

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

AGENDA DATE: February 15, 2022

PUBLIC HEARING DATE: March 1, 2022

CONTACT PERSON(S): Karina Brasgalla, (915) 212-1570, brasgallakx@elpasotexas.gov
Elizabeth Triggs, (915) 212-1619, triggsek@elpasotexas.gov

DISTRICT(S) AFFECTED: District 1

STRATEGIC GOAL: Goal 1: Cultivate an Environment Conducive to Strong, Sustainable Economic Development

SUBGOAL: 1.1: Stabilize and expand El Paso's tax base

SUBJECT:

An ordinance authorizing the City Manager to sign the Third Amendment to the Contract Of Sale between the City Of El Paso and VTRE Development, LLC to extend the deadline by which the buyer must submit building permit plans; amend the property boundaries to a 29.3651 acre parcel of land generally located at the Southeast Corner of Interstate 10 and Paseo Del Norte, legally described as a portion of Lot 1, Block 1, El Paso West, as filed in Book 57, Page 5 of the plat records of El Paso County, Texas; amend the purchase price to \$12,529,215.48; and extend the closing and termination dates.

BACKGROUND / DISCUSSION:

On March 2, 2021, the City of El Paso and VTRE Development, LLC entered into contract of sale for a 43.594-acre parcel located at the southeastern intersection of Interstate 10 and Paseo Del Norte in El Paso's west side. Under this third amendment to the Contract of Sale, the parties agree to: 1) extend the deadline by which building permits must be submitted from 60 days to 120 days; 2) amend the total acreage as referenced in Attachment A to 29.3651 acres; 3) amend the sale price to \$12,529,215.48 to reflect the revised acreage; and 4) extend the closing and termination dates.

PRIOR COUNCIL ACTION:

On March 2, 2021, by Ordinance No. 019146 City Council approved the original Contract of Sale.

AMOUNT AND SOURCE OF FUNDING:

N/A

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? X YES ___ NO

PRIMARY DEPARTMENT: Economic and International Development

SECONDARY DEPARTMENT: Capital Improvements

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

DEPARTMENT HEAD:

Elizabeth Triggs

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO SIGN THE THIRD AMENDMENT TO THE CONTRACT OF SALE BETWEEN THE CITY OF EL PASO AND VTRE DEVELOPMENT, LLC TO EXTEND THE DEADLINE BY WHICH THE BUYER MUST SUBMIT BUILDING PERMIT PLANS; AMEND THE PROPERTY BOUNDARIES TO A 29.3651 ACRE PARCEL OF LAND GENERALLY LOCATED AT THE SOUTHEAST CORNER OF INTERSTATE 10 AND PASEO DEL NORTE, LEGALLY DESCRIBED AS A PORTION OF LOT 1, BLOCK 1, EL PASO WEST, AS FILED IN BOOK 57, PAGE 5 OF THE PLAT RECORDS OF EL PASO COUNTY, TEXAS; AMEND THE PURCHASE PRICE TO \$12,529,215.48; AND EXTEND THE CLOSING AND TERMINATION DATES.

WHEREAS, Chapter 3(c) of the El Paso City Charter requires conveyances of real property to be exercised through an ordinance;

WHEREAS, Chapter 272 of the Texas Local Government Code allows a municipality to sell real property without notice and bidding requirements provided that the sale not be for less than fair market value as determined by an appraisal, the land is located in a reinvestment zone designated as provided by law and the municipality desires to have it developed under a project plan adopted by the municipality for the zone; and

WHEREAS, the Seller has obtained an appraisal for the Property the subject of this Agreement; and

WHEREAS, the Seller has created Tax Increment Reinvestment Zone No. 10 (TIRZ 10) pursuant to Chapter 311 of the Texas Tax Code; and

WHEREAS, the Property is located within TIRZ 10; and

WHEREAS, the City of El Paso desires to have the Property developed under the project plan adopted by the City of El Paso for TIRZ 10; and

WHEREAS, on March 2, 2021, the City of El Paso entered into a Contract of Sale with VTRE Development, LLC, as amended by that certain First Amendment to Contract of Sale dated June 25, 2021, and as amended by that Second Amendment to Contract of Sale dated December 21, 2021; and

WHEREAS, both parties wish to amend the contract of sale to modify the terms and conditions,

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

ORDINANCE NO. _____

That the City Manager, or designee, be authorized to execute the Third Amendment to the Contract of Sale between the City of El Paso and VTRE Development, LLC., extending the deadline by which the Buyer must submit building permits; amending the property boundaries to a 29.3651 acre parcel of land generally located at the Southeast Corner of Interstate 10 and Paseo Del Norte, legally described as a portion of Lot 1, Block 1, El Paso West, as filed in Book 57, Page 5 of the plat records of El Paso County, Texas; amending the purchase price to \$12,529,215.48; and extending the closing and termination dates.

PASSED AND APPROVED this _____ day of _____ 2022.

CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Evy Sotelo
Assistant City Attorney

APPROVED AS TO CONTENT

Elizabeth Triggs

Elizabeth Triggs, Interim Director
Economic & International Development

ORDINANCE NO. _____

THIRD AMENDMENT TO CONTRACT OF SALE

THIS THIRD AMENDMENT TO CONTRACT OF SALE (this “**Amendment**”) is effective as of the ____ day of February, 2022 (the “**Effective Date**”), by and between the **CITY OF EL PASO**, a municipal corporation organized and existing under the laws of the State of Texas (“**Seller**”), and **VTRE DEVELOPMENT, LLC**, a Delaware limited liability company, and/or its assigns (“**Buyer**”). Seller and Buyer are sometimes hereinafter referred to collectively as the “**Parties**”.

RECITALS

A. Buyer and Seller have previously executed and delivered that certain Contract of Sale dated as of March 2, 2021, as amended by that certain First Amendment to Contract of Sale dated June 25, 2021, as amended by that Second Amendment to Contract of Sale dated December 21, 2021 (as amended, the “**Contract**”), which is the subject of Lone Star Title Company of El Paso, Inc., Escrow No. 20104305.

B. Capitalized terms appearing in this Amendment and not otherwise defined herein shall have the meanings attributed to them in the Contract.

C. Seller and Buyer hereby agree to modify and amend the terms and conditions of the Contract as set forth in this Amendment.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto state, confirm and agree as follows:

1. **Defined Terms; Effectiveness.** Capitalized terms used in this Amendment and not defined have the meanings given in the Contract. This Amendment is effective as of the Effective Date, as defined within this Second Amendment.

2. **Section 1 (Building Permits) of the First Amendment is amended to read as follows:**

1. **Building Permits.** It shall be a condition precedent to Buyer’s obligation to proceed to the Closing that Buyer or its tenant shall have obtained a New Commercial Building Permit from Seller allowing Buyer’s tenant’s intended construction upon the Property of a distribution center for a national retailer. Buyer will submit to the City of El Paso’s Planning and Inspections Department an application for review and a complete set of building permit plans within 120 days of the Effective Date. In the event the Buyer does not submit a complete set of building permit plans for review by the Seller within 120 days of the Effective Date, then Buyer will be deemed to have waived this condition precedent to Closing.

3. **Property.** **Attachment “A”** to the Contract is deleted in its entirety and replaced with **Attachment “A”** to this Amendment. As a result of such substitution, the “Property” for purposes of the Contract will mean a 29.3651 acre parcel of land generally located at the southeast

corner of Interstate 10 and Paseo Del Norte, and legally described as a portion of Lot 1, Block 1, El Paso West, as filed in Book 57, page 5 of the Plat Records of El Paso County, Texas.

4. Purchase Price. The Purchase Price shall be \$12,529,215.48 and shall be paid by the Buyer to the Seller at Closing.

5. Section 5 (Termination) of the First Amendment, as amended in the Second Amendment is amended to read as follows:

5. Termination. If any of the conditions precedent set forth in Sections 1, 2 and 3 of the First Amendment to the Contract of Sale dated June 25, 2021 as amended by this Third Amendment, have not been satisfied within 120 calendar days after the Effective Date of this Third Amendment, then the Buyer may, in its sole discretion, either: (a) waive such conditions and proceed to Closing; or (b) terminate the Contract and receive a refund of the Deposit, whereupon the Parties shall have no further obligations under the Contract except any that expressly survive termination. In the event that Buyer has not communicated to Seller of Buyer's election within 135 calendar days after the Effective Date of this Third Amendment, then Buyer will have been deemed to have elected to terminate the Contract and receive a refund of the Deposit.

6. No Further Modifications. Except as specifically modified and amended pursuant to the terms of this Third Amendment, all terms and conditions of the Contract, First Amendment, and Second Amendment shall remain in full force and effect and are hereby affirmed by the Parties.

7. Effect of Amendment. In the event of any inconsistencies between this Third Amendment, Second Amendment, First Amendment, and the Contract, the terms of this Third Amendment shall govern and control. This Third Amendment may only be varied by a document, in writing, of even or subsequent date hereof, executed by the Parties.

8. Counterparts; Recitals. This Third Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. The recitals hereof are incorporated herein.

9. Facsimile and Electronic Signatures. This Third Amendment may be executed by either or all Parties by facsimile or other electronic signature, and any such facsimile or electronic signature shall be deemed an original signature.

[Signature Pages Attached]

IN WITNESS WHEREOF, Seller and Buyer have executed this Amendment as of the day and year first above written.

EXECUTED by Seller the ____ day of February, 2022.

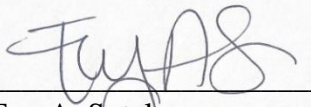
SELLER:

CITY OF EL PASO, TEXAS

By: _____

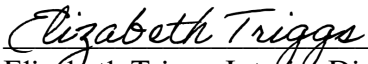
Tomas Gonzalez
City Manager

APPROVED AS TO FORM:



Evy A. Sotelo
Assistant City Attorney

APPROVED AS TO CONTENT:



Elizabeth Triggs, Interim Director
Economic & International Development

THE STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on this _____ day of February, 2022, by _____, as _____ of the City of El Paso, Texas.

Notary Public, State of Texas

My commission expires:

EXECUTED by Buyer the ____ day of February, 2022.

BUYER:

VTRE DEVELOPMENT, LLC,
a Delaware limited liability company

By: _____
David M. Harrison
President

THE STATE OF MISSOURI §
 §
COUNTY OF JACKSON §

This instrument was acknowledged before me on this _____ day of February, 2022, by David M. Harrison, as President of the Buyer.

Notary Public, State of Missouri

My commission expires:
