

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Planning and Inspections Department

AGENDA DATE: First Reading: February 6, 2018
Second Reading: February 20, 2018

CONTACT PERSON: Anthony Cisneros (CisnerosAJ@elpasotexas.gov)

DISTRICT(S) AFFECTED: 1

SUBJECT:

An ordinance granting a special privilege license to the Board of Regents of the University of Texas System for the maintenance, use, and repair of portions of 18 existing surface parking spaces encroaching 3,511 square feet within portions of city right-of-way along Oregon Street adjacent to the property located at 2701 North Oregon Street.

BACKGROUND / DISCUSSION:

NESV2017-00005, UTEP Oregon Street Encroachment: A request for the existing surface encroachment of portions of parking spaces onto portions of City right of way. The proposed surface parking encroachment is existing and will be legalized through the execution of this Special Privilege License. The term of this Special Privilege License will be binding with the lease agreement between the Board of Regents of the University of Texas System and the City of El Paso

The term of the license will be for three (3) years, and provided that the license has not been terminated, this License shall be automatically renewed for a period of one year. During the license term, Applicant agrees to apply for a Vacation of the License Area. As consideration for the license, the grantee will pay an annual fee to the City for \$2,106.60.

As per Section 15.08.120(G), the applicant has provided proof of a general liability insurance policy in accordance with the City's Risk Management Department. Any deviation from the terms of this license shall render it void. The City maintains all rights to service or modify any or all of the portions of City right-of-way as described by this license.

Attachments:

Special Privilege License (NESV2017-00005)

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

The item was distributed to reviewing departments and agencies on Thursday, July 20, 2017. This final license Agreement was drafted in accordance to staff comment. Staff received no adverse comments from the reviewing departments.

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:

Victor Morrison-Vega
Planning and Inspections Department

A handwritten signature in blue ink, appearing to read "Victor Morrison-Vega", is written over a horizontal line. The signature is stylized and cursive.

ORDINANCE NO. _____

AN ORDINANCE GRANTING A SPECIAL PRIVILEGE LICENSE TO THE BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM FOR THE MAINTENANCE, USE, AND REPAIR OF PORTIONS OF 18 EXISTING SURFACE PARKING SPACES ENCROACHING 3,511 SQUARE FEET WITHIN PORTIONS OF CITY RIGHT-OF-WAY ALONG OREGON STREET ADJACENT TO THE PROPERTY LOCATED AT 2701 NORTH OREGON STREET.

WHEREAS, the Camino Real Regional Mobility Authority (“CRRMA”) is constructing the El Paso Streetcar Project which will provide fixed rail transit service for downtown El Paso and a streetcar connection serving The University of Texas at El Paso (“UTEP”) and providing transit options for UTEP students, faculty, staff, and visitors; and

WHEREAS, a site on the UTEP Campus near the intersection of Cincinnati Ave. and Oregon St. which has been identified as a location for a traction power substation, which is a component of the El Paso Streetcar Project; and

WHEREAS, the CRRMA has asked the City to lease an identified site for the traction power substation (the “Substation”); and

WHEREAS, a portion of a parking lot on the UTEP Campus is encroaching into a portion of public right of way along Oregon Street and the use will be legalized through the execution of this Special Privilege License; and

WHEREAS, the term of this Special Privilege License will be binding with the lease agreement between the Board of Regents of the University of Texas System and the City of El Paso; and

WHEREAS, the lease agreement between the Board of Regents of the University of Texas System and the City of El Paso will commence on the day this Special Privilege License is executed; and

WHEREAS, the Board of Regents of The University of Texas System will be required to apply for a vacation of the license area during the term of this Special Privilege License.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

SECTION 1. DESCRIPTION

The City of El Paso (hereinafter called “City”) hereby grants a Special Privilege License (hereinafter called “License”) to Board of Regents of The University of Texas System (hereinafter jointly referred to as the “Grantee”), for the maintenance, use and repair of portions of 18 existing surface parking spaces encroaching 3,511 square feet (hereinafter called “Parking Encroachment”) within portions of City right-of-way along Oregon Street as shown in location map in Exhibit “A” which is made a part hereof for all purposes (hereinafter referred to as “License Area”).

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SECTION 2. LICENSE AREA

The surface rights granted herein along portions of rights-of-way along Oregon Street adjacent to the property described as 2701 N. Oregon Street and legally described as A 0.047 ACRE PORTION OF OREGON STREET RIGHT-OF-WAY, ALEXANDER ADDITION, EL PASO, EL PASO COUNTY, TEXAS and A 0.034 PORTION OF OREGON STREET RIGHT-OF-WAY, ALEXANDER ADDITION, EL PASO, EL PASO COUNTY, TEXAS, an estimated total of 0.081 acres or 3,511 square feet, to maintain, use, and repair the Parking Encroachment is more particularly shown in the metes and bounds description provided in Exhibit "A."

SECTION 3. USE OF PROPERTY

This License is granted solely for the encroachment onto City rights-of-way for the Parking Encroachment. Grantee agrees to restore the License Area to the reasonable satisfaction of the City, in accordance with applicable City specifications, which include restoration to allow for pedestrian access.

This License shall not be construed to waive any City permit requirements. Grantee shall be responsible for all maintenance. Grantee, at no cost to the City, shall clean up all litter and debris within the License Area, leaving City rights-of-way in a clean and orderly condition at all times when not in use as the Parking Encroachment.

This License shall not permit or be construed to permit any other private use of the City right-of-way that impairs its function as a City right-of-way. Except as provided herein, Grantee shall not construct any additional improvements, or make any additions or alterations on, above, or below the City right-of-way, without prior written consent of the El Paso City Council.

SECTION 4. REGULATION OF CONSTRUCTION

The work done by Grantee in repairing, reconstructing, or maintaining the Parking Encroachment shall be subject to and governed by all laws, rules and regulation of the City and State of Texas, Federal Communications Commission, and the U.S. Government that are applicable to the construction of the Parking Encroachment. Work done in connection with the repair and maintenance of such facilities is subject to the continuing police power of the City.

In the event that Grantee desires to reconstruct, repair, maintain, or replace the Parking Encroachment built hereunder, Grantee shall obtain all applicable permits required by the City. Where proposed, any excavation or trenching and other construction in the License Area shall be so carried out as to interfere as little as practical with the surface use of the License Area in accordance with any lawful and reasonable direction given by or under the authority of the governing body of the City under the police and regulatory powers necessary to provide for public convenience.

Grantee covenants and agrees that Grantee shall, at Grantee's own expense, repair all water lines, storm and sanitary sewer lines, service lines and water meters owned by the City that Grantee,

Grantee's employees, contractors, agents or assigns damage so that such repair of the water lines, storm and sanitary sewer lines and water meters shall comply with the approval of the City.

The City shall have the power at any time to order and require Grantee to remove and abate any portion of the License Area that is dangerous to life or property. Should Grantee, after notice, fail or refuse to comply within a reasonable time, the City shall have the power to remove or abate the same, at the expense of Grantee. In the event City removes or abates the License Area as provided herein, Grantee shall not be compensated for the loss of the License Area, or revenues associated with the area, nor shall the City be liable to the Grantee for any direct, indirect or consequential damages due to the removal or abatement of the License Area.

SECTION 5. TERM

This License shall be for a term of THREE (3) years from the effective date hereof, unless terminated earlier as provided herein. Provided that the license has not been terminated, this License shall be automatically renewed for a period of ONE (1) year at the expiration of the initial term and, if applicable, the expiration of the first renewal term. Grantee understands, agrees, and accepts that the City may require the terms, conditions, and provisions of this License be modified as a condition for renewing the grant of the encroachment within the License Area as permitted by this License. During the term of this License, the Grantee agrees to apply for a Vacation of the License Area.

SECTION 6. WORK DONE BY OTHERS

Throughout the term of this License, the City expressly reserves the right to install, repair, or reconstruct the City right-of-way used or occupied by Grantee, any streets or alleys and all ancillary public uses, usual and customary in connection with streets and alleys, expressly including but not limited to, drainage facilities and structures.

The City reserves the right, subject to further conditions described in this paragraph, to lay and permit to be laid, utility lines including, but not limited to, storm and sanitary sewer, gas, water, and other pipelines or cables, and to do and permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the governing body of the City in, across, along, over or under the License Area occupied by Grantee, and to change any curb or sidewalk or the street grade of any street. The City shall notify Grantee of work to be performed as herein described. The City shall not be liable to Grantee for any damage resulting there from, nor shall the City be liable to Grantee for any damages arising out of the performance of any work by the City, its contractors or subcontractors, not willfully and unnecessarily occasioned; provided, however, nothing herein shall relieve any other persons or entities from liability for damage to the License Area. If the City requires Grantee to alter, change, adapt, remove, or relocate the Parking Encroachment due to imminent public safety concerns, or because of changes in the grade of the License Area or in the location or manner of constructing a water pipe, sewer pipe or other underground or aboveground pipes owned by the City, Grantee shall make the alterations or changes as soon as practicable when ordered in writing by the City without claim for reimbursement or damages against the City. If these requirements impose a financial hardship upon Grantee, Grantee shall have the right to present alternative proposals for the City's consideration. If the City

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requires Grantee to remove, alter, change, adapt or relocate its Parking Encroachment or any portion thereof to enable any other entity or person, except the City, to use, or to use with greater convenience, the License Area, Grantee shall not be required to make such changes until such other entity or person shall have undertaken with solvent bond, to reimburse Grantee for any loss and expense which will be caused by or arise out of such removal, alteration, change, adaptation or conformance of the Parking Encroachment; provided, however, the City shall not be responsible nor liable for such reimbursement.

SECTION 7. RESERVATION OF SURFACE, SUBSURFACE, AND AIRSPACE RIGHTS

The City reserves the right to use the surface or subsurface or airspace within the License Area for any public purposes allowed by law and deemed necessary by the City and to do or permit to be done any work in connection therewith which may be deemed necessary or proper by the City on, across, along, under or over said License Area occupied by Grantee provided such use does not interfere with Grantee's use of the License Area. Whenever by reason of said work in connection with said purposes it shall be deemed necessary by the City to alter, change, adapt, conform or relocate portions of the Parking Encroachment such alteration or change or relocation shall be made by Grantee when ordered in writing by the City Manager or designee without any claim for reimbursement or damages against the City.

SECTION 8. CONSIDERATION

As consideration for this License, Grantee shall pay to the City TWO THOUSAND ONE HUNDRED AND SIX AND 60/100 DOLLARS (\$2,106.60) per year. The annual fee shall remain the same for a period of one year from the date of execution by the El Paso City Council and shall be subject to change after each one-year period the License remains in effect. The El Paso City Council retains the right to increase or decrease the annual fee specified in this License.

The City shall notify the Grantee of any proposed changes in fees as prescribed in Section 15 (Notice) of this License. This License is granted on the condition the Grantee pay for all costs associated with the Parking Encroachment, as well as all costs for the restoration of the License Area upon the termination of the License.

The first annual consideration shall be due and owing prior to the El Paso City Council approval of the License. The advance payment shall be in the form of a cashier's check or business check payable to "The City of El Paso" and delivered to the City for remittance to the Financial Services Department. If the License is disapproved by the El Paso City Council, a full refund of the payment shall be made by the Financial Services Department within fifteen (15) days of the denial action. Subsequent annual considerations shall be due the first day of the month in which the License has been granted by the El Paso City Council and remitted to the Financial Services Department.

ADVANCE PAYMENT OPTION:

Grantee shall have the option of pre-paying the City the entire amount for the THREE (3) year term of the License, prior to the execution of this License. The THREE (3) year amount is equal THREE

THOUSAND NINETY-SEVEN AND TWO/100 DOLLARS (\$3,097.02). Said \$3,097.02 reflects the net present value (NPV) at a three percent (3%) discount rate of the annual fees for the entire THREE (3) year term of the License. Should Grantee select the advance payment option, Grantee shall not be entitled to a refund of the consideration paid to the City in case of cancellation by the City and/or the Grantee prior to the expiration of the 3-year term.

Both the annual consideration and the advance payment shall be exclusive of and in addition to all general municipal taxes of whatever nature, including, but not limited to, ad valorem taxes, assessments for public improvements or any other assessments that may be enacted during the term of this License or any renewal, except hereinafter provided. The fee established in this section shall not be affected by any relocation of Grantee's Parking Encroachment required by the City pursuant to this License.

The fee payment shall be exclusive of and in addition to all costs of obtaining required permits, plans and other approvals as necessary to conform to all other applicable City regulations.

SECTION 9. INSURANCE

Prior to commencement of any future construction, repairs, or maintenance operations during the term of this License, Grantee shall provide the City with a certificate of insurance and shall maintain such insurance in effect during the term of this License. The City shall be named as an additional insured on all of the Grantee's insurance policies that are required by this License. Failure to maintain insurance shall be a material breach of this License and a basis for termination of this License by the City.

Grantee shall obtain and provide a homeowner's general liability policy with a one million dollar (\$1,000,000.00) limit, per occurrence, for personal injury, death, and property damage, with a minimum one million dollar (\$1,000,000.00) general aggregate limit. These amounts are not a limitation upon the Grantee's agreement to indemnify and hold the City harmless.

Grantee shall procure said insurance with a solvent insurance company authorized to do business in Texas. Such policy or certificate shall provide that the insurance cannot be canceled, modified or the amount of coverage changed without thirty (30) days prior written notice to the Financial Services Department, or ten (10) days prior written notice to the Financial Services Department for cancellation based on non-payment of insurance premiums. Grantee shall file a copy of the policy or certificate of insurance with Financial Services Department and the City Development Department. If the policy is not kept in full force and effect throughout the term of this License, the License shall automatically become void.

SECTION 10. INDEMNITY

TO THE EXTENT ALLOWED BY STATE LAW AND AS A CONDITION OF THIS LICENSE, GRANTEE SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES

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(INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES AND COSTS), FEES, FINES, PENALTIES, PROCEEDINGS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY OR DEATH OR PROPERTY DAMAGE, ARISING OUT OF, RESULTING FROM OR RELATED TO THE GRANTEE'S ACTIVITIES UNDER THIS LICENSE, INCLUDING ANY ACT OR OMISSION BY THE GRANTEE, THE GRANTEE'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, ALL, WITHOUT, HOWEVER, WAIVING GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY, HEREAFTER, THE "DAMAGES". THIS INDEMNIFICATION SHALL APPLY EVEN WHERE SUCH DAMAGES DESCRIBED ABOVE INVOLVE THE NEGLIGENCE OR ALLEGATIONS OF NEGLIGENCE ON THE PART OF THE CITY, ITS OFFICERS, AGENTS OR EMPLOYEES.

The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any person or entity. Without modifying the conditions of preserving, asserting, or enforcing any legal liability against the City as required by the City Charter or any law, the City will promptly forward to the Grantee every demand, notice, summons, or other process received by the City in any claim or legal proceeding contemplated herein. Grantee shall investigate or cause the investigation of accidents or occurrences involving such damages, negotiate or cause to be negotiated the claim as the Grantee may deem expedient, and defend or cause to be defended on behalf of the City all suits for damages, even if groundless, false or fraudulent brought because of such damages. Grantee shall pay all judgments finally establishing liability of the City in actions defended by Grantee pursuant to this section, along with all attorneys' fees and costs incurred by the City, including interest accruing to the date of payment by Grantee and premiums on any appeal bonds.

The City, at its election, will have the right to participate in any such negotiations or legal proceedings to the extent of its interest. In addition, the Grantee shall promptly advise the City in writing of any claim or demand against the City or the Grantee known to the Grantee related to or arising out of the Grantee's activities under this License. **The City will not be responsible for any loss of or damage to the Grantee's property from any cause.**

SECTION 11. RIGHTS IN THE EVENT OF ABANDONMENT

As an express condition of this License, and not as a mere covenant, in the event Grantee abandons the Parking Encroachment or a portion thereof or ceases to use the Parking Encroachment for the purposes enumerated herein for any period of six (6) months or longer, other than the time elapsing between the effective date of this license and the completion of construction of the Parking Encroachment, this License shall automatically terminate, free and clear of any right, title, or interest in Grantee without the necessity of any notice to Grantee or any re-entry by the City.

SECTION 12. CANCELLATION

Grantee shall have the option to terminate this License at any time upon giving the City written notice thirty (30) days in advance of such termination. In addition, the City shall have the option to

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cancel and terminate this License for failure of Grantee to comply with any material provision or requirement contained in this agreement after thirty (30) days written notice to Grantee. However, if said breach or failure to comply cannot be reasonably cured within thirty (30) days, if Grantee shall proceed promptly to cure the same with due diligence, the time for curing such failure to comply shall be extended for such period of time as may be deemed reasonably necessary by the City to complete such curing unless such breach involves public safety.

The City shall have the option to terminate this License at any time upon giving the Grantee written notice thirty (30) days in advance of such termination, at no cost to the City and may take possession of the City right-of-way. All rights of the Grantee for the City right-of-way shall then be terminated. If the License is cancelled by the City, Grantee shall not be entitled to a refund of the paid annual consideration for the months remaining in the License year (the twelve-month period beginning on the effective date of this License). If this License is cancelled due to Grantee's failure to cure any default under this License, abandonment or cancellation by Grantee, Grantee shall not be entitled to a refund of consideration paid to the City.

Upon termination of this License, prior to the expiration of the original term for any reason, Grantee shall remove Grantee's Parking Encroachment located in the License Area at no cost to the City. Grantee shall restore the License Area to the reasonable satisfaction of the City Engineer and in accordance with City specifications, at Grantee's own cost and expense. Any such restoration shall be subject to the reasonable approval of the City. If the Grantee fails to restore the License Area as required herein, the City may at its option restore the License Area and charge such costs to Grantee who shall be responsible for payment of such repair and restoration costs.

SECTION 13. RECORDS

The El Paso City Council and the El Paso City Manager or designee shall be kept fully informed by Grantee as to matters pertaining in any way to Grantee's exercise of Grantee's rights under this License, including the construction, replacement, reconstruction, maintenance, and repair of the Parking Encroachment within the License Area. Obtaining all applicable City permits shall be deemed sufficient to keep such parties informed. Grantee shall keep complete and accurate maps, construction drawings, and specifications describing the location of the structure(s) within the City right-of-way. The City shall have the right, at reasonable times to inspect such maps, construction drawings, and specifications.

SECTION 14. NOTICE

Any notice or communication required in the administration of this License shall be sent in writing by prepaid certified mail, return receipt requested, to the following addresses:

CITY: City of El Paso
Attn: City Manager
300 N. Campbell
El Paso, Texas 79901

with copy to: City of El Paso
ATTN: Planning and Inspections Department- Right-of-Way
Permits
801 Texas Avenue
El Paso, Texas 79901

with copy to: City of El Paso
ATTN: Office of the Comptroller –
Financial Accounting & Reporting
300 North Campbell
El Paso, Texas 79901

GRANTEE: Board of Regents of the University of Texas System
ATTN: Executive Director of Real Estate
210 W, 7th St
OGC-Real Estate
Austin, Texas 78701

or to such other addresses as Grantee may designate from time to time by written notice as required in this paragraph.

SECTION 15. ASSIGNMENT

The rights granted by this License inure to the benefit of the Grantee, and any parent, subsidiary, or successor entity now or hereafter existing. The rights shall not be assignable without the express advanced written consent of the El Paso City Manager.

SECTION 16. LEASING OR DEDICATION OF FACILITIES

Grantee, without the advanced written consent of the El Paso City Manager or designee, shall not lease the License Area to any non-grantee person or entity.

SECTION 17. ADMINISTRATION OF LICENSE

The El Paso City Manager or designee is the principal City official responsible for the administration of this License. Grantee recognizes that questions regarding the interpretation or application of this License shall be referred to the El Paso City Manager or designee.

SECTION 18. NO PROPERTY RIGHTS

Nothing herein shall grant any real property interest to the Grantee nor give rise to any vested right in the Grantee, Grantee's assigns or successors in interest, none of whom shall have a cause of action for damages upon revocation or termination of this License in accordance with the terms herein.

SECTION 19. LIENS AND ENCUMBRANCES

Grantee shall defend and indemnify the City against any liability and loss of any type arising from any lien or encumbrance on the License Area that arises or is alleged to have arisen from Grantee's use of the Licensed Area.

SECTION 20. RIGHT OF ENTRY AND INSPECTION

The City's authorized representative shall have the right to enter upon the licensed area at all reasonable times for the purpose of inspecting the same and determining compliance with the terms of this License.

SECTION 21. LAWS AND ORDINANCES

Grantee shall comply with all statutes, laws, codes and ordinances applicable to Grantee's construction, repair, renovation, alteration or use of the License Area.

SECTION 22. ENTIRE AGREEMENT

This document contains all of the agreements between the parties and may not be modified, except by an agreement in writing signed by both parties.

SECTION 23. SEVERABILITY

Every provision of this license is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality shall not affect the validity of the remainder of this license.

SECTION 24. LAWS GOVERNING/VENUE

The laws of the State of Texas shall govern the validity, performances, and enforcement of this license and if legal action is necessary to enforce it, exclusive venue shall be in El Paso County, Texas.

SECTION 25. RESTRICTIONS AND RESERVATIONS

This License is subject to all rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land. If, at any time during the initial term of this license, or any extension thereof, any such rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land, preclude, interrupt or interfere with Grantee's use of the License Area, Grantee shall have the right to terminate this License upon giving the City prior written notice of its intent to do so.

SECTION 26. EFFECTIVE DATE

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The effective date of this License shall be the date last entered below. This License shall not take effect unless Grantee files Grantee's written acceptance with the City prior to the enactment of this License by the El Paso City Council.

ADOPTED this ____ day of _____, 2018.

WITNESS THE FOLLOWING SIGNATURES AND SEALS

THE CITY OF EL PASO:

Dee Margo
Mayor

ATTEST:

Laura Prine
Interim City Clerk

APPROVED AS TO FORM:



Karla M. Nierman
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Victor Morrison-Vega
Planning and Inspections Department

EXHIBIT "A"

"Exhibit A"

Property description: A 0.047-acre portion of Oregon Street right-of-way, Alexander Addition, El Paso, El Paso County, Texas

METES AND BOUNDS DESCRIPTION

The parcel of land herein described is a 0.047-acre portion of Oregon Street right-of-way, Alexander Addition, El Paso, El Paso County, Texas, and is more particularly described by metes and bounds as follows:

COMMENCING at a city monument at the intersection of the monument lines of Kansas Street (70-foot right-of-way, Alexander Addition) and Cincinnati Avenue (70-foot right-of-way, Alexander Addition), said monument lines lying 10.00 feet east and 10.00 feet north of the respective centerlines of Kansas Street and Cincinnati Avenue, from which a city monument at the intersection of the monument lines of Kansas Street and University Avenue (70-foot right-of-way, Alexander Addition) bears South 37°37'00" East, a distance of 1649.72 feet, said monument lines lying 10.00 feet east and 10.00 feet north of the respective centerlines of Kansas Street and University Avenue; Thence, South 52°23'00" West, along the monument line of Cincinnati Avenue, a distance of 1035.00 feet to the westerly right-of-way of Oregon Street (70-foot right-of-way, Alexander Addition), said right-of-way also being the easterly vacated right-of-way of Cincinnati Avenue (Ordinance 3612, September 8, 1966, El Paso County, Texas); Thence, North 37°37'00" West, along said right-of-way, a distance of 25.00 feet to a 5/8" rebar with cap marked "TX 2198" found on the northerly vacated right-of-way of Cincinnati Avenue, from which a I-K nail with shiner found at the intersection of the southerly right-of-way of Glory Road (70-foot right-of-way, Alexander Addition) and the westerly right-of-way of Oregon Street bears North 37°37'00" West, a distance of 260.00 feet, for the POINT OF BEGINNING of this description;

THENCE, North 52°23'00" East, a distance of 7.33 feet to the westerly edge of a 6-inch concrete curb;

THENCE, South 38°18'13" East, a distance of 12.40 feet to the westerly edge of a 7-foot concrete sidewalk;

THENCE, South 37°36'12" East, along said sidewalk, a distance of 201.35 feet to a P.I. of the westerly edge of a concrete apron;

THENCE, South 12°18'36" West, along said apron, a distance of 6.60 feet to the easterly edge of a 6-inch concrete curb;

THENCE, South 38°24'56" East, along said curb, a distance of 63.95 feet to the southerly edge of a concrete sidewalk;

THENCE, North 54°46'38" East, along said sidewalk, a distance of 1.86 feet to the easterly edge of a 6-inch concrete curb;

THENCE, South 37°08'15" East, along said curb, a distance of 47.99 feet;

THENCE, South 52°23'00" West, a distance of 4.74 feet to a chiseled "crow's foot" set at the intersection of the northerly right-of-way of Robinson Avenue (70-foot right-of-way, Alexander Addition) and the westerly right-of-way of Oregon Street;

THENCE, North 37°37'00" West, along said right-of-way of Oregon Street, a distance of 330.00 feet to the POINT OF BEGINNING of this description.

Said parcel of land contains 0.047 acres (2,033 square feet) of land more or less.

NOTE: A PLAT OF EVEN DATE HEREWITH ACCOMPANIES THIS DESCRIPTION.

ROBERT SEIPEL ASSOCIATES, INC.
Professional Land Surveyors
Texas Reg. Surveying Firm 10060500



Mark U. Balansay, R.P.L.S.
Texas License No. 6489

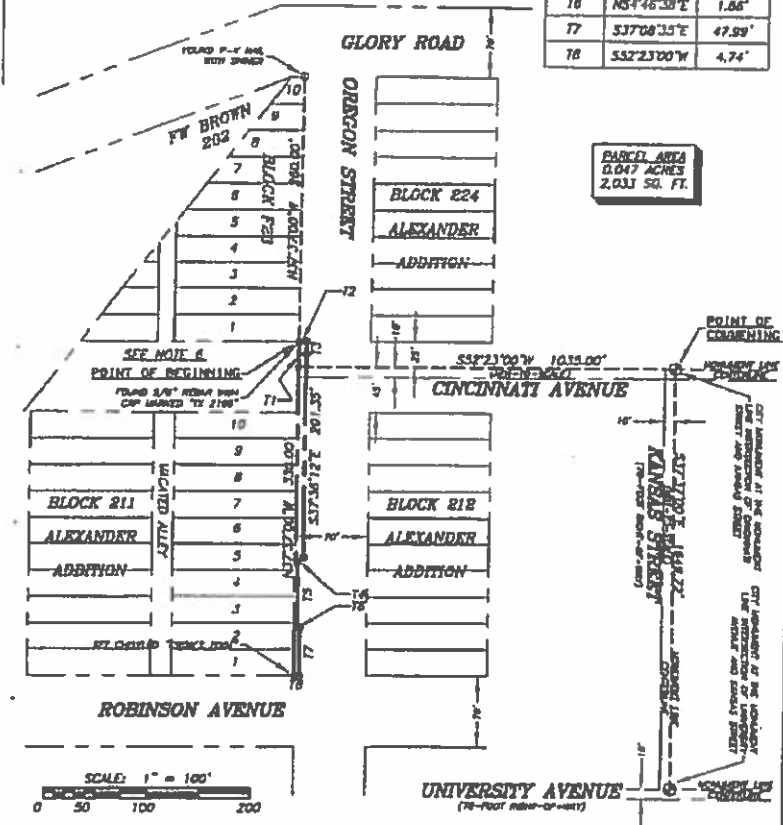
Job Number 170006F
March 17, 2017

17-00060.docx
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NOTES:

1. THE PLAT OF ALEXANDER ADDITION IS NOT FILED OF RECORD.
2. BEARINGS ARE BASED ON THE PLAT OF UNIVERSITY CENTER RECORDED IN BOOK 23, PAGE 32, PLAT RECORDS, EL PASO COUNTY, TEXAS.
3. CORNERS HAVE NOT BEEN SET UNLESS OTHERWISE INDICATED.
4. THIS SURVEY HAS BEEN MADE IN FULL COMPLIANCE WITH THE CURRENT TITLE REPORT AND MAY BE SUBJECT TO EASEMENTS OR OTHER RESTRICTIONS OF RECORD.
5. A VARIABLE METES AND BOUNDS DESCRIPTION OF EACH GATE HEREON ACCORDANCE THIS PLAT.
6. ORDINANCE NUMBER 16478 BY CITY OF EL PASO ORDINANCE 30172, DATED SEPTEMBER 8, 1994.

LINE TABLE		
LINE #	BEARING	DISTANCE
71	N37°37'00"W	25.00'
72	N32°23'00"E	7.33'
73	S38°18'13"E	12.40'
74	S13°18'38"W	6.60'
75	S38°24'58"E	83.85'
76	N54°46'38"E	1.86'
77	S37°08'35"E	47.99'
78	S52°23'00"W	4.74'



ROBERT SEIPEL ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYORS
 1843 NORTHWESTERN DR. SUITE C EL PASO, TX 79912 913-877-1928

(Signature)

A 0.047-ACRE PORTION OF OREGON STREET RIGHT-OF-WAY, ALEXANDER ADDITION, EL PASO, EL PASO COUNTY, TEXAS.

TEXAS REG. SURVEYING FIRM 10060500

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DATE:	03-17-17
SCALE:	1" = 100'
DRAWN BY:	MMH
CHECKED BY:	FT
FILE #:	17-0006F
REVISED:	

Property description: A 0.034-acre portion of Oregon Street right-of-way, Alexander Addition, El Paso, El Paso County, Texas

METES AND BOUNDS DESCRIPTION

The parcel of land herein described is a 0.034-acre portion of Oregon Street right-of-way, Alexander Addition, El Paso, El Paso County, Texas, and is more particularly described by metes and bounds as follows:

COMMENCING at a city monument at the intersection of the monument lines of Kansas Street (70-foot right-of-way, Alexander Addition) and Cincinnati Avenue (70-foot right-of-way, Alexander Addition), said monument lines lying 10.00 feet east and 10.00 feet north of the respective centerlines of Kansas Street and Cincinnati Avenue, from which a city monument at the intersection of the monument lines of Kansas Street and University Avenue (70-foot right-of-way, Alexander Addition) bears South 37°37'00" East, a distance of 1649.72 feet, said monument lines lying 10.00 feet east and 10.00 feet north of the respective centerlines of Kansas Street and University Avenue; Thence, South 52°23'00" West, along the monument line of Cincinnati Avenue, a distance of 1035.00 feet to the westerly right-of-way of Oregon Street (70-foot right-of-way, Alexander Addition), said right-of-way also being the easterly vacated right-of-way of Cincinnati Avenue (Ordinance 3612, September 8, 1966, El Paso County, Texas), from which a chiseled "crow's foot" set at the intersection of the westerly right-of-way of Oregon Street and the northerly right-of-way of Robinson Avenue (70-foot right-of-way, Alexander Addition) bears South 37°37'00" East, a distance of 305.00 feet; Thence, North 37°37'00" West, along said right-of-way, a distance of 25.00 feet to a 5/8" rebar with cap marked "TX 2198" found on the northerly vacated right-of-way of Cincinnati Avenue for the POINT OF BEGINNING of this description;

THENCE, North 37°37'00" West, continuing along said right-of-way, a distance of 260.00 feet to a P-K nail with shiner found on the southerly right-of-way of Glory Road (70-foot right-of-way, Alexander Addition);

THENCE, North 52°23'00" East, a distance of 6.98 feet to the westerly edge of a 6-inch concrete curb;

THENCE, South 38°55'11" East, along said curb, a distance of 7.10 feet to the westerly edge of a 7-foot concrete sidewalk;

THENCE, South 37°24'46" East, along said sidewalk, a distance of 152.36 feet to the southerly edge of a 6-inch concrete curb;

THENCE, South 53°50'03" West, along said curb, a distance of 3.11 feet;

THENCE, South 37°39'32" East, continuing along said curb, a distance of 93.52 feet to a P.I. of the southerly edge of a concrete sidewalk;

THENCE, North 56°06'38" East, along said sidewalk, a distance of 3.70 feet to the westerly edge of a 6-inch concrete curb;

THENCE, South 38°18'13" East, along said curb, a distance of 6.86 feet;

THENCE, South 52°23'00" West, a distance of 7.33 feet to the POINT OF BEGINNING of this description.

Said parcel of land contains 0.034 acres (1,478 square feet) of land more or less.

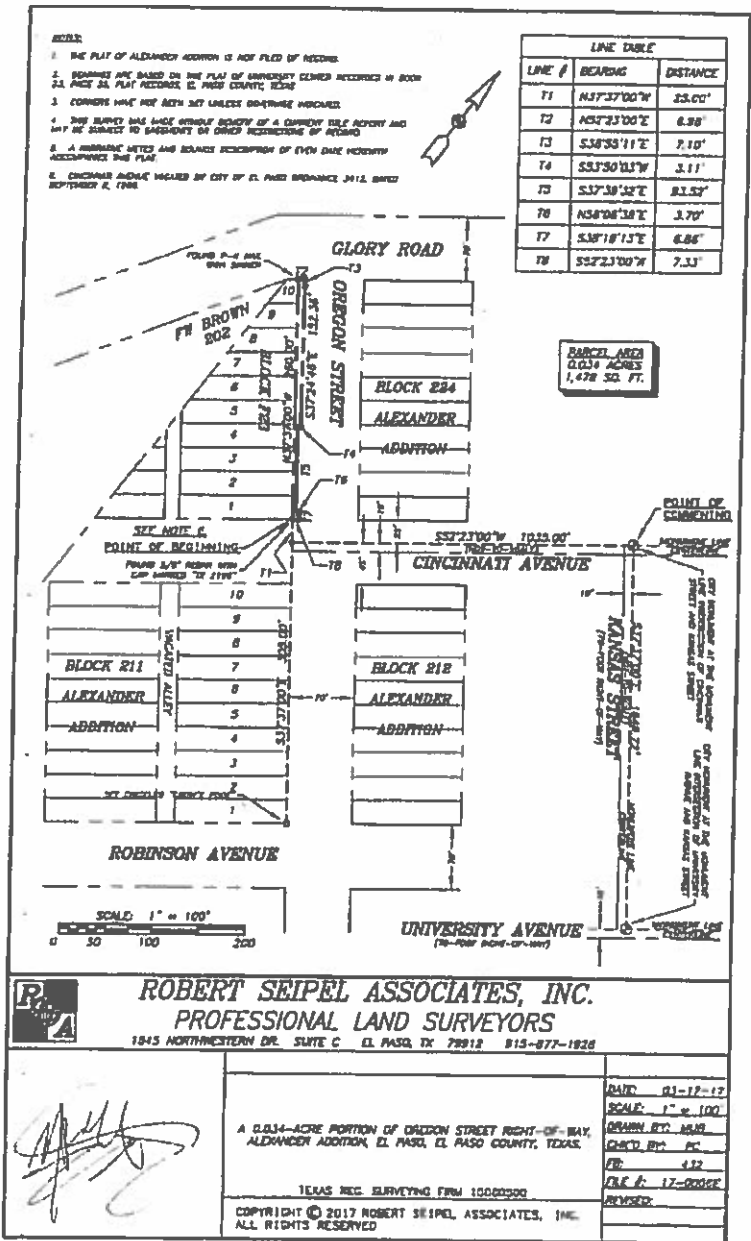
NOTE: A PLAT OF EVEN DATE HERewith ACCOMPANIES THIS DESCRIPTION.

ROBERT SEIPEL ASSOCIATES, INC.
Professional Land Surveyors
Texas Reg. Surveying Firm 10060500


Mark U. Bolonay, R.P.L.S.
Texas License No. 6489

Job Number 17-0006
March 17, 2017

17-0006C.docx
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ORDINANCE NO. _____
 17-1007-2019 | 714819
 UTEP Oregon Street Encroachment
 KMN

NESV2017-00005
 Page 15 of 19

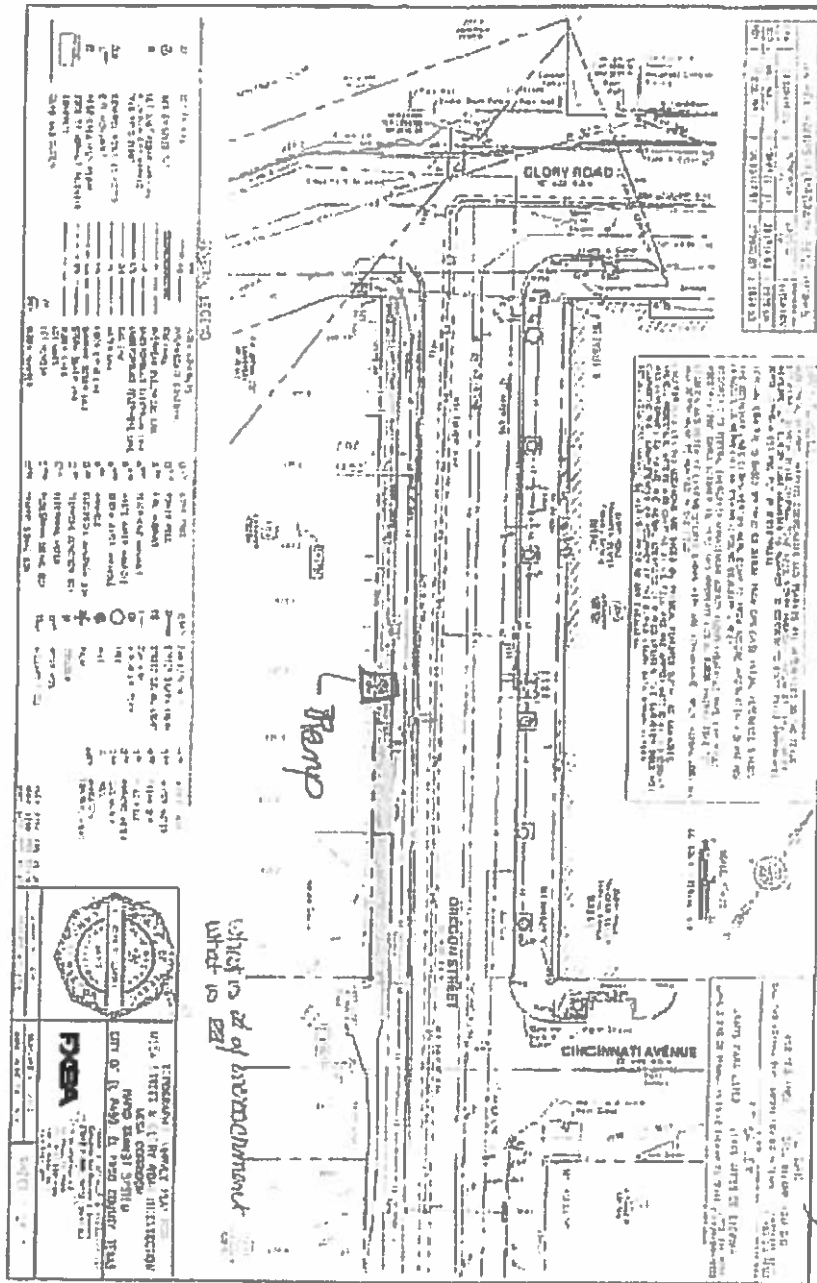


EXHIBIT “B”

STATE LAW ADDENDUM

**THE PROVISIONS OF THIS STATE LAW ADDENDUM MAY NOT BE ALTERED
BY AGREEMENT OF THE PARTIES EXCEPT AS PROVIDED IN
SECTION 10 BELOW.**

This STATE LAW ADDENDUM (“*State Law Addendum*”) is attached to and made a part for all purposes of that certain Special Privilege License (as amended from time to time, “*License*”) and dated effective _____, 2018, between the **CITY OF EL PASO** (the “*City*”) and the **BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM**, for the use and benefit of The University of Texas at El Paso, an institution of higher education and agency of the State of Texas (“*BOR*”), concerning the BOR’s use of 3,511 square feet within portions of the City right-of-way along Oregon Street in El Paso, Texas, as more particularly described in the License.

This State Law Addendum amends and modifies the License and the parties expressly agree that so long as BOR or another agency of the State of Texas is a party to the License, the provisions of this State Law Addendum shall control to the extent of any conflict between the provisions of this State Law Addendum and the remainder of the License.

1. **Prohibition on Violation of State Law and Constitution by BOR.** THE CITY AND BOR HEREBY AGREE THAT BOR SHALL NOT BE REQUIRED TO PERFORM ANY ACT OR REFRAIN FROM PERFORMING ANY ACT UNDER THIS LICENSE IF THAT PERFORMANCE OR NON-PERFORMANCE WOULD CONSTITUTE A VIOLATION OF THE CONSTITUTION OR LAWS OF THE STATE OF TEXAS.
2. **Waivers and Releases.** Pursuant to Article III, Sections 49, 50, 51, 55, and the other applicable provisions of the Texas Constitution, no provision of this License providing for (i) BOR’s waiver, release, or exculpation of the City and/or the City’s officers, employees, principals, and agents for claims, liabilities, and damages of any kind or nature arising from the negligent or willful acts or omissions of said persons, whether jointly or severally; or (ii) limitations on the remedies or recourse of BOR against the City and/or the City’s officers, employees, principals, and agents, whether jointly or severally, for claims, liabilities, and damages of any kind or nature, shall be of force and effect, except as otherwise expressly provided by statute. Without limitation of the foregoing, any waiver of subrogation rights by BOR under the License, or under any policy of insurance provided by or on behalf of the City with respect to the License shall be effective only to the extent authorized by applicable law.
3. **Indemnities.** Pursuant to Article III, Sections 49, 50, 51, 55, and the other applicable provisions of the Texas Constitution, no provision of this License providing that BOR will

reimburse, indemnify, or hold harmless the City or any other person for any liabilities, claims, or damages that are not caused by the negligent or willful acts or omissions of BOR shall be of force and effect.

4. **Courts, Jury Trial and Waiver.** Except as otherwise expressly provided by statute, no provision of this License shall constitute, nor is it intended to constitute, a waiver of BOR's or the State of Texas' exemptions, privileges, and immunities provided by or allowed under the Constitution of the State of Texas or any other applicable laws, including without limitation (i) sovereign immunity to suit; (ii) sovereign immunity against the recovery of money damages; or (iii) right to a jury trial for any issue arising under the License. Except as otherwise expressly provided by statute, no provision of this License providing that BOR consents to the jurisdiction of any court shall be binding against BOR.

5. **Attorney Fees.** No provision of this License requiring BOR to pay court costs, costs of suit, or attorney fees incurred by the City or any other person in enforcing or interpreting the terms of this License shall be of force and effect, except as otherwise expressly provided by statute.

6. **State Property.** No provision of the License purporting to grant to the City (i) a security interest or lien against the real or personal property of the BOR or any other state agency; or (ii) a contractual right or power of attorney to take control over or otherwise handle or dispose of the property of BOR or any other state agency, shall be of force and effect.

7. **Insurance.** The City acknowledges that BOR is an agency of the State of Texas and has only such authority as is granted to BOR by state law or as may be reasonably implied from such law, and that any obligation of BOR under this License to obtain insurance is expressly made subject to the BOR's authority under state law to obtain such insurance. The City further agrees that BOR shall have the right, at its option, to (a) obtain liability insurance protecting BOR and its employees and property insurance protecting BOR's interests in real property, to the extent authorized by Section 51.966 of the Texas Education Code or other law; or (b) self-insure against any risk that may be incurred by BOR as a result of its operations under this License or in order to meet the insurance requirements in the License.

8. **Texas State Auditor's Office.** The City acknowledges and stipulates that, notwithstanding anything to the contrary set forth in this License, the Texas State Auditor's Office (collectively, with any successor agency thereto, the "*State Auditor*") is authorized under applicable Texas law (including, without limitation, Texas Education Code Sections 51.9335(c), 73.115(c), and 74.008(c)), in each case, as may be amended from time to time, to conduct an audit or investigation in connection with any of the funds or payments received and accepted by the City from BOR pursuant to this License. The City agrees to cooperate with the State Auditor in the conduct of any such audit or investigation, including, without limitation, providing the State Auditor with all records requested as may be required under applicable Texas law. All costs and expenses of any such audit or investigation by the State Auditor shall be BOR's sole responsibility, except and unless such audit and investigation determines that the amounts paid by BOR for the applicable period which are the subject of such audit or investigation were in

excess of the amounts properly payable under this License, in which event the City will pay to BOR the amount determined to be in excess of the correct amount. In addition, if the excess amounts are greater than five percent (5.0%) than the amounts properly payable under this License, the City shall reimburse BOR for the actual and reasonable cost of such audit by the State Auditor.

9. **Good and Services.** The City is advised that pursuant to Texas Education Code 51.9335, in any contract for the acquisition of goods and services to which an institution of higher education is a party, a provision required by applicable law to be included in the contract is considered to be a part of the executed contract without regard to: (i) whether the provision appears on the face of the contract; or (ii) whether the contract includes any provision to the contrary.

10. **Amendment.** THE PROVISIONS OF THIS STATE LAW ADDENDUM MAY BE AMENDED BY AGREEMENT OF THE PARTIES ONLY WITH THE WRITTEN APPROVAL OF THE OFFICE OF GENERAL COUNSEL OF THE UNIVERSITY OF TEXAS SYSTEM.

IN WITNESS WHEREOF, the representatives of parties have executed this State Law Addendum, to be effective as of the effective date of the License.

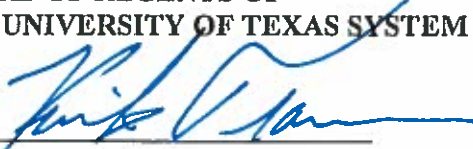
THE CITY OF EL PASO

Date signed: _____, 2018

By: _____
Name: Dee Margo
Title: Mayor

**BOARD OF REGENTS OF
THE UNIVERSITY OF TEXAS SYSTEM**

Date signed: January 29, 2018

By: 
Name: Kirk S. Tames
Title: Executive Director of Real Estate
The University of Texas System



NESV2017-00005: New Special Privilege License

Existing Encroachment of portions of
existing surface parking spaces onto
City Right-of-Way

Goal 7: Enhance and Sustain El Paso's
Infrastructure Network and Economic
Development



Applicant

- The Board of Regents of the University of Texas

Location

- Within portions of right away along Oregon Street.
- Adjacent to the property located at 2701 N. Oregon Street.

Type of Encroachment

- Surface Encroachment (3,511 sq. ft.) of existing portions of parking spaces.
- Proposed Encroachment is existing and will be legalized through the execution of this special privilege license

Term

- 3 years

Annual Fee

- \$2,106.60

Additional Information

- Applicant will be required to apply for a vacation of the license area during the term of this license.



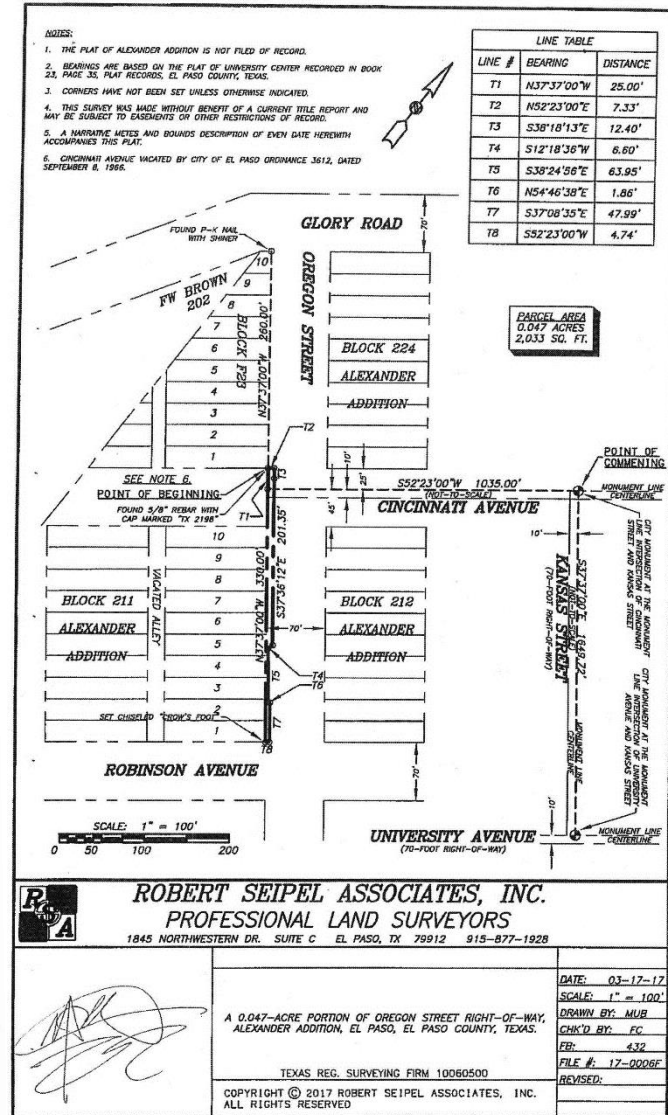
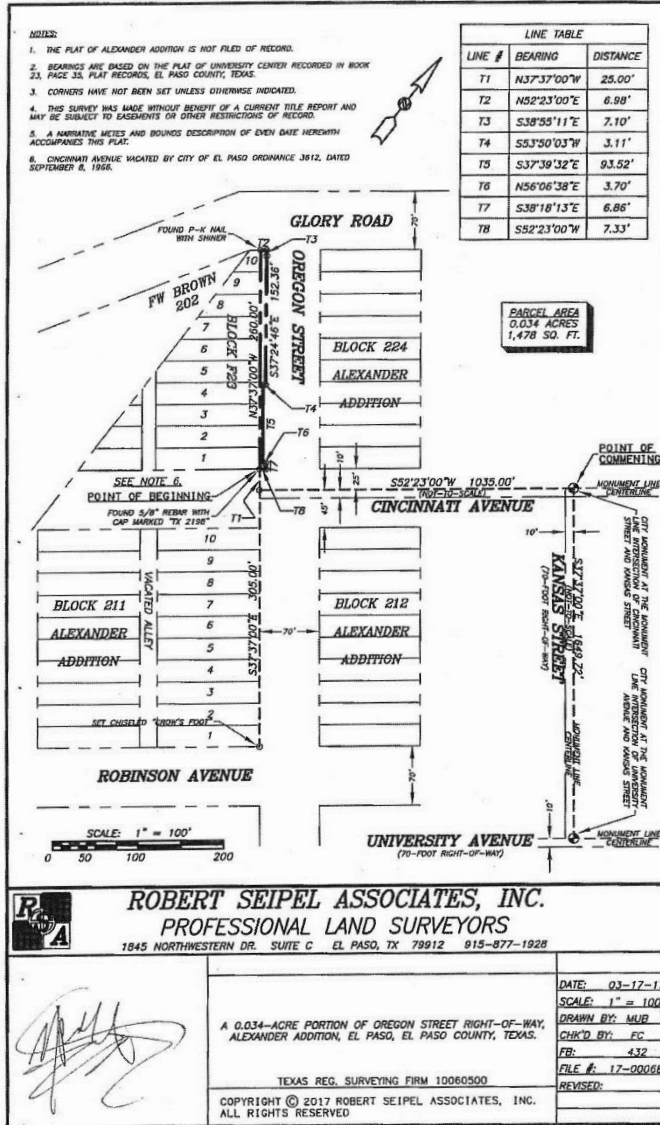
Location Map - Aerial

NESV2017-000005





Site Plan





Site Photo



"Delivering Outstanding Services"



Planning & Inspections Recommendation

- No adverse comments were received by reviewing departments

Council Action Needed

- Approval or denial of Special Privilege License NESV2017-00005