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

DEPARTMENT: **Department of Transportation**

AGENDA DATE: **Introduction:** **January 24, 2012**
Public Hearing: **January 31, 2012**

CONTACT PERSON/PHONE: Mirian D. Spencer, (915) 541-4482, Spencermd2@elpasotexas.gov

DISTRICT(S) AFFECTED: 8

SUBJECT:
An Ordinance granting a Special Privilege License to Joe Rosales permitting the encroachment of a 8 foot by 11 inch existing staircase within portions of City right-of-way on South Oregon Street adjacent to the property located at 510 South Oregon Street NESV11-00051 (District 8).

BACKGROUND / DISCUSSION:
The applicant is requesting to Special Privilege License permitting the encroachment of an 8 foot by 11 inch existing staircase within portions of City right-of-way on South Oregon Street. The staircase has been in existence since the building was built. The applicant is requesting to legalize the existing encroachment.

The term of the License is for fifteen years with an option to renew up to two additional fifteen year terms. In order to renew, the applicants will be required to submit written notification of their intention to renew three months prior to the expiration date of the permit. The annual fee for the permit is $110.00.

PRIOR COUNCIL ACTION:
There is a related special permit request (PZST11-00009) for Special Residential Revitalization.

AMOUNT AND SOURCE OF FUNDING:
N/A

BOARD / COMMISSION ACTION:
The Development Coordinating Committee approved the special privilege permit request on January 4, 2012.

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

DEPARTMENT HEAD: _____

Daryl W. Cole, Director
Department of Transportation

ORDINANCE NO. _____

AN ORDINANCE GRANTING A SPECIAL PRIVILEGE LICENSE TO JOE ROSALES PERMITTING THE ENCROACHMENT OF AN 8 FOOT BY 11 INCH EXISTING STAIRCASE WITHIN PORTIONS OF CITY RIGHT-OF-WAY ON SOUTH OREGON STREET fADJACENT TO THE PROPERTY LOCATED AT 510 SOUTH OREGON STREET.

WHEREAS, Joe Rosales has requested to keep an existing staircase within portions of City right-of-way on South Oregon Street adjacent to the property located at 510 South Oregon; and

WHEREAS, the City may grant a Special Privilege License for use of City right-of-way for specified uses; and

WHEREAS, the City Council finds that the grant of a Special Privilege License upon the terms and conditions hereinafter set forth is not inconsistent with and will not unreasonably impair the public use of the right-of-way; and

WHEREAS, the Traffic Engineer received a favorable recommendation from the Development Coordinating Committee on January 4, 2012 regarding the request to keep the encroachment.

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

The City of El Paso (hereinafter called "City") hereby grants to Joe Rosales (hereinafter referred to as "Grantee") a Special Privilege License (the "License") for use of City right-of-way as follows:

1. <u>DESCRIPTION</u>.

This License is granted to Joe Rosales to keep an existing 8 foot by 11 inch staircase within portions of City right-of-way on South Oregon Street adjacent to the property located at 510 South Oregon Street, as shown in Exhibit "A," which is attached hereto and made a part hereof for all purposes, and which is hereinafter referred to as "License Area."

2. <u>TERM</u>.

The term of this License shall be for fifteen (15) years from the date of execution of this agreement. The City shall have the sole option to renew this License upon the request of the Grantee for up to two (2) additional fifteen (15) year terms. If the Grantee desires that the City re-new this License for an additional fifteen (15) year term, Grantee shall submit a request in

writing to the City no later than three (3) months prior to the expiration date of this License or any previously granted extension thereto.

This License shall expire without notice at the end of such term unless a request for renewal is submitted in writing to the City by the Grantee as herein required. Grantee understands, agrees, and accepts that the City may require that the terms, conditions, and provisions of this License be modified as a condition for renewing the grant of the encroachment upon or through public rights-of-way as permitted by this License.

3. WORK DONE BY OTHERS.

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

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

use, or to use with greater convenience, the City right-of-way, Grantee shall not be required to make such changes until such other entity or person shall have undertaken with solvent bond, to reimburse Grantee for any loss and expense which will be caused by or arise out of such removal, alteration, change, adaptation or conformance of the portion of the staircase; provided, however, the City shall not be responsible nor liable for such reimbursement.

4. RESERVATION OF SURFACE, SUBSURFACE, AND AIRSPACE RIGHTS.

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

5. CONSIDERATION.

As consideration for this License, Grantee shall pay to the City the fee of ONE HUNDRED TEN AND NO/100 DOLLARS ($110.00) per year for the use of City right-of-way. The annual fee shall be due the first month in which the License is granted by the El Paso City Council. The annual fee shall remain the same for a period of one year from the date the license is granted, and shall be subject to change after each one year period the license remains in effect. Grantee expressly agrees to pay any additional amounts as consideration for this License, which could result from a re-computation or assessment of fees pursuant to enactment or any future amendments to 15.08.120. The City shall notify the Grantee of any proposed changes in fees as prescribed in Paragraph 14.E (Notice) of this License. This License is granted on the condition the Grantee pay for all costs associated with the License Area, as well as all costs for the restoration of the License Area upon the termination of this License.

The first annual fee shall be due prior to City Council approval of this License. The advance payment shall be in the form of a business or cashier's check payable to the "City of El Paso" and delivered to the Department of Transportation for remittance to the City's Financial Services

Department. If the License is disapproved by the City Council, the City shall make full refund of the advance payment within fifteen (15) days of the denial action.

6. USE OF PROPERTY.

This License is granted solely for the encroachment of the subject stairway onto City right-of-way by Grantee. This License shall not be construed to waive any City permit requirements. Grantee shall be responsible for all maintenance. Nothing contained herein shall grant or be construed to grant any real property interest to the Grantee, nor shall it give rise to any vested right in the Grantee, their assigns or successors in interest who shall not have a cause of action for damages upon revocation of this License.

7. IMPROPER USE.

This License shall not permit or be construed to permit any other private use of the City's right-of-way, which impairs its function as a right-of-way. Grantee shall not construct any additional improvements, or make any additions or alterations on or over the City right-of-way, without the prior written consent of the El Paso City Manager.

8. REPAIRS.

Grantee shall keep the License Area (stairway) in good repair during the term of the License. Grantee shall repair any damage to the License Area regardless of the cause of such damage, at Grantee's sole expense.

9. MAINTENANCE.

Grantee shall maintain the License Area (stairway) in good condition, in a clean, orderly, and attractive condition for the duration of the License.

10. INDEMNITY.

As a condition of the License, the Grantee or his insurer shall INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, its officers, agents, servants and employees FOR AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSES (INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES AND COSTS), FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON ARISING OUT OF OR RELATED TO THIS AGREEMENT. Without modifying the conditions of

preserving, asserting, or enforcing any legal liability against the City as required by the City Charter or any law, the City will promptly forward to the Grantee every demand, notice, summons, or other process received by the City in any claim or legal proceeding contemplated herein. Grantee will 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as Grantee may deem expedient; and 3) defend or cause to be defended on behalf of the City all suits for damages even if groundless, false, or fraudulent, brought on because of such injuries or damages. Grantee shall pay all judgments in actions defended by Grantee pursuant to this section along with all attorney's fees and costs incurred by the City including interest accruing to the date of the payment by Grantee, and premiums on any appeal bonds. The City, at its election, will have the right to participate in any such negotiations or legal proceedings to the extent of its interest. The City will not be responsible for any loss of or damage to Grantees' property from any cause.

11. LIABILITY INSURANCE.

For the duration of this License and any extension thereof, Grantee shall carry comprehensive general liability insurance in the following amounts:

$1,000,000.00 – Per Occurrence, for personal injury, death and property damage.

$1,000,000.00 – General Aggregate.

$1,000,000.00 – Products/Completed Operations-Occurrence & Aggregate, if applicable.

These amounts are not a limitation upon the Grantee' agreement to indemnify and hold the City harmless.

Grantee shall maintain said insurance with a solvent insurance company authorized to do business in Texas. The policy shall provide that the insurer will defend against all claims and lawsuits which arise and will pay any final judgment of a court of competent jurisdiction against the City, its officers, agents, servants or employees and Grantee, their officers, agents, servants or employees. All policies shall name the City of El Paso, its officers, agents, servants, and employees as additional insureds to the full amount of the policy limits.

No License shall be granted by El Paso City Council until Grantee files a copy of the policy or certificate of liability insurance as herein set forth with the Departments of Transportation and Financial Services – Capital Assets Division. Such policy or certificate shall provide that the insurance cannot be cancelled or the amount of coverage changed without thirty (30) days prior

written notice to the City's Department of Transportation and the Financial Services – Capital Assets Division, or ten (10) days prior written notice to the City's Department of Transportation and the Financial Services – Capital Assets Division for cancellation based on non-payment of insurance premiums. Failure to keep the policy in full force and effect throughout the term of the License shall be grounds for cancellation of this License. Certificates of Insurance that state that the insurer shall endeavor to give notice and/or that there shall be no liability for the failure to give the notice required herein shall not meet the requirements of this section.

12. CANCELLATION.

Should the City at any time and for any reason decide that the right-of-way onto which any of the encroachments licensed herein are needed for public use, the City may upon thirty (30) calendar days written notice, cancel this License at no cost to the City and may take possession of the City right-of-way. All rights of Grantee in/to the City right-of-way shall then be terminated. If the City cancels this License, the Grantee may receive a refund of the paid annual consideration for the months remaining in the License year (the twelve month period beginning on the effective date of the License) in the amount of NINE AND 00/100 DOLLARS ($9.00) per month. If the City cancels the License due to the Grantee' failure to cure any default under this License or if the Grantee abandon the License Area as described hereafter, Grantee shall not be entitled to any refund of its annual consideration it has paid to the City.

Grantee may cancel this License, for any reason, upon thirty (30) calendar days prior written notice to the City, and all rights of the Grantee shall then be terminated. If this License is cancelled by the Grantee, Grantee shall not be entitled to any refund of the annual consideration for the License year. In addition, if, for a period of six (6) months, Grantee cease to use or occupy the property for the purposes herein contemplated, or if Grantee default in any of his obligations under this License and fail to correct such defaults within fifteen (15) calendar days after written notice to do so, the City may cancel this License and take possession. All rights of the Grantee on the City right-of-way shall then terminate.

Any waiver by the City of any breach of any of the Grantee' obligations shall not be deemed a continuing waiver, and shall not prevent the City from exercising any remedy it may have for any succeeding breach of the same or another obligation of the Grantee.

Upon termination of this License for whatever reason, all encroachments shall become the property of the City and shall, at the option of the City, be removed by the Grantee without cost to the City. The City may require the Grantee to restore the License Area, to include removal of the said staircase at the expense of the Grantee.

13. LIENS AND ENCUMBRANCES. Grantee shall defend and indemnify the City against any liability and loss of any type arising from any lien or encumbrance on the property that arises or is alleged to have arisen from the Grantee' use of the City right-of-way.

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

15. RECORDS

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

16. NOTICES: All notices provided for herein shall be sufficient if sent by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

CITY:	City of El Paso Attn: City Manager #2 Civic Center Plaza 10th Floor El Paso, Texas 79901
with copy to:	City of El Paso ATTN: Department of Transportation 7968 San Paulo Drive El Paso, Texas 79915

with copy to: City of El Paso
ATTN: Financial Services – Capital Assets Division
#2 Civic Center Plaza 7th Floor
El Paso, Texas 79901

GRANTEE: Joe Rosales
910 Mettler
El Paso, Texas 79925

or to such other address as the parties may designate to each other in writing from time to time.

17. LEASING OR DEDICATION OF FACILITIES.

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

18. NO PROPERTY RIGHTS.

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

19. RIGHT OF ENTRY AND INSPECTION.

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

20. LAWS AND ORDINANCES.

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

21. ENTIRE AGREEMENT.

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

22. SEVERABILITY.

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

23. LAW GOVERNING.

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

24. ADMINISTRATION.

The Traffic Engineer is the principal City official responsible for the administration of this License and Grantee recognizes that questions regarding the interpretation or application of this ordinance shall be referred to the Traffic Engineer.

25. RESTRICTIONS AND RESERVATIONS.

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

26. EFFECTIVE DATE.

The effective date of this License shall be the date last entered below. This License shall not take effect unless and until Grantee files his written acceptance with the City prior to the inaction of this License by the City Council.

PASSED AND APPROVED this _____ day of_____, 2012.

THE CITY OF EL PASO

ATTEST:

_____
John F. Cook
Mayor

_____
Richarda Duffy-Momsen
City Clerk

APPROVED AS TO FORM:

_____
Elizabeth Ruhmann
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Daryl W. Cole, Director
El Paso Department of Transportation

ACCEPTANCE

The attached instrument, with all conditions thereof, is hereby accepted this ____ day of _____, 2012.

GRANTEE: Joe Rosales

By: _____

Joe Rosales, Owner

ACKNOWLEDGEMENT

THE STATE OF TEXAS)
COUNTY OF EL PASO)

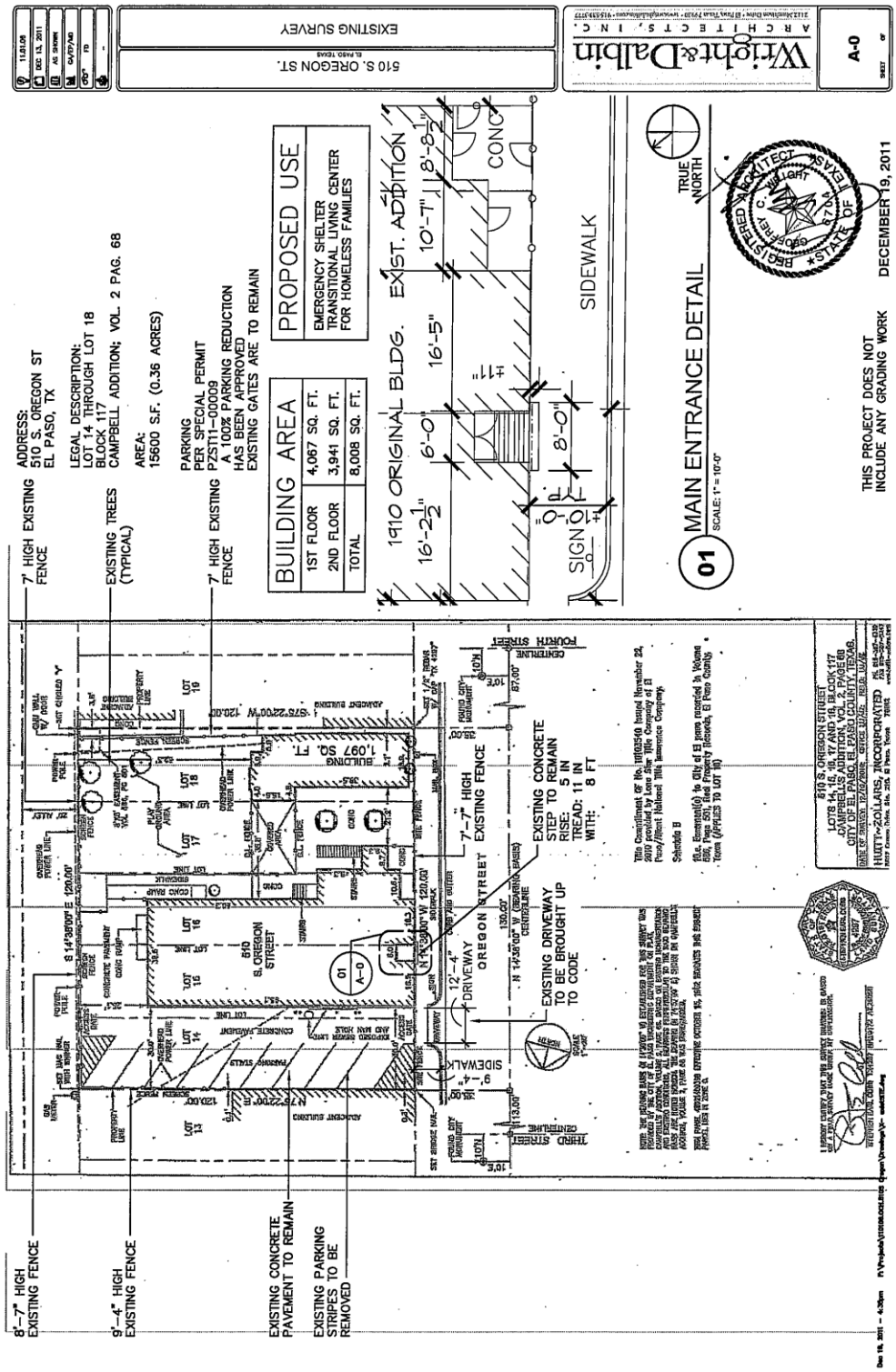
This instrument is acknowledged before me on this ____day of _____, 2012, by Joe Rosales as Grantee-Owner.

_____
Notary Public, State of Texas

_____
Notary's Printed or Typed Name:

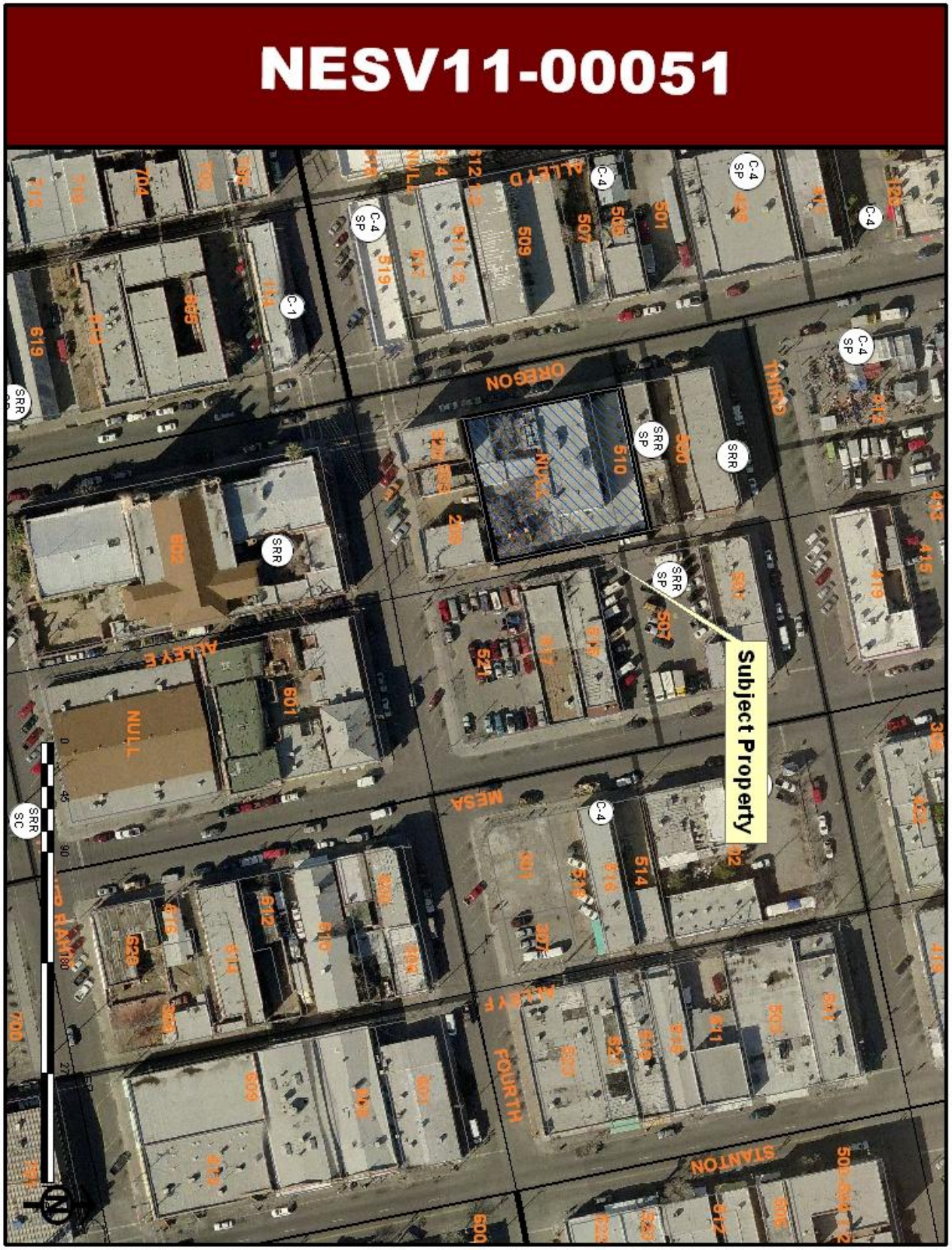
_____
My Commission Expires:

Exhibit A


ADDRESS:
510 S. OREGON ST
EL PASO, TX
LEGAL DESCRIPTION:
LOT 14 THROUGH LOT 18
BLOCK 117
CAMPBELL ADDITION; VOL. 2 PAG. 68
AREA:
15600 S.F. (0.36 ACRES)
PARKING
PER SPECIAL PERMIT
PZST11-00009
A 100% PARKING REDUCTION
HAS BEEN APPROVED
EXISTING GATES ARE TO REMAIN
PROPOSED USE
EMERGENCY SHELTER
TRANSITIONAL LIVING CENTER
FOR HOMELESS FAMILIES
BUILDING AREA
1ST FLOOR 4,067 SQ. FT.
2ND FLOOR 3,941 SQ. FT.
TOTAL 8,008 SQ. FT.
1910 ORIGINAL BLDG.
EXST. ADDITION
SIDEWALK
SIGN
MAIN ENTRANCE DETAIL
SCALE: 1" = 10'-0"
TRUE NORTH
THIS PROJECT DOES NOT
INCLUDE ANY GRADING WORK
DECEMBER 19, 2011
7' HIGH EXISTING FENCE
EXISTING TREES (TYPICAL)
7' HIGH EXISTING FENCE
8'-7" HIGH EXISTING FENCE
9'-4" HIGH EXISTING FENCE
EXISTING CONCRETE PAVEMENT TO REMAIN
EXISTING PARKING STRIPES TO BE REMOVED
7'-7" HIGH EXISTING FENCE
EXISTING CONCRETE STEP TO REMAIN
RISE: 5 IN
TREAD: 11 IN
WITH: 8 FT
EXISTING DRIVEWAY TO BE BROUGHT UP TO CODE
12'-4" DRIVEWAY
OREGON STREET
510 EL OREGON STREET
BUILDING 1,097 SQ. FT.
THIRD STREET
FOURTH STREET
EXISTING SUVEY
510 S. OREGON ST.
Wright&Dalbin
ARCHITECTS, INC.
A-0

LOCATION MAP

AERIAL MAP


NESV11-00051
Subject Property
THIRD
OREGON
ALLEY D
ALLEY E
MESA
FOURTH
STANTON
NULL
C-4
C-4 SP
C-1
SRR
SRR SP
SRR SC
0
45
90
180
270
360