

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

DEPARTMENT: El Paso Water Utilities Public Service Board

AGENDA DATE: Introduction – 2/25/2014
Public Hearing – 3/4/2014

CONTACT PERSON/PHONE: Lupe Cuellar, Real Estate Manager and Counsel, 594-5636

DISTRICT(S) AFFECTED: 2

SUBJECT: APPROVE the following Ordinance

An Ordinance authorizing the City Manager to sign a Special Warranty Deed conveying a 0.04 acre Parcel of land being a Portion out of a Tract described in Volume 977, Page 454, Real Property Records of El Paso County, Texas and being a Portion of F. Neve Survey No. 8, and a Portion out of The Setter and Schneider, One Acre Tract as shown on the Map of Chula Vista Addition, an addition in the City of El Paso, El Paso County, Texas according to the Plat thereof, recorded in Volume 6, Page 49, Plat Records of El Paso County Texas, located at the rear of 500 Radford Street and any other documents necessary to complete the sale to Jose A. Montoya (District 2) El Paso Water Utilities, Lupe Cuellar, Real Estate Manager and Counsel. (915) 594-5636

BACKGROUND / DISCUSSION:

Jose A. Montoya submitted a request to purchase approximately a 0.04 acre parcel of city land, located at the rear of 500 Radford Street west of the intersection of Gateway West and Raynolds Street in Central El Paso. This land is in the City of El Paso, El Paso Water Utilities/Public Service Board land inventory for the El Paso Municipal Drainage Utility, which is City land held in trust by the Public Service Board. At a Board meeting held on October 9, 2013, the Board determined the land to be inexpedient to the stormwater system and that the request to purchase the land be forwarded to the City Council for action. The purchaser agreed to pay the fair market value as appraised at \$2,203.75.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

Yes, on December 17, 2013, City Council approved the sale of approximately 1.24 acres of land.

AMOUNT AND SOURCE OF FUNDING: N/A

BOARD / COMMISSION ACTION:

At a regular meeting held October 9, 2013, the El Paso Water Utilities Public Service Board passed a Resolution finding the land inexpedient to the system and recommended that the land be sold.

AFTER EXECUTION OF ALL DOCUMENTS, PLEASE CONTACT LUPE CUELLAR TO PICK UP THE DOCUMENTS. 594-5636. THANK YOU.

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO SIGN A SPECIAL WARRANTY DEED CONVEYING A 0.04 ACRE PARCEL OF LAND BEING A PORTION OUT OF A TRACT DESCRIBED IN VOLUME 977, PAGE 454, REAL PROPERTY RECORDS OF EL PASO COUNTY, TEXAS AND BEING A PORTION OF F. NEVE SURVEY NO. 8, AND A PORTION OUT OF THE SETTER AND SCHNEIDER, ONE ACRE TRACT AS SHOWN ON THE MAP OF CHULA VISTA ADDITION, AN ADDITION IN THE CITY OF EL PASO, EL PASO COUNTY, TEXAS ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 6, PAGE 49, PLAT RECORDS OF EL PASO COUNTY TEXAS, LOCATED AT THE REAR OF 500 RADFORD STREET AND ANY OTHER DOCUMENTS NECESSARY TO COMPLETE THE SALE TO JOSE A. MONTOYA.

WHEREAS, the El Paso Water Utilities Public Service Board (EPWU/PSB) holds certain real properties in its land inventory that are owned by the City, but are under the management and control of the (EPWU/PSB); and,

WHEREAS, Jose A. Montoya submitted a request to purchase property abutting the back of his lot and such property is contained within the EPWU/PSB land inventory for the benefit of the Municipal Drainage Utility; and,

WHEREAS, at its regular meeting of October 9, 2013, the EPWU/PSB determined that the land is inexpedient to the Municipal Drainage Utility system and recommended selling the land to Jose A. Montoya and authorized the President/CEO to forward the recommendation to City Council for City Council action; and,

WHEREAS, Section 272.001(b) (1) of the Texas Local Government Code provides for an exception to the bidding requirements for narrow strips of land, or land that because of their shape, lack of access to public roads, or small area cannot be used independently under its current zoning or under applicable subdivision or other development control ordinances and allows such lands to be sold to the abutting property owner; and,

WHEREAS, the parcel of land was appraised for sale at its fair market value and Jose A. Montoya has agreed to pay the fair market value;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS;

That the City Manager is authorized to execute 1) A Special Warranty Deed in the form and substance approved by the City Attorney or her designee, 2) a Contract of Sale, and 3) any other documents necessary to complete the sale and conveyance to Jose A. Montoya, the following described real property:

“A parcel of land being a portion out of a tract described in Volume 977, Page 454, Real Property records of El Paso County, Texas and being a portion of F. Neve Survey No. 8, and a portion out of The Setter and Schneider, one acre tract as shown on the Map of Chula Vista Addition, an addition in the City of El Paso, El Paso County, Texas according

to the plat thereof, recorded in Volume 6, Page 49, Plat Records of El Paso County Texas” and as more particularly described in Exhibit “A” attached hereto and made a part hereof by this reference for all purposes.

PASSED AND APPROVED this _____ day of _____, 2014.

CITY OF EL PASO

Oscar Leeser, Mayor

ATTEST:

Richarda D. Momsen, City Clerk

APPROVED AS TO FORM

Bertha Ontiveros
Senior Assistant City Attorney

APPROVED AS TO CONTENT AND FORM

Lupe Cuellar
Real Estate Manager and Counsel

ORDINANCE NO. _____

Barragan & Associates Inc.**Land Planning & Land Surveying**

10950 Pellicano Dr., Building "F", El Paso, Texas 79935 Ph. (915) 591-5709 Fax (915) 591-5706

DESCRIPTION

Description of a parcel of land being a portion out of a tract described in Volume 977, Page 454, Real Property Records of El Paso County, Texas and being a portion of F. Neve Survey No. 8, and a portion out of The Stetter And Schneider, one acre tract as shown on the Map Of Chula Vista Addition, an addition in the City Of El Paso, El Paso County, Texas, according to plat thereof, recorded in Volume 6, Page 49, Plat Records of El Paso County, Texas, and being more particularly described by metes and bounds as follows:

COMMENCING for reference at found PK Nail at the centerline intersection of Madera Avenue and Radford Street, from **WHENCE**, a Found Nail with Shiner at the centerline intersection of Madera Avenue and Marr Street bears N 86°26'33" W (West-Deed) a distance of 459.28 Feet (Bearing Basis); **THENCE**, S 86°26'33" E (East-Deed) a distance of 24.09 Feet to a point on the Easterly Right Of Way of Radford Street; **THENCE**, N 03°03'27" E (North-Deed) along said Easterly Right Of Way a distance 35.00 Feet to a Found "X" mark for the common Westerly corner of a portion of F. Neve Survey No. 8 as described in Volume 2298, Page 1341 Real Property Records of El Paso County, Texas and said tract described in Volume 977, Page 454; **THENCE**, S 86°26'33" E (East-Deed), along the common line of said tract in volume 2298, Page 1341 and Volume 977, Page 454, a distance of 80.00 Feet to a Set 1/2" Rebar with Cap Stamped "B & A Inc." for the **POINT OF BEGINNING** of this description:

THENCE, N 03°03'27" E (North-Deed), continuing along said common line, a distance of 88.15 Feet to a Set Nail on the Southerly Line of a portion of F. Neve Survey No. 8 as described in Volume 3964, Page 659 Real Property Records of El Paso County, Texas;

THENCE, S 86°26'33" E (East-Deed), along Southerly line of said tract described in Volume 3964, Page 659, a distance 20.00 Feet to a Found 5/8" Rebar with Yellow Cap Stamped "Tx 2998) on the Southeasterly corner of said tract described in Volume 3964, Page 659;

THENCE, S 03°03'27" W (South-Deed), a distance of 88.15 Feet to a Set 1/2" Rebar with Cap Stamped "B & A Inc." point;

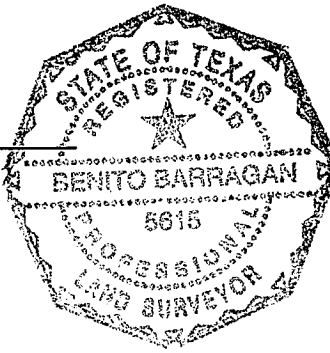
THENCE, N 86°26'33" W (West-Deed), a distance of 20.00 feet to the **POINT OF BEGINNING** of this parcel, and containing in all 1,763 sq. ft. or 0.04 acres of land more or less.

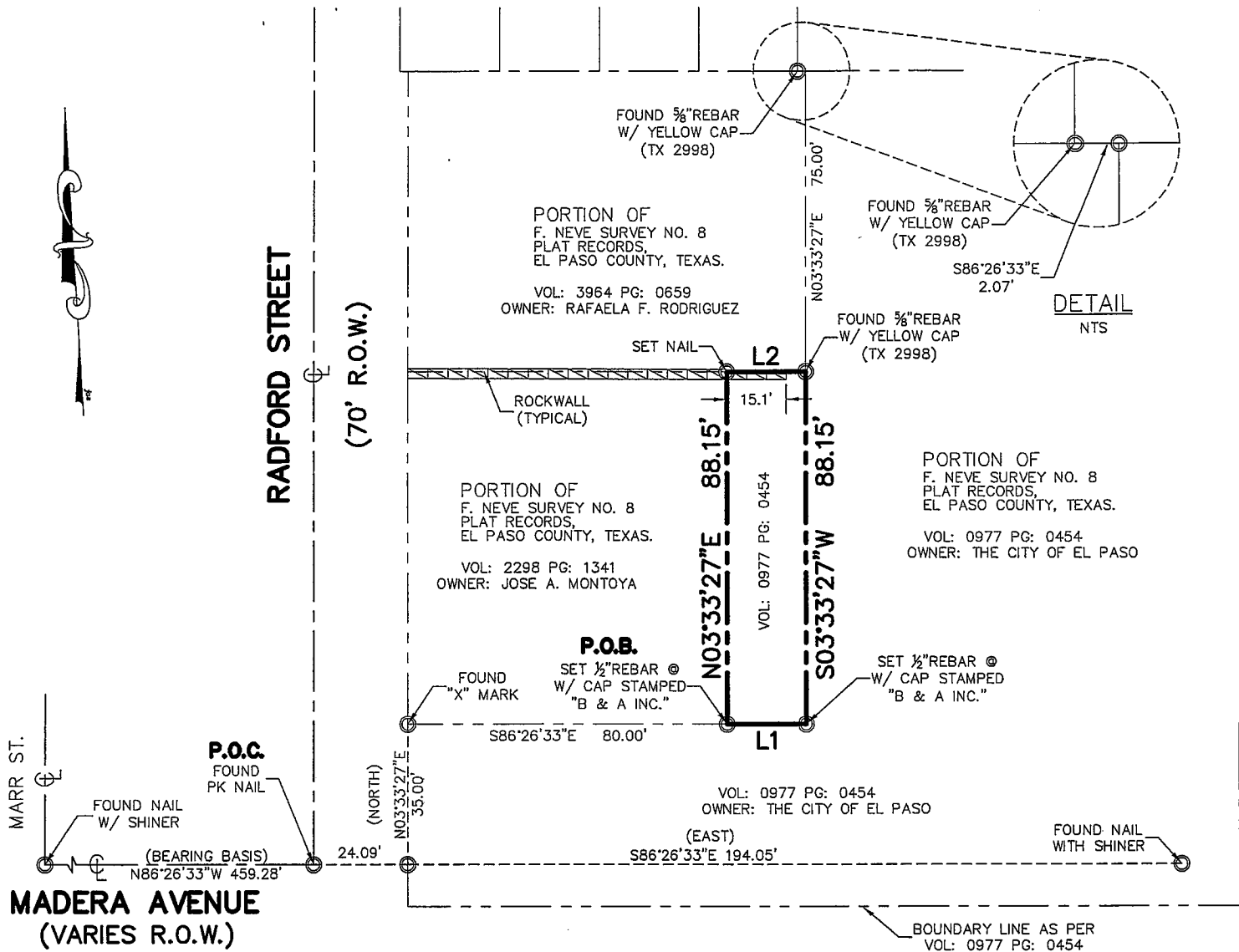
NOTES:

1. A Plat of Survey of even date accompanies this description.
2. This property may be subject to easements whether of record or not. No Additional Research was performed by B&A Inc. for any reservations, restrictions, building lines, and or easements which may or may not affect this parcel.
3. Bearings recited herein are grid bearings. Derived from RTK observation to the RTK Network of El Paso application and are referenced to the Texas Coordinate System of 1983, (NAD 83 State Plane Coordinates 1993 Adjustment) Central Zone, (4203) with values in U.S. Survey foot, will be used as the basis for all coordinates derived for this project unless otherwise noted.
4. Distances recited herein are ground distances (unless otherwise shown) and may be converted to grid by dividing by 1.000231.
5. This description does not intent to be a subdivision process which may be required by the applicable Government Entity Ordinance, and it is the Clients/Owners responsibility to comply with this Ordinance if required, and shall not be used to convey property.

Benito Barragan

Benito Barragan TX R.P.L.S. 5615, July 17, 2013
502 Radford Street



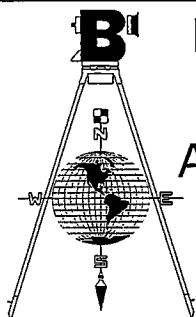


NOTE:

- SUBJECT PROPERTY SHOWN HEREON APPEARS TO BE LOCATED IN ZONE "C", PER F.I.R.M. COMMUNITY PANEL NUMBER 480214 0034B & 480214 0040B, LAST REVISION DATE 10-15-1982. THIS SURVEYOR MAKES NO GUARANTEES AS TO THE ACCURACY OF THE ABOVE INFORMATION. THE LOCAL F.E.M.A. AGENT SHOULD BE CONTACTED FOR VERIFICATION.
- ALL BEARINGS ARE GRID BEARINGS AND COORDINATES ARE GROUND, DERIVED FROM RTK OBSERVATION TO THE RTK NETWORK OF EL PASO APPLICATION AND ARE REFERENCED TO THE TEXAS COORDINATE SYSTEM OF 1983, (NAD 83 STATE PLANE COORDINATES 1993 ADJUSTMENT) CENTRAL ZONE, (4203) WITH VALUES IN U.S. SURVEY FOOT, WILL BE USED AS THE BASIS FOR ALL COORDINATES DERIVED FOR THIS PROJECT UNLESS OTHERWISE NOTED.
- ALL DISTANCES ARE GROUND DISTANCES (UNLESS OTHERWISE SHOWN) AND MAY BE CONVERTED TO GRID BY DIVIDING BY THE SCALE FACTOR OF 1.000231
- THIS PROPERTY MAY BE SUBJECT TO EASEMENTS WHETHER OF RECORD OR NOT, (NOT SHOWN). NO ADDITIONAL RESEARCH WAS PERFORMED BY B&A INC. FOR ANY RESERVATIONS, RESTRICTIONS, BUILDING LINES AND OR EASEMENTS WHICH MAY OR MAY NOT AFFECT SUBJECT PARCEL.

LINE TABLE		
LINE	BEARING	LENGTH
L1	N86°26'33"W	20.00'
L2	S86°26'33"E	20.00'

- THE PROPERTY OWNERS ARE SOLELY RESPONSIBLE FOR COMPLYING WITH ALL TITLE COMMITMENT PROVISIONS AND CONFIRMING THE SIZE AND USE OF ALL RECORDED EASEMENTS PERTAINING TO THIS PROPERTY, IN SPITE OF THE ACCURACY OR DEFECTS OF THIS PLAT.
- THIS SURVEY IS NOT TO BE USED FOR CONSTRUCTION PURPOSES AND IS ONLY TO BE USED FOR TITLE INSURANCE BY THE HEREON NAMED BORROWER, MORTGAGE COMPANY, AND/OR TITLE COMPANY.
- THIS SURVEY WAS DONE WITHOUT THE BENEFIT OF A TITLE COMMITMENT.



**Barragan
&
Associates
Inc.**

LAND PLANNING & SURVEYING

10950 Pelicano Dr. Building-F,
El Paso, Tx 79935

Phone (915) 591-5709 Fax (915) 591-5706

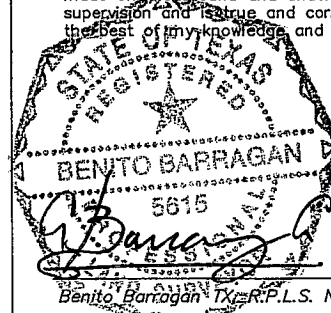
Plat of Survey

PORTION OF LAND, MORE LESS,
OUT OF F. NEVE SURVEY NO. 8,
BEIGN A PORTION OF THE STETTER AND
SCHNEIDER, ONE ACRE TRACT AS SHOWN
ON THE MAP OF CHULA VISTA ADDITION
AN ADDITION TO THE CITY OF EL PASO,
EL PASO COUNTY, TEXAS.
AREA 0.04 ACRES ±

Plat Reference Vol/Bk 6 Pages 49

Scale: 1"=40' Date: 08-07-13 Drawn By: J.A.E.

I hereby certify that the foregoing
boundary and improvement survey was
made on the ground and under my
supervision and is true and correct to
the best of my knowledge and belief.



Benito Barragan, TX-R.P.L.S. No. 5615

Job No. 130620-02 Copy Rights ©

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED OF RECORD IN THE PUBLIC RECORDS: SOCIAL SECURITY NUMBER AND DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

Date: _____, 2014

Grantor: The City of El Paso, Texas, a Texas municipal corporation
On Behalf of its El Paso Water Utilities Public Service Board
For the El Paso Municipal Drainage Utility

Grantor's Mailing Address (including county): Attention: El Paso Water Utilities
1154 Hawkins Blvd.
El Paso, Texas 79901-1196
El Paso County, Texas

Grantee: Jose A. Montoya

Grantee's Mailing Address (including county): 7021 Pecan Creek Circle
Midlothian, Texas 76065
El Paso County, Texas

Consideration: TEN AND NO/100 DOLLARS (\$10.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed.

Property:

A Parcel of land being a Portion out of a tract described in Volume 977, Page 454, Real Property Records of El Paso County, Texas and being a portion of F. Neve Survey No. 8, and a portion out of The Setter and Schneider, one acre tract as shown on the Map of Chula Vista Addition, an addition in the City of El Paso, El Paso County, Texas according to the plat thereof, recorded in Volume 6, Page 49, Plat Records of El Paso County Texas and more particularly described by metes and bounds in Exhibit "A", attached hereto and incorporated herein by this reference for all purposes, hereinafter, the "Property".

Restrictions and Reservations from and Exceptions to Conveyance and Warranty:

1. This Property is being conveyed "AS IS", with no express or implied warranty being made for a particular use or purpose. Grantee shall be responsible, at its own cost, to conduct any necessary archeological or environmental surveys or studies. Any remediation required of Grantee for or due on the Property shall be at Grantee's sole cost.

2. This conveyance is subject to all easements, rights-of-way, and prescriptive rights whether of record or not, all presently recorded instruments, other than liens and conveyances, affecting the Property.
3. Grantee, its successors or assigns shall not, for a period of at least 75 years, discard, place or store any radioactive material or other material which would contaminate or otherwise damage the groundwater supply or sources of the City of El Paso.
4. Grantor hereby, for itself, its successors and assigns forever, reserves all water in and under, and that may be produced from or attributable to the Property. If the water estate is subject to existing production or an existing license, this reservation includes the production, the license and all benefits from it: provided, however that Grantor hereby waives any right of ingress and egress to the surface of the Property for the purpose of exploring, drilling, developing or producing same.

Grantor, for the consideration and subject to the restrictions, reservations from and exceptions to conveyance and warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to Grantee, Grantee's heirs, executors, administrators, successors or assigns forever. Grantor binds Grantor and Grantor's successors to warrant and forever defend all and singular the Property to Grantee and Grantee's heirs, executors, administrators, successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to conveyance and warranty, when the claim is by, through, or under Grantor but not otherwise.

THE CITY OF EL PASO, TEXAS

Joyce A. Wilson, City Manager

APPROVED AS TO FORM:

Bertha Ontiveros
Senior Assistant City Attorney

APPROVED AS TO CONTENT AND FORM:

Lupe Cuellar, Real Estate
Manager and Counsel

(Acknowledgements on following pages)

ACKNOWLEDGEMENTS

STATE OF TEXAS

COUNTY OF EL PASO

This instrument was acknowledged before me on the _____ day of _____,
2014, by Joyce A. Wilson, the City Manager of the City of El Paso, Texas.

Printed Name: _____
Notary Public, State of Texas

STATE OF TEXAS §

§

CONTRACT OF SALE

COUNTY OF EL PASO §

This Agreement is entered into this _____ day of _____, 2014, by and between the **CITY OF EL PASO (El Paso Water Utilities/Public Service Board)** for the **El Paso Municipal Drainage Utility**, hereinafter referred to as the “PSB” as Seller and **Jose A. Montoya** hereinafter referred to as the “Buyer.”

NOW THEREFORE, for and in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Description of Property.** The City hereby agrees to sell and convey and the BUYER hereby agrees to acquire the following described real property located in El Paso County, Texas:

A 0.04 acre parcel of land located on a portion out of F. Neve Survey No. 8 and a portion out of The Stetter And Scheider, one acre tract as shown on the Map of Chula Vista Addition, an addition to the City of El Paso, El Paso County, Texas, according to plat thereof, recorded in Volume 6, Page 49, Plat Records of El Paso County, Texas and more particularly described in Exhibit “A,”

together with any interest in (i) all improvements and fixtures, and (ii) all right, title and interest of the PSB in and to all easements, appurtenances, and right-of-ways, and all interests in, on or to, any land, highway or street, in, on, across, in front of, abutting, or adjoining any such real property, all of such property, hereinafter referred to as the “Property.” In addition, the following conditions will be applicable to the PSB’s sale of the Property:

- 1.1 **Radioactive Materials.** Any conveyance of this Property will be subject to a restrictive covenant in the Deed to the effect that the BUYER, its successors or assigns, will not in violation of any applicable laws, discard, place, or store upon such land, any radioactive material or other materials which would contaminate or otherwise damage the ground water supply or resources of the PSB.
- 1.2 **Surveys.** The BUYER accepts responsibility for conducting its own archeological and environmental surveys of the Property. Mitigation of any conditions on the Property, including archeological sites or, without limitations, adverse environmental conditions, shall be at the expense of the BUYER who shall take the Property subject to all existing conditions. The BUYER accepts responsibility for its determination of the nature and extent of any archeological sites, or without limitations, any adverse environmental conditions by its complete inspection of the Property.
- 1.3 **Easements.** Easements for water and wastewater lines, if not located in public streets, shall be provided at no cost to the City or its Public Service Board.

- 1.4 **Groundwater.** All ground water, water rights, or rights to surface water shall be reserved to the PSB and will be subject to all easements, restrictions, reservations, rights of way, dedications and other encumbrances of record or apparent upon the property. The BUYER shall not have the right to drill a well and produce therefrom any quantity of groundwater.
2. **Amount of Payment of Purchase Price.** The purchase price for the property shall be TWO THOUSAND TWO HUNDRED THREE and 75/100 DOLLARS (\$2,203.75) plus buyer will pay all closing cost including cost of survey and appraisals as identified in Paragraph 5.2.
 - 2.1 **Payment of Sales Price.** The full amount of the purchase price will be payable in cash at the closing.
 - 2.2 **Earnest Money.** The PSB will require a cash deposit of in the amount of \$300.00 which will be credited to the purchase price at the time of closing. Earnest Money will be deposited in an interest bearing account with Stewart Title Company of El Paso, 415 North Mesa Street, El Paso, Texas 79901.
3. **Conditions to the Buyer's Obligations.** The obligations of the BUYER hereunder are to consummate the transaction contemplated herein are subject to the satisfaction of each of the following conditions, any of which may be waived, in whole or in part, in writing by the Buyer, at or prior to Closing.
 - 3.1 **Title Insurance.** Within fourteen (14) days after receipt of written notification of the PSB's acceptance of the BUYER's offer, the BUYER shall provide the PSB with all information necessary to close the sale with the intent that, without good cause existing or further delay, it is anticipated that the PSB and the BUYER will close within thirty (30) days from the date of the approval of the City Council of an ordinance authorizing the sale of the Property. The BUYER at its expense will order a title commitment ("Commitment") from Stewart Title Company, accompanied by copies of all recorded documents affecting the Property for the issuance of an Owner's Policy of Title Insurance with respect to the Property, in an amount to be decided by the BUYER ("Owner's Policy").
 - 3.2 **Title Objections.** The BUYER will give the PSB written notice after it receives the Commitment that the condition of the title set forth in the Commitment is or is not satisfactory. In the event the BUYER states that the condition is not satisfactory, the BUYER will specifically set forth in such notice the defect or exception to title that is deemed objectionable. The PSB may promptly undertake to eliminate or modify all unacceptable matters to the reasonable satisfaction of the BUYER. Otherwise, this condition will be deemed acceptable and any objection by the Buyer will be deemed waived.
4. **Representations of PSB.** The PSB hereby represents, to the extent allowed by law, to the BUYER that to the best of its knowledge, as follows:

- 4.1 **Parties in Possession.** At the time of closing, other than the BUYER, there are no parties in possession of any portion of the Property as lessees, tenants at sufferance, or otherwise.
- 4.2 **Mechanic's Lien.** (i) No action has been taken, suffered or permitted by or on behalf of the PSB, the effect of which would be to establish or cause the inception or priority of any mechanic's or materialmen's lien, statutory, constitutional or otherwise, or other lien, charge or encumbrance upon the Property or any part thereof or interest therein; and (ii) no liens or lien claims, choate or inchoate, arising from the PSB's actions or otherwise, exist or can exist for the benefit of mechanics or materialmen in regard to the Property; and (iii) except as expressly disclosed in the documents relating to this transaction, the PSB has not entered into any contracts or agreements relating to the use or ownership of the Property or by which any person or entity agreed to provide labor, services or materials in regard to the Property or the business of the PSB.
- 4.3 **Litigation.** There is no pending or contemplated litigation before or by any court of law pertaining to the Property or which involve incidents occurring on the Property including, but not limited to, claims of damage to persons or Property.
- 4.4 **Bills Paid.** At closing, there will be no unpaid bills or claims in connection with any repair or operation of the Property as a result of the PSB's ownership.
- 4.5 **Compliance Law.** All laws, ordinances, rules and regulations of any Government or any agency, body or subdivision thereof, bearing in the PSB's development of the Property, have been complied with.
- 4.6 **Taxes.** While the PSB owned the Property, the Property was exempt from ad valorem taxes.
- 4.7 **Pre-Closing Claims.** PSB agrees that the BUYER's acceptance of title to the Property under the conveyance documents should not create any liability on the BUYER's part to third parties that have claims of any kind against the PSB in connection with the Property. The PSB hereby expressly disclaims any and all liability to third parties that have any claims against the PSB.
- 4.8 **Condition of Property Prior to Closing.** Prior to Closing, the PSB shall not create or permit to be created any easement or other condition affecting the Property without the prior written consent of the BUYER. See paragraph 1.3 referring to proposed utility easement.
- 4.9 **"AS IS, WHERE IS."** THIS CONTRACT IS AN ARMS-LENGTH AGREEMENT BETWEEN THE PARTIES. THE PURCHASE PRICE WAS BARGAINED ON THE BASIS OF AN "AS IS, WHERE IS" TRANSACTION. THE BUYER ACCEPTS THE AS IS, WHERE IS, AND WITH ALL FAULTS, AND EXCEPT AS THE WARRANTY OF TITLE, WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF WHATSOEVER KIND, EXPRESS OR IMPLIED, WRITTEN OR ORAL, IT BEING THE INTENTION OF THE PSB AND THE BUYER TO EXPRESSLY NEGATE AND EXCLUDE ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO THOSE REGARDING: (A) THE CONDITION OF THE PROPERTY; (B) THE

SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH THE BUYER MAY CONDUCT THEREON; (C) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; AND (D) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY. THE BUYER FURTHER ACKNOWLEDGES AND AGREES THAT, HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY, THE BUYER IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY THE PSB OTHER THAN AS REGARDS THE EXISTING PSB EASEMENTS AND THE PSB PIPELINES AND EQUIPMENT WITHIN SUCH EASEMENTS. THE BUYER FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT THE PSB HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. THE PSB IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY, OR THE OPERATION THEREOF, FURNISHED BY ANY BROKER, AGENT, ATTORNEY, EMPLOYEE OR OTHER PERSON. IT IS UNDERSTOOD AND AGREED THAT THE PURCHASE PRICE FOR THE PROPERTY REFLECTS THAT ALL OF THE PROPERTY IS SOLD BY THE PSB AND PURCHASED BY THE BUYER SUBJECT TO THE FOREGOING.

4.10 **ENVIRONMENTAL MATTERS.** AFTER CLOSING, BETWEEN THE PSB AND THE BUYER, THE RISK OF LIABILITY OR EXPENSE FOR ENVIRONMENTAL PROBLEMS, EVEN IF ARISING FROM EVENTS BEFORE CLOSING, WILL BE THE SOLE RESPONSIBILITY OF THE BUYER, REGARDLESS OF WHETHER THE ENVIRONMENTAL PROBLEMS WERE KNOWN OR UNKNOWN AT CLOSING. ONCE CLOSING HAS OCCURRED, THE BUYER SHALL INDEMNIFY, HOLD HARMLESS, AND RELEASE THE PSB FROM LIABILITY FOR ANY LATENT DEFECTS AND FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY, INCLUDING LIABILITY UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA), THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA), THE TEXAS SOLID WASTE DISPOSAL ACT, OR THE TEXAS WATER CODE.

4.11 **BUYER's use.** The BUYER represents to the PSB that it intends to use the Property as a part of a back yard to the residence located at 500-02 Radford Street. BUYER will comply with all City, State and Federal Law and/or Ordinances.

4.12 **Survival.** All agreements of the PSB made in this document shall survive the execution and delivery hereof and the Closing hereunder, until such time as all of the obligations of the signatories hereto shall have lapsed in accordance with their respective terms or shall have been discharged in full.

5. **Closing.** The closing of this transaction ("Closing") shall take place at the offices of Stewart Title Company on or before the later of (i) thirty (30) days from the Effective Date; or (ii) thirty (30) days after the execution of this Agreement by the PSB and City Manager or Mayor of the City of El Paso, subject to delays due to the PSB's efforts to cure any title objection under Section 3.2.
- 5.1 **Possession.** Possession of the Property will be transferred to the BUYER upon Closing.
- 5.2 **Closing Costs.**
- (a) All recording fees arising from the recordation of documents necessary to show good title to the Property in the BUYER shall be paid by the BUYER.
 - (b) Premiums and other charges for the issuance of the Owner's Policy of Title Insurance for the Property shall be paid by the BUYER.
 - (c) Real Estate Appraisal and Survey fees shall be paid by BUYER.
- 5.3 **PSB's Obligations.** At Closing, the PSB shall deliver to the BUYER a duly executed and acknowledged Special Warranty Deed conveying the Property and any related easements, free and clear of any and all liens, encumbrances, conditions, easements, assessments, and restrictions, except for (i) ad valorem taxes for the year of Closing, if any, which shall be prorated to the date of Closing, and assumed by the BUYER upon closing, (ii) the standard printed exceptions contained in the usual form of the Owner's Policy, and (iii) any other exceptions set forth in the Title Policy which the BUYER has approved pursuant to Paragraph 4 above.
- 5.4 **Other Obligations.** Each party shall do all other acts, or deliver any other instruments or documents required or helpful to be done or delivered, in order to consummate this transaction.
6. **Default.**
- 6.1 **Breach by PSB.** In the event that the PSB shall fail to fully and timely perform any of its obligations under this Agreement, or shall fail to consummate the sale of the Property for any reason, except the BUYER's default, or the termination of this Agreement in accordance with its terms, the PSB agrees to absorb the costs the PSB may have incurred in preparation for the sale of the Property.
- 6.2 **Breach by the BUYER.** In the event that the BUYER shall fail to fully and timely perform any of its obligations under this Agreement, or shall fail to consummate the sale of the Property for any reason, except the PSB's default, or the termination of this Agreement in accordance with its terms, the PSB may seek specific performance of this agreement.
7. **Miscellaneous.**
- 7.1 **Notice.** Any notice, demand, direction, request, or other instrument authorized or required by this Agreement to be given to or filed with either party, shall be deemed to have been sufficiently given or filed for all purposes, if and when personally

delivered or sent by certified mail, postage prepaid, return receipt requested, to the address specified below or at such other address as may be designated in writing by the parties:

PSB: John E. Balliew, P.E.
President/CEO
El Paso Water Utilities Public Service Board
1154 Hawkins Blvd.
El Paso, Texas 79925

Buyer: Jose A. Montoya
7021 Pecan Creek Circle
Midlothian, Texas 76065-4627

8. **Entire Agreement / Governing Law.** This Agreement constitutes the entire agreement between the parties, and supersedes all prior agreements and understandings, written or oral, regarding the subject matter of this Agreement, and may be amended or supplemented only by an instrument in writing, executed by the party against whom enforcement is sought. This Agreement shall be governed in all respects, including validity, interpretation and effect, by and shall be enforceable in accordance with the laws of the State of Texas.
- 8.1 **Time.** Time is of the essence of this Agreement and each and every provision hereof.
- 8.2 **Severability.** If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portion shall not in any way be affected or impaired.
- 8.3 **Survival of Provisions.** The terms contained in this Agreement, including without limitation, representations, warranties, covenants and agreements of the parties, shall survive the Closing and shall not be merged therein. In case any one or more of the provisions contained in this contract for any reason is held invalid, this invalidity will not affect any other provision of this Contract, which will be construed as if the invalid or unenforceable provision had never existed.
- 8.4 **Binding Effect.** This Agreement shall be binding upon the parties hereto and their respective successors and assigns.
- 8.5 **Compliance.** In accordance with the requirements of Section 2B of the Texas Real Estate License Act, the Buyer is hereby advised that it should be furnished with or obtains a policy of title insurance or have an abstract covering the Property examined by an attorney of its own selection.
- 8.6 **Effective Date.** As used herein, "Effective Date" shall mean the date of the approval of City Council of an Ordinance authorizing the sale of the Property.

The above instrument, together with all conditions thereto is hereby executed by the City of El Paso this _____ day of _____, 2014.

SELLER:

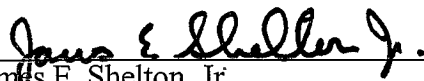
EL PASO WATER UTILITIES
PUBLIC SERVICE BOARD

By: 
John E. Balliew
President/CEO


CITY OF EL PASO
A Municipal Corporation

By: _____
Joyce A. Wilson, City Manager

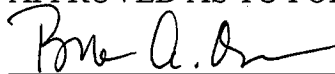
APPROVED AS TO CONTENT:


James E. Shelton, Jr.
Utility Land & Water Rights Manager

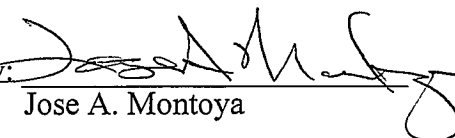
APPROVED AS TO FORM:


Lupe Cuellar
Real Estate Manager Counsel

APPROVED AS TO FORM:


Bertha Ontiveros, Senior City Attorney

BUYER:

By: 
Jose A. Montoya

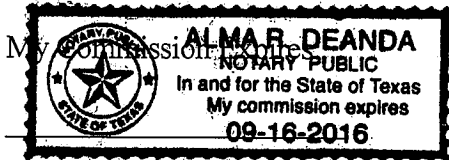
CITY CLERK DEPT.
2014 FEB 12 PM 5:27

(Acknowledgements continue on next page)

ACKNOWLEDGMENTS

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 6th day of November, 2013, by John E. Balliew, President & CEO of El Paso Water Utilities Public Service.



Alma R. Deanda
Notary Public, State of Texas

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2014, by Joyce Wilson, City Manager of the City of El Paso.

My Commission Expires:

Notary Public, State of Texas

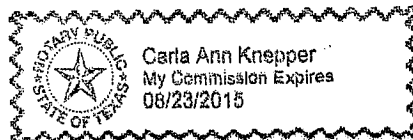
STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 25th day of November, 2013 by Jose A. Montoya.

My Commission Expires:

8-23-2015

Carla Ann Knepper
Notary Public, State of Texas



CITY CLERK DEPT.
2014 FEB 12 PM 5:27