

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

AGENDA DATE: July 30, 2024

PUBLIC HEARING DATE: N/A

CONTACT PERSON(S) NAME AND PHONE NUMBER: Mary Lou Espinoza, Capital Assets Manager,
(915) 867-2629

DISTRICT(S) AFFECTED: 1

STRATEGIC GOAL: No. 6: Set the Standard for Sound Governance and Fiscal Management

SUBGOAL: No. 6.6: Ensure continued financial stability and accountability through sound financial management, budgeting and reporting

SUBJECT:

A resolution authorizing the City Manager to sign a Possession and Use Agreement for Transportation Purposes with Additional Payment of Independent Consideration, with the State of Texas, acting by and through the Texas Department of Transportation, (the "State"), granting to the State the right to possession and use of City property for purposes of constructing a portion of State Highway 178 in exchange for payment to the City in the amount of \$3,000. The property subject to this Agreement is described as 0.0208 acre (908 square feet) of land located in the Nellie D. Mundy Survey Number 241, in northwest El Paso. This Agreement is entered into pending the final sale of said property to the State of Texas for the construction of a portion of Highway 178.

BACKGROUND / DISCUSSION:

The City of El Paso desires to allow early entry and exclusive possession, to a parcel identified as a portion of PID 100507, consisting of approximately 0.0208 acres within the Sunset Terrace LT Park, that is proposed to be conveyed to the State of Texas, acting through the Texas Department of Transportation (TxDOT).

The property is located near Artcraft Road and Berringer Street. The proposed use is for future TxDOT right-of-way, for the construction of a portion of Highway 178. The \$3,000 payment is to allow early access to the property, pending the final sale of the 0.0208 acres to the State of Texas.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A: This is a revenue generating item

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: Streets & Maintenance

SECONDARY DEPARTMENT: Real Estate

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

DEPARTMENT HEAD: Richard J. Bristol - Streets and Maintenance Director

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Revised 04/09/2021

RESOLUTION

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

THAT the City Manager be authorized to sign a Possession and Use Agreement for Transportation Purposes with Additional Payment of Independent Consideration, with the State of Texas, acting by and through the Texas Department of Transportation, (the “State”), granting to the State the right to possession and use of City property for purposes of constructing a portion of State Highway 178 in exchange for payment to the City in the amount of \$3,000.00. The property subject to this Agreement is described as 0.0208 acre (908 square feet) of land located in the Nellie D. Mundy Survey Number 241, in northwest El Paso. This Agreement is entered into pending the final sale of said property to the State of Texas for the construction of a portion of Highway 178.

APPROVED this _____ day of _____ 2024.

THE CITY OF EL PASO:

Oscar Leeser
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Roberta Brito
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Mary Lou Espinoza, Capital Assets Manager
Streets and Maintenance Department



**POSSESSION AND USE AGREEMENT FOR TRANSPORTATION PURPOSES
WITH ADDITIONAL PAYMENT OF INDEPENDENT CONSIDERATION**

STATE OF TEXAS

§
§
§

ROW CSJ: 3592-01-012

Parcel ID: P00062272

COUNTY OF EL PASO

Project No.: SH 178

This Possession and Use Agreement For Transportation Purposes (the "Agreement") between the State of Texas, acting by and through the Texas Department of Transportation (the "State"), and **The City of El Paso** (the "Grantor" whether one or more), grants to the State, its contractors, agents and all others deemed necessary by the State, an irrevocable right to possession and use of the Grantor's property for the purpose of constructing a portion of State Highway 178 (the "Highway Construction Project"). The property subject to this Agreement is described more fully in field notes and plat map (attached as "Exhibit A") and made a part of this Agreement by reference (the "Property").

1. For the consideration paid by the State which is set forth in Paragraphs 2 and 3 below, the receipt and sufficiency of which is acknowledged, the Grantor grants, bargains, sells and conveys to the State of Texas the right of entry and exclusive possession and use of the Property for the purpose of constructing a highway and appurtenances thereto and the right to remove any improvements. Authorized activities include surveying, inspection, environmental studies, archeological studies, clearing, demolition, construction of permanent improvements, relocating, replacing, and improving existing utility facilities, locating new utility facilities, and other work required to be performed in connection with the Highway Construction Project. This Agreement will extend to the State, its contractors and assigns, owners of any existing utilities on the Property and those which may be lawfully permitted on the Property by the State in the future, and all others deemed necessary by the State for the purpose of the Highway Construction Project. This grant will allow the construction, relocation, replacement, repair, improvement, operation and maintenance of utilities on the Property.
2. In full consideration for this irrevocable grant of possession and use and other Grantor covenants, warranties, and obligations under this Agreement, the State will tender to the Grantor the sum of zero and no/100 Dollars (\$0.00). The Grantor agrees that this sum represents adequate and full compensation for the possession and use of the Property. The State will be entitled to take possession and use of the Property upon tender of payment. The parties agree that the sum tendered represents zero percent of the State's approved value, which assumes no adverse environmental conditions affecting the value of the Property. The approved value is the State's determination of the just compensation owed to the Grantor for the real property interest to be acquired by the State in the Property, encumbered with the improvements thereon, if any, and damages to the remainder, if any, save and except all oil, gas and sulphur. The parties agree that the sum tendered to Grantor will be deducted from any final settlement amount, Special Commissioners' award or court judgment. In the event the amount of the final settlement or judgment for acquisition of the Property is less than the amount the State has paid for the possession and use of the Property, then the Grantor agrees that the original amount tendered represents an overpayment for the difference and, upon written notice from the State, the Grantor will promptly refund the overpayment to the State.

3. As additional consideration, the State will tender to the Grantor the sum of Three Thousand and 00/100 Dollars (\$3,000.00), the receipt and sufficiency of which is acknowledged. The parties agree that the sum tendered under this Paragraph 3:
 - (i) is independent consideration for the possession and use of Grantor's Property and represents no part of the State's compensation to be paid for the anticipated purchase of the Property; and
 - (ii) will not be refunded to the State upon any acquisition of the Property by the State.
4. The effective date of this Agreement will be the date on which payment pursuant to Paragraphs 2 and 3 above was tendered to the Grantor by the State or disbursed to the Grantor by a title company acting as escrow agent for the transaction, (the "Effective Date").
5. The Grantor warrants and represents that the title to the Property is free and clear of all liens and encumbrances or that proper releases will be executed for the Property prior to funds being disbursed under this Agreement. The Grantor further warrants that no other person or entity owns an interest in the fee title to the Property and further agrees to indemnify the State from all unreleased or undisclosed liens, claims or encumbrances affecting the Property.
6. The parties agree that the valuation date for determining the amount of just compensation for the real property interest proposed to be acquired by the State in the Property, for negotiation or eminent domain proceeding purposes, will be the Effective Date of this Agreement.
7. This Agreement is made with the understanding that the State will continue to proceed with acquisition of a real property interest in the Property. The Grantor reserves all rights of compensation for the title and interest in and to the Property which the Grantor holds as of the time immediately prior to the Effective Date of this Agreement. This Agreement shall in no way prejudice the Grantor's rights to receive full and just compensation as allowed by law for all of the Grantor's interests in and to the Property to be acquired by the State, encumbered with the improvements thereon, if any, and damages, if any, to the remainder of the Grantor's interest in any larger tract of which the Property is a part (the "Remainder"), if any; all as the Property exists on the Effective Date of this Agreement. The State's removal or construction of improvements on the Property shall in no way affect the fair market value of the Property in determining compensation due to the Grantor in the eminent domain proceedings. There will be no project impact upon the appraised value of the Property. This grant will not prejudice the Grantor's rights to any relocation benefits for which Grantor may be eligible.
8. In the event the State institutes or has instituted eminent domain proceedings, the State will not be liable to the Grantor for interest upon any award or judgment as a result of such proceedings for any period of time prior to the date of the award. Payment of any interest may be deferred by the State until entry of judgment.
9. The purpose of this Agreement is to allow the State to proceed with its Highway Construction Project without delay and to allow the Grantor to have the use at this time of a percentage of the estimated compensation for the State's acquisition of a real property interest in the Property. The Grantor expressly acknowledges that the proposed Highway Construction Project is for a valid public use and voluntarily waives any right the Grantor has or may have, known or unknown, to contest the jurisdiction of the court in any condemnation proceeding for acquisition of the Property related to the

Highway Construction Project, based upon claims that the condemning authority has no authority to acquire the Property through eminent domain, has no valid public use for the Property, or that acquisition of the Property is not necessary for the public use.

10. The Grantor reserves all of the oil, gas and sulphur in and under the land herein conveyed but waives all right of ingress and egress to the surface for the purpose of exploring, developing, mining or drilling. The extraction of oil, gas and minerals may not affect the geological stability of the surface. Nothing in this reservation will affect the title and rights of the State to take and use all other minerals and materials thereon, and thereunder.
11. The undersigned Grantor agrees to pay as they become due, all ad valorem property taxes and special assessments assessed against Property, including prorated taxes for the year in which the State takes possession under this agreement.
12. Notwithstanding the acquisition of right of possession to the Property by the State in a condemnation proceeding by depositing the Special Commissioners' award into the registry of the court, less any amounts tendered to the Grantor pursuant to Paragraph 2 above, this Agreement shall continue to remain in effect until the State acquires title to the Property either by negotiation, settlement, or final court judgment.
13. This Agreement will also extend to and bind the heirs, devisees, executors, administrators, legal representatives, successors in interest and assigns of the parties.
14. It is agreed the State will record this document.
15. Other conditions: N/A.

To have and to hold the Agreement herein described and conveyed, together with all the rights and appurtenances belonging to the State of Texas and its assigns forever, for the purposes and subject to the limitations set forth above.

GRANTOR:

City of El Paso, Texas

Cary Westin, Interim City Manager

Date: _____

Approval as to Form:



Roberta Brito, Senior Assistant City Attorney

Approval as to Content:



Mary Lou Espinoza, Capital Assets Manager

Acknowledgment

State of Texas
County of El Paso:

This instrument was acknowledged before me on _____ by Cary Westin,
as Interim City Manager of City of El Paso, Texas. The acknowledging person personally appeared by:

physically appearing before me.

appearing by an interactive two-way audio and video communication that meets the requirements for online
notarization under Texas Government Code, Chapter 406, Subchapter C.

Notary Public's Signature

THE STATE OF TEXAS

Executed by and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: _____
Ismael Hernandez
Right of Way Project Delivery Manager
El Paso District
Texas Department of Transportation

Date: _____

EXHIBIT "A"

September, 2023

P00062272.001

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COUNTY: El Paso
HIGHWAY: SH 178
LIMITS: From New Mexico and Texas State Line to IH 10
PROJECT ID: R00005569
RCSJ: 3592-01-012
CCSJ: 3592-01-009

Property Description for Parcel P00062272.001

Being 0.0208 acres (908 square feet) of land located in the Nellie D. Mundy Survey Number 241, El Paso County, Texas, being out of a tract of land (calculated 0.8588 acre) dedicated as a public park by map of Artcraft Commercial Unit Two, recorded in Volume 2007, Page 31 (Document Number 20070026174) of the El Paso County Plat Records (E.P.C.P.R.), and out of Lot 4, Block 2 of said Artcraft Commercial Unit Two, said 0.0208 acres of land being more particularly described as follows:

COMMENCING at a found 1/2-inch iron rod for an angle point on the east line of said public park, an angle point on the east line of said Lot 4, an angle point on the west line of a tract of land described in deed to Tundra Properties, LLC, recorded in Document Number 20210102269 of the Official Public Records of Real Property of El Paso County (O.P.R.R.P.E.P.C.), executed October 20, 2021, and an angle point on the west line of Lot 2, Block 2 of said Artcraft Commercial Unit Two;

THENCE, South 02°33'32" West, along the east line of said public park, the east line of said Lot 4, the west line of said Tundra Properties, LLC tract and the west line of said Lot 2, a distance of 24.76 feet to a 5/8 inch iron rod with TXDOT aluminum cap, set, for the **POINT OF BEGINNING** (N=10,705,566.95, E=356,903.16) and the northeast corner of the herein described parcel, being on the proposed north right of way line of SH 178, located 125.32 feet left of SH 178 Proposed Centerline Station 257+30.53;

1. **THENCE**, South 02°33'32" West, continuing along the east line of said public park, the east line of said Lot 4, the west line of said Tundra Properties, LLC tract and the west line of said Lot 2, a distance of 60.59 feet to a point for the southeast corner of said public park, the southeast corner of said Lot 4, the southwest corner of said Tundra Properties, LLC tract, the southwest corner of said Lot 2 and the southeast corner of the herein described parcel, being on the existing north right of way line of SH 178 (Artcraft Road) (width varies) described in deed to the State of Texas, recorded in Volume 3195, Page 1455, Volume 3299, Page 793 and Volume 3299, Page 762 O.P.R.R.P.E.P.C. and in deed to The County of El Paso, recorded in Volume 1607, Page 609 of the El Paso County Deed Records (E.P.C.D.R.);
2. **THENCE**, South 81°28'47" West, along the existing north right of way line of said SH 178, a distance of 15.28 feet to a point for the southwest corner of said public park, the southwest corner of said Lot 4, the southeast corner a called 3.9021 acre tract of land described in deed to Canutillo Independent School District, recorded in Document Number 20060032620 O.P.R.R.P.E.P.C., effective April 06, 2006 and the southwest corner of the herein described parcel;

EXHIBIT "A"

September, 2023

P00062272.001

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3. **THENCE**, North 02°33'32" East, along the west line of said public park, the west line of said Lot 4, and the east line of said Canutillo Independent School District tract, a distance of 60.46 feet to a 5/8 inch iron rod with TXDOT aluminum cap, set, for the northwest corner of the herein described parcel, being on the proposed north right of way line of SH 178, located 124.96 feet left of SH 178 Proposed Centerline Station 257+15.23.
4. **THENCE**, North 80°59'24" East, along the proposed north right of way line of SH 178, a distance of 15.31 feet to the **POINT OF BEGINNING** and containing 0.0208 acres (908 square feet) of land;

Bearings and coordinates are referenced to the Texas Coordinate System of 1983, NAD83 (2011 Adj., Epoch 2010), Central Zone (4203), and the TXDOT RTN Mount point NAD83 (2010)-West_VRS_RTCM. All distances and coordinates shown are surface values and may be converted to state plane values by dividing by the surface adjustment factor of 1.00023100 (Surface / 1.00023100 = State Plane).

The unit of measure is the U.S. Survey Foot.

Field Surveys were performed March, 2022 through July, 2022.

Research was performed February, 2022 through March, 2022.

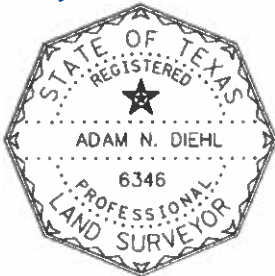
A parcel plat of even date was prepared in conjunction with this property description.

Survey Date: July 21, 2022

Access will be permitted to the remainder abutting the highway facility.

I, Adam N. Diehl, a Registered Professional Land Surveyor, do hereby certify that this property description is a true and correct representation of a survey made on the ground, under my direction and supervision.

10/16/2023



Adam N. Diehl

Adam N. Diehl
Registered Professional Land Surveyor
Number 6346

LANDTECH

2525 North Loop West, Suite 300

Houston, Texas 77008

T: 713-861-7068

F: 713-861-4131

www.landtech-inc.com

TBPELS Reg No. 10019100 Houston

TBPELS Reg. No. 10019101 El Paso

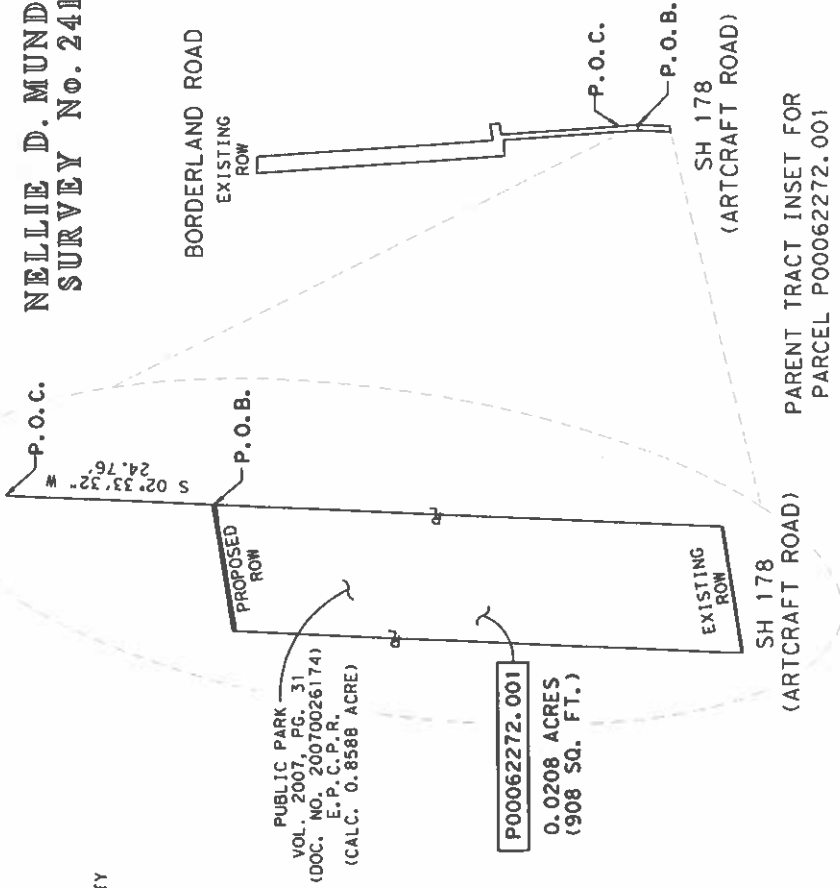
LEGEND

- EXISTING R.O.W. LINE
- - - PROPOSED R.O.W. LINE
- - - PROPOSED TEMPORARY EASEMENT
- - - PROPERTY LINE
- - - SURVEY LINE
- - - FENCE LINE
- x - OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF EL PASO COUNTY
- O.P.R.P.-E.P.C. - EL PASO COUNTY DEED RECORDS
- E.P.C.P.R. - EL PASO COUNTY DEED RECORDS
- E.P.C.D.R. - EL PASO COUNTY DEED RECORDS
- E.P.E. CO. - EL PASO ELECTRIC COMPANY
- E.P.C.W.I.D. - EL PASO COUNTY WATER IMPROVEMENT DISTRICT
- U.E. - UTILITY EASEMENT
- D.E. - DRAINAGE EASEMENT
- B.L. - BUILDING LINE
- I.R. - IRON ROD
- I.P. - IRON PIPE
- SET TXDOT TYPE II MONUMENT (UNLESS OTHERWISE NOTED)
- SET 5/8" I.R. W/TXDOT ALUM CAP (UNLESS OTHERWISE NOTED)
- ⊙ PROPERTY CORNER (FOUND AS NOTED)
- ↑ LAND HOOK (DENOTES COMMON OWNER)

NOTES

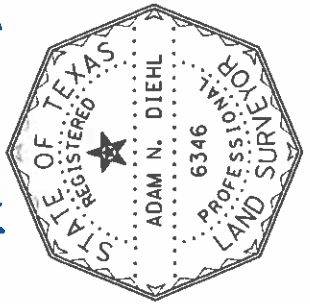
1. ALL BEARINGS AND COORDINATES ARE REFERENCED TO THE TEXAS COORDINATE SYSTEM OF 1983 (NAD83 2011 ADJ., EPOCH 2010), CENTRAL ZONE (4203) AND BASED ON TXDOT RTN MOUNT POINT NAD83 (2010)-WEST_VRS-RTCM. ALL DISTANCES AND COORDINATES SHOWN ARE SURFACE VALUES AND MAY BE CONVERTED TO STATE PLANE BY DIVIDING BY THE PROJECT SURFACE ADJUSTMENT FACTOR OF 1.000231.
2. THE UNIT OF MEASURE IS THE U.S. SURVEY FOOT.
3. FIELD SURVEYS WERE PERFORMED MARCH, 2022 THROUGH JULY, 2022.
4. DEED RESEARCH PERFORMED FEBRUARY, 2022 THROUGH MARCH, 2022
5. SURVEY LINES SHOWN ARE APPROXIMATE AND ARE BASED ON THE BEST EVIDENCE AVAILABLE.
6. EASEMENTS AND OTHER MATTERS OF RECORD MAY EXIST THAT ARE NOT SHOWN.
7. CONTROL PROVIDED BY TXDOT.
8. A PROPERTY DESCRIPTION OF EVEN DATE WAS PREPARED IN CONJUNCTION WITH THIS PARCEL PLAT.
9. ACCESS WILL BE PERMITTED TO THE REMAINDER ABUTTING THE HIGHWAY FACILITY.

NELLIE D. MUNDY SURVEY No. 241



N. T. S.

10/16/2023



I HEREBY CERTIFY THAT THIS SURVEY WAS PERFORMED ON THE GROUND UNDER MY SUPERVISION AND THAT THIS PARCEL PLAT REPRESENTS THE FACTS AS FOUND AT THE TIME OF THE SURVEY.

Adam N. Diehl

ADAM N. DIEHL
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 6346
SEPTEMBER, 2023

EXISTING AC.	AREA TABLE (ACRES)	
	TAKING AC./S.F.	REMAINDER AC.
0.8588	0.0208 908	0.8380
	LEFT	RIGHT

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Texas Department of Transportation

LANDTECH
2525 North Loop West, Suite 300,
Houston, Texas 77008
T: 713-861-7068 F: 713-861-4131
TBPELS Registration No. 10019100

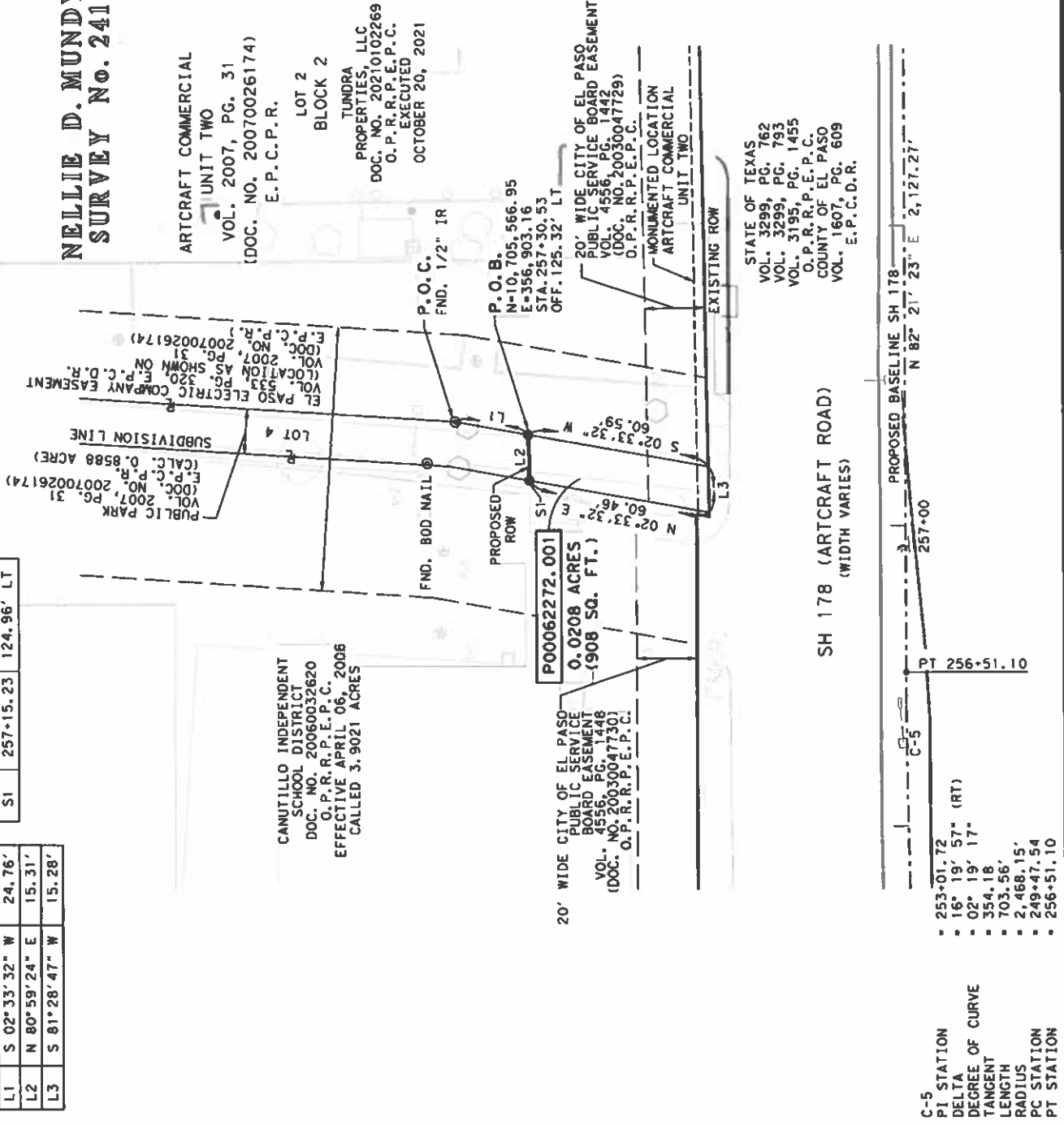
PARCEL PLAT
SHOWING
P00062272.001
SH 178 (ARTCRAFT ROAD)
EL PASO COUNTY
C.C.S.J. NO. 3592-01-009
R.C.S.J. NO. 3592-01-012
SEPTEMBER, 2023
PAGE 3 OF 4
SCALE: N. T. S.



**NELLIE D. MUNDY
SURVEY No. 241**

STATION/OFFSET DATA		
POINT	STATION	OFFSET
S1	257+15.23	124.96' LT

LINE DATA		
LINE	BEARING	LENGTH
L1	S 02° 33' 32" W	24.76'
L2	N 80° 59' 24" E	15.31'
L3	S 81° 28' 47" W	15.28'



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LANDTECH
SURVEYING
2525 North Loop West, Suite 300,
Houston, Texas 77002
T: 713-861-7068 E: 713-861-4131
TBPES Registration No. 10019100

PARCEL PLAT
SHOWING
P00062272.001
SH 178 (ARTCRAFT ROAD)
EL PASO COUNTY
C.C.S.J. NO. 3592-01-009
R.C.S.J. NO. 3592-01-012
SEPTEMBER, 2023
PAGE 4 OF 4 SCALE: 1"=50'

C-5	PI STATION	253+01.72
	DELTA	16° 19' 57" (RT)
	TANGENT	354.18
	LENGTH	703.56'
	RADIUS	2,468.15'
	PC STATION	249+47.54
	PT STATION	256+51.10