

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

DEPARTMENT: Development & Infrastructure Services

AGENDA DATE: July 24, 2007

CONTACT PERSON/PHONE: Patricia D. Adauto, Deputy City Manager for Development & Infrastructure Services

DISTRICT AFFECTED: 5

SUBJECT:

DISCUSSION AND ACTION ON A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE, ON BEHALF OF THE CITY OF EL PASO, A PURCHASE OF PRIVATE PROPERTY CONSISTING OF UNDEVELOPED LAND TO BE USED AS RIGHT OF WAY FOR THE *EDGEMERE EXTENSION PROJECT*.

BACKGROUND / DISCUSSION:

This City project consisted of street & drainage improvements, street widening, pedestrian amenities and traffic signalization on Edgemere Boulevard from Lee Boulevard to Harkis Road.

PRIOR COUNCIL ACTION:

Council has previously considered and approved the purchase of seven parcels related to this project.

AMOUNT AND SOURCE OF FUNDING:

This item is funded through 2003 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>
PPWST03022	60663	31260001	508000

BOARD / COMMISSION ACTION:

(N/A)

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

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

DEPARTMENT HEAD: _____

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

CITY CLERK DEPT.
07 JUL 16 PM 1:34

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 MICHAEL J. JOHNSON for the purchase of

Parcel 5—1,500 square feet, more or less, being a portion of Lot 14, Block 2, of Hueco View Acres, an Addition to the City of El Paso, El Paso County, Texas, according to the Plat Records of El Paso County, Texas.

to be used for the Edgemere Extension Project.

ADOPTED this _____ day of _____, 2007.

THE CITY OF EL PASO

John F. Cook, Mayor

ATTEST:

Richarda D. Momsen, City Clerk

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

CITY CLERK DEPT.
07 JUL 16 PM 1:34

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

CONTRACT OF SALE

This Agreement is entered into this ____ day of _____, 2007, by and between the **City of El Paso**, hereinafter referred to as the "City" and **Michael J. Johnson**, 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 described real property located in El Paso County, Texas:

Parcel 5—1,500 square feet, more or less, being a portion of Lot 14, Block 2, of Hueco View Acres, an Addition to the City of El Paso, El Paso County, Texas, according to the Plat Records of El Paso County, Texas; said portion being more particularly described by metes and bounds 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 **TEN THOUSAND FORTY-FIVE AND NO/100THS (\$10,045.00) DOLLARS**. 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 Sales Price. The full amount of the sales price will be payable in cash at the closing.

3. Conditions to City's Obligations. The obligations of the City 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 two (2) 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 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. Seller may 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 and warrants to the City that to the best of his knowledge, as follows:

4.1 Parties in Possession. At the time of closing 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; and (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; and (iii) 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 Law. To the best of the Seller's knowledge, all laws, ordinances, rules and regulations of any Government or any agency, body or subdivision thereof, bearing in the development of the Property, have been complied with.

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.

4.8 Pre-Closing Claims. 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 taxes or 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 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.

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 marketable title to an indefeasible 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, 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 shall survive the execution and delivery hereof and the Closing hereunder, until such time as all of the obligations of the signatories hereto shall have lapsed in accordance with their respective terms or shall have been discharged in full.

5. Closing. The closing of this transaction ("Closing") shall take place at the offices of Lone Star Title Company, 500 North Mesa, El Paso, Texas 79901, on or before August 24, 2007.

5.1 Possession. Possession of the Property will be transferred to the City upon Closing.

5.2 Real Property Taxes. Real property taxes and assessments shall be prorated at Closing, effective as of the date of Closing, based upon the latest tax bill available. Taxes shall be prorated in accordance with the foregoing provision and the parties shall appropriately and promptly adjust such pro-rations on the basis of the correct, applicable tax bill when such tax bill becomes available. Seller will pay ad valorem taxes through the date of Closing.

5.3 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.

5.4 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.

5.5 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. Default.

6.1 Breach by Seller. In the event that Seller shall fail to fully and timely perform any of his 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 Seller's default, or the termination of this Agreement in accordance with its terms, due to the difficulty of assessing Seller's actual damages as a result of such breach by City, the Seller shall have a right to receive the ONE HUNDRED and NO/100THS DOLLARS (\$100.00), 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 Seller agrees to accept and take such cash payment as its total, reasonable damages and relief and as 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:

City: Joyce A. Wilson
City Manager
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

Seller Michael J. Johnson

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.

The above instrument, together with all conditions thereto is hereby EXECUTED by the Seller this _____ day of _____, 2007.

SELLER:



Michael J. Johnson

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

CITY CLERK DEPT.
07 JUL 16 PM 1:35

This instrument was acknowledged before me on the 16TH day of JULY 2007 by Michael J. Johnson.

My Commission Expires:
5/6/2009

Louisa Bolanos

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

LORENA BOLANOS

(Signatures continue on the following page)

EXECUTED by the City this _____ day of _____, 2007.

BUYER
CITY OF EL PASO

By: _____
Joyce A. Wilson, City Manager

APPROVED AS TO CONTENT:

Patricia A. Adauto
Patricia Adauto, Deputy City Manager
Development & Infrastructure Services

APPROVED AS TO FORM:

Theresa Cullen-Garney
Theresa Cullen-Garney
Deputy City Attorney

CITY CLERK DEPT.
07 JUL 16 PM 1:35

ACKNOWLEDGMENT

STATE OF TEXAS }
 }
CITY OF EL PASO }

This instrument was acknowledged before me on this _____ day of _____, 2007, by Joyce A. Wilson, as City Manager for the City of El Paso, Texas.

Notary Public, State of Texas

My Commission Expires:

HUITT-ZOLLARS, INC.

5822 Cromo Drive, Ste. 210
El Paso, Texas, 79912
Phone: (915)587-4339
Fax: (915)587-5247

EXHIBIT "A"

PARCEL FIVE
Part of Lot 14, Block 2, Hueco View Acres.
Proposed Right-of-Way for Edgemere
Boulevard, City of El Paso,
El Paso County, Texas

Job No.: 09-0177-03
Field Note Description

CITY CLERK DEPT.
07 JUL 16 PM 1:55

All that certain tract or parcel of land for a proposed right-of-way lying within the corporate limits of the City of El Paso, El Paso County, Texas, same being a part of Lot 14, Block 2, Hueco View Acres, an addition to the City of El Paso according to the plat thereof recorded in Volume 4, Page 41, of the Plat Records of El Paso County, Texas, and being out of and a part of that certain tract described in deed to Manuel Camacho, Trustee, recorded in Volume 1234, Page 0005, of the Deed Records of El Paso County, Texas, and being more particularly described as follows:

Commencing at a 5/8-inch rebar with plastic cap marked "TX4869" found marking the northwest corner of that certain tract described in deed to Custom Woodcraft of El Paso, Inc., recorded in Volume 0152, Page 0131, of the Deed Records of El Paso County, Texas, same being on the east right-of-way of Lee Boulevard (90 feet wide); thence with the east right-of-way of Lee Boulevard, South 00°29'56" East, 103.14 feet to a point for corner; thence South 45°13'29" East, 50.68 feet to a point for corner on the north right-of-way of Edgemere Boulevard according to a deed to the City of El Paso recorded in Volume 4520, Page 0763, of the Deed Records of El Paso County, Texas; thence with the north right-of-way of Edgemere Boulevard the following three courses:

South 89°56'10" East, 161.33 feet to a 5/8-inch rebar with a yellow Huitt-Zollars, Inc. plastic cap marked "RPLS 4156" set for the westernmost southeast corner of the Woodcraft Tract;

South 89°56'10" East a distance of 50.02 feet to a 5/8-inch rebar with a yellow Huitt-Zollars, Inc. plastic cap marked "RPLS 4156" set on the west line those certain tracts described in deeds to Fransica Minjares, recorded in Volume 1404, Page 0419, and Volume 1372, Page 0528, of the Deed Records of El Paso County, Texas;

Field Note Description - Page 1 of 2

PARCEL FIVE
Part of Lot 14, Block 2, Hueco View Acres.
Proposed Right-of-Way for Edgemere

Exhibit A
1 of 3

1 South 89°56'10" East a distance of 99.42 feet to a 5/8-inch rebar with a
2 yellow Huitt-Zollars, Inc. plastic cap marked "RPLS 4156" set for the Point of
3 Beginning of this parcel, same being on the west line the Camacho tract;

4 Thence with the proposed north line of Edgemere Boulevard, South 89°56'10" East a
5 distance of 50.00 feet to a 5/8-inch rebar with a yellow Huitt-Zollars, Inc. plastic cap
6 marked "RPLS 4156" set on the west line of that certain tract described in deed to Jaime
7 Hita, et ux, et al, recorded in Volume 4578, Page 1282, of the Deed Records of El Paso
8 County, Texas, a 5/8-inch rebar with plastic cap marked "TX4869" found marking the
9 northeast corner of the Camacho Tract, same being the northwest corner of the Hita Tract,
10 bears North 00°29'22" West, 88.80 feet;

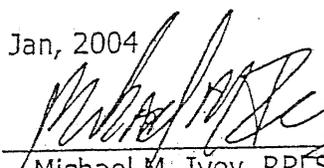
11 -----
12 Thence with west line of the Hita Tract, South 00°29'22" East, a distance of 30.00 feet to a
13 5/8-inch rebar with a yellow Huitt-Zollars, Inc. plastic cap marked "RPLS 4156" set on the
14 existing north right-of-way of Edgemere Boulevard;

15 -----
16 Thence with the existing north right-of-way, North 89°56'10" West a distance of 50.00 feet
17 to the southwest corner of the Camacho Tract;

18 -----
19 Thence North 00°29'22" West, a distance of 30.00 feet to the Point of Beginning and
20 containing 1,500 square feet or 0.034 acres of land.



Dated this 13th Jan, 2004

By: 

Michael M. Ivey, RPLS
Texas Registration No. 4156

26 Bearings in this description are based on true north as determined by GPS satellite
27 observation on existing city monuments at the intersection of Edgemere and Rising Sun,
28 and Edgemere and War Rose.

29
30 This description accompanies a plat of survey of even date.

CITY CLERK DEPT.
07 JUL 16 PM 1:55

POC
FND. 5/8" REBAR W/PLASTIC
CAP MARKED "TX4869"

LOT 14, BLOCK 2
HUECO VIEW ACRES

CITY CLERK DEPT.
VOL. 4578, PG. 1282
E.P.C.D.R. JUL 16 PM 1:35

○ - SET 5/8" REBAR WITH PLASTIC CAP
BASIS OF BEARING-GPS OBSERVATIONS
MADE ON CITY MONS. @ EDGEMERE &
RISING STAR AND EDGEMERE AND WAR
ROSE FROM TRI. STA. SHERMAN.

MANUEL CAMACHO, TR.
VOL. 1234, Pg. 0005
E.P.C.D.R.

FND. 5/8" REBAR W/PLASTIC
CAP MARKED "TX4869"

CUSTOM WOODCRAFT
OF EL PASO, INC.
VOL. 0152 PAGE 0131
E.P.C.D.R.

SIMON O. CHAVEZ

FRANCISCA MINJARES
VOL. 1372, Pg. 0528
VOL. 1404, Pg. 0419
E.P.C.D.R.

90.00'
S 00°29'56" E, 103.14'
S 45°13'29" E,
50.68'

S 89°56'10" E, 161.33'

Existing North Right-of-Way as per City of
El Paso Vol. 4520 Page 0763 E.P.C.D.R.

S 89°56'10" E, 149.44'

Proposed South Right-of-Way

N 00°29'22" W, 88.80'

L5

L8

L7

L6

PARCEL FIVE
1,500 sq.ft.
0.034 acres

27+00

28+00

29+00

30+00

31+00

32+00

EDGEMERE

BLVD.

Existing South Right-of-Way as per City of
El Paso Vol. 4569 Page 0743 E.P.C.D.R.

Proposed South Right-of-Way

431.02'

431.31'

SOCORRO INDEPENDENT
SCHOOL DISTRICT
Vol. 4077, Pg. 433
E.P.C.D.R.

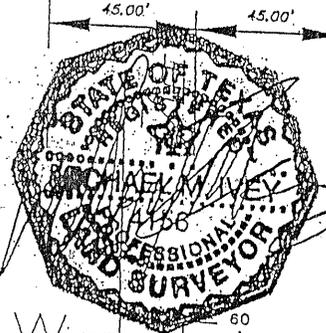
10' PUBLIC UTILITY
EASEMENT AS PER PLAT
OF HUECO VIEW ACRES

LINE TABLE		
LINE	BEARING	LENGTH
L5	S89°56'10"E	50.00'
L6	S00°29'22"E	30.00'
L7	N89°56'10"W	50.00'
L8	N00°29'22"W	30.00'

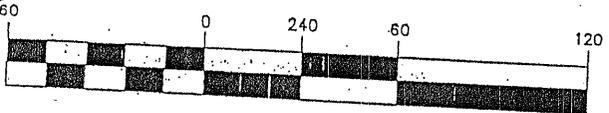
SOCORRO INDEPENDENT SCHOOL DISTRICT
Vol. 4077, Pg. 437
E.P.C.D.R.

LOT 9 BLOCK 7,
HUECO VIEW ACRES

PLAT OF SURVEY
PART OF LOT 14, BLOCK 2
HUECO VIEW ACRES
CITY OF EL PASO
EL PASO COUNTY, TEXAS



GRAPHIC SCALE



(IN FEET)
1 inch = 60 ft.

HUITT-ZOLIARS INC							
HUITT-ZOLIARS, INC. 5822 CROMO DR./SUITE-210/EL PASO, TEXAS 79912 PH. (915)587-4339 / FAX (915)587-5247							
DRAWN BY: mmi	DATE: 07-20-2003						
CHECKED BY: mmi	DRAWING NO.: 1						
JOB NO.: 09-0177-03	SHEET 1 of 1	1	01/05/04	Changed to Parcel Five	mmi		
		NO.	DATE	DESCRIPTION	BY		

Exhibit A

Box 3