

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

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

AGENDA DATE: Introduction - 1/2/24
Public Hearing - 1/17/2024

CONTACT PERSON/PHONE: Alex Vidales, EPWater Assistant Utility Land & Water Rights Manager, 915.594.5636

DISTRICT(S) AFFECTED: 7

SUBJECT: APPROVE the following Ordinance

Authorizing the City Manager to sign a Purchase and Sale Agreement, a Deed and any other documents necessary to convey to Magumo Dawin, LLC., approximately 7.006 acres of land legally described as a portion of Tracts 3A and 5A, now known as Tracts 3A3 and 5A1, Block 7, Ysleta Grant, City of El Paso, El Paso County, Texas.

(District 7) EPWater, Alex Vidales, Assistant Utility Land & Water Rights Manager (915) 594-5493.

BACKGROUND / DISCUSSION:

The parcel of land is owned by the El Paso Water Utilities Public Service Board ("EPWater"), for and on behalf of the City of El Paso, a Texas municipal corporation, as part of its water and wastewater system (the "System"). On September 27, 2006, the Public Service Board declared the property inexpedient to the system and authorized the President/CEO of EPWater to obtain an appraisal of the property.

On April 13, 2022, the Public Service Board approved the sale of land that has been declared inexpedient to the System through a real estate broker, in accordance with Texas Local Government Code Ann.§253.014(a)-(e), as added and amended.

On November 8, 2023, the Public Service Board approved the sale of the land.

PRIOR COUNCIL ACTION:

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

Yes, the City Council approved a closely item related to this one.

On May 23, 2023, City Council approved the sale of 0.12 acres of land to Casas Genesis, LLC through the real estate broker.

AMOUNT AND SOURCE OF FUNDING: N/A

BOARD / COMMISSION ACTION:

On November 8, 2023, the Public Service Board approved the sale of the land.

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO SIGN A PURCHASE AND SALE AGREEMENT, A DEED AND ANY OTHER DOCUMENTS NECESSARY TO CONVEY APPROXIMATELY 7.006 ACRES OF LAND LEGALLY DESCRIBED AS OUT OF A PORTION OF TRACTS 3A AND 5A, NOW KNOWN AS TRACTS 3A3 AND 5A1, BLOCK 7, YSLETA GRANT, CITY OF EL PASO, EL PASO COUNTY, TEXAS.

WHEREAS, the El Paso Water Utilities Public Service Board ("**EPWater**"), for and on behalf of the City of El Paso, a Texas municipal corporation, holds certain real properties in its land inventory as part of its water and wastewater utility systems (collectively the "**System**"); and,

WHEREAS, at its regular meeting on September 27, 2006, the Public Service Board determined approximately 7.006 acres of land legally described as a Portion of Tracts 3A and 5A, now known as Tracts 3A3 and 5A1, Block 7, Ysleta Grant, City of El Paso, El Paso County, Texas (the "**Property**"), to be inexpedient to the water and wastewater system and that the Property should be sold in accordance with state law; and,

WHEREAS, on April 13, 2022, the Public Service Board approved the sale of land that has been declared inexpedient to the System through a real estate broker, in accordance with Texas Local Government Code Ann. §253.014(a)-(e), as added and amended; and,

WHEREAS, on November 8, 2023, the Public Service Board approved and authorized the sale of the Property to Magumo Darwin, LLC, for the sales price of \$875,000.00 and adopted a Resolution making the finding as set forth hereinabove and requesting the El Paso City Council pass an Ordinance authorizing the City Manager to sign a Purchase and Sale Agreement, a Deed and any and all necessary documents to complete the conveyance of the Property; and,

WHEREAS, the Property was appraised for sale at its fair market value and the purchaser has agreed to pay the highest purchase offer;

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, a Deed and any other necessary documents, in a form approved by the City Attorney's Office, for the sale of the following identified real property:

Approximately 7.006 acres of land legally described as a Portion of Tracts 3A and 5A, now known as Tracts 3A3 and 5A1, Block 7, Ysleta Grant, City of El Paso, El Paso County, Texas.

(Signatures begin on following page)

ORDINANCE NUMBER _____

PASSED AND APPROVED this _____ day of _____.

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 FORM:



Michaela Ainsa
Senior Assistant General Counsel

ORDINANCE NUMBER _____

SPECIAL WARRANTY DEED

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

Effective Date: _____

Grantor: EL PASO WATER UTILITIES PUBLIC SERVICE BOARD, for and on behalf of THE CITY OF EL PASO, TEXAS, a Texas municipal corporation
1154 Hawkins Blvd.
El Paso, Texas 79925

Grantee: Magumo Darwin, LLC
Attn: Adny Moreno
4521 Shady Willow
El Paso, TX 79922

Copy to: The Ehrlich Law Firm
Attn: William Ehrlich
444 Executive Center Blvd., Suite 240
william@ehrllichlawfir.com

Consideration: TEN AND NO/100THS DOLLARS (\$10.00), and other good and valuable consideration to the undersigned paid by Grantee, the receipt of which is hereby acknowledged.

Property (including any improvements):

A parcel of land consisting of approximately 7.006 acres, more or less, legally described as a portion of Tracts 3A and 5A, now known as 3A3 and 5A1, Block 7, Ysleta Grant, in the City of El Paso, El Paso County, Texas as more particularly described on Exhibit A attached hereto.

Severance of Surface Water and Groundwater Estate and Reservations from Conveyance:

Save and except:

Any rights to the use of surface water or Groundwater (including to any government or other permits) appurtenant or in any way related to the Property are reserved by and for the Seller. The surface water and Groundwater estate related to the Property are hereby severed from the Property and reserved by and for Grantor for all purposes. The groundwater estate shall include, without limitation, the groundwater related to the Property. The term "*Groundwater*" shall mean all of the underground water, percolating water, artesian water, and any other water existing now and in the future from any and all depths, reservoirs, aquifers, formations, and horizons beneath the surface of the Property.

Exceptions to Conveyance and Warranty:

- (1) All matters emanating from the establishment of the El Paso County Water Improvement District #1.
- (2) Easement granted to El Paso Electric Company and Mt. States Telephone and Telegraph Company, by Alfred S. Braden, dated May 19, 1967, filed for record on June 12, 1967 in the Office of the County Clerk of El Paso County, Texas in Volume 170, Page 336, Official Records El Paso County, Texas, with Mountain States Telephone and Telegraph Company interest transferred to Southwestern Bell Telephone Company, recorded in Volume 1231, Page 646, Official Records of El Paso County, Texas.
- (3) Easement granted to El Paso Electric Company, by El Paso County Animal Shelter, dated April 20, 1989, filed for record on June 2, 1989 in the Office of the County Clerk of El Paso County, Texas in Volume 2059, Page 1, Official Records El Paso County, Texas.
- (4) Easement granted to El Paso Electric Company, by Humane Society of El Paso, dated October 18, 1995, filed for record on April 3, 1996 in the Office of the County Clerk of El Paso County, Texas in Volume 3033, Page 490, Official Records El Paso County, Texas.

GRANTOR AND GRANTEE AGREE THAT GRANTEE IS ACCEPTING THE PROPERTY FROM GRANTOR IN ITS "AS IS, WHERE IS, AND WITH ALL FAULTS" CONDITION AND THAT THERE ARE NO REPRESENTATIONS OR EXPRESS OR IMPLIED WARRANTIES, EXCEPT THE SPECIAL WARRANTY OF TITLE CONTAINED IN THIS DEED. GRANTEE HAS NOT RELIED ON ANY INFORMATION OTHER THAN GRANTEE'S INSPECTION OF THE PROPERTY.

Grantor, subject to the Severance of the Surface Water and Groundwater Estate and the Exceptions to Conveyance and Warranty set forth above, grants, sells and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold the Property unto Grantee and Grantee's successors and assigns forever. Grantor binds Grantor and Grantor's successors and assigns to warrant and forever defend all and singular the Property unto Grantee and Grantee's successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof when the claim is by, through or under Grantor, but not otherwise, except as to the Severance of the Surface Water and Groundwater Estate and the Exceptions to Conveyance and Warranty set forth above.

When the context requires, singular nouns and pronouns include the plural.

(Signature page and exhibits follow.)

EXECUTED to be effective as of the date first stated above.

GRANTOR:

**THE CITY OF EL PASO,
a Texas municipal corporation**

By:

Name: Cary Westin
Title: Interim City Manager

**THE STATE OF TEXAS §
 §
COUNTY OF EL PASO §**

This instrument was acknowledged before me on the __ day of _____,
by Cary Westin, Interim City Manager of the City of El Paso.

NOTARY PUBLIC, State of Texas

Exhibit A

7.006-acre parcel, more or less, legally described as a portion of Tracts 3A and 5A, now known as Tracts 3A3 and 5A1, Block 7, Ysleta Grant, in the City of El Paso, Texas, El Paso County, Texas

Prepared for: El Paso Water
November 1, 2023

METES AND BOUNDS DESCRIPTION

Description of a parcel of land being Tracts 3A3 and 5A1, Block 7, Ysleta Grant, City of El Paso, El Paso County, Texas, and being more particularly described by metes and bounds as follows:

Commencing for reference at an existing TX DOT brass disk monument on the point of intersection of southerly right of way line of North Loop Road (F.M. Highway No. 76) at Lot 3, Bonnie Anne Place, from which an existing TX DOT brass disk monument on the southerly right of way line of North Loop Road (F.M. Highway No. 76) bears North 35°29'00" West a distance of 1125.75 feet; Thence along the southerly right of way line of North Loop Road, South 35°29'00" East a distance of 442.35 feet to a set ½" rebar with cap marked TX 5152 on the common line of Tract 3A3, Block 7, Ysleta Grant and the El Paso Humane Society property in clerks file no. 20040060035, Real Property Records of El Paso County, Texas, for the "True Point of Beginning".

Thence along the southerly right of way line of North Loop Road, South 35°29'00" East a distance of 114.60 feet to set ½" rebar with cap marked TX 5152 for the northeasterly corner of Tract 3A3, Block 7, North Loop Road;

Thence along the easterly line of Tract 3A3, Block 7, Ysleta Grant, South 62°12' 00" West a distance of 318.69 feet to a set ½" rebar with cap marked TX 5152 on the easterly line of Tract 5A1, Block 7, Ysleta Grant;

Thence along said line, South 53°39'00" West a distance of 132.39 feet to a set ½" rebar with cap marked TX 5152;

Thence along said line, South 36°21'00" East a distance of 8.00 feet to a point from which a found 5/8" rebar bears South 17°43'57" East a distance of 0.29 feet;

Thence along said line, South 53°39'00" West a distance of 130.90 feet to a point from which a found ½" rebar bears, South 62°07'46" East a distance of 1.76 feet;

Thence along said line South 21°46'00" East a distance of 114.56 feet to a point from which a found ½" rebar bears, South 54°06'39" East a distance of 1.61 feet;

Thence along said line, South 55°47'00" West a distance of 341.70 feet to a set ½" rebar with cap marked TX 5152;

Thence along said line, South 08°56' 00" West a distance of 286.80 feet to a point from which a found old rusted rebar bears, South 33°22'57" East a distance of 1.37 feet;

Thence along said line, South 44°50'00" West a distance of 15.93 feet to a point from which a found 1" disturbed pipe bears, South 37°04'42" East a distance of 1.65 feet on the southerly line of Tract 5A1, Block 7, Ysleta Grant;

Thence along said line North 37°46'00" West a distance of 165.21 feet to a set ½" rebar with cap marked TX 5152 on the common line of Tract 5A1, Block 7, Ysleta Grant and lot 1, Block 1, Mission valley Elementary School;

Thence along said line the following 4 courses:

1. North 02°37'00" West a distance of 263.80 feet to a set ½" rebar with cap marked TX 5152;
2. North 18°15'00" East a distance of 275.10 feet to a set ½" rebar with cap marked TX 5152;

3. North 32°09'00" East a distance of 127.00 feet to a set ½" rebar with cap marked TX 5152;

4. North 47°54'00" East a distance of 136.56 feet to a point on the common line of Tracts 4C and 5A1, Block 7, Ysleta Grant from which a found 1" rebar bears, North 34°03'17" West a distance of 0.45 feet;

Thence along said line, North 56°51'00" East a distance of 136.16 feet to a point;

Thence along said line, North 71°12'00" East a distance of 166.60 feet to a set ½" rebar with cap marked TX 5152;

Thence along said line, North 83°57'00" East a distance of 96.00 feet to a set ½" rebar with cap marked TX 5152 on the common line of Tract 5A1, Block 7, Ysleta Grant and the El Paso Humane Society property in clerks file no. 20040060035, Real Property Records of El Paso County, Texas;

Thence along said line, South 33°22'41" East a distance of 117.74 feet to a set ½" rebar with cap marked TX 5152;

Thence along said line, North 54°31'00" East a distance of 177.76 feet to the "TRUE POINT OF BEGINNING" and containing 305,178 Square Feet or 7.0059 acres of land more or less.

Note: Above description prepared from a survey performed on May 3, 2023.


Ron R. Conde
R.P.L.S. No. 5152



CONDE INC
ENGINEERING / LAND SURVEYING / PLANNING
6080 SURETY DRIVE / SUITE 100 / EL PASO, TEXAS 79905
(915) 592-0283 FAX (915) 592-0286 FIRM# 10078100

A PORTION OF TRACTS 2A AND 3A, NOW KNOWN AS TRACTS 32E1 AND 32E2, BLOCK 7, VICTORIA GRANT, IN THE CITY OF EL PASO, EL PASO COUNTY, TEXAS, ACCORDING TO THE METES AND BOUNDS DESCRIPTION ATTACHED TO HEREON REFERENCED TITLE COMMITMENT.

[illegible]

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (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**" or "**EPWater**") and Magumo Darwin, LLC, a Texas limited liability company (the "**Buyer**"). The Seller and the Buyer may be referred to individually herein as a "**Party**" and collectively as the "**Parties**".

RECITALS

WHEREAS, the Seller owns the property described below; and

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

WHEREAS, the Seller desires to sell the property to the 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 property is being sold pursuant to the broker listing procedure outlined in Texas Local Government Code Chapter 253; and

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:

AGREEMENT

1. **Description of Property.** The Seller hereby agrees to sell and convey, and the Buyer hereby agrees to purchase, subject to the terms and conditions contained in this Agreement, the following described real property located in El Paso County, Texas:

An approximately 7.006 acre parcel, more or less, legally described as a Portion of Tracts 3A and 5A, now known as Tracts 3A3 and 5A1, Block 7, Ysleta Grant, Ysleta Grant, in the City of El Paso, Texas, El Paso County, Texas, such portion being legally described in **Exhibit A**, attached hereto and incorporated herein for all purposes; together with any interest in (i) all improvements and fixtures, and (ii) all right, title and interest in and to all easements, except such easements necessary for the operation of the EPWater water, wastewater, stormwater or drainage utility systems, appurtenances, and rights-of-way, and all interests in, on or to, any land, highway or street, in, on, across, in front of, abutting, or adjoining any such real property, all of such property (collectively, the "**Property**").

1.1 **Seller's Reservations & Disclosures.** The Property will be conveyed to the Buyer at Closing subject to certain exceptions by the Seller, as more particularly identified on **Exhibit B**, attached hereto and incorporated fully herein (the "**Seller's Reservations**") provided that Buyer shall retain reasonable rights to use the Rights of Way for access, utilities and other uses that do not unreasonably restrict Seller's use of the Property.

In addition, the Property will be conveyed to the Buyer at Closing (i) subject to known disclosures, as more particularly identified on **Exhibit B**, attached hereto and incorporated fully herein, and (ii) in accordance with the Special Warranty Deed attached hereto as **Exhibit C**.

1.2 Reliance on the Buyer's Own Diligence. It is acknowledged and agreed that the Buyer has conducted and is relying solely on its own due diligence concerning the Property, including, without limitation, performing any archeological or environmental reports, studies, or surveys of the Property it, in its sole discretion, has desired to perform, and has determined that the Property is suitable for its intended purposes. Mitigation of any conditions on the Property, including archeological sites or, without limitation, any environmental conditions, shall be at the sole cost and expense of the Buyer who shall take the Property at Closing (as defined below) subject to all conditions existing on the date of the Buyer's signature to this Agreement. By its signature hereto, the Buyer accepts responsibility for its own determination of the nature and extent of any archeological sites, or without limitation, any environmental conditions, relating to the Property.

1.3 Easements. The Property shall be conveyed to the Buyer subject to all easements, of record, affecting the Property. Buyer shall be solely responsible for the cost and acquisition of any additional easements it may require for the Property, including, without limitation, easements for the purposes of ingress and egress.

1.4 Surface Water and Groundwater. Any rights to the use of surface water (including to any government or other permits) appurtenant or in any way related to the Property are reserved by and for the Seller. In addition, the entire groundwater estate related the Property, including without limitation, the Groundwater (as defined herein below) and Groundwater Rights (as defined herein below) are reserved by and for the Seller. The term "**Groundwater**" shall mean all of the underground water, percolating water, artesian water, and any other water existing now and in the future from any and all depths, reservoirs, aquifers, formations, and horizons beneath the surface of the Property. The term "**Groundwater Rights**" shall mean (1) the right to access, test, capture, explore for, drill for, develop, withdraw, produce, store, treat, transport or otherwise acquire and beneficially use, reuse, or recharge, any and all of the Groundwater beneath the Property; (2) the right to take all usual, necessary, and convenient means to use the surface of the Property for access to and to explore for, develop, treat, produce, and transport the Groundwater; and (3) the right to apply for and obtain all permits, licenses, or other governmental authorizations relating to any of the foregoing, including but not limited to any permit issued by a groundwater conservation district or other governmental entity existing now or in the future and having jurisdiction over the Groundwater and/or the exploration, drilling, production, use, storage, treatment, reuse, recharge or transport of Groundwater that may be necessary for the full and unfettered exercise of the Seller's rights therein. For the avoidance of doubt, Buyer shall not have the right to drill a well and/or produce therefrom any quantity of Groundwater.

1.4 Utility Connections and Modifications. Buyer shall be solely responsible for the costs of all on-site and off-site extensions, relocations, easements, replacements, or adjustments of water, sanitary sewer, and appurtenances, and for all utility connections including without limitation public sanitary and storm sewers, natural gas, telephone, public water facilities, electrical facilities and all other utility facilities and services necessitated by and attributable to the proposed subdivision improvement plans, or to otherwise provide service lines to the Property.

2. **Purchase Price.** The purchase price for the Property shall be Eight-Hundred Seventy-Five Thousand U.S. Dollars, (\$875,000.00) (the "**Purchase Price**").

2.1 **Payable at Closing.** The full Purchase Price shall be tendered to Seller at Closing.

2.2 **Earnest Money.** Buyer shall pay Seller in the amount of Forty-Three Thousand Seven-Hundred Fifty U.S. Dollars, (\$43,750.00) (the "**Earnest Money**") with Lori Phillips of Del Sol Title (the "**Escrow Agent**") no more than five (5) business days after the Effective Date as a guarantee that the terms and conditions of this Agreement shall be fulfilled. The Earnest Money shall be credited towards the Purchase Price if and when Closing occurs.

2.3 **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.

2.4 **Independent Consideration.** Five Thousand and No/100ths Dollars (\$5,000.00) of the Earnest Money shall constitute independent consideration ("**Independent Consideration**") for Purchaser's Inspection Period (as hereinafter defined).

3. **Inspection Period.** For period of Thirty (30) days, beginning on the Effective Date (the "**Inspection Period**"), the 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 Seller's prior written consent must first be obtained before the commencement of any invasive studies (including Phase II environmental studies) on the Property.

3.1 **Access.** Beginning on the Effective Date and thereafter until Closing or termination of this Agreement, Buyer and Buyer's employees and agents will have the right to enter the Property 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 3 above; provided that, Buyer must coordinate with Seller at least seventy-two (72) hours in advance before to entering onto the Property at any time prior to Closing.

3.2 **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 3.2. Upon expiration of the Inspection Period the Earnest Money 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 Purchase Price or returned to Seller, at the election of Seller in its sole discretion.

4. **Survey.** If Seller has an existing survey of the Property in its possession, Seller will furnish Buyer a copy of the existing survey of the Property within twenty (20) business days after the Effective Date. Buyer may obtain a new survey at its cost. If Buyer obtains a new survey, the metes and bounds description of the Property contained in the new survey will be used for purposes of describing the Property in the Deed at Closing.

5. **Title Binder.** Within twenty (20) business days after the Effective Date, Buyer will, at Buyer's expense, deliver or cause to be delivered to Seller a title commitment covering the Property from Del Sol Title (the "**Title Company**"), binding the Title Company to issue an Owner's Policy of Title Insurance ("**Owner's Policy**") with respect to the Property in the full amount of the Purchase Price at the Closing (the "**Title Binder**"). The Title Binder shall include legible copies of all exceptions listed on Schedule B and Schedule C of the Title Binder. The Buyer will provide copies of the Title Binder and all recorded documents affecting the Property to Seller no later than three (3) days after the Buyer's receipt of the same.

5.1 **Buyer's Approval of Title.** 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 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 ("**Non-Permitted Encumbrances**"). In the event Buyer does not terminate this Agreement during the Inspection Period pursuant to the terms of Section 3.2 herein, Buyer will be deemed to have approved exceptions contained in the Title Binder that have not been cured (the "**Permitted Exceptions**"). 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 obtained and/or delivered to Buyer after the expiration of the Inspection Period and such matters will not be considered Permitted Exceptions unless expressly approved by Buyer.

5.2 **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 Property and have it examined by an attorney of its own selection and purchase owner's policy of title insurance covering the Property.

6. **Representations of the Seller.** The Seller hereby represents, to the extent allowed by law, to the Buyer, that, to its actual knowledge, as of the Effective Date and at Closing the following are true in all material respects:

6.1 **Parties in Possession.** At the time of Closing, there are no parties in possession of any portion of the Property as lessees or tenants at sufferance.

6.2 **Mechanic's Lien.** (i) No liens arising from the Seller's actions or otherwise, exist for the benefit of mechanics or materialmen in regard to the Property; and (ii) except as expressly disclosed in the documents relating to this transaction, the Seller has not entered into any contracts or agreements relating to the use or ownership of the Property or by which any person or entity agreed to provide labor, services or materials in regard to the Property or the business of the Seller.

6.3 **Litigation.** There is no pending litigation before or by any court of law pertaining to the Property or which involve incidents occurring on the Property including, but not limited to, claims of damage to persons or Property.

6.4 **Bills Paid.** At Closing, there will be no unpaid bills or claims in connection with any repair or operation of the Property as a result of the Seller's ownership.

6.5 **Taxes.** While the Seller owned the Property, the Property was exempt from ad valorem taxes.

7. Representations of the Buyer. The Buyer hereby represents, to the extent allowed by law, to the Seller, that to the best of its knowledge, that the following are true:

7.1 Authority. The Buyer has full power and authority to execute and deliver this Agreement and to perform and carry out all covenants and obligations to be performed and carried out by the Buyer herein.

7.2 Non-Contravention. The execution and delivery of this Agreement by the Buyer and the consummation by the Buyer of the transactions contemplated hereby will not materially violate any judgment, order, injunction, decree, regulation or ruling of any court or any governmental or quasi-governmental bodies or agencies having jurisdiction over the Buyer, or conflict with, result in a breach of, or constitute a default under the organizational documents of the Buyer, any note or other evidence of indebtedness, any mortgage, deed of trust or indenture, or any lease or other material agreement or instrument to which the Buyer is a party or by which it is bound.

7.3 Consents. No consent, waiver, approval or authorization is required from any person or entity that has not already been obtained as of the Effective Date or, if appropriate, which will be obtained prior to Closing, in connection with the execution and delivery of this Agreement by the Buyer or the performance by the Buyer of the transactions contemplated hereby, except for those the failure of which to be obtained would not be reasonably expected to cause a material adverse effect to the Buyer.

7.4 Bankruptcy. The Buyer has not (i) commenced a voluntary case, or had entered against it a petition, for relief under any federal bankruptcy statute or any similar petition, order or decree under any federal or state law or statute relative to bankruptcy, insolvency or other relief for debtors, or solicited or caused to be solicited petitioning creditors for any involuntary petition against it, or filed an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, (ii) caused, suffered or consented to the appointment of a receiver, trustee, administrator, conservator, liquidator or similar official in any federal, state or foreign judicial or non-judicial proceeding to hold, administer and/or liquidate all or substantially all of its property, (iii) filed or had filed against it a petition seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief, (iv) under the provisions of any other law for the relief or aid of debtors, had an action taken by any court of competent jurisdiction that allows such court to assume custody or control of it or of the whole or any substantial part of its property or assets, or (v) made an assignment for the benefit of creditors, or admitted, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due.

7.5 Litigation. There is no pending action, suit, arbitration, unsatisfied order or judgment, litigation, government investigation or proceeding against or affecting the Buyer that would materially detrimentally affect the Buyer's ability to perform hereunder.

8. Closing. The closing of the sale and delivery of the closing documents, as applicable, and release of the Purchase Price to the Seller (the "**Closing**") shall take place at the offices of the Title Company within thirty (30) days from the date the City Manager of the City of El Paso executes the signature block herein below upon the adoption by the City Council of the City of El Paso of an ordinance authorizing the sale of the Property by the Seller to the Buyer (the "**Approval Date**").

8.1 **Amount of Payment of Purchase Price.** The full amount of the Purchase Price shall be tendered to Seller at the Closing.

8.2 **Closing Costs.** Costs required to consummate the Closing shall be paid by the Parties as follows:

- (a) The Buyer shall pay all costs required to consummate the Closing, including without limitation:
 - (i) Any and all recording fees arising from the recordation of documents necessary to show good title to the Property in the Buyer;
 - (ii) Any and all premiums and other charges for the issuance of the Owner's Policy of Title Insurance for the Property; and
 - (iii) Any and all escrow fees.

(b) Buyer shall pay any and all real estate appraisal costs and survey fees.

(c) 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 the Buyer and the Seller as is customary in real estate transactions closing in El Paso, Texas.

8.3 **Conditions to the Seller's Obligation to Close.** The obligation of the Seller hereunder to consummate the Closing is subject to the satisfaction of the following conditions: (i) the occurrence of the conditions required to establish the Approval Date; (ii) the performance of all of the Buyer's obligations under this Agreement; and (iii) the Seller is satisfied that all of the Buyer's and Seller's representations and warranties herein made are true and correct. In the event any of these conditions are not satisfied on or before the Closing, or within one (1) year of the Effective Date, subject to applicable law, the Seller may, in its sole discretion, waive one or more of said conditions and proceed to Closing, or terminate this Agreement in which the Earnest Money shall be returned to Buyer.

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

- (a) The deed to the Property, in the form attached hereto as **Exhibit C** (the "**Deed**"), (subject to the Permitted Exceptions and the Seller's Reservations and to such changes as may be required to obtain the approval of the City Council of the City of El Paso or that are required by applicable law, local recording requirements and/or customary real estate practices in the jurisdiction(s) 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 Owner's 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) All original warranties and guaranties, if any, in Seller's possession or reasonably available to Seller;

- (d) The metes and bounds survey of the Seller's Reservations, if applicable; and
- (e) Any other document or instrument reasonably necessary or required to consummate the transactions contemplated by this Agreement.

8.5 Buyer's Obligations. At the Closing, the Buyer shall:

- (a) Pay the Purchase Price;
- (b) Deliver any other document or instrument reasonably necessary or required to consummate the transactions contemplated by this Agreement, duly executed and acknowledged, where applicable; and
- (c) Execute a final closing statement reflecting the Purchase Price, including any adjustments and prorations.

8.6 Possession. Possession of the Property will be transferred to the Buyer at Closing.

8.7 Broker's Fees. To the extent permitted by law, each Party agrees to release, protect, indemnify, defend and hold the other harmless from and against any and all claims with respect to any commissions, finders' fees or other remuneration due to any broker, agent or finder claiming by, through or under such Party.

9. Default.

9.1 Default by the Buyer. If Buyer defaults in its obligations hereunder to deliver the Purchase Price at the time required by this Agreement and close on the purchase of the Property at Closing on the Approval Date, then Seller shall be entitled to terminate this Agreement, thereby releasing the Buyer from its obligations hereunder except those which expressly survive the expiration or termination of this Agreement; and Buyer shall thus forfeit the Earnest Money, and Escrow Agent shall deliver the Earnest Money 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 ten (10) days after written notice from Seller, then Seller shall be entitled to terminate this Agreement thereby releasing the Buyer from its obligations hereunder except those which expressly survive the expiration or termination of this Agreement; Buyer shall thus forfeit the Earnest Money, 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.

9.2 Default by the Seller. 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 provided by Buyer hereunder, including the Earnest Money, shall be returned to Buyer as its sole recoverable damages. Buyer expressly waives the remedies of specific performance and additional damages for such default by Seller.

9.3 Recoverable Damages. The provisions of Sections 9.1 and 9.2 shall limit the damages recoverable by either Party against the other Party due to the other Party's default or breach of the express provisions of this Agreement (except for defaults or breaches due to inaccurate or incorrect representations and warranties resulting from the intentional or

knowing actions of a Party) and, in addition to such limitations, **IN NO EVENT SHALL THE SELLER OR THE BUYER BE LIABLE FOR ANY SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES.**

9.4 **Costs of Enforcement.** Any provision in this Agreement to the contrary notwithstanding, if a Party files suit to enforce or recover amounts owed under this Agreement before or after Closing or the earlier termination of this Agreement, the prevailing Party in such litigation shall be entitled to recover from the non-prevailing Party court costs and reasonable attorney's fees.

9.5 **Return of Property Information.** If Closing does not occur, Buyer shall return to Seller all Property information within seven (7) days of receipt of written demand by Seller to furnish the same.

9.6 **Liability of Parties.** Except for obligations expressly assumed or agreed to be assumed by Buyer and Seller hereunder, Buyer and Seller are not assuming any obligations of the other Party or any liability for claims arising out of any act, omission or occurrence which occurs, accrues or arises prior to the Closing Date.

10. Miscellaneous.

10.1 **Notice.** Any notice, demand, direction, request, or other instrument authorized or required by this Agreement to be given to or filed with either party, shall be deemed to have been sufficiently given or filed for all purposes, if and when personally delivered or the date the same is sent by certified mail, postage prepaid, return receipt requested, to the address specified below or at such other address as may be designated in writing by the parties. Email notice must be accompanied with another form of notice allowed hereby in order to be effective.

SELLER: El Paso Water Utilities –Public Service Board
John E. Balliew, President/CEO
1154 Hawkins Drive
El Paso, Texas 79925

Copy to: El Paso Water Utilities
Attn: Alma De Anda
Utility Land and Water Rights Manager
1154 Hawkins Blvd.
El Paso, TX 79925
ADeAnda@epwater.org

BUYER: Magumo Darwin, LLC
Attn: Andy Moreno_
4521 Shady Willow
El Paso, TX 79922
andy@monroedevco.com

Copy to: The Ehrlich Law Firm
Attn: William Ehrlich
444 Executive Center Blvd., Suite 240
El Paso, TX 79902
william@ehrllichlawfirm.com

10.2 Entire Agreement/ Governing Law. This Agreement constitutes the entire agreement between the Parties, and supersedes all prior agreements and understandings, written or oral, regarding the subject matter of this Agreement, and may be amended or supplemented only by an instrument in writing, executed by the Party against whom enforcement is sought. This Agreement shall be governed in all respects, including validity, interpretation, and effect, by and shall be enforceable in accordance with the laws of the State of Texas with jurisdiction in courts of competent jurisdiction of El Paso County, Texas.

10.3 Time. Time is of the essence of this Agreement and each and every provision hereof.

10.4 Severability. If any provision of this Agreement shall be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining portion shall not in any way be affected or impaired.

10.5 Survival of Provisions. The terms contained in all of Section 1; Section 2; Section 3, Section 5; Section 7; Section 8; and Section 9; as well as Section 10.1, 10.2, 10.3, 10.4, 10.5, 10.6, 10.7, 10.8, 10.9, 10.10, 10.11 and 10.12 of this Agreement, shall survive the Closing and shall not be merged therein. In case any one or more of the provisions contained in this contract for any reason is held invalid, this invalidity will not affect any other provision of this Agreement, which will be construed as if the invalid or unenforceable provision had never existed.

10.6 Binding Effect. This Agreement shall be binding upon the Parties hereto and their respective successors and assigns.

10.7 "AS IS, WHERE IS". THIS AGREEMENT IS AN ARMS-LENGTH AGREEMENT BETWEEN THE PARTIES. THE PURCHASE PRICE WAS BARGAINED ON THE BASIS OF AN "AS IS, WHERE IS" TRANSACTION. THE BUYER ACCEPTS THE AS IS, WHERE IS, AND WITH ALL FAULTS, AND EXCEPT AS THE WARRANTY OF TITLE AND EXCEPT FOR THE WARRANTIES AND REPRESENTATIONS SET FORTH IN THIS AGREEMENT, WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF WHATSOEVER KIND, EXPRESS OR IMPLIED, WRITTEN OR ORAL, IT BEING THE INTENTION OF THE SELLER AND THE BUYER TO EXPRESSLY NEGATE AND EXCLUDE ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO THOSE REGARDING: (A) THE CONDITION OF THE PROPERTY; (B) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH THE BUYER MAY CONDUCT THEREON; (C) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; AND (D) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY. THE BUYER FURTHER ACKNOWLEDGES AND AGREES THAT, HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY, THE BUYER IS RELYING SOLELY ON

ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED BY THE SELLER. THE BUYER FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED BY THE SELLER WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT THE SELLER HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. THE SELLER IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY, OR THE OPERATION THEREOF, FURNISHED BY ANY BROKER, AGENT, ATTORNEY, EMPLOYEE OR OTHER PERSON. THE BUYER ACKNOWLEDGES AND AGREES THAT THE DISCLAIMERS, WAIVERS AND OTHER AGREEMENTS SET FORTH HEREIN ARE INTEGRAL PARTS OF THE AGREEMENT BETWEEN THE SELLER AND THE BUYER WITH RESPECT TO THE SALE OF THE PROPERTY, AND THAT THE SELLER WOULD NOT HAVE AGREED TO SELL THE PROPERTY TO THE BUYER FOR THE PURCHASE PRICE WITHOUT THE DISCLAIMERS AND OTHER AGREEMENTS SET FORTH ABOVE.

10.8 **ENVIRONMENTAL MATTERS.** AFTER CLOSING, BETWEEN THE SELLER AND THE BUYER, THE RISK OF LIABILITY OR EXPENSE FOR ENVIRONMENTAL PROBLEMS, IF ANY, EVEN IF ARISING FROM EVENTS BEFORE CLOSING, WILL BE THE SOLE RESPONSIBILITY OF THE BUYER, REGARDLESS OF WHETHER THE ENVIRONMENTAL PROBLEMS WERE KNOWN OR UNKNOWN AT CLOSING. ONCE CLOSING HAS OCCURRED, THE BUYER SHALL INDEMNIFY, HOLD HARMLESS, AND RELEASE THE SELLER FROM LIABILITY FOR ANY LATENT DEFECTS AND FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY, INCLUDING LIABILITY UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA), THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA), THE TEXAS SOLID WASTE DISPOSAL ACT, OR THE TEXAS WATER CODE.

10.9 *[Intentionally Deleted]*

10.10 **Effective Date.** As used herein, "*Effective Date*" means the date this Agreement is receipted by the Title Company on the space provided for in this Agreement.

10.11 **Assignment.** The Buyer shall have the right to assign this Agreement or any of its rights hereunder to an affiliate of the Buyer only with the prior written consent of the Seller; provided, however, that (i) such assignee shall assume all of the obligations of the Buyer hereunder, (ii) the Buyer shall remain liable for all of its duties and obligations hereunder, and (iii) the Buyer shall deliver written notice of the assignment, including a copy of the assignment instrument, to the Seller at least three (3) days prior to the Closing.

10.12 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. Faxed and emailed signature pages may be accepted as originals.

10.13 **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the heirs, personal representatives, administrators, successors, and assigns, as applicable of the respective Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date written below each Party's signature below, but to be effective as of the Effective Date.

SELLER:

EL PASO WATER UTILITIES –
PUBLIC SERVICE BOARD, for and on
behalf of THE CITY OF EL PASO, a Texas
municipal corporation

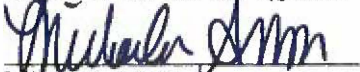
By:


John E. Balliew, P.E.
President/CEO

Executed on:

10/27/23

APPROVED AS TO FORM:


Michaela Ainsa

Senior Assistant General Counsel

APPROVED AS TO CONTENT:


Alma De Anda

Utility Land and Water Rights Manager

ACKNOWLEDGEMENT

STATE OF TEXAS


§

§

COUNTY OF EL PASO

§

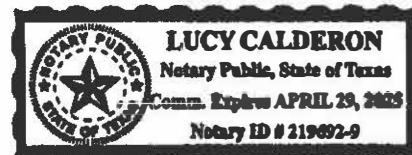
This instrument was acknowledged before me on the 23RD day of October, 2023, by John E. Balliew, P.E., President and CEO of the El Paso Water Utilities – Public Service Board.



Notary Public, State of Texas

My Commission Expires:

4/29/25



[Signatures Continue on the Following Page]

BUYER:

MAGUMO DARWIN, LLC,
a Texas limited liability company

By: 
Andres Moreno, its Manager

Executed on: 10-19-23

ACKNOWLEDGEMENT

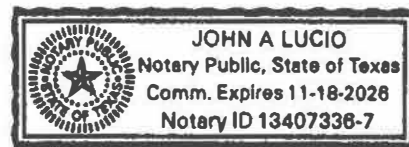
STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the 19th day of October, 2023, by Andres Moreno, Manager of Magumo Darwin, LLC, a Texas limited liability company.


Notary Public, State of Texas

My Commission Expires:

11-18-2026



This Agreement has been received and reviewed by the City of El Paso, Texas and the undersigned has been authorized by the City Council of the City of El Paso, Texas to execute the Deed pursuant to the terms of this Agreement on the _____ day of _____, 2024, which shall be the *Approval Date* for the purpose described herein.

THE CITY OF EL PASO, TEXAS,
a Texas municipal corporation.

By _____
Colonel (Ret) Cary Westin
Interim City Manager

APPROVED AS TO FORM:



Roberta Brito
Senior Assistant City Attorney

This Agreement has been received and reviewed by the Title Company this the 24 day of October, 2023. 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:

Del Sol Title

By: *Lori Phillips*
Its: Commercial Escrow Officer

EXHIBIT A
Legal Description of Property

7.006-acre parcel, more or less, legally described as Tracts 3A and 5A, now known as Tracts 3A3 and 5A1, Block 7, Ysleta Grant, in the City of El Paso, Texas, El Paso County, Texas

Prepared for: El Paso Water
November 1, 2023

METES AND BOUNDS DESCRIPTION

Description of a parcel of land being Tracts 3A3 and 5A1, Block 7, Ysleta Grant, City of El Paso, El Paso County, Texas, and being more particularly described by metes and bounds as follows:

Commencing for reference at an existing TX DOT brass disk monument on the point of intersection of southerly right of way line of North Loop Road (F.M. Highway No. 76) at Lot 3, Bonnie Anne Place, from which an existing TX DOT brass disk monument on the southerly right of way line of North Loop Road (F.M. Highway No. 76) bears North 35°29' 00" West a distance of 1125.75 feet; Thence along the southerly right of way line of North Loop Road, South 35°29' 00" East a distance of 442.35 feet to a set ½" rebar with cap marked TX 5152 on the common line of Tract 3A3, Block 7, Ysleta Grant and the El Paso Humane Society property in clerks file no. 20040060035, Real Property Records of El Paso County, Texas, for the "True Point of Beginning".

Thence along the southerly right of way line of North Loop Road, South 35°29'00" East a distance of 114.60 feet to set ½" rebar with cap marked TX 5152 for the northeasterly corner of Tract 3A3, Block 7, North Loop Road;

Thence along the easterly line of Tract 3A3, Block 7, Ysleta Grant, South 62°12'00" West a distance of 318.69 feet to a set ½" rebar with cap marked TX 5152 on the easterly line of Tract 5A1, Block 7, Ysleta Grant;

Thence along said line, South 53°39' 00" West a distance of 132.39 feet to a set ½" rebar with cap marked TX 5152;

Thence along said line, South 36°21'00" East a distance of 8.00 feet to a point from which a found 5/8" rebar bears South 17°43'57" East a distance of 0.29 feet;

Thence along said line, South 53°39' 00" West a distance of 130.90 feet to a point from which a found ½" rebar bears, South 62°07'46" East a distance of 1.76 feet;

Thence along said line South 21°46'00" East a distance of 114.56 feet to a point from which a found ½" rebar bears, South 54°06'39" East a distance of 1.61 feet;

Thence along said line, South 55°47'00" West a distance of 341.70 feet to a set ½" rebar with cap marked TX 5152;

Thence along said line, South 08°56'00" West a distance of 286.80 feet to a point from which a found old rusted rebar bears, South 33°22'57" East a distance of 1.37 feet;

Thence along said line, South 44°50'00" West a distance of 15.93 feet to a point from which a found 1" disturbed pipe bears, South 37°04'42" East a distance of 1.65 feet on the southerly line of Tract 5A1, Block 7, Ysleta Grant;

Thence along said line North 37°46'00" West a distance of 165.21 feet to a set ½" rebar with cap marked TX 5152 on the common line of Tract 5A1, Block 7, Ysleta Grant and lot 1, Block 1, Mission valley Elementary School;

Thence along said line the following 4 courses:

1. North 02°37'00" West a distance of 263.80 feet to a set ½" rebar with cap marked TX 5152;
2. North 18°15'00" East a distance of 275.10 feet to a set ½" rebar with cap marked TX 5152;

3. North 32°09'00" East a distance of 127.00 feet to a set ½" rebar with cap marked TX 5152;

4. North 47°54'00" East a distance of 136.56 feet to a point on the common line of Tracts 4C and 5A1, Block 7, Ysleta Grant from which a found 1" rebar bears, North 34°03'17" West a distance of 0.45 feet;

Thence along said line, North 56°51'00" East a distance of 136.16 feet to a point;

Thence along said line, North 71°12'00" East a distance of 166.60 feet to a set ½" rebar with cap marked TX 5152;

Thence along said line, North 83°57'00" East a distance of 96.00 feet to a set ½" rebar with cap marked TX 5152 on the common line of Tract 5A1, Block 7, Ysleta Grant and the El Paso Humane Society property in clerks file no. 20040060035, Real Property Records of El Paso County, Texas;

Thence along said line, South 33°22'41" East a distance of 117.74 feet to a set ½" rebar with cap marked TX 5152;

Thence along said line, North 54°31'00" East a distance of 177.76 feet to the "TRUE POINT OF BEGINNING" and containing 305,178 Square Feet or 7.0059 acres of land more or less.

Note: Above description prepared from a survey performed on May 3, 2023.

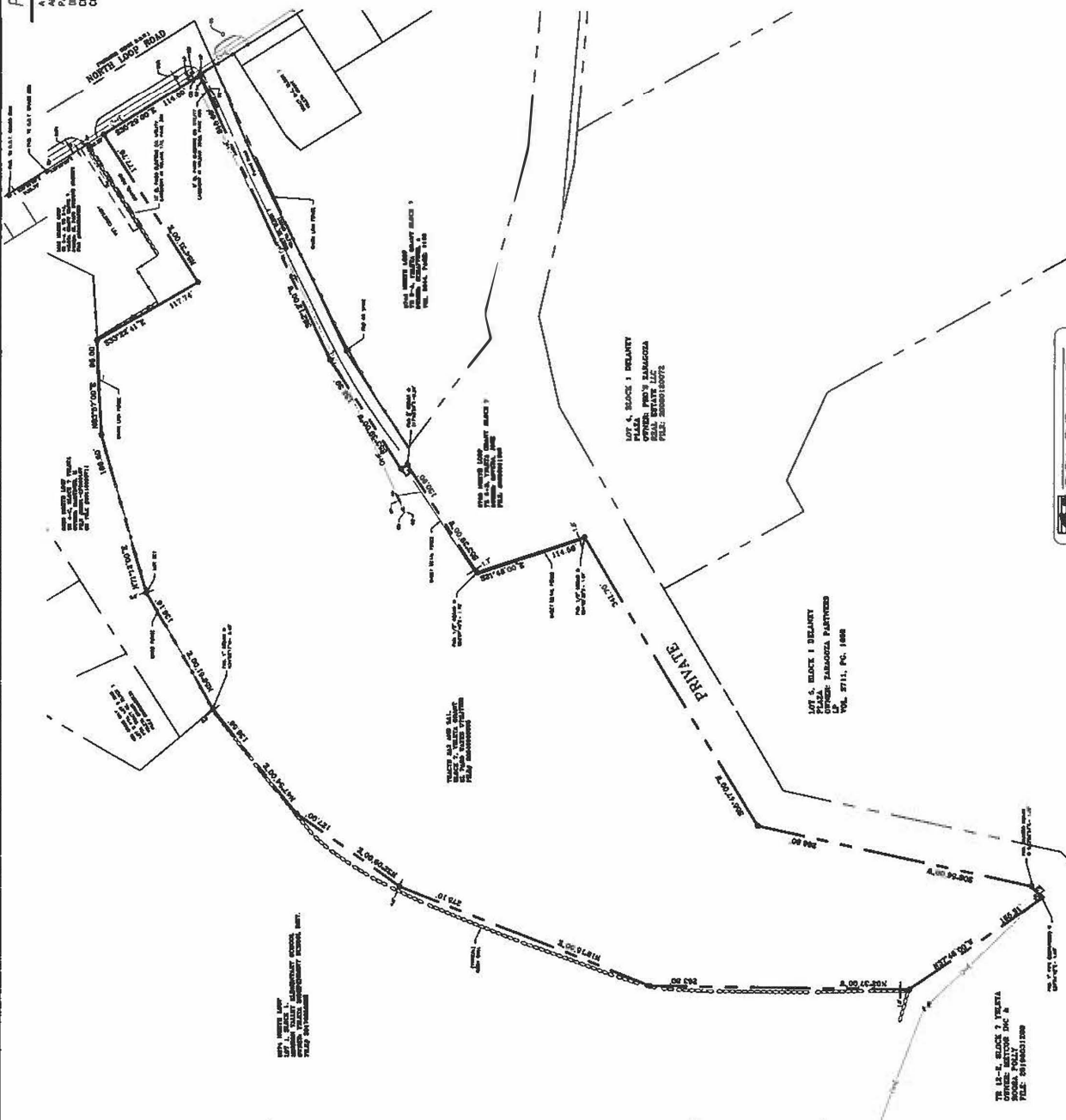

Ron R. Conde
R.P.L.S. No. 5152



CONDE INC
ENGINEERING / LAND SURVEYING / PLANNING
6080 SURETY DRIVE / SUITE 100 / EL PASO, TEXAS 79905
(915) 592-0283 FAX (915) 592-0286 FIRM# 10078100

A PORTION OF TRACTS 3A AND 3A, NOW KNOWN AS TRACTS 3A3
PAMID SAL, BLOCK 7, VILETA GRANT, IN THE CITY OF EL PASO, EL
PASO COUNTY, TEXAS, ACCORDING TO THE METES AND BOUNDS
DESCRIPTION ATTACHED TO HEREON REFERENCED TITLE
COMMITMENT
CONTAINING 305,178 SQUARE FEET OR 7.0059 ACRES

SYMBOL LEGEND	
●	TOXIC CONTROL POINT
⊙	POISON CITY MONUMENT
○	SET 1/2 SQUARE W/POW 3158
⊖	UTILITY POLE
⊕	STANDARD W/POW
⊗	WATER METER
⊙	POWER POLE
⊖	OUT WIRE
⊕	RAILING SIGN
⊗	LIGHT POLE
⊙	CABLE BOX
⊖	OVERHEAD ELECTRIC CABLE



TR 12-E, BLOCK 7 YULISTA
OWNER: MISTOSH DAC A
MOORE POLLY
TEL: 25194031389

LOT 4, BLOCK 1 DELANTY
PLAZA
OWNER: PRO'S KARAGOZA
REAL ESTATE LLC
FILE: 20080180072

LOT 5, BLOCK 1 DELANEY
PLAZA
OWNER: ZARAGOZA PARTNERS
LP
VOL. 3711, PG. 1682

CONOCE INO.

[illegible]

DATE	2	APR	1968
TIME	3	PM	
LOCATION	MILWAUKEE		
TYPING UNIT			

1950-1951

[illegible]

WITH CAPS MARKED IN SIZE ON ALL COMPONENTS, PARTS

RESEARCH AND DEVELOPMENT

LIBRARY FROM DELTA CH. TO HONOLULU BOOKSelling.

EXHIBIT B

Seller's Reservations & Disclosures

Reservations: Seller will reserve ground & surface water & mineral rights as set forth in the Special Warranty Deed attached hereto as Exhibit C.

Disclosures: N/A

EXHIBIT C
Deed

SPECIAL WARRANTY DEED

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

Effective Date: _____

Grantor: EL PASO WATER UTILITIES PUBLIC SERVICE BOARD, for and on behalf of THE CITY OF EL PASO, TEXAS, a Texas municipal corporation
1154 Hawkins Blvd.
El Paso, Texas 79925

Grantee: Magumo Darwin, LLC
Attn: Adny Moreno
4521 Shady Willow
El Paso, TX 79922

Copy to: The Ehrlich Law Firm
Attn: William Ehrlich
444 Executive Center Blvd., Suite 240
william@ehrllichlawfir.com

Consideration: TEN AND NO/100THS DOLLARS (\$10.00), and other good and valuable consideration to the undersigned paid by Grantee, the receipt of which is hereby acknowledged.

Property (including any improvements):

A parcel of land consisting of approximately 7.006 acres, more or less, legally described as a portion of Tracts 3A and 5A, now known as 3A3 and 5A1, Block 7, Ysleta Grant, in the City of El Paso, El Paso County, Texas as more particularly described on Exhibit A attached hereto.

Severance of Surface Water and Groundwater Estate and Reservations from Conveyance:

Save and except:

Any rights to the use of surface water or Groundwater (including to any government or other permits) appurtenant or in any way related to the Property are reserved by and for the Seller. The surface water and Groundwater estate related to the Property are hereby severed from the Property and reserved by and for Grantor for all purposes. The groundwater estate shall include, without limitation, the groundwater related to the Property. The term "Groundwater" shall mean all of the underground water, percolating water, artesian water, and any other water existing now and in the future from any and all depths, reservoirs, aquifers, formations, and horizons beneath the surface of the Property.

Exceptions to Conveyance and Warranty:

- (1) All matters emanating from the establishment of the El Paso County Water Improvement District #1.
- (2) Easement granted to El Paso Electric Company and Mt. States Telephone and Telegraph Company, by Alfred S. Braden, dated May 19, 1967, filed for record on June 12, 1967 in the Office of the County Clerk of El Paso County, Texas in Volume 170, Page 336, Official Records El Paso County, Texas, with Mountain States Telephone and Telegraph Company interest transferred to Southwestern Bell Telephone Company, recorded in Volume 1231, Page 646, Official Records of El Paso County, Texas.
- (3) Easement granted to El Paso Electric Company, by El Paso County Animal Shelter, dated April 20, 1989, filed for record on June 2, 1989 in the Office of the County Clerk of El Paso County, Texas in Volume 2059, Page 1, Official Records El Paso County, Texas.
- (4) Easement granted to El Paso Electric Company, by Humane Society of El Paso, dated October 18, 1995, filed for record on April 3, 1996 in the Office of the County Clerk of El Paso County, Texas in Volume 3033, Page 490, Official Records El Paso County, Texas.

GRANTOR AND GRANTEE AGREE THAT GRANTEE IS ACCEPTING THE PROPERTY FROM GRANTOR IN ITS "AS IS, WHERE IS, AND WITH ALL FAULTS" CONDITION AND THAT THERE ARE NO REPRESENTATIONS OR EXPRESS OR IMPLIED WARRANTIES, EXCEPT THE SPECIAL WARRANTY OF TITLE CONTAINED IN THIS DEED. GRANTEE HAS NOT RELIED ON ANY INFORMATION OTHER THAN GRANTEE'S INSPECTION OF THE PROPERTY.

Grantor, subject to the Severance of the Surface Water and Groundwater Estate and the Exceptions to Conveyance and Warranty set forth above, grants, sells and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold the Property unto Grantee and Grantee's successors and assigns forever. Grantor binds Grantor and Grantor's successors and assigns to warrant and forever defend all and singular the Property unto Grantee and Grantee's successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof when the claim is by, through or under Grantor, but not otherwise, except as to the Severance of the Surface Water and Groundwater Estate and the Exceptions to Conveyance and Warranty set forth above.

When the context requires, singular nouns and pronouns include the plural.

(Signature page and exhibits follow.)

EXECUTED to be effective as of the date first stated above.

GRANTOR:

**THE CITY OF EL PASO,
a Texas municipal corporation**

By: _____

Name: Cary Westin
Title: Interim City Manager

**THE STATE OF TEXAS §
 §
COUNTY OF EL PASO §**

This instrument was acknowledged before me on the _____, by Cary Westin, Interim City Manager of the City of El Paso.

NOTARY PUBLIC, State of Texas

Exhibit A

7.006-acre parcel, more or less, legally described as a portion of Tracts 3A and 5A, now known as Tracts 3A3 and 5A1, Block 7, Ysleta Grant, in the City of El Paso, Texas, El Paso County, Texas