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

'06 SEP 29 A8:16

DEPARTMENT: Financial Services

AGENDA DATE: October 10, 2006

CONTACT PERSON/PHONE: Gonzalo Cedillos, P.E., 541-4074

DISTRICT(S) AFFECTED: 1

SUBJECT:

An Ordinance authorizing the City of El Paso to sell a 12.197-acre parcel of land, more or less, being a portion of Tract 6B, S.A. & M.G. Railways Survey Company No. 268 and a portion of Tract 3B, John Whittaker Survey No. 134, City of El Paso, El Paso County, Texas to Ham Management, LLC.

BACKGROUND / DISCUSSION:

Capital Assets Manager has recommended release of this property.

PRIOR COUNCIL ACTION:

Yes, sales of city land.

AMOUNT AND SOURCE OF FUNDING:

Revenue of $406,950.00

BOARD / COMMISSION ACTION:

Capital Assets Real Estate Committee has approved sale.

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

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

DEPARTMENT HEAD: _____

(Example: if RCA is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

ORDINANCE NO. _____

06 SEP 29 AM 8:16

AN ORDINANCE AUTHORIZING THE CITY OF EL PASO TO SELL A 12.197 ACRE PARCEL OF LAND, MORE OR LESS, BEING A PORTION OF TRACT 6B, S.A. & M. G. RAILWAYS SURVEY COMPANY NO. 268 AND A PORTION OF TRACT 3B, JOHN WHITTAKER SURVEY, NO. 134, CITY OF EL PASO, EL PASO COUNTY, TEXAS TO HAM MANAGEMENT, LLC.

WHEREAS, the City of El Paso staff has recommended the sale of a 12.197 acre parcel of land, more or less, being a portion of Tract 6B, S.A. & M. G. Railways Survey Company No. 268 and a portion of Tract 3B, John Whittaker Survey, No. 134 in the City of El Paso, El Paso County, Texas; and

WHEREAS, the City of El Paso has received an independent appraisal as the market value of its interest in the identified property; and

WHEREAS, in accordance with Section 272.001 of the Texas Local Government Code, the City of El Paso advertised and solicited bids for the purchase of the identified property; and

WHEREAS, HAM Management, LLC is the highest bidder and submitted a bid of $406,950.00 (which includes an appraisal fee of $1,650.00 and survey costs of $2,050.00).

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Contract of Sale and all other necessary documents, in a form approved by the City Attorney's Office, conveying a 12.197 acre parcel of land, more or less, being a portion of Tract 6B, S.A. & M. G. Railways Survey Company No. 268 and a portion of Tract 3B, John Whittaker Survey, No. 134, being more particularly described in Exhibit "A" attached hereto and made a part hereof, City of El Paso, El Paso County, Texas to HAM MANAGEMENT, LLC.

PASSED AND APPROVED this _____ day of _____, 2006.

THE CITY OF EL PASO

_____
John F. Cook, Mayor

ATTEST:

_____
Richarda Momsen
City Clerk

APPROVED AS TO CONTENT:

Carmen Arrieta-Candalaria

Carmen Arrieta-Candalaria
Chief Financial Officer

APPROVED AS TO FORM:

Theresa Cullen-Garney

Theresa Cullen-Garney
Deputy City Attorney

Doc #24439/TCUL
CAM/Ordinance/Bartlett Property-Parcel #2

PARCEL 2

Property Description: A portion of Tract 6B, S.A. & M.G. Railways Company Survey No. 268 and a portion of Tract 3B, John Whittaker Survey No. 134, EL Paso, EL Paso County, Texas.

METES AND BOUNDS DESCRIPTION

The parcel of land herein described is a portion of Tract 6B, S.A. & M.G. Railways Company Survey No. 268 and a portion of Tract 3B, John Whittaker Survey No. 134, EL Paso, EL Paso County, Texas and is more particularly described by metes and bounds as follows:

Commencing at an existing city monument lying on the centerline intersection of Waterhouse Drive and Bartlett Drive; Thence, 170.07 feet along said centerline of Bartlett Drive and along the arc of a curve to the right, having a radius of 1672.45 feet, a central angle of 5° 49' 35" and a chord which bears South 02° 54' 47" East, a distance of 170.00 feet to a point; Thence, North 90° 00' 00" West, a distance of 35.00 feet to a point lying on the westerly right-of-way line of Bartlett Drive, said point being a set ½-inch iron with SLI plastic cap stamped "TX 2998", also being the TRUE POINT OF BEGINNING of this description;

THENCE, along said right-of-way line, the following courses:

209.36 feet along the arc of a curve to the left, having a radius of 665.14 feet, a central angle of 18° 02' 05" and a chord which bears South 09° 01' 02" East, a distance of 208.50 feet to a set ½-inch iron with SLI plastic cap stamped "TX 2998";

South 18° 02' 05" East, a distance of 312.35 feet to a point for a curve, said point being a set ½-inch iron with SLI plastic cap stamped "TX 2998";

187.33 feet along the arc of a curve to the right, having a radius of 595.14 feet, a central angle of 18° 02' 05" and a chord which bears South 09° 01' 02" East, a distance of 186.56 feet to a point lying on the common boundary line between Tract 6B and Lots 10 through 14, Block 11, Mesa Del Castillo Unit 3, EL Paso, EL Paso County, Texas, said point being a set ½-inch iron with SLI plastic cap stamped "TX 2998";

THENCE, South 90° 00' 00" West, along said boundary line, a distance of 387.04 feet to a point lying on the common boundary line between Tract 6B and Lots 10 through 14, Block 11, Mesa Del Castillo Unit 3, said point being a set ½-inch iron with SLI plastic cap stamped "TX 2998";

THENCE, South 17° 37' 15" West, along the common boundary line between Lots 7 through 9, Block 11, Mesa Del Castillo Unit 3 and Tract 3B, John Whittaker Survey No. 134, a distance of 243.27 feet to a set ½-inch iron with SLI plastic cap stamped "TX 2998";

THENCE, South 34° 49' 04" West, along the common boundary line between Tract 3B, John Whittaker Survey No. 134 and Lots 3 through 7, Block 11, Mesa Del Castillo Unit 3, a distance of 276.45 feet to a set ½-inch iron with SLI plastic cap stamped "TX 2998";

THENCE, North 26° 48' 57" West, a distance of 18.46 feet to a set ½-inch iron with SLI plastic cap stamped "TX 2998";

THENCE, North 08° 01' 26" West, a distance of 446.71 feet to a point lying on the common boundary line between Tract 6B, S.A. & M.G. Railways Company Survey No. 268 and Tract 3B, John Whittaker Survey No. 134, said point being a set ½-inch iron with SLI plastic cap stamped "TX 2998";

THENCE, North 07° 58' 31" West, a distance of 477.74 feet to a set ½-inch iron with SLI plastic cap stamped "TX 2998";

THENCE, North 08° 02' 20" West, a distance of 90.00 feet to a set ½-inch iron with SLI plastic cap stamped "TX 2998";

Exhibit "A"
1 of 3

THENCE, North 02° 31' 58" West, a distance of 125.06 feet to a point lying on the common boundary line between Tract 6B, S.A. & M.G. Railways Company Survey No. 268 and Lot 18 Block 27, West Hills Unit Thirteen, said point being a set ½-inch iron with SLI plastic cap stamped "TX 2998";

THENCE, North 90° 00' 00" East, along the common boundary line between Lots 18 through 28, Block 27, West Hills Unit Thirteen, a distance of 615.00 feet to the TRUE POINT OF BEGINNING of this description.

Said parcel of land contains 12.197 acres (531,291 sq. ft.) of land more or less.

A PLAT OF SURVEY OF EVEN DATE ACCOMPANIES THIS METES AND BOUNDS DESCRIPTION.

SLI ENGINEERING, INC.
Consulting Engineers—Land Surveyors

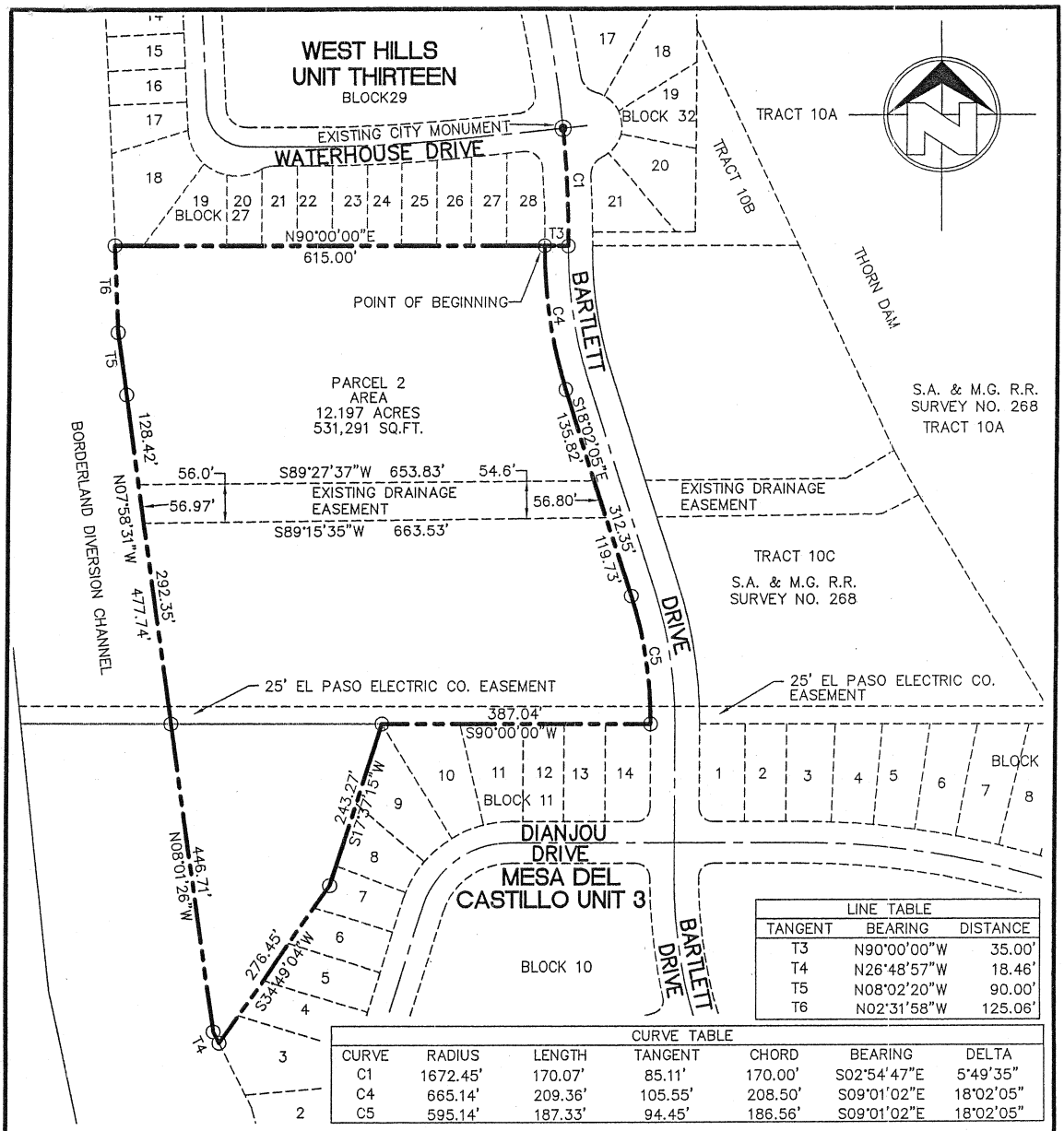
STATE OF TEXAS
REGISTERED
GUILLERMO LICON
2998
PROFESSIONAL
LAND SURVEYOR

Guillermo Licon
Registered Professional Land Surveyor
Texas License No. 2998

March 1, 2006

Job Number 06-05-2348
M&B\1275

"Exhibit "A"
2 of 3



LINE TABLE		
TANGENT	BEARING	DISTANCE
T3	N90°00'00"W	35.00'
T4	N26°48'57"W	18.46'
T5	N08°02'20"W	90.00'
T6	N02°31'58"W	125.06'

CURVE TABLE						
CURVE	RADIUS	LENGTH	TANGENT	CHORD	BEARING	DELTA
C1	1672.45'	170.07'	85.11'	170.00'	S02°54'47"E	5°49'35"
C4	665.14'	209.36'	105.55'	208.50'	S09°01'02"E	18°02'05"
C5	595.14'	187.33'	94.45'	186.56'	S09°01'02"E	18°02'05"

ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP COMMUNITY–PANEL NUMBER 480214 0021 D, DATED JANUARY 03, 1997, THIS PROPERTY LIES IN FLOOD ZONE "C".
ZONE "C", AREAS OF MINIMAL FLOODING.

DUE TO INHERENT INACCURACIES OF FEMA OR FLOOD INSURANCE RATE MAPS THIS SURVEYOR DOES NOT CERTIFY TO THE ACCURACY OF LOCATIONS BASED ON SUCH MAPS. THIS FLOOD STATEMENT SHALL NOT CREATE LIABILITY ON THE PART OF THE SURVEYOR.

NOTE:
ALL INFORMATION SHOWN HEREON WITH RESPECT TO UNDERGROUND CONDITIONS WAS DETERMINED BY DATA COLLECTED THROUGH SURVEY CREW OBSERVATION AND OTHER INFORMATION TAKEN FROM EXISTING PLANS AND MAPS OF RECORD. NO UNDERGROUND UTILITIES EXISTING OR ABANDONED WERE EXPOSED OR LOCATED. UNLESS SPECIFICALLY ACCEPTED BY SLI ENGINEERING. INC. IN WRITING, SLI ENGINEERING, INC. MAKES NO CLAIM, EXPRESSED OR IMPLIED, AS TO THE UNDERGROUND SITE CONDITIONS.

NOTES:
1. A METES AND BOUNDS DESCRIPTION OF EVEN DATE ACCOMPANIES THIS PLAT OF SURVEY.
2. SET 1/2" IRON WITH SLI CAP TEXAS NO. 2998 ON ALL PROPERTY CORNERS UNLESS OTHERWISE INDICATED.
3. BASIS OF BEARING: PLAT OF WEST HILLS UNIT THIRTEEN, RECORDED IN VOL. 65 PG. 41.
4. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE COMMITMENT.
5. NO BUILDINGS EXIST ON THE PROPERTY

Copyright 2006 SLI Engineering, Inc.
This map and survey are being provided soley for the use of the City of EL Paso, Texas, and no license has been created, expressed or implied, to copy the surveys and/or map(s) except as necessary in conjunction with the original transaction. This transaction shall be effective within six (6) months from the date hereon March 01, 2006.

STATE OF TEXAS
REGISTERED
GUILLERMO LICON
2998
PROFESSIONAL
LAND SURVEYOR

PLAT OF SURVEY

SLI ENGINEERING, INC.
CIVIL ENGINEERS
LAND SURVEYORS
LAND PLANNERS
6600 WESTWIND DRIVE
EL PASO, TEXAS 79912
915-584-4457

JOB #: 06-05-2348 DR. BY: AFV
SCALE: 1"=200' F.B. #: –
DATE: 03-01-2006 DWG.: CITYPROJ\BARTLETT\WORKING\mesadc-3.dwg

A PORTION OF TRACT 6B, S.A. & M.G. RAILWAYS COMPANY SURVEY No. 268 AND A PORTION OF TRACT 3B, JOHN WITTAKER SURVEY NO. 134, EL PASO, EL PASO COUNTY, TEXAS.

CERTIFICATION
I HEREBY CERTIFY THAT THE FOREGOING BOUNDARY SURVEY WAS PERFORMED UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

GUILLERMO LICON, R.P.L.S.
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS LICENSE NO. 2998

Exhibit "A"

'06 SEP 29 A8:16

STATE OF TEXAS §
§
COUNTY OF EL PASO §

CONTRACT OF SALE

THIS Agreement is entered into this ____ day of_____, 2006, by and between the **City of El Paso**, hereinafter referred to as the "City" and **HAM MANAGEMENT, LLC,** hereinafter referred to as the "Buyer."

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 12.197 acre parcel of land, more or less, being a portion of Tract 6B, S.A. & M. G. Railways Survey Company No. 268 and a portion of Tract 3B, John Whittaker Survey, No. 134, in the City of El Paso, El Paso County, Texas being more particularly described in Exhibit "A" attached hereto and made a part hereof for all purposes.

together with any interest in (i) all improvements, if any, (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, and (iii) all ground water, water rights or rights to surface water will be subject to all easements, restrictions, reservations, rights of way, dedications and other encumbrances of record or apparent upon the real property (including any right to drill a well and produce therefrom any quantity of groundwater), all of such property, hereinafter collectively referred to as the "Property", save and except the following:

1.1 Radioactive Materials. Any conveyance of this Property will be subject to a restrictive covenant to the effect that the Buyer, its successors or assigns, will not, for a period of at least seventy-five (75) years, discard, place, or store upon such land, any radioactive material or other materials which would contaminate or otherwise damage the ground water supply or resources of the City.

1.2 Surveys. The Buyer accepts responsibility for conducting its own archeological and environmental surveys of the Property. Any mitigation of any conditions on the Property, including archeological sites or, without limitations, adverse environmental conditions, shall be at the expense of the Buyer who shall take the Property subject to all existing conditions. The Buyer accepts responsibility for its determination of the nature and extent of any archeological sites, or without

limitations, any adverse environmental conditions by its complete inspection of the Property.

2. Amount of Payment of Purchase Price. The purchase price for the Property shall be **FOUR HUNDRED SIX THOUSAND NINE HUNDRED FIFTY AND NO/100THS DOLLARS ($406,950.00)**, which sum includes the appraisal services fee of $1,650.00 and surveying costs of $2,050.00, plus any additional closing costs as identified in Paragraph 5.2.

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

2.2 Earnest Money. The City acknowledges the receipt of earnest money paid to the City in by the Buyer in the amount of **TWENTY THOUSAND, THREE HUNDRED FORTY-EIGHT AND 00/100 DOLLARS ($20,348.00)**, which will be credited to the purchase price at the time of closing.

3. Conditions to the Buyer's Obligations. The obligations of the Buyer hereunder is 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 Buyer, at or prior to Closing.

3.1 Title Insurance. Within fourteen (14) days after receipt of written notification of the City's acceptance of the Buyer's offer, the Buyer shall provide the City with all information necessary to close the sale with the intent that, without good cause existing or further delay, it is anticipated that the City and the Buyer will close within thirty (30) days from the date of the approval of the City Council of an ordinance authorizing the sale of the Property. The Buyer 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 Buyer ("Owner's Policy").

3.2 Title Objections. The Buyer will give the City 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 Buyer states that the condition is not satisfactory, the Buyer will specifically set forth in such notice the defect or exception to title that is deemed objectionable. City may promptly undertake to eliminate or modify all unacceptable matters to the reasonable satisfaction of the Buyer. Otherwise, this condition will be deemed acceptable and any objection by The Buyer will be deemed waived.

3.3 Covenants.

3.3.1 Buyer is to construct Bartlett Drive extending from its south terminus at Dianjou Drive and connect to north street beginning at Waterhouse Drive.

3.3.2 Bartlett Drive cross section is a 44-foot wide arterial with sidewalks.

3.3.3 Construction is to be in accordance with subdivision design standards and specifications as published by the City of El Paso Engineering Department.

3.3.4 No over-width pavement reimbursement will apply.

3.3.5 Road construction should include all utility infrastructures to prevent future pavement cuts.

3.3.6 Bartlett Drive extension construction is to be accomplished within two (2) years after closing of sale.

3.3.7 If the construction of Bartlett Drive extension has not been completed by the end of the first two (2) year term, a two (2) year extension for construction can be requested by the Buyer, in writing, to:

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

Request must be considered and granted by City Council. The written request must be submitted sixty (60) calendar days prior to the expiration of the initial two (2) year term and must include a detailed explanation of delays and justification for an extension.

3.3.8 If Buyer fails to accomplish the road extension within the approved timeline(s), the property shall revert back to the City of El Paso.

4. Representations of City. The City hereby represents, to the extent allowed by law, to The Buyer that to the best of its knowledge, as follows:

4.1 Parties in Possession. At the time of closing, other than the Buyer, there are no parties in possession of any portion of the Property as lessees, tenants at sufferance, or otherwise.

4.2 Mechanic's Lien. (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; and (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; and

(iii) 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 or 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.

4.3 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.

4.4 Bills Paid. At closing, there will be no unpaid bills or claims in connection with any repair or operation of the Property.

4.5 Compliance Law. 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.

4.6 Taxes. While the City owned the Property, the Property was exempt from ad valorem taxes.

4.7 Pre-Closing Claims. City agrees that the Buyer's acceptance of title to the Property under the conveyance documents should not create any liability on the Buyer's part to third parties that have claims of any kind against the City in connection with the Property. The City hereby expressly disclaims any and all liability to third parties that have any claims against the City.

4.8 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 Buyer.

4.9 "As Is, Where Is." THIS CONTRACT IS AN ARMS-LENGTH AGREEMENT BETWEEN THE PARTIES. THE PURCHASE PRICE WAS BARGAINED ON THE BASIS OF AN "AS IS, WHERE IS" TRANSACTION. THE BUYER ACCEPTS THE AS IS, WHERE IS, AND WITH ALL FAULTS, AND EXCEPT AS TO THE WARRANTY OF TITLE, WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF WHATSOEVER KIND, EXPRESS OR IMPLIED, WRITTEN OR ORAL, IT BEING THE INTENTION OF THE CITY AND THE BUYER TO EXPRESSLY NEGATE AND EXCLUDE ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO THOSE REGARDING: (A) THE CONDITION OF THE PROPERTY AND THE CONDITION; (B) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH THE BUYER MAY CONDUCT THEREON; (C) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE

GOVERNMENTAL AUTHORITY OR BODY; AND (D) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY. THE BUYER FURTHER ACKNOWLEDGES AND AGREES THAT, HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY, THE BUYER IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY THE CITY. THE BUYER FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT THE CITY HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. THE CITY IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY, OR THE OPERATION THEREOF, FURNISHED BY ANY BROKER, AGENT, ATTORNEY, EMPLOYEE OR OTHER PERSON. IT IS UNDERSTOOD AND AGREED THAT THE PURCHASE PRICE FOR THE PROPERTY REFLECTS THAT ALL OF THE PROPERTY IS SOLD BY THE CITY AND PURCHASED BY THE BUYER SUBJECT TO THE FOREGOING.

4.10 Survival. All 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 N. Mesa, El Paso, Texas 79901 on or before the later of: (i) thirty (30) days from the Effective Date; or (ii) thirty (30) days after the execution of this Agreement by the City, subject to delays due to the City's efforts to cure any title objection under section 2.2.

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

5.2 Closing Costs.

(a) All recording fees arising from the recordation of documents necessary to show good title to the Property in the Buyer shall be paid by the Buyer.

(b) Premiums and other charges for the issuance of the Owner's Policy of Title Insurance for the Property shall be paid by the Buyer.

(c) Any fees for surveys shall be paid by the Buyer.

(d) The fees for advertising in the amount of $132.92, and any other costs the City may have incurred in the preparation for the sale of the Property (Solicitation No. 2006-180) shall be paid by the Buyer.

(e) The appraisal services fee of $1,650.00 and surveying costs of $2,050.00, which are included in the purchase price of the property.

5.3 City's Obligations. At Closing, the City shall deliver to the Buyer a duly executed and acknowledged Special Warranty Deed conveying the Property and any related easements, 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, if any, which shall be assumed by the Buyer upon 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 Buyer has approved pursuant to Paragraph 4 above.

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.

6. Default.

6.1 Breach by City. In the event that the 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 Buyer's default, or the termination of this Agreement in accordance with its terms, the City agrees to absorb the cost of the appraisal services and other costs the City may have incurred in preparation for the sale of the Property. In addition, the City will return the earnest money provided by the Buyer.

6.2 Breach by the Buyer. In the event that the Buyer 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 at its sole and exclusive remedy terminate the Contract and recover the Earnest Money as damages.

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
Buyer	HAM MANAGEMENT, LLC 5835 Cromo, Suite 2 Attention: Russell Hanson El Paso, Texas 79912

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.

8.6 Effective Date. As used herein, "Effective date" shall mean the date of the approval of City Council of an Ordinance authorizing the sale of the Property.

8.7 Assignment. Buyer may not assign this Agreement without the City's prior written consent and, in the event of any such assignment, the same shall not relieve the Buyer from liability hereunder unless otherwise agreed by the City at the time of the assignment.

The above instrument, together with all conditions thereto is hereby executed by the City this _____ day of_____, 2006.

CITY OF EL PASO, a Municipal Corporation

By: _____
Joyce A. Wilson, City Manager

APPROVED AS TO CONTENT:

Carmen Arrieta-Candelaria
Carmen Arrieta-Candelaria
Chief Financial Officer

APPROVED AS TO FORM:

Theresa Cullen-Garney
Theresa Cullen-Garney
Deputy City Attorney

The above instrument, together with all conditions thereto is hereby executed by Russell Hawson as Manager for HAM Management, LLC this 26th day of September, 2006.

HAM MANAGEMENT, LLC

By Russell Hawson
Name Russell Hawson
Its Manager

OFFICIAL SEAL
FRANCES BERTOLLI
NOTARY PUBLIC
In and for the State of Texas
My commission expires
October 29, 2009