

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

**DEPARTMENT:**        **Engineering**

**AGENDA DATE:**     **August 11, 2009**

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

**DISTRICT AFFECTED:** **3**

**SUBJECT:**

Item is to request approval of a resolution authorizing the City Manager to execute, on behalf of the City of El Paso, a purchase of a private residence within the Saipan subdivision, an area damaged by the floods of 2006. The area containing the subject property was identified by the Federal Emergency Management Agency to be within a *Special Flood Hazard Area* and will be used by the City of El Paso for floodplain management purposes.

**BACKGROUND / DISCUSSION:**

Subject property is located at 404 Ledo Road in the close proximity to the corner of Gateway Boulevard East and Ledo Street, approximately 500 yards to the West of Reynolds Street. The contract of sale that Council is being asked to consider is \$55,000 which represents the sum of the property's appraised value (*KD Valuation Services*, appraiser Linda Powers) plus replacement and relocation benefits. The owners have been fully cooperative and prepared to move forward to closing immediately.

**PRIOR COUNCIL ACTION:**

Severely damaged by the floods of 2006, Mayor and Council authorized the buyout of fifty-six properties in the affected area. The vast majority of the properties were acquired and demolished; however, ownership complications related to this particular parcel were not resolvable until recently.

**AMOUNT AND SOURCE OF FUNDING:**

This expenditure is funded through 2006 CO's. No budgetary adjustments are necessary.

<u>Project</u>	<u>Fund</u>	<u>Department</u>	<u>Account</u>
PSTM06PW556	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 **JOSE GABINO GARCIA and ALICIA G. GARCIA** for the purchase of the following property for **FIFTY FIVE THOUSAND AND 0/100 (\$55,000.00)**:

Lot 89, Block 6, EL VALLE ADDITION, an Addition to the City of El Paso, El Paso County, Texas, according to the map thereof on File in Book 3, Page 42, Plat Records of El Paso County, Texas.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

THE CITY OF EL PASO

\_\_\_\_\_  
John F. Cook  
Mayor

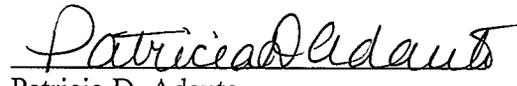
ATTEST:

\_\_\_\_\_  
Richarda D. Momsen  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Sylvia Borunda Firth  
Senior Assistant City Attorney

APPROVED AS TO CONTENT:

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

STATE OF TEXAS           §  
  §  
COUNTY OF EL PASO       §

**CONTRACT OF SALE**

This Agreement is entered into as of the \_\_\_\_ day of August, 2009 by and between the **CITY OF EL PASO**, hereinafter referred to as the "City," and **JOSE GABINO GARCIA and ALICIA G. GARCIA**, hereinafter collectively 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 real property located in El Paso County, Texas:

Lot 89, Block 6, EL VALLE ADDITION, an Addition to the City of El Paso, El Paso County, Texas, according to the map thereof on File in Book 3, Page 42, Plat Records of El Paso County, Texas.

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 a total of FIFTY FIVE THOUSAND AND 0/100 (\$55,000.00). 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 Purchase Price. Up to \$2,000 of the purchase price may be payable by the City in advance of Closing for the down payment of a replacement home of Seller. The balance of the purchase price will be payable in cash at the Closing pursuant to the terms of this Contract.

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    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").

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CITY CLERK DEPT.

3.2 Title Objections. The City will give the Seller written notice that the condition of the title set forth in the Commitment is or is not satisfactory on or before the expiration of the later of ten (10) working days after (i) the City receives the Commitment or (ii) action by City Council approving this Contract. 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 must either (i) promptly eliminate or modify all unacceptable matters to the reasonable satisfaction of the City; or (ii) notify the City in writing of any of the objections raised by the City that Seller cannot or will not cure. If Seller notifies the City in writing that Seller cannot cure the objection, the City shall have 5 days from receipt of the written notice within which to terminate this contract or the City will be deemed to have waived all objections to title.

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. No person or persons own an interest in the fee title in the Property other than the Seller and, per the Order styled Order Directing Sale of Property Cause No. 2008-P00581, the following descendants of Seller's parents: (i) Luis Gamillo-Garcia; (ii) Miguel Oropeza; (iii) Angel Pena; and (iv) Reyna Hernandez (collectively the Minor Beneficiaries). No third parties shall be required to join in order to consummate this transaction. Notwithstanding the foregoing, because the parents of Seller, Benito Garcia Lira and Luisa Gonzalez de Garcia, died intestate, Seller acknowledges that the Title Company may require prior to Closing, Deeds from certain descendants. If without some monetary consideration any of these descendants refuse to sign a Deed of any interest they may have in the Property to Seller, Seller agrees that the Title Company is authorized to pay them an amount of up to their prorata share of the net sales proceeds (after payment of the prorata portion of the taxes on the Property and other closing costs of Seller) under the laws of intestacy in effect at the time of the death of the parents. Further, Seller agrees that the Order Directing Sale of Property will be used by the Title Company in regard to the percentages of the net proceeds of Seller and to the Minor Beneficiaries according to the Order Directing Sale of Property Cause No. 2008-P00581.

4.3 Abstracts of Judgment and Other Liens. Seller acknowledges that the Title Company has listed numerous liens on its Title Commitment. Seller agrees to cooperate with the City to provide information so that the liens can be removed from the Commitment. If the liens cannot be removed and are valid against the Property, Seller agrees that they can be paid out of the purchase price. To obtain a release of the lien placed on the Property to secure the home equity loan originally from Chase Bank to Seller dated September 25, 2003 and recorded at Book 4778, Page 61, Seller agrees that \$2,500 be paid out of the purchase price.

4.4 Mechanic's Lien. (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. 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. 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. 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 2009, 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 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.

4.13 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 Sierra Title Company, Inc., 4849 N. Mesa, Suite 100, El Paso, Texas 79912 (the "Title Company") on or before thirty (30) days after the City Council has approved this Agreement.

5.1 Real Property Taxes. The Seller agrees to pay the taxes due on the Property, including those for the year 2009 which will be 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 3.2 above. Seller shall have all personal property out of the interior of the home and all trash cleared off the Property prior to Closing.

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.

5.5 Relocation Payments. Attached as Exhibit "A" are the relocation benefits that the City agrees to pay to the Seller pursuant to the conditions described therein.

6. Default.

6.1 Breach by Seller. 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 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 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 \$100.00 as independent consideration as well as the reasonable and necessary out-of-pocket expenses of the Seller directly relating to this Agreement, 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: Jose Gabino Garcia  
c/o Aurora Gonzalez  
2612 San Diego Ave.  
El Paso, Texas 79930

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.

The above instrument, together with all conditions thereto is hereby EXECUTED by the Seller to be effective as of the 5<sup>th</sup> day of August, 2009.

Seller:

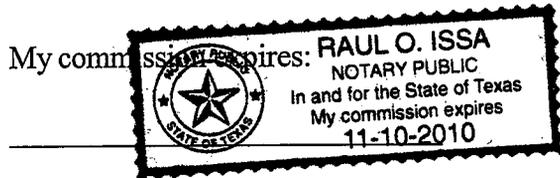
Jose Gabino Garcia  
JOSE GABINO GARCIA

Alicia G. Garcia  
ALICIA G. GARCIA

**ACKNOWLEDGEMENT**

STATE OF TEXAS       )  
  )  
COUNTY OF EL PASO   )

This instrument was acknowledged before me on the 5<sup>th</sup> day of August, 2009 by Jose Gabino Garcia and Alicia G. Garcia.



[Signature]  
Notary Public, State of Texas

EXECUTED by the City of El Paso to be effective as of the \_\_\_\_\_ day of August, 2009.

City of El Paso

By: \_\_\_\_\_  
Joyce A. Wilson  
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Sylvia Borunda Firth  
Sylvia Borunda Firth  
Senior Assistant City Attorney

Patricia A. Adams  
Deputy City Manager  
Development & Infrastructure Services

**ACKNOWLEDGEMENT**

STATE OF TEXAS       )  
                                  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on the \_\_\_\_\_ day of August, 2009 by \_\_\_\_\_, City Manager of the City of El Paso.

My commission expires: \_\_\_\_\_  
Notary Public, State of Texas

Exhibit "A"  
RELOCATION BENEFITS

JOSE GABINO GARCIA and ALICIA G. GARCIA, hereinafter referred to as the RECIPIENTS, agree as follows.

THAT, CITY is acting under direction of the City Council to purchase certain property in the City known as Lot 89, Block 6, EL VALLE ADDITION, an Addition to the City of El Paso, El Paso County, Texas, according to the map thereof on file in Book 3, Page 42, Plat Records of El Paso County, Texas, in which the RECIPIENTS once resided.

THAT, the Uniform Relocation Assistance and Property Acquisition Policies Act (URA) is used as a guideline for providing assistance for displaced property owners under certain acquisition projects.

THAT, the El Paso City Council has decided to provide certain relocation assistance payments to acquisition participants or their tenants.

THAT, the RECIPIENTS of the above referenced parcel have entered into an agreement to sell the parcel to CITY.

THAT, the RECIPIENTS represent that they resided in the above referenced residence and that the RECIPIENTS meet the qualification requirements.

NOW, THEREFORE, it is agreed as follows:

1. CITY agrees to pay the RECIPIENTS the sum of FIFTY-FIVE THOUSAND Dollars and 00/100 (\$55,000.00) plus normal and customary cash deal closing costs, but less prorated taxes and the balance of any outstanding liens created by the RECIPIENTS on the property, payable upon acceptance of this Agreement by both parties.
2. The amount to be paid was determined in accordance with applicable procedures as follows:

ITEM

Moving Expense (based on Table)		\$1,100
Personal property storage expenses		\$2,340
Closing Costs (To Be Determined – normal and customary cash deal closing costs)		TBD
Purchase of replacement Home	\$55,000.00 ✪ (present cost) \$79,750.00 (new cost)	<u>\$24,750* (difference)</u>
Total <u>benefits</u> to be paid =		\$28,190**

✪ Of which the RECIPIENTS will be paid 84.692% after closing costs per the Court Order.

\*Replacement home assistance capped at \$24,750 if owner buys replacement property. If the cost of the replacement home does not require all of the \$24,750, the assistance will decrease by the difference.

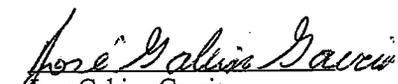
\*\*Plus closing costs

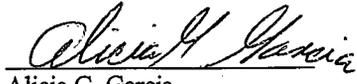
3. The RECIPIENTS acknowledge that this payment will satisfy any and all obligations of the CITY as to this transaction and agree to accept this payment as complete and full compensation.
4. The RECIPIENTS acknowledge that they have had an opportunity to review this Agreement and that they have had an opportunity, if they so choose, to contact an attorney of their choice to review this Agreement and the RECIPIENTS enter into this Agreement fully understanding the nature thereof and save and hold harmless the CITY as a result of this Agreement or any thing incident to the purchase of the above reference parcel.

This Agreement is binding upon the heirs, executors, successors and assigns of all parties.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2009.

RECIPIENTS:

  
Jose Gabino Garcia

  
Alicia G. Garcia

  
Witness