

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

DEPARTMENT: El Paso Water Utilities

AGENDA DATE: INTRODUCTION: 2-16-10
PUBLIC HEARING: 2-23-10

CONTACT PERSON/PHONE: Robert D. Andron, General Counsel, EPWU 
Jim Shelton, Land Administration, EPWU (915) 594-5511

DISTRICT(S) AFFECTED: District #4 – Northeast El Paso

SUBJECT:

The introduction of an ordinance relating to the sale of land to Jobe Materials, L.P. which is located in Northeast El Paso. Attached is an individual ordinance and special warranty deed. The land consists of 20.0155 acres of land located near Dyer and Lynn Field.

BACKGROUND / DISCUSSION:

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

Attached is the El Paso Water Utilities Public Service Board Resolution passed and approved November 19th, 2009, authorizing the sale to the sole bidder of this property; and requesting the City Council authorize the City Manager to sign a Special Warranty Deed to convey the parcel.

Approximately seventy packets were provided to potential bidders. Bids were received November 10th, 2009. There was one bid received. The bid was in excess of the minimum acceptable bid. The legal description and amount of the sole bidder for the parcel is as follows:

PSB Bid No.29-09

Being a portion of Tract 8, Section 16, Block 80, Township 1, Texas and Pacific Railway Company Surveys, City of El Paso, El Paso County, Texas, being approximately 20.0155 acres of land, to Jobe Materials, L.P., in the amount of \$302,201.00.

PRIOR COUNCIL ACTION:

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

In 2009, the City Council approved the sale of a parcel of land of 35 acres in Northeast El Paso.

AMOUNT AND SOURCE OF FUNDING:

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

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

BOARD / COMMISSION ACTION:

Approved by the El Paso Water Utilities Public Service Board by Resolution November 19th, 2009.

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

DEPARTMENT HEAD:


(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

RESOLUTION

A RESOLUTION AUTHORIZING THE SALE OF A PARCEL OF INEXPEDIENT LAND TOTALING APPROXIMATELY 20 ACRES AND AWARDED BID NO. 29-09 TO JOBE MATERIALS, L.P., THE SOLE HIGHEST BIDDER; LAND BEING A PORTION OF TRACT 8, SECTION 16, BLOCK 80, TOWNSHIP 1, TEXAS & PACIFIC RAILWAY COMPANY SURVEYS, CITY OF EL PASO, EL PASO COUNTY, TEXAS, AND REQUESTING THE CITY COUNCIL AUTHORIZE THE CITY MANAGER TO EXECUTE A SPECIAL WARRANTY DEED AND ANY NECESSARY DOCUMENTS TO CLOSE THE SALE; SAID LAND BEING LOCATED IN NORTHEAST EL PASO NEAR DYER AND LYNN FIELD; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the El Paso Water Utilities Public Service Board, Trustees ("PSB"), has jurisdiction over certain parcels of land in northeast El Paso; and

WHEREAS, the Public Service Board approved the sale at public bid of approximately 20.0155 acres of land in Northeast El Paso located near Dyer and Lynn Field; and,

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

WHEREAS, the PSB provided approximately seventy bid packets to the public to be opened November 10, 2009 and one bid was received on that date from Jobe Materials, L.P. as the sole bidder which was in excess of the minimum acceptable bid;

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

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

Section 2. That the Public Service Board hereby finds the land the subject of this Resolution to be inexpedient to the needs of the water and wastewater utility system and hereby approves the conveyance of land by bid award of Bid No. 29-09 described as follows:

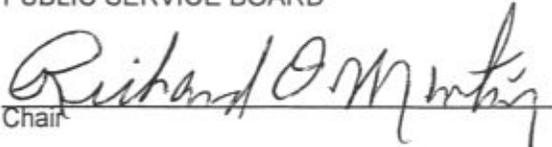
Being a portion of Tract 8, Section 16, Block 80, Township 1, Texas & Pacific Railway Company Surveys, City of El Paso, El Paso County, Texas, being approximately 20.0155 acres of land to Jobe Materials, L.P., the sole and highest bidder for a total sales price of \$302,201.00. This sole bid exceeds the minimum bid price set by the PSB.

Section 3. That the Public Service Board hereby requests the City Council authorize the City Manager to sign a Special Warranty Deed and any other documents necessary to convey the property to the successful highest bidder, Jobe Materials, L.P.

Section 4. That a copy of this Resolution shall be transmitted to the City Attorney's Office with an original going to the City Clerk of the City of El Paso.

PASSED AND APPROVED at a Special Budget Review Meeting of the Public Service Board of the City of El Paso, Texas, this 19th day of November, 2009, at which meeting a quorum was present, held in accordance with the provisions of V.T.C.A. Government Code, Sections 551.001 et. seq.

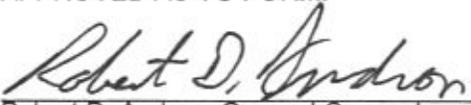
EL PASO WATER UTILITIES
PUBLIC SERVICE BOARD


Chair

ATTEST:


Secretary-Treasurer

APPROVED AS TO FORM:


Robert D. Andron, General Counsel



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

FROM: Robert D. Andron, General Counsel, EPWU 
Jim Shelton, Land Administration, EPWU (915) 594-5511

DATE: December 24, 2009

SUBJECT: Request to place Item on City Council Agenda – Introduction:
Public Hearing

An ordinance authorizing the City Manager of the City of El Paso to sign a Special Warranty Deed conveying approximately 20.0155 acres of land being a portion of Tract 8, Section 16, Block 80, Township 1, Texas and Pacific Railway Company Surveys, City of El Paso, El Paso County, Texas, to Jobe Materials, L.P. Also authorizing the City Manager to sign any and all documents necessary to complete the sale of the land. (District #4) [El Paso Water Utilities Land Administration, Jim Shelton, (915) 594-5511]

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

**Background**

The El Paso Water Utilities Public Service Board provided approximately seventy packets to potential bidders. Bids were received November 10<sup>th</sup>, 2009. There was one bidder. The bid was in excess of the minimum acceptable bid. The legal description and amount of the sole bidder for the parcel is as follows:

**PSB Bid No.29-09**

Being a portion of Tract 8, Section 16, Block 80, Township 1, Texas and Pacific Railway Company Surveys, City of El Paso, El Paso County, Texas, being approximately 20.0155 acres of land, to Jobe Materials, L.P., in the amount of \$302,201.00.

By Resolution dated November 19<sup>th</sup>, 2009, the El Paso Water Utilities Public Service Board (PSB), which has jurisdiction over certain parcels of land described as: being a total of 20.0155 acres of land, more or less, being located in a portion of Tract 8, Section 16, Block 80, Township 1, Texas and Pacific Railway Company Surveys, City of El Paso, El Paso County, Texas; found the land to be inexpedient to the water system; approved the sale of the land to the sole bidder, following a public sealed competitive bidding process, requested the El Paso City Council pass an ordinance authorizing the sale and conveyance of the real property to the sole bidder.

City Manager Joyce Wilson  
Department Memo, December 17<sup>th</sup>, 2009  
Request for Items for City Council Agenda  
**Introduction of Ordinance**  
20 acres in Northeast El Paso  
Page 2

### **ACTION REQUESTED**

That the City Manager be authorized to sign a Special Warranty Deed and any other necessary documents as required for the sale and conveyance as recommended by the El Paso Water Utilities, to Jobe Materials, L.P., the sole bidder, land described totaling approximately 20.0155 acres of land, more or less, being located in a portion of Tract 8, Section 16, Block 80, Township 1, Texas and Pacific Railway Company Surveys, City of El Paso, El Paso County, Texas. Said property is located in Northeast El Paso near Dyer and Lynn Field.

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

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

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

Please advise this office of the placement of this item on the City Council Agenda and my Secretary will contact the City Clerk and make arrangements to have document packets hand-delivered to the City Clerk's Office and email backup documents as noted to those listed below. If there are any questions, please call me at 594-5607 or email [bandron@epwu.org](mailto:bandron@epwu.org) or Jim Shelton at 594-5511 or email [jshelton@epwu.org](mailto:jshelton@epwu.org).

An EPWU representative will plan to attend the Public Hearing for the Ordinance. Thank you for your kind attention to this matter.

#### Attachments

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

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

AN ORDINANCE AUTHORIZING THE CITY MANAGER OF THE CITY OF EL PASO TO SIGN A SPECIAL WARRANTY DEED CONVEYING APPROXIMATELY 20.0155 ACRES OF LAND BEING A PORTION OF TRACT 8, SECTION 16, BLOCK 80, TOWNSHIP 1, TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS, CITY OF EL PASO, EL PASO COUNTY, TEXAS, TO JOBE MATERIALS, L.P. ALSO AUTHORIZING THE CITY MANAGER TO SIGN ANY AND ALL DOCUMENTS NECESSARY TO COMPLETE THE SALE OF THE LAND.

WHEREAS, by Resolution dated November 19<sup>th</sup>, 2009, the El Paso Water Utilities Public Service Board (PSB), found one parcel of land totaling approximately 20.0155 acres, more or less, being a portion of Tract 8, Section 16, Block 80, Township 1, Texas and Pacific Railway Company Surveys, City of El Paso, El Paso County, Texas, and more particularly described in Exhibit "A" attached hereto and made a part hereof for all purposes, to be inexpedient to the water system, and recommended the sale of the parcel of real property; and

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

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

WHEREAS, in its Resolution dated November 19<sup>th</sup>, 2009, the PSB recommended the sale of the identified real property to Jobe Materials, L.P., the sole bidder,

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

That the City Manager or her designee is hereby authorized to execute: (1) the Contract of Sale attached to this Ordinance as **EXHIBIT "B"**; (2) Special Warranty Deed in form and substance approved by the City Attorney or his designee; and (3) any other necessary documents as required for the sale and conveyance of the following described real property to Jobe Materials, L.P., the sole bidder, in accordance with the terms of the attached Contract of Sale and approved by the City Attorney or his designee:

Approximately 20.0155 acres of land, being out of a portion of Tract 8, Section 16, Block 80, Township 1, Texas and Pacific Railway Company Surveys, City of El Paso, El Paso County, Texas, and being more particularly described in **EXHIBIT "A"**.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

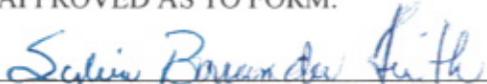
THE CITY OF EL PASO

ATTEST:

\_\_\_\_\_  
John F. Cook, Mayor

\_\_\_\_\_  
Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Sylvia Borunda Firth, Sr. Asst. City Attorney



ROMAN BUSTILLOS, P.E.  
President  
RANDY P. BROCK, P.E.  
Executive Vice President  
SERGIO J. ADAME, P.E.  
Vice President - Engineering  
OSCAR V. PEREZ  
Vice President - Operations  
ISAAC CAMACHO, R.P.L.S.  
Survey Manager  
TBPE Reg. No. F-737

## METES AND BOUNDS DESCRIPTION

*A 20.0155 acre parcel situate within the corporate limits of the City of El Paso, El Paso County, Texas as Tract 8, Section 16, Block 80, Township 1, Texas and Pacific Railway Surveys and being more particularly described by metes and bounds as follows.*

*COMMENCING* for reference at a ½ inch rebar found for the corner common to Sections 15, 16, 21 and 22, Block 80, Township 1, Texas and Pacific Railway Company Surveys; *WHENCE*, a 1 ½ inch diameter pipe found for the corner common to Sections 9, 10, 15 and 16, Block 80, Township 1, Texas and Pacific Railway Company Surveys bears North 01°04'00" West (North 01°03'58" West, measured), a distance of 5,277.55 feet (5,276.67 feet ~ measured); *THENCE*, following the line common to said Sections 16 and 21, South 89°51'30" West, a distance of 1,981.17 feet to a ½ inch rebar with surveyors cap stamped "TX5337" set for the southeast corner and the *POINT OF BEGINNING* of the parcel herein described;

*THENCE*, continuing along the line common to said Sections 16 and 21, South 89°51'30" West (South 89°51'51" West measured), a distance of 660.39 feet to a 2 inch diameter pipe for the southwest corner of the parcel herein described, identical to the southeast corner of Tract 5, Section 16, Block 80, Township 1, Texas and Pacific Railway Company Surveys;

*THENCE*, leaving the line common to said Sections 16 and 21 and following the easterly boundary line of said Tract 5, North 01°03'00" West (North 01°01'53" West measured), a distance of 1,321.14 feet (1,321.48 feet measured) to a 1 ½ inch diameter pipe for the northwest corner of the parcel herein described, identical to the southwest corner of Tract 4B, Section 16, Block 80, Township 1, Texas and Pacific Railway Company Surveys;

*THENCE*, leaving the east boundary line of said Tract 5 and following the south boundary line of said Tract 4B and continuing along the south boundary line of tract 4A, Section 16, Block 80, Township 1, Texas and Pacific Railway Company Surveys, North 89°53'30" East (North 89°55'58" East measured), a distance of 660.30 feet (659.73 feet measured) to a ½ inch rebar found on the west boundary line of BMC West Subdivision for the northeast corner of this parcel herein described, identical to the southeast corner of said Tract 4A;

**THENCE**, leaving the south boundary line of said Tract 4A and following the west boundary line of said BMC West Subdivision, South 01°03'15" East (South 01°03'15" East measured), a distance of 1,320.76 feet (1,320.70 feet measured) to the **TRUE POINT OF BEGINNING**.

*Said Parcel contains 20.0155 acres (871,878.9 square feet) more or less.*

*Isaac Camacho*

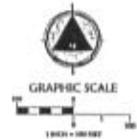
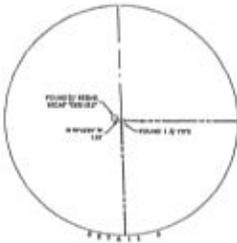
Isaac Camacho

TX R.P.L.S. 5337

Date: May 21, 2009

Document File 05896-040.doc



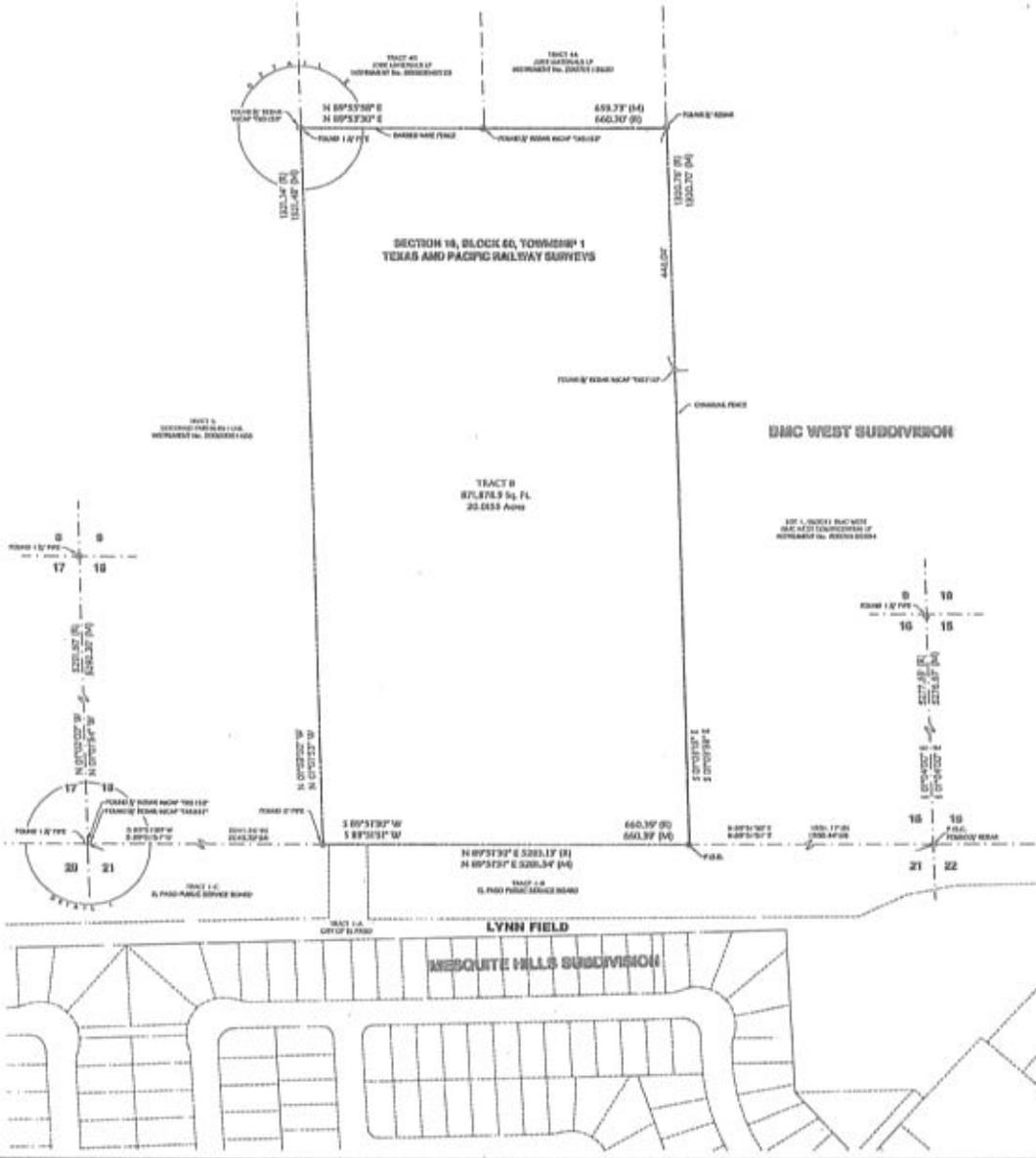


**LEGEND**

PROPERTY BOUNDARY ————

ADJACENT LINE - - - - -

TRACT BOUNDARY - - - - -



**SUPPLEMENTAL NOTES**

1. PORTION OF SECTION 18 OF THE HARRIS COUNTY SURVEY BOUNDARY LINE OF SECTION 18, BLOCK 66, TOWNSHIP 1, TEXAS AND PACIFIC RAILWAY COMPANY SURVEY CITY OF EL PASO, EL PASO COUNTY, TEXAS, AND BARRACKS BARRACKS TRACT C, PEARL HARBOR DEFENSE BARRACKS, TEXAS.
2. ADJACENT PROPERTY IS LOCATED IN BLOCK 67, PARTS OF SECTIONS 18, 19, 20 AND 21, TOWNSHIP 1, TEXAS AND PACIFIC RAILWAY COMPANY SURVEY CITY OF EL PASO, EL PASO COUNTY, TEXAS.
3. ADJACENT PROPERTY IS LOCATED IN BLOCK 66, PARTS OF SECTIONS 18, 19, 20 AND 21, TOWNSHIP 1, TEXAS AND PACIFIC RAILWAY COMPANY SURVEY CITY OF EL PASO, EL PASO COUNTY, TEXAS.

**REFERENCE DOCUMENTS**

1. MAP OF SECTION 18, BLOCK 66, TOWNSHIP 1, TEXAS AND PACIFIC RAILWAY SURVEYS.
2. FIELD TRIANGULATION OF T. 1, S. 11, E. 10, 1898 AND 1902, BY THE SURVEYING AND ENGINEERING DEPARTMENT OF THE CITY OF EL PASO.

**CERTIFICATION**

I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE ORIGINAL RECORD AS FILED IN THE PUBLIC RECORDS OF THE COUNTY OF EL PASO, TEXAS.

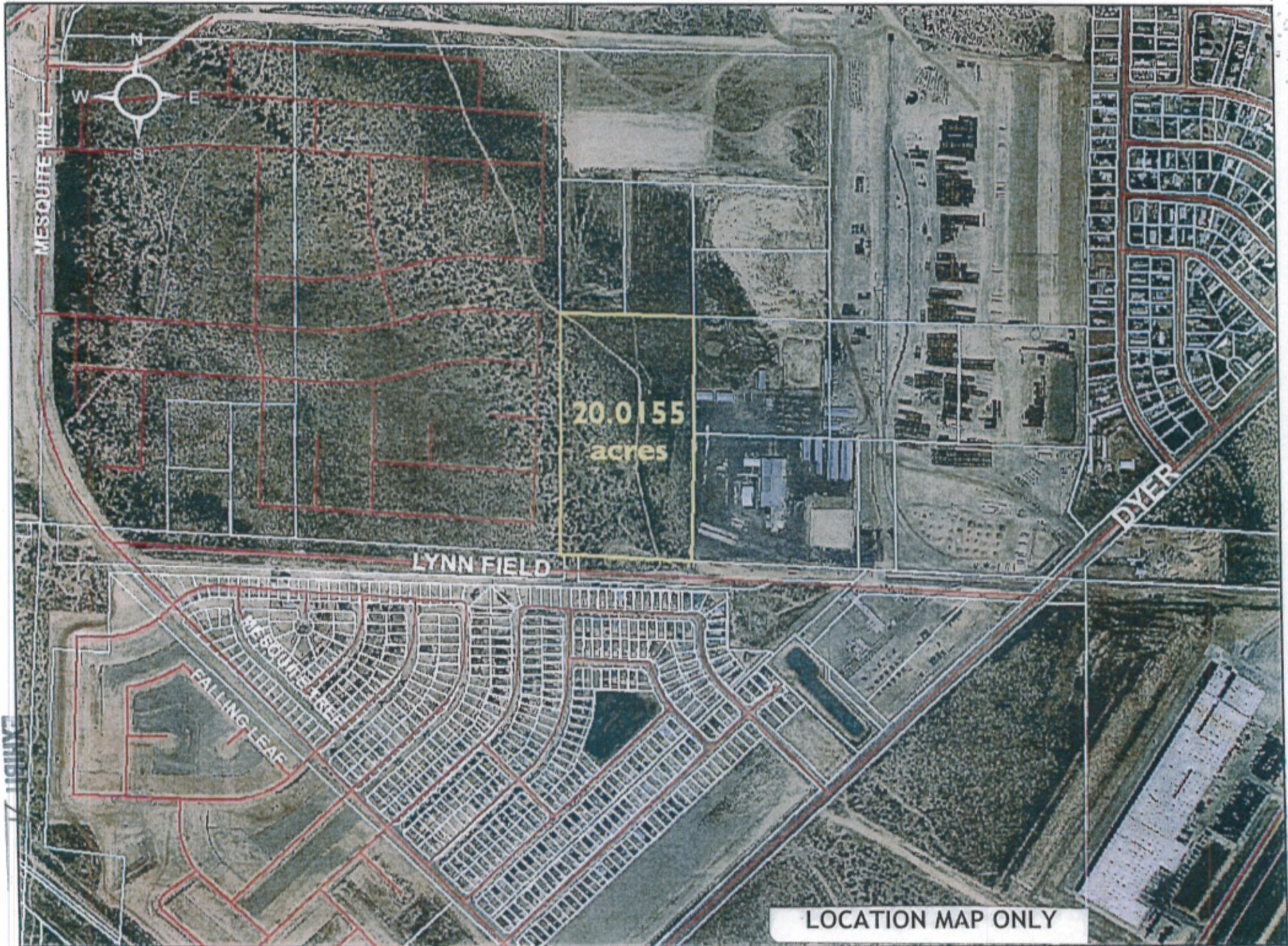
*Van Combs* 05/10/09  
 COUNTY CLERK

|                                        |          |                                                                    |  |
|----------------------------------------|----------|--------------------------------------------------------------------|--|
|                                        |          | <b>BOUNDARY AND IMPROVEMENT SURVEY</b>                             |  |
| BROCK & BUSTILLOS INC.                 |          | SECTION 18, BLOCK 66, TOWNSHIP 1 TEXAS AND PACIFIC RAILWAY SURVEYS |  |
| CITY OF EL PASO, EL PASO COUNTY, TEXAS |          | SHEET 1 OF 1                                                       |  |
| DATE                                   | 05/10/09 | BY                                                                 |  |
| BY                                     |          | DATE                                                               |  |

**BROCK & BUSTILLOS INC.**  
 417 FORTWORTH AVENUE  
 EL PASO, TEXAS 79902  
 WWW.BROCKANDBUSTILLOS.COM  
 PH: (915) 542-4200  
 FAX: (915) 542-2827

**EXHIBIT A**

**LOCATION MAP ONLY**



20.0155  
acres

LYNN FIELD

DYER

FALLING LEAF

MESQUITE HILL

LOCATION MAP ONLY

EXHIBIT 7

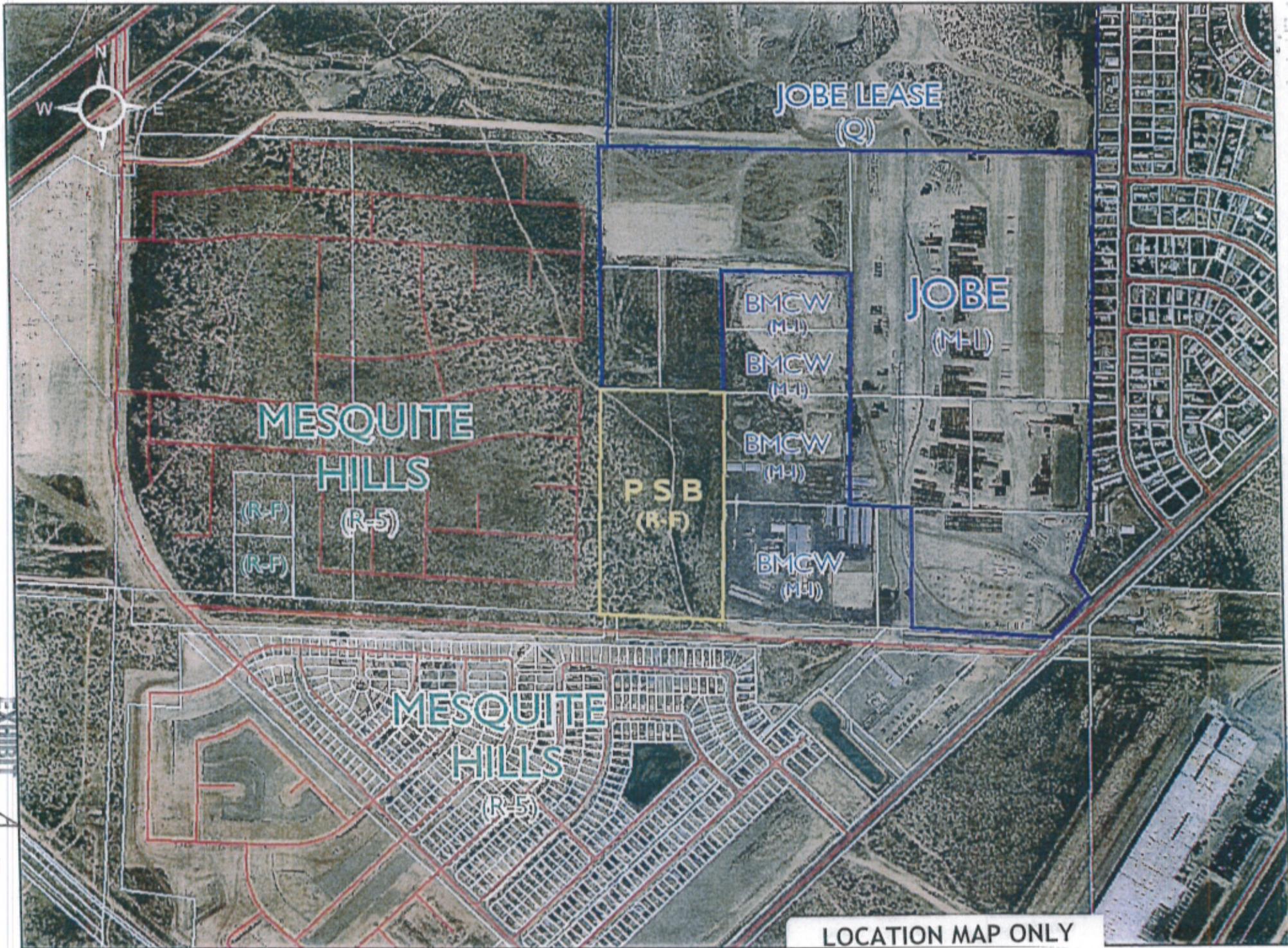


EXHIBIT A

LOCATION MAP ONLY

STATE OF TEXAS       §  
                                          §  
COUNTY OF EL PASO  §

CONTRACT OF SALE

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, 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" and, Jobe Materials, L.P., 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 PSB 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 20.0155 acre parcel situated within the corporate limits of the City of El Paso, El Paso County, Texas as Tract 8, Section 16, Block 80, Township 1, Texas and Pacific Railway Surveys 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 **Easements.** Easements for water and wastewater lines serving the subject property, if not located in public streets, shall be provided at no cost to the City or Public Service Board.
- 1.4 **Groundwater.** All ground water, water rights, or rights to surface water shall be reserved to the Public Service Board and will be subject to all easements, restrictions, reservations, rights of way, dedications and other encumbrances of record or apparent

**EXHIBIT**     B

upon the property. The Buyer shall not have the right to drill a well and produce therefrom any quantity of groundwater.

2. **Amount of Payment of Purchase Price.** The purchase price for the property shall be THREE HUNDRED TWO THOUSAND TWO HUNDRED ONE DOLLARS (\$302,201.00) plus buyer will pay all closing cost including cost of survey, advertising 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.
  - 2.2 **Earnest Money.** The PSB acknowledges the receipt of earnest money paid to the PSB by the Buyer in the amount of FIFTEEN THOUSAND ONE HUNDRED TEN AND 5/100 DOLLARS (\$15,110.05) which will be credited to the purchase price at the time of 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 execution hereof by both Seller and Buyer, 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 Sierra Title Company, 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,

EXHIBIT B

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 PSB'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 AS IS, WHERE IS, AND WITH ALL FAULTS, AND EXCEPT AS THE WARRANTY OF TITLE, 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 AND THE CONDITION; (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. 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 PROBLEMS, EVEN IF ARISING FROM EVENTS BEFORE CLOSING, WILL BE THE SOLE RESPONSIBILITY OF THE BUYER, REGARDLESS OF WHETHER THE ENVIRONMENTAL PROBLEMS WERE KNOWN OR UNKNOWN AT CLOSING. ONCE CLOSING HAS OCCURRED, THE BUYER SHALL INDEMNIFY, HOLD HARMLESS, AND RELEASE THE PSB FROM LIABILITY FOR ANY LATENT DEFECTS AND 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. THE BUYER INDEMNIFIES, HOLDS HARMLESS, AND RELEASES THE PSB FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF THEORIES OF PRODUCTS LIABILITY AND STRICT LIABILITY, OR UNDER NEW LAWS OR CHANGES TO EXISTING LAWS ENACTED AFTER THE EFFECTIVE DATE THAT WOULD OTHERWISE IMPOSE ON THE PSB IN THIS TYPE OF TRANSACTION NEW LIABILITIES FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY.
- 4.11 **Buyer's use.** The Buyer represents to the PSB that it intends to use the property in accordance with the conditions in Exhibit "B" (Bid Document #29-09), attached hereto and made a part hereof for all purposes.
- 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 Sierra Title Company located at 4849 North Mesa Street, Suite 100, El Paso, Texas 79912, on or before the later of (i) thirty (30) days from the Effective Date; or (ii) thirty (30) days after the approval of an ordinance by the City Council, 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) All other closing cost including survey, advertising and appraisals shall be paid by 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, easements, assessments, and restrictions, except for (i) ad valorem taxes for the year of Closing, if any, which shall be prorated to the date of Closing, and assumed by the Buyer upon 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 Buyer has approved pursuant to Paragraph 4 above.

5.4 **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 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 Buyer may seek specific performance of this agreement.

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: Edmund G. Archuleta, P.E.  
President/CEO  
El Paso Water Utilities Public Service Board  
1154 Hawkins Blvd.  
El Paso, Texas 79925

Buyer: Stanley Jobe  
Member of Jobeco Materials L.L.C.,  
General Partner of Jobe Materials, L.P.  
1150 Southview Dr.  
El Paso, Texas 79928

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 Buyer 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.

- 8.6. **Attorney's Fees.** If either Party hereto shall file a legal action to enforce its rights hereunder, including compelling specific performance hereof, then the prevailing party in such action shall be entitled to recover its reasonable attorney's fees and cost incurred with regard to such action.
- 8.7 **Effective Date.** As used herein, "Effective Date" shall mean the date of the approval of City Council of an Ordinance authorizing the sale of the Property.

The above instrument, together with all conditions thereto is hereby executed by the PSB and City this \_\_\_\_ day of \_\_\_\_\_, 2009.

**SELLER:**

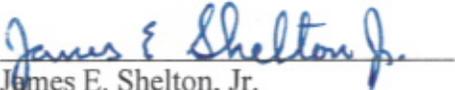
EL PASO WATER UTILITIES  
PUBLIC SERVICE BOARD

By   
Edmund G. Archuleta  
President /CEO

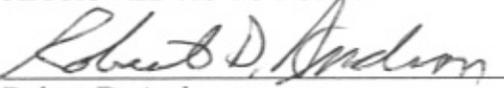
CITY OF EL PASO  
A Municipal Corporation

By \_\_\_\_\_  
Joyce A. Wilson, City Manager

APPROVED AS TO CONTENT:

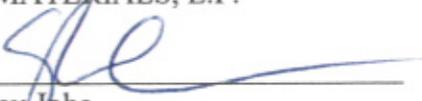
  
James E. Shelton, Jr.  
Utility Land & Water Rights Manager

APPROVED AS TO FORM:

  
Robert D. Andron  
General Counsel for PSB

**BUYER:**

JOBE MATERIALS, L.P.

By   
Stanley Jobe  
Member of Jobeco Materials L.L.C.,  
General Partner of Jobe Materials, L.P.

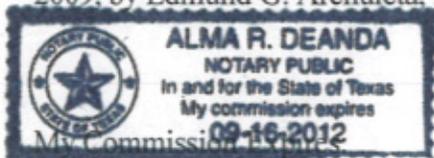
*( Acknowledgements continue on next page)*

**EXHIBIT** B

ACKNOWLEDGMENTS

STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

This instrument was acknowledged before me on the 14<sup>th</sup> day of December, 2009, by Edmund G. Archuleta, President & CEO of El Paso Water Utilities Public Service Board.



Alma R. De Anda  
Notary Public, State of Texas

Sept. 16, 2012

STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

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

My Commission Expires:

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

STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

This instrument was acknowledged before me on the 15<sup>th</sup> day of December, 2009, by Stanley Jobe, Member of Jobeco Materials L.L.C., General Partner of Jobe Materials, L.P.

My Commission Expires:

Veronica Rosario  
Notary Public, State of Texas





**BROCK & BUSTILLOS INC.**  
CONSULTING CIVIL ENGINEERS      LAND SURVEYORS

ROMAN BUSTILLOS, P.E.  
President  
RANDY P. BROCK, P.E.  
Executive Vice President  
SERGIO J. ADAME, P.E.  
Vice President - Engineering  
OSCAR V. PEREZ  
Vice President - Operations  
ISAAC CAMACHO, R.P.L.S.  
Survey Manager  
TBPE Reg. No. F-737

**METES AND BOUNDS DESCRIPTION**

*A 20.0155 acre parcel situate within the corporate limits of the City of El Paso, El Paso County, Texas as Tract 8, Section 16, Block 80, Township 1, Texas and Pacific Railway Surveys and being more particularly described by metes and bounds as follows.*

**COMMENCING** for reference at a ½ inch rebar found for the corner common to Sections 15, 16, 21 and 22, Block 80, Township 1, Texas and Pacific Railway Company Surveys; **WHENCE**, a 1 ½ inch diameter pipe found for the corner common to Sections 9, 10, 15 and 16, Block 80, Township 1, Texas and Pacific Railway Company Surveys bears North 01°04'00" West (North 01°03'58" West, measured), a distance of 5,277.55 feet (5,276.67 feet ~ measured); **THENCE**, following the line common to said Sections 16 and 21, South 89°51'30" West, a distance of 1,981.17 feet to a ½ inch rebar with surveyors cap stamped "TX5337" set for the southeast corner and the **POINT OF BEGINNING** of the parcel herein described;

**THENCE**, continuing along the line common to said Sections 16 and 21, South 89°51'30" West (South 89°51'51" West measured), a distance of 660.39 feet to a 2 inch diameter pipe for the southwest corner of the parcel herein described, identical to the southeast corner of Tract 5, Section 16, Block 80, Township 1, Texas and Pacific Railway Company Surveys;

**THENCE**, leaving the line common to said Sections 16 and 21 and following the easterly boundary line of said Tract 5, North 01°03'00" West (North 01°01'53" West measured), a distance of 1,321.14 feet (1,321.48 feet measured) to a 1 ½ inch diameter pipe for the northwest corner of the parcel herein described, identical to the southwest corner of Tract 4B, Section 16, Block 80, Township 1, Texas and Pacific Railway Company Surveys;

**THENCE**, leaving the east boundary line of said Tract 5 and following the south boundary line of said Tract 4B and continuing along the south boundary line of tract 4A, Section 16, Block 80, Township 1, Texas and Pacific Railway Company Surveys, North 89°53'30" East (North 89°55'58" East measured), a distance of 660.30 feet (659.73 feet measured) to a ½ inch rebar found on the west boundary line of BMC West Subdivision for the northeast corner of this parcel herein described, identical to the southeast corner of said Tract 4A;

**THENCE**, leaving the south boundary line of said Tract 4A and following the west boundary line of said BMC West Subdivision, South 01°03'15" East (South 01°03'15" East measured), a distance of 1,320.76 feet (1,320.70 feet measured) to the **TRUE POINT OF BEGINNING**.

*Said Parcel contains 20.0155 acres (871,878.9 square feet) more or less.*



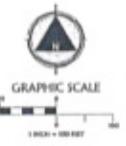
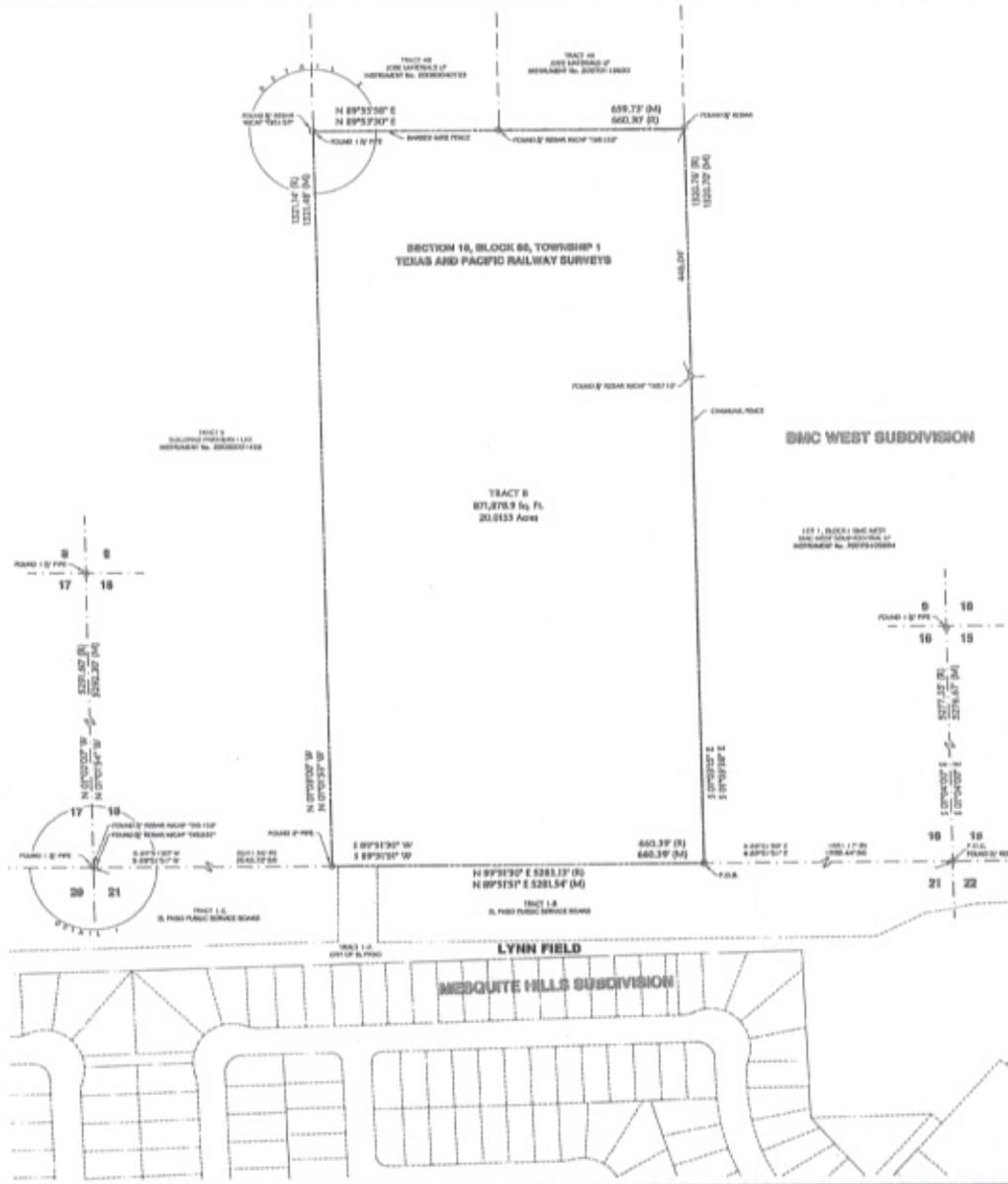
Isaac Camacho

TX R.P.L.S. 5337

Date: May 21, 2009

Document File 05896-040.doc





**LEGEND**  
 PROJECT BOUNDARY: ————  
 SECTION LINE: - - - - -  
 TRACT BOUNDARY: - · - · -

**SUPPLEMENTAL NOTES**

1. PARTS OF BOUNDS IN THIS INSTRUMENT RELY UPON DEPARTMENT OF SECTION 10, BLOCK 60, TOWNSHIP 1, TEXAS AND PACIFIC RAILWAY COMPANY SURVEY CITY OF EL PASO, EL PASO COUNTY, TEXAS, AND SECTION 10.
2. SUBJECT PROPERTY IS LOCATED IN ZONE OF ADJACENT LAMAR, RECORDING AS DETAIL ON CITY OF EL PASO PLATS AND SERVICE PLAT MAP FILE NO. 4021-40000, DATED JANUARY 24, 1991.
3. SUBJECT PROPERTY IS ZONED R-P (RESIDENTIAL) AND SHALL BE SUBJECT TO THE CITY OF EL PASO PLATS AND SERVICE PLAT MAP FILE NO. 4021-40000, DATED JANUARY 24, 1991.

**REFERENCE DOCUMENTS**

1. CITY OF EL PASO, TEXAS, PLATS AND SERVICE PLAT MAP FILE NO. 4021-40000, DATED JANUARY 24, 1991.
2. THE DEPARTMENT OF SECTION 10, BLOCK 60, TOWNSHIP 1, TEXAS AND PACIFIC RAILWAY COMPANY SURVEY CITY OF EL PASO.

**CERTIFICATION**

I, **Yusef Canales**, Surveyor, do hereby certify that this instrument was prepared by me or under my direction and supervision and that I am a duly licensed Surveyor in the State of Texas. My commission expires on **05/24/09**.

|                |               |                                                                                                                                                          |           |
|----------------|---------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
|                |               | <b>BOUNDARY AND IMPROVEMENT SURVEY</b><br>TRACT B, BLOCK 60, TOWNSHIP 1, TEXAS AND PACIFIC RAILWAY COMPANY SURVEY CITY OF EL PASO, EL PASO COUNTY, TEXAS |           |
| DATE OF SURVEY | 05/24/09      | SCALE                                                                                                                                                    | 1" = 500' |
| BY             | Yusef Canales | DATE                                                                                                                                                     | 05/24/09  |
| FOR            |               | BY                                                                                                                                                       |           |
| FILE NO.       |               | DATE                                                                                                                                                     |           |
| PROJECT NO.    |               | DATE                                                                                                                                                     |           |
| DATE           |               | DATE                                                                                                                                                     |           |
| DATE           |               | DATE                                                                                                                                                     |           |

**BROCK & BUSTILLOS INC.**  
 CONSULTING CIVIL ENGINEERS AND SURVEYORS  
 417 FRENCH CANYON  
 EL PASO, TEXAS 79906  
 WWW.BROCKANDBUSTILLOS.COM  
 (915) 762-4444  
 (915) 762-4444

EXHIBIT 'A'  
PAGE 3 OF 4

EXHIBIT 'B'

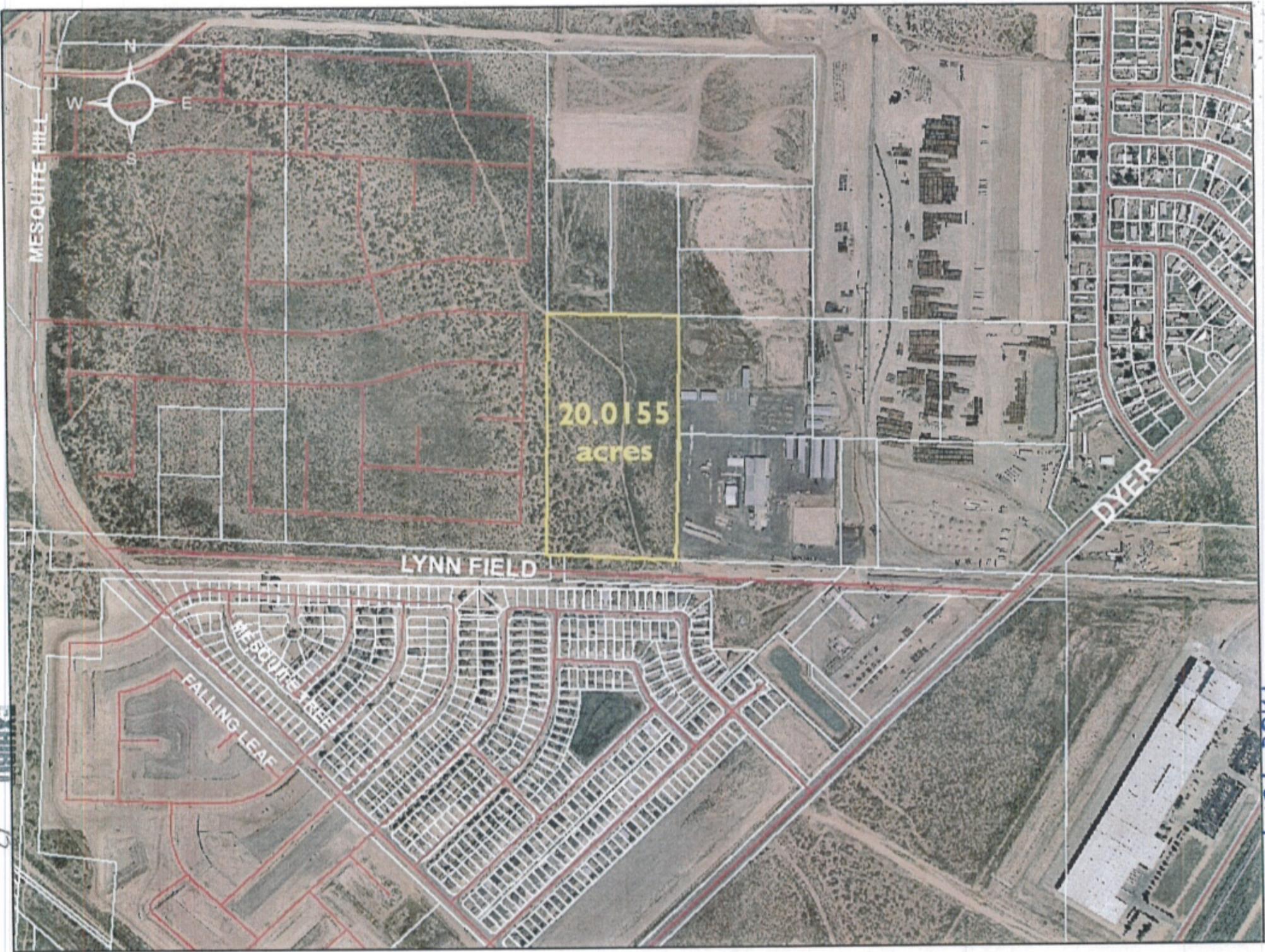


EXHIBIT 5

PART 1011 D  
PAGE 4 OF 4

EL PASO WATER UTILITIES  
PUBLIC SERVICE BOARD

PORTION OF TRACT 8, SECTION 16, BLOCK 80, TOWNSHIP 1,  
TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS  
CITY OF EL PASO, EL PASO COUNTY, TEXAS

BID NUMBER:  
29-09

TO BE OPENED:  
TUESDAY, NOVEMBER 10, 2009  
11:00 A.M.

BIDDER'S PROPOSAL

TO: El Paso Water Utilities - Public Service Board  
P.O. Box 511  
El Paso, Texas 79961-0001

SUBJECT: Sale of Real Estate, Commercial and Industrial Use Restriction

We, the undersigned, offer to purchase the following described real estate in accordance with the enclosed General Conditions and Instructions to Bidders.

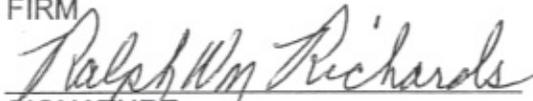
| <u>DESCRIPTION OF LAND</u>                                                                                                                                                                      | <u>TOTAL AMOUNT BID</u> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| CONSISTING OF A PORTION OF TRACT 8, SECTION 16,<br>BLOCK 80, TOWNSHIP 1, TEXAS AND PACIFIC RAILWAY<br>COMPANY SURVEYS, CITY OF EL PASO, EL PASO COUNTY,<br>TEXAS, APPROXIMATELY (20.0155 ACRES) | \$ <u>302,201.00</u>    |

The attached metes and bounds description describes the gross acreage and location of each parcel. All bids must comply with the conditions set forth herein.

The **MINIMUM ACCEPTABLE BID** for land is **\$300,000.00**. In addition, the successful bidder must pay all proportional costs of title insurance, advertising, appraisals, and surveys at closing.

Jobe Materials, L.P.

FIRM

  
SIGNATURE

Ralph Wm. Richards  
PRINTED NAME

MAILING ADDRESS

1150 Southview Dr., El Paso, TX 79928

TELEPHONE NUMBER / FAX

(915) 298-9900 / (915) 298-9992

CITY OF EL PASO  
EL PASO WATER UTILITIES  
PUBLIC SERVICE BOARD

SALE OF REAL ESTATE

GENERAL CONDITIONS AND  
INSTRUCTIONS TO BIDDERS

BID NUMBER  
29-09

Sealed bids addressed to Edmund G. Archuleta, P.E., President/CEO, El Paso Water Utilities for the sale of property described as a portion of Tract 8, Section 16, Block 80, Township 1, Texas and Pacific Railway Company Surveys, City of El Paso, El Paso County, Texas, totaling approximately 20.0155 acres of real estate, as shown on the attached Exhibit "A", will be received in the office of the El Paso Water Utilities, located at 1154 Hawkins Boulevard, El Paso, Texas 79925 until 11:00 A.M., local time, Tuesday, November 10, 2009, publicly opened and read aloud in the 1st floor conference room of the El Paso Water Utilities.

BID PROCEDURES

1. Bids must be made on the attached Bidder's Proposal. An original copy must be received in the El Paso Water Utilities' Purchasing Department by 11:00 A.M., local time, Tuesday, November 10, 2009, by either mailing to El Paso Water Utilities, P.O. Box 511, El Paso, Texas 79961-0001 or by hand delivery to the purchasing agent on the 1<sup>st</sup> floor of the El Paso Water Utilities' Administration building at 1154 Hawkins Boulevard, El Paso, Texas. The Bidder is responsible for delivery of the bid by the above listed time. All bids shall be in a sealed envelope that is clearly marked with the Bid Number on the lower left hand corner of the outside of the envelope.
2. The bid will be awarded to the bidder submitting the highest bid that equals or exceeds the minimum acceptable price. All bids must comply with the conditions set forth herein.
3. Any bid received after the above listed time for receiving bids will be returned unopened.
4. Bidders are invited to be present at the opening of bids.
5. If the bid is made by an agent for a proposed purchaser, the signature of such agent shall be affixed to the Bidder's Proposal. In addition, the bid shall identify the proposed purchaser in whose name the title will be taken. **No agent or broker commission will be the responsibility or will be paid by the El Paso Water Utilities - Public Service Board.**

6. The El Paso Water Utilities - Public Service Board reserves the right to reject any or all bids or to award a contract either in whole or in part and to waive any minor irregularities, if it is deemed to be in the best interest of the El Paso Water Utilities - Public Service Board.
7. Each bidder **must include** a cashier's check, certified check or money order in the amount of five percent (5%) of the bid total as earnest money to insure that the successful bidder will complete the purchase of the land. Such bid security must identify the bidder in whose name it is submitted. If the successful bidder fails to complete the purchase, said earnest money will be forfeited, and the El Paso Water Utilities - Public Service Board reserves the right to make the sale to the next highest responsible bidder or to reject all bids.
8. No bid may be withdrawn after the deadline for receipt of bids. The El Paso Water Utilities will retain the earnest money of the successful bidder and the earnest money will be applied to the purchase price of the successful bidder's land.
9. No oral, telephone, internet or telegraph bids will be accepted.
10. After award of the bid, all unsuccessful bidders will be notified in writing and their earnest monies will be refunded within 30 days of notice.
11. The **MINIMUM ACCEPTABLE BID** for the land is **\$300,000.00**. In addition, the successful bidder must pay all costs of title insurance, advertising, appraisals, and surveys at closing.
12. The property must be purchased in cash at the time of closing. All closing costs, including title insurance, must be paid by the successful bidder.
13. Within ten (10) days after receipt of written notification of acceptance of this bid, the successful bidder shall provide the El Paso Water Utilities - Public Service Board with all information necessary to close the sale and prepare the deed and other necessary papers. Unless good cause exists for further delay, it is contemplated that the sale will be closed within thirty days from the date of approval by the City Council of the City of El Paso of an ordinance authorizing the sale. The earnest money will be deposited in an interest bearing account after the date of award by the El Paso Water Utilities - Public Service Board with interest accruing to the El Paso Water Utilities - Public Service Board.
14. Conveyance of the property to the successful bidder shall be contingent upon passage of an ordinance by the City Council of the City of El Paso authorizing the Mayor or City Manager to execute a deed or deeds or other documents as needed.
15. The successful bidder shall execute a real estate sales contract acceptable to the General Counsel of the Public Service Board within 15 days of award of the bid by the Public Service Board, which includes the conditions and instructions to bidders.

16. The conveyance of the subject real estate will be by Special Warranty Deed and will be subject to all easements, restrictions, reservations, rights of way, dedications, and other encumbrances, of record or apparent upon the property. The Special Warranty Deed will also contain a covenant running with the land to restrict the use of the property to commercial and industrial uses only. Residential uses, including single family and multi-family, will be prohibited. Enforcement of the prohibition will be through a reversionary clause running in favor of the Grantor.
17. Questions concerning the bid package or bid procedure should be directed to the Purchasing Department of the El Paso Water Utilities - Public Service Board at 915/594-5625.
18. Technical questions concerning the bid package should be directed to the Utility Land and Water Rights Manager of the Land Management Section of the El Paso Water Utilities – Public Service Board at 915/594-5511.

#### GENERAL DEVELOPMENT REQUIREMENTS

19. Any conveyance of this land will be subject to a restrictive covenant to the effect that the successful bidder, its successors or assigns will not, subject to existing law, discard, place or store upon such land, any radioactive material or other hazardous waste material or animal waste which would contaminate or otherwise damage the ground water supply sources of the City of El Paso.
20. This property is inside the city limits of El Paso. The design, location and construction of improvements shall be per City of El Paso Code requirements. A subdivision plat and a drainage plan are required for all property and shall be approved by the City of El Paso before the issuance of any building permits within such property.
21. If the property is rezoned to an industrial type zoning, it shall be subject to the following conditions:
  - a. That the successful bidder be required to construct an eight-foot high masonry wall abutting any residential use;
  - b. That the successful bidder be required to install a twenty-five foot wide landscape buffer to consist of evergreen trees of at least three inch caliper placed at fifteen feet on center immediately adjacent to the required screening wall and along the entire length of the property line abutting any residential use. This shall be in addition to the landscaping requirements of the El Paso City Code and shall be irrigated per Title 18 of the El Paso City Code;
  - c. That a one hundred fifty foot (150') wide setback be required and measured from the entire length of the property line abutting any residential use. No structure or building of any type shall be allowed within this setback. However, ponding/drainage and the landscape buffer may be included within this setback area;

- d. That storage of materials, equipment, or supplies shall be prohibited within the first one hundred feet (100') of the setback area.
  - e. Re-zoning the property for uses other than those allowed in the current zoning category is the sole responsibility of the successful bidder after the transfer of title. Neither the City of El Paso, the Public Service or their agents or employees or have made any representations regarding future land uses and zoning. The development standards contained in paragraph 21 above have been provided to allow for disclosure of minimum requirements and shall in no way be considered exhaustive. Future zoning applications are subject to full review of City of El Paso staff, the City Plan Commission and the discretion and final approval of City Council.
22. The successful bidder accepts the responsibility for conducting its own archeological and environmental surveys of the property and contacting the Texas Historical Commission (THC) for any potential archeological information pertaining to the site. Mitigation of any conditions on the property, including archeological sites or, without limitations, adverse environmental conditions, shall be at the expense of the successful bidder who shall take the property subject to all existing conditions. The successful bidder 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.
  23. The successful bidder agrees that he or she has examined the property and accepts the land "AS IS" including but not limited to the present zoning and surface conditions.

#### WATER AND SANITARY SEWER SERVICE REQUIREMENTS

24. All ground water, water rights, or rights to surface water shall be reserved to the El Paso Water Utilities -Public Service Board of the City of El Paso. The successful bidder shall not have the right to drill a well and produce therefrom any quantity of groundwater.
25. Water, and sanitary sewerage service will be provided in accordance with the most current Public Service Board Rules and Regulations of the El Paso Water Utilities at the time of application for service to the Developer Services Section of the El Paso Water Utilities.
26. The successful bidder shall be responsible for the costs of any necessary on-site & off-site extensions, relocations, replacements or adjustments of water, sanitary sewer and appurtenances necessitated by and attributable to the proposed subdivision improvement plans.
27. In order to promote water conservation, to ensure optimum water-use efficiency, and to prevent runoff into streets, it is the policy of the Public Service Board to require landscape and irrigation restrictions in the sales of undeveloped land. Development of the property will be governed by the El Paso Municipal Code Title 15 (Public Services), Chapter 12 (Water and Sewer System) and Chapter 13 (Water Conservation), including no more than 50% turf in landscapable area.

28. The successful bidder shall grant, at no cost, easements for water, and sewer facilities to the El Paso Water Utilities, City of El Paso, necessary to serve the parcel as shown on the attached Exhibit "A" upon request by El Paso Water Utilities.
29. The current water pressure in the area is between 35 to 40 pounds per square inch (psi) and is recommended for low water pressure used only until additional infrastructure is constructed to support higher water pressure uses. Future development adjacent to this parcel may further reduce the pressure.



**BROCK & BUSTILLOS INC.**  
CONSULTING CIVIL ENGINEERS LAND SURVEYORS

ROMAN BUSTILLOS, P.E.  
President  
RANDY P. BROCK, P.E.  
Executive Vice President  
SERGIO J. ADAME, P.E.  
Vice President - Engineering  
OSCAR V. PEREZ  
Vice President - Operations  
ISAAC CAMACHO, R.P.L.S.  
Survey Manager  
TBPE Reg. No. F-757

### METES AND BOUNDS DESCRIPTION

*A 20.0155 acre parcel situate within the corporate limits of the City of El Paso, El Paso County, Texas as Tract 8, Section 16, Block 80, Township 1, Texas and Pacific Railway Surveys and being more particularly described by metes and bounds as follows.*

**COMMENCING** for reference at a ½ inch rebar found for the corner common to Sections 15, 16, 21 and 22, Block 80, Township 1, Texas and Pacific Railway Company Surveys; **WHENCE**, a 1 ½ inch diameter pipe found for the corner common to Sections 9, 10, 15 and 16, Block 80, Township 1, Texas and Pacific Railway Company Surveys bears North 01°04'00" West (North 01°03'58" West, measured), a distance of 5,277.55 feet (5,276.67 feet ~ measured); **THENCE**, following the line common to said Sections 16 and 21, South 89°51'30" West, a distance of 1,981.17 feet to a ½ inch rebar with surveyors cap stamped "TX5337" set for the southeast corner and the **POINT OF BEGINNING** of the parcel herein described;

**THENCE**, continuing along the line common to said Sections 16 and 21, South 89°51'30" West (South 89°51'51" West measured), a distance of 660.39 feet to a 2 inch diameter pipe for the southwest corner of the parcel herein described, identical to the southeast corner of Tract 5, Section 16, Block 80, Township 1, Texas and Pacific Railway Company Surveys;

**THENCE**, leaving the line common to said Sections 16 and 21 and following the easterly boundary line of said Tract 5, North 01°03'00" West (North 01°01'53" West measured), a distance of 1,321.14 feet (1,321.48 feet measured) to a 1 ½ inch diameter pipe for the northwest corner of the parcel herein described, identical to the southwest corner of Tract 4B, Section 16, Block 80, Township 1, Texas and Pacific Railway Company Surveys;

**THENCE**, leaving the east boundary line of said Tract 5 and following the south boundary line of said Tract 4B and continuing along the south boundary line of tract 4A, Section 16, Block 80, Township 1, Texas and Pacific Railway Company Surveys, North 89°53'30" East (North 89°55'58" East measured), a distance of 660.30 feet (659.73 feet measured) to a ½ inch rebar found on the west boundary line of BMC West Subdivision for the northeast corner of this parcel herein described, identical to the southeast corner of said Tract 4A;

***THENCE***, leaving the south boundary line of said Tract 4A and following the west boundary line of said BMC West Subdivision, South 01°03'15" East (South 01°03'15" East measured), a distance of 1,320.76 feet (1,320.70 feet measured) to the ***TRUE POINT OF BEGINNING***.

*Said Parcel contains 20.0155 acres (871,878.9 square feet) more or less.*

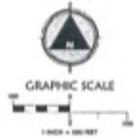
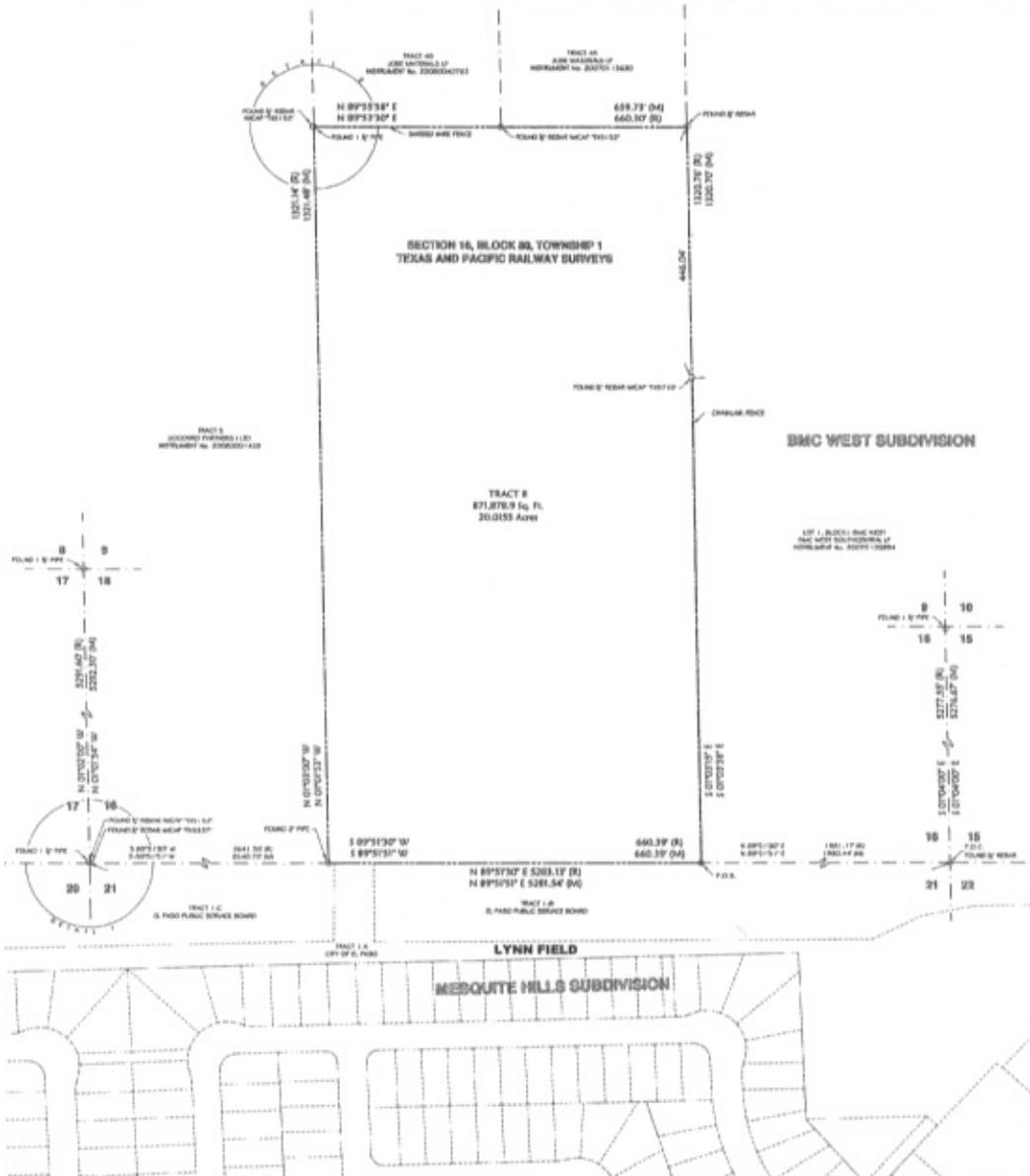
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***Isaac Camacho***

***TX R.P.L.S. 5337***

***Date: May 21, 2009***

***Document File 05896-040.doc***



**LEGEND**  
 PROPERTY BOUNDARY ———  
 SECTION LINE - - - - -  
 TRACT/LOT LINE - - - - -

**SUPPLEMENTAL NOTES**  
 1. BOUND OF SECTION 16, BLOCK 8B, TOWNSHIP 1, RANGE AND PACIFIC RAILWAY SURVEY, COUNTY BLANCKE, CITY OF EL PASO, EL PASO COUNTY, TEXAS, HAS SHOWN HEREON.  
 2. SUBJECT PROPERTY IS LOCATED IN ZONE 17 NORTH PLUMBING AS DEFINED ON CITY OF EL PASO PLUMBING REGULATION MAP T-100-100-10000, DATED JANUARY 10, 1991.  
 3. SUBJECT PROPERTY IS ZONED "R-P" RANCH AND PASTURE AS DEFINED IN EL PASO ZONING ORDINANCE CHAPTER 21C, SECTION 21C.02 FOR ZONE R-P.  
 4. PROPERTY IS NOT SUBJECT TO ANY EASEMENTS OR ENCUMBRANCES.

**REFERENCE DOCUMENTS**  
 1. MAP OF SECTION 16, BLOCK 8B, TOWNSHIP 1, RANGE AND PACIFIC RAILWAY SURVEY, COUNTY BLANCKE, CITY OF EL PASO, EL PASO COUNTY, TEXAS, HAS SHOWN HEREON.  
 2. THE COMPANION OF PL. 1111 (SECTION), EFFECTIVE DATE JANUARY 20, 2008, PREPARED BY LAWRENCE FINE RESOURCE CORPORATION, SANFORD FILE OF EL PASO.

**CERTIFICATION**  
 I HEREBY CERTIFY THAT THIS SURVEY WAS PREPARED BY ME OR UNDER MY DIRECTORSHIP AND SUPERVISION AND THAT I AM A PROFESSIONAL LAND SURVEYOR LICENSED BY THE STATE OF TEXAS.  
 \_\_\_\_\_ 05/21/09  
 NAME: *Yann Comanche* DATE: \_\_\_\_\_  
 TITLE: *Surveyor*

| BOUNDARY AND IMPROVEMENT SURVEY |               |              |                  |
|---------------------------------|---------------|--------------|------------------|
| OWNER: _____                    | DATE: _____   | SCALE: _____ | PROJECT: _____   |
| CITY: _____                     | COUNTY: _____ | STATE: _____ | TRACT/LOT: _____ |
| PREPARED BY: _____              | DATE: _____   | SCALE: _____ | PROJECT: _____   |
| CITY: _____                     | COUNTY: _____ | STATE: _____ | TRACT/LOT: _____ |
| PREPARED BY: _____              | DATE: _____   | SCALE: _____ | PROJECT: _____   |
| CITY: _____                     | COUNTY: _____ | STATE: _____ | TRACT/LOT: _____ |

**BROCK & BUSTILLOS INC.**  
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EXHIBIT B

EXHIBIT B  
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