

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

DEPARTMENT: ENGINEERING
AGENDA DATE: May 13, 2008
CONTACT PERSON: R. Alan Shubert, P.E., City Engineer
DISTRICT AFFECTED: 1

SUBJECT:

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE, ON BEHALF OF THE CITY OF EL PASO, A PURCHASE OF PRIVATE PROPERTY CONSISTING OF A 1.4297 ACRE PARCEL OF UNDEVELOPED LAND TO BE USED AS RIGHT OF WAY FOR THE STORM 2006: UPPER VALLEY DRAINAGE IMPROVEMENTS PROJECT- PHASE I - JOE SANTOS BASIN. MORE PARTICULARLY, FOR AN EXPANSION OF AN EXISTING RETENTION POND.

BACKGROUND / DISCUSSION:

This City Storm 2006 Upper Valley Drainage Improvements Project Phase I consists of the expansion of the existing McCutcheon Basins, the installation of a draw down pump and associated pipe work and the expansion of the Joe Santos Retention Basin. The property being acquired will be used to expand the Joe Santos Retention Basin.

PRIOR COUNCIL ACTION:

City Council approved the construction contract for the Joe Santos Basin Expansion and the Draw-Down Pipe Project on Feb 5, 2008 in the amount of \$1,037,825.00

AMOUNT AND SOURCE OF FUNDING:

This item is funded through Storm 2006 Certificates of Obligation. No budgetary adjustments are necessary. Funding source is as follows:

<u>Project</u>	<u>Fund</u>	<u>Department</u>	<u>Account</u>
PSTM06 PW26-0	27264	14200500	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 **RUBEN VASQUEZ** and **JULISSA VASQUEZ** for the purchase of

A 1.4297 acre parcel of land, more or less, being a portion of Tract 72-D, S.A. & M.G. Railroad Company Survey No. 267, Abstract 179, City of El Paso, El Paso County, Texas.

ADOPTED this _____ day of _____, 2008.

THE CITY OF EL PASO

John F. Cook, Mayor

ATTEST:

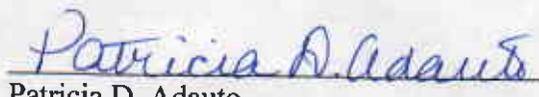
Richarda D. Momsen, City Clerk

APPROVED AS TO FORM:



Theresa Cullen Garney
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 5 day of may, 2008 by and between the **CITY OF EL PASO**, hereinafter referred to as the "City," and **RUBEN VASQUEZ** and **JULISSA VASQUEZ**, hereinafter referred to as "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:

A 1.4297 acre parcel of land, more or less, being a portion of Tract 72-D, S.A. & M.G. Railroad Company Survey No. 267, Abstract 179, City of El Paso, El Paso County, Texas, and more particularly described in Exhibit "A" attached hereto and made a part hereof for all purposes,

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 or street, 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 ONE HUNDRED THREE THOUSAND and 00/100 DOLLARS (\$103,000.00).

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

2.2 Escrow Deposit. The City shall deposit with Del Norte First American Title Insurance Company, 320 Texas Ave., El Paso, Texas 79901, (the "Agent" or the "Title Company"), in escrow, the sum of Five Hundred and 00/ 100 Dollars (\$500.00) (the "Escrow Deposit"), within three (3) business days after the City's actual receipt from the Agent, of a written notification that Agent has received a fully executed original of this Contract, signed by the Seller and the City. The Agent shall invest the Escrow Deposit in an interest-bearing account insured by the Federal Deposit Insurance Corporation, and to be held and disbursed by the Agent strictly in accordance with the terms and provisions of this Contract. In the event the City fails to deposit the Escrow Deposit with the Agent within said three (3) day period, the Seller, at its option, may terminate this Contract. Any interest which shall accrue on the Escrow Deposit from and after the date hereof through the date on which the Escrow Deposit is or should have been disbursed by the Agent shall constitute part of the Escrow Deposit. At such time as the Closing shall have been consummated, the Escrow Deposit, together with all interest accrued thereon, shall

be returned to the City or, at the option of the City, disbursed to the Seller and applied to the payment of the Purchase Price.

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 Inspection. Subject to the provisions of Paragraph 6.1 hereinafter, the City shall complete its inspection of the Property on or before ten (10) City working days after the execution of this Agreement by the City (the "Inspection Period"). For the purposes hereof, the City may complete or cause to be completed inspections of the Property by inspectors of the City's choice. Inspections may include, but shall not be limited to: (i) physical property inspections; (ii) environmental assessment or engineering study including the performance of tests such as soils tests, water tests or air sampling. The Seller shall permit the City and the City's inspectors access to the Property at all reasonable times. In the case of any invasive testing (taking samples, etc.), the City shall provide to the Seller evidence that the consultant making such inspection carries liability insurance and is properly licensed. During the Inspection Period, the City may determine in its sole and absolute discretion whether the Property is suitable for the City's needs. In the event that the City in its sole and absolute discretion determines that the Property is not suitable for its needs, the City may terminate this Contract by delivering a written termination notice to the Seller within the Inspection Period in which case the Escrow Deposit (less \$100 which is independent contract consideration for this right to cancel), along with all interest accrued or earned thereon, will be refunded to the City. During the Inspection Period, the Seller covenants and agrees to make available to the City the Property. Such inspection shall be conducted by the City, and permitted by the Seller, on business days during normal business hours. All information provided by the Seller to the City or obtained by the City relating to the Property in the course of its review shall be treated as confidential information by the City, to the extent allowed by federal and state law, and in the event the City terminates this Contract, the City shall provide the Seller with all reports, studies, documents and other information obtained by the City relating to the Property. To the extent allowed by Texas State law, the City shall be liable for all damage or injury to any person or Property resulting from any such inspection occasioned by the acts of the City, its employees, agents or representatives.

3.2 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").

3.3 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 may at its option promptly

undertake to eliminate or modify all unacceptable matters to the reasonable satisfaction of the City. Otherwise, this condition will be deemed acceptable and any objection by the City will be deemed waived.

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 in possession of any portion of the Property as lessees, tenants at sufferance, or otherwise.

4.2 Legal and Authorized Transactions. The Seller warrants that 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. To the Seller's best knowledge and belief: (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. To the best knowledge of the Seller, 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. To the Seller's knowledge, 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. To the best of the Seller's knowledge, 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 2008 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 Notices. The Seller has not received any notice that the Property is in violation of any federal or state environmental laws or regulations, or any ordinance of the City of El Paso.

4.13 Right of First Refusal. The Seller has not granted any person or entity an option to purchase the Property.

4.14 Access. The Property has access to all abutting public streets.

4.15 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.

4.16 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 the Title Company on or before thirty (30) days after the execution of this Agreement by the City, unless terminated as permitted by this Contract.

5.1 Real Property Taxes. The Seller agrees to pay the taxes due on the Property for the year 2008, 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 3.3 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.

6. Termination/Default.

6.1 Permitted Termination. If this Contract is terminated by the City pursuant to a right expressly given it to do so in this Contract, the Escrow Deposit (less the Independent Contract Consideration), together with any interest accrued or earned thereon, shall immediately be returned to the City and neither party shall have any further rights or obligations hereunder. If this Contract is terminated by the Seller pursuant to a right expressly given them to do so in this Contract, and in the absence of default by the Seller, the Escrow Deposit (including the Independent Contract Consideration), together with any interest accrued or earned thereon, shall immediately be delivered to the City.

6.2 Default by the Seller.

(a) The Seller shall be in default hereunder upon the occurrence of any one or more of the following events:

(1) Any of the Seller's warranties or representations set forth herein are untrue or inaccurate in any material respect;

(2) The Seller shall fail to meet, comply with, or perform any covenant, agreement, or obligation on its part required, within the time limits and in the manner required in this Contract, for any reason.

(b) In the event of a default by the Seller, the City's sole and exclusive remedies shall be to:

(1) 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 (a) terminate this Contract by written notice delivered to the Seller at or prior to the Closing and receive a refund of the Escrow Deposit free and clear of any claims by the Seller, or (b) enforce specific performance of this Agreement.

6.3 Default by the City. In the event that the 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 Escrow Deposit as independent consideration, 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: Ruben Vasquez and Julissa Vasquez
6469 Upper Valley Road
El Paso, Texas 79932

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.

EXECUTED by the City of El Paso to be effective as of the _____ day of _____, 2008.

City of El Paso

By: _____
Joyce Wilson
City Manager

APPROVED AS TO FORM:

Theresa Cullen-Garney
Theresa Cullen-Garney
Deputy City Attorney

APPROVED AS TO CONTENT:

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

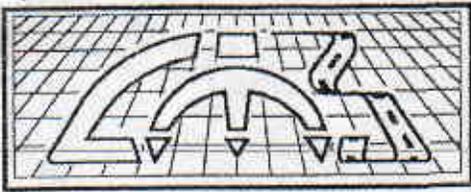
ACKNOWLEDGEMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2008 by
Joyce Wilson, City Manager of the City of El Paso.

Notary Public, State of Texas

My commission expires:



Land - Mark Professional Surveying Inc.

"Serving Texas, New Mexico and Arizona"

METES AND BOUNDS DESCRIPTION

A 1.4297 ACRE PARCEL KNOWN AS TRACT 72-D, S. A. & M. G. RAILROAD COMPANY SURVEY NO. 267, ABSTRACT 179, 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 City of El Paso Monument lying at the intersection of Joe Santos Court (60.00 feet wide right of way) and Mace Street (right of way width varies); **THENCE**, North $71^{\circ}44'00''$ East, with the centerline of said Joe Santos Court a distance of 50.00 feet to a point; **THENCE**, North $18^{\circ}16'00''$ West a distance of 30.00 feet to $5/8''$ rebar w/cap stamped "LAND-MARK TX5710" set in the northwesterly right of way line of said Joe Santos Court and the **POINT OF BEGINNING** for the following parcel description;

THENCE, with the arc of a curve to the right and with said northwesterly right-of-way line a distance of 31.42 feet to a $5/8''$ rebar with cap stamped "LAND-MARK TX5710", set in the northeasterly right of way line of said Mace Street for a corner of this parcel; Said curve having a radius of 20.00 feet, a central angle of $90^{\circ}00'00''$ and a chord which bears North $63^{\circ}13'00''$ West a distance of 28.28 feet;

THENCE, North $18^{\circ}16'00''$ West, continuing with said northeasterly right-of-way line of Mace Street a distance of 151.44 feet to a $5/8''$ rebar with cap stamped "LAND-MARK TX5710", set for a corner of this parcel;

THENCE, departing said northeasterly right of way line, North $71^{\circ}44'00''$ East a distance of 363.77 feet to a $5/8''$ rebar with cap stamped "LAND-MARK TX5710", set for a corner of this parcel;

THENCE, South $18^{\circ}16'00''$ East, a distance of 171.44 feet to an existing chiseled "+" in concrete for a corner of this parcel;

THENCE, South $71^{\circ}44'00''$ West with said northwesterly right of way line of Joe Santos Court, a distance of 343.77 feet to the **TRUE POINT OF BEGINNING**.

Said parcel containing 1.4297 Acres (62,279 Sq. Ft.) more or less.

**LAND-MARK PROFESSIONAL
SURVEYING, INC**


Kenneth R. Kindle, R.P.L.S.
Texas 5710
April 5, 2007.
Job# 07-03-24380A



Exhibit "A"
192

FLOOD CERTIFICATE: ACCORDING TO FLOOD INSURANCE RATE MAP, COMMUNITY-PANEL NUMBER 480214 00210, EFFECTIVE DATE: JANUARY 3, 1997 OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY, THIS PARCEL LIES WITHIN A ZONE DESIGNATION OF "0" WHICH INDICATES THAT THIS PARCEL DOES NOT LIE WITHIN A FLOOD HAZARD AREA.

SURVEY WAS PREPARED WITHOUT BENEFIT OF TITLE COMMITMENT OR TITLE REPORT. THERE MAY BE ADDITIONAL EASEMENTS OR ENCUMBRANCES AFFECTING THIS TRACT THAT ARE NOT SHOWN HEREON.

TRACT 72-F
City of El Paso
Volume 441, Page 0921

HILARY J. SANDOVAL, JR.
ADDITION
(Res 3-18 Housing Project)

TRACT 72-D
Ruben Vasquez and Julissa Vasquez
Clerk's File No. 20050078638
1.4297 ACRES (62,279 sq. ft.)

Exhibit "A"
2007



SET 5/8" REBAR W/CAP
STAMPED "LAND-MARK TX5710"
(Unless otherwise noted)

MACE STREET

JOE SANTOS COURT
(60.0' R.O.W.)

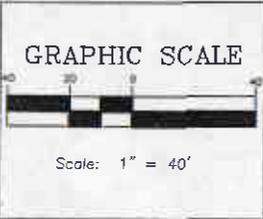


I hereby certify that the foregoing boundary and improvement survey was made by me or under my supervision and substantially complies with the current Texas Society of Professional Surveyors minimum Standards and Specifications.

Kenneth R. Kindle
Kenneth R. Kindle, R.P.L.S.
Texas 5710

LINE	DIRECTION	DISTANCE
T1	N71°44'00"E	30.00'
T2	N18°16'00"W	30.00'

CURVE	RADIUS	LENGTH	CHORD	BEARING	DELTA
C1	20.00'	31.42'	28.28'	N63°13'00"W	90°00'00"



BOUNDARY SURVEY
A PORTION OF TRACT 72-A
(aka Tract 72-D), S. A. & M. G.
RAILROAD COMPANY SURVEY NO. 267,
ABSTRACT 179, CITY OF EL PASO,
EL PASO COUNTY, TEXAS
(Metes and Bounds Description Attached)

Land-Mark Surveying
1420 Bessemer Drive "Suite A"
El Paso, Texas 79936
(915) 598-1300
email: bob@Land-Marksurvey.com
"Serving Texas, New Mexico & Arizona"

Job No. 07-03-24380A Date: JULY 3, 2007 Sheet # 1 of 1



215 Joe Santos

PARK RIDGE

THORN RIDGE

FIRE RIDGE

GATE RIDGE

RIDGE

JOE SANTOS

HILARY

MACE

HILLVIEW

THORN

CHARL ANN

DONIPHAN

RIDGE