

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

**DEPARTMENT:** El Paso Water Utilities Public Service Board

**AGENDA DATE:** Introduction - 09-29-15  
Public Hearing - 10-06-15

**CONTACT PERSON/PHONE:** Cynthia Osborn, Real Estate Manager and Counsel, 594-5636

**DISTRICT(S) AFFECTED:** 4

**SUBJECT:** APPROVE the following Ordinance

An ordinance authorizing the City Manager to sign a Contract of Sale and a Special Warranty Deed conveying a 0.973 acre parcel of land being a portion of Section 31, Block 80, Township 1, Texas and Pacific Railway Surveys, City of El Paso, El Paso County, Texas, and any other documents necessary to complete the sale to El Paso Electric Company. (District 4) El Paso Water Utilities, Cynthia Osborn, Real Estate Manager and Counsel. (915) 594-5636

**BACKGROUND / DISCUSSION:**

This land is in the City of El Paso, El Paso Water Utilities/Public Service Board land inventory, which is City land managed and controlled by the Public Service Board. The Board determined the land to be inexpedient to the system and that the sale be forwarded to the City Council for action. The purchaser has agreed to pay the fair market value as appraised at \$27,000.00.

**PRIOR COUNCIL ACTION:**

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

Yes, on May 12, 2015 City Council approved the sale of approximately 0.35 acres of land.

**AMOUNT AND SOURCE OF FUNDING:** N/A

**BOARD / COMMISSION ACTION:**

The El Paso Water Utilities Public Service Board determined that the land was 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 CONTRACT OF SALE AND A SPECIAL WARRANTY DEED CONVEYING A 0.973 ACRE PARCEL OF LAND BEING A PORTION OF SECTION 31, BLOCK 80, TOWNSHIP 1, TEXAS AND PACIFIC RAILWAY SURVEYS, CITY OF EL PASO, EL PASO COUNTY, TEXAS, AND ANY OTHER DOCUMENTS NECESSARY TO COMPLETE THE SALE TO EL PASO ELECTRIC COMPANY**

**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**, the EL Paso Electric Company (EPEC) submitted a request to purchase property abutting their property and such property is contained within the EPWU/PSB land inventory; and,

**WHEREAS**, at its regular meeting of June 11, 2014, the EPWU/PSB determined that land to be inexpedient to the EPWU/PSB system and authorized the President/CEO to have the land appraised and put out for bid to the public; and,

**WHEREAS**, there is an exception to the Bidding Requirements of the Texas Local Government Code being Section 272.001(b)(1) providing that narrow strips of land sold to abutting property owners in the same subdivision are not required to be placed for public bid; and,

**WHEREAS**, the parcel of land was appraised for sale at its fair market value by Gayle-Reid Appraisal Services, Inc. at a value of \$27,000.00 and EPEC has agreed to purchase the land for that amount;

**WHEREAS**, the Public Service Board is requesting the El Paso City Council pass an Ordinance authorizing the City Manager to sign a Contract of Sale and a Special Warranty Deed and any and all necessary documents to complete the conveyance to El Paso Electric Company.;

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

That the City Manager is authorized to sign a Contract of Sale, a Special Warranty Deed and any other documents necessary to complete the sale and conveyance to El Paso Electric Company, the following described real property:

Being a 0.973 acre parcel of land legally described as a Portion of Section 31, Block 80, Township 1, Texas and Pacific Railway Surveys, City of El Paso, 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 \_\_\_\_\_, 2015.

*SIGNATURES CONTINUE ON FOLLOWING PAGE*

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:

\_\_\_\_\_  
Cynthia Osborn  
Real Estate Manager and Counsel

**ORDINANCE NO.** \_\_\_\_\_

LINE	DIRECTION	DISTANCE
L1	N86°51'52"W	60.01'
L2	N02°00'38"E	40.01'
L3	S86°51'52"E	40.01'

#### BASIS OF BEARINGS

BEARINGS SHOWN HEREON ARE BASED ON GRID NORTH OF THE TEXAS STATE PLANE COORDINATE SYSTEM IN THE TEXAS CENTRAL ZONE NO. 4203. ALL DISTANCES ARE SURFACE. GROUND BASIS OF BEARINGS AS SHOWN. ITEMS IN PARENTHESES DENOTE RECORD INFORMATION.

#### REFERENCE DOCUMENTS

1. PLAT OF SECTION 31  
COUNTY ENGINEERING
2. Doc. # 57891 10/02/1973
3. DEED  
Book 1338, Page 497  
E.P.C.O.P.R.
4. CORRECTION DEED  
Book 479, Page 1539  
E.P.C.O.P.R.
5. DEED  
Book 1338, Page 483  
E.P.C.O.P.R.
- 6.

○ = Set "5/8" Rebar w/Cap stamped "Land-Mark TX5586" unless otherwise noted.

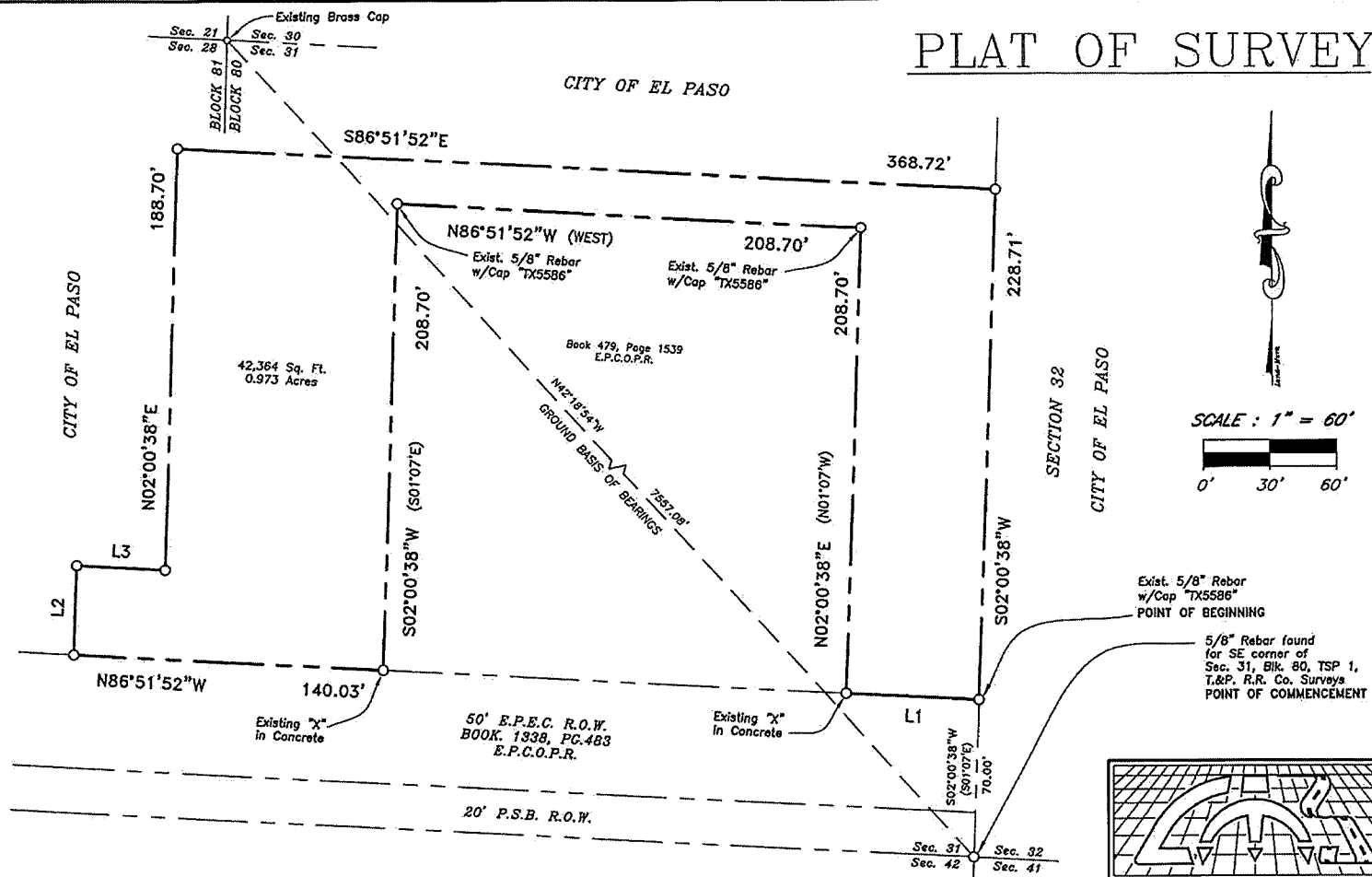
E.P.C.O.P.R. = El Paso County Official Public Records

Meters and Bounds Description of even date accompanies this plat.



I hereby certify that the foregoing boundary survey was made by me or under my supervision.

*B.R. Monroe*  
B. R. Monroe, R.P.L.S.  
Texas 5586

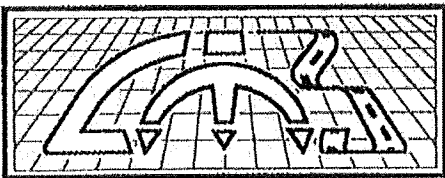


**BOUNDARY SURVEY**  
A PORTION OF SECTION 31, BLOCK 80, TOWNSHIP 1, TEXAS AND PACIFIC RAILWAY SURVEYS, CITY OF EL PASO, EL PASO COUNTY, TEXAS.

Job No. 14-03-29695 Date: August 20, 2014



**Land-Mark Professional Surveying, Inc.**  
1420 Bessemer Drive, Suite "A"  
El Paso, Texas 79936  
(915) 598-1300  
email: bob.monroe@land-marksurvey.com  
"Serving Texas, New Mexico and Arizona"



## ***Land - Mark Professional Surveying Inc.***

*"Serving Texas, New Mexico and Arizona"*

### **METES AND BOUNDS DESCRIPTION**

**BEING A PORTION OF SECTION 31, BLOCK 80, TOWNSHIP 1, TEXAS AND PACIFIC RAILWAY SURVEYS, CITY OF EL PASO, EL PASO COUNTY, TEXAS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

**COMMENCING** for reference at a 5/8 inch rebar found for the Southeast corner of said Section 31 from which a brass cap found in the intersection of Sean Haggerty drive and McCombs Street for the Northwest corner of said section 31 bears North 42°18'54" West 7557.08 feet; **THENCE** North 02°00'38" East (N 1°07' W~deed) 70.00 feet to a 5/8 inch rebar with cap stamped LAND-MARK TX 5586 found for the **POINT OF BEGINNING**;

**THENCE** North 86°51'52" West 60.01 feet to a chiseled X found at the Southeast corner of that parcel of land described in the correction deed filed in Book 479, Page 1539, El Paso County Official Public Records;

**THENCE**, along the perimeter of said parcel the following three calls;

North 02°00'38" East (N 1°07' W~deed) 208.70 feet to a 5/8 inch rebar with cap stamped LAND-MARK TX 5586 found;

North 86°51'52" West (West) 208.70 feet to a 5/8 inch rebar with cap stamped LAND-MARK TX 5586 found;

South 02°00'38" West (S 1°07' E~deed) 208.70 feet to a chiseled X found;

**THENCE**, North 86°51'52" West 140.03 feet to a 5/8 inch rebar with cap stamped LAND-MARK TX 5586 set;

**THENCE** North 02°00'38" East 40.01 feet to a 5/8 inch rebar with cap stamped LAND-MARK TX 5586 set;

**THENCE** South 86°51'52" East 40.01 feet to a 5/8 inch rebar with cap stamped LAND-MARK TX 5586 set;

**THENCE** North 02°00'38" East 188.70 feet to a 5/8 inch rebar with cap stamped LAND-MARK TX 5586 set;

1420 Bessemer • El Paso, Texas 79936

Tel. (915) 598-1300 • Fax (915) 598-1221 • E-mail address: [Larry@Land-Marksurvey.com](mailto:Larry@Land-Marksurvey.com)

**THENCE** South 86°51'52" East 368.72 feet to a 5/8 inch rebar with cap stamped LAND-MARK TX 5586 set;

**THENCE** South 02°00'38" West 228.71 feet to the **POINT OF BEGINNING** containing 42,364 square feet or 0.973 acres.

Bearings shown hereon are based on grid North of the Texas State Plane Coordinate System – Texas Central 4203. All distances are surface. Items in parentheses are record information.

Plat of Survey of even date accompanies this description.

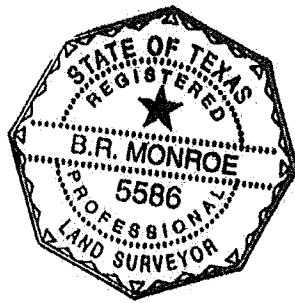
LAND-MARK PROFESSIONAL  
SURVEYING, INC.

*B.R. Monroe*

B.R. Monroe R.P.L.S. TX. 5586

August 20, 2014

Job Number 29695



STATE OF TEXAS       §

§

**CONTRACT OF SALE**

COUNTY OF EL PASO   §

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between the **CITY OF EL PASO on behalf of the El Paso Water Utilities Public Service Board**, hereinafter referred to as the "PSB" as Seller and **EL PASO ELECTRIC COMPANY** 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 0.973 acre parcel situated within the corporate limits of the City of El Paso, El Paso County, Texas as a portion of Section 31, Block 80, Township 1, Texas and Pacific Railway Surveys, City of El Paso, El Paso County, Texas and being 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 **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.

The reservation of water rights will include a waiver of PSB's right to use the surface of the Property for or in relation to the exploration or production of the reserved water rights.

2. **Amount of Payment of Purchase Price.** The purchase price for the Property shall be TWENTY SEVEN THOUSAND AND 00/100 DOLLARS (\$27,000.00) plus Buyer will pay all closing costs 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.
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, 415 North Mesa Street, El Paso, Texas 79901, 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 City'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.
- 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 PROPERTY AS IS, WHERE IS, AND WITH ALL FAULTS, AND EXCEPT AS THE WARRANTY OF TITLE AND EXCEPT FOR THE WARRANTIES AND REPRESENTATIONS SET FORTH IN THIS AGREEMENT, 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 CONCERNS, ARISING FROM EVENTS OCCURING AFTER CLOSING, WILL BE THE SOLE RESPONSIBILITY OF THE BUYER, REGARDLESS OF WHETHER THE ENVIRONMENTAL PROBLEMS WERE KNOWN OR UNKNOWN AT CLOSING.

4.11 **Buyer's Use.** The Buyer represents to the PSB that it intends to use the property for expansion of an existing electrical substation. Buyer will comply with all City, State and Federal Laws 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, 415 North Mesa Street, El Paso, Texas 79901, on or before thirty (30) days after the execution of this Agreement by the El Paso Water Utilities President/CEO and the City Manager 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 the 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, assessments, and restrictions, except for the standard printed exceptions contained in the usual form of the Owner's Policy, as approved by Buyer, and any Permitted Exceptions.

5.4 **Other Obligations.** Each party shall do all other acts, or deliver any other instruments or documents reasonably 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:      Marcela Navarrete  
             Vice President  
             El Paso Water Utilities Public Service Board  
             1154 Hawkins Blvd.  
             El Paso, Texas 79925

Buyer:     Rocky R. Miracle  
             Senior Vice President  
             El Paso Electric Company  
             P.O. Box 982  
             El Paso, Texas 79960

Copy to: El Paso Electric Company  
            Land Management  
            P.O. Box 982  
            El Paso, Texas 79960

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 with jurisdiction in courts of competent jurisdiction of El Paso County, 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 Agreement, 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 the Property Code, Title 2, Chapter 5, Subchapter D, Buyer is hereby advised that it should obtain a title abstract or title commitment covering the Property and have it examined by an attorney of its own selection and purchase owner's policy of title insurance covering the Property.

8.6 **Effective Date.** As used herein, "Effective Date" shall mean the date of the approval of City Council of an Ordinance authorizing the City Manager to sign all documents necessary for 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 \_\_\_\_\_, 2015.

**SELLER:**

EL PASO WATER UTILITIES  
PUBLIC SERVICE BOARD

By:   
Marcela Navarrete  
Vice President

CITY OF EL PASO  
A Municipal Corporation

By \_\_\_\_\_  
Tomás Gonzalez, City Manager

Executed on: \_\_\_\_\_

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Lupe Cuellar  
Real Estate Manager and Counsel

APPROVED AS TO FORM:

\_\_\_\_\_  
Bertha Ontiveros  
Senior Assistant City Attorney

*(ACKNOWLEDGMENTS CONTINUE ON NEXT PAGE)*

**ACKNOWLEDGMENTS**

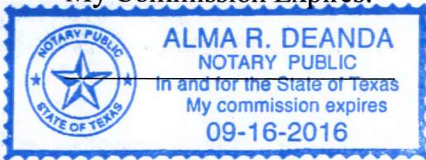
STATE OF TEXAS           )  
  )  
COUNTY OF EL PASO       )

This instrument was acknowledged before me on the 7<sup>th</sup> day of April, 2015, by Marcela Navarrete, Vice President of El Paso Water Utilities Public Service Board.

Alma R. Deanda

Notary Public, State of Texas

My Commission Expires:



STATE OF TEXAS           )  
  )  
COUNTY OF EL PASO       )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2015, by Tomás Gonzalez, City Manager of the City of El Paso.

My Commission Expires:

\_\_\_\_\_  
Notary Public, State of Texas

*(ADDITIONAL SIGNATURES ON FOLLOWING PAGE)*

BUYER:

EL PASO ELECTRIC COMPANY

By: Rocky R. Miracle  
Rocky R. Miracle, Senior Vice President  
Corporate Planning & Development

**APPROVED AS TO FORM**  
OFFICE OF THE GENERAL COUNSEL [Signature]

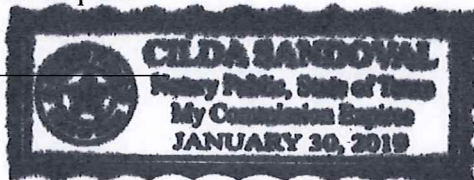
By: [Signature]  
Ryan R. Paulk, Manager  
Land Management

STATE OF TEXAS           )  
  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on the 1<sup>st</sup> day of April, 2015, by Rocky R. Miracle, Senior Vice President – Corporate Planning and Development of El Paso Electric Company.

My Commission Expires:

January 30, 2019



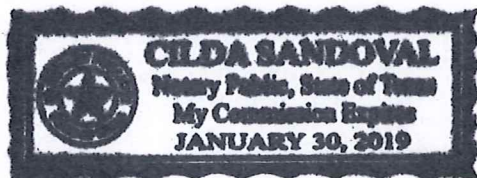
Cilda Sandoval  
Notary Public, State of Texas

STATE OF TEXAS           )  
  )  
COUNTY OF EL PASO    )

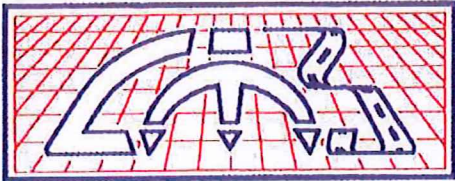
This instrument was acknowledged before me on the 31<sup>st</sup> day of March, 2015, by Ryan R. Paulk, Manager – Land Management of El Paso Electric Company.

My Commission Expires:

January 30, 2019



Cilda Sandoval  
Notary Public, State of Texas



## ***Land - Mark Professional Surveying Inc.***

*"Serving Texas, New Mexico and Arizona"*

### **EXHIBIT "A"**

### **METES AND BOUNDS DESCRIPTION**

**BEING A PORTION OF SECTION 31, BLOCK 80, TOWNSHIP 1, TEXAS AND PACIFIC RAILWAY SURVEYS, CITY OF EL PASO, EL PASO COUNTY, TEXAS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

**COMMENCING** for reference at a 5/8 inch rebar found for the Southeast corner of said Section 31 from which a brass cap found in the intersection of Sean Haggerty drive and McCombs Street for the Northwest corner of said section 31 bears North 42°18'54" West 7557.08 feet; **THENCE** North 02°00'38" East (N 1°07' W~deed) 70.00 feet to a 5/8 inch rebar with cap stamped LAND-MARK TX 5586 found for the **POINT OF BEGINNING**;

**THENCE** North 86°51'52" West 60.01 feet to a chiseled X found at the Southeast corner of that parcel of land described in the correction deed filed in Book 479, Page 1539, El Paso County Official Public Records;

**THENCE**, along the perimeter of said parcel the following three calls;

North 02°00'38" East (N 1°07' W~deed) 208.70 feet to a 5/8 inch rebar with cap stamped LAND-MARK TX 5586 found;

North 86°51'52" West (West) 208.70 feet to a 5/8 inch rebar with cap stamped LAND-MARK TX 5586 found;

South 02°00'38" West (S 1°07' E~deed) 208.70 feet to a chiseled X found;

**THENCE**, North 86°51'52" West 140.03 feet to a 5/8 inch rebar with cap stamped LAND-MARK TX 5586 set;

**THENCE** North 02°00'38" East 40.01 feet to a 5/8 inch rebar with cap stamped LAND-MARK TX 5586 set;

**THENCE** South 86°51'52" East 40.01 feet to a 5/8 inch rebar with cap stamped LAND-MARK TX 5586 set;

**THENCE** North 02°00'38" East 188.70 feet to a 5/8 inch rebar with cap stamped LAND-MARK TX 5586 set;

**THENCE** South 86°51'52" East 368.72 feet to a 5/8 inch rebar with cap stamped LAND-MARK TX 5586 set;

**THENCE** South 02°00'38" West 228.71 feet to the **POINT OF BEGINNING** containing 42,364 square feet or 0.973 acres.

Bearings shown hereon are based on grid North of the Texas State Plane Coordinate System – Texas Central 4203. All distances are surface. Items in parentheses are record information.

Plat of Survey of even date accompanies this description.

LAND-MARK PROFESSIONAL  
SURVEYING, INC.

*B.R. Monroe*

B.R. Monroe R.P.L.S. TX. 5586

August 20, 2014

Job Number 29695



## BASIS OF BEARINGS

BEARINGS SHOWN HEREON ARE BASED ON GRID NORTH OF THE TEXAS STATE PLANE COORDINATE SYSTEM IN THE TEXAS CENTRAL ZONE NO. 4203. ALL DISTANCES ARE SURFACE. GROUND BASIS OF BEARINGS AS SHOWN. ITEMS IN PARENTHESES DENOTE RECORD INFORMATION.

## REFERENCE DOCUMENTS

1. PLAT OF SECTION 31  
COUNTY ENGINEERING
2. Doc.# 57891 10/02/1973
3. DEED  
Book 1338, Page 497  
E.P.C.O.P.R.
4. CORRECTION DEED  
Book 479, Page 1539  
E.P.C.O.P.R.
5. DEED  
Book 1338, Page 483  
E.P.C.O.P.R.
- 6.

○ = Set "5/8" Rebar w/Cap  
stamped "Land-Mark TX5586"  
unless otherwise noted.

E.P.C.O.P.R. = El Paso County  
Official Public Records

Metes and Bounds Description of  
even date accompanies this plat.



I hereby certify that the foregoing boundary survey was made by me or under my supervision.

BL House

B. R. Monroe, R.P.L.S.  
Texas 5586



## BOUNDARY SURVEY

A PORTION OF SECTION 31, BLOCK 80, TOWNSHIP  
1, TEXAS AND PACIFIC RAILWAY SURVEYS,  
CITY OF EL PASO, EL PASO COUNTY, TEXAS.

Job No. 14-03-29695

Date: August 20, 2014

Land-Mark Professional  
Surveying, Inc.

1420 Bessemer Drive, Suite 'A'  
El Paso, Texas 79936  
(915) 598-1300

email: bob.monroe@Land-marksurvey.com  
*"Serving Texas, New Mexico  
 and Arizona"*

**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: \_\_\_\_\_, 2015

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

Grantor's Mailing Address (including county): 1154 Hawkins Blvd.  
El Paso County, Texas 79925

Grantee: EL PASO ELECTRIC COMPANY

Grantee's Mailing Address (including county): P.O. Box 982  
El Paso County, Texas 79960

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

Property:

Being a 0.973 acres parcel of land legally described as Portion of Section 31, Block 80, Township 1, Texas and Pacific Railway Surveys, City of El Paso, El Paso County, Texas, and more particularly described by subdivision plat map in **Exhibit "A"**, attached hereto and incorporated herein by this reference for all purposes, hereinafter, the "Property".

**USE RESTRICTIONS:**

For a period of seventy-five (75) years from the date of conveyance, the GRANTEE, its successors and assigns, will not discard, place or store upon such land, any radioactive material or other materials which would contaminate or otherwise damage the groundwater supply or resources of the City of El Paso, including, but not limited to, those of its El Paso Water Utilities Public Service Board.

**RESERVATIONS FROM AND EXCEPTIONS TO CONVEYANCE AND WARRANTY:**

This conveyance is subject to the following reservations and exceptions:

1. The Property is conveyed to GRANTEE subject to the following exceptions and prior reservations:
  - a. Utility easements and prescriptive rights visible and apparent on the ground.

- b. Easement to EL PASO ELECTRIC COMPANY recorded in Clerk's File No. 20060026096, Real Property Records of El Paso County, Texas.
  - c. Mineral Interest as set out in instrument recorded in Volume 1176, Page 504 and Volume 1212, Page 153, transferred in Volume 1667, Page 261, Real Property Records of El Paso County, Texas.
  - d. All leases, grants, exceptions or reservations of coal, lignite, oil, gas and other minerals, together with all rights, privileges, and immunities relating thereto, appearing in the Public Records. There may be leases, grants, exceptions or reservations of mineral interest that are not listed.
  - e. Terms, conditions and stipulations as cited in Deed dated 03/29/1957, recorded in Volume 1338, Page 483, Real Property Records of El Paso County, Texas.
  - f. Terms, conditions and stipulations as cited in Deed dated 03/29/1957, recorded in Volume 1338, Page 497 and Correction Deed dated 09/25/1973, Recorded in Volume 479, Page 1539, Real Property Records of El Paso County, Texas.
2. 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.
3. Grantee shall be responsible, at its own cost, to conduct any necessary archeological or environmental survey or studies.
4. 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.
5. The GRANTOR has executed and delivered this Deed, and the GRANTEE, by recording this Deed, has accepted this Deed and has purchased the Property "AS IS, WHERE IS" AND WITH ALL FAULTS, AND EXCEPT AS TO THE WARRANTY OF TITLE, WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF WHATSOEVER KIND, EXPRESS OR IMPLIED, WRITTEN OR ORAL, IT BEING THE INTENTION OF THE GRANTOR AND THE GRANTEE 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 GRANTEE MAY CONDUCT THEREON; (C) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY APPLICABLE LAWS, RULES, ORDINANCE OR

REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; (D) THE HABITABILITY, MERCHANTABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY. THE GRANTEE FURTHER ACKNOWLEDGES AND AGREES THAT, HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY, THE GRANTEE IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED BY THE GRANTOR. THE GRANTEE 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 GRANTOR HAS NOT MADE AN INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. THE GRANTOR 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 CITY AND PURCHASED BY THE GRANTEE SUBJECT TO THE FOREGOING.

6. AFTER CLOSING, BETWEEN THE GRANTOR AND THE GRANTEE, THE RISK OF LIABILITY OR EXPENSE FOR ENVIRONMENTAL CONCERNS ARISING FROM EVENTS OCCURRING AFTER CLOSING, WILL BE THE SOLE RESPONSIBILITY OF GRANTEE, EXCEPT THAT GRANTEE AGREES TO INDEMNIFY, HOLD HARMLESS AND RELEASE THE GRANTOR 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.

**EXECUTED** the \_\_\_\_ day of \_\_\_\_\_, 2015.

THE CITY OF EL PASO, TEXAS

\_\_\_\_\_  
Tomás González, City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Bertha Ontiveros  
Senior Assistant City Attorney

(Signature and acknowledgement contained on next page)

APPROVED AS TO FORM AND CONTENT:

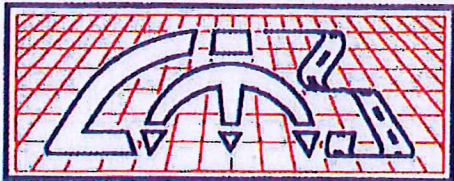
\_\_\_\_\_  
Cynthia Osborn  
Real Estate Manager and Counsel

**ACKNOWLEDGEMENT**

STATE OF TEXAS  
COUNTY OF EL PASO

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_,  
2015, by Tomás González, the City Manager of the City of El Paso, Texas.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public, State of Texas



## ***Land - Mark Professional Surveying Inc.***

*"Serving Texas, New Mexico and Arizona"*

### **EXHIBIT "A"**

### **METES AND BOUNDS DESCRIPTION**

**BEING A PORTION OF SECTION 31, BLOCK 80, TOWNSHIP 1, TEXAS AND PACIFIC RAILWAY SURVEYS, CITY OF EL PASO, EL PASO COUNTY, TEXAS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

**COMMENCING** for reference at a 5/8 inch rebar found for the Southeast corner of said Section 31 from which a brass cap found in the intersection of Sean Haggerty drive and McCombs Street for the Northwest corner of said section 31 bears North 42°18'54" West 7557.08 feet; **THENCE** North 02°00'38" East (N 1°07' W~deed) 70.00 feet to a 5/8 inch rebar with cap stamped LAND-MARK TX 5586 found for the **POINT OF BEGINNING**;

**THENCE** North 86°51'52" West 60.01 feet to a chiseled X found at the Southeast corner of that parcel of land described in the correction deed filed in Book 479, Page 1539, El Paso County Official Public Records;

**THENCE**, along the perimeter of said parcel the following three calls;

North 02°00'38" East (N 1°07' W~deed) 208.70 feet to a 5/8 inch rebar with cap stamped LAND-MARK TX 5586 found;

North 86°51'52" West (West) 208.70 feet to a 5/8 inch rebar with cap stamped LAND-MARK TX 5586 found;

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1420 Bessemer • El Paso, Texas 79936

Tel. (915) 598-1300 • Fax (915) 598-1221 • E-mail address: [Larry@Land-Marksurvey.com](mailto:Larry@Land-Marksurvey.com)

**THENCE** South  $86^{\circ}51'52''$  East 368.72 feet to a 5/8 inch rebar with cap stamped LAND-MARK TX 5586 set;

**THENCE** South  $02^{\circ}00'38''$  West 228.71 feet to the **POINT OF BEGINNING** containing 42,364 square feet or 0.973 acres.

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Plat of Survey of even date accompanies this description.

LAND-MARK PROFESSIONAL  
SURVEYING, INC.

*B.R. Monroe*

B.R. Monroe R.P.L.S. TX. 5586

August 20, 2014

Job Number 29695



LINE	DIRECTION	DISTANCE
L1	N86°51'52"W	60.01'
L2	N02°00'38"E	40.01'
L3	S86°51'52"E	40.01'

#### BASIS OF BEARINGS

BEARINGS SHOWN HEREON ARE BASED ON GRID NORTH OF THE TEXAS STATE PLANE COORDINATE SYSTEM IN THE TEXAS CENTRAL ZONE NO. 4203. ALL DISTANCES ARE SURFACE. GROUND BASIS OF BEARINGS AS SHOWN, ITEMS IN PARENTHESES DENOTE RECORD INFORMATION.

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E.P.C.O.P.R. = El Paso County  
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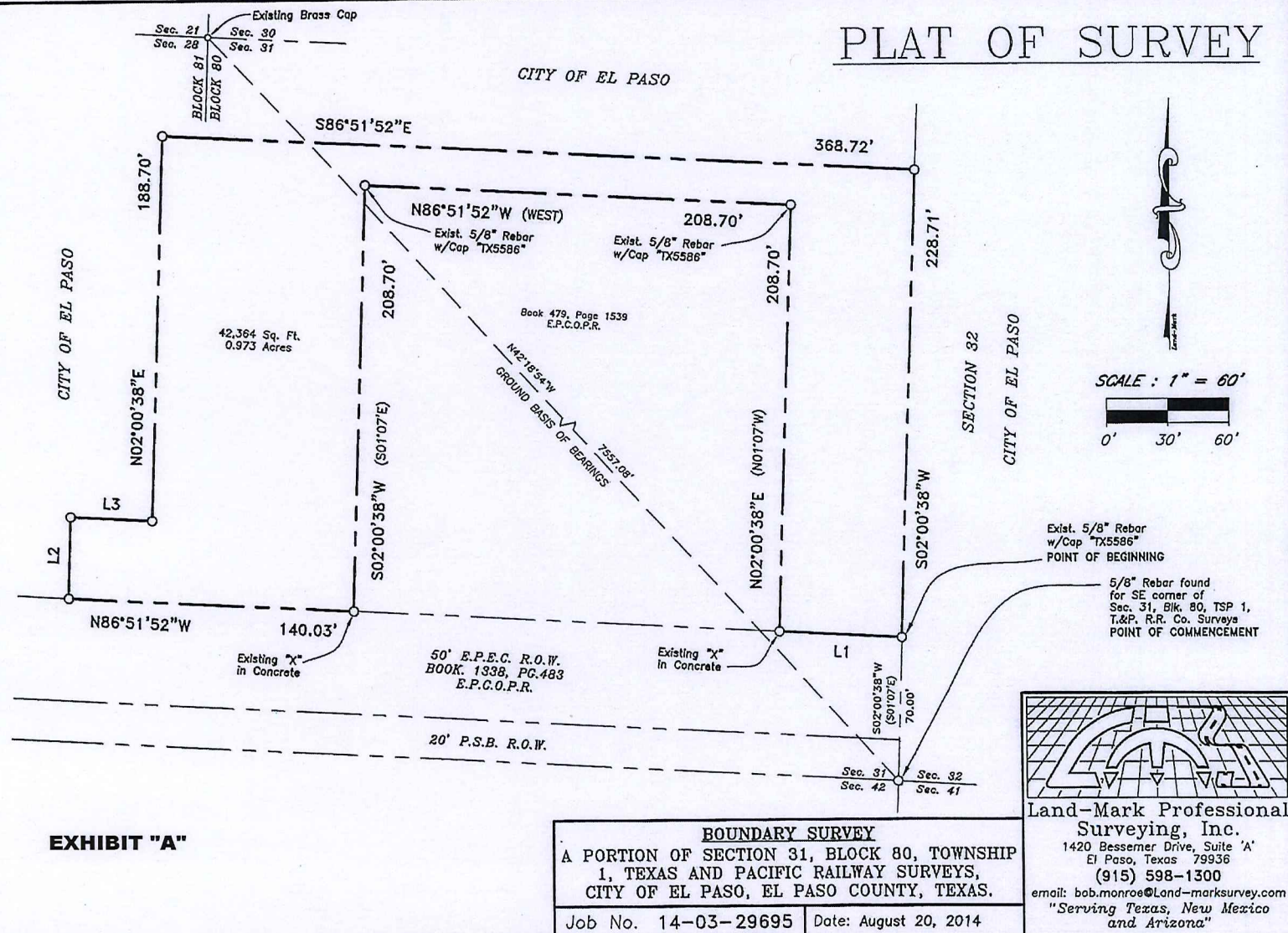
Meters and Bounds Description of  
even date accompanies this plat.



I hereby certify that the foregoing  
boundary survey was made by me  
or under my supervision.

*B.R. Monroe*  
B. R. Monroe, R.P.L.S.  
Texas 5586

#### EXHIBIT "A"




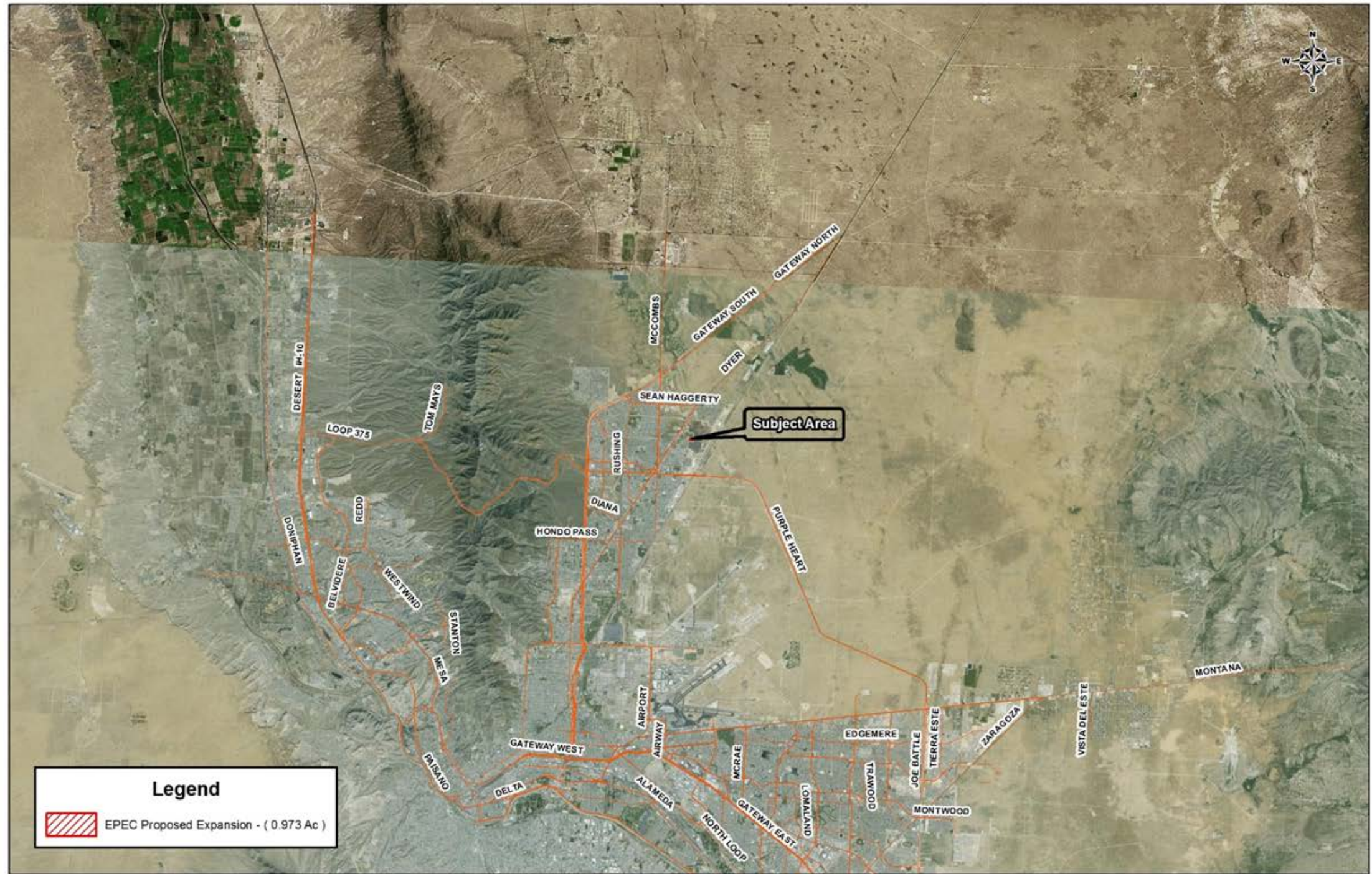
Sale of El Paso Water Utility – PSB property  
to El Paso Electric Company  
Shearman Substation Expansion  
0.973 acres





**Legend**

 EPEC Proposed Expansion - ( 0.973 Ac )





### Legend

-  EPEC Proposed Expansion - ( 0.973 Ac )
-  Well Site #051
-  EPEC ROW 50 FT
-  PSB ROW 40 FT
-  PSB ROW 20 FT

- Approved by PSB on June 11, 2014
- Independent Appraised value - \$27,000
- Contract of Sale - \$27,000



Recommendation: – Approve the Sale of 0.973 acres to  
El Paso Electric Company  
for the Shearman Substation Expansion

and

Authorize the City Manager to sign a Contract of Sale,  
Special Warranty Deed and other documents  
to complete the sale.