the City, encumbered with the improvements thereon, if any, and damages, if any, to the remainder of the Grantor's interest in any larger tract of which the Property is a part (the "Remainder"), if any; all as the Property exists on the Effective Date of this Agreement. The City's removal or construction of improvements on the Property shall in no way affect the fair market value of the Property in determining compensation due to the Grantor in the eminent domain proceedings. There will be no project impact upon the appraised value of the Property.

7. The purpose of this Agreement is to allow the City to proceed with its Project without delay and to allow the Grantor to have the use at this time of a percentage of the estimated compensation for the City's acquisition of a real property interest in the Property. The Grantor expressly acknowledges that the proposed Project is for a valid public use and voluntarily waives any right

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the Grantor has or may have, known or unknown, to contest the jurisdiction of the court in any condemnation proceeding for acquisition of the Property related to the Project, based upon claims that the condemning authority has no authority to acquire the Property through eminent domain, has no valid public use for the Property, or that acquisition of the Property is not necessary for the public use.

8. The Grantor reserves all of the oil, gas, and sulphur in and under the land herein conveyed but waives all right of ingress and egress to the surface for the purpose of exploring, developing, mining, or drilling. The extraction of oil, gas, and minerals may not affect the geological stability of the surface.

9. The undersigned Grantor agrees to pay as they become due, all ad valorem property taxes and special assessments assessed against the Property, including prorated taxes for the year in which the City takes title to the Property.

10. Grantor and the City agree that until the date of the Special Commissioners' Award, the terms of this Agreement will govern the relationship of the parties. After the date of the Special Commissioners' Award, the rights defined in the petition will supersede the rights contained in this Agreement, and the rights defined in the petition will govern the relationship of the parties. Upon Final Judgment or upon the execution of an Easement between the parties, the rights defined in said Judgment or Easement will be the final, sole, and exclusive rights acquired by the City. Notwithstanding the foregoing, Grantor agrees that the City has the right to irrevocably possess the property and Grantor waives any and all rights to challenge the City's right to take the easement and right-of-way or file any other jurisdictional challenges once the Entry Deposit is paid to Grantor.

11. This Agreement will also extend to and bind the heirs, devisees, executors, administrators, legal representatives, successors in interest, and assigns of the parties.

12. It is agreed that the City will record this document.

13. Grantor and the City agree that if any portion of this Agreement is deemed to be illegal, invalid, or unenforceable, such illegal, invalid, or unenforceable provision shall not affect the legality, validity, or enforceability of the remainder of this Agreement.

14. Grantor and the City agree that Texas law governs this Agreement and all obligations of the parties are performable in Hunt County, Texas.

15. Grantor agrees that the rights contained in this Agreement will run with the land.

16. This Agreement may be executed in multiple counterparts, each of which when so executed shall be deemed an original and all of such counterparts, when taken together, shall constitute one and the same instrument. This shall be binding on those parties executing same even though this is not executed by all of the parties hereto. For purposes of recording, signed agreements may have signature pages removed and combined into the same instrument.

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To have and to hold the Agreement herein described and conveyed, together with all the rights and appurtenances belonging to the City and its assigns forever, for the purposes and subject to the limitations set forth above.

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GRANTOR

By: *Joe N. Peters*

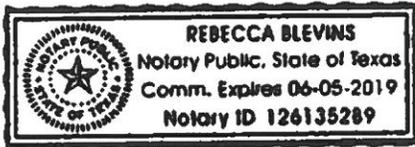
Printed Name: Joe N. Peters

Date: 5-16-19

Acknowledgement

State of Texas
County of Hunt

This instrument was acknowledged before me on May 16, 2019 by Joe N. Peters.



Rebecca Blewins
Notary Public in and for the State of Texas

THE CITY OF GARLAND

Executed by and approved for the City of Garland, for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the City Council.

By: *[Signature]*

Printed Name: *Darrell Clive*

Title: *CFO - Garland Power & Light*

Date: 5/21/19

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EXHIBIT A

CITY OF GARLAND
 DENT ROAD TO SHELBY
 138 KV TRANSMISSION LINE EASEMENT
 TRACT 703-JOE N. PETERS

4344-ESMT-703
 SAM JOB NO 4344
 SHEET 01 OF 03

EXHIBIT 'A'
3.822 ACRES OR 166,500 SQUARE FEET
120 FEET WIDE EASEMENT

BEING A TRACT OF LAND LOCATED IN THE JOEL ODELL SURVEY, ABSTRACT NO. 811, HUNT COUNTY, TEXAS AND BEING A PART OF THE RESIDUE OF A TRACT OF LAND DESCRIBED IN A DEED TO JOE N. PETERS, RECORDED IN VOLUME 173, PAGE 16 OF THE DEED RECORDS OF HUNT COUNTY, TEXAS (D.R.H.C.T.) AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A CALCULATED POINT IN A WEST LINE OF SAID PETERS TRACT AND THE EAST LINE OF THE MARY LOUISE SATTERWHITE TRACT RECORDED IN VOLUME 1401, PAGE 54 OF THE OFFICIAL PUBLIC RECORDS OF HUNT COUNTY, TEXAS (O.P.R.H.C.T.), WHICH IS DESCRIBED IN SAID DEED AS BEING THE EAST LINE OF THE ABANDONED SOUTHERN PACIFIC RAILROAD, AND SAID RAILROAD IS DESCRIBED IN A DISCLAIMER FROM SOUTHERN PACIFIC TRANSPORTATION COMPANY, ABANDONING ANY RIGHT, TITLE OR INTEREST IN OR TO THE PROPERTY DESCRIBED IN PARCEL FOUR, RECORDED IN VOLUME 6477 PAGE 859, D.R.H.C.T., SAID PARCEL FOUR FURTHER DESCRIBED IN A DEED FROM PAT BOYLES TO TEXAS MIDLAND RAILROAD COMPANY, RECORDED IN VOLUME 80, PAGE 22 D.R.H.C.T. FROM WHICH A 5/8-INCH IRON ROD FOUND AT AN ELL CORNER OF SAID PETERS TRACT AND AT THE SOUTHEAST CORNER OF SAID SATTERWHITE 0.475 ACRE TRACT BEARS SOUTH 03 DEGREES 07 MINUTES 01 SECONDS WEST, A DISTANCE OF 225.56 FEET, SAID POINT OF BEGINNING HAVING GRID COORDINATES OF N:7085257.71, E:2701123.40;

THENCE NORTH 03 DEGREES 07 MINUTES 01 SECONDS EAST, ALONG SAID COMMON LINES A DISTANCE OF 120.20 FEET, TO A CALCULATED POINT FOR CORNER;

THENCE NORTH 89 DEGREES 49 MINUTES 33 SECONDS EAST, LEAVING SAID LINES AND ACROSS SAID JOE PETERS TRACT, A DISTANCE OF 839.60 FEET, TO A CALCULATED POINT FOR CORNER IN AN EAST LINE OF SAID JOE PETERS TRACT AND THE WEST LINE OF THE JOE NEWMAN PETERS AND WIFE, CHARLA J. PETERS TRACT, RECORDED IN VOLUME 196, PAGE 35, D.R.H.C.T.;

THENCE SOUTH 01 DEGREES 29 MINUTES 49 SECONDS WEST, ALONG SAID COMMON LINES A DISTANCE OF 664.76 FEET, TO A CALCULATED POINT FOR CORNER AT A SOUTHEAST CORNER OF SAID PETERS TRACT, SAME BEING IN THE NORTH LINE OF THE ESTEX HOMES, INC TRACT, RECORDED IN INSTRUMENT NO. 2018-16148, O.P.R.H.C.T.;

THENCE SOUTH 88 DEGREES 24 MINUTES 51 SECONDS WEST, ALONG SAID COMMON LINES, A DISTANCE OF 120.17 FEET, TO A CALCULATED POINT FOR CORNER, FROM WHICH A 1/2-INCH IRON ROD FOUND AT AN ELL CORNER OF SAID PETERS TRACT SAME BEING THE NORTHWEST CORNER OF SAID ESTEX HOMES TRACT, BEARS SOUTH 88 DEGREES 24 MINUTES 51 SECONDS WEST, A DISTANCE OF 371.29 FEET.

THENCE NORTH 01 DEGREES 29 MINUTES 49 SECONDS EAST, LEAVING SAID LINES AND ACROSS SAID JOE PETERS TRACT, A DISTANCE OF 547.67 FEET, TO A CALCULATED POINT FOR CORNER;

CITY OF GARLAND
DENT ROAD TO SHELBY
138 KV TRANSMISSION LINE EASEMENT
TRACT 703-JOE N. PETERS

43444-ESMT-703
SAM JOB NO 43444
SHEET 02 OF 03

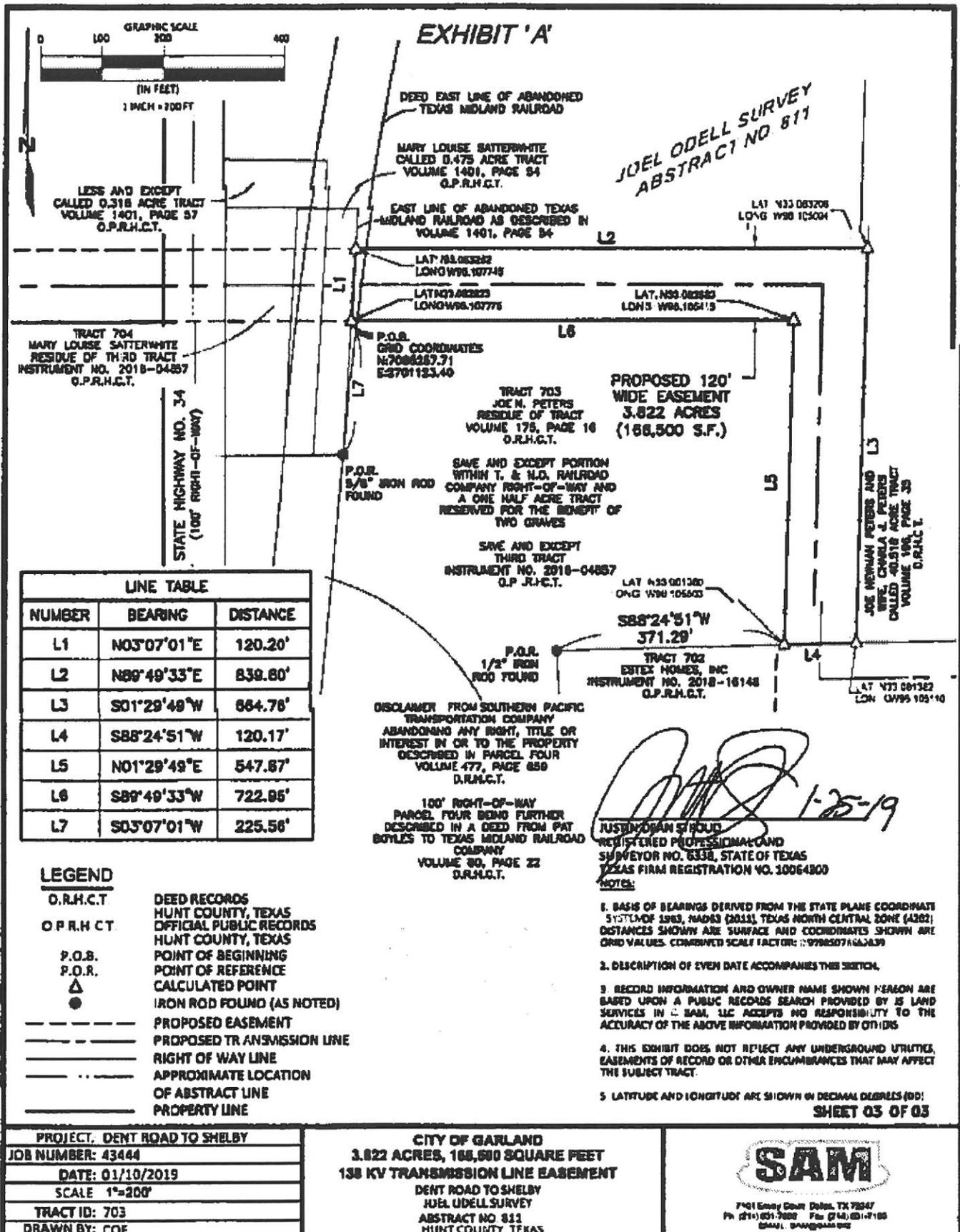
THENCE SOUTH 89 DEGREES 49 MINUTES 33 SECONDS WEST, CONTINUING ACROSS SAID JOE PETERS TRACT
A DISTANCE OF 722.95 FEET, TO THE POINT OF BEGINNING AND CONTAINING 166,500 SQUARE FEET OR 3.822
ACRES OF LAND.

BASIS OF BEARINGS DERIVED FROM THE STATE PLANE COORDINATE SYSTEM OF 1983, NAD83 (2011) TEXAS NORTH CENTRAL ZONE (4202)
DISTANCES SHOWN ARE SURFACE AND COORDINATES SHOWN ARE GRID VALUES. COMBINED SCALE FACTOR 0.99985078652839.

SKETCH OF THE LINE DATA ALL COMPANIES THIS DESCRIPTION



JLSHY/DEAN STROUB
REGISTERED PROFESSIONAL
LAND SURVEYOR NO. 6338, STATE OF TEXAS
TEXAS FIRM REGISTRATION NO. 10064300



LINE TABLE

| NUMBER | BEARING | DISTANCE |
|--------|-------------|----------|
| L1 | N03°07'01"E | 120.20' |
| L2 | N89°49'33"E | 839.80' |
| L3 | S01°29'49"W | 864.76' |
| L4 | S88°24'51"W | 120.17' |
| L5 | N01°29'49"E | 547.87' |
| L6 | S89°49'33"W | 722.95' |
| L7 | S03°07'01"W | 225.56' |

- LEGEND**
- O.R.H.C.T DEED RECORDS HUNT COUNTY, TEXAS OFFICIAL PUBLIC RECORDS HUNT COUNTY, TEXAS
 - O.P.R.H.C.T HUNT COUNTY, TEXAS OFFICIAL PUBLIC RECORDS HUNT COUNTY, TEXAS
 - P.O.B. POINT OF BEGINNING
 - P.O.R. POINT OF REFERENCE
 - ▲ CALCULATED POINT
 - IRON ROD FOUND (AS NOTED)
 - PROPOSED EASEMENT
 - - - PROPOSED TRANSMISSION LINE
 - ==== RIGHT OF WAY LINE
 - ... APPROXIMATE LOCATION OF ABSTRACT LINE
 - _____ PROPERTY LINE

[Signature] 1-25-19

JUSTIN DEAN STROUD
 REGISTERED PROFESSIONAL LAND SURVEYOR NO. 6338, STATE OF TEXAS
 TEXAS FIRM REGISTRATION NO. 10064800

NOTES:

1. BASIS OF BEARINGS DERIVED FROM THE STATE PLANE COORDINATE SYSTEM OF 1983, NAD83 (2011), TEXAS NORTH CENTRAL ZONE (4202). DISTANCES SHOWN ARE SURFACE AND COORDINATES SHOWN ARE GRID VALUES. COMBINED SCALE FACTOR IS 0.99999716624399
2. DESCRIPTION OF EVEN DATE ACCOMPANIES THIS SHEET.
3. RECORD INFORMATION AND OWNER NAME SHOWN HEREON ARE BASED UPON A PUBLIC RECORDS SEARCH PROVIDED BY IS LAND SERVICES IN C. S.A.M., LLC ACCEPTS NO RESPONSIBILITY TO THE ACCURACY OF THE ABOVE INFORMATION PROVIDED BY OTHERS.
4. THIS EXHIBIT DOES NOT REFLECT ANY UNDERGROUND UTILITIES, EASEMENTS OF RECORD OR OTHER ENCUMBRANCES THAT MAY AFFECT THE SUBJECT TRACT.
5. LATITUDE AND LONGITUDE ARE SHOWN IN DECIMAL DEGREES (DD).

PROJECT: DENT ROAD TO SHELBY
JOB NUMBER: 43444
DATE: 01/10/2019
SCALE 1"=200'
TRACT ID: 703
DRAWN BY: COF

CITY OF GARLAND
3.822 ACRES, 166,500 SQUARE FEET
138 KV TRANSMISSION LINE EASEMENT
 DENT ROAD TO SHELBY
 JOEL ODELL SURVEY
 ABSTRACT NO 811
 HUNT COUNTY, TEXAS

SAM

740 Emily Court Dallas, TX 75247
 Ph (214) 651-7000 Fax (214) 651-7100
 EMAIL: sam@samland.com

**GARLAND POWER & LIGHT
510 W. AVENUE B
GARLAND, TX 75040**

**THE STATE OF TEXAS
COUNTY OF HUNT**

I hereby certify that this instrument was FILED on the
date and time stamped heron by me and was duly
RECORDED in the Records of Hunt County, Texas
2019-09036
06/28/2019 09:31:20 AM



Jennifer Lindenzweig

Jennifer Lindenzweig, County Clerk
Hunt, Texas