CITY OF EL PASO, TEXAS
DEPARTMENT HEAD'S SUMMARY REQUEST FOR COUNCIL ACTION (RCA)

CITY CLERK DEPT.
08 JUN 12 AM 11:09

DEPARTMENT: **Engineering**

AGENDA DATE: **June 17, 2008**

CONTACT PERSON/PHONE: **R. Alan Shubert, City Engineer (X4423)**

DISTRICT(S) AFFECTED: 1

SUBJECT:

WHEREAS, the Developer, in conjunction with its development of Property located on Mesa Street, is entering into a Developer Participation Agreement for the construction of public improvements on land that is, or will be, City Property; and,
WHEREAS, the Developer, in conjunction with its development of the Property, has agreed to convey to the City property to expand the right of way so that the City can have wider sidewalks, which will promote pedestrian traffic; and,
WHEREAS, the Developer in conjunction with the development of the Property has agreed to provide a pedestrian easement to the City for a period of fifty years; and,
WHEREAS, the fair market value for the pedestrian easement would be $7,965.00 a year but the Developer is willing to provide the pedestrian easement for a cost of $53,410.00 for the entire fifty-year lease period,
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:That the City Manager be authorized to sign a Pedestrian Easement Agreement with El Paso Glory Road LLC for an eighteen foot strip of land, a 0.0487 acre parcel more or less, out of a portion of Lots 4 and 5, Block 224, of the Alexander Addition, City of El Paso, El Paso County Texas, and accept a Warranty Deed from El Paso Glory Road LLC, conveying a 0.0127 acre parcel of land being a portion of Lots 1,2,3,4, 5 and 6 of Block 224 of the Alexander Addition, City of El Paso, El Paso County, Texas, and being more fully described by metes and bounds in the Warranty Deed. The total cost to the City is $70,000.00.

BACKGROUND / DISCUSSION:

This City Council item consists of a Pedestrian Easement Agreement and acceptance of a Warranty Deed for property located at Lots 1 to 6, Block 224, Alexander Addition. The property lies on the southwest corner of Mesa Street and Glory Road.

The pedestrian easement agreement is between the City and El Paso Glory Road, LLC. The trustees for El Paso Glory Road, LLC are Gilbert W. Malooly, and Geraldine Malooly. El Paso Glory Road, LLC is granting the City an eighteen foot strip pedestrian easement. The City needs the easement to provide pedestrian access from the future Glory Road Transit Terminal to Mesa Street. The City will have legal right to the easement for fifty calendar years.

El Paso Glory Road, LLC is granting the City a warranty deed (property). The property consists of 0.0127 acres (553.30 square feet). The granted property shall be used for landscaping and pedestrian access along Mesa Street.

PRIOR COUNCIL ACTION:

None

AMOUNT AND SOURCE OF FUNDING:

Project No. PMT08001, Fund No.: 60600, Dept ID No.: 31260001, Account No.: 508027
Funding source is Fiscal Year 2003 Certificate of Obligations

BOARD / COMMISSION ACTION:

N/A

********** **REQUIRED AUTHORIZATION** **********

LEGAL: (if required)_____ **FINANCE:** (if required)_____

DEPARTMENT HEAD: _____

(Example: if RCA is initiated by Engineering, client department should sign also)

Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:**_____

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RESOLUTION

WHEREAS, the Developer, in conjunction with its development of Property located on Mesa Street, is entering into a Developer Participation Agreement for the construction of public improvements on land that is, or will be, City Property; and,

WHEREAS, the Developer, in conjunction with its development of the Property, has agreed to convey to the City property to expand the right of way so that the City can have wider sidewalks, which will promote pedestrian traffic; and,

WHEREAS, the Developer in conjunction with the development of the Property has agreed to provide a pedestrian easement to the City for a period of fifty years; and,

WHEREAS, the fair market value for the pedestrian easement would be $7,965.00 a year but the Developer is willing to provide the pedestrian easement for a cost of $53,410.00 for the entire fifty-year lease period,

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

That the City Manager be authorized to sign a Pedestrian Easement Agreement with El Paso Glory Road LLC for an eighteen foot strip of land, a 0.0487 acre parcel more or less, out of a portion of Lots 4 and 5, Block 224, of the Alexander Addition, City of El Paso, El Paso County Texas, and accept a Warranty Deed from El Paso Glory Road LLC, conveying a 0.0127 acre parcel of land being a portion of Lots 1,2,3,4, 5 and 6 of Block 224 of the Alexander Addition, City of El Paso, El Paso County, Texas, and being more fully described by metes and bounds in the Warranty Deed. The total cost to the City is $70,000.00.

ADOPTED this _____ day of _____, 2008.

THE CITY OF EL PASO

_____
John Cook, Mayor

ATTEST

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

_____
Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:

Patricia D. Adauto

Patricia D. Adauto, Deputy City Manager for Development and Infrastructure Services

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#39704 v1 - reso/pedestrian easement/glory road
Document Author: LCUE

PEDESTRIAN EASEMENT AGREEMENT

Date:

Grantor: **EL PASO GLORY ROAD, LLC**

Grantor's Mailing Address (including county):

EL PASO GLORY ROAD, LLC
3737 Gateway West
El Paso County
El Paso, Texas 79903

Grantee: **CITY OF EL PASO**

Grantee's Mailing Address (including county):

CITY OF EL PASO
2 Civic Center Plaza, 4th Floor
El Paso County
El Paso, Texas 79901-1196

Easement Property:

A eighteen (18) foot strip shown as a pedestrian easement, being a portion of the Lots 4 and 5 of Block 224 of the Alexander Addition, according to the plat thereof on file in Volume 49, Page 13, Real Property Records, City of El Paso, El Paso County, Texas, and more particularly shown on Exhibit "A" which is attached hereto and made a part hereof for all purposes.

Easement Purpose:

To provide free, clear and uninterrupted pedestrian walkway from the Glory Road Transit Terminal, through Grantor's property, to Mesa Street.

Consideration: TEN AND NO/100THS DOLLARS ($10.00), and other good and valuable consideration.

Reservations from and Exceptions to Conveyance and Warranty:

Easements, rights of way and prescriptive rights, whether of record or not; all presently recorded and valid instruments, other than encumbrances and conveyances, that affect the Easement Property.

Grantor, for the consideration and subject to the reservations from and exceptions to conveyance and warranty, grants, sells, and conveys to Grantee an easement over, upon and across

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the Easement Property for the Easement Purpose. The following terms and conditions shall apply to the easement:

1. Character and Duration of Easement. The easement granted is appurtenant to, and shall run with the land for a period of fifty years.

2. Maintenance. The Easement Property shall be maintained by Grantor in a neat and clean condition at its sole cost and expense.

3. Rights Reserved. Grantor shall reserve the right to use of the pedestrian easement for the placement of outdoor tables and chairs for use of by retail customers provided that such use complies with all pedestrian pathway clearances required under the American with Disabilities Act.

5. Choice of Law. This Agreement shall be subject to and governed by the laws of the State of Texas, excluding any conflicts-of-law rule or principle that might refer the construction or interpretation of this Agreement to the laws of another state. Each party hereby submits to the jurisdiction of the state and federal courts in the State of Texas and to venue in El Paso County.

6. Effect of Waiver or Consent. No waiver or consent, express or implied, by any party to or of any breach or default by any party in the performance by such party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such party of the same or any other breach or default in the performance by such party of the same or any other obligations of such party hereunder. Failure on the part of a party to complain of any act of any party or to declare any party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder until the applicable statute of limitation period has run.

7. Further Assurances. In connection with this Agreement as well as all transactions contemplated by this Agreement, each signatory party hereto agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement and all such transactions.

8. Integration. This Agreement contains the complete agreement between the parties and cannot be varied except by the written agreement of the parties. The parties agree that there are no oral agreements, understandings, representations or warranties, which are not expressly set forth herein.

9. Legal Construction. In case any one or more of the provisions contained in this Agreement shall for any reason be invalid, illegal or unenforceable in any respect, to the extent such invalidity or unenforceability does not destroy the basis of the bargain among the parties, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. Whenever required by the context, as used in this Agreement, the singular number shall include the plural and the neuter shall include the masculine or feminine gender, and

vice versa. The Article and Section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent or for any purpose, to limit or define the text of any Article or Section. This Agreement shall not be construed more or less favorably between the parties by reason of authorship or origin or language.

10. Notices. Any notice or communication required or permitted hereunder shall be deemed to be delivered, whether actually received or not, when deposited in the United States mail, postage fully prepaid, registered or certified mail, and addressed to the intended recipient at the address shown herein, and if not so shown, then at the last known address according to the records of the party delivering the notice. Notice given in any other manner shall be effective only if and when received by the addressee. Any address for notice may be changed by written notice delivered as provided herein.

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Grantor: El Paso Glory Road, LLC
3737 Gateway West
El Paso, Texas 79903

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

IN WITNESS WHEREOF, this instrument is executed on the 13th day of June, 2008.

CITY OF EL PASO:

Joyce Wilson, City Manager

APPROVED AS TO FORM:

Lupe Cuellar,
Assistant City Attorney

APPROVED AS TO CONTENT:

Patricia D. Adauto

Patricia D. Adauto, Deputy City Manager
Development and Infrastructure Services

The above instrument, together with all conditions thereto is hereby executed by GILBERT ~~W.~~ E. MALOOLY ~~and GERALDINE MALOOLY, as Trustees~~ AS PRESIDENT, of El Paso Glory Road, LLC this _____ day of June 2008.

Gilbert E. Malooly President

GILBERT ~~W.~~ E. MALOOLY, ~~TRUSTEE,~~ PRESIDENT

~~GERALDINE MALOOLY TRUSTEE~~ N/A

ACKNOWLEDGEMENTS ON FOLLOWING PAGE

CITY CLERK DEPT
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ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2008, by Joyce Wilson, as City Manager of **THE CITY OF EL PASO**, a Municipal Corporation.

Notary's Commission Expires:

_____
Notary Public, State of Texas

_____
Notary's name (printed)

ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF EL PASO §

This instrument was acknowledged before me on the 13th day of JUNE, 2008 by GILBERT ~~W.~~ E. MALOOLY, as ~~TRUSTEE~~ PRESIDENT for El Paso Glory Road, LLC.

My Commission Expires:
April 30, 2009

Alicia Valdespino
Notary Public, State of Texas
Notary's name printed:

ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF EL PASO §

ALICIA VALDESPINO
NOTARY PUBLIC
In and for the State of Texas
My commission expires
APRIL 30, 2009

This instrument was acknowledged before me on the _____ day of _____, 2008 by GERALDINE MALOOLY as TRUSTEE for El Paso Glory Road, LLC.

My Commission Expires:

_____

_____
Notary Public, State of Texas
Notary's name printed:

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Exhibit " A "

Glory Road and Mesa Street Pedestrian Easement

Description of a 0.0487 acre parcel of land being a portion of Lots 4 and 5 of Block 224 of the Alexander Addition, City of El Paso, El Paso County, Texas, being more particularly described by metes and bounds as follows:

Commencing at a city monument at the intersection of the centerline of Mesa Street and the centerline of Glory Road; thence South 37°30'00" East, a distance of 164.92 feet, thence South 52°30'00" West a distance of 35.00 feet, thence North 48°28'08" West a distance of 11.75 feet, thence South 52°30'00" West a distance of 1.75 feet, thence South 37°30'00" East a distance 30.50 feet, being "The True Point of Beginning of this parcel of land";

Thence, South 52°30'00" West a distance of 118.00 feet;

Thence, South 37°30'00" East a distance of 18.00 feet,

Thence, North 52°30'00" East a distance of 118.00 feet,

Thence, North 37°30'00" West a distance of 18.00 feet to "The True Point of Beginning of said parcel of land",

Said parcel of land contains 2,124 square feet or 0.0487 acres more or less.

By: Javier Reyes, P.E.
Referenced: Alexander Addition
Date: June 9, 2008

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

WARRANTY DEED

Date: _____, 2008

Grantor: **EL PASO GLORY ROAD, LLC**
GILBERT ~~W~~ E. MALOOLY, ~~AND GERALDINE MALOOLY, TRUSTEES~~ PRESIDENT

Grantor's Mailing Address (including county):

El Paso Glory Road, LLC
3737 Gateway West
El Paso County
El Paso, Texas 79903

Grantee: THE CITY OF EL PASO, A MUNICIPAL CORPORATION

Grantee's Mailing Address (including county):

City of El Paso
#2 Civic Center Plaza
El Paso County
El Paso, Texas 79901-1196

Consideration: TEN AND NO/100THS DOLLARS ($10.00) and other valuable consideration, receipt of which is hereby acknowledged.

Property (including any improvements):

Description of a 0.0127 acre parcel of land being a portion of Lots 1,2,3,4,5, and 6 of Block 224 of the Alexander Addition, City of El Paso, El Paso County, Texas, being more particularly described by metes and bounds as follows:

Commencing at a city monument at the intersection of the centerline of Mesa Street and the centerline of Glory Road; thence South 37°30'00" East, a distance of 164.92 feet, thence South 52°30'00" West a distance of 35.00 feet, being a point on the Westernly right-of-way line of Mesa Street and "The True Point of Beginning of this parcel of land";

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Thence, North 48°28'08" West a distance of 11.75 feet;
Thence, South 52°30'00" West a distance of 1.75 feet,
Thence, South 37°30'00" East a distance of 141.50 feet,
Thence, North 52°30'00" East a distance of 4.00 feet,
Thence, North 37°30'00" West a distance of 130.00 feet to "The True Point of Beginning of said parcel of land",

Said parcel of land contains 553.30 square feet or 0.0127 acres more or less.

RESERVATIONS FROM CONVEYANCE:

None

EXCEPTIONS TO CONVEYANCE AND WARRANTY:

1. Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements;

2. Standby fees, taxes and assessments by any taxing authority for the year of 2007, prorated through the date of closing, which Grantor assumes and agrees to pay, and subsequent taxes and assessments by any taxing authority for that and prior years due to change in land usage or ownership, or both, but not those taxes or assessments for prior years because of an exemption granted to a previous owner of the property under Section 11.13, Texas Tax Code, or because of improvements not assessed for a previous year, which Grantor assumes and agrees to pay.

3. Any titles or rights asserted by anyone, including, but not limited to, persons, the public, corporations, governments or other entities,

a. to tidelands or lands comprising the shores or beds of navigable or perennial rivers and streams, lakes, bays, gulfs or oceans, or
b. to lands beyond the line of harbor or bulkhead lines as established or changed by any government, or
c. to filled-in lands, or artificial islands, or
d. to statutory water rights, including riparian rights, or
e. to the area extending from the line of mean low tide to the line of vegetation or the rights of access to that area or easement along and across that area;

4. Claims by the Tigua Indian Tribe of Ysleta del Sur Pueblo, as evidenced by that certain Affidavit concerning filing of notice of Claim to the Ysleta Grant and Aboriginal Title Areas, executed by Julian Granillo, Governor of the Ysleta del Sur Pueblo Indian Tribe, also known as the Tigua Indian Community, dated April 12, 1993, filed on April 16, 1993 in Volume 2553, Page 1958, of the Real Property Records, El Paso County, Texas.

GRANT AND CONVEYANCE:

GRANTOR, for the consideration and subject to the reservations from and exceptions to conveyance, and warranty, GRANTS, SELLS, and CONVEYS to GRANTEE the Property, in fee simple, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to GRANTEE, GRANTEE'S administrators, successors and assigns forever. GRANTOR binds GRANTOR and GRANTOR'S successors and assigns to warrant and forever defend all and singular the property to GRANTEE and GRANTEE'S administrators, successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the Reservations From and Exceptions to Conveyance, when the claim is by, through, or under GRANTOR but not otherwise.

When the context of this instrument requires, singular nouns and pronouns will include the plural.

GRANTORS: EL PASO GLORY ROAD, LLC

Gilbert E. Malooly President

GILBERT ~~W~~ E. MALOOLY, ~~TRUSTEE~~, PRESIDENT

~~GERALDINE MALOOLY TRUSTEE,~~ N/A

ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF EL PASO §

This instrument was acknowledged before me on the 13th day of June, 2008 by GILBERT ~~W~~ E. MALOOLY, as ~~TRUSTEE~~ PRESIDENT for El Paso Glory Road, LLC.

My Commission Expires:

April 30, 2009

Alicia Valdespino
Notary Public, State of Texas
Notary's name printed:

ALICIA VALDESPINO
NOTARY PUBLIC
In and for the State of Texas
My commission expires
APRIL 30, 2009

ACKNOWLEDGEMENTS CONTINUE ON NEXT PAGE

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ACKNOWLEDGMENT

STATE OF TEXAS §
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COUNTY OF EL PASO §

This instrument was acknowledged before me on the _____ day of _____, 2008 by GERALDINE MALOOLY as TRUSTEE for El Paso Glory Road, LLC.

My Commission Expires:

_____

_____
Notary Public, State of Texas
Notary's name printed:

AFTER RECORDING RETURN TO:

City of El Paso
City Attorney's Office
#2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901-1196

PREPARED IN THE LAW OFFICE OF:

City Attorney's Office
City of El Paso
#2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901-1196

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