

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

DEPARTMENT: Financial Services

AGENDA DATE: Consent Agenda
September 28, 2010

CONTACT PERSON NAME AND PHONE NUMBER: Liza Ramirez-Tobias (915) 541-4074

DISTRICT(S) AFFECTED: District 8, Rep. O'Rourke

SUBJECT:

A resolution that the City Manager, or her designee, be authorized to sign, the Contract of Sale attached and all other documents approved by the City Attorney, or his designee, necessary and proper to consummate the purchase of the following described property:

The North 87.50 feet of Lots 15 and 16, Block 1, Franklin Heights Addition, municipally known and numbered as 1030 Myrtle, El Paso, El Paso County, Texas.

BACKGROUND / DISCUSSION:

An appraisal was completed by Wilkinson, Pendergras & Beard, L.P. on the .10 acre parcel, which is located on the corner of Myrtle and Octavia. The property owner, Mr. Homero Silva Terrazas has accepted the appraised value of \$35,000, and the City will pay for closing costs.

There are currently no neighborhood parks in the Magoffin area. As per the Parks Master Plan: a neighborhood park which defined as a "close-to-home park" is one of the most important categories. Close to home parks address day to day facilities for all ages and activities, and are usually within walking or driving distance from where we live. Having a neighborhood park will enhance the quality of life for the area residents.

PRIOR COUNCIL ACTION:

March 9, 2010- authorized to locate a site and bring contract to City Council for approval

AMOUNT AND SOURCE OF FUNDING:

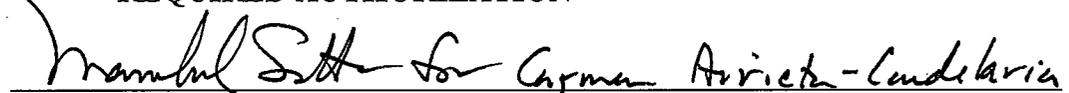
27503- Capital outlay

BOARD / COMMISSION ACTION:

CARE recommends approval

*****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

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

That the City Manager, or her designee, is authorized to sign the Contract of Sale attached to this Resolution and all other documents approved by the City Attorney, or his designee, necessary and proper to consummate the purchase of the following described property and the improvements located thereon by the City of El Paso:

The North 87.50 feet of Lots 15 and 16, Block 1, Franklin Heights Addition, municipally known and numbered as 1030 Myrtle, El Paso, El Paso County, Texas.

ADOPTED this _____ day of _____, 2010.

THE CITY OF EL PASO

John F. Cook
Mayor

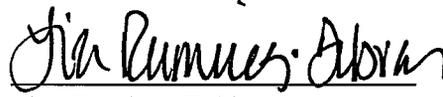
ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:


Sylvia Borunda Firth
Senior Assistant City Attorney

APPROVED AS TO CONTENT:


Liza Ramirez-Tobias
Capital Assets Manager

STATE OF TEXAS §
COUNTY OF EL PASO §

CONTRACT OF SALE

This Agreement is entered into this ____ day of _____, 2010, by and between the City of El Paso ("City") and **Homero Silva Terrazas and Ana del Carmen Silva** ("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 to the City free and clear of any liens or encumbrances, the following described real property located in El Paso County, Texas:

The North 87.50 feet of Lots 15 and 16, Block 1, Franklin Heights Addition, City of El Paso, El Paso County, Texas, municipally known and numbered as 1030 Myrtle, El Paso, El Paso County, Texas, and being more particularly described by metes and bounds as shown in Exhibit "A," attached hereto and incorporated herein by reference,

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 (the "Property").

2. Amount of Payment of Purchase Price. The purchase price for the Property shall be **THIRTY FIVE THOUSAND FIVE HUNDRED AND NO/100 (\$35,000.00) DOLLARS.**

- 2.1 Payment of Sales Price. The full amount of the sales price will be payable in cash at the closing.

- 2.2 Earnest Money. The Seller Acknowledged the receipt of earnest money paid to the Seller by the City in the amount of ONE HUNDRED AND NO/100 DOLLARS (\$100.00), which will be credited to the purchase price at the time of closing.

3. Conditions to City's Obligations. The obligations of the City 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.

- 3.1.1 Title Insurance. Within ten (10) 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 on or before the expiration of ten (10) 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. 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 and warrants to the City that to the best of his knowledge, 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. 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. (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; and (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; and (iii) 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. 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 Law. The Property is in compliance with all laws, ordinances, rules and regulations of any Government or any agency, body or subdivision thereof, bearing in the development of the Property, including any environmental issues.

4.7 Taxes. 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. Seller agrees to pay the prorated taxes due on the Property for the year 2010 through the date of closing.

4.8 Pre-Closing Claims.

4.8.1 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 taxes or liabilities pertaining to the Property that occurred or accrued prior to the date of Closing. The Seller agrees to indemnify and hold the City harmless from and against any losses, damages, or expenses, including attorneys fees and court costs, pertaining to claims arising out of the Property, and accruing prior to and arising from events that occurred prior to the date of Closing.

4.8.2 The Seller agrees to indemnify and hold the City harmless from and against any and all claims, injuries, liabilities, losses, damages, or expenses, including attorneys fees and court costs, pertaining to claims arising out of the Property, accruing prior to and arising from events that occurred prior to the date of Closing, and arising from any of the following: (i) testing or inspection obligations required by federal or state environmental agencies, including without limitation any required after the date of Closing; (ii) pending environmental investigations or cases by the Texas Commission on Environmental Quality known to the Seller; or (iii) the acts or omissions of the Seller on the Property. The Seller and the City each agree to promptly inform other party of any correspondence, directive, inquiry, demand, request, or similar communication from any federal or state environmental agency relating to the Property, to reasonably cooperate with the other party on the response to and handling of such communication and any related proceeding, and allow the reasonable participation of the other party in connection with the same.

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 marketable title to an indefeasible 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, 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, all of which shall survive the Closing hereof.

4.13 Survival. All representations, warranties, covenants and agreements of the Seller 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 Lawyers Title of El Paso, 301 E. Yandell, El Paso, Texas 79902, on or before November 1, 2010.

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. Seller will pay ad valorem taxes through the date 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 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, and (iii) any other exceptions set forth in the Title Policy which the City has approved pursuant to Paragraph 3.2 above.

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 Seller shall fail to fully and timely perform any of his obligations under this Agreement, or shall fail to consummate the sale of the Property for 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 Seller's default, or the termination of this Agreement in accordance with its terms, due to the difficulty of assessing Seller's actual damages as a result of such breach by City, the Seller shall have a right to receive the ONE HUNDRED and NO/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 Seller agrees to accept and take such cash payment as its total, reasonable damages and relief and as Seller's sole, exclusive remedy hereunder in such event.

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: Joyce A. Wilson
City Manager
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

Seller Homero Silva Terrazas and
Ana del Carmen Silva
4430 Oxford Avenue
El Paso, Texas 79903

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.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

The above instrument, together with all conditions thereto is hereby EXECUTED by the Seller this _____ day of _____, 2010.

**SELLER: HOMERO SILVA TERRAZAS
and
ANA DEL CARMEN SILVA**

Homero Silva Terrazas

Ana del Carmen Silva

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2010 by Homero Silva Terrazas and Ana del Carmen Silva (SELLER).

My Commission Expires:

Notary Public, State of Texas
Notary's name printed:

(Signatures continue on the following page)

EXECUTED by the City this _____ day of _____, 2010.

BUYER: CITY OF EL PASO

By: _____
Joyce A. Wilson, City Manager

APPROVED AS TO FORM:

Sylvia Borunda Firth
Sylvia Borunda Firth
Senior Assistant City Attorney

APPROVED AS TO CONTENT:

Liza Ramirez-Tobias
Liza Ramirez-Tobias
Capital Assets Manager

ACKNOWLEDGMENT

STATE OF TEXAS }
 }
CITY OF EL PASO }

This instrument was acknowledged before me on this _____ day of _____, 2010, by Joyce A. Wilson, as City Manager for the City of El Paso, Texas.

Notary Public, State of Texas

My Commission Expires:

PROPERTY DESCRIPTION

Property Description: A portion of Lots 15 and 16, Block 1, Franklin Heights addition, City of El Paso, El Paso County, Texas.

METES AND BOUNDS DESCRIPTION

The parcel of land herein described is the North 87.50 feet of Lots 15 and 16, Block 1, Franklin Heights Addition, City of El Paso, El Paso County, Texas, with all of said land in its entirety being more particularly described by metes and bound as follows:

Commencing at a found City Monument at the intersection of the monument lines of Myrtle Avenue and Noble Street from which a City Monument at Noble and Magoffin bears S36° 44' 31"E (basis of bearing), a distance of 408.90 feet; THENCE South 53° 01' 28" West, along the monument line of Myrtle Avenue, a distance of 504.02 feet to a set nail with shiner; THENCE South 36° 58' 32" East a distance of 45.00 feet to a ½" iron rod with SLI yellow cap "TX2998" set for the TRUE POINT OF BEGINNING of the parcel herein described;

THENCE, South 36° 57' 56" East, along the westerly right-of-way line of Octavia, a distance of 87.50 feet to a set ½" iron rod with SLI yellows cap "TX2998";

THENCE, South 53° 01' 28" West, a distance of 50.00 feet to a set ½" iron rod with SLI yellows cap "TX2998";

THENCE, North 36° 57' 56" West, a distance of 87.50 feet to a set ½" iron rod with SLI yellows cap "TX2998";

THENCE, North 53° 01' 28" East, a distance of 50.00 feet to the TRUE POINT OF BEGINNING of this description.

Said parcel of land contains 4375 square feet or 0.10043 acres of land, more or less.

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

SLI ENGINEERING, INC.
Consulting Engineers-Land Surveyors

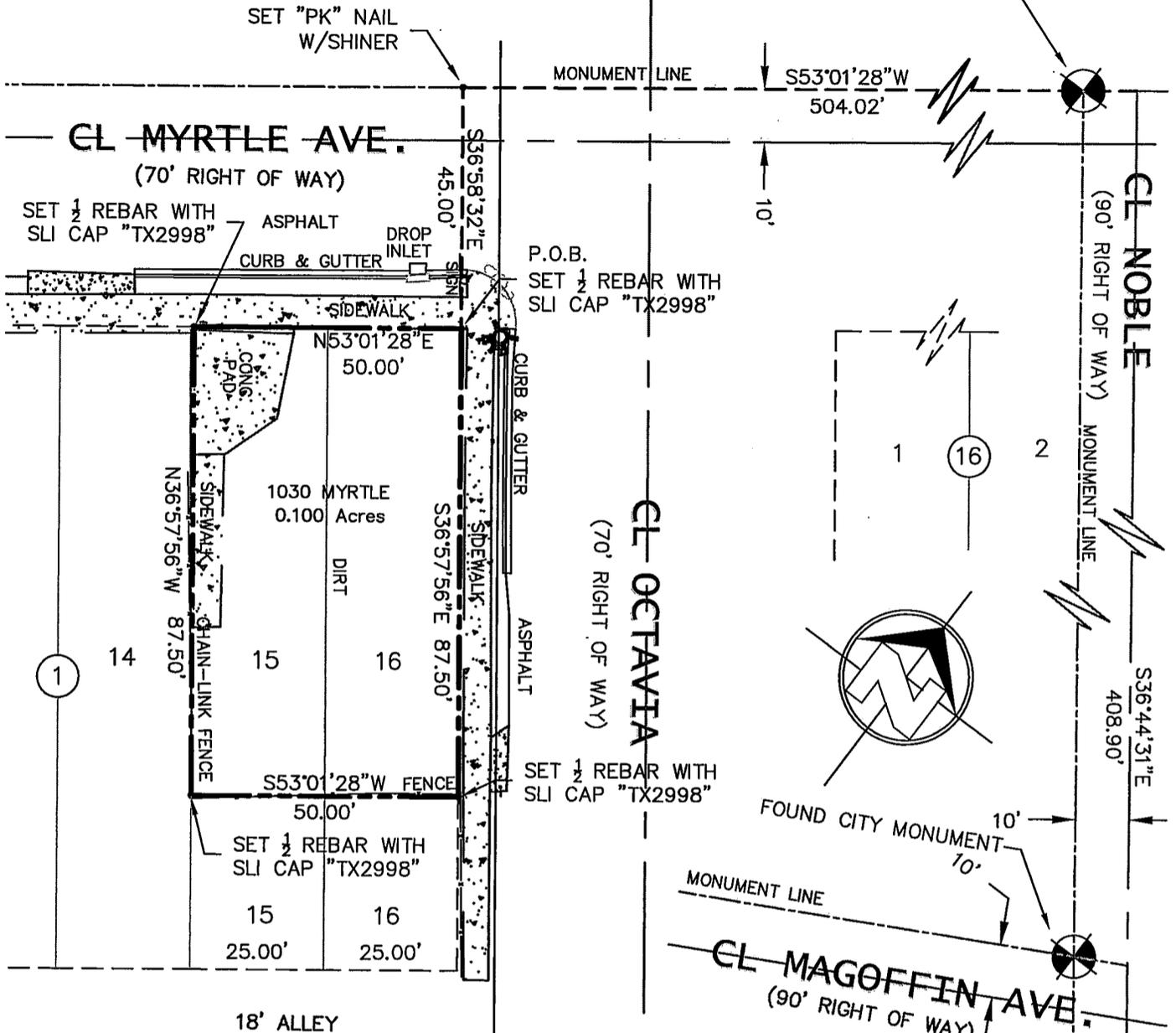
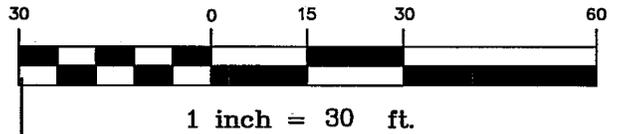

Guillermo Licon
Registered Professional Land Surveyor
Texas License No. 2998



May 4, 2010
Job # 06-10-2901
M&B/1624

NOTE:
ALL INFORMATION SHOWN HEREON WITH RESPECT TO UNDERGROUND CONDITIONS WAS DETERMINED BY DATA COLLECTED THROUGH SURVEY CREW OBSERVATION AND OTHER INFORMATION TAKEN FROM EXISTING PLANS AND MAPS OF RECORD. NO UNDERGROUND UTILITIES EXISTING OR ABANDONED WERE EXPOSED OR LOCATED.

UNLESS SPECIFICALLY ACCEPTED BY SLI ENGINEERING, INC. IN WRITING, SLI ENGINEERING, INC. MAKES NO CLAIM, EXPRESSED OR IMPLIED, AS TO THE UNDERGROUND SITE CONDITIONS.



- NOTES:
1. A METES AND BOUNDS DESCRIPTION OF EVEN DATE ACCOMPANIES THIS PLAT OF SURVEY.
 2. SET 1/2" IRON WITH SLI CAP STAMPED TX2998 ON ALL PROPERTY CORNERS UNLESS OTHERWISE INDICATED.
 3. DEED REFERENCE IN VOL. 1432, PG. 763, DEED RECORDS OF EL PASO COUNTY.
 4. BASIS OF BEARING: MONUMENT LINE OF NOBLE STREET BASED ON GPS OBSERVATIONS.
 5. NO BUILDINGS EXIST ON THE PROPERTY

ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP COMMUNITY-PANEL NUMBER 480214 0039B, DATED OCTOBER 15, 1982 THIS PROPERTY LIES IN FLOOD ZONE "X".

ZONE "X" AREAS OF MINIMAL FLOODING.

DUE TO INHERENT INACCURACIES OF FEMA OR FLOOD INSURANCE RATE MAPS THIS SURVEYOR DOES NOT CERTIFY TO THE ACCURACY OF LOCATIONS BASED ON SUCH MAPS. THIS FLOOD STATEMENT SHALL NOT CREATE LIABILITY ON THE PART OF THE SURVEYOR.

Copyright 2009 SLI Engineering, Inc.

This map and survey are being provided solely for the use of City of El Paso and no license has been created, expressed or implied, to copy the surveys and/or map(s) except as necessary in conjunction with the original transaction. This transaction shall be effective within six (6) months from the date hereon May 04, 2010.



CERTIFICATION
I HEREBY CERTIFY THAT THE FOREGOING BOUNDARY, IMPROVEMENT AND TOPOGRAPHIC SURVEY WAS PERFORMED UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

GUILLERMO LICON, R.P.L.S.
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS LICENSE NO. 2998

DATE: 5-11-10

PLAT OF SURVEY



SLI ENGINEERING, INC.
CIVIL ENGINEERS
LAND SURVEYORS
LAND PLANNERS
6600 WESTWIND DRIVE
EL PASO, TEXAS 79912
915-584-4457

A PORTION OF LOTS 15 AND 16
BLOCK 1
FRANKLIN HEIGHTS ADDITION
CITY OF EL PASO
EL PASO COUNTY, TEXAS

JOB #: 06-10-2901 DR. BY: EK/TR

SCALE: 1"=30'

DATE: 05/04/2010

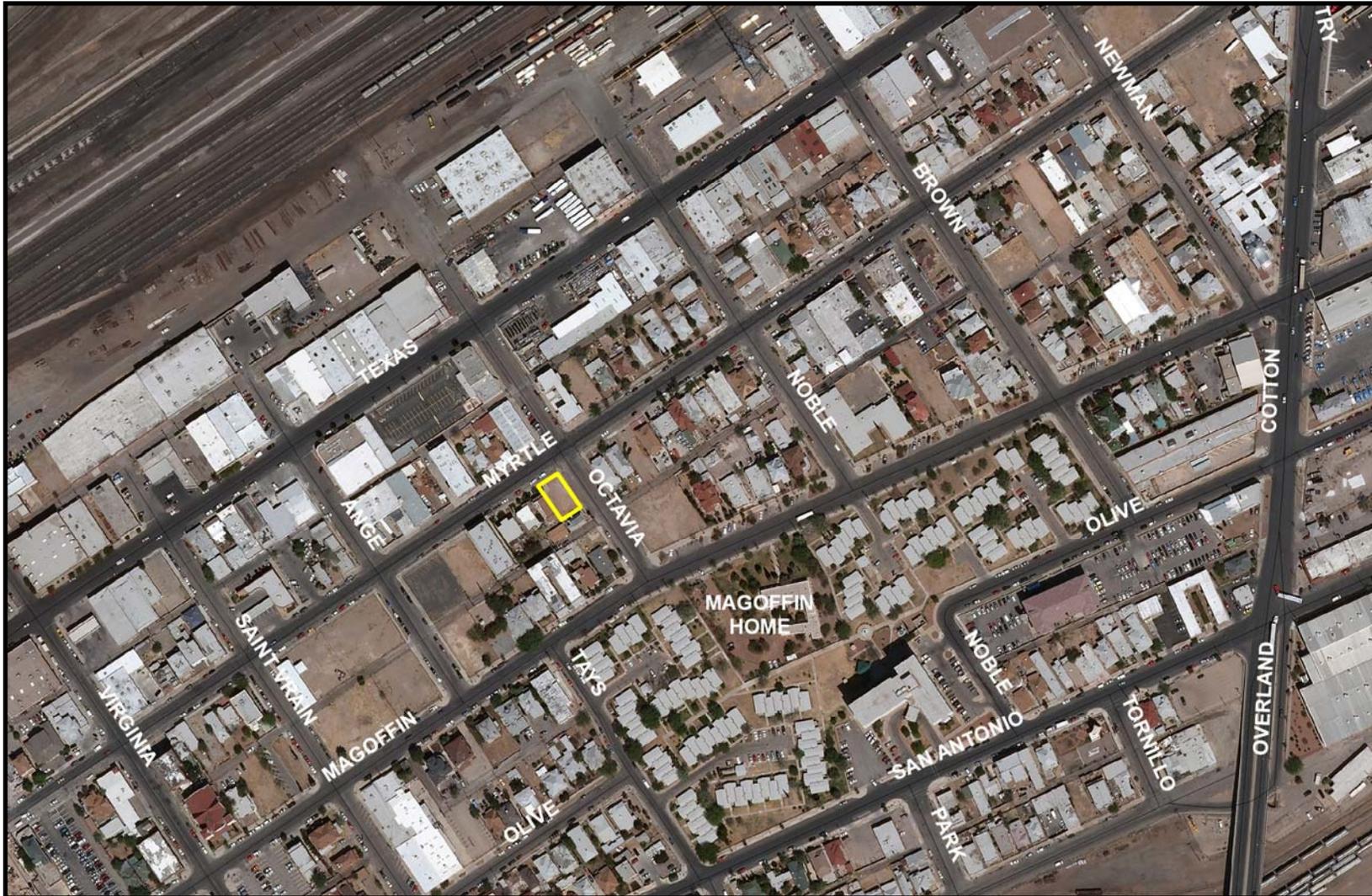
1030 Myrtle

Subject Property:
1030 Myrtle
PID#F607999900104300



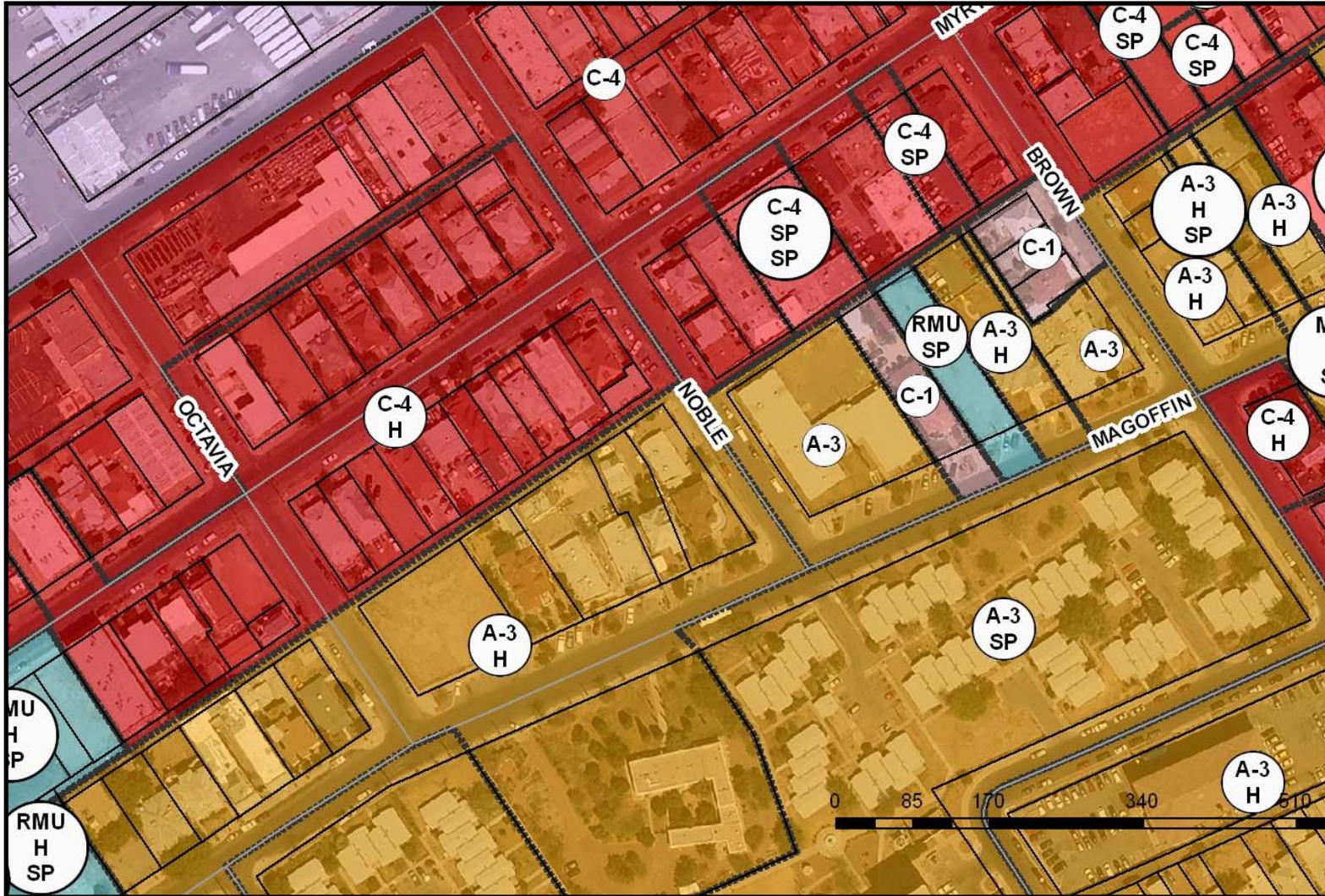


1030 Myrtle





1030 Myrtle





1030 Myrtle

