

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

CITY CLERK DEPT.

2014 DEC -4 AM 8:41

DEPARTMENT: Engineering and Construction Management

AGENDA DATE: December 9, 2014

CONTACT PERSON/PHONE: Irene D. Ramirez, P.E. (212-1831)
Liza Ramirez-Tobias (212-1840)

DISTRICT AFFECTED: District 5

SUBJECT:

That the City Manager be authorized to sign a Contract of Sale between TOMLY CORPORATION and City of El Paso, Texas, a Texas municipal corporation, for the purchase of approximately 1.3110 acres more or less of the property located on and about a portion of Tract 1 n/k/a Tract 1C, out of section 39, Block 79, Township 2, Texas and Pacific Railway Company Surveys, City of El Paso, Texas. And that the City Manager, or his designee, be authorized to sign any necessary documents to accomplish the intent of the resolution. This is the last parcel required for the extension.

BACKGROUND / DISCUSSION:

This resolution is to purchase approx. 1.311 acres of the property located at 3101 N. Zaragoza Road from TOMLY Corporation, required for the extension of Pebble Hills. The proposed extension is identified in the 2025 Proposed Thoroughfare System. The appraised value was \$428,000; the negotiated purchase price will be \$438,000. The City will pay for the title commitment, closing costs, and taxes will be prorated up to the date of closing. The purchase is contingent on approval of the Annexation and Subdivision application for the parcel.

PRIOR COUNCIL ACTION:

December 3, 2012- approval of Annexation and Service plan which dedicated a portion for right of way to be used for the proposed extension (parcel 1)

December 2, 2014- approval to acquire a portion of a parcel required for extension of Pebble Hills (parcel 2)

AMOUNT AND SOURCE OF FUNDING:

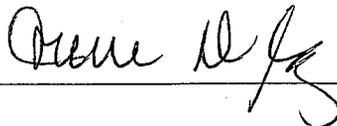
2012 Street CIP

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD: _____



Information copy to appropriate Deputy City Manager

RESOLUTION

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

That the City Manager be authorized to sign a Contract of Sale between TOMLY CORPORATION and CITY OF EL PASO, TEXAS, a Texas municipal corporation, for the purchase of approximately 1.3110 acres more or less of the property located on and about a portion of Tract 1 n/k/a Tract 1C, out of section 39, Block 79, Township 2, TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS, City of El Paso, El Paso County, Texas.

And that the City Manager, or his designee, be authorized to sign any necessary documents to accomplish the intent of this Resolution.

APPROVED this ____ day of _____, 2014.

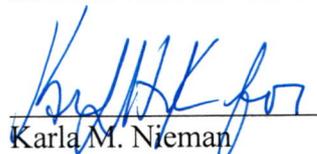
THE CITY OF EL PASO

ATTEST:

Oscar Leeser
Mayor

Richarda D. Momsen
City Clerk

APPROVED AS TO FORM:



Karla M. Nieman
Assistant City Attorney

APPROVED AS TO CONTENT:



Irene D. Ramirez, P.E.
Interim City Engineer

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

CONTRACT OF SALE

THIS Agreement is entered into this ____ day of _____, 2014, by and between the **CITY OF EL PASO**, hereinafter referred to as the "City", and **TOMLY CORPORATION**, hereinafter referred to as "Seller".

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 Seller hereby agrees to sell and convey and the City hereby agrees to acquire free and clear of any liens or encumbrances, the following described real property located in El Paso County, Texas:

HM
A Portion of Tract 1 n/k/a Tract 1C, out of Section 39, Block 79, Township 2, TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS, El Paso, El Paso County, Texas, which is approximately 1.3110 acres, and being more particularly described in Exhibit "A" which is attached hereto and incorporated herein for all purposes;

together with any interest of the Seller in (i) all improvements, if any, and (ii) all right, title and interest of the Seller in and to any easements, appurtenances, and rights-of-way, 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 collectively referred to as the "Property".

2. Amount of Payment of Purchase Price. The purchase price for the Property shall be **FOUR HUNDRED THIRTY EIGHT THOUSAND DOLLARS AND NO/100THS DOLLARS (\$438,000.00)**.

2.1 Payment of Sales Price. The full amount of the sales price will be payable in cash at the closing.

3. Conditions to City's Obligations. The obligations of the City hereunder 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 City, at or prior to Closing.

3.1 Annexation and Subdivision of the Property. The City's obligation to purchase the property is contingent on the approval of the Annexation of the property into the City limits and the approval of the Subdivision application of the property.

3.2 Title Insurance. Within thirty (30) working days after the date of execution of this contract, the City at its expense will order a title commitment ("commitment"),

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 City ("Owner's Policy").

3.3 Title Objections. The City will give the Seller 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 City states that the condition is not satisfactory, the City will specifically set forth in such notice the defect or exception to title that is deemed objectionable. Seller may promptly undertake to eliminate or modify all unacceptable matters to the reasonable satisfaction of the City. Otherwise, this condition will be deemed acceptable and any objection by the City will be deemed waived.

4. Representations and Warranties of Seller. The Seller hereby represents and warrants to the City that to the best of his knowledge, as follows:

4.1 Parties in Possession. At the time of closing there are no parties in possession of any portion of the Property as lessees, tenants at sufferance, or otherwise.

4.2 Legal and Authorized Transactions. The Seller warrants that no person or persons own an interest in the fee title in the Property other than the Seller and that the joinder of no other third party shall be required to consummate this transaction.

4.3 Mechanic's Lien. To the Seller's best knowledge and belief: (i) no action has been taken, suffered or permitted by or on behalf of the Seller, 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 Seller'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 Seller has not entered into any contracts or agreements relating to the use of 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 Seller.

4.4 Litigation. To the best knowledge of the Seller, 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.

4.5 Bills Paid. At closing, there will be no unpaid bills or claims in connection with any repair or operation of the Property.

4.6 Compliance Law. To the best of the Seller's knowledge, all laws, ordinances, rules and regulations of any Government or any agency, body or subdivision thereof, bearing in the development of the Property, have been complied with.

4.7 Taxes. To the best of the Seller's knowledge, no state or municipal taxes are due with respect to the Property and no liens for such taxes are in effect against the Property, except as set forth on the Title Commitment.

4.8 Pre-Closing Claims. The Seller agrees that the City's acceptance of title to the Property under the conveyance documents should not create any liability on the City's part to third parties that have claims of any kind against the Seller in connection with the Property. The City hereby expressly disclaims any and all liability to third parties that have any claims against the Seller. The City will not assume or agree to discharge any taxes or liabilities pertaining to the Property that occurred or accrued prior to the date of Closing. The Seller agrees to indemnify and hold the City harmless from and against any losses, damages, or expenses, including attorneys' fees and court costs, pertaining to claims arising out of the Property, and accruing prior to and arising from events that occurred prior to the date of Closing.

4.9 Authority. The Seller has full right, power and authority to convey the property to the City and to consummate this transaction as provided in this Contract without the joinder of any other person or entity.

4.10 Title. The Seller has good and marketable title to an indefeasible fee simple estate in the Property, subject to no liens, charges, encumbrances or exceptions other than those shown on the Title Commitment.

4.11 Condition of Property Prior to Closing. Prior to Closing, the Seller shall not create or permit to be created any easement or other condition affecting the Property without the prior written consent of the City.

4.12 Misrepresentation. The Seller shall indemnify and hold the City harmless from and against any losses, damages, costs or expenses (including attorneys' fees) incurred by the City as a direct or indirect result of (i) breach of any representation or warranty of the Seller contained in this document, (ii) any breach or default by the Seller under any of the covenants or agreements contained in this document, or (iii) any breach or default by the Seller under any of the covenants or agreements contained in this document to be performed by the Seller, all of which shall survive the Closing hereof.

4.13 Survival. All representations, warranties, covenants and agreements of the Seller 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.

4.14 Disclaimer of Warranties. The City is taking the Property "AS IS", "WHERE IS" and except to the warranty of title, without any warranty whether expressed or implied including the warranty of suitability for any particular purpose. The City acknowledges and agrees that it had the opportunity to inspect the property to its satisfaction and it is purchasing the property based on said inspections and own determination and not based representations if any made by Seller.

5. Closing. The closing of this transaction ("Closing") shall take place at the offices of Stewart Title of El Paso, 415 N. Mesa, El Paso, Texas 79901 on or before January 31, 2015.

5.1 Possession. Possession of the Property will be transferred to the City upon Closing.

5.2 Real Property Taxes. Real property taxes and assessments shall be prorated at Closing, effective as of the date of Closing, based upon the latest tax bill available. Taxes shall be prorated in accordance with the foregoing provision and the parties shall appropriately and promptly adjust such pro-rations on the basis of the correct, applicable tax bill when such tax bill becomes available. Seller will pay ad valorem taxes through the date of Closing.

5.3 Closing Costs.

- Hay
- (a) All recording fees arising from the recordation of documents necessary to show good title to the Property shall be paid by the City.
 - (b) Premiums and other charges for the issuance of the Owner's Policy of Title Insurance for the Property shall be paid by the City.
 - (c) Escrow fees, if any, shall be paid by the City.

5.4 Seller's Obligations. At Closing, the Seller shall deliver to the City a duly executed and acknowledged Warranty Deed to the Property, free and clear of any and all liens, encumbrances, conditions, easements, assessments, and restrictions, except for (i) ad valorem taxes for the year of Closing which shall be prorated to the date of Closing, (ii) the standard printed exceptions contained in the usual form of the Owner's Policy, and (iii) any other exceptions set forth in the Title Policy which the City has approved pursuant to Paragraph 3.2 above.

5.5 Other Obligations. Each party shall do all other acts, or deliver any other instruments or documents required or helpful to be done or delivered, in order to consummate this transaction.

6. Default.

6.1 Breach by Seller. In the event that Seller 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 City's default, or the termination of this Agreement in accordance with its terms, the City may enforce specific performance of this Agreement.

6.2 Breach by City. In the event that City 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 Seller's default, or the termination of this Agreement in accordance with its terms, due to the difficulty of assessing Seller's actual damages as a result of such breach by City, Seller shall have a right to receive the FORTY THREE THOUSAND EIGHT HUNDRED DOLLARS and NO 100THS (\$43,800.00), such sum being agreed upon as liquidated damages for the failure of the City to perform the duties, liabilities and obligations imposed upon it by the terms and provisions of this Agreement, and Seller agrees to accept and take such cash payment as its total, reasonable damages and relief and as Seller's sole, exclusive remedy hereunder in such event.

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:

Seller: Tomly Coporation
Attn: Horacio Menesis Bonilla
306 Paisano Drive
El Paso, TX 79901

Copy: Jorge Lopez Molinar
jorgelopez@lopezaroldi.com
(915) 838-3900

Araceli Garcia
graciastaxes@yahoo.com
(915) 472-3194

City: Tomás González
City Manager
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1196

Copy: City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

Copy: Engineering
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

8. Entire Agreement/Governing Law. This Agreement constitutes the entire agreement between the parties, and supersedes all prior agreements and understandings, written or oral, regarding the subject matter of this Agreement, and may be amended or supplemented only by an instrument in writing, executed by the party against whom enforcement is sought. This Agreement shall be governed in all respects, including validity, interpretation and effect, by and shall be enforceable in accordance with the laws of the State of Texas.

8.1 Time. Time is of the essence of this Agreement and each and every provision hereof.

8.2 Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portion shall not in any way be affected or impaired.

8.3 Survival of Provisions. The terms contained in this Agreement, including without limitation, representations, warranties, covenants and agreements of the parties, shall survive the Closing and shall not be merged therein. In case any one or more of the provisions contained in this contract for any reason is held invalid, this invalidity will not affect any other provision of this Contract, which will be construed as if the invalid or unenforceable provision had never existed.

8.4 Binding Effect. This Agreement shall be binding upon the parties hereto and their respective successors and assigns.

8.5 Compliance. In accordance with the requirements of Section 2B of the Texas Real Estate License Act, the City is hereby advised that it should be furnished with or obtain a policy of title insurance or have an abstract covering the Property examined by an attorney of its own selection.

WITNESS THE FOLLOWING SIGNATURES AND SEAL:

**SELLER:
TOMLY CORPORATION**

By: _____
Horacio Meneses Bonilla
President

CITY OF EL PASO, a Municipal Corporation

By: _____
Tomás González, City Manager

APPROVED AS TO CONTENT:

Cecilia Bertolli for
Irene D. Ramirez, P.E., Interim City Engineer
Engineering & Construction Management

APPROVED AS TO FORM:

Karla M. Nieman for
Karla M. Nieman
Assistant City Attorney

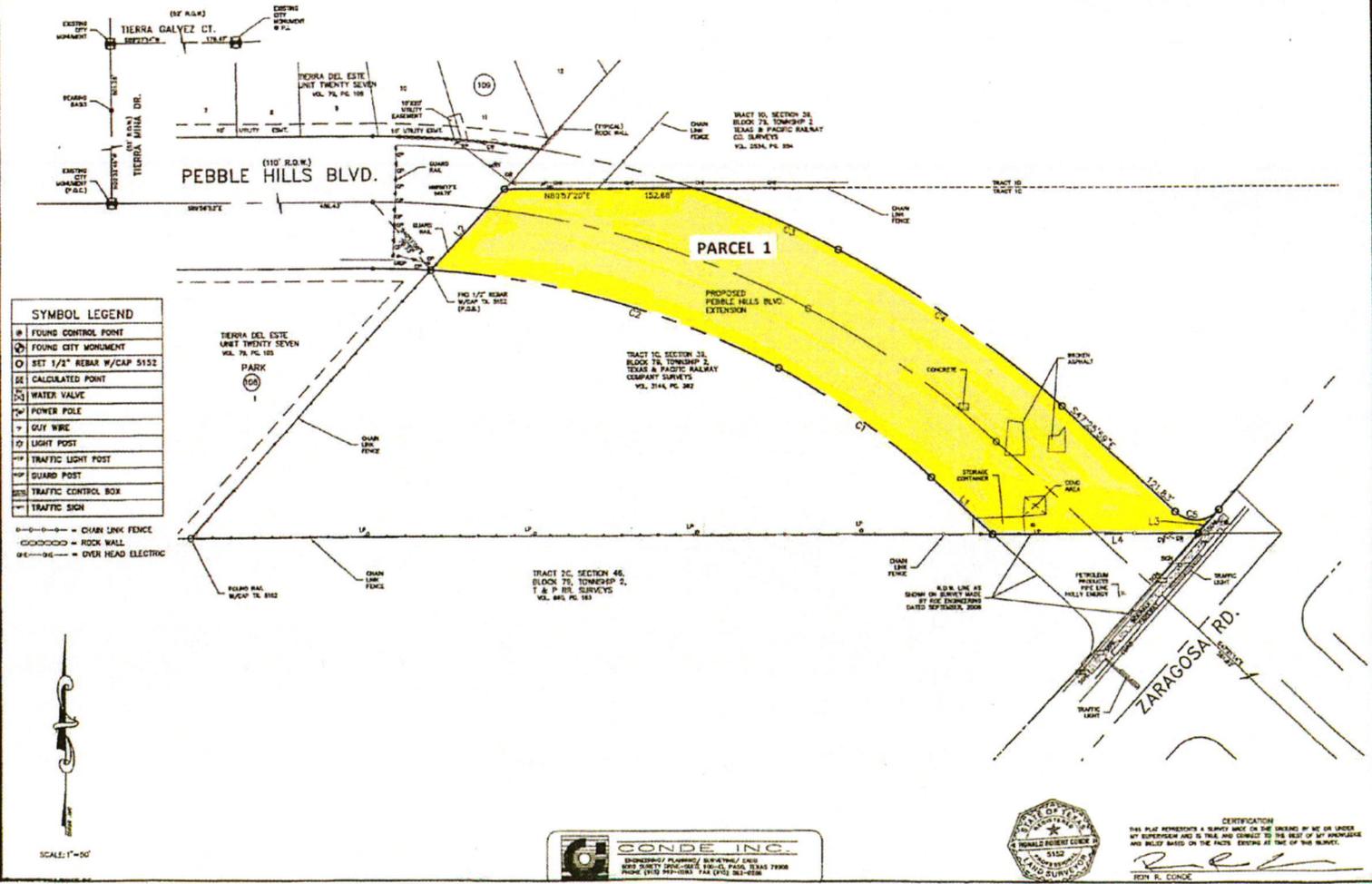
NOTES:

1. BEARINGS BASED ON CONTROL POINT MONUMENTS FOUND ON PEBBLE HILLS BLVD. AND TIERRA MINA DR. AS SET BY PLAT OF TIERRA DEL ESTE UNIT TWENTY SEVEN, RECORDED IN VALUING TR. PAGE 126, REAL PROPERTY RECORDS OF EL PASO COUNTY, TEXAS.
 2. A METES AND BOUNDS DESCRIPTION OF EXON DATE ACCOMPANIES THIS DESCRIPTION.

LINE TABLE			CURVE TABLE						
LINE	LENGTH	BEARING	CURVE	RADIUS	LENGTH	TANGENT	CHORD	BEARING	DELTA
L1	83.44	S47°22'37"W	C1	873.24	148.30	76.07	148.87	N61°52'34"W	149°11'
L2	84.79	S47°22'37"E	C2	847.20	280.21	147.24	288.17	N74°12'22"W	22°30'22"
L3	35.00	S47°22'37"W	C3	832.30	124.80	62.90	124.87	S88°46'47"E	168°37'17"
L4	102.44	S28°27'17"W	C4	806.84	215.20	106.24	214.87	S28°22'24"E	149°51'17"
			C5	25.87	24.37	24.00	30.37	S87°24'17"E	180°00'00"

PLAT OF SURVEY

BEING A PORTION OF TRACT 10, SECTION 39, BLOCK 79, TOWNSHIP 2, TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS CITY OF EL PASO, EL PASO COUNTY, TEXAS CONTAINING 1.3110 ACRES



SYMBOL LEGEND

⊙	FOUND CONTROL POINT
⊕	FOUND CITY MONUMENT
○	SET 1/2" REBAR W/CAP 5152
⊠	CALCULATED POINT
⊡	WATER VALVE
⊢	POWER POLE
⊣	GUY WIRE
⊤	LIGHT POST
⊥	TRAFFIC LIGHT POST
⊦	GUARD POST
⊧	TRAFFIC CONTROL BOX
⊨	TRAFFIC SIGN
—○—○—○—	CHAIN LINK FENCE
⊠⊠⊠⊠⊠	ROCK WALL
⊠—○—○—○—	OVER HEAD ELECTRIC

SCALE: 1"=50'

CONDE INC.
 ENGINEERING PLANNING & SURVEYING
 800 SOUTH DOWNSIDE STREET, EL PASO, TEXAS 79906
 PHONE (915) 764-1001 FAX (915) 764-0500



CERTIFICATION
 THIS PLAT REPRESENTS A SURVEY MADE ON THE BEHALF OF ME OR UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF BASED ON THE FACTS FURNISHED AT THE TIME OF THIS SURVEY.
 RON E. CONDE

Exhibit A -

Prepared For: The City of El Paso
February 11, 2013

METES AND BOUNDS DESCRIPTION

Description of a parcel of land being a portion of Tract 1C, Section 39, Block 79, Township 2, Texas and Pacific Railway Company Surveys, El Paso County, Texas, and being more particularly described by metes and bounds as follows:

Commencing for reference at an existing brass disk city monument at the centerline intersection of Pebble Hills Blvd. and Tierra Mina Dr. from which an existing brass disk city monument at the centerline intersection of Tierra Mina Dr. and Tierra Galvez Ct. bears North $00^{\circ}32'46''$ West a distance of 501.26 feet; Thence along the centerline of Pebble Hills Blvd., South $89^{\circ}56'52''$ East a distance of 489.43 feet to a point of curve; Thence leaving said centerline, South $40^{\circ}11'00''$ East a distance of 70.73 feet a point on easterly line of Tierra Del Este Unit Twenty Seven For The "TRUE POINT OF BEGINNING";

Thence along said line, North $42^{\circ}31'32''$ East a distance of 86.76 feet to a set $\frac{1}{2}$ " rebar with cap marked TX 5152 on the common line of Tract 1C and 1D, Section 39, Block 79, Township 2, Texas and Pacific Railway Company Surveys;

Thence along said line, North $89^{\circ}57'20''$ East a distance of 152.68 feet to a set $\frac{1}{2}$ " rebar with cap marked TX 5152;

Thence 124.95 feet along the arc of a curve to the right which has a radius of 802.50 feet a central angle of $08^{\circ}55'15''$ a chord which bears South $66^{\circ}48'47''$ East a distance of 124.82 feet to a set $\frac{1}{2}$ " rebar with cap marked TX 5152;

Thence 215.26 feet along the arc of a curve to the right which has a radius of 826.66 feet a central angle of $14^{\circ}55'10''$ a chord which bears South $54^{\circ}53'34''$ East a distance of 214.65 feet to a set $\frac{1}{2}$ " rebar with cap marked TX 5152;

Thence, South $47^{\circ}25'59''$ East a distance of 121.83 feet to a set $\frac{1}{2}$ " rebar with cap marked TX 5152 for a point of curve;

Thence 39.27 feet along the arc of a curve to the left which has a radius of 25.00 feet a central angle of $90^{\circ}00'00''$ a chord which bears North $87^{\circ}34'01''$ East a distance of 35.36 feet to a set $\frac{1}{2}$ " rebar with cap marked TX 5152 on the northwesterly right of way line of Zaragoza Road;

Thence along said right of way line, South $42^{\circ}34'01''$ West a distance of 25.00 feet to a set $\frac{1}{2}$ " rebar with cap marked TX 5152 on the common line of Tracts 1C, Section 39, Block 79, Township 2, Texas and Pacific Railway Company Surveys and Tract 2C, Section 46, Block 79, Township 2, Texas and Pacific Railway Company Surveys;

Thence along said line, South 89°57'17" West a distance of 162.48 feet to a set ½" rebar with cap marked TX 5152;

Thence leaving said line, North 47°25'59" West a distance of 65.44 feet to a set ½" rebar with cap marked TX 5152 for a point of curve;

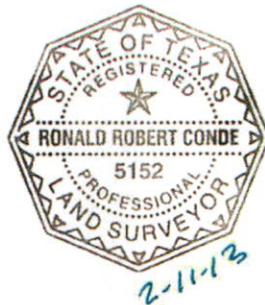
Thence, 149.30 feet along the arc of a curve to the left which has a radius of 573.34 feet a central angle of 14°55'10" a chord which bears North 54°53'34" West a distance of 148.87 feet to a set ½" rebar with cap marked TX 5152;

Thence, 290.21 feet along the arc of a curve to the left which has a radius of 697.50 feet a central angle of 23°50'22" a chord which bears North 74°16'20" West a distance of 288.13 feet to the "TRUE POINT OF BEGINNING" and containing 57,105 Square Feet or 1.3110 acres of land more or less.

Note: Bearings based on centerline monuments on Pebble Hills Blvd. and Tierra Mina Dr. per Plat of Tierra Del Este Unit Twenty Seven recorded in Volume 79, Page 105, Plat records of El County, Texas



Ron R. Conde R.P.L.S. No. 5152
Job no: 113-18



CONDE, INC.
ENGINEERING / LAND SURVEYING / PLANNING
6080 SURETY DRIVE / SUITE 100 / EL PASO, TEXAS 79905 / (915) 592-0283
FAX (915) 592-0286

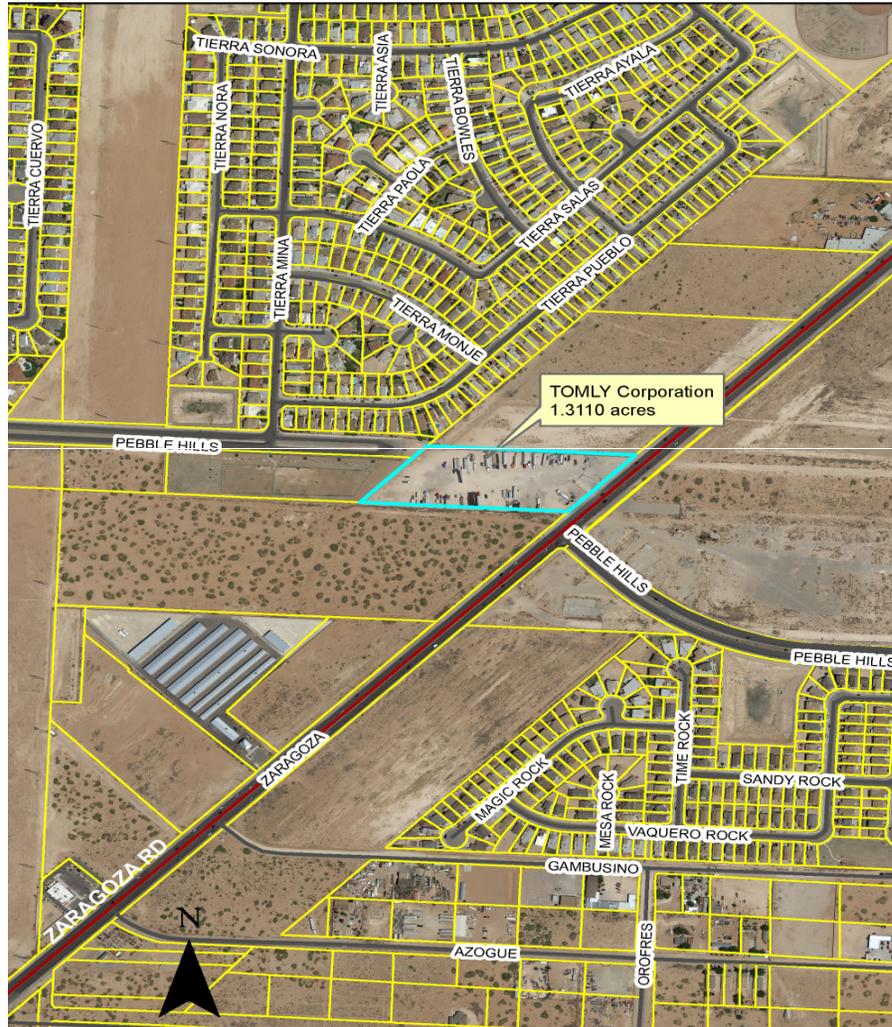
(A-2)



Pebble Hills Extension- Land Acquisition

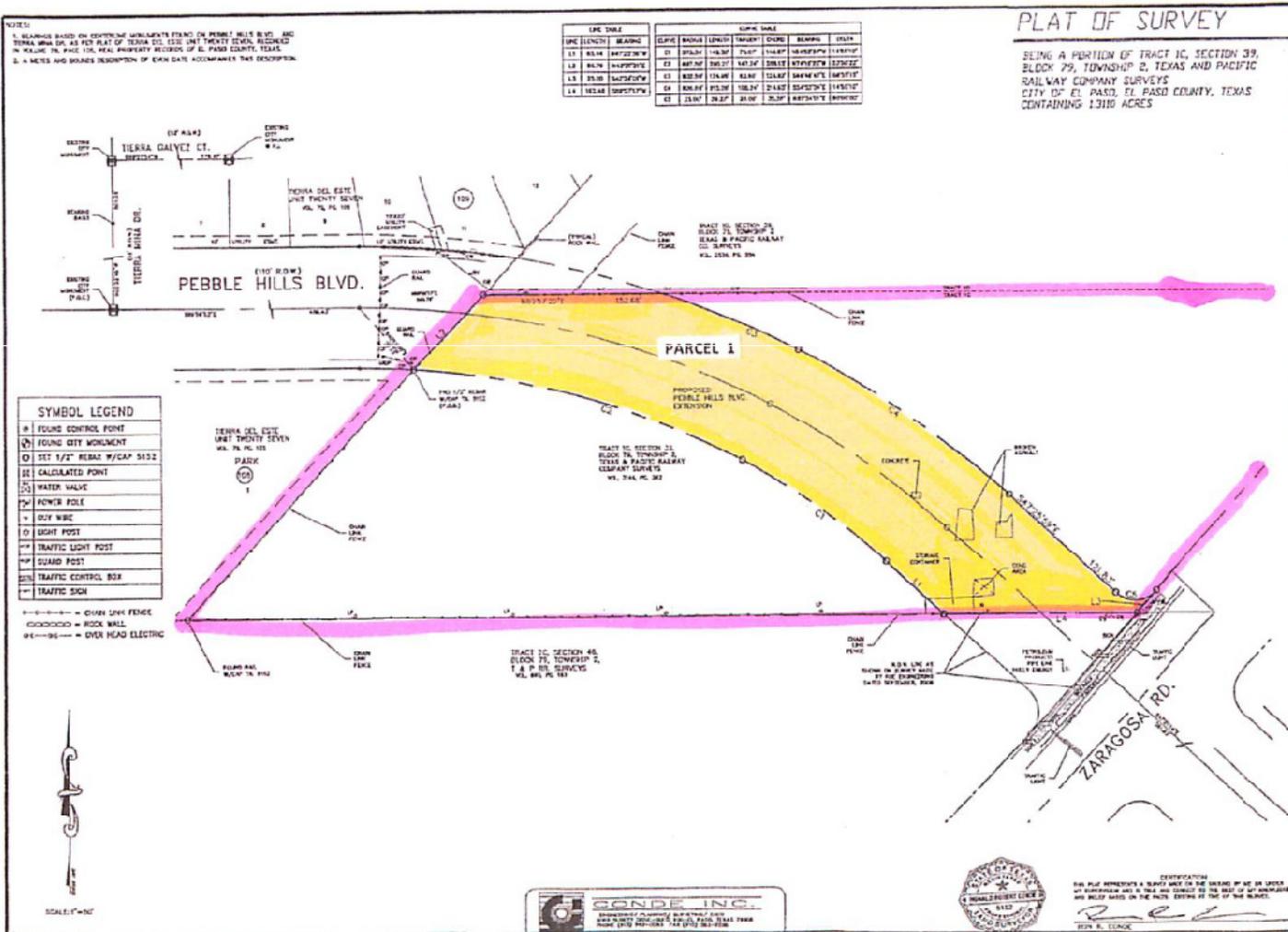


5 acre parcel- 1.3110 acres to be acquired for extension





Portion to be purchased



S E R V I C E S O L U T I O N S S U C C E S S



West

S E R V I C E S O L U T I O N S S U C C E S S



East

SERVICE SOLUTIONS SUCCESS



West



Terms:

- Seller: TOMLY Corporation
 - Approx. 1.311 acres
 - Negotiated purchase price \$438,000
 - Contingent on approval of the Annexation and Subdivision application for the parcel
 - City will pay for closing costs
 - Taxes to be prorated