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

DEPARTMENT: **Development & Infrastructure Services**

AGENDA DATE: **October 9, 2007**

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

DISTRICT AFFECTED: 1

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 private property consisting of undeveloped land to be used as right of way for the *Montoya Heights Drainage Improvement Project, Phase II.*

BACKGROUND / DISCUSSION:

This Phase II project is a system continuation and consists of the construction of a 20 ft. wide concrete-lined drainage channel from Johannsen Road to Doniphan Road. The project design requires the acquisition of four parcels needed for the widening of the channel right-of-way. This request is for Parcel 19 (of 11, 12, 13, 19).

PRIOR COUNCIL ACTION:

Council has not previously considered any land purchases related to this project.

AMOUNT AND SOURCE OF FUNDING:

This item is funded through general obligation bonds approved by the voters as part of the February 2004 Bond election. No budgetary adjustments are necessary. Funding source is as follows:

Project	Fund	Department	Account
PBE04ST118	29133	14200403	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 MARIA ELENA SALGADO for the purchase of

Parcel 19 – 653.00 square feet, more or less, of Tract 8-D, Johannsen Survey No. 185, Abstract 2789, City of El Paso, El Paso County, Texas,

to be acquired for a Project known as the Montoya Heights Drainage Improvements, Phase II, Channel Right of Way, 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

Theresa Cullen-Garney
Deputy City Attorney

APPROVED AS TO CONTENT:

Patricia D. Adauto

Patricia D. Adauto
Deputy City Manager

Doc#: 33431
BPS/CIP/Reso/Montoya Heights Ph II-Parcel 19

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

This Agreement is entered into this _____ day of _____, 2007, by and between the **City of El Paso**, hereinafter referred to as the "City" and **Maria Elena Salgado**, 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 19 – 653.00 square feet, more or less, of Tract 8-D, Johannsen Survey No. 185, Abstract 2789, City of El Paso, El Paso County, Texas, and more particularly described 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." It is understood by the City and the Seller that the City is not acquiring the Seller's home.

2. Amount of Payment of Purchase Price. The purchase price for the Property shall be **ONE THOUSAND NINE HUNDRED AND NO/100THS DOLLARS ($1,900.00).** 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 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 five (5) 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. 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, 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 Del Norte First American Title Insurance Company, 320 Texas Ave., El Paso, Texas 79901, on or before November 9, 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: Maria Elena Salgado

CITY CLERK DEPT.
07OCT -1 PM 2:52

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 21 day of Sept., 2007.

SELLER:

Ma Elena Salgado

Maria Elena Salgado

EVA MEDRANO
NOTARY PUBLIC
In and for the State of Texas
My commission expires
February 2, 2008

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 21 day of Sept., 2007 by Maria Elena Salgado.

My Commission Expires:

Feb 2, 2008

Eva Medrano

Notary Public, in and for the
State of Texas

(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:

DORADO ENGINEERING INC.
2717 E Yandell El Paso, Texas 79903 (915) 562-0002 Fax (915) 562-7743

Montoya Heights Phase 1 and Phase 2
Channel Right of Way

Parcel 19

Legal description of a parcel of land out of Tract 8D, Johannsen Survey No. 185, Abstract 2789, City of El Paso, County of El Paso, Texas, and being more particularly described as follows;

From an existing ½ inch rebar located at the common Easterly corner of Tracts 7 and 8F2, Johannsen Survey No. 185, Abstract 2789; Thence North 18° 19' 00" West along the Westerly Right-of-Way line of Johannsen Road a distance of seventy eight and seventeen hundredths (78.17) feet to the common Easterly corner of Tracts 8A and 8D, Johannsen Survey No. 185, Abstract 2789, said corner being the Point of Beginning for this description;

Thence South 88° 36' 00" West along the common line of said Tracts 8A and 8D, a distance of seventy nine and seventy hundredths (79.70) feet to the Southwesterly corner of Tract 8D;

Thence North 18° 19' 00" West along the common line of Tracts 8A and 8D, a distance of nine and five hundredths (9.05) feet to the common Easterly corner of Tracts 8A and 8E, Johannsen Survey No. 185, Abstract 2789;

Thence North 89° 18' 58" East along the Northerly line of Tract 19, a distance of eighty and one hundredths (80.01) feet for a corner on the Westerly Right-of-Way line of Johannsen Road;

Thence South 18° 19' 00" East along the Westerly Right-of Way line of Johannsen Road, a distance of eight and no hundredths (8.00) feet to the common Easterly corner of said Tracts 8A and 8D, said corner also being the Point of Beginning for this description;

Said parcel of land contains 653.00 square feet or 0.015 acres of land more or less.

STATE OF TEXAS
REGISTERED
FERMIN DORADO
3190
PROFESSIONAL
LAND SURVEYOR

Fermin Dorado

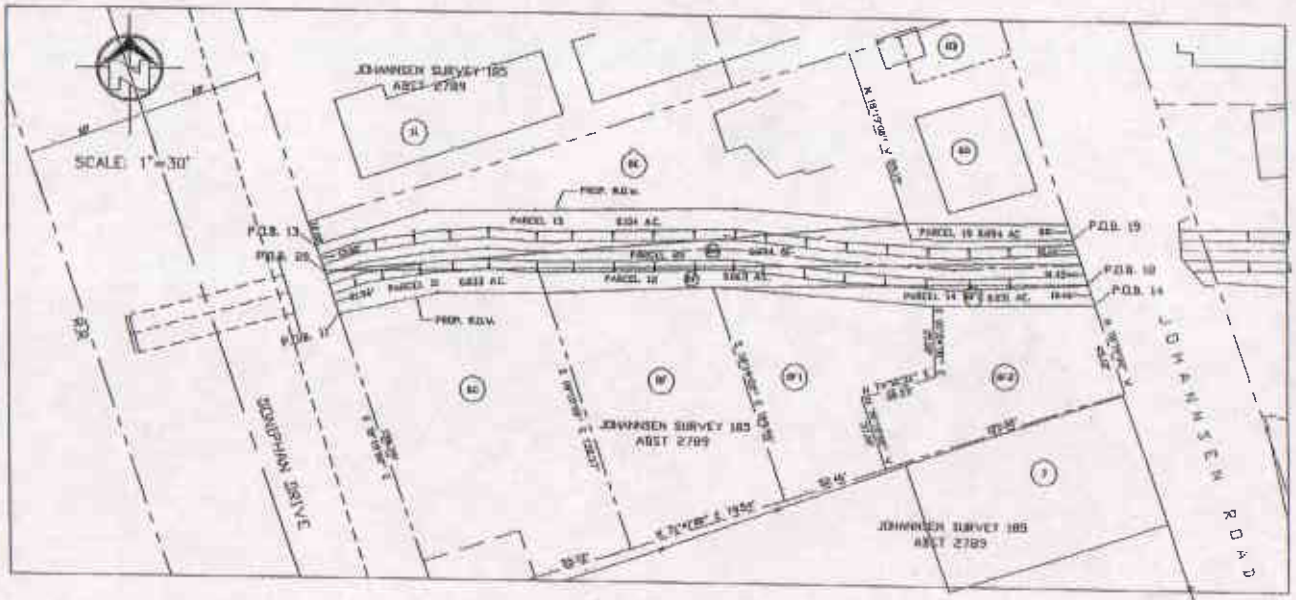
Fermin Dorado R.P.L.S.

February 16, 2006

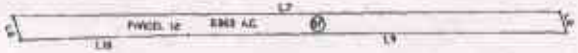
STATE OF TEXAS
REGISTERED
FERMIN DORADO
3190
PROFESSIONAL
LAND SURVEYOR

02-16-06

PARCEL NO.	PROPERTY OWNER	LEGAL DESCRIPTION	AREA
11	ZARGES, CYNTHIA L. & J	JOHANNSEN SURVEY 185, ABST 2789, TR. 8-C	0.033 A.C.
12	ZARGES, CYNTHIA L.	JOHANNSEN SURVEY 185 ABST 2789, TR. 8-F	0.063 A.C.
13	BAEZA, ELENA	JOHANNSEN SURVEY 185 ABST 2789, TR. 8-E	0.184 A.C.
14	MANUELOS, MARTHA L.	JOHANNSEN SURVEY 185 ABST 2789, TR. 8-F-1	0.031 A.C.
15	SALGADO, MARIA E.	JOHANNSEN SURVEY 185 ABST 2789, TR. 8-B	0.015 A.C.
20	UNKONWN OWNER	JOHANNSEN SURVEY 185 ABST 2789, TR. 8-A	0.090 A.C.

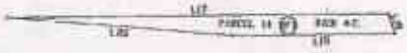


NUMBER	DIRECTION	DISTANCE
L1	N 18°19'00" W	21.76'
L2	N 88°23'00" E	104.38'
L3	S 18°19'00" E	10.00'
L4	S 88°36'00" W	113.48'
L5	S 77°56'48" W	19.17'



NUMBER	DIRECTION	DISTANCE
L6	N 18°19'00" W	16.00'
L7	N 88°36'00" E	104.44'
L8	S 18°19'00" E	16.00'
L9	S 88°36'00" W	103.59'
L10	S 87°22'18" W	00.04'

NUMBER	DIRECTION	DISTANCE
L11	N 18°19'00" W	13.00'
L12	N 71°41'00" E	16.70'
L13	N 88°36'00" E	33.00'
L14	N 88°36'00" E	15.00'
L15	S 88°36'00" E	34.28'
L16	S 84°22'41" W	16.79'



NUMBER	DIRECTION	DISTANCE
L17	N 88°36'00" E	105.50'
L18	S 18°19'00" E	8.10'
L19	S 88°36'00" W	99.90'
L20	N 88°37'54" W	108.61'

NUMBER	DIRECTION	DISTANCE
L21	S 88°36'00" W	9.00'
L22	N 88°36'00" E	99.00'
L23	S 18°19'00" E	9.00'
L24	S 88°36'00" W	73.70'

NUMBER	DIRECTION	DISTANCE
L25	N 84°22'41" E	107.48'
L26	S 18°19'00" E	3.00'
L27	N 88°36'00" E	79.70'
L28	S 18°19'00" E	10.14'
L29	S 88°36'00" W	104.44'
L30	S 88°25'48" W	104.50'

REV. 02/27/06-12:

238044

DORADO ENGINEERING, INC.

PROJECT NAME: MONTOYA HEIGHTS

CITY OF EL PASO