

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

**DEPARTMENT:** Street Department  
**AGENDA DATE:** July 10, 2007  
**CONTACT PERSON/PHONE:** Daryl W. Cole 621-6750  
**DISTRICT(S) AFFECTED:** District 3

**SUBJECT:**

A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT BETWEEN THE CITY OF EL PASO AND THE EL PASO TEXAS STAKE OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS TO ALLOW THE YOUTH OF THE CHURCH TO ENTER CERTAIN CITY PROPERTY TO PAINT MUTUALLY ACCEPTABLE SCENES ON THE PROPERTY TO BEAUTIFY AND PROTECT THE PROPERTY FROM VANDALISM AND GRAFFITI. THE MURAL WILL BE PAINTED ON THE CONCRETE SPILLWAY OF THE CAROLINA RETENTION DAM ALONG CAROLINA STREET.

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**BACKGROUND / DISCUSSION:**

**PRIOR COUNCIL ACTION:**

July, 1999

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**AMOUNT AND SOURCE OF FUNDING:**

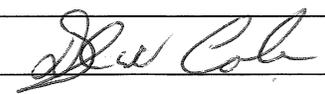
Street department to provide some painting materials – 32010362 (Graffiti division) -01101(general fund).

**BOARD / COMMISSION ACTION:**

N/A

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

**LEGAL:** (if required) \_\_\_\_\_ **FINANCE:** (if required) \_\_\_\_\_

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


CC: Pat Aduato, Deputy City Manager, Development and Infrastructure Services

**APPROVED FOR AGENDA:**

**CITY MANAGER:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

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**RESOLUTION**

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**WHEREAS**, the El Paso Texas Stake of the Church of Jesus Christ of Latter-Day Saints has requested permission to donate the painting services of its youth component on July 13, 2007, to beautify the concrete spillway of the Carolina retention dam, and protect the property from vandalism and graffiti; and,

**WHEREAS**, the City of El Paso desires to encourage community involvement and volunteerism to help keep El Paso free of graffiti and to improve the quality of life and health and safety of its citizens;

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

THAT the City Manager is hereby authorized to sign, on behalf of the City, a Donation Agreement between the City of El Paso and the El Paso Texas Stake of the Church of Jesus Christ of Latter-Day Saints, to allow the Church's youth organization enter onto certain City property on July 13, 2007, for the purpose of the supervised painting of certain scenes on the property so as to preserve and protect the property from vandalism. The mural will be painted on the concrete spillway of the Carolina retention dam along Carolina Street.

ADOPTED and EFFECTIVE this 10<sup>th</sup> day of July, 2007.

CITY OF EL PASO:

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

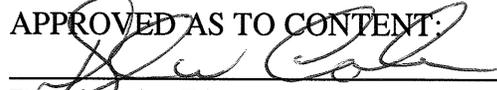
ATTEST:

\_\_\_\_\_  
Richarda Momsen  
Municipal Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Joësette Flores  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Daryl Cole, Director  
Street Department

STATE OF TEXAS        )  
  )  
COUNTY OF EL PASO    )

**DONATION AGREEMENT**

This Donation Agreement (the "Agreement") is entered into on July 10, 2007 by and between the CITY OF EL PASO, TEXAS, a Texas municipal corporation (the "City") and the EL PASO TEXAS CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a duly organized religious organization (the "Organization").

**WHEREAS**, the City finds that graffiti has become a significant concern of all Texas citizens and that vandalism and graffiti are a public nuisance, and,

**WHEREAS**, community involvement encourages neighborhood pride and discourages vandalism and graffiti; and,

**WHEREAS**, the City finds the concrete spillway on the Carolina retention dam along Carolina Street (the "Site") is an appropriate structure to be protected by approved painting; and,

**WHEREAS**, the Organization is willing to offer the volunteer services of its youth component to paint certain scenes at the Site;

**NOW THEREFORE**, for and in consideration of the mutual covenants and promises recited herein, it is hereby agreed by the parties as follows:

**1. SERVICES.** The Organization shall promote and coordinate with the City's Street Department (the "Department") the activities of its youth organization to clean the Site and paint scenes as depicted in the attached Exhibit "A" at the Site (as described more in detail in the attached Exhibit "B") on July 13, 2007 (the "Project"). This Project will be used as a method to deter vandalism and graffiti. The type of paint shall be as approved by the City. The use of lead-based paints will not be allowed.

**2. CONSIDERATION.** The Project is being furnished at the Site to the City through donated services at no cost to the City. The City will publicly acknowledge that the Project was donated to the City by the Organization. This Agreement is entered into for and in consideration that the Organization will coordinate and promote the Project in an effort to encourage civic awareness and beautification of the City.

**3. CITY'S ON-SITE SUPERVISOR.** The Director of the Department or his or her designee, including the On-Site Supervisor, is authorized to inspect the Project to ensure that the painting conforms to the approved scenes appearing herein as Exhibit "A", and that proper paint is being applied to the structures at the Site.

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4. **TRASH.** The Organization and its group of volunteer youth shall assist the City to contain and remove any and all trash generated by and during the Project.

5. **WORK.** All work performed shall be done in a good and workmanlike manner, satisfactory to the City. The volunteers shall be supervised by the Organization. The Organization represents that its volunteers shall have sufficient skills and experience to properly perform the work. The Organization agrees that the work and finished product, to include any drawings, models, or renderings, and copyright of the Project shall become the property of the City exclusively.

6. **MATERIALS AND EQUIPMENT.** Materials and some equipment to fulfill the project will be provided by the City. All unused materials and equipment shall be removed from City property at the end of the Project as instructed by the Department.

7. **SAFETY.** The Organization shall require its volunteers to comply with applicable laws, ordinances and regulations pertaining to safety of work. The Organization and its volunteers shall follow all instructions and directions concerning traffic safety and control. The Organization and its volunteers shall exercise every reasonable precaution for the safety of public property and the protection of any and all persons or property located adjacent to or passing near the Site.

8. **RELATIONSHIP.** Nothing in this Agreement shall be construed as creating the relationship of employer and employee or agent between the parties. The Organization shall act as an independent contractor and shall be responsible for its own employees, volunteers and agents.

9. **INSURANCE AND INDEMNIFICATION PROVISIONS.** The Organization agrees to provide the following as a condition of the Agreement:

9.1 LIABILITY INSURANCE. The Organization shall 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 and No/100 Dollars (\$250,000.00) per person, and Five Hundred Thousand and No/100 Dollars (\$500,000.00) for two (2) or more persons in any one accident, and, in addition, shall provide property damage liability insurance in a minimum sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) for property damage growing out of any one accident or other cause.

9.1.1 The Organization is required to purchase liability insurance on behalf of the City or, alternatively, may name the City as an additional insured on the policy of general liability insurance referenced above. Such insurance shall provide coverage for any alleged acts or omissions of the City, its agents, employees or independent contractors, alleged or asserted by any individual, in connection with the performance of this Agreement.

9.1.2 The Organization shall maintain said insurance with a solvent insurance company authorized to do business in Texas. The policy shall provide that the insurer will defend against all claims and lawsuits which arise and will pay any final judgment of a court of competent jurisdiction against the City, its officers, agents, servants or employees and the Organization, its officers, agents, servants or employees.

9.1.3 The Project shall be not be provided by the City until the Organization files a copy of the policy or certificate of liability insurance as herein set forth with the City Clerk, the City Attorney's Office, and the Department. Such policy or certificate shall provide that the insurance cannot be canceled or the amount of coverage changed without ten (10) days prior written notice to the City Clerk. Failure to keep the policy in full force and effect throughout the Project term shall be grounds for cancellation of this Agreement.

**9.2 INDEMNITY. As a condition of this Agreement, the Organization or its insurer will INDEMNIFY, DEFEND AND HOLD the City, its officers, agents and employees, HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE, (INCLUDING BUT NOT LIMITED TO ATTORNEY FEES AND COSTS) FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON ARISING OUT OF OR RELATED TO THIS AGREEMENT. Without modifying the conditions precedent for preserving defenses, asserting claims or enforcing any legal liability, against the City as required by the City Charter or any law, the City will promptly forward to the Organization every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein. The Organization will 1) investigate or**

cause the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as the Organization may deem expedient; and 3) defend or cause to be defended on behalf of the City all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages. The Organization will pay all judgments in actions defended by the Organization pursuant to this section along with all attorneys' fees and costs incurred by the City including interest accruing to the date of payment by the Organization, and premiums on any appeal bonds. The City, at its election will have the right to participate in any such negotiations or legal proceedings to the extent of its interest. The City will not be responsible for any loss of or damage to Contractor's property from any cause.

**9.3** The Organization shall be responsible for providing individual consent and release forms signed by the volunteers or their legal guardian.

**10. NON-DISCRIMINATION.** The Organization agrees that it will not discriminate on account of race, color, religion, sex or national origin or permit any discriminatory practice in the work done pursuant to this agreement.

**11. SEVERABILITY.** If any term or provision of this agreement is determined to be invalid for any reason whatsoever, the remaining terms and provisions shall be unaffected thereby.

**12. ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement and understanding between the parties with respect to the project and no amendment or modification of the terms hereof shall be binding unless same be in writing and signed by both parties.

**13. NOTICES.** Any notices necessary shall be effective if given in writing and sent by regular mail, postage prepaid and addressed as follows:

ORGANIZATION:           The Church of Jesus Christ of Latter-Day Saints  
                                  Attn: Ms. Hettie Houghton  
                                  9908 Eastridge  
                                  El Paso, TX 79925

CITY: The City of El Paso  
Attn: City Manager's Office  
2 Civic Center Plaza  
El Paso, TX 79901

AGREED to and all conditions accepted this \_\_\_\_\_ day of July, 2007.

CHURCH OF JESUS CHRIST OF  
LATTER-DAY SAINTS, EL PASO  
TEXAS STAKE

\_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

CITY OF EL PASO

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

APPROVED AS TO FORM:

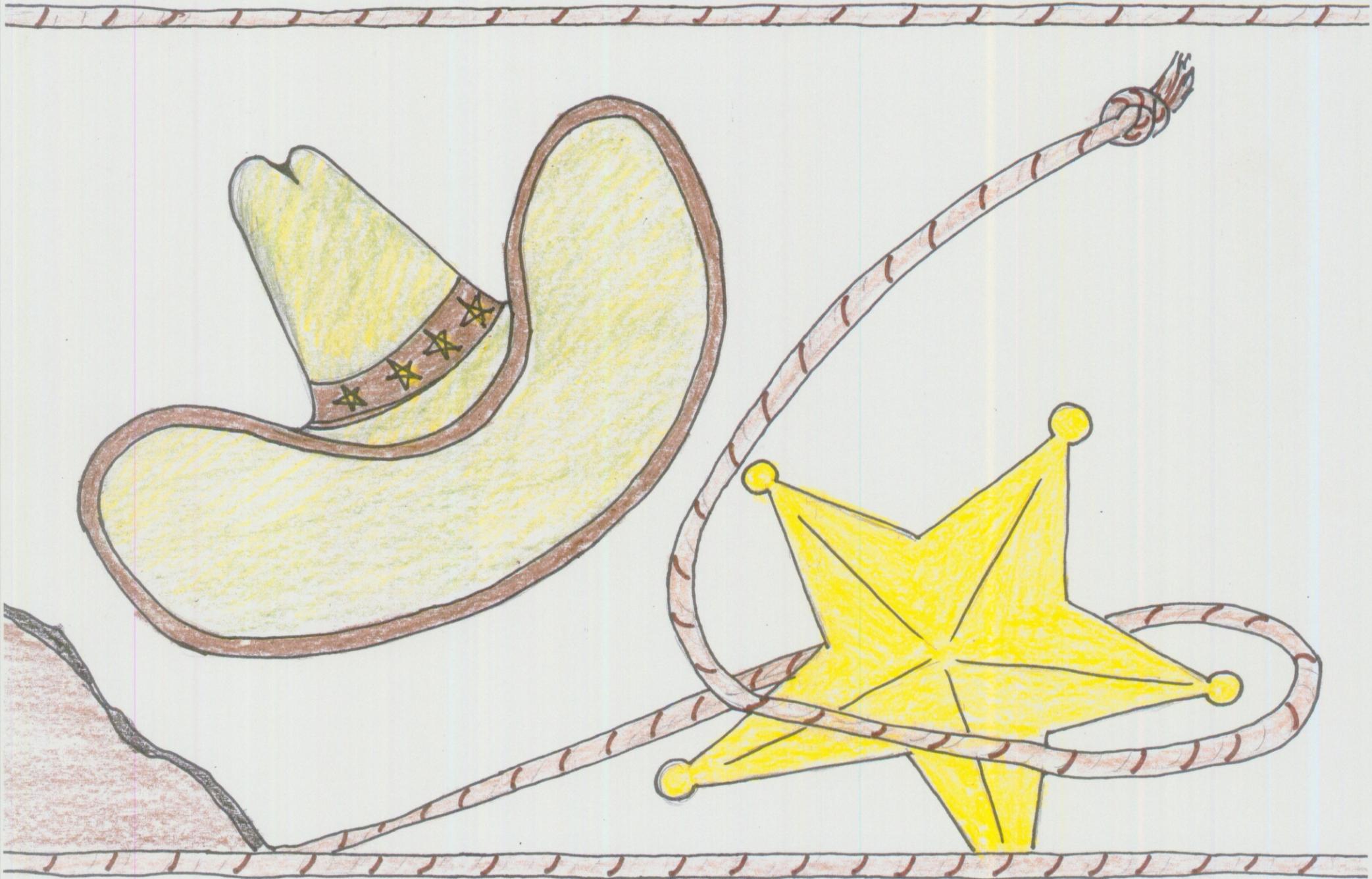
  
\_\_\_\_\_  
Josette Flores  
Assistant City Attorney

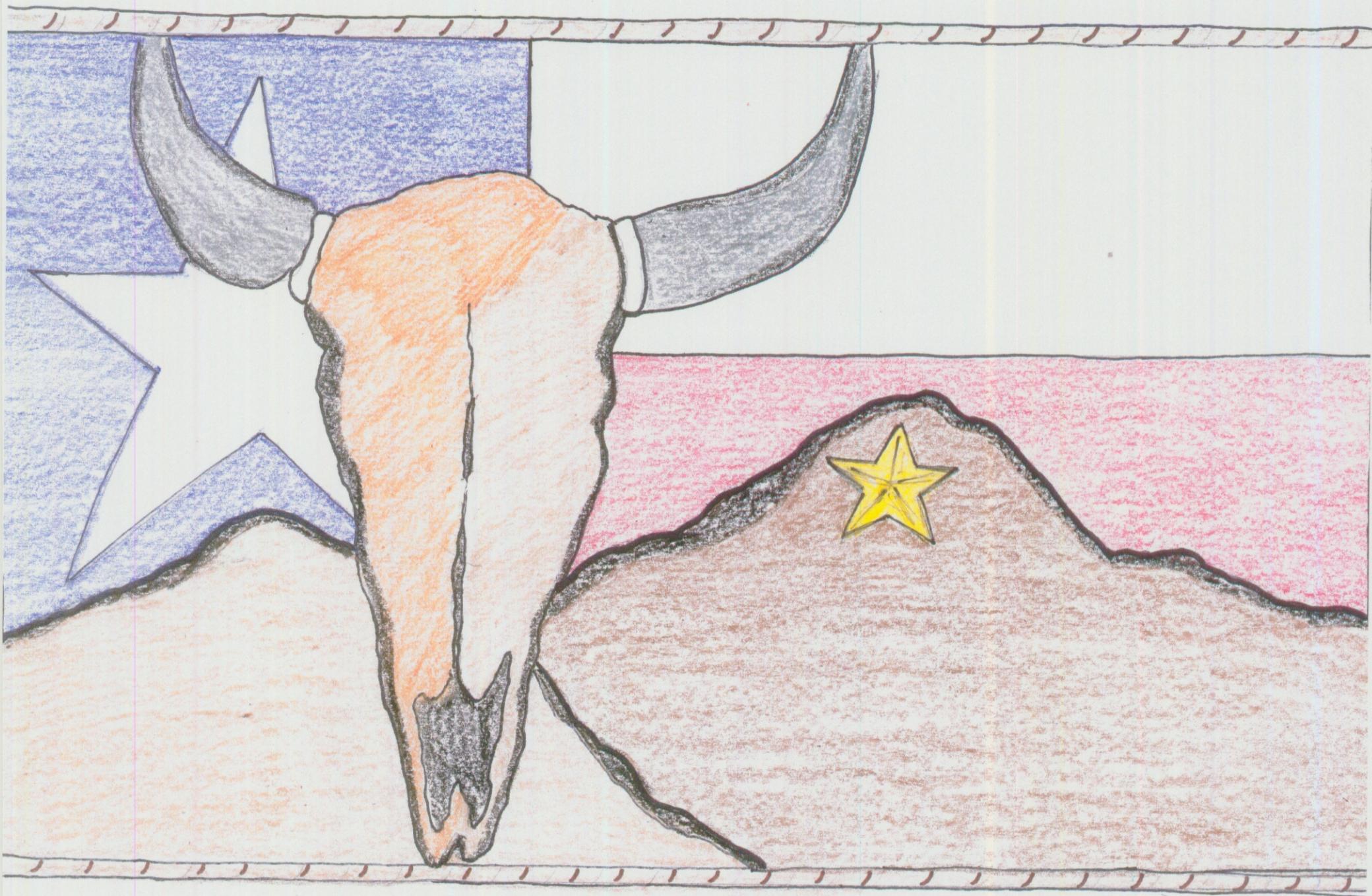
APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Daryl Cole, Director  
Street Department

EXHIBIT "A"

CITY CLERK DEPT.  
07 JUL - 5 PM 2:00





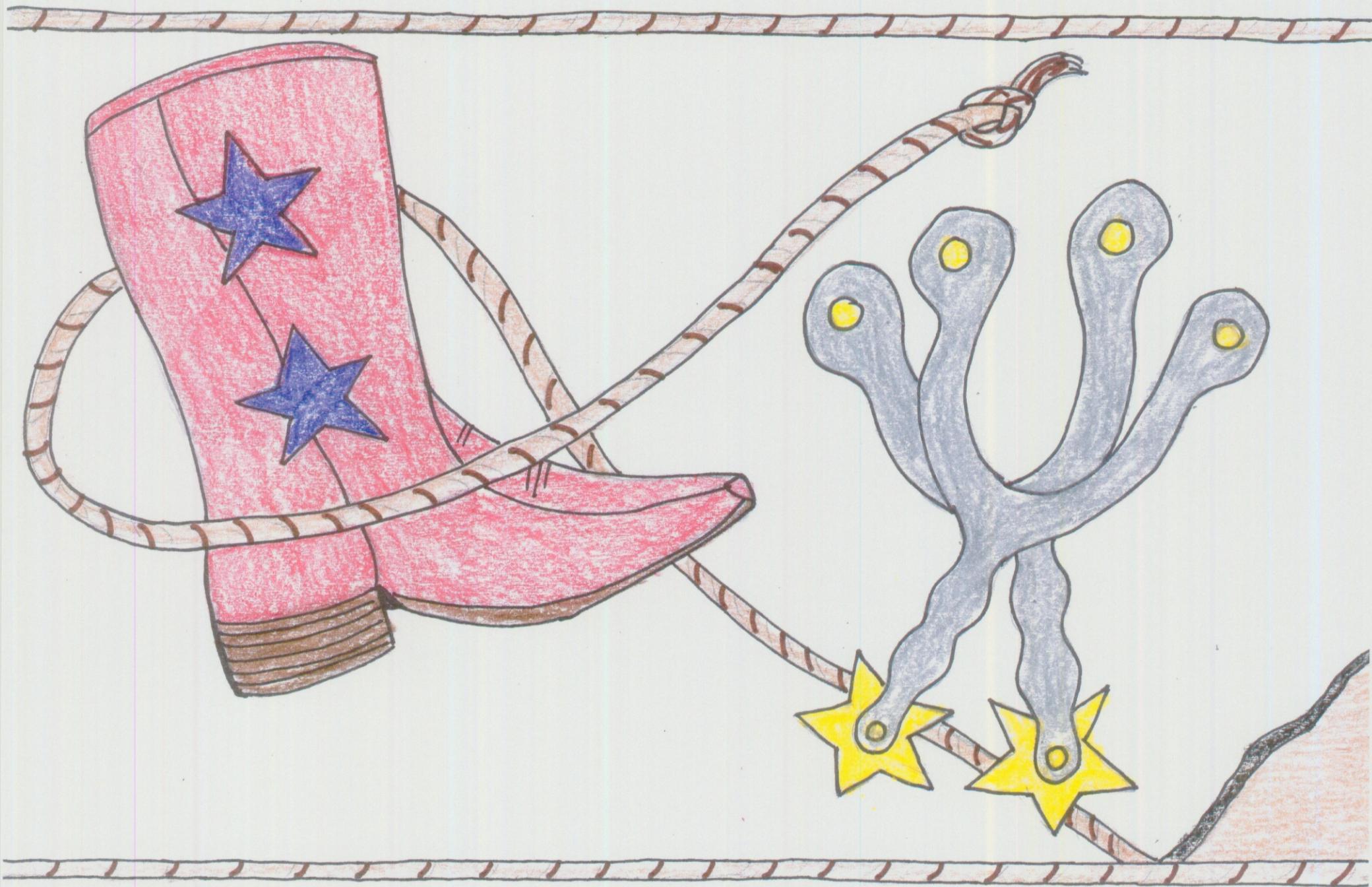


EXHIBIT "B"

LEGAL DESCRIPTION OF SITE

W PT of BLK 33 (10.544 AC), Sageland Subdivision, 2nd Replat, El Paso, El Paso County, Texas.

CITY CLERK DEPT.  
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