



**POSSESSION AND USE AGREEMENT FOR TRANSPORTATION PURPOSES  
WITH ADDITIONAL PAYMENT OF INDEPENDENT CONSIDERATION**

<b>STATE OF TEXAS</b>	§	ROW CSJ: 0338-02-043
	§	Parcel ID: P00073138.001 (68)
<b>COUNTY OF MONTGOMERY</b>	§	Project No.: SH 105

This Possession and Use Agreement For Transportation Purposes (the “Agreement”) between the State of Texas, acting by and through the Texas Department of Transportation (the “State”), and City of Montgomery, a political subdivision of the State of Texas (the “Grantor” whether one or more), grants to the State, its contractors, agents and all others deemed necessary by the State, an irrevocable right to possession and use of the Grantor’s property for the purpose of constructing a portion of SH 105 (the “Highway Construction Project”). The property subject to this Agreement is described more fully in field notes and plat map (attached as “Exhibit A”) and made a part of this Agreement by reference (the “Property”).

1. For the consideration paid by the State which is set forth in Paragraphs 2 and 3 below, the receipt and sufficiency of which is acknowledged, the Grantor grants, bargains, sells and conveys to the State of Texas the right of entry and exclusive possession and use of the Property for the purpose of constructing a highway and appurtenances thereto and the right to remove any improvements. Authorized activities include surveying, inspection, environmental studies, archeological studies, clearing, demolition, construction of permanent improvements, relocating, replacing, and improving existing utility facilities, locating new utility facilities, and other work required to be performed in connection with the Highway Construction Project. This Agreement will extend to the State, its contractors and assigns, owners of any existing utilities on the Property and those which may be lawfully permitted on the Property by the State in the future, and all others deemed necessary by the State for the purpose of the Highway Construction Project. This grant will allow the construction, relocation, replacement, repair, improvement, operation and maintenance of utilities on the Property.
2. In full consideration for this irrevocable grant of possession and use and other Grantor covenants, warranties, and obligations under this Agreement, the State will tender to the Grantor the sum of Zero Dollars (\$0.00). The Grantor agrees that this sum represents adequate and full compensation for the possession and use of the Property. The State will be entitled to take possession and use of the Property upon tender of payment. The parties agree that the sum tendered represents zero percent of the State's approved value, which assumes no adverse environmental conditions affecting the value of the Property. The approved value is the State’s determination of the just compensation owed to the Grantor for the real property interest to be acquired by the State 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. The parties agree that the sum tendered to Grantor will be deducted from any final settlement amount, Special Commissioners’ award or court judgment. In the event the amount of the final settlement or judgment for acquisition of the Property is less than the amount the State has paid for the possession and use of the Property, then the Grantor agrees that the original amount tendered represents an overpayment for the difference and, upon written notice from the State, the Grantor will promptly refund the overpayment to the State.

3. As additional consideration, the State will tender to the Grantor the sum of Four Thousand Eight Hundred Forty and 60/100 Dollars (\$4,840.60), the receipt and sufficiency of which is acknowledged. The parties agree that the sum tendered under this Paragraph 3:
  - (i) is independent consideration for the possession and use of Grantor's Property and represents no part of the State's compensation to be paid for the anticipated purchase of the Property; and
  - (ii) will not be refunded to the State upon any acquisition of the Property by the State.
4. The effective date of this Agreement will be the date on which payment pursuant to Paragraphs 2 and 3 above was tendered to the Grantor by the State, or disbursed to the Grantor by a title company acting as escrow agent for the transaction, (the "Effective Date").
5. 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 State from all unreleased or undisclosed liens, claims or encumbrances affecting the Property.
6. The parties agree that the valuation date for determining the amount of just compensation for the real property interest proposed to be acquired by the State in the Property, for negotiation or eminent domain proceeding purposes, will be the Effective Date of this Agreement.
7. This Agreement is made with the understanding that the State will continue to proceed with acquisition of a real property interest in the Property. 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 State, 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 State'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. This grant will not prejudice the Grantor's rights to any relocation benefits for which Grantor may be eligible.
8. In the event the State institutes or has instituted eminent domain proceedings, the State will not be liable to the Grantor for interest upon any award or judgment as a result of such proceedings for any period of time prior to the date of the award. Payment of any interest may be deferred by the State until entry of judgment.
9. The purpose of this Agreement is to allow the State to proceed with its Highway Construction Project without delay and to allow the Grantor to have the use at this time of a percentage of the estimated compensation for the State's acquisition of a real property interest in the Property. The Grantor expressly acknowledges that the proposed Highway Construction Project is for a valid public use and voluntarily waives any right 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 Highway Construction 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.

10. 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. Nothing in this reservation will affect the title and rights of the State to take and use all other minerals and materials thereon, and thereunder.
11. The undersigned Grantor agrees to pay as they become due, all ad valorem property taxes and special assessments assessed against Property, including prorated taxes for the year in which the State takes possession under this agreement.
12. Notwithstanding the acquisition of right of possession to the Property by the State in a condemnation proceeding by depositing the Special Commissioners' award into the registry of the court, less any amounts tendered to the Grantor pursuant to Paragraph 2 above, this Agreement shall continue to remain in effect until the State acquires title to the Property either by negotiation, settlement, or final court judgment.
13. This Agreement will also extend to and bind the heirs, devisees, executors, administrators, legal representatives, successors in interest and assigns of the parties.
14. It is agreed the State will record this document.
15. Other conditions:

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

**GRANTOR:**

**City of Montgomery, a political subdivision of the State of Texas**

by: \_\_\_\_\_  
Sara Countryman, Mayor

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Corporate Acknowledgment

State of Texas  
County of Montgomery

This instrument was acknowledged before me on \_\_\_\_\_, 2024 by Sara Countryman as Mayor of the City of Montgomery, a political subdivision of the State of Texas.

The acknowledging person personally appeared by:

physically appearing before me.

appearing by an interactive two-way audio and video communication that meets the requirements for online notarization under Texas Government Code, Chapter 406, Subchapter C.

*(seal)*

\_\_\_\_\_  
Notary Public's Signature

**THE STATE OF TEXAS**

Executed by and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: \_\_\_\_\_  
Thien Nguyen, Right of Way Manager

Date: \_\_\_\_\_

EXHIBIT A

County: Montgomery  
Highway: State Highway 105  
Limits: Grimes County Line to FM 149  
RCSJ: 0338-02-043

**Property Description for P00073138.001 (Parcel 68)**

Being a 0.0517 of an acre (2,251 square feet) parcel of land situated in the Zachariah Landrum Survey, Abstract No. 22, Montgomery County, Texas; said 0.0517 of an acre parcel of land being out of and a part of a called 1.423 acre tract of land described in a deed dated July 25, 2005, from Montgomery County to City of Montgomery, recorded under Montgomery County Clerk's File (M.C.C.F.) No. 2005-081491, Film Code 877-10-1410, of the Official Public Records of Real Property of Montgomery County, Texas (O.P.R.R.P.M.C.T.); said 0.0517 of an acre parcel of land being more particularly described by metes and bounds as follows:

**COMMENCING** at an axle found at the southwest corner of said 1.423 acre tract and the southeast corner of a called 2.6269 acre tract of land described in a deed executed April 28, 2017, from Todd Eric Stowe and wife, Glenda Carol Stowe to TG Stowe Holdings, LLC, recorded under M.C.C.F. No. 2017035252, of the Official Public Records Montgomery County, Texas;

**THENCE**, North 02° 40' 07" West, along the west boundary line of said 1.423 acre tract and the east boundary line of said 2.6269 acre tract, a distance of 307.20 feet to a 5/8 inch iron rod with TxDOT aluminum cap set in the proposed south right-of-way line of State Highway 105 (SH 105) for the southwest corner of the herein described parcel and the **POINT OF BEGINNING** having coordinates of N= 10,135,568.55, E= 3,755,910.41; said point being 62.00 feet right from the proposed SH 105 baseline station 351+55.30;

- 1) **THENCE**, North 02° 40' 07" West, continuing along the west boundary line of said 1.423 acre tract and the east boundary line of said 2.6269 acre tract, a distance of 7.99 feet to a point in the existing south right-of-way line of SH 105 (width varies per Volume 242, Page 284, Volume 243, Page 582, Volume 245, Page 140 of the Deed Records of Montgomery County, Texas and Condemnation-Cause No. 1814 of the Commissioners Court of Montgomery County, Texas) for the northeast corner of said 2.6269 acre tract and the northwest corner of said 1.423 acre tract and of the herein described parcel;

EXHIBIT A

- 2) **THENCE**, North 86° 10' 29" East, along the existing south right-of-way line of said SH 105 and the north boundary line of said 1.423 acre tract, a distance of 197.97 feet to a point in the existing west right-of-way line of Old Plantersville Road (width varies – no record information found) for the northeast corner of said 1.423 acre tract and of the herein described parcel;
- 3) **THENCE**, South 03° 00' 44" East, along the existing west right-of-way line of said Old Plantersville Road and the east boundary line of said 1.423 acre tract, a distance of 36.24 feet to a 5/8 inch iron rod with TxDOT aluminum cap set in the proposed south right-of-way line of SH 105 for the southeast corner of the herein described parcel;\*\*
- 4) **THENCE**, North 47° 52' 50" West, along the proposed south right-of-way line of SH 105, a distance of 34.77 feet to a 5/8 inch iron rod with TxDOT aluminum cap set for an angle point of the herein described parcel;\*\*
- 5) **THENCE**, South 87° 15' 04" West, continuing along the proposed south right-of-way line of SH 105, a distance of 173.47 feet to the **POINT OF BEGINNING** and containing 0.0517 of an acre (2,251 square feet) parcel of land.

Notes:

All bearings and coordinates are based on the Texas Coordinate System, Central Zone (4203), North American Datum of 1983 (NAD83), 2011 Adjustment, Epoch 2010.00. All distances and coordinates shown are surface values and may be converted to grid by dividing by a Combined Adjustment Factor of 1.00003.

TxDOT Monument Nos. H 2001-0050 and H 2001-0054 prepared by J.F. Thompson, Inc., dated Jan. 28, 2003, CSJ No. 0338-02-032, and revised by Landtech, Inc. September 17, 2017 were held for horizontal control. All measurements are in U. S. Survey feet.

\*\* The monument described and set in this call may be replaced with a TxDOT Type II right-of-way marker upon completion of the highway construction project under the supervision of a Registered Professional Land Surveyor, either employed or retained by TxDOT.

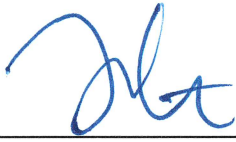
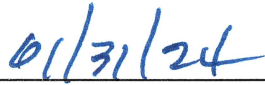
A parcel plat of even date was prepared in conjunction with this property description.

Access will be permitted to the remainder property abutting the highway facility.

Abstracting was completed in December, 2023.

EXHIBIT A

I hereby certify that this survey was performed on the ground under my supervision and that this property description and accompanying parcel plat represent the facts as found at the time of the survey. Survey date: January, 2024

\_\_\_\_\_  
Leo M. Delatorre Date  
Registered Professional Land Surveyor  
Texas Registration No. 5113

Landtech, Inc.  
2525 North Loop West, Suite 300  
Houston, Texas 77008  
(713) 861-7068  
TBPELS Firm No. 10019100



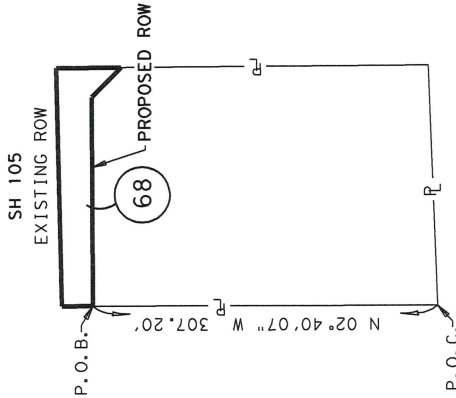
**LEGEND**

- PROPOSED R.O.W. LINE
- PROPOSED R.O.W. AND ACCESS DENIAL LINE
- EXISTING R.O.W. LINE
- PROPERTY LINE
- SURVEY LINE
- X — FENCE LINE
- O.P.R.M.C.T. - OFFICIAL PUBLIC RECORDS MONTGOMERY COUNTY
- O.P.R.P.M.C.T. - OFFICIAL PUBLIC RECORDS OF REAL PROPERTY MONTGOMERY COUNTY
- M.C.C.F. - MONTGOMERY COUNTY CLERK'S FILE
- M.R.M.C.T. - MAP RECORDS MONTGOMERY COUNTY, TEXAS
- D.R.M.C.T. - DEED RECORDS MONTGOMERY COUNTY, TEXAS
- C.C.M.C.T. - COMMISSIONERS COURT OF MONTGOMERY COUNTY, TEXAS
- U.E. - UTILITY EASEMENT
- B.L. - BUILDING LINE
- A.E. - AERIAL EASEMENT
- D.E. - DRAINAGE EASEMENT
- I.R. - IRON ROD
- I.P. - IRON PIPE
- SET 5/8" IR. W/TXDOT ALUM CAP (UNLESS OTHERWISE NOTED)
- FOUND 5/8" IR. W/TXDOT ALUM CAP
- SET (AS INDICATED)
- ⊙ FOUND PROPERTY CORNER (AS DESCRIBED)

**NOTES:**

1. ALL BEARINGS AND COORDINATES ARE BASED ON THE TEXAS COORDINATE SYSTEM, CENTRAL ZONE (4203), NORTH AMERICAN DATUM OF 1983 (NAD 83), 2011 ADJUSTMENT, EPOCH 2010.00. ALL DISTANCES AND COORDINATES SHOWN ARE SURFACE VALUES AND MAY BE CONVERTED TO GRID BY DIVIDING BY THE COMBINED ADJUSTMENT FACTOR OF 1.00003.
2. TXDOT MONUMENT NOS. H 2001-0050 AND H 2001-0054 PREPARED BY J.F. THOMPSON, INC., DATED JAN. 28, 2003, CSJ NO. 0338-02-032, AND REVISED BY LANDTECH, INC. SEPTEMBER 17, 2017 WERE HELD FOR HORIZONTAL CONTROL. HORIZONTAL SURVEY METHOD: BASE STATION (RTK) AND TXDOT RTN.
3. UNIT OF MEASURE: U.S. SURVEY FEET
4. \*\* THE MONUMENT DESCRIBED AND SET MAY BE REPLACED WITH A TXDOT TYPE II RIGHT-OF-WAY MARKER UPON COMPLETION OF THE HIGHWAY CONSTRUCTION PROJECT UNDER THE SUPERVISION OF A REGISTERED PROFESSIONAL LAND SURVEYOR, EITHER EMPLOYED OR RETAINED BY TXDOT.
5. ABSTRACTING WAS COMPLETED IN DECEMBER, 2023.
6. A PROPERTY DESCRIPTION OF EVEN DATE WAS PREPARED IN CONJUNCTION WITH THIS PARCEL PLAT.
7. FIELD SURVEYS WERE COMPLETED IN JANUARY, 2024.
8. RIGHT-OF-WAY MAP WAS COMPLETED IN JANUARY, 2024.
9. ALL EASEMENTS AND BUILDING LINES SHOWN WITHIN THE BOUNDARY OF ANY SUBDIVISION ARE PER THAT SUBDIVISION'S RECORDED PLAT UNLESS OTHERWISE NOTED.

**ZACHARIAH LANDRUM SURVEY, ABSTRACT NO. 22**



PARENT TRACT INSET FOR  
PARCEL NO. 68  
N. T. S.



I HEREBY CERTIFY THAT THIS SURVEY WAS PERFORMED ON THE GROUND UNDER MY SUPERVISION AND THAT THIS PARCEL PLAT REPRESENTS THE FACTS AS FOUND AT THE TIME OF THE SURVEY.

*Leo M. Delatorre*  
LEO M. DELATORRE DATE  
REGISTERED PROFESSIONAL LAND SURVEYOR  
TEXAS REGISTRATION NO. 5113

AREA TABLE (ACRES)		
EXISTING AC.	TAKING AC./S.F.	REMAINDER AC.
	LEFT	RIGHT
1.423	0.0517 2,251	1.3713

**LANDTECH**  
2525 NORTH LOOP WEST SUITE 300  
HOUSTON, TX 77008  
713-861-7068  
TBPELS FIRM NO. 10019100

**PARCEL PLAT**  
SHOWING  
P00073138.001  
(PARCEL 68)  
STATE HIGHWAY 105  
MONTGOMERY COUNTY  
R. C. S. J. NO. 0338-02-043  
JANUARY, 2024

SCALE: N. T. S.



# BENJAMIN RIGBY SURVEY, ABSTRACT NO. 31

SH 105

(R.O.W. WIDTH VARIES)  
VOL. 242, PG. 284, D.R.M.C.T.  
VOL. 243, PG. 582, D.R.M.C.T.  
VOL. 245, PG. 140, D.R.M.C.T.  
CONDEMNATION CAUSE NO. 1814  
C.C.M.C.T.

PROPOSED BASELINE SH 105

353+00

352+00

351+00

350+00

299+97

197.97'

EXISTING ROW

PROPOSED ROW

N 86°10'29"E

S 87°15'04"W

173.47'

GAZEBO

STA. 353+28.78

OFF. 62.00' RT

INLET

SPEED STA. 353+53.45

OFF. 86.53' R

BOY

COMMERCIAL CONCRETE DRIVE

EXISTING ROW

OLD PLANTERSVILLE RD

(R.O.W. WIDTH VARIES)

(NO RECORD INFORMATION FOUND)

PLANTERSVILLE RD

ASPHALT

N 02°40'07" W

307.20'

INLET

SPEED BUMP

INLET

INLET

INLET

INLET

INLET

INLET

INLET

INLET

INLET

INLET

INLET

INLET

INLET

INLET

THE CITY OF MONTGOMERY  
16' WATERLINE EASEMENT  
CALLED 0.12 ACRE  
M.C.C.F. NO. 2013118866  
O.P.R.M.C.T.  
EXECUTED: OCTOBER 22, 2013

P.O.B. PARCEL 68  
N = 10,135,568.56  
E = 3,755,910.41  
STA. 351+55.30  
OFF. 62.00' RT

TG STONE HOLDINGS, LLC  
CALLED 2.6269 ACRES  
M.C.C.F. NO. 2017035252,  
O.P.R.M.C.T.  
EXECUTED: APRIL 28, 2017

# ZACHARIAH LANDRUM SURVEY, ABSTRACT NO. 22

P.O.C. PARCEL 68  
FND. AXLE

LINE	BEARING	LENGTH
L1	N 02°40'07" W	7.99'
L2	S 03°00'44" E	36.24'
L3	N 47°52'50" W	34.77'

**LANDTECH**  
2525 NORTH LOOP WEST, SUITE 300  
HOUSTON, TX 77008  
713-861-7068  
TBPELS FIRM NO. 10019100

**PARCEL PLAT**  
SHOWING  
P00073138.001  
(PARCEL 68)  
STATE HIGHWAY 105  
MONTGOMERY COUNTY  
R.C.S.J. NO. 0338-02-043  
JANUARY, 2024

SH 105 PARCEL 68.TXT

HIGHWAY: SH 105  
LIMITS: GRIMES COUNTY LINE TO FM 149  
RCSJ: 0338-02-043  
PARCEL P00073138.001 (PARCEL 68)  
DATE: JANUARY, 2024

POC 7735

From Pt	Bearing	Distance	To Point	Delta North	Delta East	Delta Elev
7735	N 02°40'07"W	307.20	7685	306.86452	-14.30287	

\*-----\*

\* Prepared by: Landtech, Inc.  
 \* Routine: Area Summary Coord File: 2320052-Calcs.crd 8/14/23 9:25:17  
 \* Input Scale Factor: 1.000000000 Output Scale Factor: 1.000000000  
 \*-----\*

SH 105 PARCEL 68

POB  
N = 10135568.54996  
E = 3755910.40736

Point ID	Ang Rt	Bearing	Distance	Point ID	Northing	Easting
7685		N 02°40'07"W	7.99	7726	10135576.53279	3755910.03528
7726	91°09'24"	N 86°10'29"E	197.97	4106	10135589.74031	3756107.56654
4106	89°11'13"	S 03°00'44"E	36.24	7688	10135553.54880	3756109.47100
7688	44°52'06"	N 47°52'50"W	34.77	7689	10135576.86946	3756083.67912
7689	224°52'06"	S 87°15'04"W	173.47	7685	10135568.54996	3755910.40736
7685	89°55'11"					

Perimeter: 450.45 Cumulative Perimeter: 450.45

Sq. Feet: 2251 Acres: 0.0517  
Total - Sq. Feet: 2251 Acres: 0.0517