



Agenda Item Form

Agenda Date: 4/27/04

Districts Affected: Citywide

Dept. Head/Contact Information: Byron E. Johnson, C.P.M.

Type of Agenda Item:

- | | | |
|---|---|--|
| <input type="checkbox"/> Resolution | <input type="checkbox"/> Staffing Table Changes | <input type="checkbox"/> Board Appointments |
| <input type="checkbox"/> Tax Installment Agreements | <input type="checkbox"/> Tax Refunds | <input type="checkbox"/> Donations |
| <input type="checkbox"/> RFP/ BID/ Best Value Procurement | <input type="checkbox"/> Budget Transfer | <input type="checkbox"/> Item Placed by Citizen |
| <input type="checkbox"/> Application for Facility Use | <input type="checkbox"/> Bldg. Permits/Inspection | <input type="checkbox"/> Introduction of Ordinance |
| <input checked="" type="checkbox"/> Interlocal Agreements | <input type="checkbox"/> Contract/Lease Agreement | <input type="checkbox"/> Grant Application |
| <input type="checkbox"/> Other _____ | | |

Funding Source:

- General Fund
- Grant (duration of funds: _____ Months)
- Other Source: _____

Legal:

- Legal Review Required Attorney Assigned (please scroll down): None Approved Denied

Timeline Priority: High Medium Low # of days: _____

Why is this item necessary:

To revise Interlocal Agreement for Sale of Land and Construction of a Parking Garage at 210 S. Campbell Street, El Paso, Texas.

Explain Costs, including ongoing maintenance and operating expenditures, or Cost Savings:

Statutory or Citizen Concerns:

Departmental Concerns:

DATE: May 13, 2004
TO: Municipal Clerk
FROM: Byron E. Johnson, C.P.M. *BJ*
BJ Director of Purchasing x 4313
THRU: Catherine Stern, Secretary III, X4308

CITY CLERK DEPARTMENT
2004 MAY 13 PM 1 30

Please place the following item on the **CONSENT** agenda for the Council Meeting of **MAY 18, 2004**

RESOLUTION:

That the Mayor be authorized to sign a revised Interlocal Agreement between the City of El Paso and the County of El Paso for the Sale of Land and the Construction of a Parking Garage at 210 S. Campbell Street, El Paso, El Paso County, Texas.

Contact person: Byron E. Johnson, Director of Purchasing, 541-4308

AGENDA FOR: MAY 18, 2004

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RESOLUTION

Whereas on May 11, 2004, the El Paso City Council authorized the Mayor to sign an Interlocal Agreement between the CITY OF EL PASO and the COUNTY OF EL PASO for the Sale of Land and the Construction of a Parking Garage at 210 S. Campbell Street, El Paso, El Paso County, Texas, and

WHEREAS, on May 17, 2004, the El Paso County Commissioners Court reviewed the Interlocal Agreement approved by the City of El Paso, and requested revisions to the agreement,

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign a revised Interlocal Agreement between the CITY OF EL PASO and the COUNTY OF EL PASO for the Sale of Land and the Construction of a Parking Garage at 210 S. Campbell Street, El Paso, El Paso County, Texas.

ADOPTED this _____ day of _____, 2004.

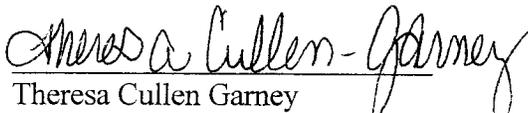
THE CITY OF EL PASO

Joe Wardy, Mayor

ATTEST:

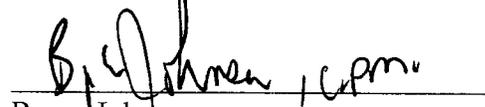
Richarda D. Momsen, City Clerk

APPROVED AS TO FORM:



Theresa Cullen Garney
Deputy City Attorney

APPROVED AS TO CONTENT:



Byron Johnson
Director of Purchasing

RESOLUTION

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

That the Mayor be authorized to sign an Interlocal Agreement between the CITY OF EL PASO and the COUNTY OF EL PASO for the Sale of Land and the Construction of a Parking Garage at 210 S. Campbell Street, El Paso, El Paso County, Texas.

ADOPTED this _____ day of _____, 2004.

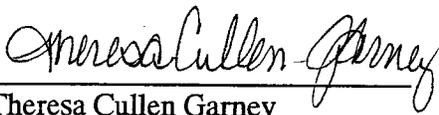
THE CITY OF EL PASO

Joe Wardy, Mayor

ATTEST:

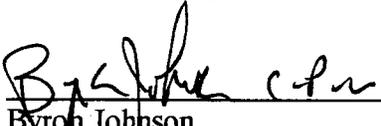
Richarda D. Momsen, City Clerk

APPROVED AS TO FORM:



Theresa Cullen Garney
Deputy City Attorney

APPROVED AS TO CONTENT:



Byron Johnson
Director of Purchasing

STATE OF TEXAS §

§

**INTERLOCAL AGREEMENT FOR THE SALE
OF LAND AND THE CONSTRUCTION OF A
PARKING GARAGE**

COUNTY OF EL PASO §

THIS AGREEMENT is entered into on this ____ day of May, 2004 by and between the CITY OF EL PASO, a home- rule municipal corporation of El Paso County, Texas, by and through its duly authorized officials and hereinafter referred to as the "City", and the COUNTY OF EL PASO, State of Texas, by and through its duly authorized officials, hereinafter referred to as the "County".

WHEREAS, the City owns a parking structure at 210 S. Campbell St., which is located within Block 198, Campbell Addition, El Paso, El Paso County, Texas, and

WHEREAS, the County desires to increase the number of parking opportunities in the vicinity of the El Paso County Courthouse in order to provide safe and convenient parking for El Paso jurors, as well as, the personnel and citizens who are required to use the El Paso County Courthouse facilities, and

WHEREAS, the City is committed to assisting the County in providing parking for the citizens of El Paso, and is willing to assist the County in its expansion and construction of parking facilities including, but not limited to, the construction of a new parking facility on the site presently occupied by the City's parking structure as long as any new construction and expansion will accommodate sufficient spaces for City vehicles and City personnel currently using the City's parking structure, and

WHEREAS, under Section 272.001 of the Texas Local Government Code, governmental entities with the power of eminent domain are excepted from the notice and bidding requirements of the Texas Local Government Code when a political subdivision of the state is selling or exchanging land, and

WHEREAS, both the City and the County have powers of eminent domain, and,

WHEREAS, Chapter 791, Texas Government Code, authorizes local governments of the state to enter into contracts for governmental functions and services to increase their efficiency and effectiveness, and

WHEREAS, the City and the County each find that a consolidated effort in the construction of a new parking facility is in each party's best interest and that of the public and that this agreement will increase the effective and efficient functioning of each party, and

WHEREAS, the City and the County are local governments as defined in Texas Government Code, Section 791.003(4), have the authority to enter into this agreement,

and have each entered into this agreement by the action of its governing body in the appropriate manner prescribed by law, 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:

1. Description of Property. The City hereby agrees to sell and convey and the County hereby agrees to acquire the following described real property:

21,000 square feet, more or less, being Lots 1-6 and the South 19 feet of Lot 7, Block 198, Campbell Addition, El Paso, El Paso County, Texas, and commonly referred to as 210 S. Campbell St., El Paso, El Paso, County, Texas,

together with any interest of the City in (i) all improvements, if any, and (ii) all right, title and interest of the City 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 as follows:

The City and the County have agreed that the Property has an appraised value of \$462,000. The City will give the County a credit, not to exceed the amount of \$328,557, which is further defined in Exhibit "A" attached hereto and made a part hereof for all purposes, which will be applied toward the agreed appraised value.

In addition, the City and the County agree that the balance of the money owed by the County to the City for the purchase price of this Property will be given to the City as a credit, in the value of \$189,000, to be provided in parking spaces for the City's use in the new parking facility to be built by the County. The County will provide the following parking spaces per year in its new parking facility as credit to the City:

<u>Year</u>	<u>Parking spaces</u>
2006	150 spaces at no additional cost to the City per space
2007	150 spaces at no additional cost to the City per space
2008	150 spaces at no additional cost to the City per space
2009	100 spaces at a \$35 per space per month cost to the City and an option to be exercised by the

City for an additional 50 spaces at \$55 per space per month*

<u>Year</u>	<u>Parking spaces</u>
2010	100 spaces at a \$35 per space per month cost to the City and an option to be exercised by the City for an additional 50 spaces at \$55 per space per month**

*The City reserves the right to terminate the arrangement for parking spaces for the year 2009 or to exercise its option for an additional 50 spaces at \$55 per space per month in year 2009, by giving the County written notice by Dec. 1, 2008.

** If the City exercises its option for parking spaces in the year 2009, the City reserves the right to terminate the arrangement for parking spaces for the year 2010 or to exercise its option for an additional 50 spaces at \$55 per space per month in year 2010, by giving the County written notice by Dec. 1, 2009.

2.1 Lost Parking Opportunity Credit. The County agrees that if the proposed new parking facility is not constructed and useable by the City for parking eighteen months after the City has vacated the Property, the County will grant the City a \$3,000 credit per month, as a "Lost Parking Opportunity" credit. This credit will be for the time period beyond the eighteen-month time period until the date the City is allowed to park in the new parking facility the County will build. The County will give the City 30 days notice before the City is to vacate the Property. The City and the County agree that the date identified in the letter notifying the City to vacate the Property will be the date used to establish the beginning date for the "Lost Parking Opportunity" credit and that a copy of this letter will be incorporated herein as Attachment No. 1.

2.2 Removal of Improvements and Personal Property. The City reserves the right to remove from the Property any improvements which will not disrupt the integrity of the City's parking structure and any personal property belonging to the City on the Property. The right may be exercised at any time after the approval of this Agreement and up to the identified Closing on the Property.

3. Environmental Clearance. The City has provided the County with a copy of the April 8, 2004 letter from the Texas Commission on Environmental Quality (TCEQ) that the Property has met TCEQ closure requirements and that no further corrective action is necessary.

3.1 Inspections and Feasibility Studies. The County, at the County's expense, may complete or cause to be completed inspections of the Property (including all improvements and fixtures) by inspectors of the County's choice. Inspections may

include but are not limited to: (i) physical property inspections including but not limited to, structural pest control, mechanical, structural, electrical, or plumbing inspections; (ii) any type of environmental assessment or engineering study including the performance of tests such as soils tests, air sampling, or paint sampling; and (iii) compliance inspections to determine compliance with zoning ordinances, restrictions, building codes, and statutes (e.g. ADA, OSHA, and others). The City shall permit the County and the County's inspectors access to the Property at reasonable times. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE COUNTY SHALL INDEMNIFY AND HOLD CITY HARMLESS FROM ALL CLAIMS, LIABILITIES, DAMAGES AND CAUSES OF ACTION ARISING OUT OF THE COUNTY'S ACTIVITIES ON THE PROPERTY IN CONNECTION WITH THE INSPECTION PERFORMED BY THE COUNTY, ITS AGENTS, INDEPENDENT CONTRACTORS, SERVANTS AND/OR EMPLOYEES. If the County determines, in the County's sole judgment, that the Property is not suitable for any reason for County's intended use as a parking facility, then the County may terminate this contract by providing written notice of termination and copies of all reports of inspections, studies, or assessments completed or caused to be completed by the County under this paragraph to the City within 30 days from the date of this Agreement. If the County should terminate this Agreement under the provisions of this paragraph through no fault of the City, the County shall restore the Property to its original condition if altered due to inspections, studies, or assessments completed by the County or the County's inspectors.

The County's failure to terminate this Agreement under the provisions of this paragraph shall constitute acknowledgment by the County that the County has inspected the Property and that same are suitable for the County's intended use. The County recognizes and agrees that the City is making no warranties, expressed or implied, as to the suitability of the Property for any particular use. The cost of bringing the Property into compliance with all laws, rules, orders, ordinances of federal, state, county and municipal authorities including, but not limited to the Americans with Disabilities Act, as of the Closing Date shall be borne solely by the County.

4. Demolition. The County will be responsible for all demolition costs in accordance with the allowance that is outlined in Exhibit "A". The County will provide the City with the actual cost for the demolition costs. If the actual cost should be less than this amount, the County will grant the City an additional credit for parking spaces at \$35 per parking space and the City will determine what year(s) it will use the spaces.

5. Title Insurance. County at its expense may 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 County ("Owner's Policy").

5.1 Title Objections. The County will give the City 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 County states that the condition is not satisfactory, the County will specifically set forth in such

notice the defect or exception to title that is deemed objectionable. The City will undertake to eliminate or modify all unacceptable matters to the reasonable satisfaction of the County. Otherwise, this condition will be deemed acceptable and any objection by the County will be deemed waived.

6. Closing. The closing of this transaction ("Closing") shall take place at the offices of _____ Title Company, _____, El Paso, Texas 799___. The Closing will take place within 30 days after the County has given the City notice to vacate the Property.

6.1 Possession. Possession of the Property will be transferred to the County upon Closing.

6.2 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 County.
- (b) Premiums and other charges for the issuance of the Owner's Policy of Title Insurance for the Property shall be paid by the County.
- (c) Escrow fees, if any, shall be paid by the County.

6.3 City's Obligations. At Closing, the City shall deliver to the County a duly executed and acknowledged Special Warranty Deed.

7. Default.

7.1 Breach by County. In the event that County 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 beyond Dec. 31, 2004, except the City's default, or the termination of this Agreement in accordance with its terms, the County agrees to pay the City \$462,000, such sum being agreed upon as liquidated damages for the failure of the County to perform the duties, liabilities and obligations imposed upon it by the terms and provisions of this Agreement, and the City agrees to accept and take such cash payment as its total, reasonable damages and relief and as the City's sole, exclusive remedy hereunder in such event.

7.2 Breach by 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 County's default, or the termination of this Agreement in accordance with its terms, the County may enforce specific performance of this Agreement.

8. Miscellaneous.

8.1 Assignment. No assignment of this Agreement or of any right or duty accruing under this Agreement shall be made, in whole or in part, by either party without the prior written consent of the other party.

8.2 Notice. Any and all notices required to be given by one party to the other under the terms of this Agreement shall be in writing and shall be effective if sent by certified mail, return receipt requested, or facsimile transmission to the following addresses:

City of El Paso
Attn.: Mayor
2 Civic Center Plaza
El Paso, Texas 79901

County of El Paso
Attn: County Judge
County Courthouse
500 E. San Antonio
El Paso, Texas 79901

8.3 Venue. For the purpose of determining the place of contract and the law governing same, this Agreement is entered into in the City and County of El Paso, State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in El Paso County, Texas.

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

8.5 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.

8.6 Entire Agreement. This writing constitutes and expresses the entire agreement between the parties and shall not be amended or modified except by written instrument signed by both/all parties.

In witness whereof the parties execute this Agreement.

ATTEST:

THE CITY OF EL PASO

Richarda Duffy Momsen
City Clerk

Joe Wardy
Mayor
Agenda Date: _____, 2004

ATTEST:

THE COUNTY OF EL PASO

County Clerk

County Judge
Agenda Date: _____

APPROVED AS TO FORM:

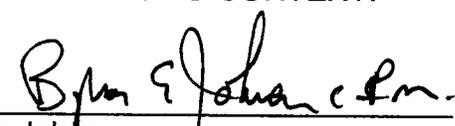
APPROVED AS TO FORM:



Deputy City Attorney

Assistant County Attorney

APPROVED AS TO CONTENT:



Byron Johnson
Director of Purchasing

EXHIBIT "A"

The City will give the County a credit of \$328,557.00. The explanation for this credit is as follows:

Demolition costs	\$270,157.00**
Asbestos abatement allowance	52,000.00
Associate bond cost	<u>6,400.00</u>
TOTAL	\$328,557.00

** The County will provide the City with the actual cost for the demolition costs. If the actual cost should be less than this amount, the County will grant the City an additional credit for parking spaces at \$ 35 per parking space per month and the City will determine what year(s) it will use the spaces.