

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

DEPARTMENT: **Engineering**

AGENDA DATE: **July 15, 2008**

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

DISTRICT AFFECTED: **1**

SUBJECT:

Item is to request approval of a resolution authorizing the City Manager to execute, on behalf of the City of El Paso, a purchase of undeveloped private property to be used as right of way for the Ojo De Agua Channel & Thorn Inlet Project. This is a Storm 2006 Priority I project.

BACKGROUND / DISCUSSION:

This vacant, undeveloped property is located at the upstream portion of the Ojo De Agua Channel on vacant undeveloped land. The purpose of the right of way is to allow the City to build a de-silting/debris basin at the entrance to the concrete lined portion of the channel. The City already owns a portion of the land required to build the basin. The additional property will allow the City to complete it. This is required to prevent heavy debris/rocks from entering and damaging the concrete channel. There will a maintenance road for access to the basin. The repair work for the channel has been completed and these additional improvements will complete the whole scope of the project. The proposed purchase price is \$12,000, the appraised value.

PRIOR COUNCIL ACTION:

There has been no prior Council action on this project previous to this consideration.

AMOUNT AND SOURCE OF FUNDING:

This expenditure is funded through Storm 2006 COs. No budgetary adjustments are necessary.

<u>Project</u>	<u>Fund</u>	<u>Department</u>	<u>Account</u>
PSTM06 PW56-0	27264	14200500	508000

BOARD / COMMISSION ACTION:

(N/A)

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

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

DEPARTMENT HEAD: _____ 

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

RESOLUTION

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

That the City Manager be authorized to sign a Contract of Sale between the **CITY OF EL PASO** and **EP PARK HILLS II, LTD**, a Texas Limited Partnership, for the purchase of

a 0.355 acre parcel of land, more or less, being a portion of Tract 1, H.G. Foster Survey No. 258, City of El Paso, El Paso County, Texas.

for the Ojo de Agua Channel Project.

ADOPTED this _____ day of _____, 2008.

THE CITY OF EL PASO

John F. Cook, Mayor

ATTEST:

Richarda D. Momsen, City Clerk

APPROVED AS TO FORM:



Theresa Cullen Garney
Deputy City Attorney

APPROVED AS TO CONTENT:



Patricia D. Adauto
Deputy City Manager

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

CONTRACT OF SALE

This Agreement is entered into as of the ____ day of _____, 2008 by and between the **CITY OF EL PASO**, hereinafter referred to as the "City," and **EP PARK HILLS II, LTD**, a Texas limited partnership, hereinafter referred to as "Seller."

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 Seller hereby agrees to sell and convey and the City hereby agrees to acquire free and clear of any liens or encumbrances, the following real property located in El Paso County, Texas:

A 0.355 acre parcel of land, more or less, being a portion of Tract 1, H.G. Foster Survey No. 258, 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,

together with any interest of the Seller in (i) all improvements, if any, and (ii) all right, title and interest of the Seller in and to any easements, appurtenances, and rights-of-way, 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 collectively referred to as the "Property."

2. Amount of Payment of Purchase Price. The purchase price for the Property shall be a total of TWELVE THOUSAND and 00/100 DOLLARS (\$12,000.00). The consideration recited herein represents a release of all claims, a settlement and compromise by all parties as to the value of the property herein conveyed in order to avoid litigation and the added expense of litigation.

2.1 Payment of Purchase Price. The full amount of the purchase price will be payable in cash at the closing.

3. Conditions to City's Obligations. The obligations of the Seller hereunder 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 City, at or prior to Closing.

3.1 Title Insurance. Within five (5) working days after the date of execution of this contract, the City at its expense will order a title commitment ("Commitment"), 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 City ("Owner's Policy").

3.2 Title Objections. The City will give the Seller written notice within five (5) working days 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 City states that the condition is not satisfactory, the City will specifically set forth in such notice the defect or exception to title that is deemed objectionable. The

Seller may promptly undertake to eliminate or modify all unacceptable matters to the reasonable satisfaction of the City. Otherwise, this condition will be deemed acceptable and any objection by the City will be deemed waived.

4. Representations and Warranties of Seller. The Seller hereby represents, to the best of its knowledge, covenants, and warrants to the City, as follows:

4.1 Parties in Possession. There are no parties in possession of any portion of the Property as lessees, tenants at sufferance, or otherwise.

4.2 Legal and Authorized Transactions. The Seller warrants that no person or persons own an interest in the fee title in the Property other than the Seller and that the joinder of no other third party shall be required to consummate this transaction.

4.3 Mechanic's Lien. To the Seller's best knowledge and belief: (i) no action has been taken, suffered or permitted by or on behalf of the Seller, 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, charge or encumbrance upon the Property or any part thereof or interest therein; or (ii) no liens or lien claims, choate or inchoate, arising from the Seller's actions or otherwise, exist or can exist for the benefit of mechanics or materialmen in regard to the Property. Except as expressly disclosed in the documents relating to this transaction, the Seller has not entered into any contracts or agreements relating to the use of 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 Seller.

4.4 Litigation. To the Seller's best knowledge, 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.

4.5 Bills Paid. At closing, there will be no unpaid bills or claims in connection with any repair or operation of the Property.

4.6 Compliance With Law. To the Seller's best knowledge, the Property is in compliance with all applicable laws, ordinances, rules and regulations of any Government or any agency, body or subdivision, including any environmental issues related to the Seller's activities thereof.

4.7 Taxes. To the best of the Seller's knowledge, no state or municipal taxes are due with respect to the Property and no liens for such taxes are in effect against the Property, except as set forth on the Title Commitment. The Seller agrees to pay the prorated taxes due on the Property for the year 2008 through the date of Closing.

4.8 Pre-Closing Claims.

- A. The Seller agrees that the City's acceptance of title to the Property under the conveyance documents should not create any liability on the City's part to third parties that have claims of any kind against the Seller in connection with the

Property. The City hereby expressly disclaims any and all liability to third parties that have any claims against the Seller. The City will not assume or agree to discharge any liabilities pertaining to the Property that occurred or accrued prior to the date of Closing.

4.9 Authority. The Seller has full right, power and authority to convey the property to the City and to consummate this transaction as provided in this Contract without the joinder of any other person or entity.

4.10 Title. The Seller has good and indefeasible title to a fee simple estate in the Property, subject to no liens, charges, encumbrances or exceptions other than those shown on the Title Commitment.

4.11 Condition of Property Prior to Closing. Prior to Closing, the Seller shall not create or permit to be created any easement or other condition affecting the Property without the prior written consent of the City.

4.12 Misrepresentation. The Seller shall indemnify and hold the City harmless from and against any losses, damages, costs or expenses (including attorneys' fees) incurred by the City as a direct or indirect result of (i) breach of any representation or warranty of the Seller contained in this document, or (ii) any breach or default by the Seller under any of the covenants or agreements contained in this document to be performed by the Seller.

4.13 Termination. All representations, warranties, covenants and agreements of the Seller made in this document, except as noted in Paragraph 4.6 and 4.8, hereof, shall terminate upon the execution and delivery of the Deed and the Closing hereunder.

4.14 DISCLAIMER. THE SELLER IS MAKING NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OR ANY NATURE WHATSOEVER WITH RESPECT TO THE PROPERTY, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY AS TO THE CONDITION, HABITABILITY, MERCHANTABILITY OR FITNESS OF THE PROPERTY FOR A PARTICULAR PURPOSE, EXCEPT FOR THE WARRANTIES OF TITLE SPECIFICALLY SET FORTH IN THE DEED OF CONVEYANCE.

DISCLAIMER BY THE CITY OF WARRANTIES OF THE SELLER, THE CITY ACKNOWLEDGES THAT (I) IT AND ITS OFFICERS, AGENTS, EMPLOYEES, AND ADVISORS HAVE BEEN GIVEN FULL AND COMPLETE OPPORTUNITY TO THE EXTENT THAT THEY IN THEIR SOLE JUDGMENT DEEMED APROPRIATE, DESIRABLE AND PRUDENT, (II) THE CITY AND SUCH PARTIES TAKE FULL RESPONSIBILITY FOR DETERMINING THE SCOPE OF THEIR INVESTIGATIONS OF THE PROPERTY AND FOR THE MANNER IN WHICH SUCH INVESTIGATIONS HAVE BEEN CONDUCTED, (III) THE CITY, TOGETHER WITH SUCH OTHER PARTIES, ARE FULLY CAPABLE OF EVALUATING THE ACCURACY OF THE INFORMATION AND MATERIAL OBTAINED BY THE CITY IN THE COURSE OF SUCH INVESTIGATION, AND (IV) THE CITY AND SUCH PARTIES HAVE NOT RELIED ON THE SELLER OR ON ANY OFFICER, EMPLOYEE, OR AGENT OF THE SELLER OR UPON ANY WRITTEN OR ORAL INFORMATION, REPRESENTATION OR FACT PROVIDED BY ANY SUCH PARTY WITH

DNY

RESPECT TO ANY MATTER IN CONNECTION WITH THE CITY'S EVALUATION OF THE PROPERTY, INCLUDING, BUT NOT LIMITED TO THE PHYSICAL CONDITION THEREOF. ACCORDINGLY, THE CITY AGREES TO PURCHASE THE PROPERTY "AS IS" AND "WHERE IS," WITHOUT ANY WARRANTY WHATSOEVER EXPRESS OR IMPLIED FROM THE SELLER TO THE CITY.

5. Closing. The closing of this transaction ("Closing") shall take place at the offices of Del Norte American Title Insurance Company, 320 Texas Ave., El Paso, Texas 79901 (the "Title Company") on or before thirty (30) days after the execution of this Agreement by the City.

5.1 Possession. Possession of the Property will be transferred to the City upon Closing.

5.2 Real Property Taxes. Real property taxes and assessments shall be prorated at Closing, effective as of the date of Closing, based upon the latest tax bill available. Taxes shall be prorated in accordance with the foregoing provision and the parties shall appropriately and promptly adjust such pro-rations on the basis of the correct, applicable tax bill when such tax bill becomes available. The Seller agrees to pay ad valorem taxes through the day of closing.

5.3 Closing Costs.

- (a) All recording fees arising from the recordation of documents necessary to show good title to the Property shall be paid by the City.
- (b) Premiums and other charges for the issuance of the Owner's Policy of Title Insurance for the Property shall be paid by the City.
- (c) Escrow fees, if any, shall be paid by the City.

5.4 Seller's Obligations. At Closing, the Seller shall deliver to the City a duly executed and acknowledged Special Warranty Deed to the Property, 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 which shall be prorated to the date of Closing, (ii) the standard printed exceptions contained in the usual form of the Owner's Policy, (iii) any other exceptions set forth in the Title Policy which the City has approved pursuant to Paragraph 3.2 above, and (iv) a reservation of right to Seller and its successors and assigns of any portion of Seller's property adjoining the Property to use the Property for storm water drainage, subject however, to Seller or its successors and assigns compliance with applicable rules and regulations of the City of El Paso and any applicable drainage plans with respect thereto.

5.5 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 Seller. In the event that the Seller 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

504

any reason, except the City's default, or the termination of this Agreement in accordance with its terms, the City may enforce specific performance of this Agreement.

6.2 Breach by City. In the event that City 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 Seller's default, or the termination of this Agreement in accordance with its terms, due to the difficulty of assessing the Seller's actual damages as a result of such breach by City, the Seller shall have a right to receive the ONE HUNDRED and 00/100 DOLLARS (\$100.00), such sum being agreed upon as liquidated damages for the failure of the City to perform the duties, liabilities and obligations imposed upon it by the terms and provisions of this Agreement, and the Seller agrees to accept and take such cash payment as its total, reasonable damages and relief or shall be permitted to seek to enforce specific performance.

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:

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

Seller: EP Park Hills II LTD.
1790 Lee Trevino, Suite 601
El Paso, Texas 79936

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.

APPROVED AS TO FORM:

Theresa A. Cullen-Garney
Theresa A. Cullen-Garney
Deputy City Attorney

APPROVED AS TO CONTENT:

Patricia A. Adauto
Patricia Adauto, Deputy City Manager
Development & Infrastructure Services

ACKNOWLEDGEMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2008 by
Joyce Wilson, City Manager of the City of El Paso.

Notary Public, State of Texas

My commission expires:

SUBJECT PARCEL DESCRIPTION

The following is the description of a parcel of land ("subject parcel") lying in and being a portion of Tract 1, H. G. Foster Survey No 258, said subject parcel lying east of Chaparral Park Unit 39 and sharing its southerly boundary line with the north right-of-way line of a platted drainage and street right-of-way as shown on the plot of Coronado Oaks Unit Two, City of El Paso, El Paso County, Texas; also being a portion of that parcel of land described as "Parcel 2" in that Quit Claim Deed recorded on 07-13-2000 in Volume 3820 at Page 1164, Real Property Records of El Paso County, Texas; more particularly described as follows:

The POINT OF BEGINNING being a chiseled "V" cut in the center of an existing concrete-lined channel (Djo de Agua Chumale); said point lying in the northerly right-of-way line of the platted drainage and street right-of-way adjacent to Lots 5 and 6, Block 6, Coronado Oaks Unit Two; FROM WHICH the following monuments are located:

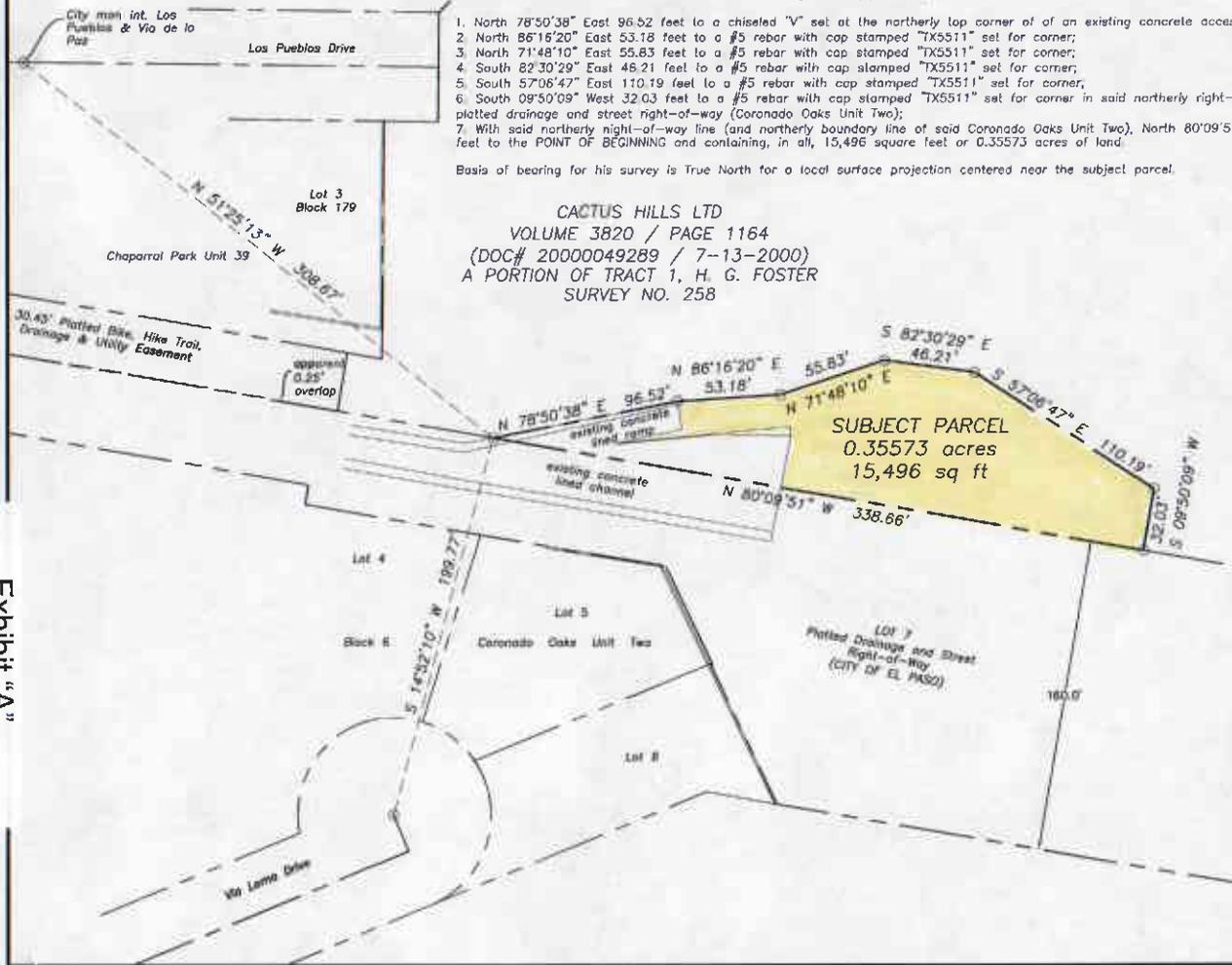
1. A city monument found for the intersection of the centerlines of Los Pueblos and Via de la Paz bears North 51° 25' 13" West 308.67 feet;
2. A city monument found for the radius point of the cul-de-sac of Via Loma Drive (giving frontage to lots 4 through 6, Block 6, Coronado Oaks Unit Two) bears South 14° 52' 10" West 199.77 feet;

THENCE, from said POINT OF BEGINNING, the following seven (7) courses:

1. North 78°50'38" East 96.52 feet to a chiseled "V" set at the northerly top corner of an existing concrete access ramp for corner;
2. North 86°16'20" East 53.18 feet to a #5 rebar with cap stamped "TX5511" set for corner;
3. North 71°48'10" East 55.83 feet to a #5 rebar with cap stamped "TX5511" set for corner;
4. South 82°30'29" East 46.21 feet to a #5 rebar with cap stamped "TX5511" set for corner;
5. South 57°06'47" East 110.19 feet to a #5 rebar with cap stamped "TX5511" set for corner;
6. South 09°50'09" West 32.03 feet to a #5 rebar with cap stamped "TX5511" set for corner in said northerly right-of-way line of the platted drainage and street right-of-way (Coronado Oaks Unit Two);
7. With said northerly right-of-way line (and northerly boundary line of said Coronado Oaks Unit Two), North 80°09'51" West 338.66 feet to the POINT OF BEGINNING and containing, in all, 15,496 square feet or 0.35573 acres of land.

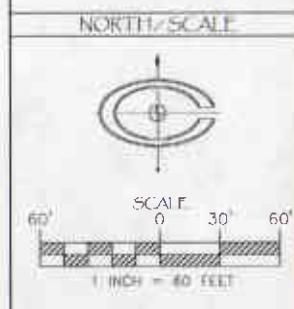
Basis of bearing for his survey is True North for a local surface projection centered near the subject parcel.

CACTUS HILLS LTD
VOLUME 3820 / PAGE 1164
(DOC# 2000049289 / 7-13-2000)
A PORTION OF TRACT 1, H. G. FOSTER
SURVEY NO. 258



LEGEND

BOUNDARY/POA LINE	---
CENTERLINE OF ROAD	---
RAILROAD LINE	---
MAINTENANCE CENTER LINE	---
DRAINAGE ELEVATION LINE	---
POWERS/UTILITY POLE	●
KEY MONUMENT	+



NOTES

PROJECT ORIENTATION, HORIZONTAL POSITIONS, ORIGNOMETRIC HEIGHTS AND MAGNETIC DECLINATION DETERMINED BY STATIC G.P.S. METHOD ACCORDING TO THE NATIONAL GRID, AZEL, HIPS UTILITY (WWW.HIPSLINK.COM), GEODETIC REFERENCE FRAME NAD83(2011) (EPSG:31466.0000)

INDEED/EXPRESS IN VIA EXISTING CHANNEL.

BASE OF BEARING: TRUE (DESIGNEE) NORTH FOR A LOCAL SURFACE PROJECTION CENTERED NEAR THE SUBJECT PARCEL SHOWN HEREON.

ALL DISTANCES SHOWN HEREON ARE U.S. SURVEY FEET GROUND DISTANCES

CERTIFICATION

I HEREBY CERTIFY THAT THIS SURVEY EXHIBIT WAS PREPARED BY ME OR UNDER MY SUPERVISION, AND THAT THE INFORMATION PRESENTED HEREON IS TRUE AND CORRECT TO BEST OF MY KNOWLEDGE AND BELIEF.

08-30-07

CHRISTIAN A. CLAUSEN, R.P.L.S.
(TX 5511-MM 18467-AZ 38621)

Clausen
Land Surveying

2210 N. Loop West, Suite 200, El Paso, TX 79912
Phone: (915) 764-1922 Fax: (915) 764-1923

The information contained in this set of documents is proprietary by nature. Any use or disclosure other than that which relates to the client herein is strictly prohibited.

PROJECT INFORMATION
PARCEL FOR PURCHASE
BY THE CITY OF EL PASO



TRAINED FOR	DATE
SEWER	08-17-07
TRAILER SHEET TOWER	08-30-07

SITE ID:
CLS - 2007 CEP ACQ

SITE NAME:
QJO DE AGUA PARCEL

SITE ADDRESS:
POR: TRACT 1
H. G. FOSTER SURVEY
NO 258

SHEET TITLE:
SURVEY SHEET

SHEET NUMBER:
SUR-1

Page 1 of 1
Exhibit "A"