

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

**DEPARTMENT:**        **Engineering & Construction Management**

**AGENDA DATE:**     **May 28, 2013**

**CONTACT PERSON/PHONE:** **R. Alan Shubert, City Engineer**

**DISTRICT AFFECTED:** **1 & 8, Representatives Ann Morgan Lilly, Cortney Niland**

**SUBJECT:**

Item is to request approval of a resolution authorizing the City Manager to accept, on behalf of the City of El Paso, a Letter of Agreement between the City of El Paso and *Lungs, LLC* for the purchase of a portion of property at 4305 N. Mesa Street to be used as part of a Mesa Street RTS Corridor station.

**BACKGROUND / DISCUSSION:**

This proposed purchase is one of three portions of private property required by the Mesa Street Rapid Transit System Corridor project, which extends from the Downtown Transfer Center to the Westside Transfer Center (Santa Fe & 4<sup>th</sup> Street to Remcon Circle & North Mesa). The additional station sites within the Mesa RTS corridor will be situated on State and City right-of-way and do not require additional land acquisition. The subject parcel consists of 649 s.f. of frontage at 4305 N. Mesa and was valued at \$18,285.00 by appraiser Martha Gayle-Reid, *Gayle-Reid Appraisal Services, Inc.*

**PRIOR COUNCIL ACTION:**

Council has not previously considered this item.

**AMOUNT AND SOURCE OF FUNDING:**

\$18,285.00 – Mesa RTS - 2009 CO's

<u>Project</u>	<u>Fund</u>	<u>Dept. ID</u>	<u>Division</u>	<u>Account</u>
PCP09CMP0020	4710	190	28300	580000

**BOARD / COMMISSION ACTION:**

(N/A)

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**  \_\_\_\_\_

***Information copy to appropriate Deputy City Manager***

RESOLUTION

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

That the City Manager, or her designee, be authorized to sign any necessary documents between the CITY OF EL PASO and LUNGS, LLC, a Texas limited liability company, for the purchase of a portion of the property commonly known as 4305 N. Mesa Street, El Paso, Texas more particularly described as a portion of Lot 1, Block 1, Mesa and Executive Medical Subdivision, an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof filed September 13, 2006, under Clerk's File No. 20060094232, Real Property Records, El Paso County, Texas.

ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2013.

THE CITY OF EL PASO

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

ATTEST:

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

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

*for*   
\_\_\_\_\_  
Cynthia Osborn  
Assistant City Attorney

  
\_\_\_\_\_  
Irene D. Ramirez, P.E.  
Interim Assistant City Engineer

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

## ENGINEERING AND CONSTRUCTION MANAGEMENT DEPARTMENT

March 13, 2013

Lungs, LLC  
c/o Dr. Gonzalo Diaz  
4305 N. Mesa  
El Paso, Texas 79912

Re: Property described as an approximate 649 square foot portion of Lot 1, Block 1, Mesa and Executive Medical Subdivision, an addition to the City of El Paso, El Paso County, Texas, within the property municipally known as 4305 N. Mesa, El Paso, Texas 79912 (the "Property").

Dear Dr. Diaz:

Our negotiations for a Rapid Transit System bus station on your property have progressed to the point that you have indicated a willingness to sign a Deed to the City for the above referenced 649 square feet in return for payment of the appraised value of \$18,285.00 as agreed to in our previous discussions. It is thought to be in the best interest of both you and the City of El Paso to confirm this agreement in order to avoid any possible misunderstanding as to the details of the purchase or the process by which the City will make payment.

The Property to be purchased by the City is 649 square feet. The payment of the amount of Eighteen Thousand Two Hundred Eighty Five and No/100 dollars (\$18,285.00) will constitute full payment to be made by the City of El Paso for the Property to be conveyed to the City. The City and Lungs, LLC have agreed to the following provisions, subject to City Council approval.

Until payment is made by the City, title and possession of the Property to be conveyed will remain in Lungs, LLC and it shall bear all risk of loss to any and all such Property prior to such payment. At the closing at Rio Bravo Title, the City will pay for the fair and reasonable incidental expenses necessarily incurred in transferring title to the Property for use by the City of El Paso. After the closing but before they are past due you will be responsible for paying the 2013 taxes on the Property. After the closing the City will send a copy of the Deed into the City for the Property to the Central Appraisal District, notifying the District that for tax purposes the Property should be removed from your larger parcel. Without cost to you the City will pay for the title policy in favor of the City, the title company escrow fee, and the recording fees of the Deed and of the Partial Release of Lien from Bank of the West, which you have agreed to obtain from the Bank, and similar expenses



Mayor  
John F. Cook

City Council

District 1  
Ann Morgan Lilly

District 2  
Susie Byrd

District 3  
Emma Acosta

District 4  
Carl Robinson

District 5  
Dr. Michel R. Noo

District 6  
Eddie Holguin Jr.

District 7  
Steve Ortega

District 8  
Corney Carlisle Niland

City Manager  
Joyce A. Wilson

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SERVICE SOLUTIONS SUCCESS



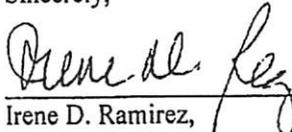
incidental to conveying the Property to the City. You may file a written request for review if you believe that the City failed to properly determine the eligibility for, or the amount of, incidental expenses to either be paid by the City or to be reimbursed. There is no standard form on which to request a review of a claim; however, the claim must be filed with the City of El Paso Engineering and Construction Management Department at P.O. Box 1890, El Paso, TX 79950-1890 within six months after you are notified of the City's determination on any claim for reimbursement.

In addition to the above, and subject to the approval of City Council to be obtained prior to closing, the City will pay to Lungs, LLC at closing the construction cost of \$5,651.73 for Superior Sign & Lighting to raise the El Paso Pulmonary Association sign (the "Sign") approximately 2 feet. You agree that you shall have the Sign raised within 60 days of the Closing so that the Sign raising will be finished prior to the start of the Station construction. If the Sign is not raised within the 60 day period after Closing, the City may proceed with the construction of the Station. The City further agrees to remove the secondary roof from the design of the Station so that the roof of the Station will not exceed an above ground height of approximately 10 feet.

The payment of the amount herein stated and the terms provided constitute the only promises, consideration and conditions of this purchase; and, no other promises, consideration or conditions have been signified or implied.

Please review the proposed attached Warranty Deed and satisfy yourself as to its provisions. With your signature below, this letter agreement will be placed on City Council agenda for approval and the City will schedule the Closing. Rio Bravo Title has been designated as the City's closing agent and is responsible to see that the City obtains clear title and Rio Bravo Title will not issue payment to Lungs LLC until it has done so.

Sincerely,

  
Irene D. Ramirez,  
Interim City Engineer

3/13/13  
Date

I fully understand and accept the City of El Paso's proposal as contained in this agreement.

LUNGS, LLC, a Texas limited liability company

By:   
GONZALO DIAZ, President

3/13/13  
Date

- Mayor  
John F. Cook
- City Council
- District 1  
Ann Morgan Lilly
- District 2  
Susie Byrd
- District 3  
Emma Acosta
- District 4  
Carl P. Robinson
- District 5  
Dr. Michel R. Nee
- District 6  
Eddie Holguin Jr.
- District 7  
Steve Ortega
- District 8  
Cortney Carlisle Niland
- City Manager  
Joyce A. Wilson

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**WARRANTY DEED**

**Date:** March \_\_, 2013

**Grantor:** LUNGS, LLC, a Texas limited liability company

**Grantor's Mailing Address (including county):**

4305 N. Mesa  
El Paso County  
El Paso, Texas 79912

**Grantee:** THE CITY OF EL PASO, A MUNICIPAL CORPORATION

**Grantee's Mailing Address (including county):**

City of El Paso  
300 N. Campbell  
El Paso County  
El Paso, Texas 79901

**Consideration:** TEN AND NO/100THS DOLLARS (\$10.00) and other valuable consideration, receipt of which is hereby acknowledged.

**Property (including any improvements):**

A portion of Lot 1, Block 1, MESA AND EXECUTIVE MEDICAL SUBDIVISION, an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof filed September 13, 2006, under Clerk's File No. 20060094232, Real Property Records, El Paso County, Texas, said portion being more particularly described by metes and bounds attached in Exhibit "A" attached and as shown in Exhibit "B" attached.

**RESERVATIONS FROM CONVEYANCE:** None

**EXCEPTIONS TO CONVEYANCE AND WARRANTY:**

1. Restrictive Covenants recorded in/under Volume 433, Page 1470; Volume 450, Page 1387; and Clerk's File No. 20060094234, Real Property Records of El Paso County, Texas but omitting any covenant or restriction based on race, color, religion, sex, handicap, familial status, or national origin.
2. Perpetual Smoke Easement to Kansas City Smelting & Refining Co., in Volume 500, Page

**GRANT AND CONVEYANCE:**

Grantor, for the Consideration and subject to the Exceptions to Conveyance and Warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee's successors and assigns forever. Grantor binds Grantor and Grantor's successors and assigns to warrant and forever defend all and singular the Property to Grantee and Grantee's successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the Exceptions to Conveyance and Warranty.

When the context of this instrument requires, singular nouns and pronouns will include the plural.

IN WITNESS WHEREOF this Warranty Deed is effective this the 13 day of March, 2013.

**GRANTOR:**

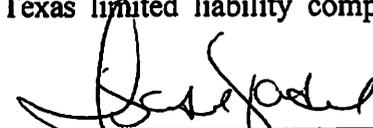
LUNGS, LLC, a Texas limited liability company

By:   
GONZALO DIAZ, President

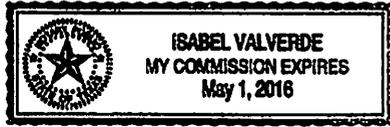
**ACKNOWLEDGMENT**

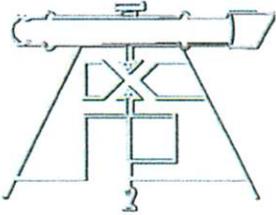
STATE OF TEXAS        )  
                                  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on the 13 day of MARCH, 2013 by Gonzalo Diaz, President of Lungs, LLC, a Texas limited liability company, on behalf of said company.

  
Notary Public, State of Texas

My commission expires:  
5/1/2016





**Frank X. Spencer & Associates, Inc.**  
Consulting Civil Engineers & Surveyors  
1130 Montana \* El Paso, Texas 79902

(915) 533-4600  
FAX (915) 533-4673  
e-mail: elpaso@fxsa.com

Frank X. Spencer, P.E., R.P.L.S.

**BOUNDARY SURVEY OF A PORTION OF LOT 1, BLOCK 1  
MESA AND EXECUTIVE MEDICAL SUBDIVISION**

**BEING A TRACT OF LAND SITUATED IN LOT 1, BLOCK 1 MESA AND EXECUTIVE MEDICAL SUBDIVISION, ACCORDING TO THE PLAT RECORDED IN DOCUMENT # 20060094232, PLAT RECORDS EL PASO COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

**COMMENCING**, at a Recovered PK Nail in the west Right-of-way line of Mesa Street, and the east line of Tract 4, E.O. DRYER SURVEY No. 132, Deed Records, El Paso County, Texas, **Thence**, South  $02^{\circ}19'13''$  West along the west R.O.W. line of Mesa Street passing the northeast corner of Lot 1, Block 1, MESA AND EXECUTIVE MEDICAL SUBDIVISION, at a distance of 107.12 feet and continuing with the east line of Lot 1, a distance of 129.24 feet for a total distance of 236.36 feet to a Chiseled "X" set for the **POINT OF BEGINNING**;

**THENCE**, South  $02^{\circ}19'13''$  West, with the west R.O.W. line of Mesa Street, a distance of 65.34 feet to a Chiseled "X" set for corner;

**THENCE**, North  $87^{\circ}28'31''$  West, a distance of 10.04 feet, to a 5/8" rebar with aluminum cap marked "FXS RPLS 2198" set for corner;

**THENCE**, North  $02^{\circ}31'29''$  East, a distance of 65.54 feet, to a 5/8" rebar with aluminum cap marked "FXS RPLS 2198" set for corner;

**THENCE**, South  $86^{\circ}20'25''$  East, a distance of 9.81 feet, to the **POINT OF BEGINNING** and containing 0.015 acres (649 square feet) of land.

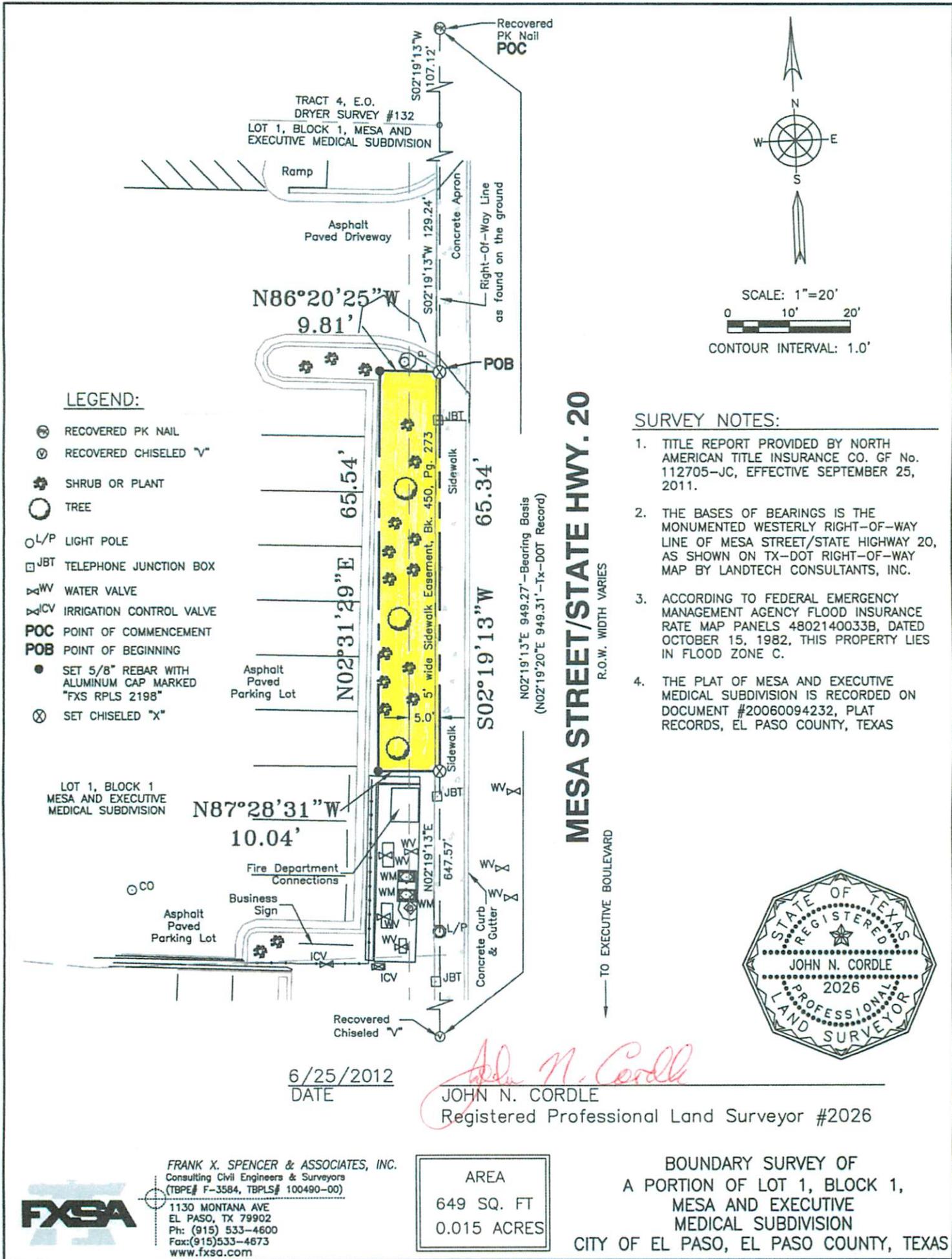
**NOTE:**

A SURVEY PLAT OF EVEN DATE ACCOMPANIES THIS "METES AND BOUNDS DESCRIPTION".

Frank X. Spencer & Associates, Inc.

\_\_\_\_\_  
**JOHN N. CORDLE, RPLS**  
Texas License No. 2026  
Date: 6/25/2012  
FXSA#S1110EP





**LEGEND:**

- ⊙ RECOVERED PK NAIL
- ⊕ RECOVERED CHISELED "V"
- ⊗ SHRUB OR PLANT
- TREE
- /P LIGHT POLE
- JBT TELEPHONE JUNCTION BOX
- ⊗ WV WATER VALVE
- ⊗ ICV IRRIGATION CONTROL VALVE
- POC POINT OF COMMENCEMENT
- ⊙ POB POINT OF BEGINNING
- SET 5/8" REBAR WITH ALUMINUM CAP MARKED "FXS RPLS 2198"
- ⊗ SET CHISELED "X"

**SURVEY NOTES:**

1. TITLE REPORT PROVIDED BY NORTH AMERICAN TITLE INSURANCE CO. GF No. 112705-JC, EFFECTIVE SEPTEMBER 25, 2011.
2. THE BASES OF BEARINGS IS THE MONUMENTED WESTERLY RIGHT-OF-WAY LINE OF MESA STREET/STATE HIGHWAY 20, AS SHOWN ON TX-DOT RIGHT-OF-WAY MAP BY LANDTECH CONSULTANTS, INC.
3. ACCORDING TO FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP PANELS 4802140033B, DATED OCTOBER 15, 1982, THIS PROPERTY LIES IN FLOOD ZONE C.
4. THE PLAT OF MESA AND EXECUTIVE MEDICAL SUBDIVISION IS RECORDED ON DOCUMENT #20060094232, PLAT RECORDS, EL PASO COUNTY, TEXAS

**MESA STREET/STATE HWY. 20**

R.O.W. WIDTH VARIES

TO EXECUTIVE BOULEVARD



6/25/2012  
DATE

*John N. Cordle*  
JOHN N. CORDLE  
Registered Professional Land Surveyor #2026

AREA  
 649 SQ. FT  
 0.015 ACRES

BOUNDARY SURVEY OF  
 A PORTION OF LOT 1, BLOCK 1,  
 MESA AND EXECUTIVE  
 MEDICAL SUBDIVISION  
 CITY OF EL PASO, EL PASO COUNTY, TEXAS

**FXSA**  
 FRANK X. SPENCER & ASSOCIATES, INC.  
 Consulting Civil Engineers & Surveyors  
 (TBPE# F-3584, TBPLS# 100490-00)  
 1130 MONTANA AVE  
 EL PASO, TX 79902  
 Ph: (915) 533-4600  
 Fax: (915) 533-4673  
 www.fxsa.com