

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

**DEPARTMENT:**       Engineering

**AGENDA DATE:**     January 26, 2010

**CONTACT PERSON/PHONE:** R. Alan Shubert, City Engineer

**DISTRICT AFFECTED:** 3

**SUBJECT:**

Item is to request approval of a resolution authorizing the City Manager to execute, on behalf of the City of El Paso, a purchase of a private residence within the Saipan subdivision, an area damaged by the floods of 2006. The area containing the subject property was identified by the Federal Emergency Management Agency to be within a *Special Flood Hazard Area* and will be used by the City of El Paso for floodplain management purposes.

**BACKGROUND / DISCUSSION:**

Subject property is located at 313 Ledo Road in the close proximity to the corner of Gateway Boulevard East and Reynolds Street. The contract price that Council is being asked to consider is \$55,000.00, its appraised value (*KD Valuation Services*, appraiser Linda Powers). This is the lone standing structure in the affected area.

**PRIOR COUNCIL ACTION:**

Severely damaged by the floods of 2006, Mayor and Council authorized the buyout of fifty-six properties in the affected area. All but this last property have been acquired, abated and demolished. Title complications related to this particular parcel were not resolvable until recently.

**AMOUNT AND SOURCE OF FUNDING:**

This expenditure is funded through 2006 CO's. No budgetary adjustments are necessary.

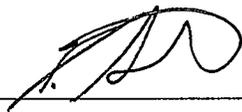
<u>Project</u>	<u>Fund</u>	<u>Department</u>	<u>Account</u>
PSTM06PW556	27264	14200500	508000

**BOARD / COMMISSION ACTION:**

(N/A)

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:** \_\_\_\_\_



*Information copy to appropriate Deputy City Manager*

**RESOLUTION**

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

That the City Manager be authorized to sign a Contract of Sale between the **CITY OF EL PASO** and **DANIEL LEMUS** for the purchase of the following property for FIFTY FIVE THOUSAND AND NO/100 DOLLARS (\$55,000.00):

Lot 70, Block 5, EL VALLE ADDITION, an Addition to the City of El Paso, El Paso County, Texas, according to the map thereof on File in Book 3, Page 42, Real Property Records, El Paso County, Texas.

**ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.**

THE CITY OF EL PASO

\_\_\_\_\_  
John F. Cook, Mayor

ATTEST:

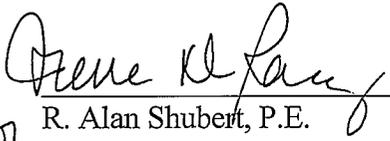
\_\_\_\_\_  
Richarda D. Momsen, City Clerk

APPROVED AS TO FORM:



 Mark Shoosmith  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
for R. Alan Shubert, P.E.  
City Engineer



3.2 Title Objections. The City has no obligation to object to any title exceptions prior to the date of Closing, to include any outstanding liens or past due taxes. The City has no obligation to close unless title exceptions and liens are removed in their entirety as a condition to the Closing and all past due taxes are paid out of the Closing proceeds.

3.3 Probates and Partition Suit. Seller represents that he was one of five children, and two brothers are deceased, and one brother has been missing for many years. Seller inherited an undivided one-fifth interest in the Property from his mother Angela Lemus, who owned the Property when she died intestate on October 29, 1980. Seller acknowledges that the other heirs have a 4/5ths interest in the Property. Within 20 days from the date that Seller executes this Contract, Seller agrees to file a probate of his mother's estate and of his two deceased brothers, and file a partition suit. Seller will seek to obtain a Court Order as to payment of the proceeds from the sale to any other heirs of his mother. Seller acknowledges that Closing and funding of Seller's one-fifth interest cannot occur without a Court Order acceptable to the City.

4. Representations and Warranties of Seller. The Seller hereby represents, to the best of its knowledge, covenants, and warrants to the City, as follows:

4.1 Parties in Possession. The brother of Seller's estranged wife may be living at the Property without Seller's permission. Seller agrees to have the Property vacated prior to Closing, and shall remove all personal property out of the interior of the home and any trash cleared off the Property prior to Closing. No tenant or other third party has any legal right to be in possession of the Property.

4.2 Legal and Authorized Transactions. Seller represents that he lived on the Property and maintained it for many years, and that none of the other heirs have lived in it for over twenty years. Seller agrees that he will comply with the terms of the Court Order described in paragraph 3.3 above, and will direct the Title Company to also comply with the terms of the Order concerning the undivided interest of the heirs in the Net Sales Proceeds. Seller acknowledges that the Title Company may also require a Deed from those heirs who may have an undivided interest in the property through the laws of intestacy. If any lien holder that has a lien on the Property through an Abstract of Judgment or other recorded document refuses to release its lien on the Property without some monetary consideration, Seller agrees that the Title Company is authorized to pay the lien holder an amount not to exceed the undivided interest in the Net Sales Proceeds of the person who is the debtor.

4.3 Mechanic's Lien. (i) No action has been taken, suffered or permitted by or on behalf of the Seller, the effect of which would be to establish or cause the inception or priority of any mechanic's or materialmen's lien, statutory, constitutional or otherwise, or other lien, charge or encumbrance upon the Property or any part thereof or interest therein; or (ii) no liens or lien claims, choate or inchoate, arising from the Seller's actions or otherwise, exist or can exist for the benefit of mechanics or materialmen in regard to the Property. Except as expressly disclosed in the documents relating to this transaction, the Seller has not entered into any contracts or agreements relating to the use of ownership of the Property or by which any person or entity agreed to provide labor, services or materials in regard to the Property or the business of the Seller.

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

4.5 Bills Paid. There are no unpaid bills or claims in connection with any repair or operation of the Property.

4.6 Compliance With Law. The Property is in compliance with all applicable laws, ordinances, rules and regulations of any Government or any agency, body or subdivision, including any environmental issues related to the Seller's activities thereof.

4.7 Taxes. Seller acknowledges that the taxes are past due on the Property. The Seller agrees to pay any past due taxes plus interest and penalty owed on the Property for years prior to 2010 and agrees to pay the prorated taxes through the date of Closing, including those due on the Property for the year 2010.

4.8 Pre-Closing Claims.

- A. The Seller agrees that the City's acceptance of title to the Property under the conveyance documents should not create any liability on the City's part to third parties that have claims of any kind against the Seller in connection with the Property. The City hereby expressly disclaims any and all liability to third parties that have any claims against the Seller. The City will not assume or agree to discharge any liabilities pertaining to the Property that occurred or accrued prior to the date of Closing. The Seller agrees to indemnify and hold the City harmless from and against any claims, injuries, liabilities, losses, damages, or expenses, including attorneys' fees and court costs, pertaining to claims arising out of the Property, and accruing prior to and arising from events that occurred prior to the date of Closing.
- B. The Seller agrees to indemnify and hold the City harmless from and against any and all claims, injuries, liabilities, losses, damages, or expenses, including attorneys fees and court costs, pertaining to claims arising out of the Property, accruing prior to and arising from events that occurred prior to the date of Closing, and arising from any of the following: (i) testing or inspection obligations required by federal or state environmental agencies, including without limitation any required after the date of Closing; (ii) pending environmental investigations or cases by the Texas Commission on Environmental Quality known to the Seller; or (iii) the acts or omissions of the Seller on the Property. The Seller and the City each agree to promptly inform other party of any correspondence, directive, inquiry, demand, request, or similar communication from any federal or state environmental agency relating to the Property, to reasonably cooperate with the other party on the response to and handling of such communication and any related proceeding, and allow the reasonable participation of the other party in connection with the same.

4.9 Authority. The Seller has full right, power and authority to convey his one-fifth interest in the property to the City and to consummate this transaction as provided in this Contract without the joinder of any other person or entity.

4.10 Title. The Seller has good and indefeasible title to a one-fifth fee simple estate in the Property, subject to no liens, charges, encumbrances or exceptions other than those shown on the Title Commitment.

4.11 Condition of Property Prior to Closing. Prior to Closing, the Seller shall not create or permit to be created any easement or other condition affecting the Property without the prior written consent of the City.

4.12 Misrepresentation. The Seller shall indemnify and hold the City harmless from and against any losses, damages, costs or expenses (including attorneys' fees) incurred by the City as a direct or indirect result of (i) breach of any representation or warranty of the Seller contained in this document, or (ii) any breach or default by the Seller under any of the covenants or agreements contained in this document to be performed by the Seller, all of which shall survive the Closing hereof.

4.13 Survival. All representations, warranties, covenants and agreements of the Seller made in this document, including without limitation any indemnity obligations, shall survive the execution and delivery hereof and of the Deed as well as the Closing hereunder, until such time as all of the obligations of the signatories hereto shall have lapsed in accordance with their respective terms, if and as applicable, or shall have been discharged in full.

5. Closing. The closing of this transaction ("Closing") shall take place at the offices of Sierra Title Company, Inc., 4849 N. Mesa, Suite 100, El Paso, Texas 79912 (the "Title Company"). The Closing shall occur on or before thirty (30) days after the City has executed this Agreement, unless more time is needed to obtain clear title, in which case the City may unilaterally extend the Closing for an additional ninety (90) days.

5.1 Real Property Taxes. The Seller agrees to pay the taxes due on the Property, including those for the year 2010 which will be prorated through the day of closing.

5.2 Closing Costs.

- (a) All recording fees arising from the recordation of documents necessary to show good title to the Property shall be paid by the City.
- (b) Premiums and other charges for the issuance of the Owner's Policy of Title Insurance for the Property shall be paid by the City.
- (c) Escrow fees, if any, shall be paid by the City.

5.3 Seller's Obligations. At Closing, the Seller shall deliver to the City a duly executed and acknowledged Warranty Deed to the Property, free and clear of any and all liens, encumbrances, conditions, easements, assessments, and restrictions, except for (i) ad valorem taxes for the year of Closing which shall be prorated to the date of Closing, (ii) the standard printed exceptions contained in the usual form of the Owner's Policy, and (iii) any other exceptions set forth in the Title Policy which the City has approved in writing.

5.4 Other Obligations. Each party shall do all other acts, or deliver any other instruments or documents required or helpful to be done or delivered, in order to consummate this transaction.

5.5 Relocation Payments. Since Seller was estranged from his wife and not living on the Property at the time of the 2006 flood and has not lived there since before the 2006 flood, Seller agrees that he is not entitled to relocation benefits from the City. Because Seller's wife Maria Yolanda Lemus may have been living in the Property with her two sons at the time of the 2006 flood, Seller will not object if the City separately negotiates with the wife concerning any relocation benefits that she may be entitled to, and will not try to claim those benefits as his own.

6. Default.

6.1 Breach by Seller. In the event that the Seller shall fail to fully and timely perform any of its obligations under this Agreement, or shall fail to consummate the sale of the Property for any reason, except the City's default, or the termination of this Agreement in accordance with its terms, the City may enforce specific performance of this Agreement.

6.2 Breach by City. In the event that City shall fail to fully and timely perform any of its obligations under this Agreement, or shall fail to consummate the sale of the Property for any reason, except the Seller's default, or the termination of this Agreement in accordance with its terms, due to the difficulty of assessing the Seller's actual damages as a result of such breach by City, the Seller shall have a right to receive the \$100.00 as independent consideration as well as the reasonable and necessary out-of-pocket expenses of the Seller directly relating to this Agreement, such sum being agreed upon as liquidated damages for the failure of the City to perform the duties, liabilities and obligations imposed upon it by the terms and provisions of this Agreement, and the Seller agrees to accept and take such cash payment as its total, reasonable damages and relief and as the Seller's sole, exclusive remedy hereunder in such event.

7. Notice. Any notice, demand, direction, request, or other instrument authorized or required by this Agreement to be given to or filed with either party, shall be deemed to have been sufficiently given or filed for all purposes, if and when personally delivered or sent by certified mail, postage prepaid, return receipt requested, to the address specified below or at such other address as may be designated in writing by the parties:

Seller: Daniel Lemus  
4730 N. Mesa, Apt. 89  
El Paso, Texas 79912

With copy to: Magda Y. Soto  
7300 Viscount, And Suite 101  
El Paso, TX 79925

City: City Manager  
City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

With copy to: Risher S. Gilbert  
201 E. Main Street, Suite 1501  
El Paso, TX 79901

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

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

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

8.3 Survival of Provisions. The terms contained in this Agreement, including without limitation, representations, warranties, covenants and agreements of the parties, shall survive the Closing and shall not be merged therein. In case any one or more of the provisions contained in this contract for any reason is held invalid, this invalidity will not affect any other provision of this Contract, which will be construed as if the invalid or unenforceable provision had never existed.

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

8.5 Compliance. In accordance with the requirements of Section 2B of the Texas Real Estate License Act, the City or its representatives is hereby advised that it should be furnished with or obtain a policy of title insurance or have an abstract covering the Property examined by an attorney of its own selection.

**This Contract is executed by Seller as of the \_\_\_\_\_ day of January, 2010. This Contract shall be effective after it is approved by the City Council of the City of El Paso and its Effective Date shall be the date it is executed on behalf of the City.**

SELLER:

Daniel Lemus  
DANIEL LEMUS

ACKNOWLEDGEMENT

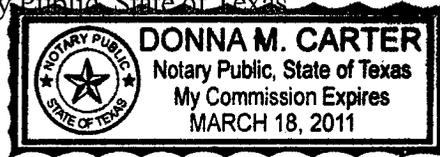
STATE OF TEXAS       )  
  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on the 12 day of January, 2010 by Daniel Lemus.

Donna M. Carter  
Notary Public, State of Texas

My commission expires:

3-18-11



EXECUTED by the City of El Paso on the \_\_\_ day of January, 2010.

City of El Paso

By: \_\_\_\_\_  
Joyce Wilson  
City Manager

APPROVED AS TO FORM:

Mark Shoosmith  
Mark Shoosmith  
Assistant City Attorney

APPROVED AS TO CONTENT:

Patricia D. Adauto  
Patricia D. Adauto  
Deputy City Manager  
Development & Infrastructure Services

**ACKNOWLEDGEMENT**

**STATE OF TEXAS**        )

)

**COUNTY OF EL PASO**    )

This instrument was acknowledged before me on the \_\_\_\_\_ day of January, 2010 by \_\_\_\_\_, City Manager of the City of El Paso.

My commission expires:

\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_