


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

DEPARTMENT: El Paso Water Utilities **DATE:** September 8, 2009

Includes changes
Requested by City Atty's office

AGENDA DATE: INTRODUCTION: Per Irma – Sept 15, 2009
PUBLIC HEARING: Per Irma – Sept 22, 2009

CONTACT PERSON/PHONE:  Lowell M. Stokes, Assistant General Counsel, EPWU
Jim Shelton, Land Administration, EPWU (915) 594-5511

DISTRICT(S) AFFECTED: District #7 – Lower Valley El Paso

SUBJECT:

The introduction of an ordinance relating to the sale of land to the Catholic Diocese of El Paso/Most Reverend Armando X. Ochoa or his successor in office which is located in the Lower Valley of El Paso. Attached is an individual ordinance and special warranty deed. The land consists of 0.662 acres of land located near Carpenter and San Jose.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

Attached is the El Paso Water Utilities Public Service Board Resolution passed and approved February 25th, 2009, authorizing the sale to the sole bidder of this property; and requesting the City Council authorize the City Manager to sign a Special Warranty Deed to convey the parcel.

Seventy packets were provided to potential bidders. Bids were received January 23rd, 2009. There was one bid received. The bid was in excess of the market value established by an independent appraisal. The legal description and amount of the sole bidder for the parcel is as follows:

PSB Bid No.13-09

Being a portion of Tract 8A, Block 13, Ysleta Grant City of El Paso, El Paso County, Texas, being approximately 0.662 acres of land, to Catholic Diocese of El Paso/Most Reverend Armando X. Ochoa or his successor in office, in the amount of \$39,501.00.

PRIOR COUNCIL ACTION:

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

In 2007, the City Council approved the sale of a parcel of land of 9.635 acres in the Mission Valley area of El Paso.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

Sale of land to the sole bidder. The City of El Paso will receive 5% of the net proceeds from the sale of the land pursuant to City of El Paso El Paso Water Utilities Water and Sewer Revenue Bond Covenants.

BOARD / COMMISSION ACTION:

Approved by the El Paso Water Utilities Public Service Board by Resolution February 25th, 2009.

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

LEGAL: (if required) _____

FINANCE: (if required) _____

DEPARTMENT HEAD _____
(Example: if RCA is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

Attachments

p:\20092010\September2009\CityCouncilItems\CatholicDioceseLandSale\MemoAgendaItemRequestLandSaleCatholicDiocese.662acresLowerValley.doc

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE CITY OF EL PASO TO SELL APPROXIMATELY 0.662 ACRES OF LAND BEING A PORTION OF TRACT 8A, BLOCK 13, YSLETA GRANT, CITY OF EL PASO, EL PASO COUNTY, TEXAS, TO THE CATHOLIC DIOCESE OF EL PASO/MOST REVEREND ARMANDO X. OCHOA OR HIS SUCCESSOR IN OFFICE.

WHEREAS, by Resolution dated February 25, 2009, the El Paso Water Utilities Public Service Board (PSB), found one parcel of land totaling approximately 0.662 acres, more or less, being a portion of Tract 8A, Block 13, Ysleta Grant, City of El Paso, El Paso County, Texas, and more particularly described in Exhibit "A" attached hereto and made a part hereof for all purposes, to be inexpedient to the water system, and recommended the sale of the parcel of real property; and

WHEREAS, the PSB has received an independent appraisal of the market value of the identified real property; and

WHEREAS, in accordance with Section 272.001 of the Texas Local Government Code, the City of El Paso, through its PSB, advertised and solicited bids for the purchase of the identified real property; and

WHEREAS, in its Resolution dated February 25, 2009, the PSB recommended the sale of the identified real property to the Catholic Diocese of El Paso/Most Reverend Armando X. Ochoa or his successor in office, the sole bidder for \$39,500.00,

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

That the City Manager is hereby authorized to execute a Special Warranty Deed and any other necessary documents as required for the sale and conveyance of the following described real property to the Catholic Diocese of El Paso/Most Reverend Armando X. Ochoa or his successor in office, the sole bidder, as recommended by the El Paso Water Utilities Public Service Board:

0.662 acres of land, more or less, being out of a portion of Tract 8A, Block 13, Ysleta Grant, City of El Paso, El Paso County, Texas, and being more particularly described in Exhibit "A".

PASSED AND APPROVED this _____ day of _____, 2009.

THE CITY OF EL PASO

ATTEST:

John F. Cook, Mayor

Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:

Lowell M. Stokes, Assistant General Counsel, PSB

APPROVED AS TO FORM:

Theresa Cullen, Deputy City Attorney

CITY CLERK DEPT.
09 SEP -8 AM 11:46

Cutts Land Surveying, Inc.
Professional Land Surveyors

PROPERTY DESCRIPTION
28,840 Square Feet or 0.662 Acre

Being the description of Tract 8A, Block 13, Ysleta Grant, City of El Paso, El Paso County, Texas and being more particularly described by metes and bounds as follows:

COMMENCING FOR REFERENCE at the city monument at the intersection of San Jose Road and Yarbrough Drive and the city monument at the intersection of said San Jose Road and Lornaland Drive bears, South 57°26'32" East, a distance of 614.25 feet;

THENCE, South 85°28'11" West, a distance of 245.60 feet to a set ½ inch rebar marked (Tx2027) at the Northeastly corner of said Tract 8A in the Southerly right-of-way line of Yarbrough Drive and in the Westerly right-of-way line of Carpenter Road (40 feet wide) and **POINT OF BEGINNING** for the herein described tract;

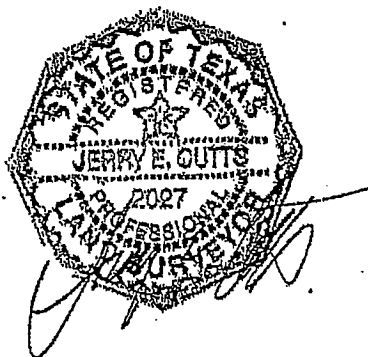
THENCE, along said Westerly right-of-way line, South 32°36'00" East, a distance of 530.75 feet to a set ½ inch rebar marked (Tx2027) at the Southeastly corner of said Tract 8A in the Easterly right-of-way line of the Southern Pacific Railroad (100 feet wide);

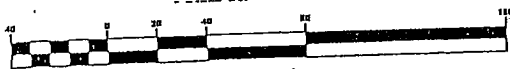
THENCE, along said Easterly right-of-way line, North 45°09'00" West, a distance of 500.11 feet to a set ½ inch rebar marked (Tx2027) at the Northwestly corner of said Tract 8A in said Southerly right-of-way line of Yarbrough Drive;

THENCE, along said Southerly right-of-way line, North 36°00'00" East, a distance of 116.72 feet to the **POINT OF BEGINNING** and containing 28,840 square feet or 0.662 acre of land.

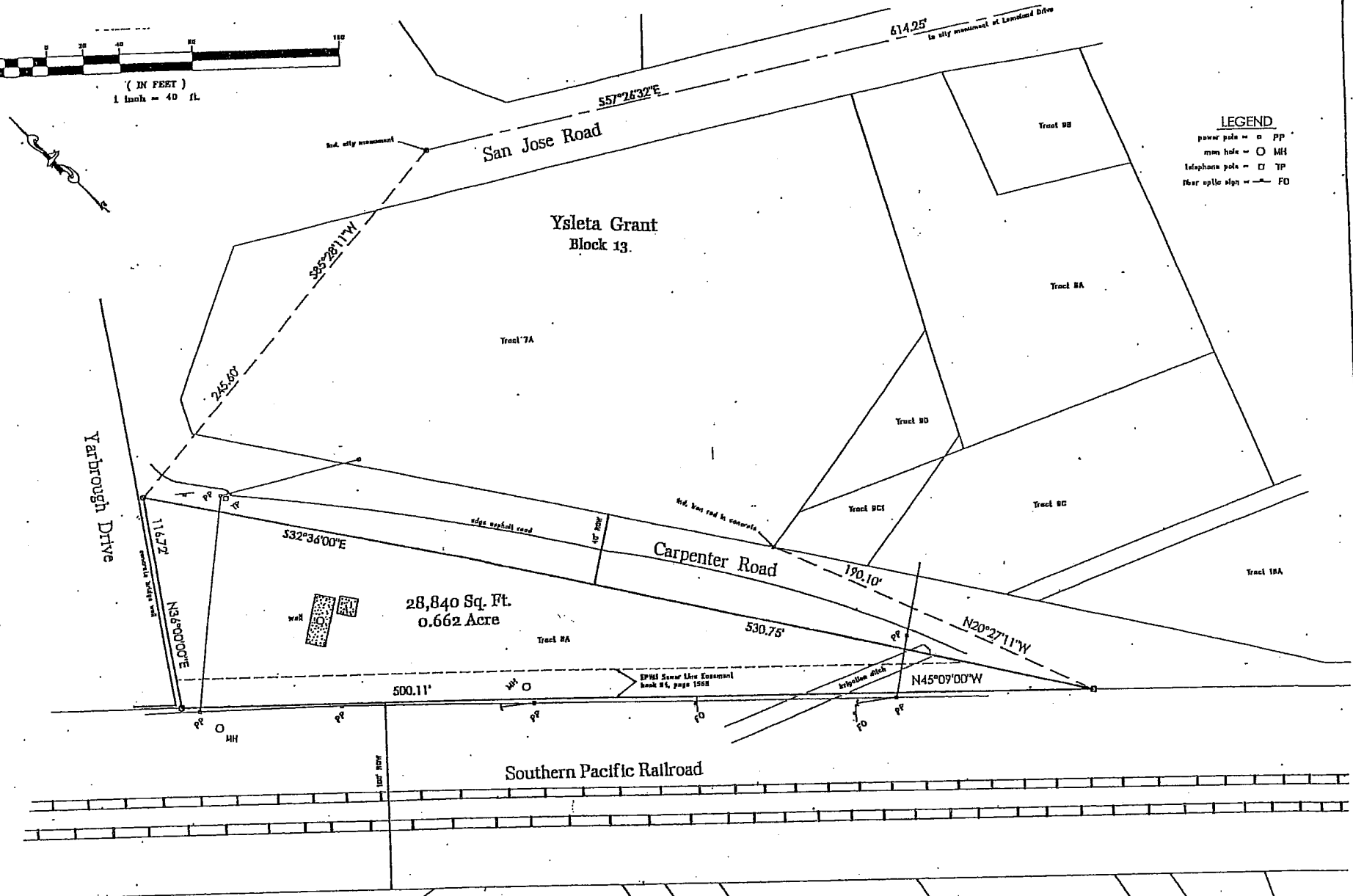
This description was prepared from a survey made on the ground on September 16, 2008 with a plat of same date.

PREPARED BY:
Cutts Land Surveying, Inc.
El Paso, Texas
January 17, 2008
Job No. 080903





(IN FEET)
1 inch = 40 ft.



LEGEND
power pole = □ PP
man hole = ○ MH
telephone pole = □ TP
fiber optic sign = — FO

I hereby certify that this survey was made on the ground under my supervision and that this plat represents the facts as found at the time of this survey.

9-15-08
Date

Henry E. Cutts
Henry E. Cutts, RPS



PLAT OF SURVEY
TRACT 8A, BLOCK 13,
YSLETA GRANT,
EL PASO, EL PASO COUNTY, TEXAS

NOTES: 1) Block assessment in El Paso Electric Company and Municipal Street Telephone & Telephone Company across Tract 8, book 1084, page 351.
2) Set 1/2 inch rebar marked (16227) at all corners unless otherwise noted.

Date surveyed: 09-15-08
Job No. 080903

Cutts Land Surveying, Inc.
Professional Land Surveyors

1100 Montana Avenue, Suite 205
El Paso, Texas 79902

Ph. (915) 534-9391
Fx. (915) 534-9394

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: _____, 2009

Grantor: The City of El Paso, Texas, a Texas municipal corporation
On Behalf of El Paso Water Utilities Public Service Board

Grantor's Mailing Address (including county): Two Civic Center Plaza
El Paso, Texas
El Paso County, Texas 79901-1196

Grantee: Catholic Diocese of El Paso/
Most Reverend Armando X. Ochoa
Or his successor in office

Grantee's Mailing Address (including county): 499 St. Matthews
El Paso, Texas 79907
El Paso County, Texas

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

Being approximately 0.662 acres of land being a portion of Tract 8A, Block 13, Ysleta Grant, City of El Paso, El Paso County, Texas, and more particularly described in Exhibit "A", attached hereto and incorporated herein by this reference for all purposes.

Restrictions and Reservations from and Exceptions to Conveyance and Warranty:

1. Grantee acknowledges that there are plugged wells on the property and that the property is being sold "as is".
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, that affect 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.

CITY CLERK DEPT.
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4. Development of the property shall be governed by the following restrictions as to turf:

a. Turf Areas, exclusive of non-irrigated or non-maintained landscape areas, shall not exceed the following percentages of the landscape area provided:

- i. Commercial, office, and industrial: 33 $\frac{1}{3}$ %
- ii. Apartments, duplexes and other multi-family dwellings, single-family detached or attached dwellings, and all other residential dwellings, including mobile and modular homes: 50%
- iii. All other developments excluding parks, golf courses, and cemeteries: 15%

b. Turf and/or sprinkler spray heads shall not be installed in the following locations:

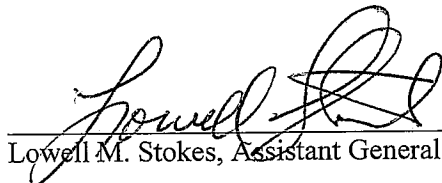
- i. Along street curbs;
- ii. In areas whose width is less than 8 feet; and
- iii. In rights-of-way whose slopes are a ratio of 1:3 or greater from the horizontal.

5. 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.

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

APPROVED AS TO FORM:


Lowell M. Stokes, Assistant General Counsel, PSB

Joyce Wilson, City Manager

(Acknowledgments on following page)

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This Deed is hereby accepted by Grantee under the terms, covenants, obligations and conditions stated herein:

Catholic Diocese of El Paso/
Most Reverend Armando X. Ochoa
Or his successor in office

By: _____

ATTEST:

(print name) (title)

ACKNOWLEDGMENTS

STATE OF TEXAS }
 }
COUNTY OF EL PASO }

This instrument was acknowledged before me on the _____ day of _____, 2009, by
Joyce Wilson, the City Manager of the City of El Paso.

Notary Public, State of Texas

STATE OF TEXAS }
 }
COUNTY OF EL PASO }

This instrument was acknowledged before me on the _____ day of _____, 2009, by
_____, the _____ of _____.

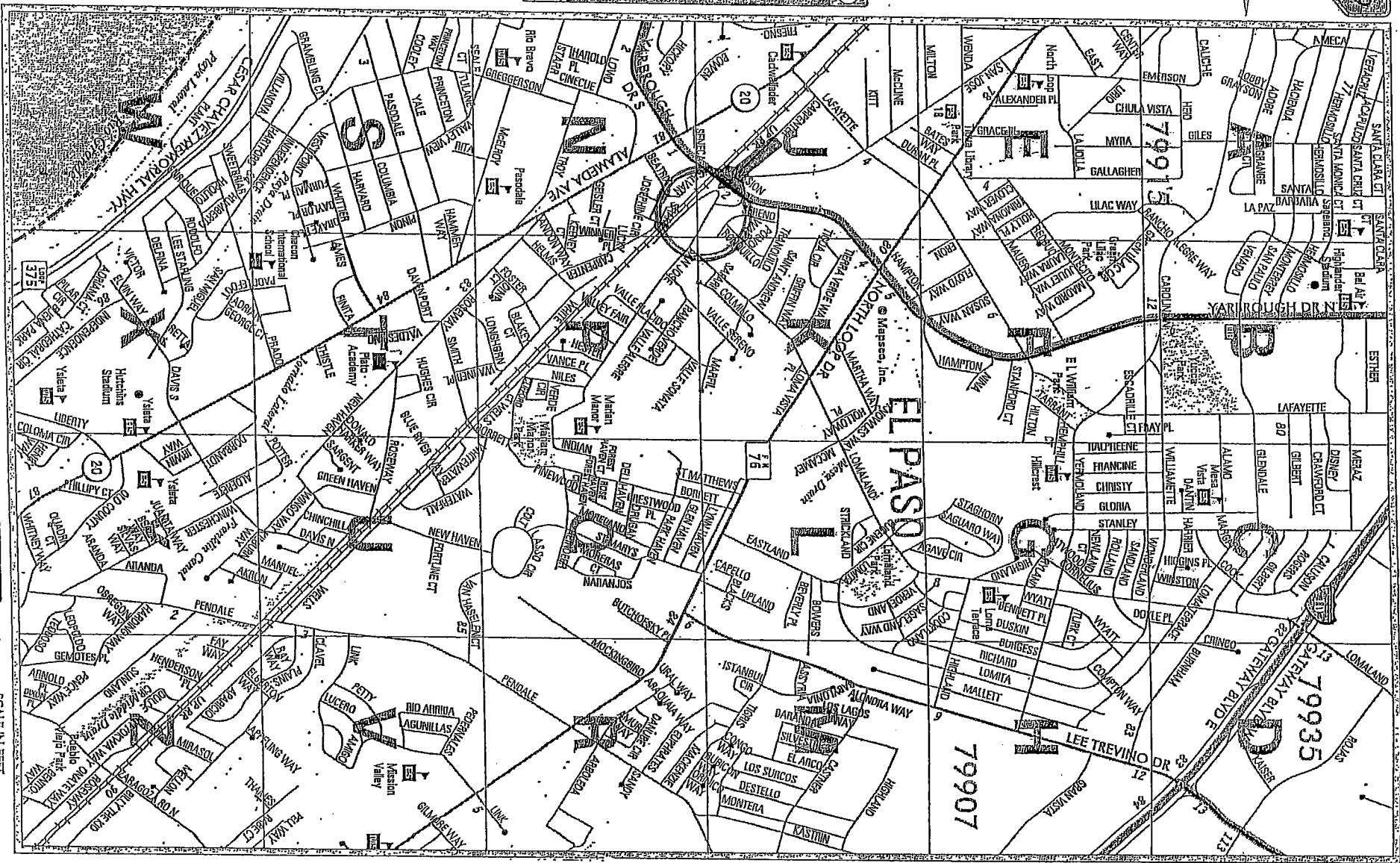
Notary Public, State of Texas

CITY CLERK DEPT.
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SCALE IN MILES
0 1/4 1/2 3/4 1

CONTINUED ON MAP 769
COPYRIGHT 2008 by MAPSCO, INC. - ALL RIGHTS RESERVED

SCALE IN FEET
0 1000 2000 3000



LOCATION MAP ONLY

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Cutts Land Surveying, Inc.
Professional Land Surveyors

PROPERTY DESCRIPTION
28,840 Square Feet or 0.662 Acre

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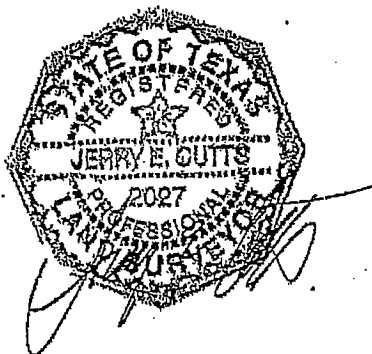
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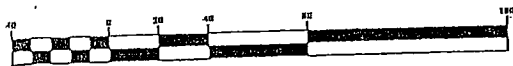
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This description was prepared from a survey made on the ground on September 16, 2008 with a plat of same date.

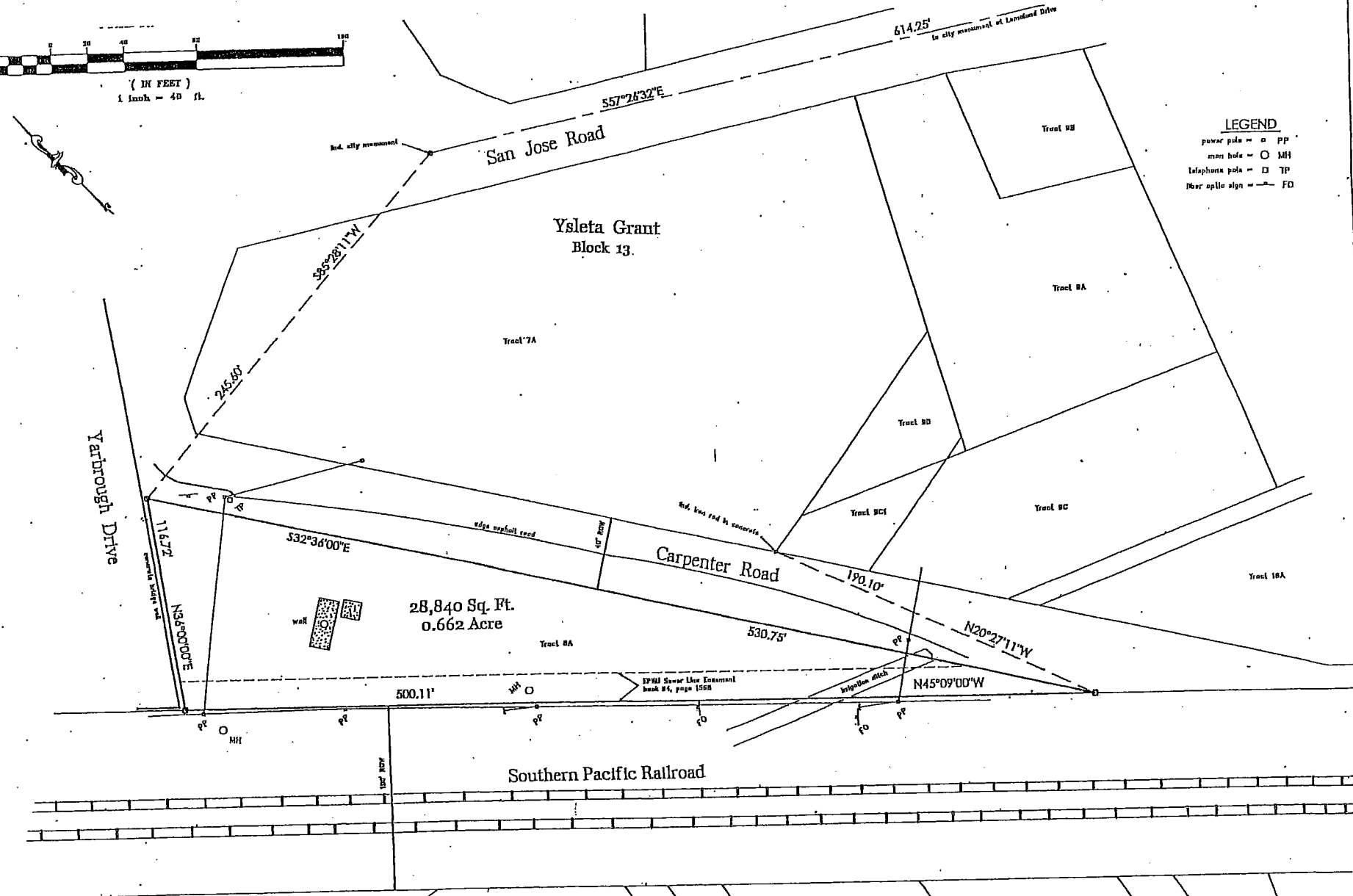
PREPARED BY:
Cutts Land Surveying, Inc.
El Paso, Texas
January 17, 2008
Job No. 080903



CITY CLERK DEPT.
09 SEP - 8 AM 11:47



(IN FEET)
1 inch = 40 ft.



LEGEND
power pole = \bullet PP
man hole = \bigcirc MH
telephone pole = \square TP
bear split sign = \triangle FO

I hereby certify that this survey was made on the ground under my supervision and that this plat represents the facts as found at the time of this survey.

8-15-08
Date

Jerry E. Cutts
JERRY E. CUTTS, R.P.S.



PLAT OF SURVEY
TRACT 8A, BLOCK 13,
YSBETIA GRANT,
EL PASO, EL PASO COUNTY, TEXAS

NOTES: 1) Market assessment to El Paso Electric Company and Mountain States Telephone & Telephone Company across Tract 8, book 1084, page 331.
2) Set 1/2 inch radius marked (1/2027) at all corners unless otherwise noted.

Date surveyed: 08-15-08
Job No. 080903

Cutts Land Surveying, Inc.
Professional Land Surveyors

1100 Montana Avenue, Suite 206
El Paso, Texas 79902

Ph. (915) 534-9391
Fx. (915) 534-9394

REAL ESTATE SALES CONTRACT

This Contract to buy and sell real property is between Seller and Buyer as identified below and is effective on the date ("Effective Date") of the last of the signatures by Seller and Buyer as parties to this Contract and by Title Company to acknowledge receipt of the Earnest Money.

Seller:

THE CITY OF EL PASO, through concurrent approval of its **City Council** and the **PUBLIC SERVICE BOARD**

1154 Hawkins Blvd.

El Paso, Texas 79925

Telephone : (915) 594-5501

Facsimile : (915) 594-5699

Seller's Attorney:

Robert D. Andron, General Counsel

Lowell M. Stokes, Assistant General Counsel

1154 Hawkins Blvd.

El Paso, Texas 79925

Telephone : Andron — (915) 594-5607

Stokes — (915) 594-5507

Buyer:

**THE CATHOLIC DIOCESE OF EL PASO/
MOST REVEREND ARMANDO X. OCHOA
OR HIS SUCCESSOR IN OFFICE.**

499 St. Matthews St.

El Paso, Texas 79907

Telephone : (915) 872-8400

Facsimile :

E-mail : elpasodiocese.org

Buyer's Attorney:

Property: Approximately 0.662 acres of land being a portion of Tract 8A, Block 13, Ysleta Grant Surveys, City of El Paso, El Paso County, Texas, and is more particularly described by metes and bounds in Exhibit "A."

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Title Company:

Lawyers Title of El Paso, Inc.
301 E. Yandell
El Paso, Texas 79902
Telephone: (915) 543-7610
Fax: (915) 543-7699 fax

Contact Person: Pearl Burkett
pburkett@ltic.com

Purchase Price: \$39,501.00

Earnest Money: \$ 7,976.00 (On deposit at El Paso Water Utilities)

Surveyor:

Jerry E. Cutts
Cutts land Surveying, Inc.
1100 Montana Ave. Suite 206
El Paso, Texas 79902
Telephone : (915) 534-9391
Facsimile : (915) 534-9394

A. Deadlines and Other Dates

All deadlines in this Contract expire at 5:00 p.m. local time where the Property is located. If a deadline falls on a Saturday, Sunday, or national holiday, the deadline will be extended to the next day that is not a Saturday, Sunday, or national holiday. A national holiday is a holiday designated by the federal government. Time is of the essence.

1. Delivery of Title Commitment: April 13, 2009
2. Delivery of Survey: Already Delivered (Dated 01/17/2008)
3. Delivery of Title Objections: April 17, 2009
4. Closing Date: On or before 30 days after City Council Approval

B. Closing Documents

1. At closing, Seller will deliver the following items:

Special Warranty Deed

Evidence of Seller's authority to close this transaction

2. At closing, Buyer will deliver the following items:

Evidence of Buyer's authority to consummate this transaction

C. Exhibits

The following are attached to and are a part of this Contract:

Exhibit "A"— Description of the Land (On-the-Ground Survey has been delivered to Buyer)

D. Purchase and Sale of Property

Seller agrees to sell and convey the Property to Buyer, and Buyer agrees to buy and pay Seller for the Property. The promises by Buyer and Seller stated in this Contract are the consideration for the formation of this Contract.

E. Title and Survey

1. **Review of Title.** Review of Title. The following statutory notice is provided to Buyer, on behalf of the real estate licensees, if any, involved in this transaction: Buyer is advised that it should either have the abstract covering the Property examined by an attorney of Buyer's own selection or be furnished with or obtain a policy of title insurance.

2. **Title Commitment; Title Policy.** "Title Commitment" means a Commitment for Issuance of an Owner Policy of Title Insurance by Title Company, as agent for Underwriter, stating the condition of title to the Land. The "effective date" stated in the Title Commitment must be after the Effective Date of this Contract. "Title Policy" means an Owner Policy of Title Insurance issued by Title Company, as agent for Underwriter, in conformity with the last Title Commitment delivered to and approved by Buyer.

3. **Survey.** "Survey" means an on-the-ground, staked plat of survey and metes-and-bounds description of the Land, prepared by Surveyor or another surveyor satisfactory to Title

Company, dated after the Effective Date, and certified to comply with the current standards and specifications as published by the Texas Society of Professional Surveyors for the Survey Category.

4. Delivery of Title Commitment, and Survey. Seller must deliver the Title Commitment to Buyer by the deadline. Survey has been delivered (Dated: January 17, 2008).

5. Title Objections. Buyer has until the deadline ("Title Objection Deadline") to review the Survey, Title Commitment, and legible copies of the title instrument referenced in them and notify Seller of Buyer's objections to any of them ("Title Objections"). Buyer will be deemed to have approved all matters reflected by the Survey and Title Commitment to which Buyer has made no Title Objection by the Title Objection Deadline. The matters that Buyer either approves or is deemed to have approved are "Permitted Exceptions." If Buyer notifies Seller of any Title Objections, Seller has five (5) days from receipt of Buyer's notice to notify Buyer whether Seller agrees to cure the Title Objections before closing ("Cure Notice"). If Seller does not timely give its Cure Notice or timely gives its Cure Notice but does not agree to cure all the Title Objections before closing, Buyer may, within five (5) days after the deadline for the giving of Seller's Cure Notice, notify Seller that either this contract is terminated or Buyer will proceed to close, subject to Seller's obligations to resolve the items listed in Schedule C of the Title Commitment, remove the liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date, and cure only the Title Objections that Seller has agreed to cure in the Cure Notice. At or before closing, Seller must resolve the items that are listed on Schedule C of the Title Commitment, remove all liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date of this Contract, and cure the Title Objections that Seller has agreed to cure.

F. Inspection Period

1. Entry onto the Property. Buyer may enter the Property before effective closing date to inspect it, subject to the following:

- a.** Buyer must deliver evidence to Seller that buyer has insurance for its proposed inspection activities, in amounts and with coverages that are substantially the same as those maintained by Seller or in such lesser amounts or with such lesser coverages as are reasonably satisfactory to Seller;
- b.** Buyer must notify Seller in advance of Buyer's plans to conduct tests so that Seller may be present during the tests;
- c.** If the Property is altered because of Buyer's inspections, Buyer must return the Property to its pre-inspection condition promptly after the alteration occurs;

- d. Buyer must deliver to Seller copies of all inspection reports that Buyer prepares or receives from third-party consultants or contractors within three (3) days of their preparation or receipt; and,
- e. Buyer must abide by any other reasonable entry rules imposed by Seller.

2. *Buyer's Right to Terminate.*

- a. ***Indemnity.*** Buyer will indemnify, defend and hold Seller harmless from any loss, attorney's fees, expenses, or claims arising out of Buyer's investigation of the Property, except for repair or remediation of existing conditions discovered by Buyer's inspection.
- b. ***Release.*** Buyer releases Seller and those persons acting on Seller's behalf from all claims and causes of action (including claims for attorney's fees and court and other costs) resulting from Buyer's investigation of the Property.

G. No Recording of Contract

Buyer may not file this contract or any memorandum or notice of this Contract in the real property records of any county. If however, Buyer records this contract or a memorandum or notice, Seller may terminate this Contract and record a notice of termination.

H. Termination

1. *Disposition of Earnest Money After Termination*

- a. ***To Buyer.*** If buyer terminates this Contract in accordance with any of Buyer's rights to terminate, Seller will, within five (5) days of receipt of Buyer's termination notice, El Paso Water Utilities will deliver the Earnest Money to Buyer.
- b. ***To Seller.*** If Seller terminates this Contract in accordance with any of Seller's rights to terminate, Buyer will, within five (5) days of receipt of Seller's termination notice, authorize Seller to keep the Earnest Money.

2. *Duties after Termination.* If this Contract is terminated, Buyer will promptly return to Seller all documents relating to the Property that Seller has delivered to Buyer and all copies that Buyer has made of the documents. After return of the documents and copies, neither party will have further duties or obligations to the other under this Contract, except for those obligations that cannot be or were not performed before termination of this Contract.

I. Closing

1. **Closing.** This transaction will close at Title Company's offices at the Closing Date. At closing, the following will occur:

- a. **Closing Documents.** The parties will execute and deliver the Closing Documents.
- b. **Payment of Purchase Price.** Buyer will deliver a cashier's check or wire transfer to Title Company in funds acceptable to Title Company. The Earnest Money will be applied to the Purchase Price.
- c. **Disbursement of Funds; Recording; Copies.** Title Company will be instructed to disburse the Purchase Price and other funds in accordance with this Contract, record the deed and the other Closing Documents directed to be recorded, and distribute documents and copies in accordance with the parties' written instructions.
- d. **Possession.** Seller will deliver possession of the Property to Buyer upon closing and funding.

2. Transaction Costs

- a. **Seller's Costs.** None
- b. **Buyer's Costs.** Buyer will pay all closing cost including Title Insurance.
- c. **Ad Valorem Taxes.** None. Both Buyer and Seller are tax exempt entities.

3. **Issuance of Title Policy.** Seller will cause Title Company to issue the Title Policy to Buyer as soon as practicable after closing.

J. Default and Remedies

1. **Seller's Default.** If Seller fails to perform any of its obligations under this Contract or if any of Seller's representations is not true and correct as of the Effective Date or on the Closing Date ("Seller's Default"), Buyer may elect either of the following as its sole and exclusive remedy:

- a. **Termination;** Buyer may terminate this Contract by giving notice to Seller on or before the Closing Date and have the Earnest Money, as

described above, returned to Buyer. Unless Seller's Default relates to the untruth or incorrectness of Seller's representations for reasons not reasonably within Seller's control, if Seller's Default occurs after Buyer has incurred costs to investigate the Property after the Effective Date and Buyer terminates this Contract in accordance with the previous sentence, Seller will also pay to Buyer as liquidated damages the lesser of Buyer's actual out-of-pocket expenses (Appraisal and Survey Cost) incurred within ten (10) days of Seller's receipt of an invoice from Buyer or title company stating the amount of Buyer's expenses.

- b. ***Specific Performance.*** Unless Seller's Default relates to the untruth or incorrectness of Seller's representations for reasons not reasonably within Seller's control, Buyer may enforce specific performance of Seller's obligations under this Contract. If title to the Property is awarded to Buyer, the conveyance will be subject to the matters stated in the Title Commitment.

2. ***Buyer's Default.*** If Buyer fails to perform any of its obligations under this Contract ("Buyer's Default"), Seller may elect either of the following as its sole and exclusive remedy:

- a. ***Termination;*** Seller may terminate this Contract by giving notice to Buyer on or before the Closing Date and have the Earnest Money paid to Seller. If Buyer's Default occurs after Seller has incurred costs to perform its obligations under this Contract and Seller terminates this Contract in accordance with the previous sentence, Buyer will also reimburse Seller for the lesser of Seller's actual out-of-pocket expenses incurred to perform its obligations under this Contract within ten (10) days of Buyer's receipt of an invoice from Seller stating the amount of Seller's expenses.
- b. ***Specific Performance.*** Seller may enforce specific performance of Buyer's obligations under this Contract. If title to the Property is awarded to Buyer, the conveyance will be subject to the matters stated in the Title Commitment.

3. ***Attorney's Fees.*** If either party retains an attorney to enforce this contract, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.

K. **Miscellaneous Provisions**

1. ***Notices.*** Any notice required by or permitted under this contract must be in writing. Any notice required by this Contract will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested and addressed to the intended recipient at the address shown in this

Contract. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein. Copies of each notice must be given by one of these methods to the attorney of the party to whom notice is given.

2. **Entire Contract.** This Contract, together with its exhibits, and any Closing Documents delivered at closing constitute the entire agreement of the parties concerning the sale of the Property by Seller to Buyer. There are no oral representations, warranties, agreements, or promises pertaining to the sale of the Property by Seller to Buyer not incorporated in writing in this Contract.

3. **Amendment.** This Contract may be amended only by an instrument in writing signed by the parties.

4. **Prohibition of Assignment.** Buyer may not assign this Contract or any of Buyer's rights under it without Seller's prior written consent, and any attempted assignment is void. This Contract binds, benefits and may be enforced by the parties, successors and permitted assigns.

5. **Survival.** The obligations of this contract that cannot be performed before termination of this Contract or before closing will survive termination of this Contract or closing and the legal doctrine of merger will not apply to these matters. If there is any conflict between the Closing Documents and this contract, the Closing Documents will control.

6. **Choice of Law; Venue; Alternative Dispute Resolution.** This Contract will be construed under the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in the County for Performance, except as otherwise provided by applicable law. Time permitting, the parties will submit in good faith to an alternative dispute resolution process before filing a suit concerning this Contract.

7. **Waiver of Default.** It is not a waiver of default if the non-defaulting party fails to declare immediately a default or delays taking any action with respect to the default.

8. **No Third-Party Beneficiaries.** There are no third-party beneficiaries of this Contract.

9. **Severability.** The provisions of this Contract are severable. If a court of competent jurisdiction finds that any provision of this Contract is unenforceable, the remaining provisions will remain in effect without the unenforceable parts.

10. **Ambiguities Not to Be Construed Against Party Who Drafted Contract.** The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this Contract.

11. **No Special Relationship.** The parties' relationship is an ordinary commercial relationship and they do not intend to create the relationship of principal and agent, partnership, joint venture, or any other special relationship.

12. **Counterparts.** If this Contract is executed in multiple counterparts, all counterparts taken together will constitute this Contract.

13. **Confidentiality.** The parties will keep confidential this Contract, this transaction and all information learned in the course of this transaction, except to the extent disclosure is required by law or court order or to enable third parties to advise or assist Buyer to investigate the Property or either party to close this transaction.

14. **As Is Disclaimer:** Notwithstanding anything in the Contract to the contrary, buyer acknowledges and agrees that the sale of the property as provided for herein is made on "AS IS", "WHERE IS" condition and basis "WITH ALL FAULTS" on the date of closing. Buyer acknowledges and agrees that seller has not made, does not make and specifically disclaims except as to title as set out hereinabove, any representations, warranties, promises, covenants, agreements or guaranties of any kind of character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerned or with respect to (a) the nature, quality or condition of the property, including, without limitation, the environmental condition of the property; (b) the income to be derived from the property; (c) the suitability of the property for any and all activities and uses which Buyer may conduct thereon; (d) the compliance of or by the property or its operations with any laws, rules, ordinances or regulations or any applicable governmental authorities or body; (e) the habitability, suitability, merchantability or fitness for a particular purpose of the property, or (f) any other matter with respect to the property, and specifically that seller has not made, does not make and specifically disclaims any representations regarding solid waste, as defined by the U.S. Environmental Protection Agency regulations at 40 C.F.R., part 261, or the disposal or existence, in or on the property, of any hazardous substance, as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and applicable state laws and regulations promulgated thereunder. Buyer further acknowledges and agrees that having been given the opportunity to inspect the property, Buyer is buying is relying solely on its own investigation of the property and not on any information provided or to be provided by Seller. Buyer further acknowledges and agrees that any information provided with respect to the property was obtained from a variety of sources and that Seller has not made any independent investigation or verification of such INFORMATION. The foregoing provision shall be incorporated into the Deed conveying the Property and accepted by Buyer.

L. General Development Requirements

1. Any conveyance of this land will be subject to a restrictive covenant to the effect that the Buyer, its successors or assigns will not, discard, place or store upon such land, any radioactive material or other hazardous waste material or animal waste which would contaminate or otherwise damage the ground water supply sources of the City of El Paso.

2. The Buyer shall be responsible for conducting an archeological field survey of the property and contacting the Texas Historical Commission (THC) for any potential archeological information pertaining to the site. Any archeological remediation shall be at the Buyer's sole cost.

3. All ground water, water rights, or rights to surface water shall be reserved to the El Paso Water Utilities – Public Service Board of the City of El Paso. The Buyer shall not have the right to drill a well and produce therefrom any quantity of groundwater.

4. Water, and sanitary sewerage service will be provided in accordance with the most current Public Service Board Rules and Regulations of the El Paso Water Utilities at the time of application for service to the Developer Services Section of the El Paso Water Utilities.

5. The Buyer shall be responsible for the costs of any necessary on-site & off-site extensions, relocations, replacements or adjustments of water, sanitary sewer and appurtenances as a result of the proposed subdivision improvement plans.

6. In order to promote water conservation, to ensure optimum water-use efficiency, and to prevent runoff into streets, it is the policy of the PSB to require landscape and irrigation restrictions in the sales of undeveloped land. Development of the Property will be governed by the El Paso Municipal Code Title 15 (Public Services), Chapter 12 (Water and Sewer System) and Chapter 13 (Water Conservation), including no more than 50% turf in landscapable area.

(Endorsements on following Page)

EXECUTED the _____ day of _____, 2009 (EFFECTIVE DATE).
(Effective date is upon acceptance of this contract by Seller and Buyer)

SELLER: EL PASO WATER UTILITIES
PUBLIC SERVICE BOARD

By: Edmund G. Archuleta
Edmund G. Archuleta, P.E.
President & CEO

THE CITY OF EL PASO

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

Robert D. Andron
Robert D. Andron
General Counsel for El Paso Water Utilities

BUYER: THE CATHOLIC DIOCESE OF
EL PASO/MOST REVEREND
ARMANDO X. OCHOA OR HIS
SUCCESSOR IN OFFICE

By: + Armando X. Ochoa

APPROVED AS TO FORM:

NOT REQUIRED
General Counsel for The Catholic Diocese
of El Paso.

REAL ESTATE SALES CONTRACT

CITY CLERK DEPT.
09 SEP -8 AM 11:47

Cutts Land Surveying, Inc.
Professional Land Surveyors

PROPERTY DESCRIPTION
28,840 Square Feet or 0.662 Acre

Being the description of Tract 8A, Block 13, Ysleta Grant, City of El Paso, El Paso County, Texas and being more particularly described by metes and bounds as follows:

COMMENCING FOR REFERENCE at the city monument at the intersection of San Jose Road and Yarbrough Drive and the city monument at the intersection of said San Jose Road and Lomaland Drive bears, South 57°26'32" East, a distance of 614.25 feet;

THENCE, South 85°28'11" West, a distance of 245.60 feet to a set ½ inch rebar marked (Tx2027) at the Northeasterly corner of said Tract 8A in the Southerly right-of-way line of Yarbrough Drive and in the Westerly right-of-way line of Carpenter Road (40 feet wide) and **POINT OF BEGINNING** for the herein described tract;

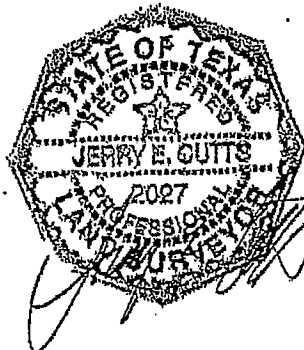
THENCE, along said Westerly right-of-way line, South 32°36'00" East, a distance of 530.75 feet to a set ½ inch rebar marked (Tx2027) at the Southeasterly corner of said Tract 8A in the Easterly right-of-way line of the Southern Pacific Railroad (100 feet wide);

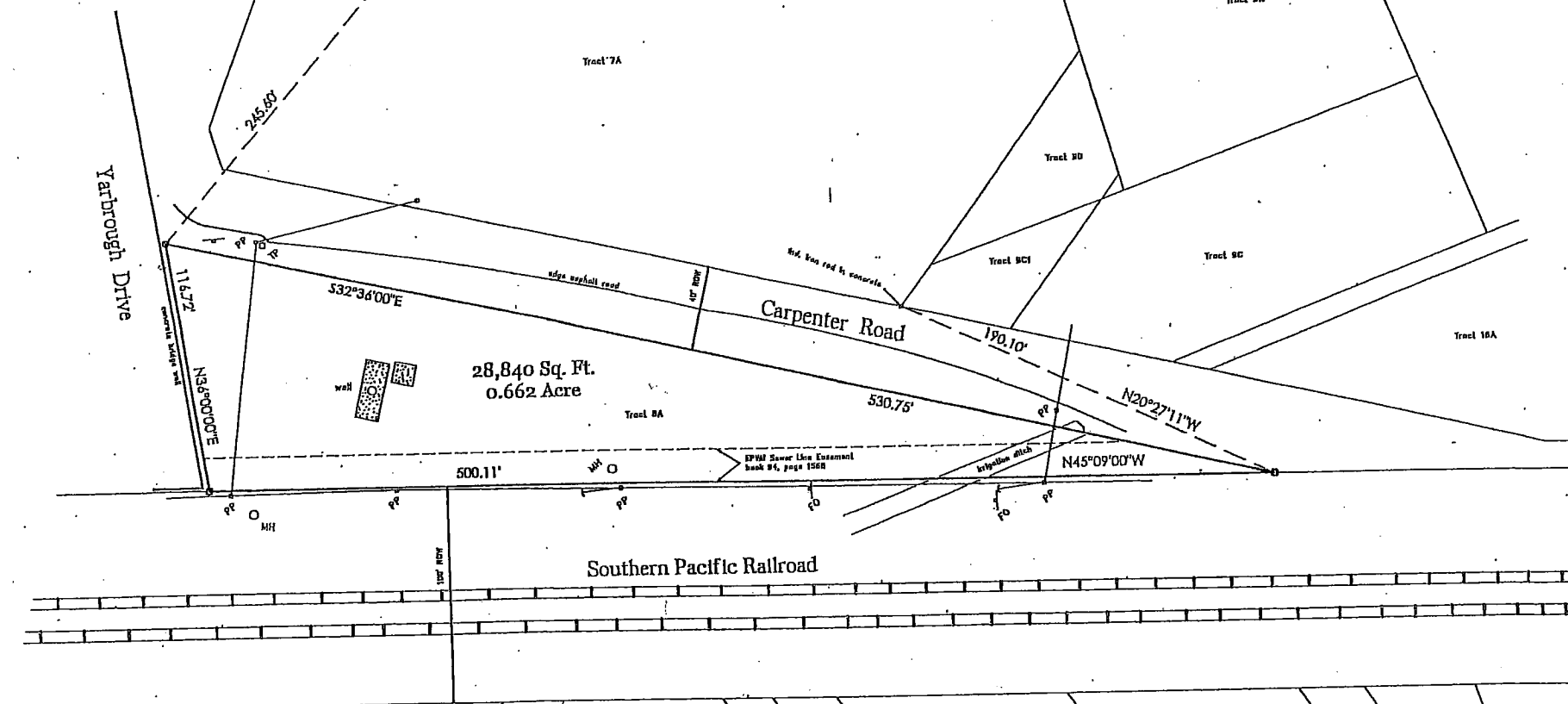
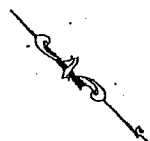
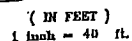
THENCE, along said Easterly right-of-way line, North 45°09'00" West, a distance of 500.11 feet to a set ½ inch rebar marked (Tx2027) at the Northwesterly corner of said Tract 8A in said Southerly right-of-way line of Yarbrough Drive;

THENCE, along said Southerly right-of-way line, North 36°00'00" East, a distance of 116.72 feet to the **POINT OF BEGINNING** and containing 28,840 square feet or 0.662 acre of land.





This description was prepared from a survey made on the ground on September 16, 2008 with a plat of same date.

PREPARED BY:
Cutts Land Surveying, Inc.
El Paso, Texas
January 17, 2008
Job No. 080903





LEGEND

power pole =  PP
moon hole =  MH
telephone pole =  TP
door pull sign =  FD

I hereby certify that this survey was made on the ground under my supervision and that this plat represents the facts as found at the time of this survey.

9-18-08
DGL



PLAT OF SURVEY
TRACT 8A, BLOCK 13,
YSLETA GRANT,
EL PASO, EL PASO COUNTY, TEXAS

NOTES: 1) Blanket assessment to El Paso Electric Company and Mountain States Telephone & Telephone Company across Tract B, book 1054, page 551.
2) Set 1/2 inch rebar marked (T-2027) at all corners unless otherwise noted.

Date surveyed: 09-15-08
Job No. 080903

Cutts Land Surveying, Inc.
Professional Land Surveyors

1100 Montana Avenue, Suite 206
El Paso, Texas 79902

Ph. (915) 534-9391
Fx. (915) 534-9394



TO: Joyce Wilson, City Manager
City of El Paso, Texas

FROM: Lowell M. Stokes, Assistant General Counsel
El Paso Water Utilities Public Service Board

DATE: September 8, 2009

SUBJECT: Request to place Item on City Council Agenda – Introduction: Per Irma: Sept 15, 2009
Public Hearing: Per Irma: Sept 22, 2009
Please place on agenda according to City Attorney's Office

RESUBMITTING with
Changes From City Atty's Ofc.

A handwritten signature in black ink, appearing to be "L. Stokes", written over the "FROM:" line of the letter.

An ordinance authorizing the City of El Paso to sell approximately 0.662 acres of land being a portion of Tract 8A, Block 13, Ysleta Grant, City of El Paso, El Paso County, Texas, to the Catholic Diocese of El Paso/Most Reverend Armando X. Ochoa or his successor in office. (District #7) [El Paso Water Utilities Land Administration, Jim Shelton, (915) 594-5511]

~~~~~  
**INTRODUCTION – City Council Agenda**  
**PUBLIC HEARING – City Council Agenda**

per Irma: Sept 15, 2009  
per Irma: Sept 22, 2009

#### **Background**

The El Paso Water Utilities Public Service Board provided seventy packets to potential bidders. Bids were received January 23, 2009. There was one bidder. The bid was in excess of the market value established by an independent appraisal. The legal description and amount of the sole bidder for the parcel is as follows:

#### **PSB Bid No.13-09**

Being a portion of Tract 8A, Block 13, Ysleta Grant, City of El Paso, El Paso County, Texas, being approximately 0.662 acres of land, to Catholic Diocese of El Paso/Most Reverend Armando X. Ochoa or his successor in office, in the amount of \$39,501.00.

By Resolution dated February 25<sup>th</sup>, 2009, the El Paso Water Utilities Public Service Board (PSB), which has jurisdiction over certain parcels of land described as: being a total of 0.662 acres of land, more or less, being located in a portion of Tract 8A, Block 13, Ysleta Grant, City of El Paso, El Paso County, Texas; found the land to be inexpedient to the water system; approved the sale of the land to the sole bidder, following a public sealed competitive bidding process, requested the El Paso City Council pass an ordinance authorizing the sale and conveyance of the real property to the sole bidder.

City Manager Joyce Wilson

Department Memo – September 8, 2009: resubmitted with City Atty's Changes

Request for Items for City Council Agenda

**Introduction of Ordinance- per Irma – September 15, 2009**

0.662 acres in the Lower Valley of El Paso

Page 2

**ACTION REQUESTED**

That the City Manager be authorized to sign a Special Warranty Deed and any other necessary documents as required for the sale and conveyance as recommended by the El Paso Water Utilities, to Catholic Diocese of El Paso/Most Reverend Armando X. Ochoa or his successor in office, the sole bidder, land described totaling approximately 0.662 acres of land, more or less, being located in a portion of Tract 8A, Block 13, Ysleta Grant, City of El Paso, El Paso County, Texas. Said property is located in the Lower Valley of El Paso near Carpenter and San Jose.

**REQUEST TO PLACE ITEM ON THE CITY COUNCIL AGENDA**

Attached is a copy of the Ordinance and a copy of the Special Warranty Deed for the parcel in this request. Upon passage of the Ordinance, it is requested that the City Clerk provide to this office a copy of the fully executed and numbered Ordinance for the parcel.

As to the deed, after City Council approval, execution by the City Manager and notarizing such signature, the City Clerk's Office will make a copy for her file, the City Clerk will route the original Special Warranty Deed to the El Paso Water Utilities Legal Section so that arrangements can be made for a closing on the parcels. After closing and once the Special Warranty Deed has been filed of record, this office will send a conformed copy to the City Clerk for the City's permanent records.

Please advise this office of the placement of this item on the City Council Agenda and my Secretary will contact the City Clerk and make arrangements to have document packets hand-delivered to the City Clerk's Office and email backup documents as noted to those listed below. If there are any questions, please call me at 594-5507 or email [lmstokes@epwu.org](mailto:lmstokes@epwu.org) or Jim Shelton at 594-5511 or email [jshelton@epwu.org](mailto:jshelton@epwu.org).

Jim Shelton will plan to attend the Public Hearing for the Ordinance which will be scheduled according to the City Attorney's Office. Thank you for your kind attention to this matter.

**Attachments**

Cc: The Honorable Mayor John Cook (email)  
City Council Representatives (email)  
Pat Adauto, Deputy City Manager for Building & Planning Services (email)  
Charlie McNabb, City Attorney (email)  
Theresa Cullen, Deputy City Attorney (email)  
Richarda Duffy-Morsen, City Clerk (hard copies & email)  
Nicholas J. Costanzo, Vice President of Strategic, Financial & Management Services (email)  
Marcela Navarrete, Chief Finance Officer, PSB (email)  
Jim Shelton, Land Management, PSB (email)

## RESOLUTION

A RESOLUTION AUTHORIZING THE SALE OF A PARCEL OF LAND TOTALLING 0.662 ACRES OF LAND TO CATHOLIC DIOCESE OF EL PASO/MOST REVEREND ARMANDO X. OCHOA, 0.662 ACRES OF LAND, THE SOLE BIDDER; LAND BEING A PORTION OF TRACT 8A, BLOCK 13, YSLETA GRANT, CITY OF EL PASO, EL PASO COUNTY, TEXAS, SAID REAL PROPERTY BEING UNDER THE JURISDICTION OF THE PUBLIC SERVICE BOARD; REQUESTING THE CITY COUNCIL AUTHORIZE THE CITY MANAGER TO EXECUTE A SPECIAL WARRANTY DEED; AND PROVIDING AN EFFECTIVE DATE.

\*\*\*\*\*

WHEREAS, the El Paso Water Utilities Public Service Board (PSB), Trustee, has jurisdiction over certain parcels of land in the lower valley of El Paso; and

WHEREAS, the Public Service Board approved the sale of 0.662 acres of land in the El Paso lower valley located near Carpenter and San Jose; and

WHEREAS, the PSB finds that this parcel of land is inexpedient to the water system and it is in the public interest that said land should be sold to the highest bidder; and

WHEREAS, the PSB provided approximately seventy bid packets to be opened January 23, 2009. Only one bid was received from Catholic Diocese of El Paso/Most Reverend Armando X. Ochoa.

NOW, THEREFORE, BE IT RESOLVED BY THE PUBLIC SERVICE BOARD OF THE CITY OF EL PASO EL PASO WATER UTILITIES:

Section 1. That the findings and recitations set out in the preamble to this Resolution are true and correct and are hereby adopted by the Public Service Board and made a part of this Resolution for all purposes.

Section 2. That the Public Service Board hereby finds the land the subject of this Resolution to be inexpedient to the needs of the water utility system and hereby approves the conveyance of land described as follows:

Being a portion of Tract 8A, Block 13, Ysleta Grant, City of El Paso, El Paso County, Texas, being approximately 0.662 acres of land to Catholic Diocese of El Paso/Most Reverend Armando X. Ochoa, for a total sales price of \$39,501.00.

Section 3. That the Public Service Board hereby requests the City Council authorize the City Manager to sign a Special Warranty Deed and any other necessary documents to convey the property to Catholic Diocese of El Paso/Most Reverend Armando X. Ochoa

Section 4. That a copy of this Resolution shall be transmitted to the City Attorney's Office.

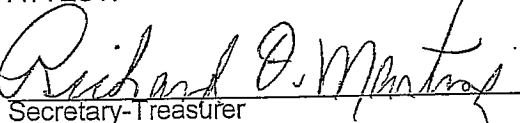
PASSED AND APPROVED at a regular meeting of the Public Service Board of the City of El Paso, Texas, this 25<sup>th</sup> day of February, 2009, at which meeting a quorum was present, held in accordance with the provisions of V.T.C.A. Government Code, Sections 551.001 et. seq.

PUBLIC SERVICE BOARD



Chair

ATTEST:

  
Secretary-Treasurer

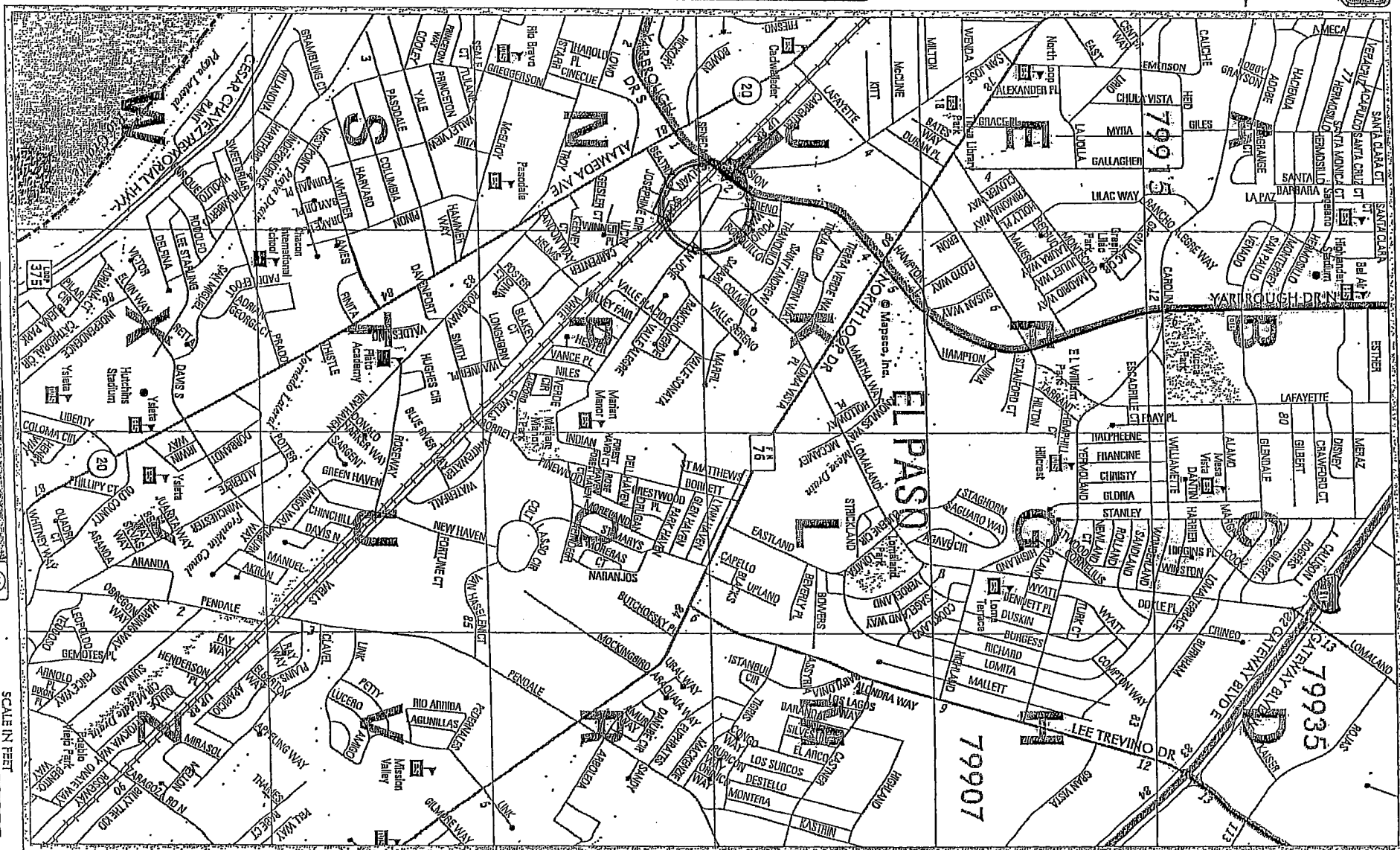
APPROVED AS TO FORM:

  
Robert D. Andron, General Counsel

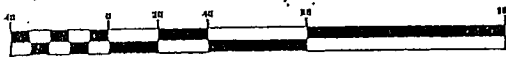
SCALE IN MILES  
0 1/4 1/2 3/4 1

CONTINUED ON MAP 169  
COPYRIGHT 2008 by MAPSCO, INC. - ALL RIGHTS RESERVED

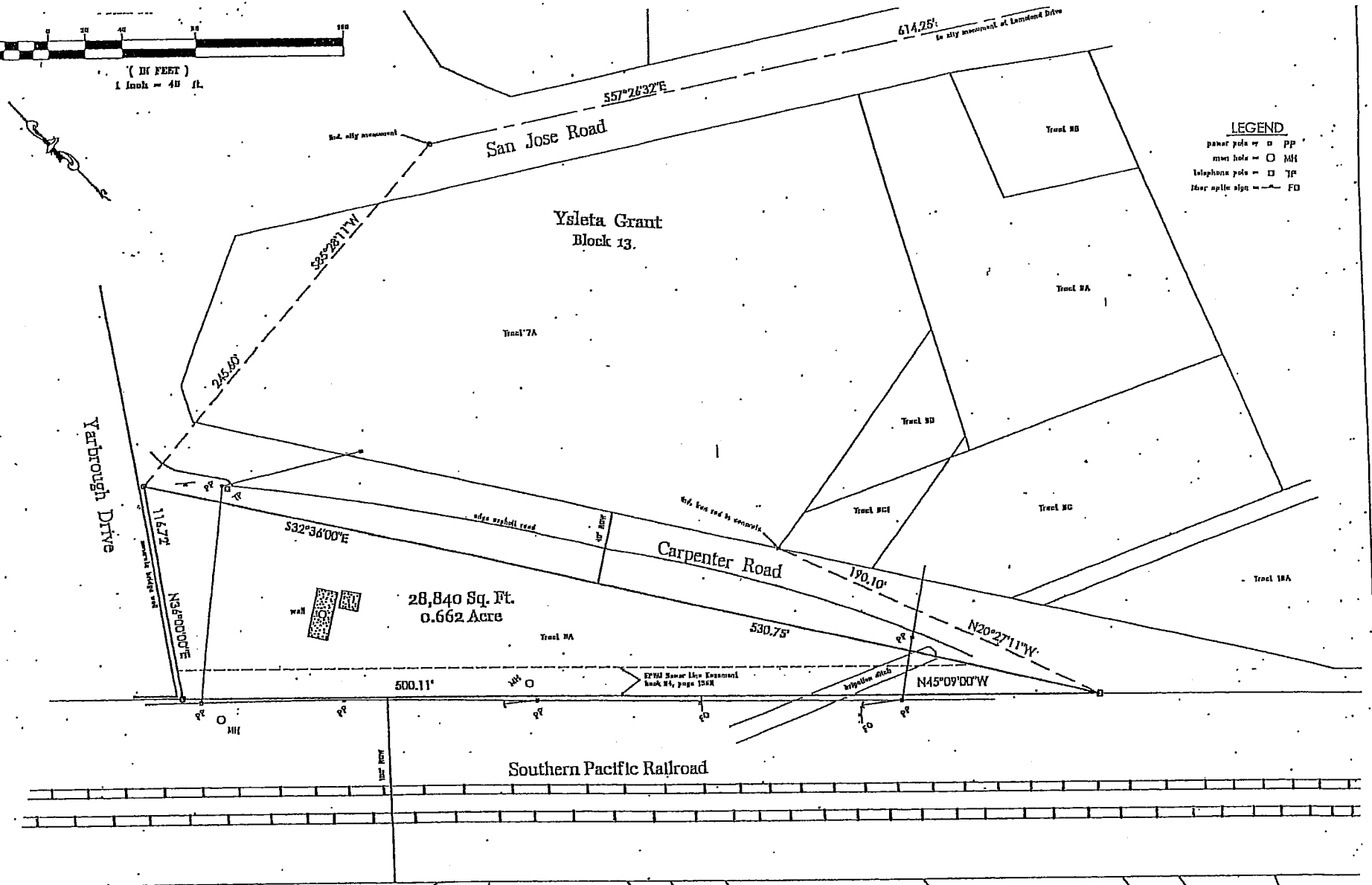
SCALE IN FEET  
0 1000 2000 3000



LOCATION MAP ONLY



( IN FEET )  
1 inch = 40 ft.



**LEGEND**  
 power pole = PP  
 man hole = MH  
 telephone pole = TP  
 flag spike sign = FO

I hereby certify that this survey was made on the ground under my supervision and that this plat represents the facts as found at the time of this survey.

S-16-00  
Date

*Jerry E. Cutts*  
 Jerry E. Cutts, R.P.S.



**PLAT OF SURVEY**  
 TRACT 8A, BLOCK 13,  
 YSLETA GRANT,  
 EL PASO, EL PASO COUNTY, TEXAS

**LOCATION MAP ONLY**

NOTES: 1) Block measurement in El Paso Electric Company and Houston Electric Telephone & Telephone Company records, Tract 8, block 1024, page 251.  
 2) Set 1/2 inch stake marked (152027) at all corners unless otherwise noted.

Date surveyed: 08-16-00  
 Job No. 000003

**Cutts Land Surveying, Inc.**  
 Professional Land Surveyors

1100 Montana Avenue, Suite 208  
 El Paso, Texas 79902

Ph. (915) 534-0391  
 Fx. (915) 534-0394