

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

DEPARTMENT: **Engineering**

AGENDA DATE: **May 19, 2009**

CONTACT PERSON/PHONE: **R. Alan Shubert, City Engineer**

DISTRICT AFFECTED: **2**

SUBJECT:

Item is to request approval of a resolution authorizing the City Manager to execute, on behalf of the City of El Paso, a purchase of private property to be used as right of way for the proposed *Northeast Transit Terminal*. The proposed right-of-way purchase has been reviewed and authorized by the Federal Transit Authority.

BACKGROUND / DISCUSSION:

The City of El Paso, working in conjunction the Federal Transit Authority, proposes to construct a new transit terminal to support the Northeast sector's public transportation requirements as well as the influx of personnel to Fort Bliss, Texas. This multi-purpose transit terminal and park-and-ride facility will be located in the Northeast area, specifically on Dyer and Wren Street. The terminal is proposed to consist of 10-12 bay facilities, commuter parking, covered and uncovered passenger areas, lighting, landscaping, benches, information kiosks, restrooms, ticket booth, public telephones, drinking fountains and a small maintenance/storage room.

PRIOR COUNCIL ACTION:

On March 11, 2008, it was recommended that the Chairman of the Mass Transit Board authorize the City Manager to evaluate and analyze alternatives available for the location of a proposed transit terminal in Northeast El Paso.

AMOUNT AND SOURCE OF FUNDING:

This expenditure is funded through FTA Grant TX-90-X573, a State of Texas Defense Economic Adjustment Grant, and Certificates of Obligation. No budgetary adjustments are necessary.

| <u>Project</u> | <u>Fund</u> | <u>Department</u> | <u>Account</u> | |
|----------------|-------------|-------------------|----------------|-----------------------|
| G600352 | 11655 | 60600011 | 508000 | \$1,961,826.95 (FTA) |
| PCP09MT007 | 11710 | 60600011 | 508000 | \$ 200,000.00 (State) |
| PCP09MT007 | 27265 | 14400100 | 508000 | \$ 551,484.51 (City) |

BOARD / COMMISSION ACTION:

(N/A)

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

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: Gene DeRay

APPROVED FOR AGENDA:

CITY MANAGER: R. Alan Shubert

DATE: _____

RESOLUTION

WHEREAS, the Mass Transit Department Board of the City of El Paso is interested in constructing and operating a Northeast Transit Terminal for the use and benefit of Sun Metro passengers and customers as a multi-purpose transit terminal; and

WHEREAS, on March 11, 2008, the Mass Transit Department Board of the City of El Paso authorized the City Manager to evaluate and analyze alternatives available for the location of a proposed transit terminal in Northeast El Paso; and,

WHEREAS, the owner of the following described parcel of land, is willing to sell its property and such property is needed for the purpose of a Northeast Transit Terminal,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF EL PASO:

THAT the City Manager be authorized to execute a Contract of Sale by and between the **CITY OF EL PASO** and **NORTHGATE PLAZA, LLC, a California Limited Company; ELIAS DONAY, DARYOUSH KHANI and JAKLIN MESHKANIAN**, to purchase property for the Northeast Transit Terminal, which property is described as follows:

Lot 7, Block 6, Northgate Replat "C," an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof on file in Volume 62, Page 45, Real Property Records, El Paso County, Texas,

THAT the Contract of Sale shall offer just compensation for the value of the land in the amount of \$2,700,000.00; and

THAT the City Manager of the City of El Paso or her designee is hereby authorized to execute any related documents necessary to accomplish the purchase of the property identified within this Resolution.

ADOPTED THIS ___ DAY OF _____, 2009.

City of El Paso

John F. Cook, Mayor

ATTEST:

Richarda Momsen
City Clerk

APPROVED AS TO FORM:



Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:



Patricia D. Adauto, Deputy City Manager
Development & Infrastructure Services

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

CONTRACT OF SALE

This Agreement is entered into as of the ____ day of May, 2009 by and between the **CITY OF EL PASO**, hereinafter referred to as the "City," and **NORTHGATE PLAZA, LLC**, a California Limited Liability Company; **ELIAS DONAY, DARYOUSH KHANI and JAKLIN MESHKANIAN**, hereinafter referred to as "Seller."

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 Seller hereby agrees to sell and convey and the City hereby agrees to acquire free and clear of any liens or encumbrances, the following real property located in El Paso County, Texas:

Lot 7, Block 6, Northgate Replat "C," an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof on file in Volume 62, Page 45, Real Property Records, El Paso County, Texas,

together with any interest of the Seller in (i) all improvements, and (ii) all right, title and interest of the Seller 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 a total of TWO MILLION SEVEN HUNDRED THOUSAND and 00/100 DOLLARS (\$2,700,000.00). The consideration recited herein represents a release of all claims, a settlement and compromise by all parties as to the value of the property herein conveyed in order to avoid litigation and the added expense of litigation.

2.1 Payment of Purchase Price. The full amount of the purchase price will be payable in cash at the closing.

3. Conditions to City's Obligations. The obligations of the Seller 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 ten (10) City business 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 on or before the expiration of ten (10) City business days 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. The Seller may at its option 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 Seller. The Seller hereby represents, to the best of its knowledge, covenants, and warrants to the City, as follows:

4.1 Parties in Possession. 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 Seller warrants that no person or persons own an interest in the fee title in the Property other than the Seller and that the joinder of no other third party shall be required to consummate this transaction.

4.3 Mechanic's Lien. (i) No action has been taken, suffered or permitted by or on behalf of the Seller, 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; or (ii) no liens or lien claims, choate or inchoate, arising from the Seller's actions or otherwise, exist or can exist for the benefit of mechanics or materialmen in regard to the Property. Except as expressly disclosed in the documents relating to this transaction, the Seller has 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 Seller.

4.4 Litigation. 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 With Law. The Property is in compliance with all applicable laws, ordinances, rules and regulations of any Government or any agency, body or subdivision, including any environmental issues related to the Seller's activities thereof.

4.7 Taxes. 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. The Seller agrees to pay the taxes due on the Property for the year 2008 and prorated taxes for the year 2009 through the date of Closing.

4.8 Pre-Closing Claims. The Seller agrees 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 Seller in connection with the Property. The City hereby expressly disclaims any and all liability to third parties that have any claims against the Seller. The City will not assume or agree to discharge any liabilities pertaining to the Property that occurred or accrued prior to the date of Closing. The Seller agrees to indemnify and hold the City

harmless from and against any claims, injuries, liabilities, 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 Seller has 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 Seller has good and indefeasible title to a 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 Seller 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 Seller 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 Seller contained in this document, or (ii) any breach or default by the Seller under any of the covenants or agreements contained in this document to be performed by the Seller, all of which shall survive the Closing hereof.

4.13 Survival. All representations, warranties, covenants and agreements of the Seller made in this document, except as noted in Paragraph 4.8 hereof, shall terminate upon the execution and delivery of the Deed and Closing hereunder.

4.14 DISCLAIMER. THE SELLER IS MAKING NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OR ANY NATURE WHATSOEVER WITH RESPECT TO THE PROPERTY, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY AS TO THE CONDITION, HABITABILITY, MERCHANTABILITY OR FITNESS OF THE PROPERTY FOR A PARTICULAR PURPOSE, EXCEPT FOR THE WARRANTIES OF TITLE SPECIFICALLY SET FORTH IN THE DEED OF CONVEYANCE.

DISCLAIMER BY THE CITY OF WARRANTIES OF THE SELLER, THE CITY ACKNOWLEDGES THAT (I) IT AND ITS OFFICERS, AGENTS, EMPLOYEES, AND ADVISORS HAVE BEEN GIVEN FULL AND COMPLETE OPPORTUNITY TO THE EXTENT THAT THEY IN THEIR SOLE JUDGMENT DEEMED APROPRIATE, DESIRABLE AND PRUDENT, (II) THE CITY AND SUCH PARTIES TAKE FULL RESPONSIBILITY FOR DETERMINING THE SCOPE OF THEIR INVESTIGATIONS OF THE PROPERTY AND FOR THE MANNER IN WHICH SUCH INVESTIGATIONS HAVE BEEN CONDUCTED, (III) THE CITY, TOGETHER WITH SUCH OTHER PARTIES, ARE FULLY CAPABLE OF EVALUATING THE ACCURACY OF THE INFORMATION AND MATERIAL OBTAINED BY THE CITY IN THE COURSE OF SUCH INVESTIGATION, AND (IV) THE CITY AND SUCH PARTIES HAVE NOT RELIED ON THE SELLER OR ON ANY OFFICER, EMPLOYEE, OR AGENT OF THE SELLER OR UPON ANY WRITTEN OR ORAL INFORMATION, REPRESENTATION OR FACT PROVIDED BY ANY SUCH PARTY WITH RESPECT TO ANY MATTER IN CONNECTION WITH THE CITY'S EVALUATION OF THE

PROPERTY, INCLUDING, BUT NOT LIMITED TO THE PHYSICAL CONDITION THEREOF. ACCORDINGLY, THE CITY AGREES TO PURCHASE THE PROPERTY "AS IS" AND "WHERE IS," WITHOUT ANY WARRANTY WHATSOEVER EXPRESS OR IMPLIED FROM THE SELLER TO THE CITY.

5. Closing. The closing of this transaction ("Closing") shall take place at the offices of LandAmerica Lawyers Title of El Paso, 301 East Yandell Drive, El Paso, Texas 79902 (the "Title Company") on or about June 12, 2009.

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. The Seller agrees to pay ad valorem taxes for the year 2008 and prorated for the year 2009 through the day of closing.

5.3 Closing Costs.

- (a) All recording fees arising from the recordation of documents necessary to show good title to the Property 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.

5.3 Seller's Obligations. At Closing, the Seller 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.

5.4 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.

5.5 Special Provisions. The Seller shall be entitled to remove all furnishings, fixtures, equipment, or its personal property from the Property before closing.

6. Default.

6.1 Breach by Seller. In the event that the Seller 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 the Seller's default, or the termination of this Agreement in accordance with its terms, due to the difficulty of assessing the Seller's actual damages as a result of such breach by City, the Seller shall have a right to receive the \$100.00 as independent consideration as well as the reasonable and necessary out-of-pocket expenses of the Seller directly relating to this Agreement, 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 the Seller agrees to accept and take such cash payment as its total, reasonable damages and relief and as the Seller's 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:

Seller: **NORTHGATE PLAZA, LLC, a California Limited Company; ELIAS DONAY, DARYOUSH KHANI and JAKLIN MESHKANIAN**
Attn: George Meshkianian
2932 Willshire Blvd., Suite 205
Santa Monica, CA 90403

City: City Manager
City of El Paso
2 Civic Center Plaza
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.

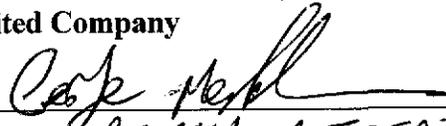
8.4 Binding Effect. This Agreement shall be binding upon the parties hereto and their respective successors and assigns.

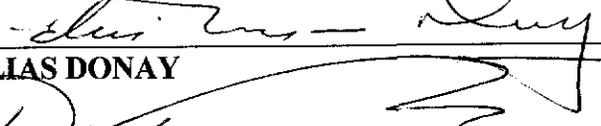
8.5 Compliance. In accordance with the requirements of Section 2B of the Texas Real Estate License Act, the City or its representatives is hereby advised that it should be furnished with or obtain a policy of title insurance or have an abstract covering the Property examined by an attorney of its own selection.

8.6 Reservation. The City reserves, and does not waive, its rights of sovereign immunity and similar rights and its rights under the Texas Tort Claims Act, except to the extent necessary to give legal effect to this Contract.

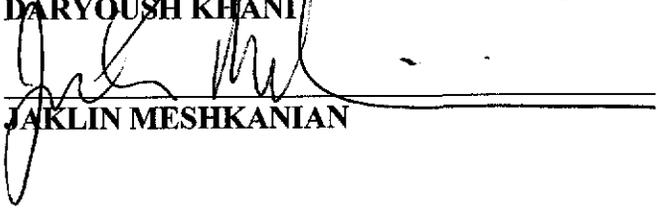
The above instrument, together with all conditions thereto is hereby EXECUTED by the Seller to be effective as of the _____ day of _____, 2009.

SELLER: NORTHGATE PLAZA, LLC, a California Limited Company

By: 
Name: BERKLEY ESTATES LP
Title: MEMBER-MANAGER


ELIAS DONAY


DARYOUSH KHANI


JAKLIN MESHKANIAN

(Acknowledgments begin on next page)

ACKNOWLEDGEMENT

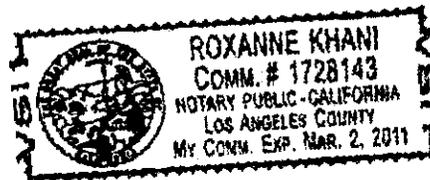
STATE OF CALIFORNIA)

COUNTY OF Los Angeles)

This instrument was acknowledged before me on the 6 day of May, 2009 by George Meshkarian Managing Member of NORTHGATE PLAZA, LLC, A CALIFORNIA LIMITED COMPANY.

3/2/2011
My commission expires

Roxanne Khani
Notary Public, State of California



ACKNOWLEDGEMENT

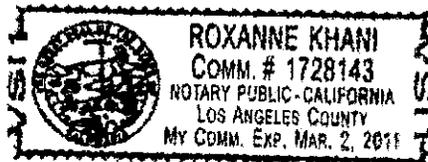
STATE OF CALIFORNIA)

COUNTY OF Los Angeles)

This instrument was acknowledged before me on the 7 day of May, 2009 by ELIAS DONAY.

3/2/2011
My commission expires

Roxanne Khani
Notary Public, State of California



ACKNOWLEDGEMENT

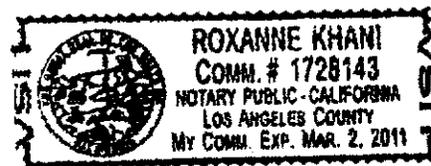
STATE OF CALIFORNIA)

COUNTY OF Los Angeles)

This instrument was acknowledged before me on the 6 day of May, 2009 by DARYOUSH KHANI.

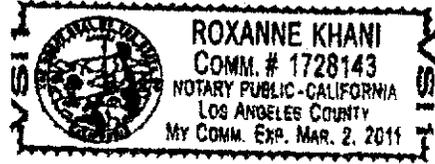
3/2/2011
My commission expires

Roxanne Khani
Notary Public, State of California



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ACKNOWLEDGEMENT



STATE OF CALIFORNIA)
COUNTY OF (Los Angeles)

This instrument was acknowledged before me on the 7 day of May, 2009 by
JAKLIN MESHKANIAN.

3/2/2011
My commission expires

Roxanne Khani
Notary Public, State of California

EXECUTED by the City of El Paso to be effective as of the _____ day of _____,
2009.

CITY OF EL PASO

By: _____
Joyce Wilson
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Theresa Cullen
Theresa Cullen
Deputy City Attorney

Patricia D. Adauto
Patricia D. Adauto
Deputy City Manager
Development & Infrastructure Services

ACKNOWLEDGEMENT

STATE OF TEXAS)
COUNTY OF EL PASO)

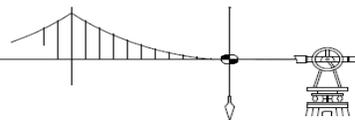
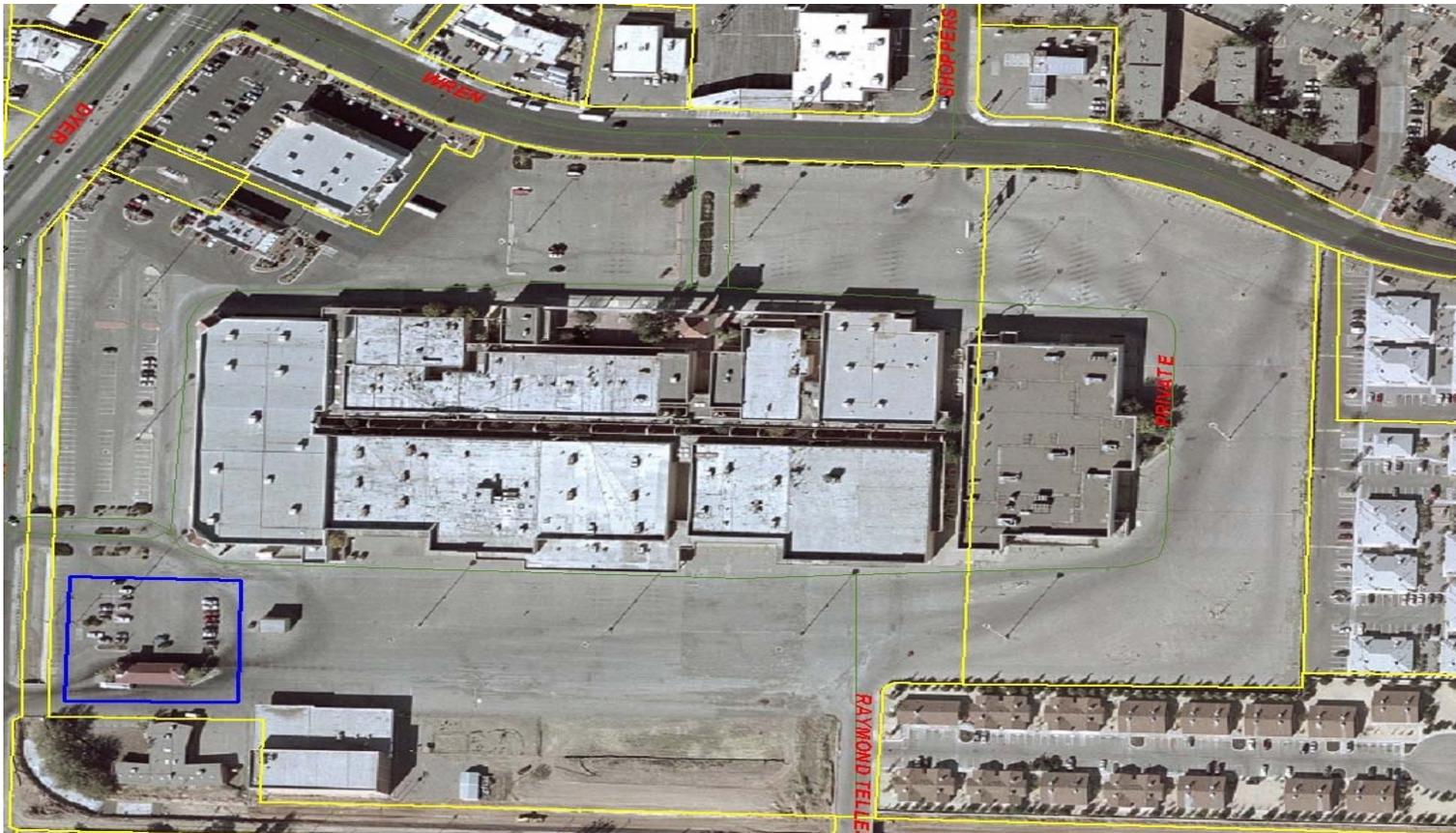
This instrument was acknowledged before me on the _____ day of _____, 2009 by
Joyce Wilson, City Manager of the City of El Paso.

My commission expires

Notary Public, State of Texas



NORTHEAST TRANSIT TERMINAL





Proposed Improvements

- **Commuter Park-And-Ride Facility**
- **Information Kiosks**
- **Lift Vehicle Drop-Off Areas**
- **10 to 12 Bay Facility**
- **Covered & Uncovered Passenger Areas**
- **Restrooms**
- **Public Telephones**
- **Bench Areas, Drinking Fountains**



Summary

- **Portion of Northgate Mall**
- **Vicinity of Existing Transit Terminal**
- **Access from Wren St. & Raymond Telles St.**
- **7.3190 acres of area**

Contract of Sale Amount : \$ 2,700,000

- **80% Federal Funds**
- **20% Local Funds**

(2009 Certificates of Obligation)



04/23/2009





Questions/Comments