

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

DEPARTMENT: Financial Services
AGENDA DATE: April 3, 2007
CONTACT PERSON/PHONE: Gonzalo Cedillos, P.E., 541-4074
DISTRICT(S) AFFECTED: 3

SUBJECT:

An Ordinance authorizing the City Manager to sign a Lease Agreement on behalf of the City of El Paso with Chico's Tacos, Inc. to allow the use of a portion of the northwest corner of Washington Park and a 367-square-foot portion adjacent to the alley between Pera Street and Washington Park for a parking and for vehicular and pedestrian traffic.

BACKGROUND / DISCUSSION:

Chico's Tacos has been leasing City park property since 1971. This is a lease renewal with updated rental value.

PRIOR COUNCIL ACTION:

Yes.

AMOUNT AND SOURCE OF FUNDING:

\$185.00 per month revenue.

BOARD / COMMISSION ACTION:

Parks and Recreation Advisory Board has recommended approval of the continued use of the Park parcels for parking and for vehicular and pedestrian traffic.

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

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

DEPARTMENT HEAD:  _____
(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA: _____

CITY MANAGER: _____ **DATE:** _____

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO SIGN A LEASE AGREEMENT ON BEHALF OF THE CITY OF EL PASO WITH CHICO'S TACOS INC. TO ALLOW THE USE OF A PORTION OF THE NORTHWEST CORNER OF WASHINGTON PARK AND A 367 SQUARE FOOT PORTION ADJACENT TO THE ALLEY BETWEEN PERA STREET AND WASHINGTON PARK FOR A PARKING AND FOR VEHICULAR AND PEDESTRIAN TRAFFIC

WHEREAS, pursuant to a License Agreement dated October 16, 1989, Lessee has been using a portion of the Northeast corner of Washington Park, hereinafter referred to as the "Park Parcels", as well as portions of two alleys located within Block 2, Tobin's Washington Park Addition, El Paso County, Texas, for parking and for vehicular and pedestrian traffic in connection with Lessee's restaurant known as Chico's Tacos and located at 4230 Alameda Avenue; and,

WHEREAS, the Parks and Recreation Advisory Board has recommended approval of the continued use of the Park Parcels for parking and for vehicular and pedestrian traffic; and,

WHEREAS, Lessee is also pursuing a special privilege for use of city right of way and alleys; and,

WHEREAS, the City Council finds that the execution of such an Agreement upon the terms and conditions hereinafter set forth would be in the public interest.

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

That the City Manager is hereby authorized to sign, on behalf of the City, a Lease Agreement, as attached, between the City and Chico's Tacos Inc leasing a portion of the northwest corner of Washington Park for a parking and for vehicular and pedestrian traffic for a term not to exceed fifteen years.

ADOPTED this the _____ day of _____, 2007.

THE CITY OF EL PASO

John Cook, Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:

Gonzalo Cedillos, P.E.
Capital Assets Manager

to renew are exercised pursuant to this Agreement, the consideration shall be set out in paragraph 3 below. Each month's fee for the rental of the Park Parcels shall be paid in advance every month beginning on the first day of this Agreement such date noted in the first paragraph of this Agreement. Lessee shall remit to the City payment in full for all fees. Failure to remit such payment will be cause for termination.

3. TERM. The Initial Term of this Agreement shall be for a period of five (5) years, or longer if the following options to renew are approved. In the event Lessee fulfills its obligation under this Agreement, the City agrees in its discretion to renew this Agreement for two (2) additional periods of five (5) years each, the first period being known as the First Renewal Term, and the second period being known as the Second Renewal Term. All terms and conditions of these renewal terms shall be the same as set forth in this Agreement, except that the fee for the rental of the Park Parcels shall be as set out hereafter. Lessee must notify the City in writing stating its desire to exercise their option at least three (3) months prior to the termination of the Initial Term, and if such notice is not given, then this option shall fail and be of no further force and effect, and the Agreement shall expire upon its own terms. The City, at its sole discretion, may waive the notice requirement. Such discretion may be exercised by the City Manager.

In the event the City approves the First Renewal Term, then the rental paid during the First Renewal Term shall be \$210.00 per month. If the option for the First Renewal Term is exercised, then, and in that event only, Lessee shall have the right to exercise the option for the Second Renewal Term, provided it gives notice in writing at least three (3) months prior to the end of the first renewal term, unless such notice requirement is waived by the City. In the event the Lessee exercises the option herein granted and the City approves the option to renew, then the rental paid during the Second Renewal Term shall be \$235.00 per month.

4. IMPROVEMENTS. All improvements, including two (2) pay telephones, existing at the time of the execution of this Agreement, may remain and may be relocated at the Lessee's sole cost, subject to the prior approval of the City which shall not be unreasonably withheld or delayed. Under this Agreement, the Lessee shall maintain the pavement and the striping and cement stops where located on the Park Parcels. Lessee acknowledges that no additional improvements shall be constructed on the Park Parcels without the written consent of the City, except that Lessee shall have the right, but not the obligation, to add landscaping and curbing, subject to the City's prior approval of proposed the improvement plans and inspection of the construction of such improvements. Lessee will remove any improvement, at its sole cost and expense, upon notice from the City if the Lessee's improvements materially interfere with any City operations or activities.

This Agreement in every sense shall be without cost to the City for the development, maintenance or improvement of the Park Parcels, unless the City is specifically made responsible for such development, maintenance or improvement by the terms hereof. It shall be the sole responsibility of the Lessee to keep, maintain, repair and operate the entirety of the Park Parcels and all improvements placed thereon by Lessee at Lessee's sole cost and expense.

5. IMPROPER USE. Lessee shall not conduct any activity on the Park Parcels that violates any federal or state law or regulation or any City ordinance. Lessee shall attempt to prevent disorder and conduct amounting to a nuisance but shall not be required to hire additional personnel to patrol or guard the Park Parcels. The Park Parcels shall not be used for any purpose except as contemplated by this Agreement. In addition, Lessee acknowledges that the use of the Park Parcels is non-exclusive and the City may use or lease the Park Parcels in any manner not in conflict or inconsistent with the purpose of this Agreement. The City shall provide thirty (30) days written notice to Lessee prior to leasing the Park Parcels, or any portion thereof, to any third party. Lessee may repave, restripe and place cement stops on the Park Parcels without prior City approval provided such work is performed in accordance with City Standards for the parking and passage of vehicles and pedestrians; but otherwise no structure of any kind shall be placed thereon, and no obstructions temporary or permanent, shall be placed thereon, which interfere with the right of public utilities, city departments, or the public.

6. INDEMNITY AND LIABILITY INSURANCE. In the use of the Park Parcels, and in the exercise of the rights herein granted, Lessee shall indemnify, defend and hold the City, its officers, agents, servants and employees harmless from any and all claims, losses, damages, causes of action, suits, and liability of every kind, regardless of cause, including all reasonable expenses of litigation, court costs, and reasonable attorney's fees, for injury to or death of any person, or for damage to any property, arising out of or in connection with Lessee's use of the Park Parcels under this Agreement.

The Lessee further agrees to handle and defend at its own expense, on behalf of the City and in the City's name, any claim or litigation in connection with any such injury, death or damage.

Lessee shall promptly, before utilizing the Park Parcels, provide public liability insurance for personal injuries and death growing out of any one accident or other cause in a minimum amount of Two Hundred Fifty Thousand Dollars (\$250,000) per person, and Five Hundred Thousand Dollars (\$500,000) for two or more persons in any one accident, and in addition, shall provide property liability insurance in a minimum sum of One Hundred Thousand Dollars (\$100,000) for property damage growing out of any one accident or other cause. These amounts are not a limitation upon the Lessee's agreement to indemnify and hold the City harmless.

Lessee shall maintain said insurance with a solvent insurance company authorized to do business in Texas. All policies shall name the City, its officers, agents, servants and employees as additional insureds. Lessee shall file a copy of the policy or certificate of insurance with the City Clerk. Such policy or certificate shall provide that the insurance cannot be cancelled or the amount of coverage changed without thirty (30) days prior written notice to the City Clerk by certified mail.

7. TERMINATION. Should at any time the City, for any reason, decide that the Park Parcels are needed for public use by the City or any other public entity, the City Manager may terminate the Agreement upon thirty (30) day's written notice to the Lessee with an opportunity for the Lessee to appear before the City Council, and, at no cost to the City, the City can take possession of the Park Parcels. All rights of Lessee in the Park Parcels shall then be

terminated, and Lessee shall be entitled to no reimbursement or compensation under the Agreement, but the rent may be prorated for the rental period.

Any illegal use of or illegal activity by Lessee on the Park Parcels, or the City's need for the Park Parcels to secure the immediate needs of the public health, safety or welfare, shall be cause for immediate termination of this Agreement. Lessee shall take immediate steps after reasonable notice from the City to prevent any illegal use or illegal activity by patrons of Lessee's facilities. If Lessee fails to take such immediate steps to prevent any illegal use or illegal activity by patrons of Lessee's facilities within 24 hours after reasonable notice, the City Manager may terminate this Agreement and take possession and all rights of Lessee in the Park Parcels shall then terminate.

In addition, if Lessee shall cease to use or occupy the Park Parcels for the purposes herein contemplated for a period of ninety (90) days after written notice by the City, or if Lessee defaults in any of Lessee's obligations under this Agreement and fails to correct such default within thirty (30) days after written notice to do so, the City Manager may terminate this Agreement and take possession, and all rights of Lessee in the Park Parcels shall then terminate. Any waiver by the City of any breach of any of Lessee's obligations shall not be deemed a continuing waiver and shall not prevent the City from exercising any remedy it may have for any succeeding breach of this same or another obligation of Lessee. The grant of this Agreement is subject to the governmental powers of the City.

Upon termination of this Agreement, for whatever reason, any improvements, other than paving, striping, and cement stops which the Lessee may have placed within the Park Parcels, with the written consent of the City, shall be removed by the Lessee without cost to the City, and the Park Parcels shall be restored by the Lessee to a condition satisfactory to the City. In all instances the paving, striping and cement stops shall become the property of the City upon the termination of this Agreement. Upon failure to remove any of said additional improvements within sixty (60) days of expiration or termination, said improvements shall become the property of the City and the Lessee shall pay the City for all expenses related to the removal of the improvements and the restoration of the Park Parcels.

8. LIENS AND ENCUMBRANCES. Lessee shall not give or permit any liens or encumbrances on the Park Parcels, and upon termination of the Agreement, shall peacefully surrender the Park Parcels to the City free of all such liens or encumbrances. Lessee shall defend and indemnify the City against any liability and loss of any type arising from any such lien or encumbrance on the Park Parcels, together with reasonable attorney's fees, costs and expenses incurred by the City negotiating, settling, defending or otherwise protecting against such liens or encumbrance.

9. MISCELLANEOUS.

- a. Maintenance of Park Parcels: Lessee shall be responsible for all maintenance of the Park Parcels, including, but not limited to, the following:

1. Cutting and trimming all vegetation within the Park Parcels as often as necessary, in accordance with Section 9.04.360 of the City Code. It is agreed that at the inception of this Agreement no landscaping exists on the Park Parcels and none is required.
 2. Collection and removal of litter and debris that accumulates on the Park Parcels, on a weekly basis or more as needed, in accordance with 9.04.340 of the City Code.
- b. Right of Entry and Inspection: The City's authorized representative shall have the right to enter upon the Park Parcels at all reasonable times for the purpose of inspecting the Park Parcels.
- c. Laws and Ordinances: Lessee shall comply with all statutes, laws, codes and ordinances applicable to Lessee's use or occupancy of the Park Parcels. In addition, Lessee shall obtain all required permits and inspections and pay the necessary permit fees applicable to Lessee's use or occupancy of the Park Parcels.
- d. Outside Lighting: Outside lighting will not be operated at such hours or with such intensity as to constitute a nuisance to the occupants on other property in the abutting neighborhoods, consistent with applicable provisions of the El Paso City Code. If this provision is violated, the City may require any such lighting to be extinguished, changed or removed at Lessee's expense.
- e. Garbage and Trash: Lessee shall provide for the adequate and proper handling and disposal of all trash, garbage and other refuse caused by its use of the Park Parcels. Piling of boxes, cartons, trash or similar items on the Park Parcels shall not be permitted.
- f. Utilities: Lessee shall assume and promptly pay for all costs or charges for utility services it requests be furnished and used in connection with its use of the Park Parcels during the term of this Agreement, including the cost of extending utility lines within the boundaries of the Park Parcels, and connecting such lines and setting meters.
- g. Signs: This Agreement does not permit commercial signage on the Park Parcels other than the existing sign for Lessee's restaurant, and as may be relocated within one the Park Parcels, in accordance with the City Code regulations regarding signage, subject to prior approval of the City, and such approval shall not be unreasonably withheld or delayed.
- h. Taxes: Lessee shall pay all taxes on the Park Parcels, to include all improvements and personal property it places upon the Park Parcels or

uses in connection with its use of the Park Parcels on the same basis as if the land were in private ownership, regardless of any other provisions hereof.

- i. Successors and Assigns: This Agreement, or any interest therein, is not assignable without the prior consent of the City Manager. In the event of any assignment, Lessee shall remain primarily liable for the payment of all monies due hereunder and for the performance of all its other obligations as herein stated. Any assignee shall be bound by all of the obligations and provisions as herein stated in this Agreement. In addition, Lessee shall not sublet the Park Parcels without the prior consent of the City Manager.

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

City: City of El Paso
ATTN: City Manager
2 Civic Center Plaza
El Paso, Texas 79901-1196

with copy to: City of El Paso
ATTN: Financial Services
Capital Assets Management
2 Civic Center Plaza
El Paso, Texas 79901-1196

Lessee: Chico's Tacos, Inc.
10530 Montwood Drive
El Paso, Texas 79936

with copy to: Risher S. Gilbert
The Gilbert Law Firm
P.O. Box 472
El Paso, Texas 79943

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

- k. Law Governing: The laws of the State of Texas shall govern the validity, performances and enforcement of this Agreement. Venue shall be in the courts of El Paso County, Texas.

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

- m. Severability: The invalidity or illegality of any provision hereof shall not affect the remaining provisions hereof.
- n. Authorization to Enter Agreement: The individual signing this Agreement acknowledges that he is authorized to do so and said individual further warrants that he is authorized to commit and bind the Lessee to the terms and conditions of this Agreement.
- o. Effect of Hold Over: In the event Lessee does not renew or extend the term of this Agreement as herein provided; and holds over beyond the expiration of the term hereof, such holding over shall be deemed a month to month tenancy only at the rental of twice the amount or TWO HUNDRED PERCENT (200%) of the last monthly rental prior to the commencement of hold over per month, payable on the first day of each and every month thereafter until the tenancy is terminated in a manner provided by law.
- p. Bankruptcy: Should any other person other than the Lessee named herein secure possession of the Park Parcels, or any part thereof, under writ of attachment of execution, or by reason of any receivership, or proceedings in bankruptcy, or other operation of law in any manner whatsoever, the City may, at its option, and without demand or notice of any kind whatsoever, reenter and take possession of the Park Parcels and remove all persons and improvements therefrom and terminate this lease.

10. RESTRICTIONS AND RESERVATIONS. This Agreement is subject to all rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land. In addition, as of this date, according to records within the City Clerk's Office, there are no other leases or licenses involving the Park Parcels. If in conflict, it is not the intent of this Agreement to divest the Lessee any vested rights accrued as of the effect date of this Agreement.

11. ENVIRONMENTAL. Lessee warrants and represents that to Lessee's knowledge Lessee's intended use of the Park Parcels will not violate applicable environmental laws. Lessee shall not cause or permit the Park Parcels or Lessee to be in violation of, or do anything or permit anything to be done which will subject the City or the Park Parcels to any remedial obligations under, any applicable environmental laws, assuming disclosure to the applicable governmental authorities of all relevant facts, conditions and circumstances, if any, pertaining to the Park Parcels. Lessee shall take all steps necessary to determine during the term of this Agreement that no hazardous substances or solid wastes are being disposed of or otherwise released on or to or from the Park Parcels. The City may enter upon the Park Parcels at any time and without notice to verify compliance with this Section. Any violation of this Section by Lessee shall constitute an "event of default" under this Agreement, which cannot be cured.

12. **REMEDIES UPON DEFAULT.** In the event the Lessee shall at any time default in the performance of any of the terms and conditions of this Agreement, after any applicable notice periods, the City may declare the Lessee in default of this Agreement, may deny possession of the Park Parcels to the Lessee and may sue for all rents and damages under this Agreement or arising out of any violation hereof, without prejudice to any remedies that it otherwise has for the default. In the event the Lessee does not vacate the Park Parcels within thirty (30) days, or such other period indicated in the City's written notice of default to Lessee, Lessee shall pay the amount referenced in the paragraph entitled "Effect of Hold Over" herein. In addition to the above remedies, the City shall have all rights to which it is entitled either in law or in equity, and shall be entitled to its reasonable attorneys' fees and costs incurred as a result of any default.

WITNESS THE FOLLOWING SIGNATURES:

CITY OF EL PASO:

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:

Gonzalo Cedillos, Financial Services
Capital Assets Management

APPROVED AS TO CONTENT:

Kimberly Forsyth, Senior Planner
Development Services Department

APPROVED AS TO CONTENT:

Norman C. Merrifield, Ed.D., Director
Parks and Recreation Department

ACCEPTANCE AND ACKNOWLEDGEMENTS ON FOLLOWING PAGE

Being a portion of Washington Park
City of El Paso, El Paso County, Texas
Prepared for: The Gilbert Law Firm
March 27, 2006

METES AND BOUNDS DESCRIPTION

Description of a parcel of Washington Park, City of El Paso El Paso County, Texas and being more particularly described by metes and bounds as follows:

Commencing for reference at a found nail at the intersection of the easterly line of lot 1, Block 2, Tobin's Washington Park Addition with the southerly right of way line of Alameda Avenue; Thence along the southerly right of way line of Alameda Avenue South $45^{\circ}07'00''$ East a distance of 18.28 feet to a set nail on the easterly line of a 13.00 feet alley for The "TRUE POINT OF BEGINNING"

Thence continuing along said right of way line South $45^{\circ}07'00''$ East a distance of 54.30 feet to a set nail;

Thence leaving said right of way line South $16^{\circ}11'50''$ East a distance of 47.18 feet to a set nail in asphalt;

Thence 43.17 feet along the arc of a curve to the right whose radius is 72.00 feet whose interior angle is $34^{\circ}21'04''$ and whose chord bears South $06^{\circ}08'43''$ West a distance of 42.52 feet to a set nail in asphalt;

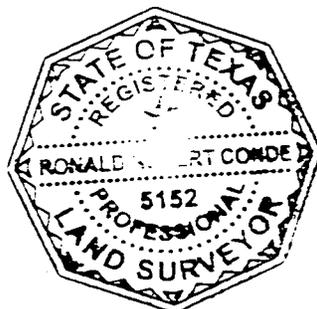
Thence North $69^{\circ}45'00''$ West a distance of 50.60 feet to a point on the easterly line of a 13.00 feet alley from which a found $\frac{1}{2}''$ rebar bears South $54^{\circ}57'25''$ East a distance of 0.13 feet;

Thence along said alley North $00^{\circ}12'30''$ East a distance of 108.39 feet to the "TRUE POINT OF BEGINNING" and containing 4569 Sq. Ft. or 0.1049 Acres of land more or less.

NOTE: Bearings based on found control shown on survey plat and Metes and Bounds Descriptions of Chicos Tacos Restaurant prepared by Jose Herndon Jr. on July 11, 1989.

A sketch of even date accompanies this description.


Ron R. Conde
R.P.L.S. No. 5152
Job No. 306-88



CONDE, INC.
ENGINEERING / LAND SURVEYING / PLANNING
1790 LEE TREVINO SUITE 400 / EL PASO, TEXAS 79936 / (915) 592-0283

EXHIBIT A

Jose Herndon Jr.

LAND PLANNING
3424 MEMPHIS

LAND SURVEYING
EL PASO, TEXAS 79930
915-565-6055

July 11, 1989

Prepared for:
Mr. Joe Mora
Chico's Tacos, Inc.
10530 Montwood Drive
El Paso, Texas 79935

Portion of land adjoining Alley
Between Pera St. and Washington
Park, (Blk. 2, Tobin's Washington
Park Add'n., El Paso, Texas.
Area = 367. 3 sq. ft.

D E S C R I P T I O N

Description of a, 0.008 Ac.+, portion of land, adjacent to a 13-ft. Alley between Pera St. and Washington Park, (Blk. 2, Tobin's Washington Park Addition to the City of El Paso, Texas.).

FROM a nail, marking the Southeast corner of Lot 1, Blk. 2, Tobin's Washington Park Addition to the City of El Paso, Texas, THENCE, S 89° 47' 30" E, 13.00 feet to a mark, THENCE, S 0° 12' 30" W, 13.00 feet to an iron, marking the point of beginning of this description;

THENCE, S 69° 45' E, 43.04 feet to a fence,

THENCE, N 80° 30' 30" W, along an existing chain link fence, 91.43 feet to a point,

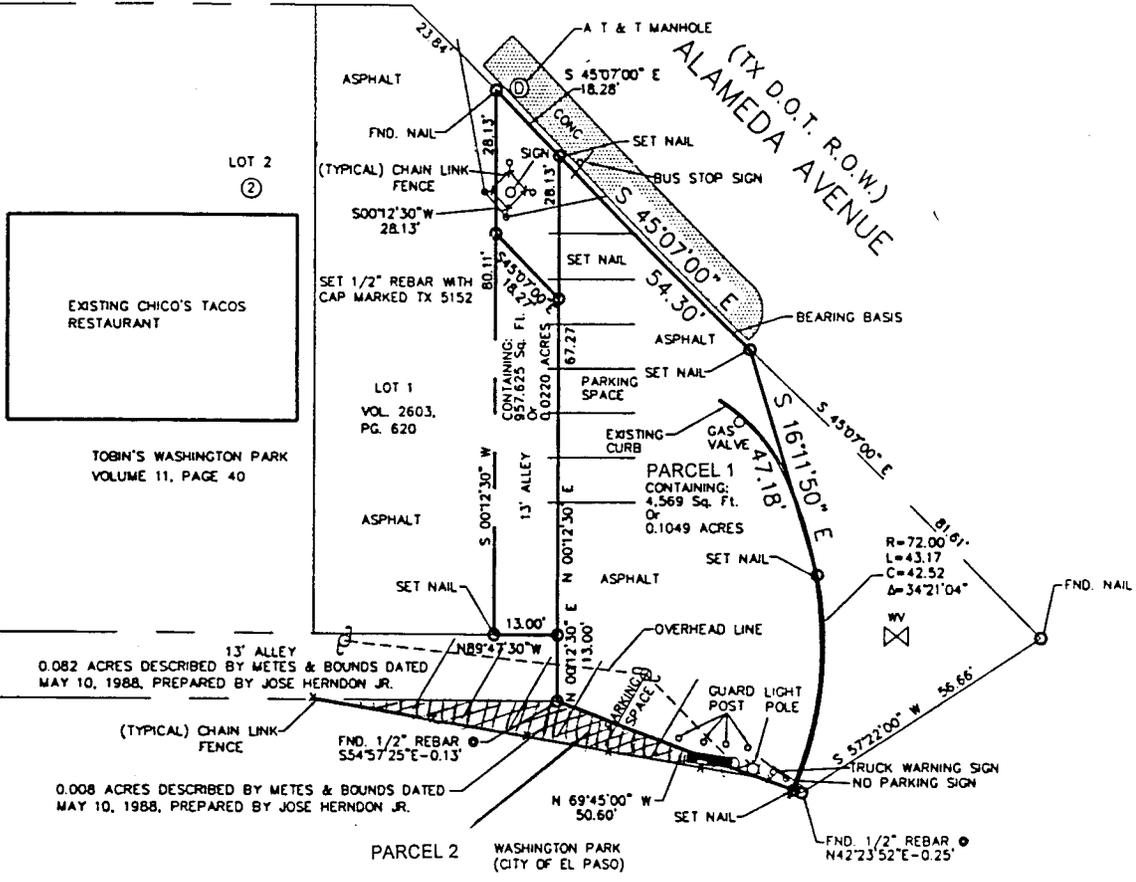
THENCE, S 89° 47' 30" E, 49.80 feet to the point of beginning containing in all, 367.30 square feet or 0.008 Acres of land more or less.

END OF DESCRIPTION

Note: See Survey Plat dated May 10, 1988

EXHIBIT B

PERA STREET



13' ALLEY
0.082 ACRES DESCRIBED BY METES & BOUNDS DATED
MAY 10, 1988, PREPARED BY JOSE HERNDON JR.

(TYPICAL) CHAIN LINK
FENCE

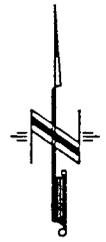
0.008 ACRES DESCRIBED BY METES & BOUNDS DATED
MAY 10, 1988, PREPARED BY JOSE HERNDON JR.

- NOTES:
1. REFERENCE IMPROVEMENT SURVEY PREPARED BY JOSE HERNDON JR. DATED JULY 7, 1989.
 2. METES AND BOUNDS DESCRIPTIONS OF EVEN DATE ACCOMPANIES THIS SKETCH.
 3. ACCORDING TO HTE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP COMMUNITY PANEL NO. 48021-0040 B. DATED OCTOBER 15, 1982, THIS PROPERTY IS IN FLOOD HAZARD ZONE C.

CERTIFICATION

THIS PLAT REPRESENTS A SURVEY MADE ON THE GROUND BY ME OR UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF BASED ON THE FACTS EXISTING AT TIME OF THIS SURVEY.

R R C
RON R. CONDE R.P.L.S. NO. 5152



SCALE: 1"=30'

JOB # 306-88	DATE: JULY 20, 2006	FIELD: D.G.	OFFICE: R.C.
BEING A PORTION OF AN ALLEY ADJACENT TO BLOCK 2, TOBIN'S WASHINGTON PARK ADDITION AND A PORTION OF WASHINGTON PARK CITY OF EL PASO, EL PASO COUNTY, TEXAS			
CONDE ENGINEERING INC. CADD FILE: C:\SU\3\306 1790 LEE TREVINO SUITE 400 (915) 592-0283 EL PASO, TEXAS 79936			