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

DEPARTMENT: **Building & Planning Services**

AGENDA DATE: **November 30, 2004**

CITY CLERK DEPT.
04 NOV 23 PM 3:09

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

DISTRICT(S) AFFECTED: 3

SUBJECT:

Item is to request APPROVAL of a resolution authorizing the Mayor to execute, on behalf of the City of El Paso, a purchase of private property for street improvement project right of way requirements.

BACKGROUND / DISCUSSION:

This is the seventh of eight properties to be acquired for the expansion of Dodge Road located in District 3. Right of way acquisition is currently funded. Roadway construction is proposed for future CIP funding.

PRIOR COUNCIL ACTION:

Council has previously considered and approved five other contracts of sale related to this project since June 22, 2004. There are a total of eight properties acquisitions within this project scope.

AMOUNT AND SOURCE OF FUNDING:

This item is funded through certificates of obligation approved by Mayor and Council during the 2003 budget cycle. No budgetary adjustments are necessary. Funding source is as follows:

Project	Fund	Department	Account
PPW0053	60658	31260001	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 Mayor be authorized to sign, on behalf of the City, a Contract of Sale between the CITY OF EL PASO and JESSIE GUTIERREZ for the purchase of Lots 28 and 29, Block 7, STILES GARDEN, El Paso, El Paso County, Texas, also known as 7255 Stiles Drive, to be used as additional right-of-way related to the Hawkins Extension Project.

ADOPTED this 30th day of November, 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:

Patricia D. Adauto, Deputy City Manager
for Building and Planning Services

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

THIS Agreement is entered into this 30th day of November, 2004, by and between the **CITY OF EL PASO**, hereinafter referred to as the "City", and **JESSIE GUTIERREZ**, 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 28 and 29, Block 7, Stiles Gardens, El Paso, El Paso County, Texas, also known as 7255 Stiles Drive,

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 **EIGHTY FIVE THOUSAND SEVENTY SIX DOLLARS AND OO/100THS DOLLARS ($85,076.00).**

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 Stewart Title Company, 500 North Mesa, Suite 300, El Paso, Texas 79901.

5.1 Possession. Possession of the Property will be transferred to the City upon Closing. With the prior approval of the Deputy Chief Administrative Officer of Building and Planning Services, Sellers shall have the right to gain entry to complete their move to their new house up to ten (10) days after 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: Jessie Gutierrez
7255 Stiles Drive
El Paso, Texas 79915

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

Copy to: Patricia D. Adauto
Deputy City Manager 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 22nd day of November, 2004.

Jessie Gutierrez

Jessie Gutierrez

ACKNOWLEDGEMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 22nd day of November, 2004 by Jessie Gutierrez on behalf of Jessie Gutierrez.

NORMA A. CASTILLO
NOTARY PUBLIC STATE OF TEXAS
COMMISSION EXPIRES:
MARCH 21, 2006

Norma A. Castillo

Notary Public, State of Texas

(Signatures continue on following page)

EXECUTED by the City this 30th day of November, 2004.

CITY OF EL PASO, a Municipal Corporation

By: _____
Joe Wardy, Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO CONTENT:

Patricia D. Adauto
Patricia D. Adauto, Deputy City Manager
for Building and Planning Services

APPROVED AS TO FORM:

K. D. E
Kevin D. Elkins
Assistant City Attorney