

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

DEPARTMENT: El Paso Water Utilities

AGENDA DATE: INTRODUCTION: October 13, 2009
PUBLIC HEARING: October 20, 2009

CONTACT PERSON/PHONE: **Robert D. Andron**, General Counsel, EPWU 
Jim Shelton, Land Administration, EPWU (915) 594-5511

DISTRICT(S) AFFECTED: District #4 – Northeast El Paso

SUBJECT:

The introduction of an ordinance relating to the sale of land in Northeast El Paso. Attached is an individual ordinance and special warranty deed. The land consists of approximately 35 acres of land located near Patriot Freeway and McCombs.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

Attached is the El Paso Water Utilities Public Service Board Resolution passed and approved April 8th, 2009, authorizing the sale to the highest and sole bidder of this property; and requesting the City Council authorize the City Manager to sign a Special Warranty Deed and any other necessary documents to convey the parcel.

Seventy packets were provided to potential bidders. Bids were received April 3rd, 2009. There was one bid received. The bid was in excess of the market value established by an independent appraisal and the minimum bid price set by the PSB. The legal description and amount of the highest and sole bidder for the parcel is as follows:

PSB Bid No.20-09

Being a portion of Section 30, Block 80, Township 1, Texas & Pacific Railway Company Surveys, City of El Paso, El Paso County, Texas, being approximately 35 acres of land, to EP Plaza Partners, L.P., in the amount of \$3,646,000.00.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

In 2007, the City Council approved the sale of a parcel of land of 9.635 acres in the Mission Valley area of El Paso.

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AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

Sale of land to the highest and sole bidder. After Closing, the City of El Paso will receive 5% of the net proceeds from the sale of the land pursuant to City of El Paso El Paso Water Utilities Water and Sewer Revenue Bond Covenants.

BOARD / COMMISSION ACTION:

Approved by the El Paso Water Utilities Public Service Board by Resolution on April 8th, 2009.

*****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:** _____

Attachments

p:\20092010\October2009\CityCouncilItems\35 acres Land Sale\MemoAgendaItemRequestLandSaleEPplazaPartners35acresNortheast.doc

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ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO SIGN A SPECIAL WARRANTY DEED AND ANY OTHER NECESSARY DOCUMENTS CONVEYING APPROXIMATELY 35 ACRES OF LAND BEING A PORTION OF SECTION 30, BLOCK 80, TOWNSHIP 1, TEXAS & PACIFIC RAILWAY SURVEYS, CITY OF EL PASO, EL PASO COUNTY, TEXAS, TO EP PLAZA PARTNERS, L.P., THE HIGHEST AND SOLE BIDDER.

WHEREAS, by Resolution dated April 8th, 2009, the El Paso Water Utilities Public Service Board (PSB), found one parcel of land totaling approximately 35 acres, more or less, being a portion of Section 30, Block 80, Township 1, Texas & Pacific Railway Company Surveys, 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, to be inexpedient to the water system, and recommended the sale of the parcel of real property at public bid; and

WHEREAS, the PSB received an independent appraisal of the market value of its interest in the identified real property; and

WHEREAS, in accordance with Section 272.001 of the Texas Local Government Code, the City of El Paso, through its PSB, advertised and solicited bids for the purchase of the identified real property; and

WHEREAS, in its Resolution dated April 8th, 2009, the PSB awarded Bid No. 20-09 for the sale of the identified real property to EP Plaza Partners, L.P., the highest and sole bidder,

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

That the City Manager is hereby authorized to execute a Special Warranty Deed and any other necessary documents as required for the sale and conveyance of the following described real property to EP Plaza Partners, L.P., the highest and sole bidder, as awarded and recommended by the El Paso Water Utilities Public Service Board:

35 acres of land, being out of a portion of Section 30, Block 80, Texas & Pacific Railway Company Surveys, City of El Paso, El Paso County, Texas, and being more particularly described in Exhibit "A".

PASSED AND APPROVED this _____ day of _____, 2009.

THE CITY OF EL PASO

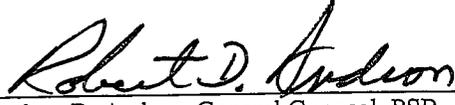
ATTEST:

John F. Cook, Mayor

Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:



Robert D. Andron, General Counsel, PSB



Theresa Cullen, Deputy City Attorney

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BROCK & BUSTILLOS INC.
CONSULTING CIVIL ENGINEERS LAND SURVEYORS

ROMAN BUSTILLOS, P.E.
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RANDY D. BROCK, P.E.
Executive Vice President
SERGIO J. ADAME, P.E.
Vice President - Engineering
OSCAR V. PEREZ
Vice President - Operations
ISAAC GAMACHO, R.P.L.S.
Survey Manager

METES AND BOUNDS DESCRIPTION
"35 ACRE PARCEL"

A 35.00 acre parcel being a portion of Section 30, Block 80, Township 1, Texas and Pacific Railway Company Surveys, city of El Paso, El Paso County, Texas, and being more particularly described by metes and bounds as follows.

COMMENCING for reference at an existing Brass Cap found at the intersection of the lines common to Sections 19 and 30, Block 80 and Sections 20 and 21, Block 81, Township 1, Texas and Pacific Railway Company; **THENCE**, following the line common to said Section 21, Block 81 and said Section 30, Block 80, also being the center line of F.M. 2529 (McCombs Avenue, 150 feet wide right-of-way), South 01°04'44" East, a distance of 1,361.32 feet to a point; **THENCE**, leaving the center line of said F.M. 2529, North 88°55'16" East, a distance of 75.02 feet to a 1/2" rebar with survey cap stamped "TX6032" set on the easterly right-of-way line of said F.M. 2529 and the southerly right-of-way line of U.S. 54 (Patriot Freeway, 400 feet wide right-of-way), for the northwest corner and the **POINT OF BEGINNING** of the parcel herein described;

THENCE, leaving the easterly right-of-way line of said F.M. 2529 and following the southerly right-of-way line of said U.S. 54, North 23°42'47" East, a distance of 178.35 feet to a 1/2" rebar with survey cap stamped "TX6032" set on the southerly right-of-way line of said U.S. 54 and an angle point;

THENCE, continuing along the southerly right-of-way of said U.S. 54, North 48°29'49" East, a distance of 1,646.15 feet to a 1/2" rebar with survey cap stamped "TX6032" set on the southerly right-of-way of said U.S. 54 for the northeast corner of the parcel herein described;

THENCE, leaving the southerly right-of-way line of said U.S. 54, South 16°27'59" East, a distance of 850.66 feet to a 1/2" rebar with survey cap stamped "TX6032" set for the most easterly corner of the parcel herein described;

THENCE, South 49°13'35" West, a distance of 265.44 feet to a 1/2" rebar with survey cap stamped "TX6032" set for an angle point;

THENCE, South 49°10'42" West, a distance of 849.22 feet to a 1/2" rebar with survey cap stamped "TX6032" set for an angle point;

THENCE, South 17°30'33" East, a distance of 410.32 feet to a 1/2" rebar found on the northerly right-of-way line of Rick Husband Drive (120 feet wide) and the southeasterly corner of the parcel herein described;

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THENCE, following the northerly right-of-way line of said Rick Husband Drive, South 89°03'29" West, a distance of 812.49 feet to a ½" rebar with survey cap stamped "TX6032" set on the intersection of the northerly right-of-way line of said Rick Husband Drive and the easterly right-of-way line of said F.M. 2529 for the southwesterly corner of the parcel herein described;

THENCE, leaving the northerly right-of-way line of said Rick Husband Drive and following the easterly right-of-way line of said F.M. 2529, North 01°04'44" West, a distance of 694.92 feet to the **TRUE POINT OF BEGINNING**.

Said Parcel contains 35.0000 acres (1,524,600.8 square feet) more or less.


Avelardo Ponce, Tx. R.P.L.S. No. 6032
Date: December 11, 2008
Job No. 05896-039



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~~effective May 5, 2017~~



TEXAS ASSOCIATION OF REALTORS®
COMMERCIAL CONTRACT - UNIMPROVED PROPERTY

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS® IS NOT AUTHORIZED.
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1. **PARTIES:** Seller agrees to sell and convey to Buyer the Property described in Paragraph 2. Buyer agrees to buy the Property from Seller for the sales price stated in Paragraph 3. The parties to this contract are:
City of El Paso, through concurrent approval of its City Council and the Public Service Board of
Seller: ~~City of El Paso Water Utilities Public Service Board~~ Trustees

Address: 1154 Hawkins Blvd., El Paso, TX 79925
Phone: _____ Fax: _____
E-mail: _____

Buyer: EP Plaza Partners, L.P.
Address: 6500 Montana Ave., El Paso, TX 79925
Phone: (915) 779-6500 Fax: (915) 779-6509
E-mail: rayoub@mimcoelp.com

2. **PROPERTY:**

A. "Property" means that real property situated in El Paso County, Texas at
McCombs & US HWY 54
(address) and that is legally described on the attached Exhibit A or as follows:

B. Seller will sell and convey the Property together with:
(1) all rights, privileges, and appurtenances pertaining to the Property, including Seller's right, title, and interest in any minerals, utilities, adjacent streets, alleys, strips, gores, and rights-of-way;
(2) Seller's interest in all leases, rents, and security deposits for all or part of the Property; and
(3) Seller's interest in all licenses and permits related to the Property.

(Describe any exceptions, reservations, or restrictions in Paragraph 12 or an addendum.)

3. **SALES PRICE:**

A. At or before closing, Buyer will pay the following sales price for the Property:

(1) Cash portion payable by Buyer at closing \$	<u>3,646,000.00</u>
(2) Sum of all financing described in Paragraph 4 \$	_____
(3) Sales price (sum of 3A(1) and 3A(2)) \$	<u>3,646,000.00</u>

(TAR-1802) 10-18-05 Initialed for Identification by Buyer [Signature] and Seller [Signature]

B. Adjustment to Sales Price: (Check (1) or (2) only.)

- (1) The sales price will not be adjusted based on a survey.
- (2) The sales price will be adjusted based on the latest survey obtained under Paragraph 6B.

(a) The sales price is calculated on the basis of \$ _____ per:

- (i) square foot of total area net area.
- (ii) acre of total area net area.

(b) "Total area" means all land area within the perimeter boundaries of the Property. "Net area" means total area less any area of the Property within:

- (i) public roadways;
- (ii) rights-of-way and easements other than those that directly provide utility services to the Property; and
- (iii) _____

(c) If the sales price is adjusted by more than _____ % of the stated sales price, either party may terminate this contract by providing written notice to the other party within _____ days after the terminating party receives the survey. If neither party terminates this contract or if the variance is less than the stated percentage, the adjustment to the sales price will be made to the cash portion of the sales price payable by Buyer.

4. **FINANCING:** Buyer will finance the portion of the sales price under Paragraph 3A(2) as follows:

- A. Third Party Financing: One or more third party loans in the total amount of \$ _____ This contract:
 - (1) is not contingent upon Buyer obtaining third party financing.
 - (2) is contingent upon Buyer obtaining third party financing in accordance with the attached Commercial Contract Financing Addendum.
- B. Assumption: In accordance with the attached Commercial Contract Financing Addendum, Buyer will assume the existing promissory note secured by the Property, which balance at closing will be \$ _____
- C. Seller Financing: The delivery of a promissory note and deed of trust from Buyer to Seller under the terms of the attached Commercial Contract Financing Addendum in the amount of \$ _____

5. **EARNEST MONEY:**

- A. ~~Not later than 3 days after the effective date, Buyer must deposit \$ 182,300.00~~ ^{Buyer has deposited} _____ as earnest money with El Paso Water Utilities Public Service Board (escrow agent) at 1154 Hawkins, El Paso, TX 79925 (address). If Buyer fails to timely deposit the earnest money, Seller may terminate this contract by providing written notice to Buyer before Buyer deposits the earnest money and may exercise Seller's remedies under Paragraph 15.
- B. Buyer will deposit an additional amount of \$ N/A with the escrow agent to be made part of the earnest money on or before:
 - (i) _____ days after Buyer's right to terminate under Paragraph 7B expires; or
 - (ii) _____
 Buyer will be in default if Buyer fails to deposit the additional amount required by this Paragraph 5B within 3 days after Seller notifies Buyer that Buyer has not timely deposited the additional amount.
- C. Buyer may instruct the escrow agent to deposit the earnest money in an interest-bearing account at a federally insured financial institution and to credit any interest to Buyer.

6. TITLE POLICY AND SURVEY:

A. Title Policy:

- (1) Seller, at ^{Buyer's} Seller's expense, will furnish Buyer an Owner's Policy of Title Insurance (the title policy) issued by Stewart Title Company (title company) in the amount of the sales price, dated at or after closing, insuring Buyer against loss under the title policy, subject only to:
 - (a) those title exceptions permitted by this contract or as may be approved by Buyer in writing; and
 - (b) the standard printed exceptions contained in the promulgated form of title policy unless this contract provides otherwise.
- (2) The standard printed exception as to discrepancies, conflicts, or shortages in area and boundary lines, or any encroachments or protrusions, or any overlapping improvements:
 - (a) will not be amended or deleted from the title policy.
 - (b) will be amended to read "shortages in areas" at the expense of Buyer Seller.
- (3) Buyer may object to any restrictive covenants on the Property within the time required under Paragraph 6C.
- (4) Within 10 days after the effective date, Seller will furnish Buyer a commitment for title insurance (the commitment) including legible copies of recorded documents evidencing title exceptions. Seller authorizes the title company to deliver the commitment and related documents to Buyer at Buyer's address.

B. Survey: Within 5 days after the effective date:

- (1) Buyer will obtain a survey of the Property at Buyer's expense and deliver a copy of the survey to Seller. The survey must be made in accordance with the Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition.
- (2) Seller, at Seller's expense, will furnish Buyer a survey of the Property dated after the effective date. The survey must be made in accordance with the Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition.
- (3) Seller will deliver to Buyer and the title company a true and correct copy of Seller's existing survey of the Property dated December 11, 2008 along with an affidavit required by the title company for approval of the survey. If the survey is not acceptable to the title company, Seller, at Seller's expense, will obtain a survey acceptable to the title company and deliver the acceptable survey to the Buyer and the title company within 15 days after Seller receives notice that the existing survey is not acceptable to the title company. The closing date will be extended daily up to 15 days if necessary for Seller to deliver an acceptable survey within the time required.

C. Buyer's Objections to the Commitment and Survey:

- (1) Within 15 days after Buyer receives the commitment, copies of the documents evidencing the title exceptions, and any required survey, Buyer may object in writing to matters disclosed in the items if: (a) the matters disclosed constitute a defect or encumbrance to title other than those permitted by this contract or liens that Seller will satisfy at closing or Buyer will assume at closing; or (b) the items show that any part of the Property lies in a special flood hazard area (an "A" or "V" zone as defined by FEMA). If Paragraph 6B(1) applies, Buyer is deemed to receive the survey on the earlier of: (i) the date of Buyer's actual receipt of the survey; or (ii) of the deadline specified in Paragraph 6B.

- (2) Seller may, but is not obligated to, cure Buyer's timely objections within 15 days after Seller receives the objections. The closing date will be extended as necessary to provide such time to cure the objections. ~~If Seller fails to cure the objections by the time required, Buyer may terminate this contract by providing written notice to Seller within 5 days after the time by which Seller must cure the objections. If Buyer terminates, the earnest money, less any independent consideration under Paragraph 7B(1), will be refunded to Buyer.~~
- (3) ~~Buyer's failure to timely object or terminate under this Paragraph 6C is a waiver of Buyer's right to object except that Buyer will not waive the requirements in Schedule C of the commitment.~~

7. PROPERTY CONDITION:

A. Present Condition: Buyer accepts the Property in its present condition except that Seller, at Seller's expense, will complete the following before closing: N/A

B. Feasibility Period: Buyer may terminate this contract for any reason within _____ days after the effective date (feasibility period) by providing Seller written notice of termination. (Check only one box.)

(1) If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer less \$ _____ that Seller will retain as independent consideration for Buyer's unrestricted right to terminate. Buyer has tendered the independent consideration to Seller upon payment of the amount specified in Paragraph 5A to the escrow agent. The independent consideration is to be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(1) or if Buyer fails to timely deposit the earnest money, Buyer will not have the right to terminate under this Paragraph 7B.

(2) Not later than 3 days after the effective date, Buyer must pay Seller \$ _____ as independent consideration for Buyer's right to terminate by tendering such amount to Seller or Seller's agent. If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer and Seller will retain the independent consideration. The independent consideration will be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(2) or if Buyer fails to timely pay the independent consideration, Buyer will not have the right to terminate under this Paragraph 7B.

C. Inspections, Studies, or Assessments:

(1) During the feasibility period, Buyer, at Buyer's expense, may complete or cause to be completed any and all inspections, studies, or assessments of the Property (including all improvements and fixtures) desired by Buyer.

(2) Buyer must:

- (a) employ only trained and qualified inspectors and assessors;
- (b) notify Seller, in advance, of when the inspectors or assessors will be on the Property;
- (c) abide by any reasonable entry rules or requirements of Seller;
- (d) not interfere with existing operations or occupants of the Property; and
- (e) restore the Property to its original condition if altered due to inspections, studies, or assessments that Buyer completes or causes to be completed.

(3) Except for those matters that arise from the negligence of Seller or Seller's agents, Buyer is responsible for any claim, liability, encumbrance, cause of action, and expense resulting from

Buyer's inspections, studies, or assessments, including any property damage or personal injury. Buyer will indemnify, hold harmless, and defend Seller and Seller's agents against any claim involving a matter for which Buyer is responsible under this paragraph. This paragraph survives termination of this contract.

D. Property Information:

(1) Delivery of Property Information: Within 5 days after the effective date, Seller will deliver to Buyer:

- (a) copies of all current leases pertaining to the Property, including any modifications, supplements, or amendments to the leases;
- (b) copies of all notes and deeds of trust against the Property that Buyer will assume or that Seller will not pay in full on or before closing;
- (c) copies of all previous environmental assessments, geotechnical reports, studies, or analyses made on or relating to the Property;
- (d) copies property tax statements for the Property for the previous 2 calendar years;
- (e) plats of the Property;
- (f) copies of current utility capacity letters from the Property's water and sewer service provider; and
- (g) _____

(2) Return of Property Information: If this contract terminates for any reason, Buyer will, not later than 10 days after the termination date: (a) return to Seller all those items described in Paragraph 7D(1) that Seller delivered to Buyer and all copies that Buyer made of those items; and (b) deliver copies of all inspection and assessment reports related to the Property that Buyer completed or caused to be completed. This Paragraph 7D(2) survives termination of this contract.

E. Contracts Affecting Operations: Until closing, Seller: (1) will operate the Property in the same manner as on the effective date under reasonably prudent business standards; and (2) will not transfer or dispose of any part of the Property, any interest or right in the Property, or any of the personal property or other items described in Paragraph 2B or sold under this contract. After the feasibility period ends, Seller may not enter into, amend, or terminate any other contract that affects the operations of the Property without Buyer's written approval.

8. **LEASES:**

A. Each written lease Seller is to assign to Buyer under this contract must be in full force and effect according to its terms. Seller may not enter into any new lease, fail to comply with any existing lease, or make any amendment or modification to any existing lease without Buyer's written consent. Seller must disclose, in writing, if any of the following exist at the time Seller provides the leases to the Buyer or subsequently occur before closing:

- (1) any failure by Seller to comply with Seller's obligations under the leases;
- (2) any circumstances under any lease that entitle the tenant to terminate the lease or seek any offsets or damages;
- (3) any advance sums paid by a tenant under any lease;
- (4) any concessions, bonuses, free rents, rebates, brokerage commissions, or other matters that affect any lease; and
- (5) any amounts payable under the leases that have been assigned or encumbered, except as security for loan(s) assumed or taken subject to under this contract.

B. Estoppel Certificates: Within N/A days after the effective date, Seller will deliver to Buyer estoppel certificates signed not earlier than _____ by each tenant that leases space in the Property. The estoppel certificates must state:

- (1) that no default exists under the lease by the landlord or tenant as of the date the estoppel certificate is signed;
- (2) the amount of the scheduled rents to be paid through the end of the lease and any rental payments that have been paid in advance;
- (3) the amount of any security deposit;
- (4) the amount of any offsets tenant is entitled against rent;
- (5) the expiration date of the lease;
- (6) a description of any renewal options; and
- (7) _____

9. BROKERS:

A. The brokers to this sale are:

<u>N/A</u>			
Cooperating Broker	License No.	Principal Broker	License No.
Address		Address	
Phone		Phone	
E-mail:		E-mail:	
Fax		Fax	

Cooperating Broker represents buyer.

- Principal Broker: *(Check only one box.)*
- represents Seller only.
 - represents Buyer only.
 - is an intermediary between Seller and Buyer.

B. Fees. *(Check only one box.)*

- (1) Seller will pay Principal Broker the fee specified by separate written commission agreement between Principal Broker and Seller. Principal Broker will pay Cooperating Broker the fee specified in the Agreement Between Brokers found below the parties' signatures to this contract.
- (2) At the closing of this sale, Seller will pay:

Cooperating Broker a total cash fee of:	Principal Broker a total cash fee of:
<input type="checkbox"/> _____ % of the sales price.	<input type="checkbox"/> _____ % of the sales price.
<input type="checkbox"/> _____	<input type="checkbox"/> _____

The cash fees will be paid in _____ County, Texas. Seller authorizes escrow agent to pay the brokers from the Seller's proceeds at closing.

NOTICE: Chapter 62, Texas Property Code, authorizes a broker to secure an earned commission with a lien against the Property.

C. The parties may not amend this Paragraph 9 without the written consent of the brokers affected by the amendment.

10. CLOSING:

- A. The closing of the sale will be on or before thirty days after the date of approval by the City Council of an ordinance authorizing the Sale or within 7 days after objections made under Paragraph 6C have been cured or waived, whichever date is later (the closing date).
- B. If either party fails to close by the closing date, the non-defaulting party may exercise the remedies in Paragraph 15.

(TAR-1802) 10-18-05 Initialed for Identification by Buyer [Signature] and Seller [Signature]

13. SALES EXPENSES:

- A. Seller's Expenses: Seller will pay for the following at or before closing:
- (1) releases of existing liens, other than those liens assumed by Buyer, including prepayment penalties and recording fees;
 - (2) release of Seller's loan liability, if applicable;
 - (3) tax statements or certificates;
 - (4) preparation of the deed;
 - (5) one-half of any escrow fee;
 - (6) costs to record any documents to cure title objections that Seller must cure; and
 - (7) other expenses that Seller will pay under other provisions of this contract.
- B. Buyer's Expenses: Buyer will pay for the following at or before closing:
- (1) all loan expenses and fees;
 - (2) preparation of any deed of trust;
 - (3) recording fees for the deed and any deed of trust;
 - (4) premiums for flood insurance as may be required by Buyer's lender;
 - (5) one-half of any escrow fee;
 - (6) other expenses that Buyer will pay under other provisions of this contract.

14. PRORATIONS:A. Prorations:

- (1) Interest on any assumed loan, taxes, rents, and any expense reimbursements from tenants will be prorated through the closing date.
- (2) If the amount of ad valorem taxes for the year in which the sale closes is not available on the closing date, taxes will be prorated on the basis of taxes assessed in the previous year. If the taxes for the year in which the sale closes vary from the amount prorated at closing, the parties will adjust the prorations when the tax statements for the year in which the sale closes become available. This Paragraph 14A(2) survives closing.
- (3) If Buyer assumes a loan or is taking the Property subject to an existing lien, Seller will transfer all reserve deposits held by the lender for the payment of taxes, insurance premiums, and other charges to Buyer at closing and Buyer will reimburse such amounts to Seller by an appropriate adjustment at closing.

- B. Rollback Taxes: If Seller changes the use of the Property before closing or if a denial of a special valuation on the Property claimed by Seller results in the assessment of additional taxes, penalties, or interest (assessments) for periods before closing, the assessments will be the obligation of the Seller. If this sale or Buyer's use of the Property after closing results in additional assessments for periods before closing, the assessments will be the obligation of Buyer. This Paragraph 14B survives closing.
- C. Rent and Security Deposits: At closing, Seller will tender to Buyer all security deposits and the following advance payments received by Seller for periods after closing: prepaid expenses, advance rental payments, and other advance payments paid by tenants. Rents prorated to one party but received by the other party will be remitted by the recipient to the party to whom it was prorated within 5 days after the rent is received. This Paragraph 14C survives closing.

15. DEFAULT:

- A. If Buyer fails to comply with this contract, Buyer is in default and Seller may:
- (1) terminate this contract and receive the earnest money as liquidated damages, thereby releasing the parties from this contract; or
 - (2) ~~enforce specific performance, or seek other relief as may be provided by law, or both.~~

READ THIS CONTRACT CAREFULLY. The brokers and agents make no representation or recommendation as to the legal sufficiency, legal effect, or tax consequences of this document or transaction. **CONSULT your attorney BEFORE signing.**

Buyer: EP Plaza Partners, L.P. Seller: El Paso Water Utilities Public Service Board

By: Mesita Investors, L.L.C., its General Partner By: [Signature]

Printed Name: Meyer Marcus Printed Name: Edmund G. Archuleta

Title: Manager Title: President & CEO

Buyer: _____ Seller: City of El Paso

By: _____ By: _____

Printed Name: _____ Printed Name: Joyce A. Wilson

Title: _____ Title: City Manager

AGREEMENT BETWEEN BROKERS

Principal Broker agrees to pay _____ (Cooperating Broker) a fee of \$ _____ or _____ % of the sales price when the Principal Broker's fee is received. Escrow agent is authorized and directed to pay Cooperating Broker from Principal Broker's fee at closing. This Agreement Between Brokers supersedes any prior offers and agreements for compensation between brokers.

Cooperating Broker By: _____ Principal Broker By: _____

ATTORNEYS

Buyer's attorney is: Name: _____ Address: _____ Phone & Fax: _____ E-mail: _____
Buyer's attorney requests copies of documents, notices, and other information:
 the title company sends to Buyer.
 Seller sends to Buyer.

Seller's attorney is: Name: _____ Address: _____ Phone & Fax: _____ E-mail: _____
Seller's attorney requests copies of documents, notices, and other information:
 the title company sends to Seller.
 Buyer sends to Seller.

ESCROW RECEIPT

Escrow agent acknowledges receipt of:
 A. the contract on this day _____ (effective date);
 B. earnest money in the amount of \$ _____ in the form of _____ on _____

Escrow Agent: _____ Address: 1154 Hawkins
El Paso, TX 79925
Phone & Fax: _____
By: _____ E-mail: _____

ADDENDUM TO CONTRACT

This Addendum to that certain Commercial Contract-Unimproved Property (the "Contract") dated _____, 2009 is entered into by and between, The City of El Paso through concurrent approval of its City Council and the El Paso Water Utilities Public Service Board of Trustees (the "Seller") and EP Plaza Partners, L.P., a Texas Limited Partnership (the "Buyer"), and modifies that certain Contract for the sale of approximately a 35.00 acre parcel being a portion of Section 30, Block 80, Township 1, Texas and Pacific Railway Company Surveys from Seller to Buyer and incorporates the following terms:

1. Buyer understands that this Property is inside the city limits of the City of El Paso. The design, location and construction improvements shall be per City of El Paso Code requirements. A subdivision plat and a drainage plan are required for all property and shall be approved by the City of El Paso before the issuance of any building permits within such property.

2. Buyer shall be responsible for conducting an archeological field survey of the property and contacting the Texas Historical Commission for any potential archeological information pertaining to the Property. Any archeological remediation shall be at Buyer's Sole cost.

3. Buyer shall make certain that Water and sanitary sewerage service will be provided in accordance with the most current Public Service Board Rules and Regulations of the El Paso Water Utilities Public Service Board at the time of application for service to the Developer Services Section of the El Paso Water Utilities.

4. The Buyer shall be responsible for the costs of any necessary on-site & off-site extensions, relocations, replacements or adjustments of water, sanitary sewer and appurtenances necessitated by and attributable to the proposed subdivision improvement plans.

5. Buyer agrees that in order to promote water conservation, to ensure optimum water-use efficiency, and to prevent runoff into streets, it is the policy of the Seller to require landscape and irrigation restrictions in the sales of undeveloped land. Development of the Property will be governed by the El Paso Municipal code Title 15 (Public Services), Chapter 12 (Water and Sewer System) and Chapter 13 (Water Conservation), including no more than 50% turf in landscape area, all as may be amended to date of closing.

6. Buyer shall grant to no cost to the Seller, easements for water and sewer facilities necessary to serve the Property upon written request by Seller at the time of development of the Property by Buyer.

7. Subject to the terms and conditions of this paragraph below, the terms, conditions, and agreements contained herein shall survive the closing. At such time as a subdivision plat is recorded in the El Paso County Records, that includes a portion of the Property, the Restrictions under items 1 through 6 ("Conditions") shall be automatically released and deleted as to the portion of the Property included in the applicable subdivision plat upon issuance of a letter by the

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City of El Paso's Development Services staff acknowledging the acceptance of the subdivision improvements called for by the subdivision plat or acknowledging that no subdivision improvements were required ("Approval Letter"). Once the Approval Letter is issued, no further action is required to release and delete these provisions as to the property covered by the letter.

8. In the event that Buyer shall assign the Contract to its assigns, Buyer shall notify Seller of such assignment in writing.

Dated: 15 JUN, 2009.

SELLER:

CITY OF EL PASO

By: _____
Joyce A. Wilson, City Manager

EL PASO WATER UTILITIES SERVICE BOARD

By: 
Edmund G. Archuleta, P.E., President/CEO

BUYER:

EP PLAZA PARTNERS, L.P.,
Texas Limited Partnership
By its general partner
Mesita Investors, L.L.C, a Texas Limited
Liability Company

By: 
Name: _____
Its: _____

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NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED OF RECORD IN THE PUBLIC RECORDS: SOCIAL SECURITY NUMBER AND DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

Date: _____, 2009

Grantor: The City of El Paso, Texas, a Texas Home Rule Municipal Corporation on behalf of the El Paso Water Utilities Public Service Board, Trustees

Grantor's Mailing Address (including County): Two Civic Center Plaza
El Paso County
El Paso, Texas 79901-1196

Grantee: E P Plaza Partners, L.P.

Grantee's Mailing Address (including County): 6500 Montana Avenue
El Paso County
El Paso, Texas 79925

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Consideration: TEN AND NO/100 DOLLARS and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

Property (including any improvements):

BEING 35 acres of land, more or less, a portion of Section 30, Block 80, Township 1, Texas & Pacific Railway Company Surveys, City of El Paso, El Paso County, Texas, and more particularly described in Exhibit "A", attached hereto and incorporated herein by this reference for all purposes.

Restrictions and Reservations from and Exceptions to Conveyance and Warranty:

1. This conveyance is subject to all easements, rights-of-way, and prescriptive rights whether of record or not, all presently recorded instruments, other than liens and conveyances, that affect the Property.
2. Grantee, its successors or assigns, will not, discard, place or store upon the Property any radioactive material or other hazardous waste material or animal waste which would contaminate or otherwise damage the ground water supply sources of the City of El Paso.
3. This Property is inside the city limits of the City of El Pas. The design, location and construction improvements shall be per City of El Paso Code requirements. A subdivision plat and a drainage plan are required for all property and shall be approved by the City of El Paso before the issuance of any building permits within such property.

4. Grantee shall be responsible for conducting an archeological field survey of the property and contacting the Texas Historical Commission for any potential archeological information pertaining to the Property. Any archeological remediation shall be at Grantee's sole cost.
5. Grantee has examined the property and accepts the land "AS IS" including but not limited to the present zoning and surface conditions.
6. Grantor, for itself, its successors and assigns, reserves all water in and under and that may be produced from the Property. All ground water, water rights, or rights to surface water are hereby reserved to the El Paso Water Utilities Public Service Board. Grantee, its agents, contractors or assigns shall not have a right to drill water well(s) and produce therefrom any quantity of ground water. If the water estate is subject to existing production or an existing license, this reservation includes the production, the license and all benefits from it.
7. Water and sanitary sewerage service will be provided in accordance with the most current Public Service Board Rules and Regulations of the El Paso Water Utilities Public Service Board at the time of application for service to the Developer Services Section of the El Paso Water Utilities.
8. The Grantee shall be responsible for the costs of any necessary on-site & off-site extensions, relocations, replacements or adjustments of water, sanitary sewer and appurtenances necessitated by and attributable to the proposed subdivision improvement plans.
9. In order to promote water conservation, to ensure optimum water-use efficiency, and to prevent runoff into streets, it is the policy of the El Paso Water Utility to require landscape and irrigation restrictions in the sales of undeveloped land. Development of the Property will be governed by the El Paso Municipal code Title 15 (Public Services), Chapter 12 (Water and Sewer System) and Chapter 13 (Water Conservation), including no more than 50% turf in landscapable area, all as may be amended to date of closing.
10. Grantee shall grant at no cost to the El Paso Water Utilities, easements for water and sewer facilities necessary to serve the Property upon written request by El Paso Water Utilities.

Grantor, for the Consideration and subject to the Reservations from Conveyance and 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 heirs, successors and assigns forever. Grantor binds Grantor and Grantor's successors to warrant and forever defend all and singular the Property to Grantee and Grantee's heirs, successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof when the claim is by, through, or under Grantor, but not otherwise, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.

GRANTOR:

THE CITY OF EL PASO

Joyce A. Wilson, City Manager

APPROVED AS TO FORM:

Robert D. Andron
Robert D. Andron, General Counsel PSB

This Special Warranty Deed is hereby accepted by Grantee under the terms, covenants, obligations and conditions stated.

GRANTEE:

EP PLAZA PARTNERS, L.P.

BY: _____

Printed Name and Title

ATTEST:

Secretary

STATE OF TEXAS
COUNTY OF EL PASO

This instrument was acknowledged before me on this the _____ day of _____, 2009
by Joyce A. Wilson, the City Manager of the City of El Paso, Texas.

Notary Public, State of Texas

STATE OF TEXAS
COUNTY OF EL PASO

This instrument was acknowledged before me on this the _____ day of _____, 2009
by _____, the _____ of EP Plaza Partners, L.P.

Notary Public, State of Texas

RESOLUTION

A RESOLUTION AUTHORIZING THE SALE OF A PARCEL OF INEXPEDIENT LAND TOTALING 35 ACRES OF LAND AND AWARDING BID NO. 20-09 TO EP PLAZA PARTNERS, L.P., THE SOLE BIDDER; LAND BEING A PORTION OF SECTION 30, BLOCK 80, TOWNSHIP 1, TEXAS & PACIFIC RAILWAY COMPANY SURVEYS, CITY OF EL PASO, EL PASO COUNTY, TEXAS, SAID REAL PROPERTY BEING UNDER THE JURISDICTION OF THE PUBLIC SERVICE BOARD; REQUESTING THE CITY COUNCIL AUTHORIZE THE CITY MANAGER TO EXECUTE A SPECIAL WARRANTY DEED; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the El Paso Water Utilities Public Service Board (PSB), Trustee, has jurisdiction over certain parcels of land in northeast El Paso; and

WHEREAS, the Public Service Board approved the sale of 35 acres of land in northeast El Paso located near Patriot Freeway & McCombs; and

WHEREAS, the PSB finds that this parcel of land is inexpedient to the water system and it is in the public interest that said land should be sold to the highest bidder; and

WHEREAS, the PSB provided approximately seventy bid packets to be opened April 3, 2009. Only one bid was received from EP Plaza Partners, L.P. as the sole bidder.

NOW, THEREFORE, BE IT RESOLVED BY THE PUBLIC SERVICE BOARD OF THE CITY OF EL PASO EL PASO WATER UTILITIES:

Section 1. That the findings and recitations set out in the preamble to this Resolution are true and correct and are hereby adopted by the Public Service Board and made a part of this Resolution for all purposes.

Section 2. That the Public Service Board hereby finds the land the subject of this Resolution to be inexpedient to the needs of the water utility system and hereby approves the conveyance of land by bid award of Bid No. 20-09 described as follows:

Being a portion of Section 30, Block 80, Township 1, Texas & Pacific Railway Surveys, City of El Paso, El Paso County, Texas, being approximately 35 acres of land to EP Plaza Partners, L.P., for a total sales price of \$3,645,000.00, the sole bid and exceeding the minimum bid price set by the PSB.

Section 3. That the Public Service Board hereby requests the City Council authorize the City Manager to sign a Special Warranty Deed and any other documents necessary to convey the property to EP Plaza Partners, L.P.

Section 4. That a copy of this Resolution shall be transmitted to the City Attorney's Office.

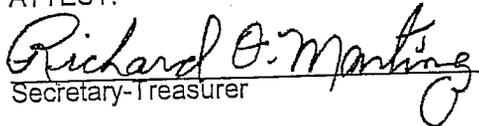
PASSED AND APPROVED at a regular meeting of the Public Service Board of the City of El Paso, Texas, this 8th day of April, 2009, at which meeting a quorum was present, held in accordance with the provisions of V.T.C.A. Government Code, Sections 551.001 et. seq.

PUBLIC SERVICE BOARD



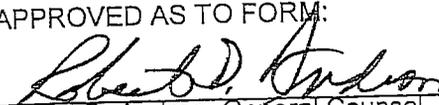
Chair

ATTEST:



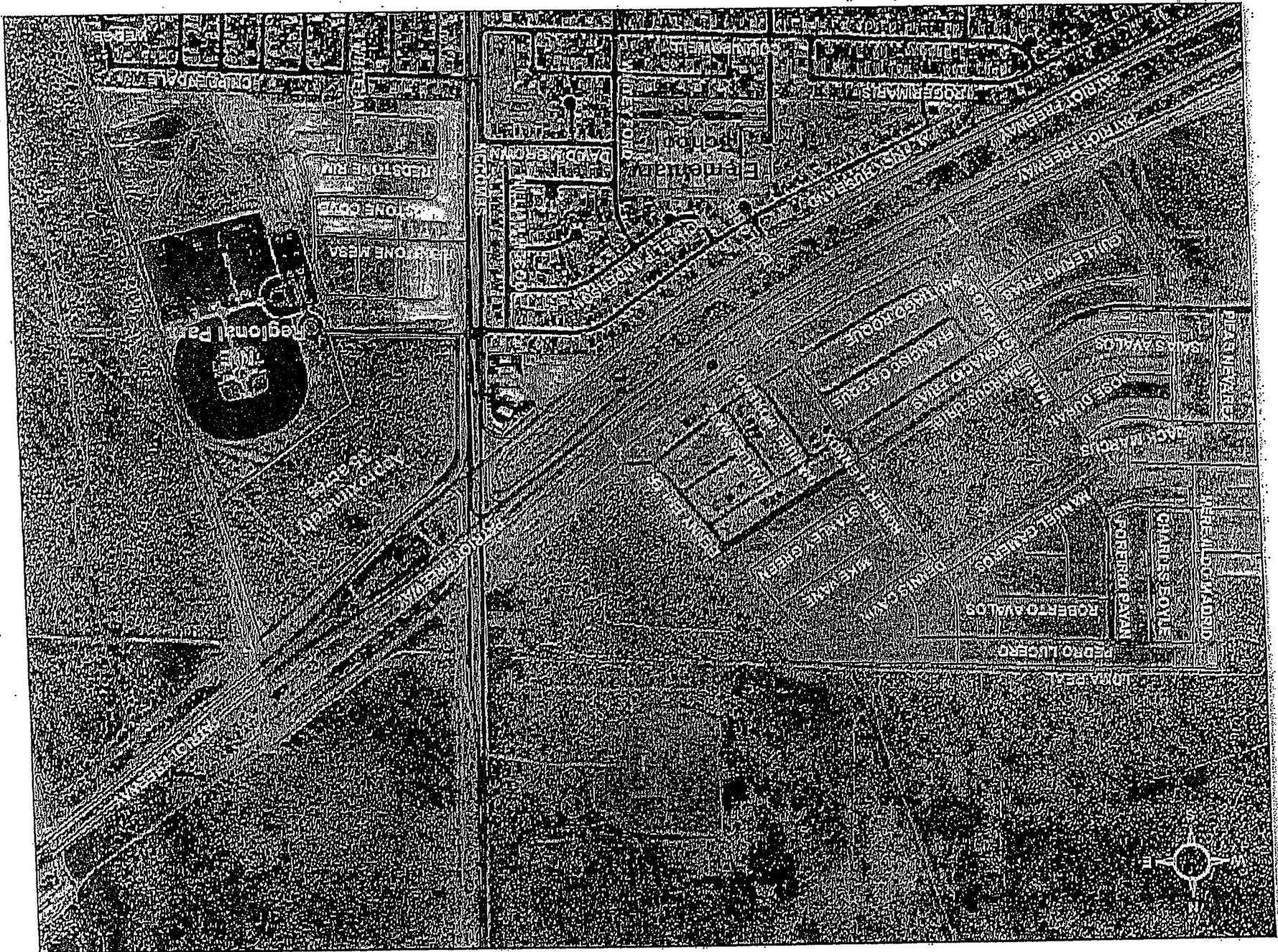
Secretary-Treasurer

APPROVED AS TO FORM:

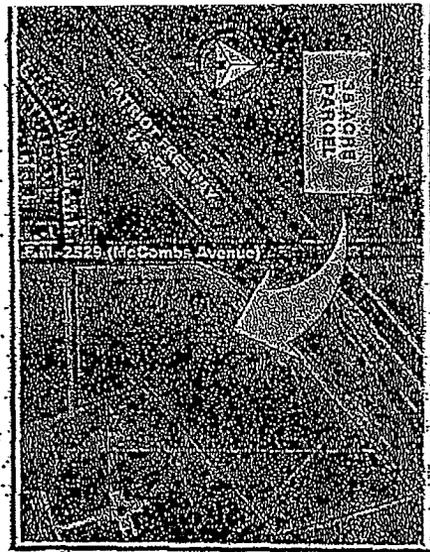


Robert D. Andron, General Counsel

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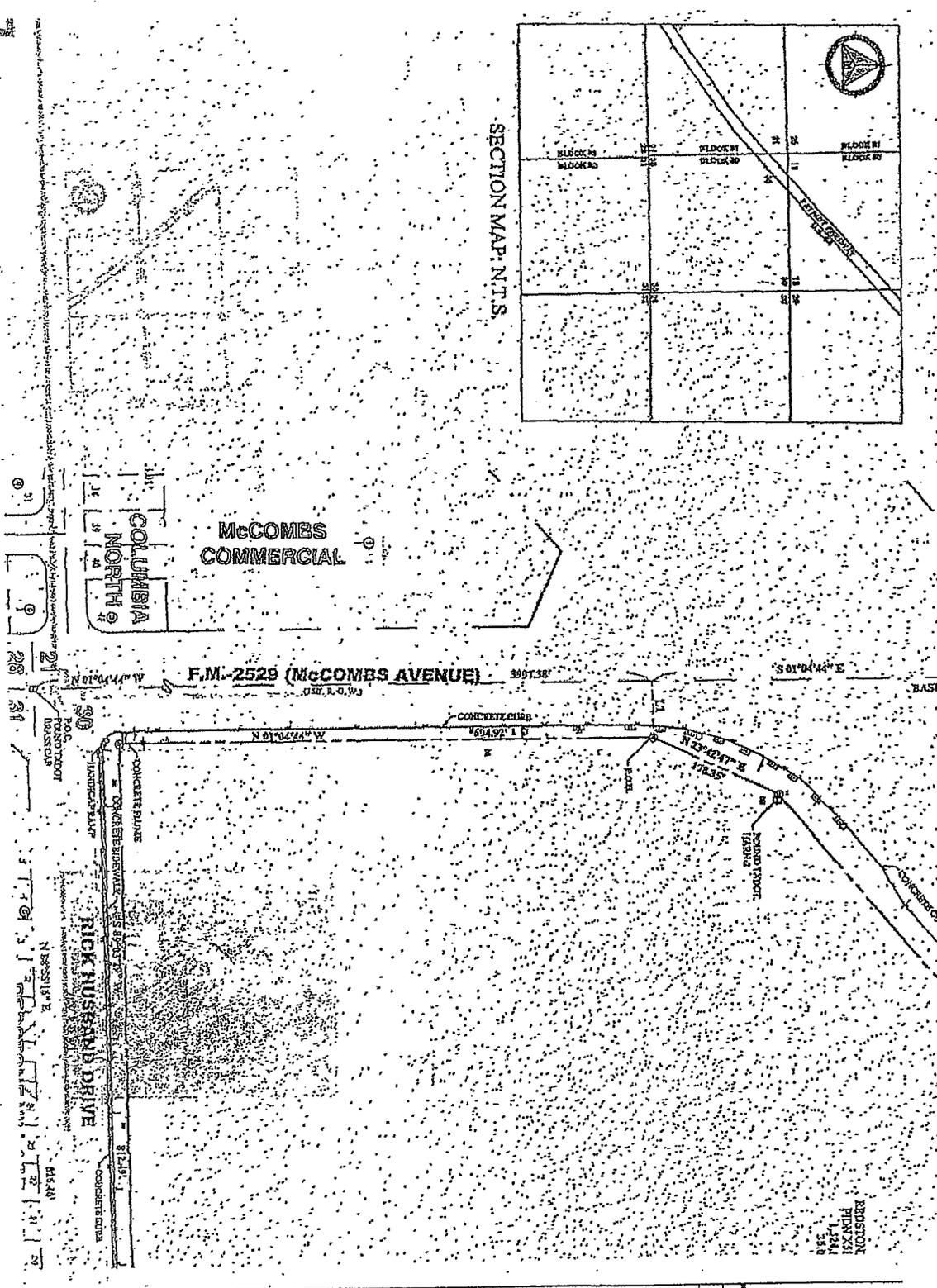
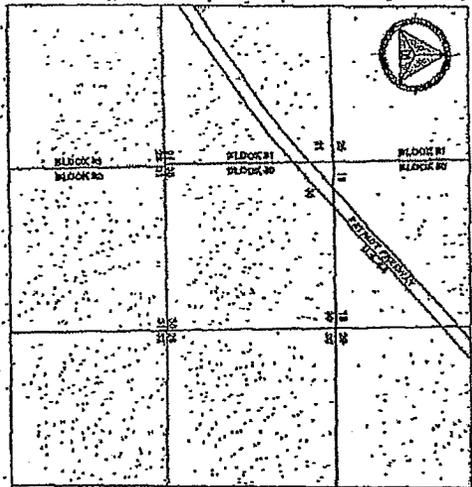


LOCATION MAP ONLY



LOCATION MAP ONLY

SECTION MAP: N.T.S.



McCOMBS COMMERCIAL

COLUMBIA NORTH

F.M. 2529 (McCOMBS AVENUE)

BLOCK 81, TSP 1, TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS
BLOCK 82, TSP 1, TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS

RICK HUSBAND DRIVE

ARBITRON
PIDC251
1,454
338

US 54
607.00'

1955' BULLS ELY