

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

**DEPARTMENT:**      **Engineering**

**AGENDA DATE:**    **May 5, 2009**

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

**DISTRICT AFFECTED:** **8**

**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 private property (a rental house and two adjacent commercial lots) to be used as right of way for the Stanton International Bridge Pedestrian Toll Plaza Facility. The City of El Paso, working in conjunction with the General Services Administration and the Texas Department of Transportation, will be constructing a new toll collection facility to support the Stanton Street Bridge. Project scope includes a new toll collection facility, a pedestrian plaza, rest areas, restrooms and employee parking.

**BACKGROUND / DISCUSSION:**

These properties are located at 1008 to 1012 S. Mesa Street, adjacent to the Stanton International Bridge, between 8<sup>th</sup> Street and the Cesar Chavez Highway. This proposed acquisition would complete project right-of-way requirements and would allow Engineering Department to move forward to final design. Utilizing a relocation specialist, Engineering Department will assist the tenant in locating and obtaining replacement housing.

**PRIOR COUNCIL ACTION:**

Council has previously considered and approved four acquisitions as part of the right-of-way requirements for the Stanton Toll Plaza Facility.

**AMOUNT AND SOURCE OF FUNDING:**

This expenditure is funded through a State Infrastructure Bank loan. No budgetary adjustments are necessary.

<u>Project</u>	<u>Fund</u>	<u>Department</u>	<u>Account</u>
PBR06003	43005	32000080	508000

**BOARD / COMMISSION ACTION:**

(N/A)

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

**LEGAL:** (if required) \_\_\_\_\_ **FINANCE:** (if required) \_\_\_\_\_

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

**APPROVED FOR AGENDA:** \_\_\_\_\_

**CITY MANAGER:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

## 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 **JORGE F. ESPARZA and ROSA M. ESPARZA** for the purchase of the following parcels for the Stanton Street Toll Plaza Project for One Hundred Thirty-Three Thousand, One Hundred Seventeen and no/100 Dollars (\$133,117.00):

**Parcel 1:** Lot 15 and the South 2 feet of Lot 14, Block 47, Campbell Addition, an Addition to the City of El Paso, El Paso County, Texas, according to the plat thereof on file in Volume 2, Page 68, Real Property Records, El Paso County, Texas, commonly known as 1008 S. Mesa Street, El Paso, El Paso County, Texas, and

**Parcel 2:** Lot 16 and Lot 17, Block 47, Campbell Addition, an Addition to the City of El Paso, El Paso County, Texas, according to the plat thereof on file in Volume 2, Page 68, Real Property Records, El Paso County, Texas, commonly known as 1010 and 1012 S. Mesa Street, El Paso, El Paso County, Texas.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

THE CITY OF EL PASO

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

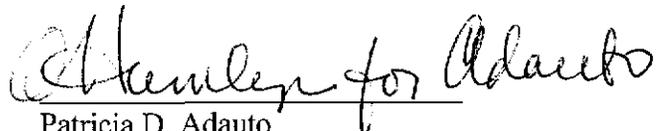
ATTEST:

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Theresa Cullen  
Deputy City Attorney

APPROVED AS TO CONTENT:

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

STATE OF TEXAS

§

CONTRACT OF SALE

COUNTY OF EL PASO

§

§

This Agreement is entered into as of the \_\_\_\_ day of April 2009 by and between the **CITY OF EL PASO**, hereinafter referred to as the "City," and **JORGE F. ESPARZA and ROSA M. ESPARZA**, hereinafter referred to as the "Seller."

**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:

1. Description of Property. The Seller hereby agrees to sell and convey and the City hereby agrees to acquire free and clear of any liens or encumbrances, the following real property located in El Paso County, Texas:

Parcel 1: Lot 15 and the South 2 feet of Lot 14, Block 47, Campbell Addition, an Addition to the City of El Paso, El Paso County, Texas, according to the plat thereof on file in Volume 2, Page 68, Real Property Records, El Paso County, Texas, commonly known as 1008 S. Mesa Street, El Paso, El Paso County, Texas, and

Parcel 2: Lot 16 and Lot 17, Block 47, Campbell Addition, an Addition to the City of El Paso, El Paso County, Texas, according to the plat thereof on file in Volume 2, Page 68, Real Property Records, El Paso County, Texas, commonly known as 1010 and 1012 S. Mesa Street, El Paso, El Paso County, Texas,

together with any interest of the Seller in (i) all improvements, if any, and (ii) all right, title and interest of the Seller in and to any easements, appurtenances, and rights-of-way, and all interests in, on or to, any land, highway, street or alley, in, on, across, in front of, abutting, or adjoining any such real property, all of such property, hereinafter collectively referred to as the "Property."

2. Amount of Payment of Purchase Price. The purchase price for the Property shall be a total of **ONE HUNDRED THIRTY THREE THOUSAND ONE HUNDRED AND SEVENTEEN and 00/100 DOLLARS (\$133,117.00)**. The consideration recited herein represents a release of all claims, a settlement and compromise by all parties as to the value of the property herein conveyed in order to avoid litigation and the added expense of litigation.

2.1 Payment of Purchase Price. The full amount of the purchase price will be payable in cash at the closing.

3. Conditions to City's Obligations. The obligations of the Seller hereunder to consummate the transaction contemplated herein are subject to the satisfaction of each of the

following conditions, any of which may be waived, in whole or in part, in writing by the City, at or prior to Closing.

3.1 Title Insurance. Within ten (10) working days after the date of execution of this contract, the City at its expense will order a title commitment ("Commitment"), accompanied by copies of all recorded documents affecting the property for the issuance of an Owner's Policy of Title Insurance with respect to the Property, in an amount to be decided by the City ("Owner's Policy").

3.2 Title Objections. The City will give the Seller written notice on or before the expiration of ten (10) working days after it receives the Commitment that the condition of the title set forth in the Commitment is or is not satisfactory. In the event the City states that the condition is not satisfactory, the City will specifically set forth in such notice the defect or exception to title that is deemed objectionable. The Seller must either (i) promptly eliminate or modify all unacceptable matters to the reasonable satisfaction of the City; or (ii) notify Buyer in writing of any of the objections raised by Buyer that Seller cannot or will not cure. If Seller notifies Buyer in writing that Seller cannot cure the objection, Buyer shall have 5 days from receipt of the written notice within which to terminate this contract or Buyer will be deemed to have waived all objections to title.

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. There are no parties, other than Seller's tenant, **Natalia Duran and her husband and two children**, in possession of any portion of the Property as lessees, tenants at sufferance, or otherwise.

4.2 Legal and Authorized Transactions. No person or persons own an interest in the fee title in the Property other than the Seller and that the joinder of no other third party shall be required to consummate this transaction.

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. At closing, there will be 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. No state or municipal taxes are due with respect to the Property and no liens for such taxes are in effect against the Property, except as set forth on the Title Commitment. The Seller agrees to pay the prorated taxes due on the Property for the year 2009, through the date of Closing.

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 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 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 Lawyer's Title Company of El Paso, 301 East Yandell, El Paso, Texas 79902, or another El Paso Title Company of Buyer's choosing (the "Title Company") on or before thirty (30) days after the City Council has approved this Agreement.

5.1 Real Property Taxes. The Seller agrees to pay the taxes due on the Property for the year 2009, 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 pursuant to Paragraph 3.2 above.

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 Special Provisions. The Seller shall remove all its personal property from the Property before closing.

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. Miscellaneous.

7.1 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 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: Jorge F. Esparza and Rosa M. Esparza  
7715 Hacienda Ave.  
El Paso, Texas 79915

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

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.

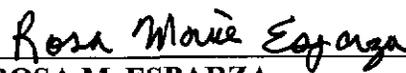
8.4 Binding Effect. This Agreement shall be binding upon the parties hereto and their respective successors and assigns.

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.

The above instrument, together with all conditions thereto is hereby executed by Seller on the 27 day of April 2009. By Seller's signature Seller makes an offer to the City that shall be outstanding for 45 days from the date of Seller's signature.

Seller:

  
\_\_\_\_\_  
JORGE F. ESPARZA

  
\_\_\_\_\_  
ROSA M. ESPARZA

**ACKNOWLEDGEMENT**

STATE OF TEXAS       )  
  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on the 24<sup>th</sup> day of APRIL, 2009 by **JORGE F. ESPARZA**.

My commission expires: **RAUL O. ISSA**  
NOTARY PUBLIC  
In and for the State of Texas  
My commission expires  
**11-10-2010**

*Raul O. Issa*  
\_\_\_\_\_  
Notary Public, State of Texas

**ACKNOWLEDGEMENT**

STATE OF TEXAS       )  
  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on the 24<sup>th</sup> day of APRIL, 2009 by **ROSA M. ESPARZA**.

My commission expires: **RAUL O. ISSA**  
NOTARY PUBLIC  
In and for the State of Texas  
My commission expires  
**11-10-2010**

*Raul O. Issa*  
\_\_\_\_\_  
Notary Public, State of Texas

**EXECUTED** by the City of El Paso to be effective as of the \_\_\_\_ day of \_\_\_\_, 2009.

City of El Paso

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

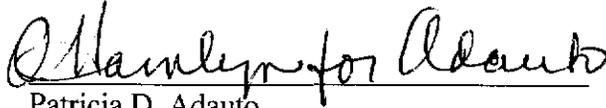
(Signatures and Acknowledgment continued on next page)

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Theresa Cullen  
Deputy City Attorney



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 \_\_\_\_\_, 2009 by Joyce Wilson, City Manager of the City of El Paso.

My commission expires:

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

\_\_\_\_\_