

RESOLUTION NO. 2009- 25 R

A resolution authorizing the City Manager to accept deeds and execute contracts and other documents necessary for the acquisition of real property at 1208 Crestwood, Victoria, Texas owned by David and Pauline Castaneda, in the amount of \$50,000.00, for the Laurent Street Reconstruction Project – Phase II; and declaring an effective date.

IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF VICTORIA, TEXAS:

1.

The City Manager is authorized to accept deeds and execute the attached **Real Estate Sales Contract** and other necessary documents, with changes to be approved by the City Attorney, for the acquisition of real property at 1208 Crestwood, described as part of Lot 16, Block 8 of Crestwood Subdivision, Victoria, Texas owned by David and Pauline Castaneda, in the amount of \$50,000.00, for the Laurent Street Reconstruction Project– Phase II.

2.

All other necessary parties may be joined in the aforementioned transaction, and the City Manager is authorized to accept a deed to the aforementioned property.

3.

This resolution shall become effective immediately upon adoption.

PASSED, this the 17th day of February, 2009.

AYES: 7

NAYS: 0

ABSTENTIONS: 0

APPROVED AND ADOPTED, this the 17th day of February, 2009.



ATTEST:

Scarlet Swoboda
SCARLET SWOBODA, City Secretary

Will Armstrong
WILL ARMSTRONG, Mayor of the
City of Victoria, Texas

APPROVED AS TO LEGAL FORM:

Miles K. Risley
MILES K. RISLEY, City Attorney

Distribution: Legal Department
Finance Department
Public Works Department

Copies Sent: **FEBRUARY 18, 2009**

Real Estate Sales Contract

This contract to buy and sell real and personal property is between Seller and Buyer as identified below and is effective on the date ("Effective Date") of the last of the signatures by Seller and Buyer as parties to this contract and by Title Company to acknowledge receipt of the Earnest Money. Buyer must deliver the Earnest Money to Title Company and obtain Title Company's signature before the Earnest Money Deadline provided in section A.1. for this contract to be effective. If the Earnest Money is paid by check and payment on presentation is refused, Buyer is in default. This contract will not be effective until the City Council has authorized the City Manager to execute it.

Seller: David Castaneda and Pauline Castaneda
Address: 1602 N. Bridge St., Victoria, Texas 77901
Phone: 361-578-9784

Buyer: City of Victoria
Address: c/o Legal Department; P. O. Box 1758, Victoria, Texas 77902
Phone: 361-485-3520
E-mail: mrисley@victoriatx.org
Type of entity: Texas Municipal Corporation

Property: Fee simple interest in the Part of Lot 16, Block 8 of Crestwood Subdivision depicted in yellow in attached **Exhibit C**, and

Temporary Construction Easement, for a period of two years, with the right to remove all improvements in the part of Lot 16, Block 8 of Crestwood Subdivision depicted in pink in attached **Exhibit C**, and

Any leases and other occupancy rights associated with any part of the property depicted by the pink and/or yellow areas of **Exhibit C**. This Temporary Construction Easement will allow the Buyer to enter, remove, and evict any tenants from all structures and land in the pink area shown on **Exhibit C** in accordance with the Special Provisions of **Exhibit B**.

Title Company: Stewart Title of the Coastal Bend
Address: 202 W. Goodwin, Victoria Texas 77901
Phone: 361-575-4781

Purchase Price: \$50,000, plus the Buyer's execution of agreements described in the Special Provisions.

Earnest Money: \$1,000.00

Surveyor: Urban Surveying Inc.

County for Performance: Victoria

A. Deadlines and Other Dates: All deadlines in this contract expire at 5:00 P.M. local time unless otherwise specified 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. A national holiday is a holiday designated by the federal government. Time is of the essence.

1. Earnest Money Deadline: _____, 2009
2. Delivery of Title Commitment: 30 days after the Effective Date
3. Delivery of Survey: 30 days after the Effective Date

Exhibit A

4. Delivery of legible copies of instruments referenced in Title Commitment and Survey: 30 days after Effective Date
5. End of Inspection Period: 30 days after Effective Date
6. Title Objection Deadline: 30 days after Delivery of Title Commitment and Survey to Buyer
7. Closing Date: **March 15, 2009**
8. Closing Time: **3:00 pm.**

B. Closing Documents:

At closing, Seller will deliver a General Warranty Deed to Buyer conveying good and indefeasible title to the Property to Buyer. The documents listed in this Section B are collectively known as the "Closing Documents." Unless otherwise agreed by the parties before closing, the deed will be prepared using the forms contained in the current edition of the *Texas Real Estate Forms Manual* (State Bar of Texas) except as clauses must be specifically drafted to incorporate the terms described in this contract.

Exhibits: The following are attached to and are a part of this contract:

Exhibit A—Representations; Environmental Matters

Exhibit B—Special Provisions

Exhibit C—Depiction of Property

D. Purchase and Sale of Property: Seller agrees to sell and convey the Property to Buyer, and Buyer agrees to buy and pay Seller for the Property. The promises by Buyer and Seller stated in this contract are the consideration for the formation of this contract.

E. Interest on Earnest Money: Buyer may direct Title Company to invest the Earnest Money in an interest-bearing account in a federally insured financial institution by giving notice to Title Company and satisfying Title Company's requirements for investing the Earnest Money in an interest-bearing account. Any interest earned on the Earnest Money will be paid to the party that becomes entitled to the Earnest Money.

F. Title and Survey

1. *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.

2. *Title Commitment; Title Policy.* "Title Commitment" means a Commitment for Issuance of an Owner Policy of Title Insurance by Title Company, stating the condition of title to the Land. The "effective date" stated in the Title Commitment must be after the Effective Date of this contract. "Title Policy" means an Owner Policy of Title Insurance issued by Title Company in conformity with the last Title Commitment delivered to and approved by Buyer.

3. *Survey.* "Survey" means an on-the-ground, staked plat of survey and metes-and-bounds description of the Land, prepared by Surveyor or another surveyor satisfactory to Title Company, dated after the Effective Date, and certified to comply with the current standards and specifications as published by the Texas Society of Professional Surveyors for the Survey Category.

4. *Delivery of Title Commitment, Survey, and Legible Copies.* Buyer will attempt to obtain the Title Commitment by the deadline stated in section A.2; the Survey by the deadline stated in section A.3; and legible copies of the instruments referenced in the Title Commitment and Survey by the deadline stated in section A.4.

5. *Title Objections.* Buyer has until 30 days after the Delivery of Title Commitment by the deadline stated in section A.6. ("Title Objection Deadline") to review the Survey, Title Commitment, and legible copies of the title instruments referenced in them and notify Seller of Buyer's objections to any of them ("Title Objections"). Buyer will be deemed to have approved all matters reflected by the Survey, and Title Commitment to which Buyer has made no Title Objection by the Title Objection Deadline. The matters that Buyer either approves or is deemed to have approved are "Permitted Exceptions." If Buyer notifies Seller of any Title Objections, Seller has five days from receipt of Buyer's notice to notify Buyer whether Seller agrees to cure the Title Objections before closing ("Cure Notice"). If Seller does not timely give its Cure Notice or timely gives its Cure Notice but does not agree to cure all the Title Objections before closing, Buyer may, within five days after the deadline for the giving of Seller's Cure Notice, notify Seller that either this contract is terminated or Buyer will proceed to close, subject to Seller's obligations to resolve the items listed in Schedule C of the Title Commitment, remove the liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date, and cure the Title Objections that Seller has agreed to cure in the Cure Notice. At or before closing, Seller must resolve the items that are listed on Schedule C of the Title Commitment, remove all liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date of this contract, and cure the Title Objections that Seller has agreed to cure.

G. Inspection Period

1. Buyer may enter the Property before closing to inspect it by the deadline stated in section A.5 as long as Buyer does not interfere in any material manner with existing operations or occupants of the Property, and Seller is notified in advance of Buyer's plans to conduct tests so that Seller may be present during the tests.
2. Buyer may terminate this contract should the inspection discover the presence of hazardous materials, or any adverse environmental conditions.

H. Representations: The parties' representations stated in Exhibits A, B and C are true and correct as of the Effective Date and must be true and correct on the Closing Date.

I. Condition of the Property until Closing & Cooperation

1. *Claims; Hearings.* Seller will notify Buyer promptly of any claim or administrative hearing that is threatened, filed, or initiated before closing that involves or directly affects the Property.
2. *Cooperation.* Seller will cooperate with Buyer (a) before and after closing, to transfer the applications, permits, and licenses held by Seller and used in the operation of the Property and to obtain any consents necessary for Buyer to operate the Property after closing and (b) before closing, with any reasonable evaluation, inspection, audit, or study of the Property prepared by, for, or at the request of Buyer.

J. Termination

1. Disposition of Earnest Money after Termination

- a. *To Buyer.* If Buyer terminates this contract in accordance with any of Buyer's rights to terminate, Seller will, within 5 days after receipt of Buyer's termination notice, authorize Title Company to deliver the Earnest Money to Buyer, less \$100, which will be paid to Seller as consideration for the right granted by Seller to Buyer to terminate this contract.
- b. *To Seller.* If Seller terminates this contract in accordance with any of Seller's rights to terminate,

Seller will, within 5 days after receipt of Seller's termination notice, authorize Title company to pay and deliver the Earnest Money to Buyer.

2. *Duties after Termination.* If this contract is terminated, Buyer will promptly return to Seller all documents relating to the Property that Seller has delivered to Buyer and all copies that Buyer has made of the documents. After return of the documents and copies, neither party will have further duties or obligations to the other under this contract, except for those obligations that cannot be or were not performed before termination of this contract and those obligations that survive termination under the express terms of this contract.

K. Closing

1. *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 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 in funds acceptable to Title Company. The Earnest Money will be applied to the Purchase Price.

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. *Delivery of Originals.* Seller will deliver to Buyer the originals of Seller's Records.

e. *Possession.* Seller will deliver possession of the Property to Buyer, subject to the Permitted Exceptions existing at closing and any lien and security interest in favor of Seller, if the sale is seller-financed.

2. Transaction Costs

a. *Buyer's Costs.* Buyer will pay 100% of the escrow fee charged by Title Company and the costs to obtain, deliver, and record all documents other than those to be recorded at Seller's expense. Buyer will also pay for the cost of title insurance and any required surveys.

b. *Ad Valorem Taxes.* This is the purchase of only a part of the property by a tax-exempt entity. Therefore there is no need to prorate ad valorem taxes.

3. *Issuance of Title Policy.* Buyer will cause Title Company to issue the Title Policy to Buyer as soon as practicable after closing.

L. Default and Remedies

1. *Seller's Default.* If Seller fails to perform any of its obligations under this contract or if any of Seller's representations is not true and correct as of the Effective Date or on the Closing Date ("Seller's Default"), Buyer may elect either of the following as its sole and exclusive remedy:

a. *Termination; Liquidated Damages.* Buyer may terminate this contract by giving notice to Seller

on or before the Closing Date and Closing Time and have the Earnest Money, less \$100 as described above, returned to Buyer. Unless Seller's Default relates to the untruth or incorrectness of Seller's representations for reasons not reasonably within Seller's control, if Seller's Default occurs after Buyer has incurred costs to investigate the Property after the Effective Date and Buyer terminates this contract in accordance with the previous sentence, Seller will also pay to Buyer as liquidated damages the lesser of Buyer's actual out-of-pocket expenses incurred to investigate the Property after the Effective Date or the amount of Buyer's Liquidated Damages, within ten days after Seller's receipt of an invoice from Buyer stating the amount of Buyer's expenses.

b. *Specific Performance.* Unless Seller's Default relates to the untruth or incorrectness of Seller's representations for reasons not reasonably within Seller's control, Buyer may enforce specific performance of Seller's obligations under this contract. If title to the Property is awarded to Buyer, the conveyance will be subject to the matters stated in the Title Commitment.

2. *Buyer's Default.* If Buyer fails to perform any of its obligations under this contract ("Buyer's Default"), Seller may elect either of the following as its sole and exclusive remedy:

a. *Termination; Liquidated Damages.* Seller may terminate this contract by giving notice to Buyer on or before the Closing Date and Closing Time and have the Earnest Money paid to Seller. If Buyer's Default occurs after Seller has incurred costs to perform its obligations under this contract and Seller terminates this contract in accordance with the previous sentence, Buyer will also reimburse Seller for the lesser of Seller's actual out-of-pocket expenses incurred to perform its obligations under this contract or the amount of Seller's Additional Liquidated Damages, within ten days of Buyer's receipt of an invoice from Seller stating the amount of Seller's expenses.

b. *Specific Performance.* Seller may enforce specific performance of Buyer's obligations under this contract. If title to the Property is awarded to Buyer, the conveyance will be subject to the matters stated in the Title Commitment.

3. *Liquidated Damages.* The parties agree that just compensation for the harm that would be caused by a default by either party cannot be accurately estimated or would be very difficult to accurately estimate and that Buyer's Liquidated Damages or the Earnest Money and Seller's Additional Liquidated Damages are reasonable forecasts of just compensation to the nondefaulting party for the harm that would be caused by a default.

M. Miscellaneous Provisions

1. *Notices.* Any notice required by or permitted under this contract must be in writing. Any notice required by this contract will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this contract. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, electronic mail, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein. Copies of each notice must be given by one of these methods to the attorney of the party to whom notice is given.

2. *Entire Contract.* This contract, together with its exhibits and any Closing Documents delivered at closing constitute the entire agreement of the parties concerning the sale of the Property by Seller to Buyer. There are no oral representations, warranties, agreements, or promises pertaining to the sale of the Property by Seller to Buyer not incorporated in writing in this contract.

3. *Amendment.* This contract may be amended only by an instrument in writing signed by the parties.

4. *Prohibition of Assignment.* Buyer may not assign this contract or any of Buyer's rights under it without Seller's prior written consent, and any attempted assignment is void. This contract binds, benefits, and may be enforced by the parties and their respective heirs, successors, and permitted assigns.

5. *Survival.* The obligations of this contract that cannot be performed before termination of this contract or before closing will survive termination of this contract or closing, and the legal doctrine of merger will not apply to these matters. If there is any conflict between the Closing Documents and this contract, the Closing Documents will control.

6. *Choice of Law; Venue; Alternative Dispute Resolution.* This contract will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in the County for Performance, except as otherwise provided by applicable law. Time permitting, the parties will submit in good faith to an alternative dispute resolution process before filing a suit concerning this contract.

7. *Waiver of Default.* It is not a waiver of default if the non-defaulting party fails to declare immediately a default or delays taking any action with respect to the default.

8. *No Third-Party Beneficiaries.* There are no third-party beneficiaries of this contract.

9. *Severability.* The provisions of this contract are severable. If a court of competent jurisdiction finds that any provision of this contract is unenforceable, the remaining provisions will remain in effect without the unenforceable parts.

10. *Ambiguities Not to Be Construed against Party Who Drafted Contract.* The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this contract.

11. *No Special Relationship.* The parties' relationship is an ordinary commercial relationship, and they do not intend to create the relationship of principal and agent, partnership, joint venture, or any other special relationship.

12. *Counterparts.* If this contract is executed in multiple counterparts, all counterparts taken together will constitute this contract.

EXECUTED, this the _____ day of _____, 2009.

Buyer: City of Victoria

Sellers:

Charles E. Windwehen, City Manager

David Castaneda
David Castaneda

(seal)

ATTEST:

Scarlet Swoboda, City Secretary

Pauline Castaneda
Pauline Castaneda

Exhibit A

Representations; Environmental Matters

A. Seller's Representations to Buyer

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. *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.
2. *Condemnation; Zoning; Land Use; Hazardous Materials.* Seller has not received notice of 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.
3. *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.
4. *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.

Exhibit A

Exhibit A

Special Provisions

The City of Victoria (Buyer) agrees to provide and execute agreements to provide the following to Seller:

1. On or before September 31, 2009, the Buyer will re-plat, at the Buyer's expense, the remaining unsold portion of Lot 16, Block 8 (1208 E. Crestwood), with the adjacent property located at 1206 E. Crestwood, Lot 15, Block 8, Crestwood Subdivision, into one legally platted tract of land, assuming Seller owns both lots at the time of re-platting.
2. The Buyer will provide a curb cut off Laurent Street and will have a new driveway approach constructed off Laurent Street, no closer to the intersection of Laurent Street and Crestwood Drive than the existing driveway.
3. The Buyer will give the Seller full salvage rights to the existing residence, including any accessory structures on the property. The Seller will have the right to remove such structures at any time prior to November 1, 2009. The Seller will not have an obligation to remove any such structures.
4. The Buyer will provide the Seller the option to lease the house and Property in the amount of \$100 per month until October 1, 2009. The lease will be on a City form, will be "as is," and will require the lessee to pay for all upkeep and maintenance of the property. The Seller will grant the Buyer the right to right to evict any and all tenants, including Seller, if necessary, from the aforesaid house and Property, after October 1, 2009.
5. The Buyer will ensure the house on the property covered by the Temporary Construction Easement is entirely removed on or before two years following the closing.

Buyer

Seller

David Castaneda
Pauline Castaneda

Exhibit B

Exhibit A

Depiction of Property

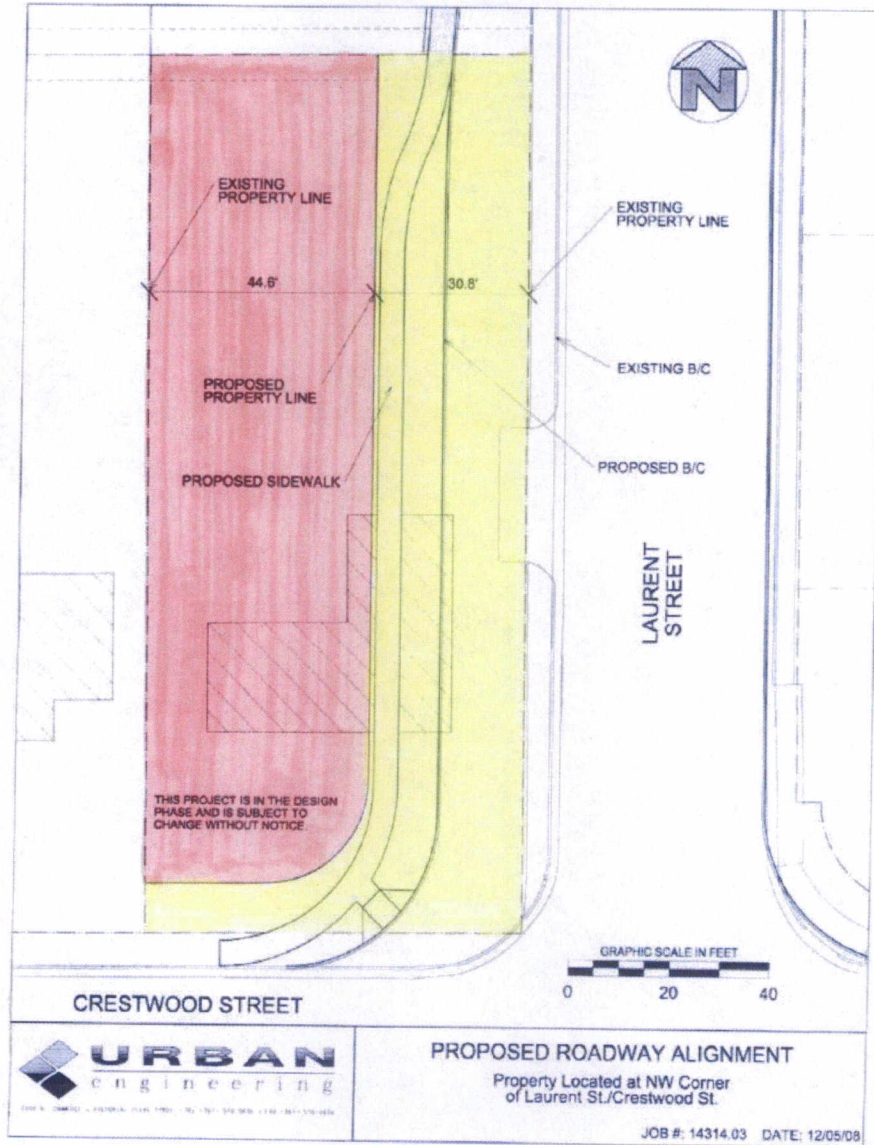


Exhibit C

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Exhibit A