

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

DEPARTMENT: El Paso Water Utilities Public - Service Board (EPWater)

AGENDA DATE: Introduction – June 22, 2022
Public Hearing – July 5, 2022

CONTACT PERSON/PHONE: Alex Vidales, El Paso Water, Real Estate Manager, 915.594.5636

DISTRICT(S) AFFECTED: 4

SUBJECT: APPROVE the following Ordinance

Authorizing the City Manager to sign a Purchase & Sale Agreement, Special Warranty Deed and any other documents necessary to convey to Franklin Mountain Communities, LLC, approximately 1.73 acres of land being described as a portion of Section 20, Block 81, Township 1 and portion of Section 19, Block 80, Township 1, Texas & Pacific Railway Company Surveys, City of El Paso, El Paso County, Texas. (District 4) El Paso Water, Alex Vidales, Real Estate Manager (915) 594-5636.

BACKGROUND / DISCUSSION:

These parcels of land are owned by the City of El Paso and managed by the El Paso Water Utilities - Public Service Board (EPWU/PSB). On March 27, 2020, El Paso Water Utilities Public Service Board approved the transfer of approximately 2,313 acres of land excepting these land parcels from the land transfer to the City of El Paso.

PRIOR COUNCIL ACTION:

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

On July 23, 2019, El Paso City Council approved the Second Amendment to the Land Exchange Agreement between the City of El Paso and FSW Investments, LP.

AMOUNT AND SOURCE OF FUNDING: N/A

BOARD / COMMISSION ACTION:

On September 12, 2018, the El Paso Water Utilities - Public Service Board approved the transfer of one or more parcels to the City of El Paso.

AFTER EXECUTION OF ALL DOCUMENTS, PLEASE CONTACT ALEX VIDALES TO PICK UP THE DOCUMENTS @ 594.5636. THANK YOU.



TO: Roberta Brito
Assistant City Attorney

FROM: Alex Vidales
Real Estate Manager

THRU: Alma De Anda
Utility Land and Water Rights Manager

DATE: May 31, 2022

SUBJECT: Placement of Item on City Council Agenda

City Council authorizing the City Manager to sign a Purchase and Sale Agreement and Deed conveying approximately 1.73 acres of land being described as a portion of as a portion of Section 20, Block 81, Township 1 and portion of Section 19, Block 80, Township 1, Texas & Pacific Railway Company Surveys, Abstract No., City of El Paso, El Paso County, Texas

This is a request for review and approval of the documents necessary to place an item on the City Council agenda for approval of the above referenced sale of property from the City of El Paso to Franklin Mountain Communities, LLC. All the standard documents are attached including the DHS form, proposed Ordinance, Special Warranty Deed, and Purchase & Sale Agreement.

The subject property is City of El Paso property managed and controlled by the El Paso Water Utilities - Public Service Board (EPWater). The Public Service Board determined the land inexpedient to the system and was forwarded to City staff for consideration as required by the Joint Resolution between the City and EPWater. City staff reviewed and approved the sale. We would like to place this item on City Council agenda for introduction and public hearing for approval of the sale.

Also attached are the following documents:

Attachment A - DHS
Attachment B - Ordinance
Attachment C – Special Warranty Deed
Attachment D – Purchase & Sale Agreement

The wording of the Ordinance should be as follows:

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO SIGN A PURCHASE AND SALE AGREEMENT, DEED AND ANY OTHER DOCUMENTS NECESSARY TO CONVEY THE FOLLOWING DESCRIBED REAL PROPERTY: APPROXIMATELY 1.73 ACRES OF LAND BEING DESCRIBED AS A PORTION OF SECTION 20, BLOCK 81, TOWNSHIP 1 AND PORTION OF SECTION 19, BLOCK 80, TOWNSHIP 1, TEXAS & PACIFIC RAILWAY COMPANY SURVEYS, CITY OF EL PASO, EL PASO COUNTY, TEXAS.

(District 4) El Paso Water, Alex Vidales, Real Estate Manager (915) 594-5636.

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO SIGN A PURCHASE AND SALE AGREEMENT, SPECIAL WARRANTY DEED AND ANY OTHER DOCUMENTS NECESSARY TO CONVEY TO FRANKLIN MOUNTAIN COMMUNITIES, LLC, APPROXIMATELY 1.73 ACRES OF LAND BEING DESCRIBED AS A PORTION OF SECTION 20, BLOCK 81, TOWNSHIP 1, AND A PORTION OF SECTION 19, BLOCK 80, TOWNSHIP 1, TEXAS & PACIFIC RAILWAY COMPANY SURVEYS, CITY OF EL PASO, EL PASO COUNTY, TEXAS.

WHEREAS, the El Paso Water Utilities Public Service Board (EPWU/PSB) holds certain real properties in its land inventory that are owned by the City of El Paso but are under the management and control of EPWU/PSB; and,

WHEREAS, at its regular meeting on March 27, 2020, the Public Service Board approved the transfer of approximately 2,313 acres of land to the City of El Paso and excepted certain parcels of land for existing and future infrastructure; and,

WHEREAS, on October 12, 2021, Franklin Mountain Communities, LLC requested to purchase these parcels for their development.

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

That the City Manager is authorized to sign a Purchase and Sale Agreement, Deed and any other necessary documents, in a form approved by the City Attorney’s Office, conveying the following described real property:

Approximately 1.73 acres of land being a portion of Section 20, Block 81, Township 1 and portion of Section 19, Block 80, Township 1, Texas & Pacific Railway Company Surveys, City of El Paso, El Paso County, Texas, and more particularly described in Exhibits “A”, “B” and “C” attached hereto and made a part hereof for all purposes.

(Signatures begin on following page)

ADOPTED this _____ day of _____, 2022.

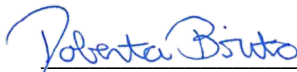
CITY OF EL PASO

Oscar Leeser,
Mayor

ATTEST:

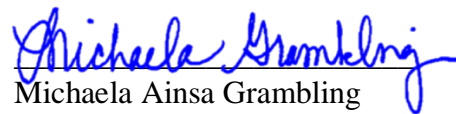
Laura D. Prine,
City Clerk

APPROVED AS TO FORM:



Roberta Brito
Assistant City Attorney

APPROVED AS TO FORM:



Michaela Ainsa Grambling
Senior Assistant General Counsel

ORDINANCE NO. _____

**PURCHASE AND SALE AGREEMENT FOR
UNIMPROVED PROPERTY**

This Purchase and Sale Agreement for Unimproved Property (this “*Agreement*”) is entered into by and between the **EL PASO WATER UTILITIES PUBLIC SERVICE BOARD**, for and on behalf of THE CITY OF EL PASO, a Texas municipal corporation (the “*Seller*”), and **FRANKLIN MOUNTAIN COMMUNITIES, LLC**, a Texas limited liability company (the “*Buyer*”), in consideration of the mutual covenants, promise and undertaking of Seller and Buyer in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged. Seller and Buyer may be each referred to individually herein as a “*Party*” and collectively as the “*Parties*”.

RECITALS

WHEREAS, Seller own certain real property being more particularly described by metes and bounds on **Exhibit A-1, A-2 and A-3** attached hereto and incorporated herein for all purposes (collectively with all rights, privileges and appurtenances, pertaining thereto, including, without limitation, any and all adjacent roads, alleys, easements, streets, docks, ways, strips and gores, the “*Property*”);

WHEREAS, Buyer desires to purchase the Property from Seller in its “as-is, where-is and with all faults” condition; and

WHEREAS, Seller desires to sell the Property to Buyer in its “as-is, where-is and with all faults” condition, subject to the terms and conditions contained in this Agreement; and

WHEREAS, the Seller may sell the Property directly to the Buyer pursuant to the exception to the notice and bidding requirements set forth at Texas Local Government Code Section 272.001 (b) (6).

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:

**ARTICLE I
KEY TERMS AND PROVISIONS**

PARTIES:

“*Seller*” means El Paso Water Utilities by and through its Public Service Board.

“*Buyer*” means Franklin Mountain Communities, LLC, a Texas limited liability company.

“*Escrow Agent*” means WestStar Title, 601 N. Mesa, Suite 1025, El Paso, Texas 79901, Attn. Janette Coon. Telephone: (915) 747-4147; Email: Janette.Coon@weststar-title.com.

“*Title Company*” means WestStar Title, 601 N. Mesa, Suite 1025 El Paso, Texas 79901, Attn. Janette Coon. Telephone: (915) 747-4147; Email: Janette.Coon@weststar-title.com.

DATES:

“*Effective Date*” means the date this Agreement is received by the Title Company on the space provided for in this Agreement.

“Inspection Period” means a period of thirty (30) days, beginning on the Effective Date, during which Buyer may inspect the Property and conduct due diligence in, on or in relation to the Property in accordance with the terms of Section 5.1.

“Closing Date” means the date on which the Closing shall occur, which date shall be on or before fifteen (15) days after the expiration of the Inspection Period, provided that an ordinance (the “Ordinance”) approving the sale of the Property by the City of El Paso has been passed as set forth in paragraph 12.1(f). The Closing Date shall be extended until such time as the Ordinance is passed but in no event more than fifteen (15) days after its passage.

FINANCIAL TERMS:

“Earnest Money” means the sum of FIVE HUNDRED DOLLARS AND ZERO CENTS (\$500.00).

“Independent Consideration” means the portion of the Earnest Money in the amount of ONE HUNDRED DOLLARS AND ZERO CENTS (\$100.00) which amount the parties have bargained for and agreed to as consideration for Seller's grant to Buyer of Buyer's exclusive right to purchase the Property pursuant to the terms hereof and for Seller's execution of this Agreement.

“Sales Price” means THIRTEEN THOUSAND NINE HUNDRED AND THIRTY-FIVE DOLLARS AND EIGHTY-TWO CENTS (\$13,935.82).

**ARTICLE II
OTHER DEFINITIONS**

2.1 Defined Terms. Capitalized terms in this Agreement shall be defined as follows:

“Agreement” means this Purchase and Sale Agreement.

“Applicable Laws” means any applicable building, zoning, subdivision, environmental, health, safety or other governmental laws, statutes, ordinances, resolutions, rules, codes, regulations, orders or determinations of any Governmental Authority or of any insurance boards of underwriters (or other body exercising similar functions), or any restrictive covenants or deed restrictions affecting the Property or the ownership, operation, use, maintenance or condition thereof.

“Authorizations” means all licenses, permits and approvals required by any governmental or quasi-governmental agency, body, department, commission, board, bureau, instrumentality or office, or otherwise appropriate with respect to the construction, ownership, operation, leasing, maintenance, or use of the Property or any part thereof.

“Business Day” means Monday through Friday, that is not a Legal Holiday.

“Buyer Parties” means Buyer and Buyer’s contractors, employees, agents and representatives.

“Claims” means any and all claims, demands, causes of action, losses, damages, liabilities, costs and expenses (including attorneys’ fees whether suit is instituted or not) whether known or unknown, liquidated or contingent.

“Closing” means the closing of the sale and delivery of the closing documents as applicable and

release of the Sales Price to Seller in accordance with Sections 7.1 and 7.2 hereof.

“Condemnation” means a fee simple taking or a limitation or denial of use, temporary or permanent, by a body having the power of eminent domain.

“Confirmations” means shall have the meaning given such term in Section 11.2 (c) hereof.

“Deed” means a duly executed and acknowledged Special Warranty Deed.

“Due Diligence Information” means any and all information in Seller’s possession related to the property and such other information called for in Section 6.5, together with the Title Binder and Survey.

“Earnest Money Deposit” means the Earnest Money, along with any interest earned on the Earnest Money.

“Existing Survey” means Seller’s most recent existing survey of the Land.

“Facilities” shall have the meaning provided in Section 3.3 hereof.

“Facilities Easement” shall have the meaning provided in Section 3.3 hereof.

“Federal Tax Law” means the Federal Foreign Investment in Real Property Tax Act of 1980 and the 1984 Tax Reform Act as amended.

“FIRPTA Certificate” means the affidavit of Seller under Section 1445 of the Internal Revenue Code, as amended, certifying that Seller is not a foreign corporation, foreign partnership, foreign trust, foreign estate or Foreign Person (as those terms are defined in the Internal Revenue Code and regulations promulgated thereunder), in form and substance satisfactory to Buyer.

“Foreign Person” means a person as defined in the Federal Tax Law.

“Governmental Authority” means any federal, state, county, municipal or other government or any governmental or quasi-governmental agency, department, commission, board, bureau, officer or instrumentality, foreign or domestic, or any of them.

“Hazardous Materials” means any chemical substance: (i) which is or becomes defined as a “hazardous substance,” “hazardous waste,” “hazardous material,” “pollutant,” “contaminant,” or “toxic,” “explosive,” “corrosive,” “flammable,” “infectious,” “radioactive,” “carcinogenic,” or “mutagenic” material under any law, regulation, rule, order, or other authority of the federal, state or local governments, or any agency, department, commission, board, or instrumentality thereof, regarding the protection of human health or the environment from such chemical substances including, but not limited to, the following federal laws and their amendments, analogous state and local laws, and any regulations promulgated thereunder: the Clean Air Act, the Clean Water Act, the Oil Pollution Control Act, the Comprehensive Environmental Response, Compensation, and Liability Act of 1986, the Emergency Planning and Community Right to Know Act, the Solid Waste Disposal Act, the Resource Conservation and Recovery Act, the Safe Drinking Water Act, the Federal Insecticide, Fungicide and Rodenticide Act, and the Toxic Substances Control Act, including, without limitation, asbestos and gasoline and other petroleum products (including crude oil or any fraction thereof); (ii) without limitation, which contains gasoline, diesel fuel or other petroleum hydrocarbons; (iii) without limitation, which contains drinking biphenyls or asbestos or asbestos-containing materials or urea formaldehyde foam insulation; or (iv) without limitation, radon gas.

“Legal Holiday” means a date in which the Federal, State or local government is not open for business.

“New Survey” means an updated survey or surveys of the Land in a form acceptable to Buyer.

“Non-Permitted Encumbrances” means (i) all deeds of trust that Seller or its predecessors has or have granted and that are recorded against the Property; (ii) easements, restrictions, liens, encumbrances or other instruments related to the Property created or recorded after the Effective Date; (iii) mechanics', materialmen's and other similar statutory liens arising from work performed or materials supplied in connection with the Property unless arising out of the acts of Buyer or Buyer Parties; or (iv) any other lien of a definite or ascertainable amount which may be removed by the payment of money.

“Ordinance” shall mean the ordinance passed by the City Council of the City of El Paso, Texas approving the sale of the Property (*see also* the defined term *Closing Date*).

“Permitted Exceptions” means the exceptions shown on the Title Binder that Buyer either approves or is deemed to have approved pursuant to Section 6.3 but excluding the Non-Permitted Encumbrances.

“Person” means an individual, a partnership, a limited liability company, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, or a Governmental Authority.

“Property” shall have the definition as set forth in the Recitals of this Agreement.

“Representations” means representations, warranties, covenants and certifications.

“Seller Parties” means Seller and/or any agent, advisor, representative, employee, or other person or entity acting on Seller's behalf or otherwise related or affiliated with Seller.

“State” means the State of Texas.

“Survey” means collectively the Existing Survey and New Survey.

“Surviving Obligations” means the obligations and rights that by their terms expressly survive Closing or termination of this Agreement.

“Title Binder” means a title commitment covering the Land, binding the Title Company to issue the Title Policy in the full amount of the Sales Price at the Closing in accordance with Section 6.2 herein.

“Title Policy” means a Texas Owner's Policy of Title Insurance on the standard form of policy prescribed by the Texas State Board of Insurance in the full amount of the Sales Price.

ARTICLE III **PURCHASE AND SALE**

3.1 Sale of Property. Upon the terms and conditions in this Agreement and for other good and valuable consideration, the receipt of which is hereby acknowledged, Seller agrees to sell and convey the Property to Buyer, and Buyer agrees to buy the Property from Seller.

3.2 Closing Costs. Unless otherwise provided herein or already paid outside of Closing, at Closing all other costs and expenses incurred in connection with this Agreement that are not expressly recited herein to be the obligation of Seller or Buyer shall be allocated among Buyer and Seller as is customary in El Paso, Texas, and each party shall pay its own attorneys' fees.

3.3 Access to EPWater Facilities After Closing. Buyer acknowledges and agrees that Seller will require access to its existing utility infrastructure (the "*Facilities*") for a period of time after the Closing until the Buyer's subdivision plat is recorded, and Buyer agrees to grant Seller a permanent easement granting access to the Facilities (the "*Facilities Easement*") as shown on the map attached hereto as **Exhibit B** and in the form attached hereto as **Exhibit C** and incorporated fully herein for the purpose of relocating the Facilities to a new right of way.

ARTICLE IV **SALES PRICE AND EARNEST MONEY**

4.1 Amount and Payment of Sales Price. The Buyer shall pay to Seller the Sales Price in immediately available funds at Closing.

4.2 Earnest Money. Buyer shall deposit the Earnest Money with Escrow Agent, within five (5) Business Days after the Effective Date.

4.3 Earnest Money Deposit. The Parties agree that the Earnest Money shall be deposited by Escrow Agent in an interest-bearing account at an institution acceptable to Seller and Buyer.

4.4 Independent Consideration. Upon deposit, the Independent Consideration will be earned by Seller and will be non-refundable under any circumstances. The Independent Consideration is in addition to and independent of any other consideration or payment provided in this Agreement. The Independent Consideration shall be credited against the Sales Price if the Closing occurs.

ARTICLE V **INSPECTION PERIOD**

5.1 Property Condition Investigation. During the Inspection Period, Buyer may inspect the Property and conduct due diligence in, on or in relation to the Property, including, but not limited to review of conditions (physical and financial), all information, contracts and agreements and perform such other inspections and studies as Buyer desires in its sole discretion; provided that Buyer's prior written consent must first be obtained before the commencement of any invasive studies (including Phase II environmental studies) on the Land.

5.2 Access. Beginning on the Effective Date and thereafter until Closing or termination of this Agreement, Buyer and Buyer Parties will have the right to enter the Land to perform, at Buyer's expense, such economic, surveying, engineering, topographic, environmental, marketing and other tests, studies and investigations in accordance with the provisions in Section 5.1 above; provided that, Buyer must coordinate with Seller at least seventy-two (72) hours in advance before entering onto Land at any time prior to Closing.

5.3 Termination During Inspection Period. Buyer may terminate this Agreement for any reason by providing Seller written notice of termination prior to the expiration of the Inspection Period. Upon receipt of the notice of termination by the Seller during the Inspection Period, this Agreement shall be deemed terminated and the Earnest Money Deposit, less the Independent Consideration, shall be refunded to

Buyer and the Parties shall have no further rights or obligations under this Agreement, except the Surviving Obligations. If Buyer fails to timely deliver a notice of termination, upon expiration of the Inspection Period, Buyer is deemed to have approved the Property and waived its right to terminate this Agreement under this Section 5.3. Upon expiration of the Inspection Period the Earnest Money Deposit, shall become non-refundable, except in the event of a default by Seller under this Agreement or as otherwise specifically set forth in this Agreement. At Closing, the Earnest Money Deposit will be credited against the Sales Price or returned to Seller, at the election of Seller in its sole discretion.

ARTICLE VI

SURVEY, TITLE BINDER AND OTHER DOCUMENTS

6.1 Survey. Buyer may obtain a New Survey at its cost. If Buyer obtains a New Survey, the metes and bounds description of the Land contained in the New Survey will be used for purposes of describing the Land in the Deed.

6.2 Title Binder. Within twenty (20) days after the Effective Date, Buyer will, at Buyer's expense, deliver or cause to be delivered to Buyer and Seller a Title Binder. In addition, the Title Binder will include legible copies of all exceptions listed on Schedule B and Schedule C of the Title Binder. The Parties further instruct the Title Company that Schedule B of the Title Policy to be issued at the Closing must comply with the following requirements: (a) the exception for restrictive covenants must be annotated "none of record" or, if applicable, "none of record except...(restrictions listed)"; (b) the exceptions for taxes must reflect only the current year; (c) no exceptions shall be permitted for "visible and apparent easements" or words to that effect; (d) no exception shall be permitted for "rights of parties in possession"; (e) the "survey deletion" shall be deleted except for shortages in area, at Buyer's option and at Buyer's expense; and (f) at Buyer's election, be accompanied by a T-19.1 Endorsement at the expense of Buyer.

6.3 Buyer's Approval of Title and Survey. Buyer shall have until the expiration of the Inspection Period to deliver in writing to Seller objections Buyer may have to anything contained in the Title Binder or the Survey. In the event that Buyer delivers objections to Seller, Seller may, in Seller's sole discretion, undertake to eliminate or modify all unacceptable matters to the reasonable satisfaction of Buyer. In the event Buyer delivers the Go Forward Notice to Seller, Buyer will be deemed to have approved exceptions contained in the Title Binder that have not been cured. Notwithstanding the foregoing, Seller shall at its expense cure, remove or satisfy the Non-Permitted Encumbrances at or before the Closing. The Non-Permitted Encumbrances will never be included as Permitted Exceptions. In addition to the above, Buyer may object to and will not be deemed to approve any additional exceptions shown in an updated Title Binder or Survey delivered to Buyer after the expiration of the Inspection Period and such matters will not be considered Permitted Exceptions unless expressly approved by Buyer.

6.4 Compliance. In accordance with the requirements of the Property Code, Title 2, Chapter 5, Subchapter D, Buyer is hereby advised that it should obtain a title abstract or title commitment covering the Land and have it examined by an attorney of its own selection and purchase owner's policy of title insurance covering the Land.

ARTICLE VII

CLOSING

7.1 Closing Date. The Closing shall take place on the Closing Date, as otherwise extended, at the offices of Escrow Agent unless otherwise agreed by Seller and Buyer. Notwithstanding the forgoing, Seller and Buyer agree that the Closing can be accomplished by the Parties' delivery of closing documents

to Escrow Agent via mail or other delivery method acceptable to Escrow Agent and that neither party is required to be physically present at the office of Escrow Agent for the Closing to occur.

7.2 Seller's Obligations. At the Closing, Seller shall deliver in-escrow to Escrow Agent in accordance with this Agreement, duly executed and, where applicable, acknowledged:

(a) The Deed, in the form mutually acceptable to the parties (subject on only the Permitted Exceptions and to such changes as are required by Applicable Law, local recording requirements and/or customary real estate practices in the jurisdiction in which the Property is located, provided, the substantive terms and provisions of the Deed attached hereto are not modified as a result of any such changes).

(b) Such agreements, affidavits or other documents as may be required by the Title Company to issue the Title Policy to Buyer at Closing, subject only to the Permitted Exceptions and to eliminate such standard exceptions and to issue such endorsements thereto which may be eliminated and issued under applicable State law, and which are customarily required by institutional investors purchasing property comparable to the Property.

(c) The FIRPTA Certificate.

(d) Appropriate resolutions of Seller, together with all other necessary approvals and consents of Seller and such documentary and other evidence as may be reasonably required by Buyer or Escrow Agent, authorizing and evidencing the authorization of (i) the execution on behalf of Seller of this Agreement and the authority of the person or persons who are executing the various documents to be executed and delivered by Seller prior to, at or otherwise in connection with the Closing, and (ii) the performance by Seller of its obligations hereunder and under such documents.

(e) Any other document or instrument reasonably necessary or required to consummate the transactions contemplated by this Agreement.

7.3 Buyer's Obligations. At Closing, Buyer shall:

(a) Pay the Sales Price.

(b) Any other document or instrument reasonably necessary or required to consummate the transactions contemplated by this Agreement.

7.4 Seller and Buyer Obligations. At the Closing, Seller and Buyer will mutually execute and deliver the following:

A final closing statement reflecting the Sales Price and the adjustments and prorations required hereunder and the allocation of income and expenses required hereby.

7.5 Closing Costs. All other costs and expenses incurred in connection with this Agreement that are not expressly recited herein to be the obligation of Seller or Buyer shall be allocated among Buyer and Seller as is customary in El Paso, Texas. Except as provided in Section 14.3, each party shall pay its own attorneys' fees.

ARTICLE VIII **BROKER'S FEES**

Buyer and Seller represent and warrant to each other that they have not engaged and will not engage during the pendency of this Agreement the services of any real estate broker or real estate agent in connection with this transaction.

**ARTICLE IX
CASUALTY LOSS**

9.1 Risk of Loss. The risk of any loss or damage to the Land and Improvements prior to the recordation of the Deed shall remain upon Seller. If any such material loss or material damage occurs prior to Closing, Buyer shall have the right to terminate this Agreement. If Buyer elects not to terminate this Agreement, all insurance proceeds and rights to proceeds arising out of such loss or damage shall be paid or assigned, as applicable, to Buyer at Closing (less any money spent disputing the valuation) and Buyer shall receive as a credit against the Sales Price the amount of any deductibles under the policies of insurance covering such loss or damage. If Buyer elects to terminate this Agreement by giving Seller written notice thereof prior to the Closing, the Earnest Money Deposit shall be promptly returned to Buyer and all rights and obligations of Seller and Buyer hereunder (except those set forth herein which expressly survive a termination of this Agreement) shall terminate immediately.

**ARTICLE X
CONDEMNATION**

10.1 Condemnation. In the event of any actual or threatened Condemnation, of all or any portion of the Land or Improvements, or any proposed sale in lieu thereof, Seller shall give written notice thereof to Buyer promptly after Seller learns or receives notice thereof. If all or any part of the Land or Improvements is, or is to be, so condemned or sold pursuant to Condemnation, Buyer shall have the right to terminate this Agreement. If Buyer elects not to terminate this Agreement, all proceeds, awards and other payments arising out of such Condemnation or sale (actual or threatened) shall be paid or assigned, as applicable, to Buyer at Closing. Seller shall not settle or compromise any such proceeding without Buyer's written consent. If Buyer elects to terminate this Agreement by giving Seller written notice thereof prior to the Closing, the Earnest Money Deposit shall be promptly returned to Buyer and all rights and obligations of Seller and Buyer hereunder (except those set forth herein which expressly survive a termination of this Agreement) shall terminate immediately.

**ARTICLE XI
WARRANTIES, REPRESENTATIONS AND COVENANTS**

11.1 Seller Representations and Warranties. Seller represents and warrants to Buyer as of the Effective Date and the Closing Date, that:

(a) **Authority to Sell.** Seller has the legal authority to sell the Property and has retained all necessary approvals or consents required to consummate the sale of the Property under the terms of this Agreement.

(b) **Organization and Power.** Seller has all requisite powers and all governmental licenses, authorizations, consents and approvals to carry on its business as now conducted and to enter into and perform its obligations hereunder and under any document or instrument required to be executed and delivered on behalf of Seller hereunder.

(c) Authorization and Execution. This Agreement has been duly authorized by all necessary action on the part of Seller, has been duly executed and delivered by Seller, constitutes the valid and binding agreement of Seller and is enforceable in accordance with its terms. There is no other person or entity who has an ownership interest in the Property or whose consent is required in connection with Seller's performance of its obligations hereunder. The person executing this Agreement on behalf of Seller has the authority to do so.

(d) Non-contravention. The execution and delivery of, and the performance by Seller of its obligations under, this Agreement do not and will not contravene, or constitute a default under, any provision of Applicable Law or regulation, Seller's governing documents or any agreement, judgment, injunction, order, decree or other instrument binding upon Seller or to which the Property is subject, which would be likely to have a material adverse effect on the ability of Seller to consummate the transactions set forth herein or result in the creation of any lien or other encumbrance on all or any asset of Property. There are no outstanding agreements (written or oral) pursuant to which Seller (or any predecessor to or representative of Seller) has agreed to sell or has granted an option or right of first refusal to purchase the Property or any part thereof.

(e) Title to Land. (1) Seller is the sole owner of fee simple absolute title to the Land; (2) Seller is legally authorized to sell the Land; (3) Seller has satisfied all obligations necessary to consummate the sale of the Land, including but not limited obtaining all bond conditions/covenant releases.

(f) No Special Taxes. Seller has no actual knowledge of, nor has it received any notice of, any special taxes or assessments relating to the Property or any part thereof or any planned public improvements that may result in a special tax or assessment against the Property.

(g) Compliance with Existing Laws. To Seller's actual knowledge, Seller possesses all Authorizations, each of which is valid and in full force and effect, and no provision, condition or limitation of any of the Authorizations has been breached or violated. To Seller's actual knowledge, Seller has not misrepresented or failed to disclose any relevant fact in obtaining any Authorizations, and Seller has no knowledge of any change in the circumstances under which those Authorizations were obtained that result in their termination, suspension, modification or limitation. Seller has no actual knowledge, nor has it received notice within the past three (3) years, of any existing or threatened violation of any provision of any Applicable Laws including, but not limited to, those of environmental agencies or insurance boards of underwriters with respect to the ownership, operation, use, maintenance or condition of the Property or any part thereof or requiring any repairs or alterations to the Property other than those that have been made prior to the date hereof. Seller has no knowledge, nor has it received notice within the past three (3) years, of any existing or threatened violation of any restrictive covenants or deed restrictions affecting the Property.

(h) Condemnation Proceedings; Roadways. Seller has received no notice of any Condemnation or eminent domain proceeding pending or to Seller's actual knowledge threatened against the Property or any part thereof. Seller has no knowledge of any change or proposed change in the route, grade or width of, or otherwise affecting, any street, creek or road adjacent to or serving the Land.

(i) Actions or Proceedings. There is no action, suit or proceeding pending or, to Seller's actual knowledge, known to Seller to be threatened against or affecting Seller in any court, before any arbitrator or before or by any Governmental Authority which (a) in any manner raises any question affecting the validity or enforceability of this Agreement or any other agreement or instrument to which Seller is a party or by which it is bound and that is or is to be used in connection with, or is contemplated by, this Agreement, (b) would materially and adversely affect the business, financial position or results of operations of Seller or the Property, (c) would materially and adversely affect the ability of Seller to perform

its obligations hereunder, or under any document to be delivered pursuant hereto, (d) could create a lien on the Property, any part thereof or any interest therein, (e) concerns any past or present employee of Seller or its managing agent or (f) would otherwise adversely affect the Property, any part thereof or any interest therein or the use, operation, condition or occupancy thereof.

(j) Hazardous Substances. To Seller's actual knowledge, neither Seller nor any previous owner, tenant, occupant or user of the Property, nor any other person, has engaged in or permitted any operations or activities upon, or any use or occupancy of the Property or any portion thereof, for the purpose of or in any way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Hazardous Materials on, under, in or about the Property in violation of any Applicable Laws. To Seller's actual knowledge, no Hazardous Materials have migrated from or to the Property upon, about, or beneath other properties in violation of any Environmental Requirements. To Seller's actual knowledge, neither the Property nor its existing or prior uses fail or failed to materially comply with Environmental Requirements. Seller has no actual knowledge of any permits, licenses or other authorizations which are required under any Environmental Requirements with regard to the current uses of the Property which have not been obtained and complied with. Seller has not received any written notice concerning any alleged violation of Environmental Requirements in connection with the Property or any liability for Environmental Damages in connection with the Property for which Seller (or Buyer after Closing) may be liable. To Seller's knowledge, no Hazardous Materials are constructed, deposited, stored or otherwise located on, under, in or about the Property in violation of any Environmental Requirements. To Seller's knowledge, there exists no writ, injunction, decree, order or judgment outstanding, nor any lawsuit, claim, proceeding, citation, summons or investigation, pending or threatened, relating to any alleged violation of Environmental Requirements on the Property, or from the suspected presence of Hazardous Materials thereon, or relating to any Environmental Damages and, other than temporary storage of deliveries of fertilizer for the golf course in the ordinary course of business and two above-ground fuel tanks for unleaded and diesel fuel, no underground or above ground chemical treatment or storage tanks, or gas or oil wells are located on the Property.

(k) Access. Seller has no actual knowledge of any pending or threatened governmental proceeding or any other fact or condition which would limit or result in the termination of the Property's existing access to and from public streets or roads.

(l) No Commitments. To Seller's actual knowledge, no commitments have been made to any Governmental Authority, utility company, school board, church or other religious body, or any homeowners' association or any other organization, group or individual, relating to the Property which would impose an obligation upon Buyer to make any contribution or dedication of money or land or to construct, install or maintain any improvements of a public or private nature on or off the Property.

(m) Seller Is Not a "Foreign Person". Seller is not a "Foreign Person" within the meaning of Section 1445 of the Internal Revenue Code, as amended (i.e., Seller is not a foreign corporation, foreign partnership, foreign trust, foreign estate or Foreign Person as those terms are defined in the Internal Revenue Code and regulations promulgated thereunder).

(n) Notwithstanding anything in this Agreement to the contrary, any and all references to "Seller's actual knowledge" or words of similar import shall be deemed to refer to the current actual knowledge of Ms. Marcela Navarrete.

11.2 Seller's Covenants. Seller hereby covenants and agrees with Buyer, after the date specified in each covenant below:

(a) No Marketing. Seller shall not market the Property for sale or enter into discussions or negotiations with potential Buyers of the Property during the pendency of this Agreement.

(b) Rights of First Refusal and Options. Seller shall provide Buyer with satisfactory evidence of the waiver of any and all rights of first refusal or options related to the Property that may have been granted to any party.

(c) Confirmations. After the Effective Date, Seller will deliver to Buyer, in a form reasonably acceptable to Buyer in its sole discretion, written confirmation from Seller, confirmation that the Property has been deemed inexpedient.

ARTICLE XII

CONDITIONS PRECEDENT TO BUYER'S PERFORMANCE

12.1 Conditions for Buyer's Benefit. The obligations of Buyer to consummate the transaction contemplated hereby are subject to the following conditions:

(a) Seller's Deliveries. Seller shall have delivered to or for the benefit of Buyer, on or before the Closing Date, all of the documents and other information required of Seller pursuant to Sections 7.2 and 7.4 hereof.

(b) Representations, Warranties and Covenants; Obligations of Seller; Certificate. All of Seller's representations and warranties made in this Agreement shall be true and correct in all material respects as of the date hereof and as of the date of Closing as if then made; there shall have been no material adverse change in the business conducted at the Property or the financial results thereof from the date of acceptance of this Agreement; Seller shall have performed in all material respects all of its covenants and other obligations under this Agreement.

(c) Title Insurance. Good and indefeasible fee simple title to the Land shall be insurable as such by the Title Company, at its lowest rates allowed by law, subject only to Permitted Exceptions as determined in accordance with Section 6.3 hereof and including, without limitation, all applicable deletions of standard exceptions and endorsements permitted under applicable state law which are customarily required by institutional investors purchasing property comparable to the Property.

(d) Survey. The Survey shall be adequate for the Title Company to delete any exception for general survey matters in the Owner's Title Policy except for "shortages in area".

(e) Title to Property. Seller shall be the sole owner of good and indefeasible fee simple title to the Property, free and clear of all liens, encumbrances, restrictions, conditions and agreements except for Permitted Title Exceptions. Seller shall not have taken any action or permitted or suffered any action to be taken by others from the date hereof and through and including the date of Closing that would adversely affect the status of title to the Property.

Each of the conditions contained in this Section are intended for the benefit of Buyer and may be waived in whole or in part, by Buyer, but only by an instrument in writing signed by Buyer.

12.2 Default by Seller/Failure of Conditions Precedent. If any condition set forth herein for the benefit of Buyer cannot or will not be satisfied prior to Closing, or upon the occurrence of any other event that

would entitle Buyer to terminate this Agreement and its obligations hereunder, and if Seller fails to cure any such matter or satisfy that condition within ten (10) business days after notice thereof from Buyer (or such other time period as may be explicitly provided for herein), Buyer, at its option, may elect (a) to terminate this Agreement, in which event (i) the Earnest Money Deposit shall be promptly returned to Buyer, and (ii) all other rights and obligations of Seller and Buyer hereunder (except Surviving Obligations) shall terminate immediately; or (b) elect to proceed to Closing.

ARTICLE XIII **CONDITIONS PRECEDENT TO SELLER'S PERFORMANCE**

13.1 Conditions for Seller's Benefit. The obligations of Seller to consummate the transaction contemplated hereby are subject to the following conditions, any of which, if not fulfilled by the Closing or as otherwise provided herein, shall entitle Seller (at its option) to terminate this Agreement and retain the Earnest Money Deposit:

(a) The transactions contemplated under this Agreement to be effected on the Closing Date shall not have been restrained or prohibited by any injunction or order or judgment rendered by any court or other governmental agency of competent jurisdiction and no proceeding shall have been instituted and be pending in which any creditor of Buyer or any other person seeks to restrain such transactions or otherwise to attach any of the Property;

(b) Buyer shall have timely complied with its obligations hereunder;

(c) All warranties and representations made by Buyer herein shall be true and correct in all respects.

ARTICLE XIV **DEFAULT**

14.1 Buyer's Default. If Buyer defaults in its obligations hereunder to deliver the Sales Price at the time required by this Agreement and close on the purchase of the Property on the Closing Date, then, Buyer shall forfeit the Earnest Money Deposit, and Escrow Agent shall deliver the Earnest Money Deposit to Seller, and neither party shall be obligated to proceed with the purchase and sale of the Property. If, Buyer defaults in any of its other representations, warranties or obligations under this Agreement, and such default continues for more than 10 days after written notice from Seller, then Buyer shall forfeit the Earnest Money Deposit, and Escrow Agent shall deliver the Earnest Money Deposit to Seller, and neither party shall be obligated to proceed with the purchase and sale of the Property. The Earnest Money Deposit is liquidated damages and recourse to the Earnest Money Deposit is, except for Buyer's indemnity and confidentiality obligations hereunder, Seller's sole and exclusive remedy for Buyer's failure to perform its obligation to purchase the Property or breach of a representation or warranty. Seller expressly waives the remedies of specific performance and additional damages for such default by Buyer. **SELLER AND BUYER ACKNOWLEDGE THAT SELLER'S DAMAGES WOULD BE DIFFICULT TO DETERMINE, AND THAT THE EARNEST MONEY DEPOSIT IS A REASONABLE ESTIMATE OF SELLER'S DAMAGES RESULTING FROM A DEFAULT BY BUYER IN ITS OBLIGATION TO PURCHASE THE PROPERTY. SELLER AND BUYER FURTHER AGREE THAT THIS SECTION 14.1 IS INTENDED TO AND DOES LIQUIDATE THE AMOUNT OF DAMAGES DUE SELLER, AND SHALL BE SELLER'S EXCLUSIVE REMEDY AGAINST BUYER, BOTH AT LAW AND IN EQUITY, ARISING FROM OR RELATED TO A BREACH BY BUYER OF ITS OBLIGATION TO CONSUMMATE THE TRANSACTIONS CONTEMPLATED BY THIS CONTRACT, OTHER**

**THAN WITH RESPECT TO BUYER'S INDEMNITY AND CONFIDENTIALITY OBLIGATIONS
HEREUNDER.**

14.2 Seller's Default. If Seller, prior to the Closing, defaults in its representations, warranties, covenants, or obligations under this Agreement, including to sell the Property as required by this Agreement, then this Agreement shall terminate, and all payments and things of value, including the Earnest Money Deposit, provided by Buyer hereunder shall be returned to Buyer as its sole recoverable damages.

14.3 Attorneys' Fees. Any signatory to this Agreement who is the prevailing party against any other signatory in any legal proceeding brought under or with relation to this Agreement or sale transaction shall be additionally entitled to recover from the non-prevailing party court costs, reasonable attorneys' fees, and all other litigation expenses, including deposition, travel, and expert witness costs and fees.

14.4 Liability of Parties. Except for obligations expressly assumed or agreed to be assumed by Buyer hereunder, Buyer is not assuming any obligations of Seller or any liability for Claims arising out of any act, omission or occurrence which occurs, accrues or arises prior to the Closing Date, to the extent allowed by law, and Seller hereby indemnifies and holds Buyer harmless from and against any and all Claims, costs, penalties, damages, losses, liabilities and expenses (including reasonable attorneys' fees) that may at any time be incurred by Buyer as a result of (1) obligations of Seller not expressly assumed or agreed to be assumed by Buyer hereunder, or (2) acts, omissions or occurrences which occur, accrue or arise prior to the Closing Date. The provisions of this Section shall survive the Closing of the transaction contemplated hereby.

**ARTICLE XV
NOTICES**

Any notice or communication required or permitted hereunder shall be deemed to be delivered, whether actually received or not, when addressed to the intended recipient at the address provided below: (a) three (3) Business Days after being deposited in the United States mail, postage fully prepaid, registered or certified mail, return receipt requested; (b) one (1) Business Day after being deposited with a nationally recognized overnight courier, postage fully prepaid; or (c) sent by fax transmission upon transmission and confirmation of receipt; provided any notice sent by fax transmission will be followed by delivery using method (b), above, deposited on the following Business Day. Any address for notice may be changed by giving notice thereof as provided in this Section. The addresses and fax numbers for notice purposes are as follows:

Seller: El Paso Water Utilities Public Service Board
Attention: John Balliew
President/CEO
1154 Hawkins Blvd.
El Paso, Texas 79925
(915) 594-5595

with a copy to El Paso Water Utilities Public Service Board
Attention: Alma DeAnda
Utility Land and Water Rights Manager
1154 Hawkins Blvd.
El Paso, Texas 79925
ADeAnda@epwater.org

Buyer: FRANKLIN MOUNTAIN COMMUNITIES, LLC
c/o Yolanda Giner
123 W. Mills Ave. Suite 600
El Paso, Texas 79901
(915) 504-7100

ARTICLE XVI
MISCELLANEOUS

16.1 Integration. This Agreement contains the complete agreement among the parties and the Brokers. It cannot be varied except by the written agreement of the Buyer and Seller. The parties agree that there are no oral agreements, understandings, representations, or warranties that are not expressly set forth herein.

16.2 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, representatives, successors and assigns, when such are not proscribed by this Agreement.

16.3 Omitted

16.4 Legal Construction. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. This Agreement shall be construed as a whole and in accordance with its fair meaning and without regard to any presumption or other rule requiring construction against the party preparing this Agreement or any part hereof.

16.5 Time of the Essence. Time is of the essence of this Agreement. If the expiration of the Inspection Period or the Closing Date falls on a Saturday, Sunday or a Legal Holiday, then the Inspection Period and/or the Closing Date shall be the first Business Day after the Saturday, Sunday or Legal Holiday.

16.6 Governing Law. This Agreement shall be construed under in accordance with the laws of the state of Texas. Venue shall be in El Paso, Texas.

16.7 Assignment. Buyer may assign this Agreement or any of its rights hereunder to the City of El Paso Municipal Management District No.1 with the consent of the President of the El Paso Water Utilities Public Service Board.

16.8 Exhibits

Exhibit A – Property Description

Exhibit B- Map of the Facilities Easement

Exhibit C- Facilities Easement Form

EXECUTED by Seller on this the 9th day of June, 2022.

SELLER:

**EL PASO WATER UTILITIES
PUBLIC SERVICE BOARD**

By: Marcela Navarrete
Marcela Navarrete
Vice President

APPROVED AS TO FORM:

Michaela Grambling
Michaela Ainsa Grambling
Senior Assistant General Counsel

APPROVED AS TO CONTENT:

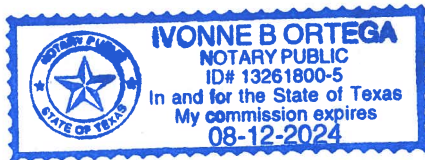
Alma De Anda
Alma De Anda
Utility Land & Water Rights Manager

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this the 9th day of June, 2022, by **MARCELA NAVARRETE, VICE PRESIDENT**, on behalf of the El Paso Water Utilities Public Service Board.

Notary Seal:



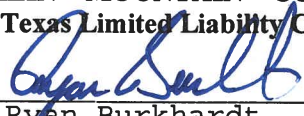
[Signature]
Notary Public, State of Texas

Commission Expires: 08-12-2024

EXECUTED by Buyer on this the 8th day of June, 2022.

BUYER:

**FRANKLIN MOUNTAIN COMMUNITIES,
LLC, a Texas Limited Liability Company**

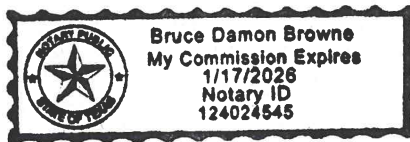
By: 
Name: Ryan Burkhardt
Title: President

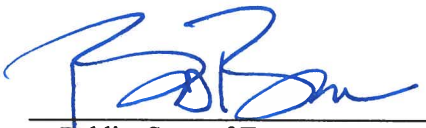
ACKNOWLEDGMENT

STATE OF TEXAS)
)
)
COUNTY OF ~~EL PASO~~ DALLAS)

This instrument was acknowledged before me on this the 8th day of June 2022, by Ryan Burkhardt, President of Franklin Mountain Communities, LLC, a Texas liability company, on behalf of said company.

Notary Seal:




Notary Public, State of Texas


Commission Expires: 1/17/2026

EXECUTED on this the ____ day of _____, 2022.

**THE CITY OF EL PASO
a Municipal Corporation**

By: _____
Tomás González
City Manager

APPROVED AS TO FORM:



Roberta Brito
Assistant City Attorney

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this the ____ day of _____ 2022, by
Tomás González, City Manager of the City of El Paso.

Notary Seal: _____
Notary Public, State of Texas

Commission Expires: _____

This Agreement has been received and reviewed by the Title Company this the _____ day of _____, 20____. The Title Company acknowledges that all information furnished to it by the parties or obtained by the Title Company in the course of performing its duties, including acting as the escrow agent for the parties, under the Agreement will be treated as confidential information.

TITLE COMPANY:

WestStar Title Company

By: _____
Its: _____

EXHIBIT "A-1"

PROPERTY DESCRIPTION

LEGAL DESCRIPTION

BEING a tract of land situated in Section 20, Block 81, Township 1, Texas & Pacific Railway Company Surveys, Abstract No. 5419, City of El Paso, El Paso County, Texas, and being all of a tract of land described as "PARCEL 6B" in Declaration and Grant of Easements and Restrictions to City of El Paso Public Service Board (PSB) recorded in Instrument No. 20200059840 of the Official Public Records of El Paso County, Texas, and being more particularly described as follows:

COMMENCING at a point in the west right-of-way line of McCombs Street - Farm to Market Road No. 2529 (150-foot wide right-of-way); from said point a 2-inch iron pipe found for the common corner of Sections 13 and 20, Block 81, Township 1, Texas & Pacific Railway Company Surveys and Sections 18 and 19, Block 80, Township 1, Texas & Pacific Railway Company Surveys bears North 30°24'25" East, a distance of 158.13 feet;

THENCE South 1°57'20" West, along the said west right-of-way line of McCombs Street, a distance of 2045.96 feet to a point;

THENCE departing the said west right-of-way line of McCombs Street, North 88°01'01" West, a distance of 50.00 feet to a point for the northeast corner of a called 11.2965 acre tract of land described in Special Warranty Deed to Franklin Mountain Communities, LLC recorded in Instrument No. 20210037465 of said Official Public Records;

THENCE South 1°57'20" West, along the east line of said 11.2965 acre tract, a distance of 464.62 feet to a point for the southeast corner of said 11.2965 acre tract, and being the northeast corner of said "PARCEL 6B", and being the **POINT OF BEGINNING**;

THENCE South 1°57'20" West, along the east line of said "PARCEL 6B", a distance of 20.00 feet to a point for the southeast corner of said "PARCEL 6B";

THENCE North 87°59'29" West, along the south line of the said "PARCEL 6B", a distance of 1059.74 feet to a 1/2-inch iron rod with plastic cap stamped "TX 6223" found for the southwest corner of said "PARCEL 6B";

THENCE North 1°58'59" East, along the west line of the said "PARCEL 6B", a distance of 20.00 feet to a 1/2-inch iron rod with plastic cap stamped "TX 8223" found for the northwest corner of said "PARCEL 6B";

THENCE South 87°59'29" East, along the north line of the said "PARCEL 6B", a distance of 1059.73 feet to the **POINT OF BEGINNING** and containing 0.4866 acres or 21,195 square feet of land, more or less.

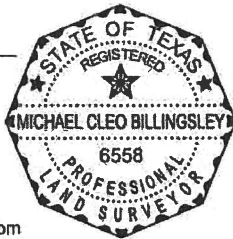
NOTES:

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), Central Zone (4203).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the 0.4866 acre tract.

M.C. Billingsley 8/10/21
MICHAEL C. BILLINGSLEY
 REGISTERED PROFESSIONAL
 LAND SURVEYOR NO. 6558
 801 CHERRY STREET,
 UNIT 11 SUITE 1300
 FORT WORTH, TEXAS 76102
 PH. 817-335-6511
 michael.billingsley@kimley-horn.com



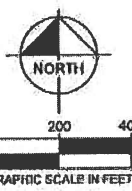
0.4866 ACRES
 SECTION 20, BLOCK 81, TOWNSHIP 1,
 TEXAS & PACIFIC RAILWAY COMPANY
 SURVEY, ABSTRACT NO. 5419
 CITY OF EL PASO, EL PASO COUNTY, TEXAS

Kimley»Horn

801 Cherry Street, Unit 11, # 1300 Fort Worth, Texas 76102 Tel. No. (817) 335-9511 www.kimley-horn.com

Role	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	JRH	MCS	07/10/21	004421005	1 OF 3

BILLINGSLEY, MICHAEL 07/10/2021 8:10 AM K-F-TW SURVEY 1004421005-2300 ACRES EL PASO DWG 0064421595-2300 ACRES EL PASO EX PBB PARCEL 6B DWG

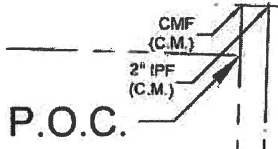


NOTES:

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), Central Zone (4203).

A metes and bounds description of even survey date herewith accompanies this survey plat.

The undersigned, Registered Professional Land Surveyor, hereby certifies that this survey plat accurately sets out the metes and bounds of the 0.4866 acre tract.



SECTION 20, BLOCK 81,
TOWNSHIP 1, TEXAS &
PACIFIC RAILWAY
COMPANY SURVEY,
ABSTRACT NO. 5419

**McCOMBS STREET -
F.M. ROAD NO. 2529**

(150-FOOT WIDE RIGHT-OF-WAY)
(VOL. 1410, PG. 576)

PART OF
CALLED 242.2385 ACRES
FSW INVESTMENTS V, LP
(INST. NO. 20200026011)

CALLED 51.4860 ACRES
FRANKLIN MOUNTAIN
COMMUNITIES, LLC
(INST. NO. 20210037466)

P.S.B. RIGHT-OF-WAY PARCEL 6B
CALLED 0.4868 ACRES
CITY OF EL PASO
(INST. NO. 20200059840)

1/2" IRFC "TX
6223" (C.M.)

PART OF
CALLED 244.8805 ACRES
FSW INVESTMENTS I, LP
(INST. NO. 20200026010)

PART OF
CALLED 640 ACRES
THE CITY OF EL PASO
(VOL. 1188, PG. 183)

1/2" IRFC "TX
6223" (C.M.)

CALLED 11.2985 ACRES
FRANKLIN MOUNTAIN
COMMUNITIES, LLC
(INST. NO. 20210037465)

**0.4866 ACRES
21,195 SQ. FT.**

P.O.B.

1/2" IRFC "TX
6223" (C.M.)

1/2" IRFC "TX
6223" (C.M.)

1/2" IRFC "TX
6223" (C.M.)

S87°59'29"E 1059.73'

N87°59'29"W 1059.74'
CALLED 5.2457 ACRES
FRANKLIN MOUNTAIN COMMUNITIES, LLC
(INST. NO. 20210037485)

PART OF
CALLED 244.8805 ACRES
FSW INVESTMENTS I, LP
(INST. NO. 20200026010)

CALLED 100.0000 ACRES
FRANKLIN MOUNTAIN COMMUNITIES, FUTURE P.S.B. ROW-PARCEL 3C
LLC (FORMERLY KNOWN AS
SCARBOROUGH ELP DEVELOPMENT, LLC)
(INST. NO. 20200026009)

CALLED 5.5032 ACRES
CITY OF EL PASO
(INST. NO. 20200059840)

0.4866 ACRES

SECTION 20, BLOCK 81, TOWNSHIP 1,
TEXAS & PACIFIC RAILWAY COMPANY
SURVEY, ABSTRACT NO. 5419
CITY OF EL PASO, EL PASO COUNTY, TEXAS

3/10/21
MICHAEL C. BILLINGSLEY
REGISTERED PROFESSIONAL
LAND SURVEYOR NO. 6558
801 CHERRY STREET,
UNIT 11 SUITE 1300
FORT WORTH, TEXAS 76102
PH. 817-335-6511
michael.billingsley@kimley-horn.com



Kimley»Horn


801 Cherry Street, Unit 11, # 1300 Fort Worth, Texas 76102
Tel. No. (817) 335-6511
www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 400'	JBJ	MCB	3/10/2021	08421505	2 OF 3

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LINE TABLE		
NO.	BEARING	LENGTH
L1	N88°01'01"W	50.00'
L2	S01°57'20"W	464.62'
L3	S01°57'20"W	20.00'
L4	N01°58'58"E	20.00'

0.4866 ACRES
SECTION 20, BLOCK 81, TOWNSHIP 1,
TEXAS & PACIFIC RAILWAY COMPANY
SURVEY, ABSTRACT NO. 5419
CITY OF EL PASO, EL PASO COUNTY, TEXAS

		<small>401 Cherry Street, Unit 11, #1300 Fort Worth, Texas 76102</small>		<small>Tel. No. (817) 335-8511 www.Kimley-Horn.com</small>	
		<small>FIRM # 1018404P</small>		<small>Scale: N/A</small>	
<small>Scale</small>	<small>Drawn by</small>	<small>Checked by</small>	<small>Date</small>	<small>Project No.</small>	<small>Sheet No.</small>
N/A	JRH	MCE	6/16/2021	054421505	1 OF 3

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EXHIBIT "A-2"

PROPERTY DESCRIPTION

LEGAL DESCRIPTION

BEING a tract of land situated in Section 20, Block 81, Township 1, Texas & Pacific Railway Company Surveys, Abstract No. 5419, City of El Paso, El Paso County, Texas, and being part of a tract of land described as "PARCEL 6A" in Declaration and Grant of Easements and Restrictions to City of El Paso Public Service Board (PSB) recorded in Instrument No. 20200059840 of the Official Public Records of El Paso County, Texas, and being more particularly described as follows:

COMMENCING at a point in the west right-of-way line of McCombs Street - Farm to Market Road No. 2529 (150-foot wide right-of-way); from said point a 2-inch iron pipe found for the common corner of Sections 13 and 20, Block 81, Township 1, Texas & Pacific Railway Company Surveys and Sections 18 and 19, Block 80, Township 1, Texas & Pacific Railway Company Surveys bears North 30°24'25" East, a distance of 158.13 feet;

THENCE South 1°57'20" West, along the said west right-of-way line of McCombs Street, a distance of 2045.96 feet to a point;

THENCE departing the said west right-of-way line of McCombs Street, North 88°01'01" West, a distance of 50.00 feet to a point for the northeast corner of a called 11.2965 acre tract of land described in Special Warranty Deed to Franklin Mountain Communities, LLC recorded in Instrument No. 20210037465 of said Official Public Records;

THENCE South 1°57'20" West, along the east line of said 11.2965 acre tract, a distance of 464.62 feet to a point for the southeast corner of said 11.2965 acre tract;

THENCE North 87°59'29" West, a distance of 1959.73 feet to a 1/2-inch iron rod with plastic cap stamped "TX 6223" found for the northeast corner of said "PARCEL 6A", and being the **POINT OF BEGINNING**;

THENCE South 1°58'59" West, along the east line of said "PARCEL 6A", a distance of 20.00 feet to a 1/2-inch iron rod with plastic cap stamped "TX 6223" found for the southeast corner of said "PARCEL 6A";

THENCE North 87°59'29" West, along the south line of the said "PARCEL 6A", a distance of 565.22 feet to a point for corner;

THENCE departing the said south line of "PARCEL 6A", North 2°00'31" East, a distance of 20.00 feet to a point for corner in the north line of said "PARCEL 6A";

THENCE South 87°59'29" East, along the north line of the said "PARCEL 6A", a distance of 565.22 feet to the **POINT OF BEGINNING** and containing 0.2595 acres or 11,304 square feet of land, more or less.

NOTES:

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), Central Zone (4203).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the 0.2595 acre tract.

M.C. Billingsley 8/10/21

MICHAEL C. BILLINGSLEY
 REGISTERED PROFESSIONAL
 LAND SURVEYOR NO. 8558
 801 CHERRY STREET,
 UNIT 11 SUITE 1300
 FORT WORTH, TEXAS 76102
 PH. 817-335-6511
 michael.billingsley@kimley-horn.com



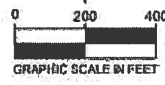
0.2595 ACRES
 SECTION 20, BLOCK 81, TOWNSHIP 1,
 TEXAS & PACIFIC RAILWAY COMPANY
 SURVEY, ABSTRACT NO. 5419
 CITY OF EL PASO, EL PASO COUNTY, TEXAS

Kimley»Horn

801 Cherry Street, Unit 11, # 1300 Fort Worth, Texas 76102 Tel. No. (817) 335-6511 www.kimley-horn.com

State	Drawn by	Checked by	Date	Project No.	Sheet No.
TX	JBH	MCA	8/10/2021	004421605	1 OF 3

BILLINGSLEY, MICHAEL 8/10/2021 8:11 AM K:\FTW SURVEY\094421605-2300 ACRES EL PASO\DWG\054421605-2300 ACRES EL PASO EX PSB PARCEL 6A.DWG



NOTES:

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), Central Zone (4203).

A metes and bounds description of even survey date herewith accompanies this survey plat.

The undersigned, Registered Professional Land Surveyor, hereby certifies that this survey plat accurately sets out the metes and bounds of the 0.2595 acre tract.

CMF (C.M.)
2" IPF (C.M.)
P.O.C.

SECTION 20, BLOCK 81,
TOWNSHIP 1, TEXAS &
PACIFIC RAILWAY
COMPANY SURVEY,
ABSTRACT NO. 5419

**McCOMBS STREET -
F.M. ROAD NO. 2529**
(150-FOOT WIDE RIGHT-OF-WAY)
(VOL. 1410, PG. 576)

PART OF
CALLED 242.2385 ACRES
FSW INVESTMENTS V, LP
(INST. NO. 20200026011)

CALLED 51.4860 ACRES
FRANKLIN MOUNTAIN
COMMUNITIES, LLC
(INST. NO. 20210037486)

P.S.B. RIGHT-OF-WAY
PARCEL 6B
CALLED 0.4868 ACRES
CITY OF EL PASO
(INST. NO. 20200059840)

P.S.B. RIGHT-OF-WAY
PARCEL 6A
CALLED 1.4442 ACRES
CITY OF EL PASO
(INST. NO. 20200059840)

1/2" IRFC "TX
6223" (C.M.)
PART OF
CALLED 244.8805 ACRES
FSW INVESTMENTS I, LP
(INST. NO. 20200026010)

PART OF
CALLED 640 ACRES
THE CITY OF EL PASO
(VOL. 1186, PG. 183)

CALLED 11.2965 ACRES
FRANKLIN MOUNTAIN
COMMUNITIES, LLC
(INST. NO. 20210037465)

P.O.B.

0.2595 ACRES
11,304 SQ. FT.
PART OF
CALLED 244.8805 ACRES
FSW INVESTMENTS I, LP
(INST. NO. 20200026010)

CALLED 100.0000 ACRES
FRANKLIN MOUNTAIN COMMUNITIES, LLC (FORMERLY KNOWN AS
SCARBOROUGH ELP DEVELOPMENT, LLC)
(INST. NO. 20200026008)

CALLED 5.2457 ACRES
FRANKLIN MOUNTAIN COMMUNITIES, LLC
(INST. NO. 20210037465)
FUTURE P.S.B. ROW-PARCEL 3C
CALLED 5.5032 ACRES
CITY OF EL PASO
(INST. NO. 20200059840)
0.2595 ACRES

SECTION 20, BLOCK 81, TOWNSHIP 1,
TEXAS & PACIFIC RAILWAY COMPANY
SURVEY, ABSTRACT NO. 5419
CITY OF EL PASO, EL PASO COUNTY, TEXAS

M.C.B. 8/10/21
MICHAEL C. BILLINGSLEY
REGISTERED PROFESSIONAL
LAND SURVEYOR NO. 6558
801 CHERRY STREET,
UNIT 11 SUITE 1300
FORT WORTH, TEXAS 76102
PH. 817-335-6511
michael.billingsley@kimley-horn.com




Kimley»Horn
801 Cherry Street, Unit 11, # 1300
Fort Worth, Texas 76102 FIRM # 10194040 Tel. No. (817) 335-6511
www.kimley-horn.com
Scale 1" = 400' Drawn by JEB Checked by MJB Date 8/10/2021 Project No. 004421505 Sheet No. 2 OF 3

BILLINGSLEY, MICHAEL 8/10/2021 8:11 AM K:\FTW SURVEY\004421505-2300 ACRES EL PASO\DWG\004421505-2300 ACRES EL PASO EX P'SB PARCEL 6A.DWG

LINE TABLE		
NO.	BEARING	LENGTH
L1	N88°01'01"W	50.00'
L2	S01°57'20"W	464.62'
L3	S01°58'59"W	20.00'
L4	N67°59'29"W	565.22'
L5	N02°00'31"E	20.00'
L6	S87°59'29"E	565.22'

0.2595 ACRES
SECTION 20, BLOCK 81, TOWNSHIP 1,
TEXAS & PACIFIC RAILWAY COMPANY
SURVEY, ABSTRACT NO. 5419
CITY OF EL PASO, EL PASO COUNTY, TEXAS

		801 Cherry Street, Unit 11, # 1300 Fort Worth, Texas 76102		Tel. No. (817) 339-6511 www.kimley-horn.com	
		PRR # 19194040			
Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	JBH	AKC	01/02/2021	084421505	3 OF 3

BILLINGSLEY, MICHAEL 01/02/2021 8:11 AM K.V.T.W. SURVEY 084421505-2300 ACRES EL PASO DWG 084421505-2300 ACRES EL PASO EX P88 PARCEL 8A, DWG

EXHIBIT "A-3"

PROPERTY DESCRIPTION

LEGAL DESCRIPTION

BEING a tract of land situated in Section 19, Block 80, Township 1, Texas & Pacific Railway Company Surveys, Abstract No., City of El Paso, El Paso County, Texas, and being all of the called 3.9819 acre tract of land described in deed to the City of El Paso's Public Service Board recorded in Instrument No. 20200059840 of the Official Public Records of El Paso County, Texas, and being more particularly described as follows:

COMMENCING at a point in the east right-of-way line of McCombs Street - Farm to Market Road No. 2529 (150-foot wide right-of-way); from said point the common corner of Sections 20 and 21, Block 81, Texas & Pacific Railway Company Surveys and Sections 19 and 30, Block 80, Texas & Pacific Railway Company Surveys bears North 89°30'24" West, a distance of 79.97 feet;

THENCE departing the said east right-of-way line of McCombs Street, South 86°57'26" East, along the south line of said 3.9819 acre tract, a distance of 50.91 feet to the southernmost southeast corner of said 3.9819 acre tract;

THENCE South 01°57'20" West, along the east line of said 3.9819 acre tract, a distance of 1331.39 feet to a 1/2-inch iron rod with plastic cap stamped "TX 6223" found for corner, and being the **POINT OF BEGINNING**;

THENCE the following eight (8) calls:

- South 01°57'20" West, a distance of 1125.48 feet to a 1/2-inch iron rod with plastic cap stamped "TX 6223" found for corner;
- South 88°02'40" East, a distance of 30.00 feet to a 1/2-inch iron rod with plastic cap stamped "TX 6223" found for corner;
- South 01°57'20" West, a distance of 141.37 feet to a 1/2-inch iron rod with plastic cap stamped "TX 6223" found for corner;
- South 38°21'18" East, a distance of 1254.17 feet to a 1/2-inch iron rod with plastic cap stamped "TX 6223" found for corner;
- South 83°21'18" East, a distance of 28.58 feet to a 1/2-inch iron rod with plastic cap stamped "TX 6223" found for corner;
- South 51°38'18" West, a distance of 42.42 feet to a 1/2-inch iron rod with plastic cap stamped "TX 6223" found for corner;
- North 83°21'18" West, a distance of 11.01 feet to a 1/2-inch iron rod with plastic cap stamped "TX 6223" found for corner;
- North 38°21'18" West, a distance of 1277.61 feet to the **POINT OF BEGINNING** and containing 42,985 square feet or 0.9868 acres of land, more or less.

NOTES:

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), Central Zone (4203).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the 0.9868 acre tract.

M.C. Billingsley 4/18/22
MICHAEL C. BILLINGSLEY
 REGISTERED PROFESSIONAL
 LAND SURVEYOR NO. 6558
 801 CHERRY STREET,
 UNIT 11 SUITE 1300
 FORT WORTH, TEXAS 76102
 PH. 817-335-8511
 michael.billingsley@kimley-horn.com



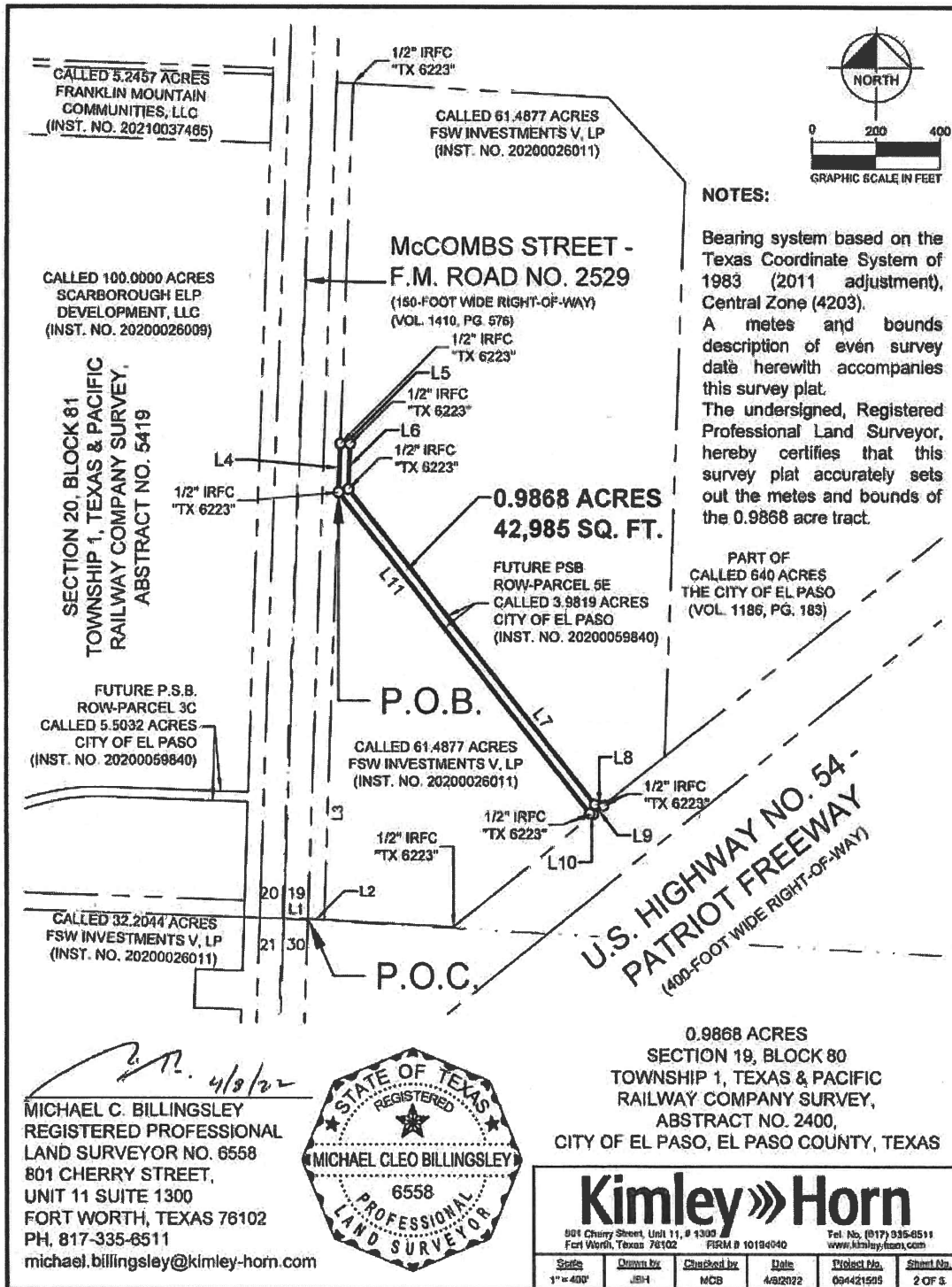
0.9868 ACRES
 SECTION 19, BLOCK 80
 TOWNSHIP 1, TEXAS & PACIFIC
 RAILWAY COMPANY SURVEY,
 ABSTRACT NO. 2400,
 CITY OF EL PASO, EL PASO COUNTY, TEXAS

Kimley»Horn

801 Cherry Street, Unit 11, # 1300
 Fort Worth, Texas 76102 FIRM # 10194940 Tel. No. (817) 355-6511
 www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	JHM	MCB	4/18/2022	684421505	1 OF 3

HOPPER, BRADIN 4/18/2022 11:46 AM KCF-TW SURVEY 084421505-2300 ACRES EL PASO DWG PUBLIC SERVICE BOARD 084421505-2300 ACRES EL PASO PBB FUTURE ROW-PARCEL



HOPPER BRADIN 4/8/2022 11:48 AM K:\FTW SURVEY\064421505-2300 ACRES EL PASO\DWG\PUBLIC SERVICE BOARD\064421505-2300 ACRES EL PASO PSB FUTURE ROW\PARCEL

LINE TABLE		
NO.	BEARING	LENGTH
L1	S88°30'24"E	79.97'
L2	S86°57'26"E	60.91'
L3	N01°57'20"E	1331.39'
L4	N01°57'20"E	152.39'
L5	S88°02'40"E	30.00'
L6	S01°57'20"W	141.37'
L7	S38°21'18"E	1254.17'
L8	S83°21'18"E	28.58'
L9	S51°38'18"W	42.42'
L10	N83°21'18"W	11.01'
L11	N38°21'18"W	1277.60'

0.9868 ACRES
SECTION 19, BLOCK 80
TOWNSHIP 1, TEXAS & PACIFIC
RAILWAY COMPANY SURVEY,
ABSTRACT NO. 2400,
CITY OF EL PASO, EL PASO COUNTY, TEXAS

Kimley»Horn

801 Cherry Street, Unit 11, # 1000
Fort Worth, Texas 76102 FIRM # 16184049 Tel. No. (817) 335-6511
www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	JBH	MCB	4/9/2022	054421505	3 OF 3

HOPPER, BRADIN 4/8/2022 11:46 AM K:\FTW SURVEY\1904421505-2300 ACRES EL PASO\DWG\PUBLIC SERVICE BOARD\054421505-2300 ACRES EL PASO P88 FUTURE ROW.PARCEL

EXHIBIT B
Map of the Facilities Easement



EXHIBIT C
The Facilities Easements

EASEMENT

THE STATE OF TEXAS)
) **KNOW ALL MEN BY THESE PRESENTS:**
COUNTY OF EL PASO)

That the undersigned, **FRANKLIN MOUNTAIN COMMUNITIES, LLC**, hereinafter called "Grantor", for and in consideration of the sum of **TEN DOLLARS (\$10.00)** and other good and valuable consideration paid by the **CITY OF EL PASO**, a municipal corporation, for the use and benefit of the **El Paso Water Utilities - Public Service Board**, hereinafter called "Grantee," the receipt and sufficiency of which is hereby acknowledged by Grantor, does hereby grant and convey unto said Grantee, a **20-FT WIDE (.8415 ACRES)** underground easement, to install, repair, replace, reconstruct, and use, maintain and operate a **underground 24-INCH RECLAIMED WATER LINE** with necessary appurtenances, and improvements, being hereinafter sometimes collectively called the "Facilities", under and through the following described property in the County of El Paso, Texas, hereinafter referred to as the "Easement":

as depicted in the **PART OF SECTION 20, BLOCK 81, TOWNSHIP I, TEXAS & PACIFICRAILWAY COMPANY SURVEYS, ABSTRACT NO. 5419 CITY OF EL PASO, EL PASO COUNTY, TEXAS** attached hereto as Exhibit "A".

This Easement shall be subject to all matters of record and existing on the ground. Except as modified herein, this grant shall carry with it the right of ingress and egress to and from the Easement at all reasonable times, with the right to use existing roads for the purpose of constructing, reconstructing, installing, operating, inspecting, repairing, and maintaining the Facilities; and the removal or replacement of same either in whole or in part. Grantee may use such portion of the property along and adjacent to said easement, as may be reasonably necessary, in connections with the construction, reconstruction, installation, maintenance, repair, removal, or replacement of the Facilities.

Grantor reserves the right to full use and enjoyment of the property encumbered by the Easement except as otherwise provided herein. Grantor's use shall not hinder, conflict, or interfere with the exercise of Grantee's rights hereunder. No building, reservoir, or permanent structure shall be constructed or maintained on said Easement. However, Grantor its successors and assigns may use the Easement Area for improvements such as paving (provided that any concrete paving is constructed in 20' x 20' segments with expansion joints around the perimeter), parking, driveways, surface drainage improvements, landscaping (provided trees are in compliance with city code requirements), light poles with bases, access areas, curbs, curb cuts, roads and signage (provided that Grantor shall coordinate with Grantee regarding the specific location of light poles with bases, signage with bases, and trees within the Easement to ensure that such improvements are not placed over the Facilities and will not interfere with Grantee's operation of its Facilities). Additionally, parking stalls cannot be placed above facilities such as manholes and vaults.

1048/3003/00013276.4

Grantor's employees, agents, and invitees, shall at all times, have access and use of the Easement and Grantee shall not unreasonably prohibit ingress to or egress from Grantor's adjacent land because of construction or for any other reason.

Grantor reserves the right to allow additional underground utilities and infrastructure to cross the Facilities, provided that the location of such additional utilities and infrastructure are marked and identifiable. Grantor however, agrees not to collocate underground utilities and infrastructure in the Easement, except for the collocation of water and sewer lines which is expressly permitted. For purposes of this Easement, "collocation" shall mean the parallel placement of other underground utilities and infrastructure within the Easement.

Grantee covenants and agrees not to unreasonably interfere with the use of the Easement by Grantor, its successor and assigns, and to restore the surface of the Easement and surrounding property, whenever disturbed by Grantee, to as good a condition as existed immediately prior to such disturbance, including, but not limited to, compaction of excavated areas, restoration of pavement areas, landscaping, sidewalks and other improvements. Grantee agrees to cooperate with Grantor if an adjustment of the Easement is required at any time; however, any reasonable costs associated with adjusting or relocating facilities shall be the responsibility of the Grantor. Grantee's consent shall not be unreasonably withheld where required.

This Easement shall automatically terminate unless Grantee objects to Grantor in writing within 10 days after delivery to Grantee of all the following items (the "Objection Period"): (i) a subdivision plat ("Plat") covering the Property that is recorded in the Real Property Records of El Paso County, Texas and creates a public utility easement for use by Grantee on, over and across Easement Area, and (ii) a "Termination Certificate", in recordable form, signed by a licensed engineer confirming to Grantee that: (a) the public utility easements shown on the Plat are in the same location as the Easement Area, and (b) Grantee Facilities are within the public utility easement on the Plat.

If Grantee does not provide written objection to Grantor within the Objection Period, Grantor may record the Termination Certificate as evidence that this easement has terminated without further action from Grantee. Provided however, that Grantee shall promptly execute reasonable documents confirming such termination as requested by Grantor. This obligation shall survive termination of this Easement.

Notwithstanding anything to the contrary contained herein, to the extent Grantee Facilities are located within street rights of way that are to be dedicated pursuant to the Plat ("Dedicated Right of Way"), Grantee shall retain rights under this easement to portions of the Easement Area within Dedicated Right of Way until such time as the Dedicated Right of Way is accepted by the applicable governmental authority.

The authority granted herein to Grantee does not include the right for Grantee to grant permission to any other person or entity to use the Easement Area for any purpose unrelated to the delivery by Grantee of electrical service. Grantor retains the exclusive authority to permit cable companies and telephone service companies to use the easement for their own purposes, provided

1048/3003/00013276.4

that such entities do not unreasonably obstruct Grantee's access or impair safe clearances from Grantee Facilities.

Grantee warrants to Grantor that the undersigned has the full power and authority to execute this Easement and fulfill its obligations under this Easement as a condition to the validity of this Easement. Grantor warrants to Grantee that the undersigned has the full power and authority to execute this Easement and fulfill its obligations under this Easement.

WITNESS THE EXECUTION HEREOF the _____ day of _____,
202_.

(Signatures Continue on Following Pages)

1048/3003/00013276.4

GRANTOR:

**FRANKLIN MOUNTAIN COMMUNITIES, LLC, a
Texas Limited Liability Company**

By: _____

NAME: _____

TITLE: _____

Executed on: _____

ACKNOWLEDGMENT

STATE OF TEXAS)

)

COUNTY OF EL PASO)

This instrument was acknowledged before me on this the ___ day of _____,
202_, by _____ of Franklin Mountain
Communities, LLC, a Texas limited liability company.

My Commission Expires

Notary Public, State of Texas

(Additional Signature Contained on Following Page)

1048/3003/00013276.4

GRANTEE:

**CITY OF EL PASO
EL PASO WATER UTILITIES
PUBLIC SERVICE BOARD**

By: _____
Marcela Navarrete
Vice President

Executed on: _____

APPROVED AS TO CONTENT:

Alma De Anda
Utility Land and Water Rights Manger

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this the _____ day of _____, 202_, by Marcela Navarrete, Vice President, of El Paso Water Utilities Public Service Board.

My Commission Expires

Notary Public, State of Texas

1048/3003/00013276.4

EXHIBIT A

LEGAL DESCRIPTION

BEING a tract of land situated in Section 20, Block 81, Township 1, Texas & Pacific Railway Company Surveys, Abstract No. 5419, City of El Paso, El Paso County, Texas, and being part of a called 100.0000 acre tract of land described in Special Warranty Deed to Scarborough ELP Development, LLC recorded in Instrument No. 20200026009 of the Official Public Records of El Paso County, Texas, and being more particularly described as follows:

COMMENCING at a point in the west right-of-way line of McCombs Street - Farm to Market Road No. 2529 (150-foot wide right-of-way), and being the southeast corner of said 100.0000 acre tract; from said point the common corner of Sections 20 and 21, Block 81, Township 1, Texas & Pacific Railway Company Surveys and Sections 19 and 30, Block 80, Township 1, Texas & Pacific Railway Company Surveys bears South 50°51'02" East, a distance of 87.94 feet;

THENCE North 1°57'20" West, along the said west right-of-way line of McCombs Street, a distance of 2356.73 feet to a point;

THENCE departing the said west right-of-way line of McCombs Street, North 88°01'01" West, a distance of 50.00 feet to a point in the west line of a called 5.5032 acre tract of land described in Declaration and Grant of Easements and Restrictions to City of El Paso Public Service Board (PSB) recorded in Instrument No. 20200059840 of said Official Public Records, and being the **POINT OF BEGINNING**;

THENCE departing the said west line of said 100.0000 acre tract, North 88°01'01" West, a distance of 1795.74 feet to a point corner in the west line of said

THENCE North 01°57'20" East, along the said west line of the 100.0000 acre tract, a distance of 20.00 feet to a point for corner;

THENCE South 88°01'01" East, a distance of 327.32 feet to a point for corner;

THENCE North 01°58'59" East, a distance of 37.00 feet to a point for corner in the north line of said 100.0000 acre tract; from said point a 5/8-inch iron rod with cap stamped "KHA" found for the northwest corner of said 100.0000 acre tract bears North 88°01'01" West, a distance of 327.34 feet;

THENCE South 88°01'01" East, along the said north line of the 100.0000 acre tract, a distance of 20.00 feet to a point for corner; from said point a 1/2-inch iron rod with cap stamped "TX 6223" found bears South 88°01'01" East, a distance of 388.55 feet;

CONTINUED ON SHEET 2

**WATER EASEMENT
PART OF SECTION 20, BLOCK 81,
TEXAS & PACIFIC RAILWAY COMPANY
SURVEYS, ABSTRACT NO. 5419
CITY OF EL PASO, EL PASO COUNTY, TEXAS**

		801 Cherry Street, Unit 11, # 1200 Fort Worth, Texas 76102		FIRM # 10194040		Tel. No. (817) 336-0811 www.kimley-horn.com	
		Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	JBH	MCB	10/19/2021	064421808	1 OF 5		

HOPPER, BRADIN 10/19/2021 10:36 AM K:\P-TW_SURVEY\1064421808-2300 ACRES EL PASO\DWG\EASEMENTS AND RIGHT-OF-WAYS\1064421808-2300 ACRES EL PASO_ESMT_WTR_2.DWG

LEGAL DESCRIPTION (CONTINUED)

THENCE departing the said north line of the 100.0000 acre tract, South 01°58'59" West, a distance of 37.00 feet to a point for corner;

THENCE South 88°01'01" East, a distance of 1448.42 feet to a point for corner in the said west line of the 5.5032 acre tract;

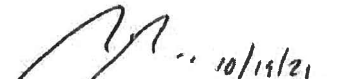
THENCE South 01°57'20" West, along the said west line of the 5.5032 acre tract, a distance of 20.00 feet to the POINT OF BEGINNING and containing 36,655 square feet or 0.8415 acres of land, more or less.

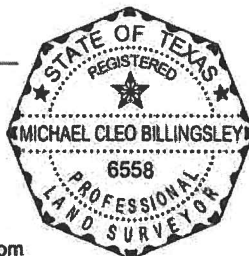
NOTES:

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), Central Zone (4203).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.


 MICHAEL C. BILLINGSLEY
 REGISTERED PROFESSIONAL
 LAND SURVEYOR NO. 6558
 801 CHERRY STREET,
 UNIT 11 SUITE 1300
 FORT WORTH, TEXAS 76102
 PH. 817-335-6511
 michael.billingsley@kimley-horn.com



WATER EASEMENT
 PART OF SECTION 20, BLOCK 81,
 TEXAS & PACIFIC RAILWAY COMPANY
 SURVEYS, ABSTRACT NO. 5419
 CITY OF EL PASO, EL PASO COUNTY, TEXAS

Kimley»Horn		801 Cherry Street, Unit 11, # 1300 Fort Worth, Texas 76102		FIRM # 10184040		Tel. No. (817) 335-6511 www.kimley-horn.com	
Scale	Drawn by	Checked by	Date	Project No.	Sheet No.		
N/A	JSH	MCB	10/18/2021	084421508	2 OF 6		

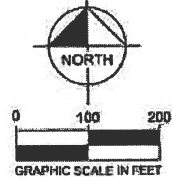
HPSPBR, BRADIN 10/18/2021 10:30 AM K:\FTW_SURVEY\1064421508-2300 ACRES EL PASO\DWG\EASEMENTS AND RIGHT-OF-WAY\1064421508-2300 ACRES EL PASO_ESMT_WTR_2.DWG

LEGEND

P.O.B. = POINT OF BEGINNING
 VOL. = VOLUME
 PG. = PAGE
 INST. NO. = INSTRUMENT NUMBER
 C.M. = CONTROLLING MONUMENT
 IRFC = IRON ROD WITH CAP FOUND

PART OF
 CALLED 100.0000 ACRES
 FRANKLIN MOUNTAIN
 COMMUNITIES LLC
 (FORMERLY KNOWN AS
 SCARBOROUGH ELP
 DEVELOPMENT, LLC)
 (INST. NO. 20200026009)

SECTION 20, BLOCK 81
 TOWNSHIP 1, TEXAS &
 PACIFIC RAILWAY
 COMPANY SURVEY,
 ABSTRACT NO. 5419



FUTURE P.S.B. ROW-PARCEL 3C
 CALLED 5.5032 ACRES
 CITY OF EL PASO
 (INST. NO. 20200059840)

25' TEXAS GAS SERVICE EASEMENT
 (SHOWN ON "PLAT OF SURVEY, BY:
 BENITO BARRAGAN, RPLS 5815,
 DATED: 10/12/11, JOB NO. 110927-12")
 (INST. NO. 20120017039)

P.O.C.

DEED LINE

10' TEXAS GAS SERVICE EASEMENT
 (SHOWN ON "PLAT OF SURVEY, BY:
 BENITO BARRAGAN, RPLS 5815,
 DATED: 10/12/11, JOB NO. 110927-12")
 (INST. NO. 20120017039)

10' MOUNTAIN STATES
 TELEPHONE AND TELEGRAPH
 COMPANY EASEMENT
 (VOL. 308, PG. 81)

SECTION 21, BLOCK 81
 TOWNSHIP 1, TEXAS & PACIFIC
 RAILWAY COMPANY SURVEYS,
 ABSTRACT NO. 2162

CALLLED 32.2044 ACRES
 FSW INVESTMENTS V, LP
 (INST. NO. 20200026011)

N1°57'20"E 2356.73'
MCCOMBS STREET
 F.M. ROAD NO. 2529
 (150-FOOT WIDE RIGHT-OF-WAY)

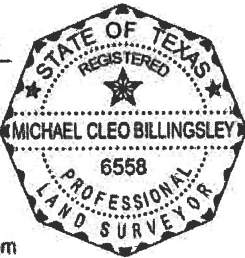
NOTES:

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), Central Zone (4203).

A metes and bounds description of even survey date herewith accompanies this survey plat.

The undersigned, Registered Professional Land Surveyor, hereby certifies that this survey plat accurately sets out the metes and bounds of the easement tract.

M.C.B. 10/19/21
MICHAEL C. BILLINGSLEY
 REGISTERED PROFESSIONAL
 LAND SURVEYOR NO. 6558
 801 CHERRY STREET,
 UNIT 11 SUITE 1300
 FORT WORTH, TEXAS 76102
 PH. 817-335-6511
 michael.billingsley@kimley-horn.com

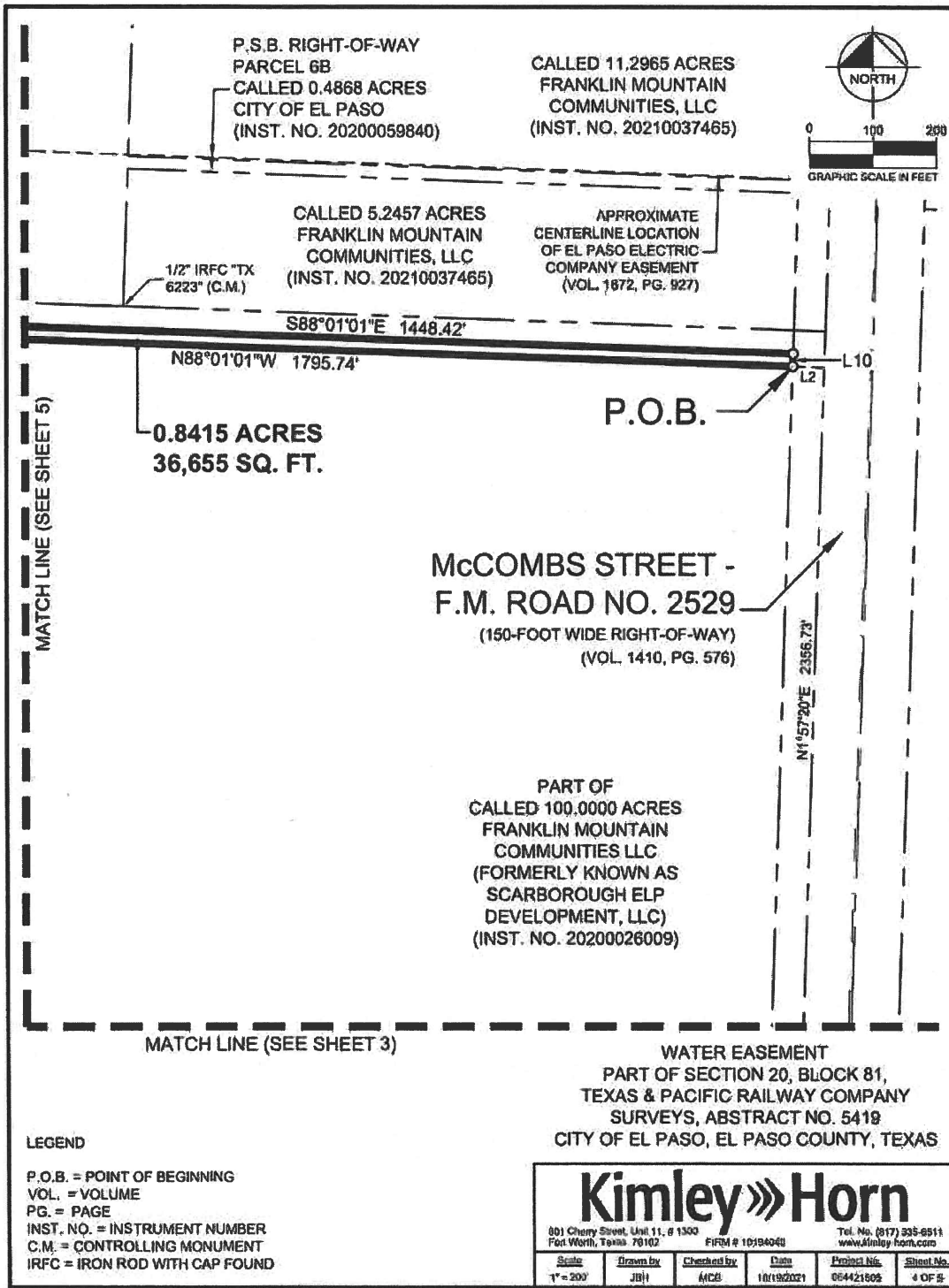


WATER EASEMENT
 PART OF SECTION 20, BLOCK 81,
 TEXAS & PACIFIC RAILWAY COMPANY
 SURVEYS, ABSTRACT NO. 5419
 CITY OF EL PASO, EL PASO COUNTY, TEXAS

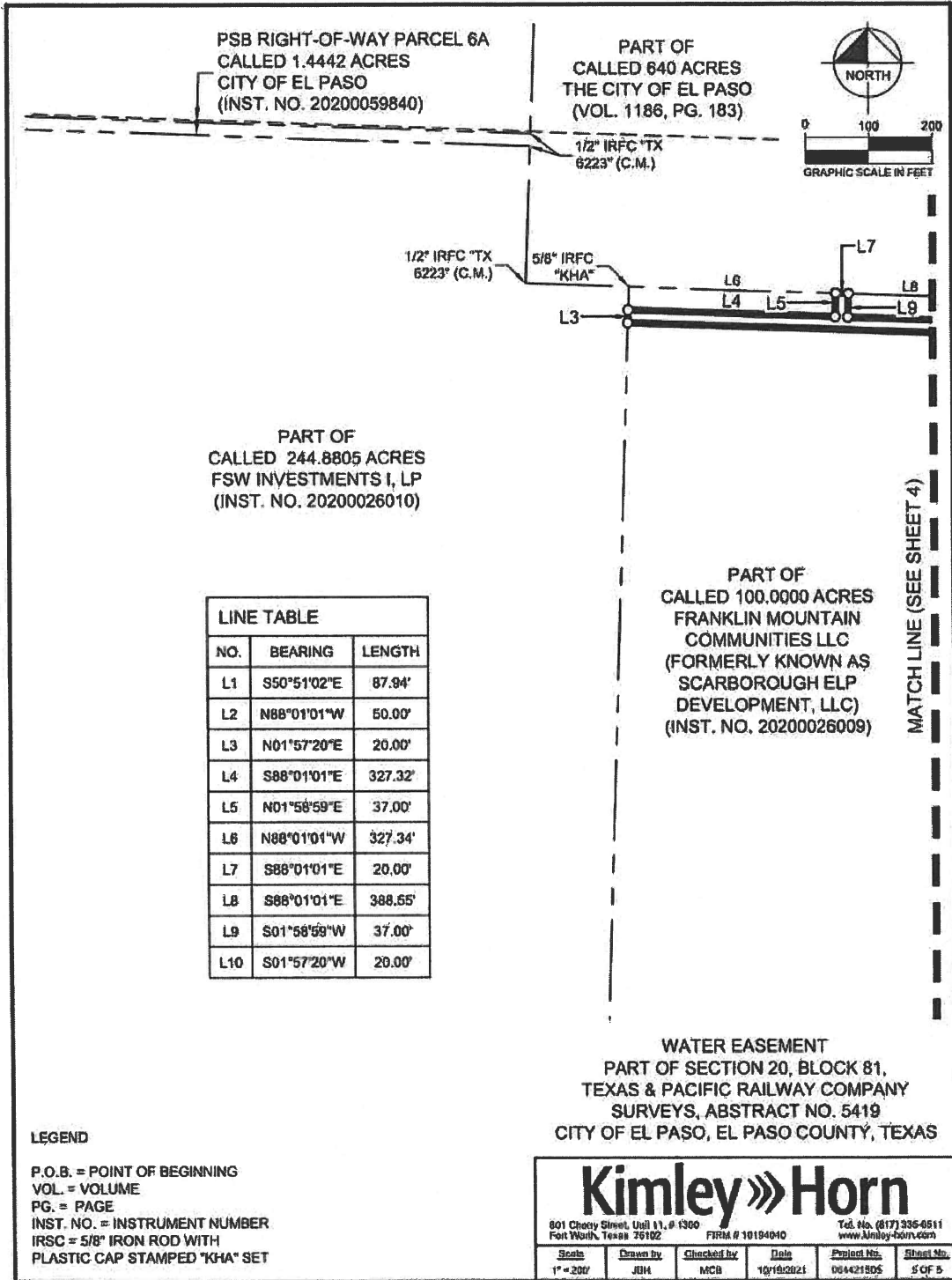
Kimley»Horn
 591 Cherry Street, Unit 11, # 1300 Fort Worth, Texas 76102 FIRM # 10194040 Tel. No. (817) 335-6211 www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 200'	JBH	MCB	10/19/2021	094421609	3 OF 5

HÖPPER, BRADIN 10/19/2021 10:26 AM K:\FTW, SURVEY\1054\421606-2300 ACRES EL PASO\DWG\EASEMENTS AND RIGHT OF-WAY\5004421605-2300 ACRES EL PASO_ESMT_WTR_2.DWG



HOPPER, BRADIN 10/19/2021 10:35 AM K:\FTW_SURVEY\064421803-2300 ACRES EL PASO\DWG\EASEMENTS AND RIGHT-OF-WAYS\064421505-2300 ACRES EL PASO_ESMT_WTR_2.DWG



LINE TABLE

NO.	BEARING	LENGTH
L1	S50°51'02"E	87.94'
L2	N88°01'01"W	50.00'
L3	N01°57'20"E	20.00'
L4	S88°01'01"E	327.32'
L5	N01°58'59"E	37.00'
L6	N88°01'01"W	327.34'
L7	S88°01'01"E	20.00'
L8	S88°01'01"E	388.65'
L9	S01°58'59"W	37.00'
L10	S01°57'20"W	20.00'

LEGEND

P.O.B. = POINT OF BEGINNING
VOL. = VOLUME
PG. = PAGE
INST. NO. = INSTRUMENT NUMBER
IRSC = 5/8" IRON ROD WITH
PLASTIC CAP STAMPED "KHA" SET

EASEMENT

THE STATE OF TEXAS)
) KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF EL PASO)

That the undersigned, FSW INVESTMENTS I, LP, hereinafter called "Grantor", for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration paid by the CITY OF EL PASO, a municipal corporation, for the use and benefit of the El Paso Water Utilities - Public Service Board, hereinafter called "Grantee," the receipt and sufficiency of which is hereby acknowledged by Grantor, does hereby grant and convey unto said Grantee, a 20-FT WIDE (0.3873 ACRES) underground easement, to install, repair, replace, reconstruct, and use, maintain and operate a underground 24-INCH RECLAIMED WATER LINE with necessary appurtenances, and improvements, being hereinafter sometimes collectively called the "Facilities", under and through the following described property in the County of El Paso, Texas, hereinafter referred to as the "Easement":

as depicted in the PART OF SECTION 20, BLOCK 81, TOWNSHIP 1, TEXAS & PACIFIC RAILWAY COMPANY SURVEYS, ABSTRACT NO. 5419 CITY OF EL PASO, EL PASO COUNTY, TEXAS attached hereto as Exhibit "A".

This Easement shall be subject to all matters of record and existing on the ground. Except as modified herein, this grant shall carry with it the right of ingress and egress to and from the Easement at all reasonable times, with the right to use existing roads for the purpose of constructing, reconstructing, installing, operating, inspecting, repairing, and maintaining the Facilities; and the removal or replacement of same either in whole or in part. Grantee may use such portion of the property along and adjacent to said easement, as may be reasonably necessary, in connections with the construction, reconstruction, installation, maintenance, repair, removal, or replacement of the Facilities.

Grantor reserves the right to full use and enjoyment of the property encumbered by the Easement except as otherwise provided herein. Grantor's use shall not hinder, conflict, or interfere with the exercise of Grantee's rights hereunder. No building, reservoir, or permanent structure shall be constructed or maintained on said Easement. However, Grantor its successors and assigns may use the Easement Area for improvements such as paving (provided that any concrete paving is constructed in 20' x 20' segments with expansion joints around the perimeter), parking, driveways, surface drainage improvements, landscaping (provided trees are in compliance with city code requirements), light poles with bases, access areas, curbs, curb cuts, roads and signage (provided that Grantor shall coordinate with Grantee regarding the specific location of light poles with bases, signage with bases, and trees within the Easement to ensure that such improvements are not placed over the Facilities and will not interfere with Grantee's operation of its Facilities). Additionally, parking stalls cannot be placed above facilities such as manholes and vaults.

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Grantor's employees, agents, and invitees, shall at all times, have access and use of the Easement and Grantee shall not unreasonably prohibit ingress to or egress from Grantor's adjacent land because of construction or for any other reason.

Grantor reserves the right to allow additional underground utilities and infrastructure to cross the Facilities, provided that the location of such additional utilities and infrastructure are marked and identifiable. Grantor however, agrees not to collocate underground utilities and infrastructure in the Easement, except for the collocation of water and sewer lines which is expressly permitted. For purposes of this Easement, "collocation" shall mean the parallel placement of other underground utilities and infrastructure within the Easement.

Grantee covenants and agrees not to unreasonably interfere with the use of the Easement by Grantor, its successor and assigns, and to restore the surface of the Easement and surrounding property, whenever disturbed by Grantee, to as good a condition as existed immediately prior to such disturbance, including, but not limited to, compaction of excavated areas, restoration of pavement areas, landscaping, sidewalks and other improvements. Grantee agrees to cooperate with Grantor if an adjustment of the Easement is required at any time; however, any reasonable costs associated with adjusting or relocating facilities shall be the responsibility of the Grantor. Grantee's consent shall not be unreasonably withheld where required.

This Easement shall automatically terminate unless Grantee objects to Grantor in writing within 10 days after delivery to Grantee of all the following items (the "Objection Period"): (i) a subdivision plat ("Plat") covering the Property that is recorded in the Real Property Records of El Paso County, Texas and creates a public utility easement for use by Grantee on, over and across Easement Area, and (ii) a "Termination Certificate", in recordable form, signed by a licensed engineer confirming to Grantee that: (a) the public utility easements shown on the Plat are in the same location as the Easement Area, and (b) Grantee Facilities are within the public utility easement on the Plat.

If Grantee does not provide written objection to Grantor within the Objection Period, Grantor may record the Termination Certificate as evidence that this easement has terminated without further action from Grantee. Provided however, that Grantee shall promptly execute reasonable documents confirming such termination as requested by Grantor. This obligation shall survive termination of this Easement.

Notwithstanding anything to the contrary contained herein, to the extent Grantee Facilities are located within street rights of way that are to be dedicated pursuant to the Plat ("Dedicated Right of Way"), Grantee shall retain rights under this easement to portions of the Easement Area within Dedicated Right of Way until such time as the Dedicated Right of Way is accepted by the applicable governmental authority.

The authority granted herein to Grantee does not include the right for Grantee to grant permission to any other person or entity to use the Easement Area for any purpose unrelated to the delivery by Grantee of electrical service. Grantor retains the exclusive authority to permit cable companies and telephone service companies to use the easement for their own purposes, provided

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that such entities do not unreasonably obstruct Grantee's access or impair safe clearances from Grantee Facilities.

Grantee warrants to Grantor that the undersigned has the full power and authority to execute this Easement and fulfill its obligations under this Easement as a condition to the validity of this Easement. Grantor warrants to Grantee that the undersigned has the full power and authority to execute this Easement and fulfill its obligations under this Easement.

WITNESS THE EXECUTION HEREOF the _____ day of _____,
202_.

(Signatures Continue on Following Pages)

1048/3003/00013277.5

GRANTOR:

**FSW INVESTMENTS I, LP,
a Texas Limited Partnership**

By: FSW GP, LLC
a Texas limited liability company
its general partner

By: _____
Name: _____
Title: _____

Executed on: _____

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this the ___ day of _____,
202_, by _____ of FSW Investments I, LP, a
limited partnership.

My Commission Expires

Notary Public, State of Texas

(Additional Signature Contained on Following Page)

1048/3003/00013277.5

GRANTEE:

**CITY OF EL PASO
EL PASO WATER UTILITIES
PUBLIC SERVICE BOARD**

By: _____
Marcela Navarrete
Vice President

Executed on: _____

APPROVED AS TO CONTENT:

Alma De Anda
Utility Land and Water Rights Manger

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this the _____ day of _____, 202_, by Marcela Navarrete, Vice President, of El Paso Water Utilities Public Service Board.

My Commission Expires

Notary Public, State of Texas

10483003/00013277.5

EXHIBIT A

LEGAL DESCRIPTION

BEING a tract of land situated in Section 20, Block 81, Township 1, Texas & Pacific Railway Company Surveys, Abstract No. 5419, City of El Paso, El Paso County, Texas, and being part of a called 244.8805 acre tract of land described in Special Warranty Deed to PSW Investments I, LP recorded in Instrument No. 20200026010 of the Official Public Records of El Paso County, Texas, and being more particularly described as follows:

COMMENCING at a point in the west right-of-way line of McCombs Street - Farm to Market Road No. 2529 (150-foot wide right-of-way), and being the southeast corner of said 100.0000 acre tract; from said point the common corner of Sections 20 and 21, Block 81, Township 1, Texas & Pacific Railway Company Surveys and Sections 19 and 30, Block 80, Township 1, Texas & Pacific Railway Company Surveys bears South 50°51'02" East, a distance of 87.94 feet;

THENCE North 1°57'20" East, along the said west right-of-way line of McCombs Street, a distance of 2356.73 feet to a point;

THENCE departing the said west right-of-way line of McCombs Street, North 88°01'01" West, a distance of 1845.74 feet to a point in the east line of said 244.8805 acre tract, and being the **POINT OF BEGINNING**;

THENCE departing the said east line of the 244.8805 acre tract, North 88°01'01" West, a distance of 167.22 feet to a point for corner, and being the beginning of a tangent curve to the right with a radius of 770.00 feet, a central angle of 48°52'09", and a chord bearing and distance of North 63°34'56" West, 637.03 feet;

THENCE (the following three (3) calls):

In a northerly direction, with said tangent curve to the right, an arc distance of 656.76 feet to a point for corner, North 87°59'29" West, a distance of 51.56 feet to a point for corner;
 North 02°00'31" East, a distance of 10.00 feet to a point for corner in the south line of a called 1.4442 acre tract of land described in Declaration and Grant of Easements and Restrictions to City of El Paso Public Service Board (PSB) recorded in Instrument No. 20200059840 of said Official Public Records;

THENCE South 87°59'29" East, along the said south line of the 1.4442 acre tract, a distance of 69.40 feet to a point at the beginning of a non-tangent curve to the left having a central angle of 48°32'51", a radius of 750.00 feet, a chord bearing and distance of South 63°44'35" East, 616.65 feet; from said point a 1/2-inch iron rod with plastic cap stamped "TX 6223" found for the southeast corner of said 1.4442 acre tract bears South 87°59'29" East, a distance of 565.22 feet;

CONTINUED ON SHEET 2

WATER EASEMENT
 PART OF SECTION 20, BLOCK 81,
 TEXAS & PACIFIC RAILWAY COMPANY
 SURVEYS, ABSTRACT NO. 5419
 CITY OF EL PASO, EL PASO COUNTY, TEXAS

Kimley»Horn		801 Cherry Street, Suite 11.4, El Paso, TX 79901		Tel: (915) 837-8200	
		Fax: (915) 837-8200		www.kimley-horn.com	
Drawn	Checked	Reviewed	Date	Project No.	Sheet No.
ASH	JRH	JCS	10/10/21	08431029	1 OF 6

HOPPER, GRADE 12/15/2021 11:37 AM 11/17/21 SURVEY 08431029-230 ACRES EL PASO COUNTY, TEXAS AND RIGHT-OF-WAY RECORDS 100-1200-0000 EL PASO COUNTY, TEXAS

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LEGAL DESCRIPTION (CONTINUED)

THENCE departing the said south line of the 1.4442 acre tract, in a southeasterly direction, with said curve to the left, an arc distance of 636.49 feet to a point for corner;

THENCE South 88°01'01" East, a distance of 167.21 feet to a point for corner in the said east line of the 244.8805 acre tract;

THENCE South 01°57'20" West, along the said east line of the 244.8805 acre tract, a distance of 20.00 feet to the **POINT OF BEGINNING** and containing 16,872 square feet or 0.3873 acres of land, more or less.

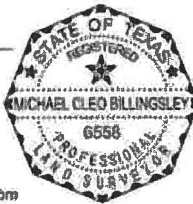
NOTES:

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), Central Zone (4283).

A survey plat of eyes survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

Michael C. Billingsley
MICHAEL C. BILLINGSLEY
 REGISTERED PROFESSIONAL
 LAND SURVEYOR NO. 6558
 801 CHERRY STREET,
 UNIT 11 SUITE 1300
 FORT WORTH, TEXAS 76102
 PH. 817-335-6511
 michael.billingsley@kimley-horn.com



WATER EASEMENT
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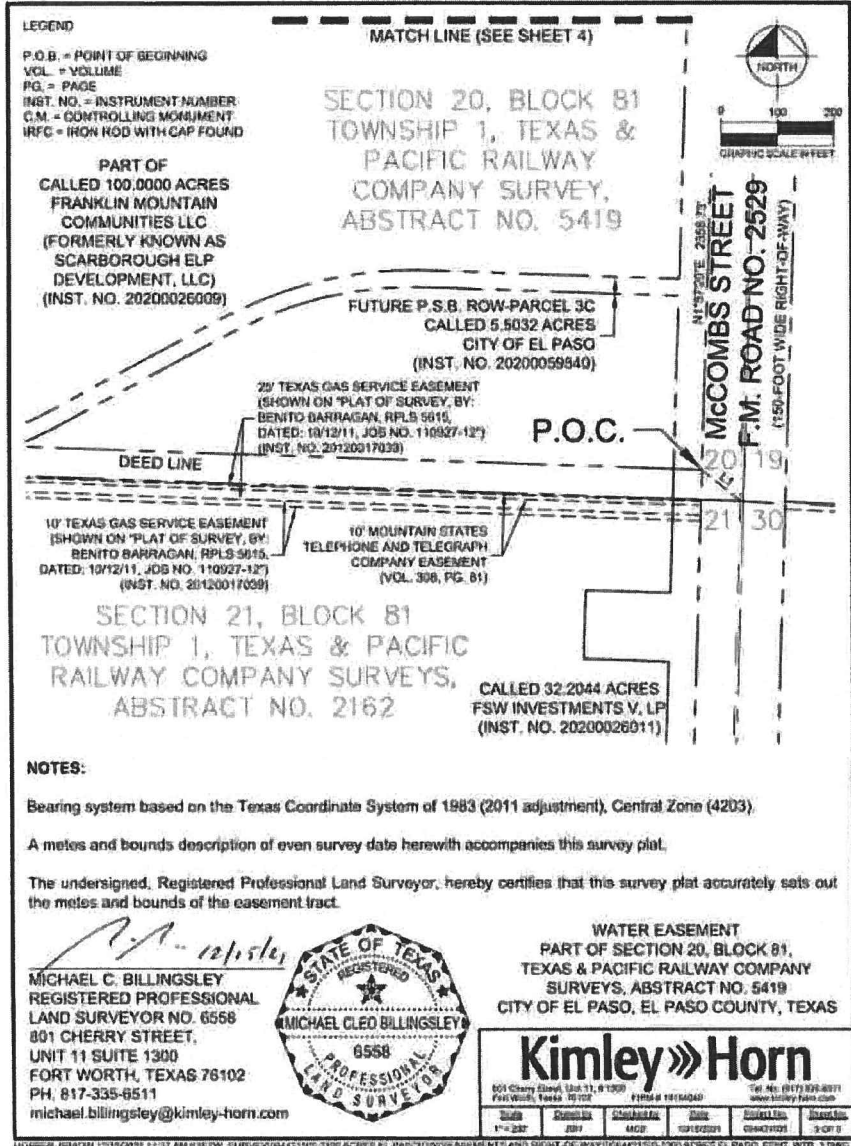
Kimley»Horn

801 Cherry Street, Unit 11, Suite 1300 Fort Worth, Texas 76102 FIRM # 0378400 Tel. No. (817) 335-6511 www.kimley-horn.com

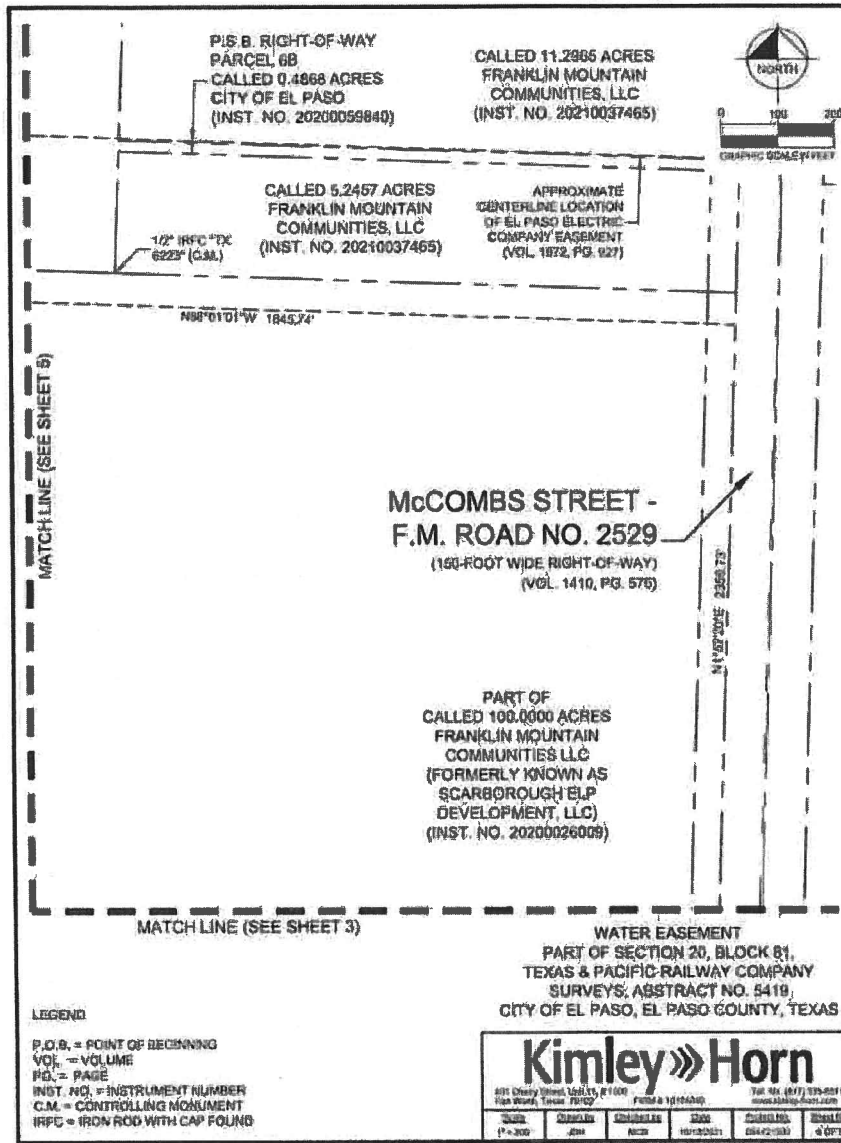
STATE	ADDRESS	CHANGING	DATE	PROJECT NO.	ISSUE NO.
TX	801 CHERRY STREET, UNIT 11, SUITE 1300 FORT WORTH, TEXAS 76102				

HORN, RWDR 12/18/2015 11:07 AM RUTW, SURVEY\442154-3300 ACRES EL PASO\WATER EASEMENT AND RIGHT-OF-WAY\5419\5419.DWG

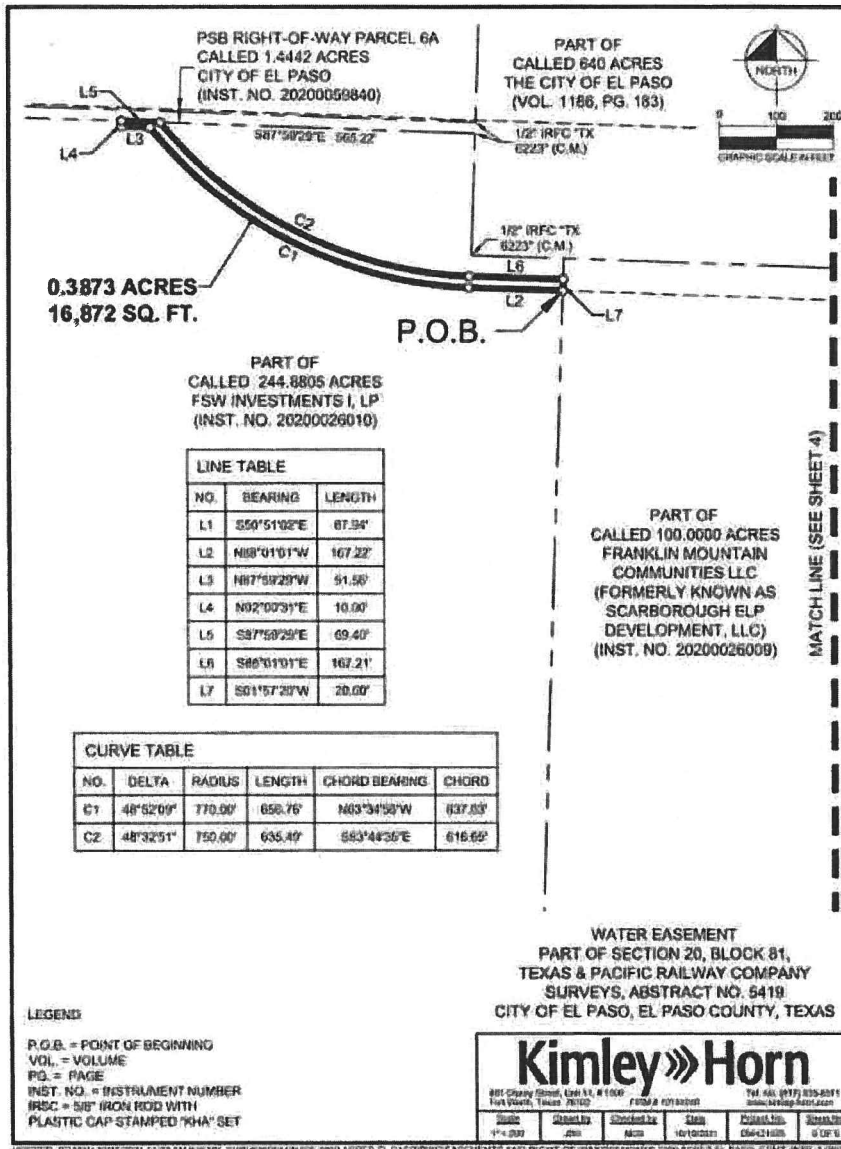
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