

AN ORDINANCE

2013-03-07-0155

AUTHORIZING ACQUISITION OF A 5,683-SQUARE-FEET RESIDENTIAL LOT LOCATED IN NCB 17293 IN COUNCIL DISTRICT 8, FOR A DRAINAGE IMPROVEMENT PROJECT BETWEEN CARRIAGE ELM STREET AND CARRIAGE MIST STREET, A 2007 STORMWATER REVENUE BOND FUNDED PROJECT; DECLARING IT TO BE A PUBLIC PROJECT AND AUTHORIZING EXPENDITURES NOT TO EXCEED \$210,000.

* * * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The city manager and her designee, severally, are authorized and directed to execute and deliver on behalf of the city an instrument with Joe Fox and Irma Butcher in substantially the form attached as **Attachment I**, which is incorporated for all purposes as if fully set forth, and to consummate the transaction contemplated therein. The city manager and her designee, severally, should take all other actions necessary or convenient to effectuate the transaction, including agreeing to non-material changes to the approved form and executing all necessary or convenient ancillary instruments and agreements.

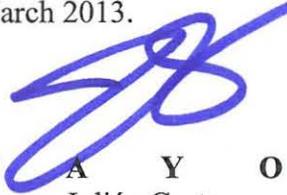
SECTION 2. Payment not to exceed \$210,000.00 in SAP Fund 48099000, Municipal Drainage Capital Projects, SAP Project Definition 23-01222, Carriage Mist Drainage Improvements, is authorized to be encumbered and made payable to the selected title company for the acquisition of 0.1305 acres of privately-owned real property.

SECTION 3. The acquisition of surplus property must be coordinated through the city's Finance Department to assure the addition of these assets into the City's financial records and to record the proper accounting transactions.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

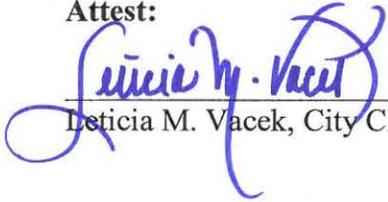
SECTION 5. This ordinance becomes effective 10 days after passage, unless it receives the eight votes requisite to immediate effectiveness under City Code of San Antonio § 1-15, in which case it becomes effective immediately.

PASSED AND APPROVED this 7th day of March 2013.



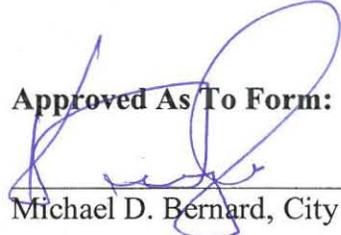
M A Y O R
Julián Castro

Attest:



Leticia M. Vacek, City Clerk

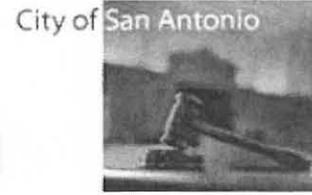
Approved As To Form:



Michael D. Bernard, City Attorney



Request for
**COUNCIL
ACTION**



Agenda Voting Results - 8

Name:	6, 7, 8, 9, 11, 12, 13A, 13B, 13C, 13D, 13E, 16						
Date:	03/07/2013						
Time:	09:23:32 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing the acquisition of fee simple title to 5,683 square feet (.1305 acres) of privately-owned real property located at 7424 Carriage Mist in NCB 17293 in Council District 8, for the Carriage Mist Drainage Improvement Project, a 2007 Stormwater Revenue Bond funded project; declaring it to be a public project and authorizing expenditures not to exceed \$210,000.00 payable to the selected title company for land and associated closing costs. [Peter Zanoni, Deputy City Manager; Mike Frisbie, Director, Capital Improvements Management Services]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2	x					
Leticia Ozuna	District 3	x					
Rey Saldaña	District 4	x					
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x			x	
Cris Medina	District 7		x				x
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

Attachment I

Real Estate Sales Contract

The Seller identified below agrees to sell the Property to the City of San Antonio under the terms and conditions of this agreement.

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Authorizing Ordinance:

Parcel // Project: 19037 // Carriage Mist Drainage Improvement

Seller: Joe Fox and Irma Butcher

Address: 7242 Carriage Mist, San Antonio, Texas 78249

Property: Lot 88, Block 25, New City Block 17293, Carriage Hills, Phase IIIA, Planned Unit Development, in the City of San Antonio, Bexar County, Texas, according to plat thereof recorded in Volume 955, Page 148, Deed and Plat Records of Bexar County, Texas.

Title Company: Alamo Title Company

Address: 4 Dominion Drive, Building 4, Suite 100, San Antonio, Texas
78257

Phone: 210.698.0924

Purchase Price: \$190,000

Effective Date: The date the Title Company acknowledges a fully executed copy of this Agreement.

County for Performance: Bexar County, Texas

1. Deadlines and Other Dates.

1.01. Deadlines in this contract expire at 5:00 P.M. local time where the Property is located. If a deadline falls on a Saturday, Sunday, or national holiday, the deadline will be extended to the next day that is not a Saturday, Sunday, or national holiday. Time is of the essence.

Closing Date: 45 days after the Effective Date.

Closing Time: 10:00 A.M.

1.02. The deadlines may be altered by the mutual agreement of the parties. Buyer's consent may be made by the Assistant Director for Real Estate, Capital Improvements Management Services, without further authorization of City Council.

2. Closing Documents.

2.01. At closing, Seller will deliver the following items:

Special Warranty Deed

IRS Nonforeign Person Affidavit

Evidence of Seller's authority to close this transaction

Notices, statements, and certificates as specified in **Exhibit C**

The documents listed above are collectively known as the "Closing Documents."

2.02. At closing, Buyer will deliver the Purchase Price.

2.03. Unless otherwise agreed by the parties in writing before closing, the deed will be substantially in the form attached as **Exhibit D**. The deed may except from warranty those items contained in Schedule B of the latest effective title commitment. It may not except rights of parties in possession, survey-related matters, or other rights not arising out of a recorded instrument.

3. Exhibits.

The following are attached to and are part of this contract for all purposes as if fully set forth:

Exhibit A—Representations; Environmental Matters

Exhibit B—Notices, Statements, and Certificates

Exhibit C—Deed

4. Title and Survey.

4.01. *Review of Title.* The following statutory notice is provided to Buyer on behalf of the real estate licensees, if any, involved in this transaction: Buyer is advised that it should either have the abstract covering the Property examined by an attorney of Buyer's own selection or be furnished with or obtain a policy of title insurance.

4.02. *Encumbrances.* If Buyer's examination discloses clouds or encumbrances in the Property's title unacceptable to Buyer, Buyer may extend the closing date up to an additional 60 days to try to cure the clouds and encumbrances. If Buyer does not cure the clouds and encumbrances or determines in its discretion that doing so is uneconomical, Buyer may refuse to close. Buyer's cancellation does not impair Buyer's right later to take the Property in condemnation.

4.03. *Just Condemnation Value.* If Buyer condemns, then Seller acknowledges that just compensation for Buyer's taking the Property would be the Purchase Price. Seller declares the Purchase Price to be the fair market value of the Premises. This acknowledgment survives termination of this agreement.

4.04. *Waiver of Repurchase Right.* As to any condemnation by Buyer, Seller knowingly and intentionally waives the requirements of (A) Texas Property Code §§ 21.0111, 21.0112, and 21.023, which relate to information disclosure and (B) Texas Property Code §§ 21.101 through 21.103, which relate to repurchase. Seller's agreement to these terms survives Buyer's decision to condemn in lieu of proceeding under this contract.

5. Transfer of Possession, Removal of Encroachments, Due Diligence.

5.01. Possession. Buyer may take possession of the Property and begin construction immediately on execution of this contract.

5.02. Removal of any Encroachments. As a negotiated part of the Purchase Price, Seller has ten days after the Closing Date to remove any and all of Seller's property from the Property. Should Seller not remove all of Seller's property by that time, Buyer may remove and dispose of any such property and have no further liability to Seller and Seller must immediately refund to Buyer any part of the Purchase Price allocated to Seller's relocation of the Seller's property. This Section 5.02 will survive closing.

5.03. Extension. Buyer may delay the closing date for an additional 60 days if it determines in its discretion that it needs to perform a Phase II environmental site assessment.

5.04. Termination. Buyer may terminate this contract before Closing without liability if it reasonably determines that the cost of environmental remediation will exceed 10% of the Purchase Price.

6. Representations.

The parties' representations stated in **Exhibit B** are true and correct as of the Effective Date and must be true and correct on the Closing Date.

7. Allocation of Closing Costs.

7.01. Closing Costs. Buyer pays all closing costs other than attorney fees for a lawyer, if any, hired to represent seller and any expenses Seller incurs outside the usual and customary costs ordinarily paid through a title company.

7.02. Ad Valorem Taxes. Ad valorem taxes for the Property for the calendar year of closing will be prorated between Buyer and Seller as of the Closing Date according to Section 26.11 of the Texas Tax Code. In no event is Buyer liable for any roll back taxes.

8. Closing.

This transaction will close at Title Company's offices at the Closing Date and Closing Time. At closing, the following will occur:

- a. *Closing Documents.* The parties will execute and deliver, or cause to be delivered, the Closing Documents.
- b. *Payment of Purchase Price.* Buyer will deliver the Purchase Price and other amounts that Buyer is obligated to pay under this contract to Title Company.
- c. *Disbursement of Funds; Recording; Copies.* Title Company will be instructed to disburse the Purchase Price and other funds in accordance with this contract, record the deed and the other Closing Documents directed to be recorded, and distribute documents and copies in accordance with the parties' written instructions.
- d. *Possession.* If not previously transferred, Seller will deliver possession of the Property to Buyer.
- e. *Failure To Deliver Indefeasible Title.* Buyer need not close if Seller cannot or does not deliver indefeasible title at closing.

9. Prohibited Interest in Contracts.

9.01. The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- (i) a City officer or employee;

(ii) his parent, child or spouse;

(iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;

(iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

9.02. Seller warrants and certifies as follows:

(i) Seller and its officers, employees and agents are neither officers nor employees of the City.

(ii) Seller has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

9.03. Seller acknowledges that City's reliance on the above warranties and certifications is reasonable.

10. Public Information.

Seller acknowledges that this instrument and all documents ancillary to it are public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public.

In Witness Whereof, the parties have caused their representatives to set their hands.

BUYER:

City of San Antonio,
a Texas municipal corporation

SELLER:

Joe Fox and Irma Butcher

Steve Hodges, Real Estate Manager

Joe Fox Butcher

Date

Date

Approved As To Form:

City Attorney

Irma Butcher

Date

Title Company Receipt for Contract

Parcel: 19037

Seller: Joe Fox and Irma Butcher

Address: 7242 Carriage Mist, San Antonio, Texas 78249

Buyer: City of San Antonio

Address: P.O. Box 839966, San Antonio, Texas 78283-3966

Project: Carriage Mist Drainage Improvement

Title Company acknowledges receipt from Buyer of three fully executed counterpart originals of the Contract on the same date, with one fully executed original Contract being returned to each of Seller and Buyer.

Alamo Title Company

Name

Signature

Title

Date

Exhibit A

Representations

Seller represents to Buyer that the following are true and correct as of the Effective Date and will be true and correct on the Closing Date.

1. *Authority.* Seller has authority to convey the Property to Buyer. This contract is, and all documents required by this contract to be executed and delivered to Buyer at closing will be, duly authorized, executed, and delivered by Seller.
2. *Litigation.* There is no litigation pending or threatened against Seller that might affect the Property or Seller's ability to perform its obligations under this contract.
3. *Violation of Laws.* Seller has not received notice of violation of any law, ordinance, regulation, or requirements affecting the Property or Seller's use of the Property.
4. *Condemnation; Zoning; Land Use; Hazardous Materials.* Seller has not received notice of any condemnation, zoning, or land-use proceedings affecting the Property or any inquiries or notices by any governmental authority or third party with respect to the presence of hazardous materials on the Property or the migration of hazardous materials from the Property.
5. *No Other Obligation to Sell the Property or Restriction against Selling the Property.* Except for granting a security interest in the Property, Seller has not obligated itself to sell the Property to any party other than Buyer. Seller's performance of this contract will not cause a breach of any other agreement or obligation to which Seller is a party or to which it is bound.
6. *No Liens.* On the Closing Date, the Property will be free and clear of all mechanic's and materialman's liens and other liens and encumbrances of any nature except the Permitted Exceptions, and no work or materials will have been furnished to the Property that might give rise to mechanic's, materialman's, or other liens against the Property other than work or materials to which Buyer has given its consent.
7. *Leases.* On the Closing Date, the Property will be free and clear of all Leases, and no person, other than Buyer, will have a claim to possession or occupancy of the Property by, through, or under Seller or its predecessors in interest.
8. *Wells.* There are no water or other wells on the property, capped or uncapped, registered or unregistered.

Exhibit B

Notices, Statements, and Certificates

The following notices, statements, and certificates are attached for delivery to Buyer, and Buyer acknowledges receipt of the notices, statements, and certificates by executing this contract:

If applicable, notice concerning underground storage tanks, described in section 334.9 of title 30 of the Texas Administrative Code

Exhibit C

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Notice of Confidentiality Rights: If You Are a Natural Person, You May Remove or Strike Any or All the Following Information from Any Instrument That Transfers an Interest in Real Property Before it Is Filed for Record in the Public Records: Your Social Security Number or Your Driver's License Number.

**SPECIAL WARRANTY DEED
(AND ASSIGNMENT OF CLAIMS)**

Authorizing Ordinance:

Parcel: 19037

Grantor: Joe Fox and Irma Butcher

Grantor's Mailing Address: 7242 Carriage Mist, San Antonio, Texas 78249

Grantee: City of San Antonio

Grantee's Mailing Address: P.O. Box 839966, San Antonio, Texas 78283-3966 (Attention: Director, Capital Improvement Management Services)

Consideration: \$10 in hand paid and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged.

Property: Lot 88, Block 25, New City Block 17293, Carriage Hills, Phase IIIA, Planned Unit Development, in the City of San Antonio, Bexar County, Texas, according to plat thereof recorded in Volume 955, Page 148, Deed and Plat Records of Bexar County, Texas.

Grantor, for the consideration and subject to the reservations from and exceptions to conveyance and warranty, **grants, sells, and conveys to Grantee**, together with all and singular the rights and appurtenances thereto in anywise belonging, to have and to hold to Grantee, and Grantee's heirs and assigns forever.

Grantor binds Grantor and Grantor's heirs, executors, administrators, and successors to warrant and forever defend all and singular the property to Grantee and Grantee's heirs, executors, administrators, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through, or under Grantor, but not otherwise.

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

Assignment of Claims

In addition to the conveyance of real estate addressed above, Grantor hereby assigns to Grantee all choate and inchoate statutory and common-law claims, if any, it may have against its predecessors in title and against any other potentially responsible person for environmental contamination of the Property now known or later found to exist.

Joe Fox Butcher

Date

Irma Butcher

Date

State of Texas §

County of Bexar §

This instrument was acknowledged before me this date by Joe Fox Butcher.

Date: _____

Notary Public, State of Texas

State of Texas §

County of Bexar §

This instrument was acknowledged before me this date by Irma Butcher.

Date: _____

Notary Public, State of Texas

Approved as to Form:

City Attorney

After recording, please return to:
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966
(Attention: Director, Capital Improvement Management Services)