

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

**DEPARTMENT:** Development & Infrastructure Services

**AGENDA DATE:** August 21, 2007

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

**DISTRICT AFFECTED:** 1

**SUBJECT:**

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE, ON BEHALF OF THE CITY OF EL PASO, A PURCHASE OF PRIVATE PROPERTY CONSISTING OF A PARTIAL TAKING OF DEVELOPED LAND TO BE USED AS RIGHT OF WAY FOR THE *FRANKLIN SUMMIT DRAINAGE IMPROVEMENTS PROJECT*, MORE PARTICULARLY, A DRAINAGE EASEMENT.

**BACKGROUND / DISCUSSION:**

This City Storm 2006 project consists of the placing of concrete and asphalt to repair damage, upgrade drainage conveying system and improve drainage flow into drainage channel.

**PRIOR COUNCIL ACTION:**

None.

**AMOUNT AND SOURCE OF FUNDING:**

This item is funded through Storm 2006 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>
PSTM06 PW111-0	27264	14200500	508000

**BOARD / COMMISSION ACTION:**

(N/A)

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\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**LEGAL:** (if required) \_\_\_\_\_ **FINANCE:** (if required) \_\_\_\_\_

**DEPARTMENT HEAD:** \_\_\_\_\_

**APPROVED FOR AGENDA:**

**CITY MANAGER:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

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CITY CLERK DEPT.

## 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 ALBERTO CIPRIANO and JULIA G. CIPRIANO for the purchase of

1575 square feet, more or less, being the southerly 15 feet of Lot 8, Block 17, Franklin Hills, Unit Two, El Paso, El Paso County, Texas, also known as 6398 Franklin Summit,

to be acquired for a Storm 2006 Project known as the Franklin Summit Drainage Improvements, and that the City Manager, or her designee, be authorized to sign any necessary documents to accomplish the intent of this Resolution.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

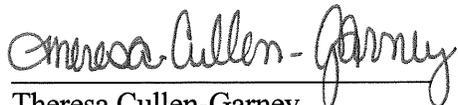
THE CITY OF EL PASO

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

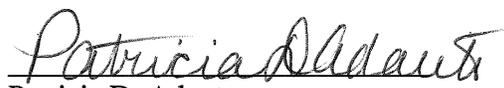
ATTEST:

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Theresa Cullen-Garney  
Deputy City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Patricia D. Adauto  
Deputy City Manager

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CITY CLERK DEPT.



condition will be deemed acceptable and any objection by the City will be deemed waived. To the extent the Property is subject to a lien in favor of Seller's lender or the SBA, the City and the Seller will work together to use their best efforts to have those liens released on the Property.

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, other than Alberto Cipriano v. Hunt Communities, Cause No. 2007-3054, filed in the 210<sup>th</sup> District Court in El Paso County, Texas, 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 Land America Lawyers Title of El Paso, 301 E. Yandell, El Paso, Texas 79901, on or before \_\_\_\_\_, 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: Alberto Cipriano  
Julia G. Cipriano

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.

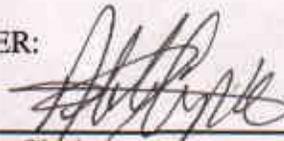
8.3 Survival of Provisions. The terms contained in this Agreement, including without limitation, representations, warranties, covenants and agreements of the parties, shall survive the Closing and shall not be merged therein. In case any one or more of the provisions contained in this contract for any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

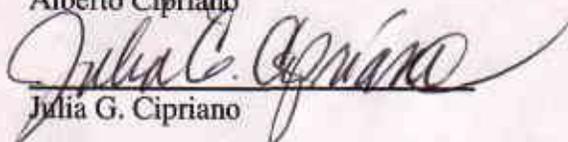
(Signatures begin on next page)

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

SELLER:



Alberto Cipriano



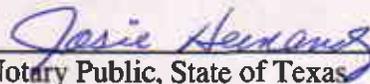
Julia G. Cipriano

**ACKNOWLEDGMENT**

STATE OF TEXAS        )  
                                  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on the 10<sup>th</sup> day of August,  
2007 by Alberto Cipriano and Julia G. Cipriano.

My Commission Expires:



Notary Public, State of Texas

Notary's name printed:



*(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

**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:



TSC Surveying Company

**PROPERTY DESCRIPTION**

Being the southeasterly 15 feet of Lot 8, Block 17, Franklin Hills Unit Two as filed in Volume 78, Page 19, county plat records, City of El Paso, El Paso County, Texas and more particularly described as follows:

Beginning at a concrete nail found at the common corner of Lots 7 and 8, Block 17 and on the southwesterly right-of-way line of Franklin Summit Drive, from which an existing city monument located at the centerline intersection of Franklin Summit Drive and Franklin Nook Way bears North 10°06'25" West 48.14 feet;

Thence, along the common line of said lots, South 46°12'11" West (S46°13'47"W) 105.00 feet to a #8 inch rebar with cap stamped TX 4869 found on the northeasterly line of a platted drainage right-of-way and a curve to the right:

Thence, 15.00 feet along said right-of-way line and along the arc of said curve having a radius of 1266.00 feet, an interior angle of 00°40'45", and a chord bearing North 43°27'27" West 15.00 feet to a point;

Thence, leaving said right-of-way line, North 46°12'11" East 105.01 feet to a point on the southwesterly right-of-way line of Franklin Summit Drive and a curve to the left;

Thence, 15.00 feet along said right-of-way line and along the arc of said curve having a radius of 1161.00 feet, an interior angle of 00°40'25", and a chord bearing South 43°25'37" East 15.00 feet to the Point of Beginning containing 1575 square feet or 0.036 acres.

Basis of Bearings is true north for a transverse mercator projection based on a monument found or set on or near this site. Items in parentheses denote record information.

A drawing of even date accompanies this Description and is made a part thereof.

*B. R. Monroe*  
B. R. MONROE  
R. P. L. S. Texas No. 5586

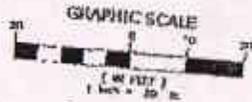
2/14/2007  
Date



**EXHIBIT 'A'**

Houston: 200 S. Asher Rd., Suite 120 • Houston, Texas 77063 • 713.794.1446 • Fax 713.264.1446  
El Paso: 3950 Gateway West, Suite 222 • El Paso, Texas 79925 • 915.773.6500 • Fax 915.772.6621

*B.L. House* 2/14/2007  
 B. L. HOUSE ONLY TO BE OPENED



SOUTH-EASTERLY 15' OF LOT 8, BLOCK 17,  
 FRANKLIN HILLS UNIT TWO,  
 CITY OF EL PASO, EL PASO COUNTY, TEXAS

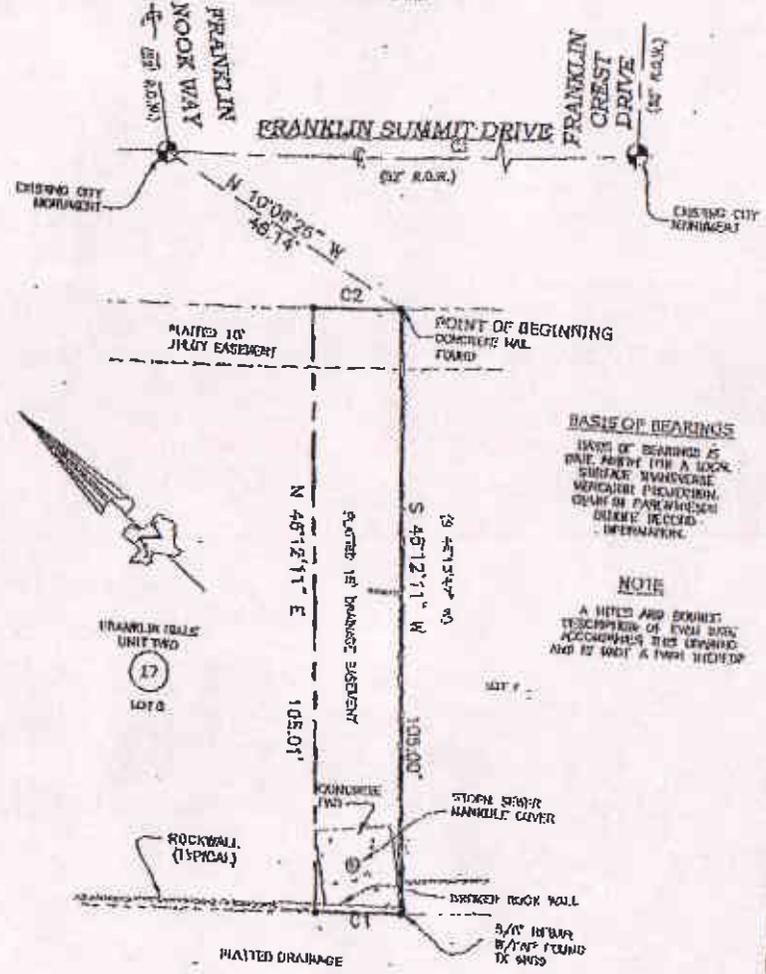
PLAN RECORD:  
 VOLUME 79  
 PAGE 18  
 E.P.D.P.R.

PROJECT: 058-015-0304 Franko Summit/058/015-0304 Franklin Summit LandLog

Scale: 1"=20'  
 drawn by: hlg  
 checked by: bart

**TSC SURVEYING COMPANY**  
 3959 GATEWAY WEST, SUITE 202, EL PASO, TEXAS 79920  
 PHONE 915-772-4500  
 FAX 915-772-0581  
 EL PASO, TEXAS 79920

MARK	NUMBER	BEARING	LENGTH	CHANGING	BEARING
C1	181.00	20° 41' 45"	75.00	12.00	N84° 27' 27" W
C2	181.00	20° 41' 45"	15.00	15.00	S41° 28' 27" W
C3	181.00	24° 45' 38"	90.00	18.75	N24° 28' 11" W



**BASIS OF BEARINGS**  
 BEARING OF BEARING IS  
 TRUE NORTH FOR A LOCAL  
 SURFACE MAGNETIC  
 VARIATION MEASUREMENT  
 OBTAIN BY MEANS OF  
 GUNTER BEARING  
 INSTRUMENT.

**NOTE**  
 A HEED AND EXACT  
 DESCRIPTION OF THIS SURVEY  
 ACCORDING TO THE BEARING  
 AND IS NOT A TRUE NORTH

Exhibit "A"  
 epe