

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

DEPARTMENT: **Engineering Traffic Division**

AGENDA DATE: **Introduction: February 2, 2010; Public Hearing: February 9, 2010**

CONTACT PERSON/PHONE: **Mirian Spencer, Planner, (915) 541-4482, spencermd2@elpasotexas.gov**

DISTRICT(S) AFFECTED: 8

SUBJECT:

An Ordinance to renew and extend a Special Privilege to St. Mark's United Methodist Church to permit and regulate the construction, maintenance, and use of one subsurface storm water drainage pipe within a portion of Oleander Way, City of El Paso, El Paso County, Texas for a term of fifteen years with one renewable term of fifteen years. SPL09-00032 (District 8).

BACKGROUND / DISCUSSION:

St. Mark's United Methodist Church is requesting to continue to utilize the existing subsurface storm water drainage pipe within City right-of-way. The church was originally granted a special privilege for the drainage pipe by Ordinance 014140 approved July 27, 1999 for a term of ten years with renewable periods of ten years. The special privilege expired prior to receiving a request to renew, so a subsequent special privilege is being requested.

The special privilege is for a term of fifteen years at a rate of \$3,500.00 per year for a total of \$52,500.00. General Liability insurance in the amounts of \$250,000.00 for injury to one person, \$500,000.00 for injury to two or more, and \$100,000.00 for property damage with the City listed as additionally insured will be required for the duration of the special privilege.

PRIOR COUNCIL ACTION:

Ordinance 014140, granted July 27, 1999

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

The Development Coordinating Committee approved the special privilege application (SPL09-00032) for the construction, maintenance and use of the subsurface storm water drainage pipe within a portion of Oleander Way on December 2, 2009 for a term of fifteen years with a renewable term of fifteen years.

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

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

ORDINANCE NO. _____

AN ORDINANCE TO RENEW AND EXTEND A SPECIAL PRIVILEGE TO ST. MARK'S UNITED METHODIST CHURCH TO PERMIT AND REGULATE THE CONSTRUCTION, MAINTENANCE, AND USE OF ONE SUBSURFACE STORM WATER DRAINAGE PIPE WITHIN A PORTION OF OLEANDER WAY, CITY OF EL PASO, EL PASO COUNTY, TEXAS FOR A TERM OF FIFTEEN YEARS WITH ONE RENEWABLE TERM OF FIFTEEN YEARS.

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

SECTION 1. PURPOSE

This is a renewal of the special privilege granted by The City of El Paso (hereinafter called "City") to St. Mark's United Methodist Church (hereinafter referred to as the "Grantee") by Ordinance No. 014140 on July 27, 1999 for a term of ten years. The existing stormwater drainage pipe installed by Grantee under the original special privilege ordinance may remain in place during the period of this renewal of the special privilege under this ordinance, subject to the terms and conditions herein. No additional stormwater drainage pipes or other uses shall be allowed without an amendment to this ordinance

The City hereby grants a Special Privilege to install, operate, repair, and maintain one (1) private stormwater drainage pipe (hereinafter referred to as the "Pipe") upon, beneath, across and along a portion of Oleander Way, and as more particularly described in Exhibit "A" which is made a part hereof for all purposes (hereinafter referred to as "City right-of-way"). The size of the Pipe shall be limited to one (1) six (6) inch pipe, within a twelve (12) inch casing. The pipe has been installed in compliance with a previously approved Special Privilege License granted by the City of El Paso. Use of the City right-of-way shall be limited to the purpose of extending a discharge line for stormwater collection, and as otherwise agreed to by the parties hereto. The only City right-of-way that Grantee shall use pursuant to this Special Privilege shall be the portion of City right-of-way shown for the construction of the Pipe. Any use of City right-of-way other than the use of the City right-of-way in connection with the construction of the Pipe is not authorized by this Special Privilege. Nothing herein shall grant any real property interest to the Grantee nor give rise to any vested right in the Grantee, his assigns or successors in interest, none of whom shall have a cause

of action for damages upon revocation or termination of this Special Privilege in accordance with the terms herein.

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

SECTION 2. REGULATION OF CONSTRUCTION

The work done by Grantee in placing, constructing, replacing, repairing, reconstructing, or maintaining the Pipe shall be subject to and governed by all laws, rules and regulation of the City and State of Texas, and the U.S. Government that are applicable to insuring the work done does not unreasonably inconvenience the public in the use of the City right-of-way including, but not limited to the following:

A. In the event that Grantee desires to reconstruct, repair, maintain, or replace the Pipe built hereunder which involves excavation or any surface disturbance, Grantee shall submit the plans and specifications that pertain to the rebuilding of repairs to the City right-of-way and the rebuilding or repairs of any of the public utilities to the City Engineer for approval fourteen (14) days prior to the scheduled work. Approval of such plans will not be unreasonably delayed, withheld, or denied by the City Engineer or designee. In the event that emergency repairs are necessary, Grantee shall immediately notify the City Engineer and provide details of the proposed repair work and the traffic control plan. On weekends and holidays, the City Engineer shall be notified as soon as practicable regarding work performed under emergency conditions.

B. Where proposed, any excavation or trenching and other construction in the City right-of-way shall be so carried out as to interfere as little as practical with the surface use of the City right-of-way in accordance with any lawful and reasonable direction given by or under the authority of the governing body of the City under the police and regulatory powers necessary to provide for public convenience. After installation of the Pipe, Grantee shall restore the City right-of-

way to substantially the same condition as before any such boring, excavation, or trenching and to the reasonable satisfaction of the City Engineer, in accordance with applicable City specifications.

C. Before Grantee commences work on any repair of the City right-of-way, water lines, sewer lines or any other public utilities, the specifications shall be approved by the City Engineer, after consultation with the General Manager of the El Paso Water Utilities or designee. Approval of such specifications will not be unreasonably delayed, withheld, or denied by the City Engineer. Grantee shall obtain all other required permits prior to commencing work within the right-of-way, including but not limited to applicable street cut and excavation permit and traffic control permit.

E. During the progress of the work described herein, the convenience of the public residents must be provided for as far as practicable. During construction and maintenance of the Pipe, convenient access to driveways and buildings along the City right-of-way and crossing of the City right-of-way must be maintained whenever possible by Grantee and shall be shown on a City approved traffic control plan.

F. Traffic control signs shall not be removed, altered, or damaged for any reason by the Grantee. Grantee shall notify the City Engineer or designee at least forty-eight (48) hours, not including weekends or City holidays, before construction activities are scheduled to begin. All construction barricading, warning signs and other construction control devices shall be put in place by Grantee and shall be in accordance with the latest edition of the "Texas Manual on Uniform Traffic Control Devices" before traffic signs can be removed. Grantee shall notify the City Engineer or designee at least seventy-two (72) hours, not including weekends or City holidays, before scheduled removal of construction barricades, warning signs, and traffic control devices. But in all cases, Grantee shall not remove said barricades, warning signs, and traffic control devices until the City Engineer or designee has replaced stop signs, yield signs and other official traffic control devices in their proper location.

G. Grantee covenants and agrees that Grantee shall, at its own expense, repair all water lines, storm and sanitary sewer lines, service lines and water meters owned by the City that Grantee, its employees, contractors, agents or assigns, damage so that such repair of the water

lines, storm and sanitary sewer lines and water meters shall comply with the approval of the City Engineer, and such approval shall not be unreasonably delayed, withheld or denied.

H. After completion of the initial installation, except in an emergency, Grantee shall not bore, excavate or trench any pavement in the City right-of-way without first securing the prior permission of the City Engineer, but such permission shall not be unreasonably delayed, withheld or denied if the proposed boring, excavation or trenching is in accordance with the terms of this Special Privilege. The City Engineer shall be notified as soon as practicable regarding work performed under emergency conditions.

The City shall have the power at any time to order and require Grantee to remove and abate any portion of the Pipe that is dangerous to life or property. Should Grantee, after notice, fail or refuse to comply within a reasonable time, the City shall have the power to remove or abate same, at the expense of Grantee. In the event City removes or abates the Pipe, Grantee shall not be compensated for the loss of the Pipe nor shall the City be liable to the Grantee for any direct, indirect or consequential damages due to the removal or abatement of the Pipe.

Work done in connection with the construction, repair and maintenance of such facilities is subject to the continuing police power of the City.

SECTION 3. TERM

This Special Privilege shall be for a term of fifteen (15) years from the effective date hereof, unless terminated earlier as provided herein. At the end of this term, the City shall have the unilateral option of renewing this Special Privilege for an additional fifteen (15) years upon the request of the Grantee. If Grantee wishes the City to renew this Special Privilege, Grantee shall submit a request in writing to the City no later than three (3) months prior to the expiration date of this Special Privilege. Should Grantee fail to submit such request for the renewal of this Special Privilege to the City as herein required, the Special Privilege shall expire upon the expiration date. Grantee understands, agrees, and accepts that the City may require that the terms, conditions, and provisions of this Special Privilege be modified as a condition for renewing the grant of the encroachment within the city right-of-way as permitted by this Special Privilege.

SECTION 4. WORK DONE BY OTHERS

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 conduits, 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 there from, 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 Grantee's Pipe. If the City requires Grantee to remove, alter, change, adapt, or conform its Pipe 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 structure owned by the City, Grantee shall make the alterations or changes as soon as practicable when ordered in writing by the El Paso City Council 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 El Paso City Council's consideration. If the City requires Grantee to remove, alter, change, adapt or conform its Pipe 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 Grantee's Pipe; provided, however, the City shall not be responsible nor liable for such reimbursement.

SECTION 5. RESERVATION OF SURFACE, SUBSURFACE, AND AIRSPACE RIGHTS

The City reserves the right, subject to Section 4., to use the surface or subsurface or airspace within the City right-of-way covered by this Special Privilege 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; and 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 portions of Grantee's Pipe, such alteration or change or relocation shall be made by Grantee when ordered in writing by the City Engineer without any claim for reimbursement or damages against the City; provided, however, that Grantee shall at all times be entitled to receive from appropriate governmental bodies, excluding the City, payment for alteration or relocation of its Pipe to which it may be lawfully entitled under applicable federal or state laws with respect to relocation payments.

SECTION 6. CONSIDERATION

A. As consideration for this Special Privilege, Grantee shall pay to the City the sum of Three Thousand Five Hundred and No/100 Dollars (\$3,500.00) per year, for a total sum of Thirteen Thousand Two Hundred and No/100 Dollars (\$52,500.00). The first annual consideration shall be due and owing prior to City Council approval of the Special Privilege. The advance payment shall be in the form of a cashier's check payable to "The City of El Paso" and delivered to the Traffic Engineering Division for remittance to the Financial Services Department. If the Special Privilege is disapproved by the City Council, a full refund of the payment shall be made by the Financial Services Department within fifteen (15) days of the denial action.

B. The fee payment shall be exclusive of and in addition to all general municipal taxes of whatever nature, including, but not limited to, the ad valorem taxes, and assessments for public

improvements except as hereinafter provided as may be enacted during the term of this Special Privilege or any renewal.

C. The fee established in this Section shall not be affected by any relocation of Grantee's Pipe required by the City pursuant to this Special Privilege.

D. The fee payment shall be exclusive of and in addition to all costs of obtaining required permits, plans and other approvals as necessary to conform to all other applicable City Special Privileges and regulations.

SECTION 7. INSURANCE

A. Prior to commencement of any future construction, repairs, or maintenance operations during the term of this Special Privilege, Grantee shall provide the City with a certificate of insurance and shall maintain such insurance in effect during the term of this Special Privilege. Grantee agrees to indemnify and hold the City harmless from any claims for injury, death, loss or damage of any kind or character and by whomsoever suffered or asserted, occasioned by or in connection with the use or temporary closing of the City right-of-way by Grantee, its agents, servants or employees or any organizations contracted by the Grantee.

Grantee shall provide public liability insurance for personal injuries and death growing out of any one (1) accident or other cause in a minimum amount of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) per person, and Five Hundred Thousand and No/100 Dollars (\$500,000.00) for two (2) or more persons in any one accident, and, in addition, shall provide property damage liability insurance in a minimum sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) for property damage growing out of any one (1) accident or other cause. These amounts are not a limitation upon Grantee's agreement to indemnify and hold the City harmless.

Grantee shall procure said insurance with a solvent insurance company authorized to do business in Texas. All policies shall name the City of El Paso, its officer, agents, servants and employees as additional insureds. Such policy or certificate shall provide that the insurance cannot be canceled or the amount of coverage changed without ten (10) days prior written

notice to the City Clerk. Grantee shall file a copy of the policy or certificate of insurance with the City Clerk and the City Engineer. If the policy is not kept in full force and effect throughout the term of this Special Privilege, the Special Privilege shall automatically become void.

SECTION 8. INDEMNITY

As a condition of this License, Grantee shall indemnify, defend and hold harmless the City, its officers, agents, servants and employees from and against any and all costs, claims, liens, damages, losses, expenses (including but not limited to attorneys' fees and costs), fees, fines, penalties, proceedings, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury or death or property damage, arising out of, resulting from or related to the GRANTEE'S activities under this License, including any act or omission by the GRANTEE, its agents, employees or subcontractors, all, without, however, waiving governmental immunity available to the City, hereafter, the "damages". This indemnification shall apply even where such damages described above involve the negligence or allegations of negligence on the part of the City, its officers, agents or employees.

The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any person or entity. 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 shall investigate or cause the investigation of accidents or occurrences involving such damages, negotiate or cause to be negotiated the claim as the GRANTEE may deem expedient, and defend or cause to be defended on behalf of the City all suites for damages, even if groundless, false or fraudulent brought because of such damages. GRANTEE shall pay all judgments finally establishing liability of the City in actions defended by Contractor pursuant to this section, along with all attorneys' fees and costs

incurred by the City, including interest accruing to the date of 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. In addition, the GRANTEE shall promptly advise the City in writing of any claim or demand against the City or the GRANTEE known to the GRANTEE related to or arising out of the GRANTEE'S activities under this License. **The City will not be responsible for any loss of or damage to the GRANTEE'S property from any cause.**

SECTION 9. RIGHTS IN THE EVENT OF ABANDONMENT

As an express condition of this Special Privilege, and not as a mere covenant, in the event Grantee abandons the Pipe or a portion thereof to be constructed hereunder, or the Pipe placed in the City right-of-way hereby cease to be used by Grantee for the purposes enumerated herein for any period of six (6) months or longer, other than the time elapsing between the date hereon and the initiation of installation of the Pipe to be built hereunder which shall be no greater than six (6) months, the Special Privilege shall automatically revert to the City, its successors or assigns, free and clear of any right, title, or interest in Grantee, without the necessity of any notice to Grantee or any re-entry by the City.

SECTION 10. CANCELLATION

Grantee shall have the option to terminate this agreement at any time upon giving the City written notice sixty (60) days in advance of such termination. In addition, the City shall have the option to cancel and terminate this agreement for failure of Grantee to comply with any material provision or requirement contained in this agreement after sixty (60) days written notice to Grantee. However, if said breach or failure to comply cannot be reasonably cured within sixty (60) days, if the breaching party shall proceed promptly to cure the same with due diligence, the time for curing such failure to comply shall be extended for such period of time as may be deemed reasonably necessary by the City to complete such curing unless such breach involves public safety.

Upon termination of this Special Privilege, prior to the expiration of the original term, Grantee shall remove its Pipe located in the City right-of-way at no cost to the City. When said Pipe is removed from the City right-of-way, Grantee shall restore all pavement or base, damaged, or removed during the term of this Special Privilege, if any, at Grantee's own cost and expense, as determined by the City Engineer and in accordance with City specifications. Any such restoration shall be subject to the reasonable approval of the City. If the Grantee fails to restore the pavement as required by the City, the City may at its option restore the pavement and charge such costs to Grantee who shall be responsible for payment of such repair and restoration costs.

SECTION 11. RECORDS

The El Paso City Council and the City Engineer or designee shall be kept fully informed by Grantee as to matters pertaining in any way to Grantee's exercise of its rights under this Special Privilege, including the construction, replacement, reconstruction, maintenance, and repair of the Pipe within the City right-of-way. Grantee shall keep complete and accurate maps, construction drawings, and specifications describing the location of the Pipe within the City right-of-way. The City shall have the right, at reasonable times to inspect such maps, construction drawings, and specifications.

SECTION 12. NOTICE

Any notice or communication required in the administration of this Special Privilege shall be sent in writing by prepaid certified mail, return receipt requested, to the following addresses:

CITY: City of El Paso
ATTN: Assistant City Engineer
#2 Civic Center Plaza 6th Floor
El Paso, Texas 79901

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

GRANTEE: St. Mark United Methodist Church
5005 Love Road
El Paso, Texas 79922

or to such other addresses as Grantee may designate from time to time by written notice as required in this paragraph.

SECTION 13. ASSIGNMENT

The rights granted by this Special Privilege inure 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 written consent of the El Paso City Manager. A written copy of any such assignment must be filed with the City.

SECTION 14. LEASING OR DEDICATION OF FACILITIES

Grantee, without the consent of the El Paso City Manager or designee, shall not lease any of the City right-of-way it uses in connection with its Pipe, to any non-grantee person or entity; provided that Grantee shall have the right to lease or dedicate its Pipe or any portion thereof, or otherwise make available the Pipe in the ordinary conduct of its business, so long as Grantee retains responsibility for servicing and repairing the Pipe.

SECTION 15. MISCELLANEOUS

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

SECTION 16. EFFECTIVE DATE

This Special Privilege shall not take effect unless Grantee shall, prior to the enactment of this Special Privilege by the El Paso City Council; file its written acceptance with the Engineering Traffic Division and the City Clerk.

PASSED AND APPROVED this ____ day of _____, 2010.

WITNESS THE FOLLOWING SIGNATURES AND SEALS

THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Mark Shoesmith,
Asst. City Attorney

Ted Marquez, P.E.,
Assistant City Engineer

(Acceptance to follow on next page)

ACCEPTANCE

The above instrument, with all conditions thereof, is hereby accepted this _____
day of January, 2010.

GRANTEE:
ST. MARK'S UNITED METHODIST CHURCH

By: _____

Title: _____

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument is acknowledged before me on this _____ day of January, 2010, as
_____ on behalf of ST. MARK'S UNITED METHODIST
CHURCH, as Grantee.

Notary Public, State of Texas
Notary's Printed or Typed Name:

My Commission Expires:

EASEMENT

The parcel of land herein described lies within the platted right-of-way of Oleander Street (40' wide right-of-way) as shown on Silverwood Subdivision (Book 13 at Page 17, Plat Records El Paso County, Texas), is a proposed 10 foot wide easement, and is more particularly described by metes and bounds as follows:

COMMENCING for reference at a nail found at the centerline intersection of Country Club Road and Love Road; Thence, with the centerline of Love Road, South 45°02'00" East (bearing basis), 1298.98 feet (record 1298.68 feet) to a nail found at the centerline intersection of Love Road and Oleander Street; Thence, with the centerline of Oleander Street, South 50°09'00" West, 240.65 feet to the east boundary line of the herein described easement and the POINT OF BEGINNING hereof;

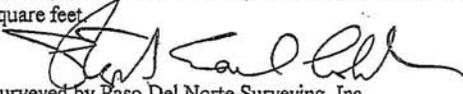
Thence, South 0°00'00" West, 26.05 feet to a 1/2" dia. rebar with plastic cap set on the southeast right-of-way line of Oleander Street;

Thence, with the southeast right-of-way line of Oleander Street, South 50°09'00" West, 13.03 feet to a 1/2" dia. rebar with plastic cap set;

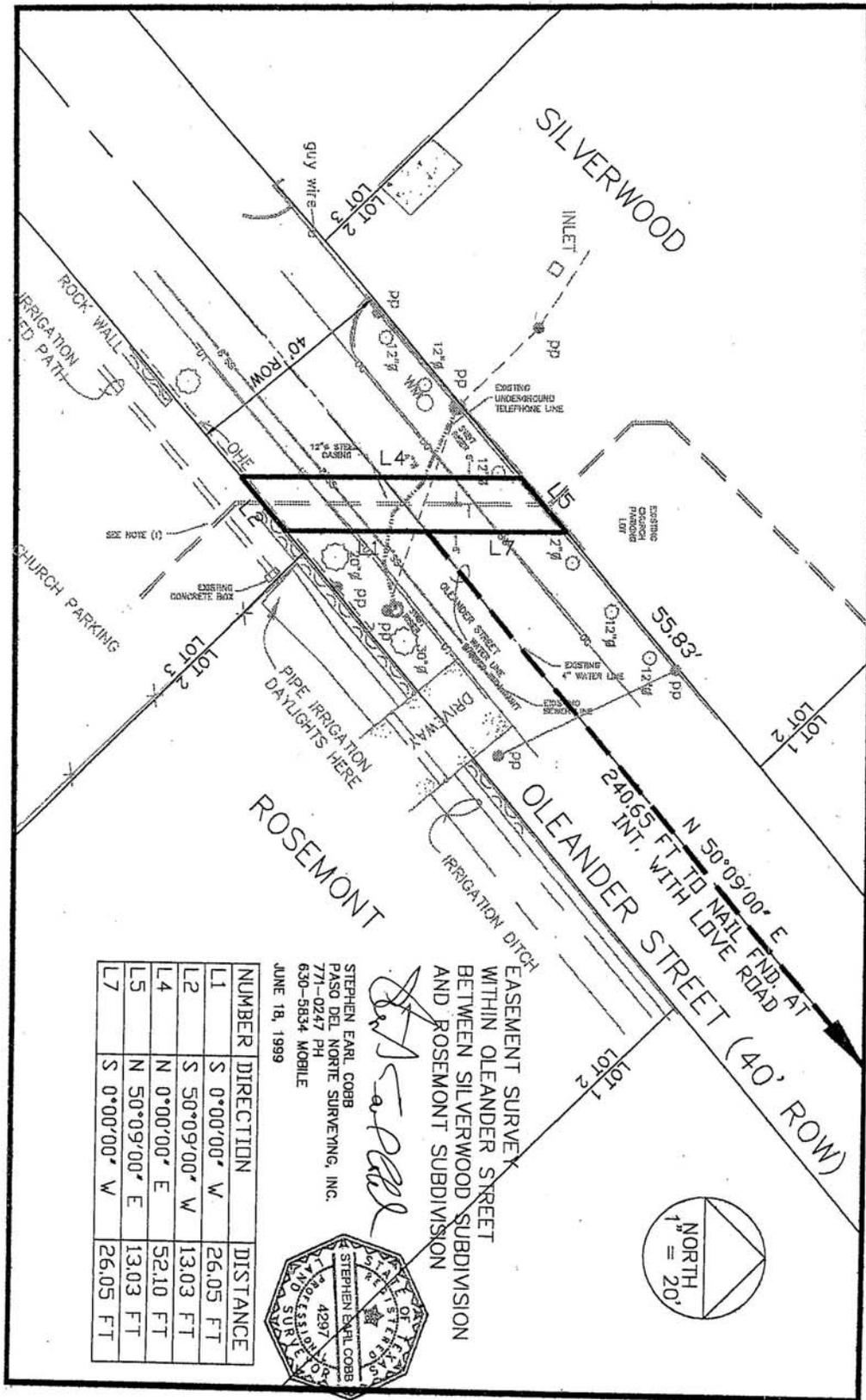
Thence, North 0°00'00" East, 52.10 feet to a 1/2" dia. rebar with plastic cap set on the northwest right-of-way line of Oleander Street;

Thence, North 50°09'00" East, 13.03 feet to a 1/2" dia. rebar with plastic cap set, and from which point the common southerly corner of Lots 1 and 2, Silverwood Subdivision bears North 50°09'00" East, 55.83 feet;

Thence, South 0°00'00" West, 26.05 feet to the POINT OF BEGINNING and containing 0.0120 acres or 521 square feet.


Surveyed by Paso Del Norte Surveying, Inc.
Stephen Earl Cobb, Tx RPLS 4297





NUMBER	DIRECTION	DISTANCE
L1	S 0°00'00" W	26.05 FT
L2	S 50°09'00" W	13.03 FT
L4	N 0°00'00" E	52.10 FT
L5	N 50°09'00" E	13.03 FT
L7	S 0°00'00" W	26.05 FT

STEPHEN EARL COBB
 PASO DEL NORTE SURVEYING, INC.
 771-0247 PH
 630-5834 MOBILE
 JUNE 18, 1999

EASEMENT SURVEY
 WITHIN OLANDER STREET
 BETWEEN SILVERWOOD SUBDIVISION
 AND ROSEMONT SUBDIVISION



EXHIBIT A
PG 2 of 2

LOCATION MAP

SPL09-00032

