Agenda Item Form

Agenda Date: 09/28/04

Districts Affected: 6

Dept. Head/Contact Information: Pat Adauto, Deputy CAO, B & PS; 541-4853

04 SEP 23 PM 1:

Type of Agenda Item:

- ☒ Resolution
- ☐ Tax Installment Agreements
- ☐ RFP/ BID/ Best Value Procurement
- ☐ Application for Facility Use
- ☐ Interlocal Agreements
- ☐ Other _____
- ☐ Staffing Table Changes
- ☐ Tax Refunds
- ☐ Budget Transfer
- ☐ Bldg. Permits/Inspection
- ☐ Contract/Lease Agreement
- ☐ Board Appointments
- ☐ Donations
- ☐ Item Placed by Citizen
- ☐ Introduction of Ordinance
- ☐ Grant Application

Funding Source:

- ☐ General Fund
- ☐ Grant (duration of funds: _____ Months)
- ☒ Other Source: 2004 Bond Election

Legal:

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

Timeline Priority: ☒ High ☐ Medium ☐ Low # of days:_____

Why is this item necessary:

New eastside Fire Station (No. 35) authorized by 2004 Bond Election

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

Statutory or Citizen Concerns:

_____

Departmental Concerns:

_____

RESOLUTION

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

That the Mayor be authorized to sign, on behalf of the City, a Contract of Sale between the CITY OF EL PASO and ANNA CECILIA BARRAGAN, ALFRED JACQUES, RICHARD Z. ARMIJO and VIRGINIA ORALIA REYNA for the purchase of property described as

Lots 24 through 28, Block 1, VISTA COMMERICAL PARK, an addition to the City of El Paso, El Paso County, Texas,

to be used for construction of new Fire Station No. 35.

ADOPTED this 28th day of September, 2004.

THE CITY OF EL PASO

_____
Joe Wardy, Mayor

ATTEST:

_____
Richarda D. Momsen, City Clerk

APPROVED AS TO FORM:

Kevin D. Elkins
Assistant City Attorney

APPROVED AS TO CONTENT:

for Patricia D. Adauto
Deputy Chief Administrative Officer
for Building and Planning Services

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

THIS Agreement is entered into this _____ day of September, 2004, by and between the **CITY OF EL PASO**, hereinafter referred to as the "City", and **ANNA CECILIA BARRAGAN, ALFRED JACQUES, RICHARD Z. ARMIJO AND VIRGINIA ORALIA REYNA**, hereinafter referred to as "Sellers".

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 Sellers hereby agree 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:

Lots 24 through 28, Block 1, Vista Commercial Park, an Addition to the City of El Paso, El Paso County, Texas,

together with any interest of the Sellers in (i) all improvements, if any, and (ii) all right, title and interest of the Sellers 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 **TWO HUNDRED AND TWENTY FOUR THOUSAND AND NO/100THS DOLLARS ($224,000.00).**

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 thirty (30) 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.

4. Representations and Warranties of Sellers. The Sellers hereby represent and warrant 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 Sellers warrant that no person or persons own an interest in the fee title in the Property other than the Sellers and that the joinder of no other third party shall be required to consummate this transaction.

4.3 Mechanic's Lien. To the Sellers' best knowledge and belief: (i) no action has been taken, suffered or permitted by or on behalf of the Sellers, 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 Sellers' 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 Sellers have 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 Sellers.

4.4 Litigation. To the best knowledge of the Sellers, 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 Sellers' 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 Sellers' 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 Sellers agree 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 Sellers in connection with the Property. The City hereby expressly disclaims any and all liability to third parties that have any claims against the Sellers. 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 Sellers agree 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 Sellers have 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 Sellers have 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 Sellers 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 Sellers 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 Sellers contained in this document, or (ii) any breach or default by the Sellers under any of the covenants or agreements contained in this document, or (ii) any breach or default by the Sellers under any of the covenants or agreements contained in this document to be performed by the Sellers, all of which shall survive the Closing hereof.

4.13 Survival. All representations, warranties, covenants and agreements of the Sellers 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 Sierra Title, 1014 N. North Mesa, Suite 100, El Paso, Texas 79902.

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. Sellers 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 City 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 Sellers' Obligations. At Closing, the Sellers 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 Sellers. In the event that Sellers 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 Sellers' default, or the termination of this Agreement in accordance with its terms, due to the difficulty of assessing Sellers' actual damages as a result of such breach by City, Sellers 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 Sellers agree to accept and take such cash payment as its total, reasonable damages and relief and as Sellers' 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:

Sellers: Anna Cecilia Barragan

Alfred Jacques
Richard Z. Armijo
Virginia Oralia Reyna
C/O Robert Neill
501 Executive Center Blvd.
El Paso, Texas 79912

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

Copy to: Patricia D. Adauto
Deputy CAO for Building and Planning Services
City of El Paso
2 Civic Center Plaza, 10th Floor
El Paso, Texas 79901-1196

Kevin D. Elkins
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901-1196

8. Entire Agreement/Governing Law. This Agreement constitutes the entire agreement between the parties, and supersedes all prior agreements and understandings, written or oral, regarding the subject matter of this Agreement, and may be amended or supplemented only by an instrument in writing, executed by the party against whom enforcement is sought. This Agreement shall be governed in all respects, including validity, interpretation and effect, by and shall be enforceable in accordance with the laws of the State of Texas.

8.1 Time. Time is of the essence of this Agreement and each and every provision hereof.

8.2 Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portion shall not in any way be affected or impaired.

8.3 Survival of Provisions. The terms contained in this Agreement, including without limitation, representations, warranties, covenants and agreements of the parties, shall survive the Closing and shall not be merged therein. In case any one or more of the provisions contained in this contract for any reason is held invalid, this invalidity will not affect any other provision of this Contract, which will be construed as if the invalid or unenforceable provision had never existed.

8.4 Binding Effect. This Agreement shall be binding upon the parties hereto and their respective successors and assigns.

8.5 Compliance. In accordance with the requirements of Section 2B of the Texas Real Estate License Act, the City 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 this _____day of August, 2004.

Anna Cecilia Barragan

Alfred Jacques

_____
Richard Z. Armijo

_____
Virginia Oralia Reyna

(Signatures continue on following page)

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The above instrument, together with all conditions thereto is hereby EXECUTED by the Seller this _____day of August, 2004.

Anna Cecilia Barragan

Anna Cecilia Barragan

_____

Alfred Jacques

_____

Richard Z. Armijo

Virginia Oralia Reyna

Virginia Oralia Reyna

(Signatures continue on following page)

EXECUTED by the City this 28th day of September, 2004.

CITY OF EL PASO, a Municipal Corporation

By: _____
Joe Wardy, Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO CONTENT:

for _____
Patricia D. Adauto, Deputy CAO
Building and Planning Services

APPROVED AS TO FORM:

_____
Kevin D. Elkins
Assistant City Attorney

Doc# 20040079436

SPECIAL WARRANTY DEED

THE STATE OF TEXAS	§	
	§	KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF EL PASO	§	

THAT I, **RICHARD Z. ARMIJO**, of the County of El Paso, State of Texas, for and in consideration of the sum of TEN DOLLARS AND NO/100 ($10.00), and other valuable consideration to the undersigned paid by the Grantee herein named, the receipt of which is hereby acknowledged, have **GRANTED**, **SOLD** and **CONVEYED**, and by these presents do **GRANT**, **SELL** and **CONVEY** unto **VIRGINIA O. REYNA**, of the County of Caldwell, State of Texas, all of the right, title, and interest in and to the following described real property situated in El Paso County, Texas, to-wit:

> Lots 24 through 28, inclusive, Block 1, VISTA COMMERCIAL PARK, an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof on file in Volume 63, Page 57, Real Property Records, El Paso County, Texas.

This conveyance is expressly made subject to liens securing payment of debt created or assumed as part of the consideration; taxes for the current year; all easements, reservations, and restrictions of record.

TO HAVE AND TO HOLD the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said Grantees, their heirs and assigns forever; and we do hereby bind ourselves, our heirs, executors and administrators to **WARRANT AND FOREVER DEFEND** all and singular the said premises unto the said Grantees, their heirs,

executors, administrators, successors, and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to conveyance and warranty, when the claim is by, through, or under Grantor but not otherwise.

When the context requires, singular nouns and pronouns include the plural.

EXECUTED this 19th day of August, 2004.

Richard Z. Armijo
RICHARD Z. ARMIJO

PERSONAL ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF EL PASO §

BEFORE ME, the undersigned authority, on this date personally appeared **RICHARD Z. ARMIJO**, known to me to be the person whose name is subscribed to the foregoing instrument and he acknowledged to me that he executed the same for the purposes and considerations therein expressed.

GIVEN under my hand and seal of office this 19th day of August, 2004.

LAURA HEREDIA
NOTARY PUBLIC
In and for the State of Texas
My commission expires
December 12, 2004

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS
My Commission Expires: Dec. 12, 2004

AFTER FILING RETURN TO:
NAME: Virginia Reyna
ADDRESS: c/o Neill + Streelitz, PC
501 Executive Center #100
El Paso, TX 79902