

Agenda Item Form

Agenda Date: 07/27/04

Districts Affected: 1

Dept. Head/Contact Information: Gonzalo Cedillos, P.E., Capital Assets Manager (915) 541-4074

CITY CLERK DEPARTMENT
2007 JUL 22 AM 11 09

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 checked="" type="checkbox"/> Introduction of Ordinance |
| <input type="checkbox"/> Interlocal Agreements | <input type="checkbox"/> Contract/Lease Agreement | <input type="checkbox"/> Grant Application |
| <input checked="" type="checkbox"/> Other <u>Contract of Sale</u> | | |

Funding Source:

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

Legal:

- Legal Review Required Attorney Assigned (please scroll down): Kevin Elkins Approved Denied

Timeline Priority: High Medium Low # of days: _____

Why is this item necessary:

That the Mayor is hereby authorized to sign, on behalf of the City, a Contract of Sale and any other necessary documents, in a form as prepared by the City Attorney's office, conveying to Nicolas Rich, Jr., M.D. and Edna Rich, a portion of Lots 1 through 7, and a closed alley, Block 229, Alexander Addition, El Paso, El Paso County, Texas.

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

None

Statutory or Citizen Concerns:

None

Departmental Concerns:

Concur.

JOE WARDY
MAYOR



MUNICIPAL SERVICES

Excellence through Teamwork

July 22, 2004

CITY COUNCIL

SUSAN AUSTIN
DISTRICT NO. 1

ROBERT A. CUSHING Jr.
DISTRICT NO. 2

JOSE ALEXANDRO LOZANO
DISTRICT NO. 3

JOHN COOK
DISTRICT NO. 4

DANIEL S. POWER
DISTRICT NO. 5

PAUL J. ESCOBAR
DISTRICT NO. 6

VIVIAN ROJAS
DISTRICT NO. 7

ANTHONY COBOS
DISTRICT NO. 8

TO: Mayor and Council
Jim Martinez, Chief Administrative Officer
Laura Uribarri, Executive Assistant to the Mayor
Adrian Osegueda, Executive Assistant to the Mayor

FROM: Gonzalo Cedillos, P.E., Capital Assets Manager

SUBJECT: Council Agenda Item for July 27, 2004
Ordinance re Contract of Sale between City of El Paso and
Nicholas Rich, Jr., M.D. and Edna Rich

That the Mayor is hereby authorized to sign, on behalf of the City, a Contract of Sale and any other necessary documents, in a form as prepared by the City Attorney's office, conveying to Nicolas Rich, Jr., M.D. and Edna Rich, a portion of Lots 1 through 7, and a closed alley, Block 229, Alexander Addition, El Paso, El Paso County, Texas.

If there are any questions, please contact Gonzalo Cedillos at 541-4074.

Office Use Only

Mayor's Office (2 copies)	Date: _____ time: _____ by: _____
Chief Administrative Officer:	Date: _____ time: _____ via e-mail to BGonzalez
Representative District 1:	Date: _____ time: _____ by: _____
Representative District 2:	Date: _____ time: _____ by: _____
Representative District 3:	Date: _____ time: _____ by: _____
Representative District 4:	Date: _____ time: _____ by: _____
Representative District 5:	Date: _____ time: _____ by: _____
Representative District 6:	Date: _____ time: _____ by: _____
Representative District 7:	Date: _____ time: _____ by: _____
Representative District 8:	Date: _____ time: _____ by: _____
City Attorney's Office	Date: _____ time: _____ by: _____

Attachments

C: Lisa Elizondo, City Attorney
Kevin Elkins, Assistant City Attorney

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE MAYOR TO SIGN A CONTRACT OF SALE AND ANY OTHER NECESSARY DOCUMENTS BETWEEN THE CITY OF EL PASO AND NICOLAS RICH, JR., M.D. AND EDNA RICH, FOR THE SALE OF A PORTION OF LOTS 1 THROUGH 7, AND A CLOSED ALLEY, BLOCK 229, ALEXANDER ADDITION, EL PASO, EL PASO COUNTY.

WHEREAS, by Resolution dated March 16, 2004, the City Council authorized the City's Purchasing Department to advertise to sell to the public vacant land owned by the City, known as a Portion of Lots 1 through 7 and a closed alley, Block 229, Alexander Addition, El Paso, El Paso County, Texas; and

WHEREAS, after obtaining an independent appraisal to establish market value, the Purchasing Department advertised the property and received a bidder's proposal for the purchase of the property; and,

WHEREAS, the City Council of the City of El Paso ("Council") finds that the execution of the Contract of Sale serves a public purpose and is in the public interest; **NOW THEREFORE**,

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

That the Mayor is hereby authorized to sign, on behalf of the City, a Contract of Sale and any other necessary documents, in a form as prepared by the City Attorney's office, conveying to Nicolas Rich, Jr., M.D. and Edna Rich, a portion of Lots 1 through 7, and a closed alley, Block 229, Alexander Addition, El Paso, El Paso County, Texas.

PASSED AND APPROVED this 10th day of August, 2004.

THE CITY OF EL PASO

MAYOR

ATTEST:

Richarda Momsen
City Clerk

APPROVED AS TO CONTENT:



Gonzalo Cedillos, P.E.
Capital Assets Manager

APPROVED AS TO FORM:



Kevin D. Elkins
Assistant City Attorney

STATE OF TEXAS §
 § **CONTRACT OF SALE**
COUNTY OF EL PASO §

THIS Agreement is entered into this 10th day of August, 2004, by and between the **CITY OF EL PASO**, hereinafter referred to as the "City", and **NICOLAS RICH, JR., M.D. and EDNA RICH**, hereinafter referred to as "Buyers".

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 Buyer hereby agrees to acquire free and clear of any liens or encumbrances, the following described real property located in El Paso County, Texas:

A Portion of Lots 1 through 7 and a closed alley, (129.94 Ft. on S, 219.28 Ft. on NW, 176.64 Ft. on E) (11476.30 Square Ft.) Block 229, Alexander Addition, 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 **TWENTY FOUR THOUSAND AND NO/100THS DOLLARS (\$24,000.00)**, plus all costs related to this sale, including but not limited to, appraisal fees and publication fees.

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

3. Conditions to Buyers' Obligations. The obligations of the Buyers 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 Buyers, at or prior to Closing.

3.1 Title Insurance. Within thirty (30) working days after the date of execution of this contract, the buyers at their 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 Buyers ("Owner's Policy").

3.2 Use of Property. The Buyers agree to the purchase of the property for the purpose of parking lot use only, and access to parking lot will be provided on Mississippi and/or Kansas Street only, and the property will be rezoned for use as a parking lot.

4. Representations and Warranties of the City. The City hereby represents and warrants to the Buyers that to the best of its knowledge, 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. To the City's best knowledge and belief no person or persons own an interest in the fee title in the Property other than the City and that the joinder of no other third party shall be required to consummate this transaction.

4.3 Mechanic's Lien. To the City's best knowledge and belief: (i) no action has been taken, suffered or permitted by or on behalf of the City, 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 City's actions or otherwise, exist or can exist for the benefit of mechanics or materialmen in regard to the Property; (iii) and except as expressly disclosed in the documents relating to this transaction, the City 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 City.

4.4 Litigation. To the best knowledge of the City, 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 City'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 City'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 City agrees that the Buyers acceptance of title to the Property under the conveyance documents should not create any liability on the Buyers

part to third parties that have claims of any kind against the City in connection with the Property. The Buyers hereby expressly disclaim any and all liability to third parties that have any claims against the City. The Buyers will not assume or agree to discharge any liabilities pertaining to the Property that occurred or accrued prior to the date of Closing. The City agrees to indemnify and hold the Buyers 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 City has full right, power and authority to convey the property to the Buyers and to consummate this transaction as provided in this Contract without the joinder of any other person or entity.

4.10 Title. The City 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 City shall not create or permit to be created any easement or other condition affecting the Property without the prior written consent of the Buyers.

4.12 Misrepresentation. The City shall indemnify and hold the Buyers harmless from and against any losses, damages, costs or expenses (including attorneys' fees) incurred by the Buyers as a direct or indirect result of (i) breach of any representation or warranty of the City contained in this document, or (ii) any breach or default by the City under any of the covenants or agreements contained in this document, or (ii) any breach or default by the City under any of the covenants or agreements contained in this document to be performed by the City, all of which shall survive the Closing hereof.

4.13 Survival. All representations, warranties, covenants and agreements of the City 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, 601 North Mesa, El Paso, Texas 79901.

5.1 Possession. Possession of the Property will be transferred to the Buyers 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. The City will pay ad valorem taxes through the date of Closing, as applicable.

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

5.4 Sellers' Obligations. At Closing, the City shall deliver to the Buyers 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.

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 Buyers. In the event that Buyers 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 Buyers' default, or the termination of this Agreement in accordance with its terms, due to the difficulty of assessing Buyers' actual damages as a result of such breach by City, Buyers shall have a right to receive the \$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 Buyers agree to accept and take such cash payment as its total, reasonable damages and relief and as Buyers' 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:

Buyers: Nicolas Rich, Jr., M.D.
 Edna Rich

City: Mayor Joe Wardy
 The City of El Paso
 2 Civic Center Plaza, 10th Floor
 El Paso, Texas 79901-1196

Copy to: Gonzalo Cedillos, P.E.
 Capital Assets Manager
 City of El Paso
 2 Civic Center Plaza, 6th Floor
 El Paso, Texas 79901-1196

 Kevin D. Elkins
 Assistant City Attorney
 City of El Paso
 2 Civic Center Plaza, 9th Floor
 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.

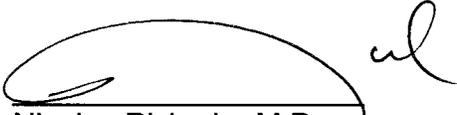
8.3 Survival of Provisions. The terms contained in this Agreement, including without limitation, representations, warranties, covenants and agreements of the parties, shall survive the Closing and shall not be merged therein. In case any one or more of the

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 Buyer 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 the Buyers this ____ day of July, 2004.



Nicolas Rich, Jr., M.D.



Edna Rich

Signatures continue on following page)

EXECUTED by the City this 10th day of August, 2004.

CITY OF EL PASO, a Municipal Corporation

By: _____
Joe Wardy, Mayor

ATTEST:

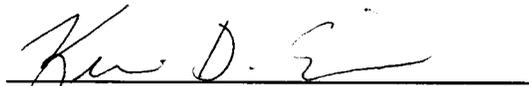
Richarda Duffy Momsen
City Clerk

APPROVED AS TO CONTENT:



Gonzalo Cedillos, P.E.
Capital Assets Manager

APPROVED AS TO FORM:



Kevin D. Elkins
Assistant City Attorney