

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

DEPARTMENT: **Engineering**

AGENDA DATE: **Introduction June 21, 2011
Public Hearing June 28, 2011**

CONTACT PERSON NAME AND PHONE NUMBER: **R. Alan Shubert, City Engineer, (915) 541-4423
William Lilly, Director, Community & Human Development, (915) 541-4643**

DISTRICT(S) AFFECTED: **Rep. Steve Ortega, District #7**

SUBJECT:

An Ordinance authorizing the City Manager to sign a contract of sale and any other necessary documents between the City of El Paso and the Housing Authority of the City of El Paso which will allow for the City to convey property commonly known as 8909 Old County Line Road, El Paso, El Paso County, Texas, including the improvements thereon.

BACKGROUND / DISCUSSION:

The facility was originally transferred from the County to the City in 1981, and was used as the "Ysleta Senior Citizen Center" up till 1999. At that time a larger senior center was built (Pavo Real) which rendered this center obsolete. In 2003, the Housing Authority and the City entered into a settlement agreement which the City agreed to the extent legally permissible to convey the Center with a use plan. Section 272.001 of the Texas Local Government Code provides that a political subdivision of the state may convey real property interest to a government entity without the statutory required notice and bidding requirements. The sales price will be ten dollars, and the following public purpose. The property (Building approx. 6015 sq. ft, .3347 acre lot) will have the following restrictions, to serve a public purpose:

- Be used as a community space for classes and programming for senior citizens and residents of the area;
- To serve HACEP's housing facilities at Graham, Tellez and Ochoa Senior Communities;
- An annual report will be submitted to the Community Development Director regarding services provided;
- The City reserves the right to perform periodic on-site monitoring on HACEP's compliance.

PRIOR COUNCIL ACTION:

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

CARE recommends approval

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

DEPARTMENT HEAD:

(If Department Head Summary Form is initiated by Purchasing, client department should sign also) Information copy to appropriate Deputy City Manager

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT OF SALE AND ANY OTHER NECESSARY DOCUMENTS BETWEEN THE CITY OF ELPASO AND THE HOUSING AUTHORITY OF THE CITY OF EL PASO WHICH WILL ALLOW FOR THE CITY TO CONVEY PROPERTY COMMONLY KNOWN AS 8909 OLD COUNTY LINE ROAD, EL PASO, EL PASO COUNTY, TEXAS, INCLUDING THE IMPROVEMENTS THEREON.

WHEREAS, as part of the Suncrest Townhomes litigation settlement approved by the City Council of the City of El Paso on Nov. 25, 2003 (Dec. 2, 2003), the Housing Authority of the City of El Paso (HACEP) and the City of El Paso (City) entered into a letter agreement on Dec. 5, 2003, in which the City agreed, to the extent permissible by law, to transfer the Julian Tellez Community Center and the Old Clardy Fox Library to HACEP, provided that HACEP completed an acceptable use plan for the identified properties to use the property for El Paso residents and neighborhoods; and,

WHEREAS, HACEP has submitted a Use Plan for the Julian Tellez Community Center, commonly known as 8909 Old County Line Road, and has notified the City that it will not submit a Use Plan for the Old Clardy Fox Library; and

WHEREAS, the City staff has reviewed HACEP's Use Plan for the Julian Tellez Community Center which states that the property will be used as a community space for classes and programming for senior citizens and residents of the area particularly contained within Census Tract 39.01, Block Group 200, as well as to HACEP's housing facilities at Graham, Tellez and Ochoa Senior Communities; and,

WHEREAS, HACEP is a governmental entity that has the power of eminent domain; and,

WHEREAS, Section 272.001 of the Texas Local Government Code provides a political subdivision of the state may convey land to a governmental entity without the statutory required notice and bidding requirements; and,

WHEREAS, the City Council of the City of El Paso finds that a conveyance of the property with a restriction that the Julian Tellez Community Center will be used as a community space for classes and programming for senior citizens and residents of the area particularly contained within Census Tract 39.01, Block Group 200 as well as to HACEP's housing facilities at Graham, Tellez and Ochoa Senior Communities, serves a public purpose and is in the public interest;

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

That the City Manager is hereby authorized to sign a Contract of Sale and any other necessary documents, in a form approved by the City Attorney's Office, conveying to the Housing

Authority of the City of El Paso, the following described real property and the improvements thereon:

A 0.3347 acre parcel, more or less, being a portion of Tract 23D, Block 38, Ysleta Grant, City of El Paso, El Paso County, Texas, according to a resurvey made for tax purposes and being more particularly described by metes and bounds in Exhibit "A" attached hereto and made a part hereof for all purposes, and commonly known as 8909 Old County Line Road.

PASSED AND APPROVED this _____ day of _____, 2011.

THE CITY OF EL PASO

John F. Cook, Mayor

ATTEST:

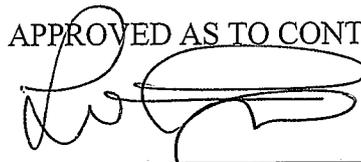
Richarda D. Momsen
Municipal Clerk

APPROVED AS TO FORM:



Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:



William Lilly, Director
Dept. of Community and Human Development

APPROVED AS TO CONTENT:



Liza Ramirez-Tobias
Capital Assets Manager

YSLETA GRANT, BLOCK 38
PORTION OF TRACT 23

Legal description of a parcel of land being a portion of Tract 23, Block 38; Ysleta Grant Surveys, belonging to Domecello, Inc. and being more particularly described as follows:

From a common corner to Tracts 23 and 24, Block 38; Ysleta Grant Surveys, being on the westerly right-of-way line of Old Country Road (40 foot right-of-way), same being the true point of beginning of this parcel of land.

Thence, South $54^{\circ}25'00''$ West along a line common to Tracts 23 and 24, Block 38, Ysleta Grant, a distance of one hundred ten and zero hundredths (110.00) feet,

Thence, North $35^{\circ}07'40''$ West, a distance of one hundred twenty seven and zero hundredths (127.00) feet,

Thence, North $58^{\circ}10'13''$ East, a distance of one hundred twenty seven and zero hundredths (127.00) feet, to the westerly right-of-way line of Old Country Road,

Thence, South $27^{\circ}05'00''$ East along a line common to Tract 23, Block 38, Ysleta Grant and the westerly right-of-way line of Old Country Road, a distance of one hundred twenty and zero hundredths (120.00) feet, to the point of beginning.

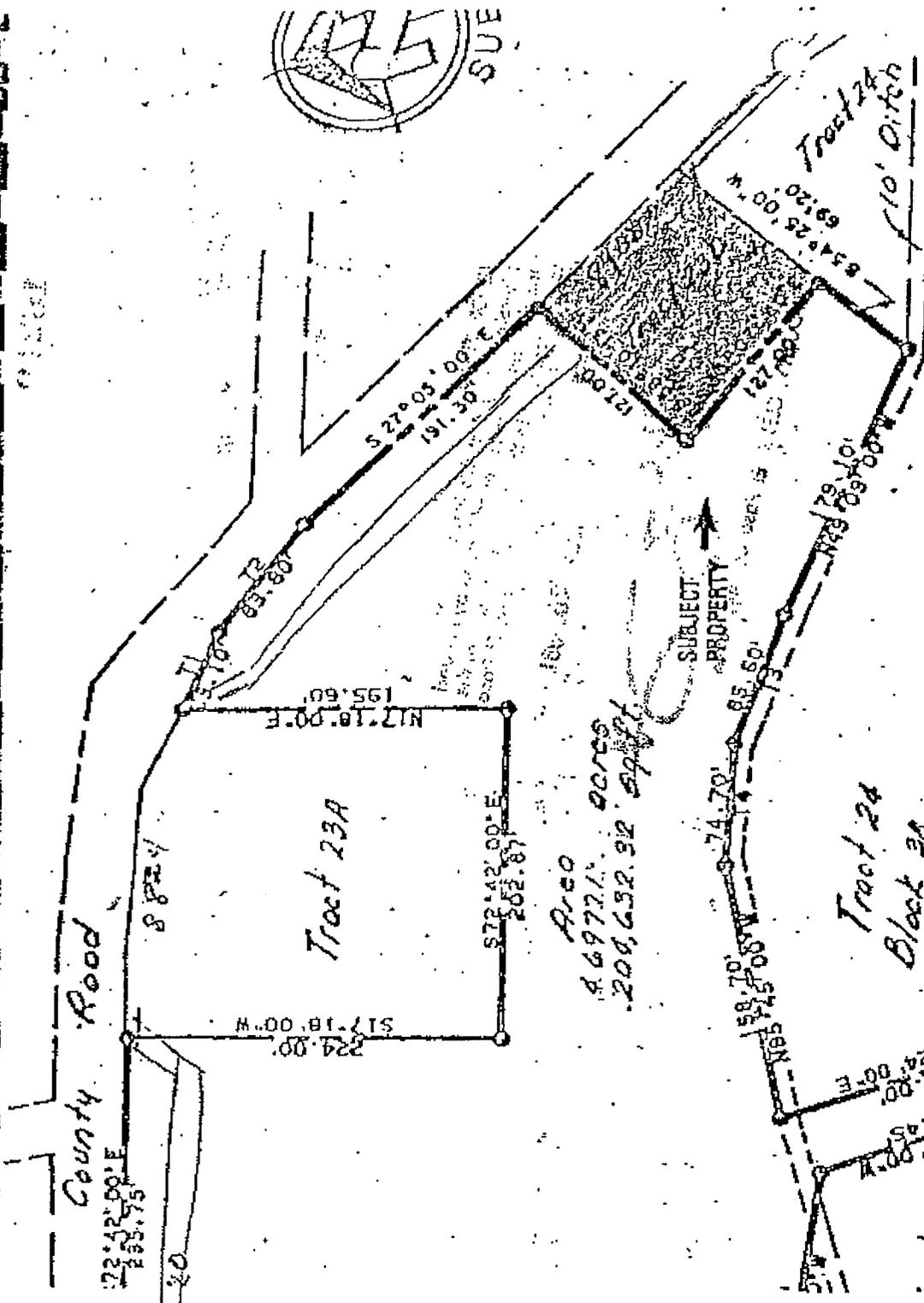
Said parcel of land contains 14,578.63 square feet or 0.3347 acre, more or less.

By: A. Borrego
Checked by: J. Baca
Reference No.: 251129
Date: July 24, 1981

/hd

1221-1734

Exhibit "A"
1 of 2



Area
4,697.71 acres
200,632.92 sq ft

Tract 24
Block 38
Ysleta Grant
Survey

RADIUS	LENGTH	TAN
1152.00	400.22	202.15

Alameda Avenue

A portion of Tract 23D, and a portion of Tracts 23B and 23C, Block 38, Ysleta Grant Surveys, El Paso, El Paso County, Texas

YOUR DRAFTER: [Signature]

DR. BY: A.F.V.

COMP BY: A.F.V.

Owner Demecello, Inc. Scale 1" = 100'

Legal Description 14,578.63 S.F. portion of Tract 23D, Blk 38, Ysleta Grant

Building Identification _____

Drawn By Sub-Land, Inc. Date 7/08/81

Client Community Development Code _____

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

CONTRACT OF SALE

This Agreement is entered into this ____ day of _____, 2011, by and between the **City of El Paso**, hereinafter referred to as the “City” and the **Housing Authority of the City of El Paso**, hereinafter referred to as the “Buyer.”

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

A 0.3347 acre parcel, more or less, being portion of Tract 23D, Block 38, Ysleta Grant, City of El Paso, El Paso County, Texas, according to a resurvey made for tax purposes and being more particularly described by metes and bounds in Exhibit “A” attached hereto and made a part hereof for all purposes, and commonly known as 8909 Old County Line Road,

together with any interest in (i) all improvements, if any, (ii) all right, title and interest of the City in and to any easements, appurtenances, and right-of-ways, 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, and (iii) all ground water, water rights or rights to surface water will be subject to all easements, restrictions, reservations, right of ways, dedications, and other encumbrances of record or apparent upon the real property (including any right to drill a well and produce therefrom any quantity of groundwater), all of such property, hereinafter collectively referred to as the “Property.” In addition, the following conditions will be applicable to the City’s sale of the Property:

1.1 **Radioactive Materials.** Any conveyance of this Property will be subject to a restrictive covenant to the effect that the Buyer, its successors or assigns, will not, for discard, place, or store upon such land, in violation of any applicable laws, any radioactive material or other materials which would contaminate or otherwise damage the ground water supply or resources of the City.

1.2 **Surveys.** The Buyer accepts responsibility for conducting its own archeological and environmental surveys of the Property. Any mitigation of any conditions on the Property, including archeological sites or, without limitations, adverse environmental conditions, shall be at the expense of the Buyer who shall take the Property subject to all existing conditions. The Buyer accepts responsibility for their determination of the nature and extent of any archeological sites, or without limitations, any adverse environmental conditions by their complete inspection of the Property.

- 1.3 **Use.** The Buyer shall comply with the terms and conditions of the agreement between the City and HACEP, which is dated as of the date of this Agreement, a copy of which is attached hereto as Exhibit "B" and made a part hereof for all purposes. Failure to comply with the terms and conditions of the agreement will result in the reversion of the property to the City.
 - 1.3.1 Easements for water and wastewater lines, if not located in public streets, shall be provided at no cost to the Seller or its Public Service Board.
 - 1.3.2 All ground water, water rights, or rights to surface water shall be reserved to the Seller.

- 2. **Consideration.** The consideration for the Property shall be Ten and no/100 Dollars (\$10.00), and the Buyer's compliance with the terms and conditions identified in Exhibit "B", plus any additional closing costs as identified in Paragraph 5.2.
 - 2.1 **Payment of Sales Price.** The full amount of the purchase price will be payable in cash at the closing.

- 3. **Conditions to the Buyer's Obligations.** The obligations of the Buyer hereunder is 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 Buyer, at or prior to Closing.
 - 3.1 **Title Insurance.** Within fourteen (14) days after receipt of written notification of the City's acceptance of the Buyer's offer, the Buyer shall provide the City with all information necessary to close the sale with the intent that, without good cause existing or further delay, it is anticipated that the City and the Buyer will close within thirty (30) days from the date of the approval of the City Council of an ordinance authorizing the sale of the Property. The Buyer 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 Buyer ("Owner's Policy").
 - 3.2 **Title Objections.** The Buyer will give the City 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 Buyer states that the condition is not satisfactory, the Buyer will specifically set forth in such notice the defect or exception to title that is deemed objectionable. City may promptly undertake to eliminate or modify all unacceptable matters to the reasonable satisfaction of the Buyer. Otherwise, this condition will be deemed acceptable and any objection by the Buyer will be deemed waived.

- 4. **Representations of City.** The City hereby represents, to the extent allowed by law, to the Buyer that to the best of its knowledge, as follows:

- 4.1 **Parties in Possession.** At the time of closing, other than the Buyer, there are no parties in possession of any portion of the Property as lessees, tenants at sufferance, or otherwise.
- 4.2 **Mechanic's Lien.** (i) No action has been taken, suffered or permitted by or on behalf of the City, 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 City's 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 City has not entered into any contracts or agreements relating to the use or 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 City.
- 4.3 **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.
- 4.4 **Bills Paid.** At closing, there will be no unpaid bills or claims in connection with any repair or operation of the Property.
- 4.5 **Compliance Law.** 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.
- 4.6 **Taxes.** While the City owned the Property, the Property was exempt from ad valorem taxes.
- 4.7 **Pre-Closing Claims.** City agrees that the Buyer's acceptance of title to the Property under the conveyance documents should not create any liability on the Buyer's part to third parties that have claims of any kind against the City in connection with the Property. The City hereby expressly disclaims any and all liability to third parties that have any claims against the City.
- 4.8 **Condition of Property Prior to Closing.** Prior to Closing, the City shall not create or permit to be created any easement or other condition affecting the Property without the prior written consent of the Buyer.
- 4.9 **"AS IS, WHERE IS."** THIS CONTRACT IS AN ARMS-LENGTH AGREEMENT BETWEEN THE PARTIES. THE PURCHASE PRICE WAS BARGAINED ON THE BASIS OF AN "AS IS, WHERE IS" TRANSACTION. THE BUYER ACCEPTS THE PROPERTY AS IS, WHERE IS, AND WITH ALL FAULTS, AND EXCEPT AS THE WARRANTY OF TITLE, WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF WHATSOEVER KIND, EXPRESS OR IMPLIED, WRITTEN OR ORAL, IT BEING THE INTENTION OF THE CITY

AND THE BUYER TO EXPRESSLY NEGATE AND EXCLUDE ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO THOSE REGARDING: (A) THE CONDITION OF THE PROPERTY AND THE CONDITION; (B) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH THE BUYER MAY CONDUCT THEREON; (C) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; AND (D) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY. THE BUYER FURTHER ACKNOWLEDGES AND AGREES THAT, HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY, THE BUYER IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY THE CITY. THE BUYER FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT THE CITY HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. THE CITY IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY, OR THE OPERATION THEREOF, FURNISHED BY ANY BROKER, AGENT, ATTORNEY, EMPLOYEE OR OTHER PERSON. IT IS UNDERSTOOD AND AGREED THAT THE PURCHASE PRICE FOR THE PROPERTY REFLECTS THAT ALL OF THE PROPERTY IS SOLD BY THE CITY AND PURCHASED BY THE BUYER SUBJECT TO THE FOREGOING.

- 4.10 **ENVIRONMENTAL MATTERS.** AFTER CLOSING, BETWEEN THE CITY AND THE BUYER, THE RISK OF LIABILITY OR EXPENSE FOR ENVIRONMENTAL PROBLEMS, EVEN IF ARISING FROM EVENTS BEFORE CLOSING, WILL BE THE SOLE RESPONSIBILITY OF THE BUYER, REGARDLESS OF WHETHER THE ENVIRONMENTAL PROBLEMS WERE KNOWN OR UNKNOWN AT CLOSING ONCE CLOSING HAS OCCURRED, THE BUYER INDEMNIFIES, HOLDS HARMLESS, AND RELEASES THE CITY FROM LIABILITY FOR ANY LATENT DEFECTS AND FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY, INCLUDING LIABILITY UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA), THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA), THE TEXAS SOLID WASTE DISPOSAL ACT, OR THE TEXAS WATER CODE. **THE BUYER INDEMNIFIES, HOLDS HARMLESS AND RELEASES THE CITY FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF THE CITY'S OWN NEGLIGENCE OR THE NEGLIGENCE OF THE CITY'S REPRESENTATIVES.** THE BUYER INDEMNIFIES, HOLDS HARMLESS,

AND RELEASES THE CITY FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF THEORIES OF PRODUCTS LIABILITY AND STRICT LIABILITY, OR UNDER NEW LAWS OR CHANGES TO EXISTING LAWS ENACTED AFTER THE EFFECTIVE DATE THAT WOULD OTHERWISE IMPOSE ON THE CITY IN THIS TYPE OF TRANSACTION NEW LIABILITIES FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY.

4.11 **Survival.** All agreements of the City 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 Lone Star Title Company, 601 N. Mesa St., Suite A, El Paso, Texas 79912 on or before the later of (i) thirty (30) days from the Effective Date; or (ii) thirty (30) days after the execution of this Agreement by the City, subject to delays due to the City's efforts to cure any title objection under Section 3.2.

5.1 **Possession.** Possession of the Property will be transferred to the Buyer upon Closing.

5.2 **Closing Costs.**

- (a) All recording fees arising from the recordation of documents necessary to show good title to the Property in the Buyer shall be paid by the Buyer.
- (b) Premiums and other charges for the issuance of the Owner's Policy of Title Insurance for the Property shall be paid by the Buyer.
- (c) The City and the Buyer shall bear its own attorney's fees.

5.3 **City's Obligations.** At Closing, the City shall deliver to the Buyer a duly executed and acknowledged Special Warranty Deed conveying the Property and any related easements, 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, if any, which shall be assumed by the Buyer upon 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 Buyer has approved pursuant to Paragraph 4 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.

6. **Default.**

6.1 **Breach by City.** In the event that the 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 Buyer's default, or the termination of this Agreement in accordance with its terms, the City agrees to absorb the cost of any costs the City may have incurred in preparation for the conveyance of the Property.

6.2 **Breach by the Buyer.** In the event that the Buyer 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 Buyer agrees to reimburse the City for any costs it may have incurred in the preparation for the conveyance of the Property.

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:

City: Joyce A. Wilson
City Manager
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

Buyer: Housing Authority of the City of El Paso
Attention: Executive Director
5300 Paisano Drive
El Paso, Texas 79925-2895

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 Buyer 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 **Effective Date.** As used herein, "Effective Date" shall mean the date of the approval of City Council of an Ordinance authorizing the sale of the Property.

The above instrument, together with all conditions thereto is hereby executed by the City this _____ day of _____, 2011.

THE CITY OF EL PASO

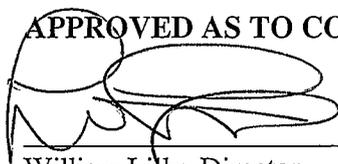
 Joyce Wilson,
 City Manager

APPROVED AS TO FORM:



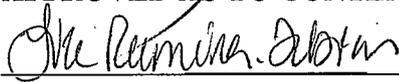
 Theresa Cullen
 Deputy City Attorney

APPROVED AS TO CONTENT:



 William Lilly, Director
 Dept. of Community and Human Development

APPROVED AS TO CONTENT:



 Liza Ramirez-Tobias
 Capital Assets Manager

(Signatures continue on next page)

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the ___ day of ___, 201___, by Joyce Wilson as City Manager of the City of El Paso, Texas

My Commission Expires:

Notary Public, State of Texas
Notary's name printed:

The above instrument, together with all conditions thereto is hereby executed by the Housing Authority of the City of El Paso this 5 day of APRIL, 2011.

HOUSING AUTHORITY OF THE CITY OF EL PASO:

APPROVED AS TO FORM:

[Signature]
HACEP Legal Counsel

Date: 3-31-11

[Signature]

By: GERALD CICHON
Executive Director
Housing Authority of the City of El Paso

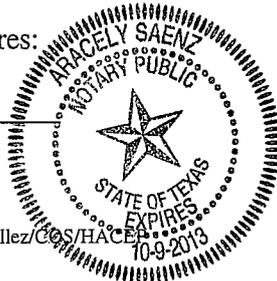
ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 5 day of APRIL, 2011, by GERALD CICHON, as CEO of the Housing Authority of the City of El Paso.

My Commission Expires:

10-9-13



[Signature]

Notary Public, State of Texas
Notary's name printed:

ARACELY SAENZ

YSLETA GRANT, BLOCK 38
PORTION OF TRACT 23

Legal description of a parcel of land being a portion of Tract 23, Block 38, Ysleta Grant Surveys, belonging to Domecello, Inc. and being more particularly described as follows:

From a common corner to Tracts 23 and 24, Block 38, Ysleta Grant Surveys, being on the westerly right-of-way line of Old Country Road (40 foot right-of-way), same being the true point of beginning of this parcel of land.

Thence, South $54^{\circ}25'00''$ West along a line common to Tracts 23 and 24, Block 38, Ysleta Grant, a distance of one hundred ten and zero hundredths (110.00) feet,

Thence, North $35^{\circ}07'40''$ West, a distance of one hundred twenty seven and zero hundredths (127.00) feet,

Thence, North $58^{\circ}10'13''$ East, a distance of one hundred twenty seven and zero hundredths (127.00) feet, to the westerly right-of-way line of Old Country Road,

Thence, South $27^{\circ}05'00''$ East along a line common to Tract 23, Block 38, Ysleta Grant and the westerly right-of-way line of Old Country Road, a distance of one hundred twenty and zero hundredths (120.00) feet, to the point of beginning.

Said parcel of land contains 14,578.63 square feet or 0.3347 acre, more or less.

By: A. Borrego
Checked by: J. Baca
Reference No.: 251129
Date: July 24, 1981

/hd

1221-1734

Exhibit "A"

1 of 2

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

AGREEMENT

This Agreement made this ____ day of _____, 2011, by and between the **CITY OF EL PASO**, a municipal corporation, hereinafter referred to as "City," and the **HOUSING AUTHORITY OF THE CITY OF EL PASO**, a Texas political subdivision, hereinafter referred to as "HACEP," shall be effective upon the occurrence of both execution and transfer of title and shall continue so long as title continues to vest with HACEP.

WHEREAS, HACEP has submitted a Use Plan for the Julian Tellez Community Center, commonly known as 8909 Old County Line Road; and

WHEREAS, the City staff has reviewed HACEP's Use Plan for the Julian Tellez Community Center which states that the property will be used as a community space for classes and programming for senior citizens and residents of the area particularly contained within Census Tract 39.01, Block Group 200, as well as to HACEP's housing facilities at Graham, Tellez and Ochoa Senior Communities; and,

WHEREAS, the City Council of the City of El Paso finds that a conveyance of the property with a restriction that the Julian Tellez Community Center will be used as a community space for classes and programming for senior citizens and residents of the area particularly contained within Census Tract 39.01, Block Group 200, as well as to HACEP's housing facilities at Graham, Tellez and Ochoa Senior Communities, serves a public purpose and is in the public interest; and

WHEREAS, the City originally acquired this property with Federal Block Grant assistance; and

WHEREAS, City and HACEP agree to comply with the Department of Housing and Urban Development (HUD) Community Development Block Grant requirements related to the disposition of property acquired by use of Community Development Block Grant funds; and

WHEREAS, HACEP has agreed to comply with all applicable requirements as provided for herein;

NOW, THEREFORE, the parties mutually agree as follows:

Section 1. PROGRAM SCOPE

A. The City will convey the Julian Tellez Community Center, 8909 Old County Line Road, El Paso, hereinafter referred to as the "Community Center," and more particularly described by metes and bounds in Attachment "A," attached hereto and made a part hereof for all purposes for use as a community center for classes and programming for senior citizens and

Exhibit B
10/8

residents of the area particularly contained within Census Tract 39.01, Block Group 200, as well as to HACEP's housing facilities at Graham, Tellez and Ochoa Senior Communities, and for low and moderate-income residents of El Paso. For purposes of this Agreement, "low and moderate income" shall be defined as "Households whose total annual income is between 0 – 80% of Area Median Income," as determined by HUD, or as amended by 24 CFR 570.208.

B. HACEP agrees to provide the social services as detailed in Attachment "B," and to complete the renovations and the improvements identified in accordance with the time schedule outlined in Attachment "C." Attachments "B" and "C" are attached hereto and made a part hereof for all purposes. HACEP also agrees that the Community Center will be made fully accessible to persons with disabilities and agrees to comply with City Ordinance No. 9779 dated August 8, 1989. This accessibility obligation to operate the Community Center shall continue so long as HACEP owns the Community Center.

C. HACEP agrees it will not request any funding from the City for maintenance of the Community Center at this location.

D. HACEP acknowledges that it has not submitted a Use Plan to the City for the old Clardy Fox Branch Library facility, commonly known as 200 Lisbon St., El Paso, Texas, and that it will not request that the City convey this property to it pursuant to the settlement approved by the City Council of the City of El Paso on Nov. 25, 2003 (Dec. 2, 2003), the Housing Authority of the City of El Paso (HACEP) and the letter agreement dated Dec. 5, 2003, in which the City agreed, to the extent permissible by law, to transfer the Julian Tellez Community Center and the Old Clardy Fox Library to HACEP, provided that HACEP completed an acceptable use plan for the identified properties to use the property for El Paso residents and neighborhoods.

Section 2. HACEP CERTIFICATIONS

HACEP herein certifies the following:

A. That HACEP is a housing authority pursuant to Section 392.011 of the Texas Local Government Code;

B. That HACEP represents and warrants that the persons executing this Agreement and all instruments related hereto has the authority to commit the corporation to the obligations, financial and otherwise, pursuant to this Agreement.

Section 3. EVENTS OF DEFAULT OR BREACH

A Default shall consist of:

A. Any use of the Community Center for any purpose other than as authorized in this Agreement or pursuant to the City's Special Warranty Deed to HACEP;

B. A breach of any covenant, agreement, or warranty of the HACEP, to include HACEP certifications made in this Agreement;

C. The filing of any petition by or against HACEP under the Federal Bankruptcy Act or any similar law, state or federal, or HACEP's failure to continue operations as a public housing authority, or HACEP's insolvency, or any manifestation or statement by HACEP that it does not intend to continue performance of its obligations hereunder.

Section 4. CITY'S REMEDIES UPON DEFAULT

Upon the occurrence of any event of default, the City Manager shall notify HACEP, in writing, that City is required to exercise its automatic reversion should default be determined by City Council. City Manager, upon belief that default continues to occur, shall, upon the expiration of sixty (60) days following the date of the letter, submit an item to the El Paso City Council requesting a finding of default of the identified use requirements. Upon a City Council finding of current and continued default, title shall automatically revert to the City without further notice, foreclosure or action on the part of the City save and except for the filing by the City of an instrument in writing of notice of reversion in the Real Property Records of El Paso County, Texas.

Section 5. ACCESS TO RECORDS AND RECORDS RETENTION

A. HACEP shall prepare and maintain proper files, books, and records in accordance with federal OMB Circulars A-110, A-87 and A-133 pertaining to costs incurred, audits, income derived from the Community Center, HACEP administration, persons assisted, and all other relevant matters.

B. HUD, City and/or their designees shall have reasonable access to, and a right to make copies of, and a right to audit, all of HACEP's files, books, and records which they deem pertinent to the performance of this Agreement, all as determined solely in the reasonable exercise of City's or HUD's discretion. These rights shall continue for so long as HACEP retains ownership pursuant to this Agreement.

C. An annual letter report shall be submitted to the City's Director of Community and Human Development regarding the number of people assisted, the type of assistance rendered, and any other matters reasonably requested by City. The first report shall be due on January 31, 2012 following the effective date of this Agreement.

D. Monitoring: City reserves the right on its behalf and on behalf of HUD to perform, or have their designees perform, a periodic on-site monitoring of HACEP's compliance with the provisions hereof. Said monitoring shall be conducted in a reasonable time, place and manner by City. HACEP will provide assistance and information needed by City in monitoring and evaluating the performance of the above-mentioned areas of accountability. It is understood

that City or its designee may perform periodic fiscal and program monitoring reviews, including a review of the audit.

Monitoring reviews will include a written report to the HACEP documenting findings and concerns that will require a response to City. The City must receive an acceptable response within thirty (30) days from the HACEP's receipt of the monitoring report or audit review letter. The Director of Community and Human Development shall have the sole discretion to extend the thirty (30) day period for reasons said Director may judge to be extenuating circumstances. Failure to take all actions necessary to resolve and close monitoring or audit findings within thirty (30) days from receipt of the monitoring report or audit review letter shall trigger Section 4, City's Remedies Upon Default, unless an extension has been granted by the Director of Community and Human development.

Section 6. COMPLIANCE WITH LAW

HACEP shall comply with all applicable federal, state, and local laws including City ordinances, codes, regulations, and guidelines. Failure to do so in any manner, which impairs the quality of HACEP's performance hereunder, or affects the administration of the Community Center as defined hereunder, or exposes City to penalties or to censure by HUD, shall constitute a default.

Section 7. DISCRIMINATION PROHIBITED

No person in the United States shall, on the grounds of race, creed, color, national origin, (including immigration status where an alien holds proper work authorization) sex, age, or handicap be excluded from participation in, be denied the benefits of, or be otherwise subjected to segregation or discrimination in any way, shape, or form in employment or under projects or activities funded in whole or in part with funds made available to the HACEP pursuant to this Agreement.

Section 8. INSURANCE AND RELATED MATTERS

A. HACEP agrees to maintain for the life of this Agreement the following liability insurance in the identified amounts:

- \$1,000,000 - Per Occurrence
- \$1,000,000 - General Aggregate
- \$1,000,000 - Products/Completed Operations - Occurrence & Aggregate
- \$1,000,000 - Personal & Advertising Injury
- \$ 5,000 - Premises Medical Payments
- \$ 500,000 - Fire Damage Legal Liability

B. HACEP shall maintain said insurance with a solvent insurance company authorized to do business in Texas. HACEP shall name the City as an additional insured on the

policy of liability insurance referenced above. Such insurance shall provide coverage for any alleged acts or omissions of the City, its agents, employees or independent contractors, alleged or asserted by any individual, in connection with the performance of this Agreement.

C. HACEP's policy shall provide that the insurer will defend against all claims and lawsuits which arise and will pay any final judgment of a court of competent jurisdiction against the City, its officers, agents, servants or employees and Lessee, its officers, agents, servants or employees.

D. HACEP shall file a copy of the policy or certificate of liability insurance as herein set forth with the City's Capital Asset Manager. Such policy or certificate shall provide that the insurance cannot be canceled or the amount of coverage changed without ten (10) days prior written notice to the City's Capital Asset Manager. Failure to keep the policy in full force and effect throughout the Term of this Agreement shall be grounds for cancellation of this Agreement.

E. HACEP, at its own cost and expense, shall insure the Community Center for fire, extended coverage, vandalism and malicious mischief. Such insurance shall be in a form acceptable to HACEP and in an amount equal to the full insurable replacement value of such improvements. HACEP shall name the City as an additional insured on the policy for property coverage. Any payments received by HACEP from insuring companies by reason of loss under such policy or policies shall be applied toward repair or reconstruction of the Community Center improvements.

- (1) A Certificate or certificates evidencing such insurance coverage shall be filed with the City's Capital Assets Manager within thirty (30) days after execution of this Agreement, and said certificate shall provide that such insurance coverage will not be canceled, reduced or materially changed without thirty (30) days' prior written notice to the City's Capital Assets Manager.
- (2) At least ten (10) days prior to the expiration of any such policy, a certificate showing that such insurance coverage has been renewed or extended shall be filed with the City's Capital Assets Manager.
- (3) If all or a portion of an improvement described as the Community Center is damaged by flood, fire, explosion, the elements, public enemy, or other casualty, the same will be repaired with due diligence by HACEP.

Section 9. CHANGES IN HACEP ORGANIZATION

HACEP shall immediately notify City in writing in the event of any material change in HACEP's organization, control, management, tax status, or insurance status.

Section 10. INDEPENDENT CONTRACTOR

City and HACEP agree that HACEP is an Independent Contractor, and that no term or provision hereof or act of HACEP in the performance of this Agreement shall be construed as making HACEP an agent of City.

Section 11. ASSIGNMENT

HACEP may not assign or otherwise transfer this Agreement either as to obligations or benefits.

Section 12. GENERAL PROVISIONS

A. HACEP hereby agrees to provide any and all documentation necessary to fulfill any and all City requirements pertaining hereto.

B. HACEP represents that the information furnished to City, upon which City relied to make this conveyance, is correct and true.

C. This Agreement is entered into in the City and County of El Paso, Texas, and shall be governed and construed under the laws of Texas. Venue shall be in El Paso County, Texas.

D. Failure by either party on one or more occasions to exercise one or more of its rights hereunder shall not be construed as a waiver of such right or rights and the rights granted hereunder are in addition to those available under law and equity.

E. All agreements, covenants, or provisions contained herein are severable, and in the event any of them shall be held to be invalid by any competent court, this shall be interpreted as though such invalid agreement, covenant, or provision were not contained herein.

F. All notices, communications, and reports under this Agreement shall be either hand delivered or mailed, postage prepaid in the United States Postal Service, to the respective parties at the respective addresses shown below, unless and until either party is otherwise notified in writing:

CITY: The City of El Paso
 Attention: City Manager
 Two Civic Center Plaza
 El Paso, Texas 79901-1196

HACEP: Housing Authority of the City of El Paso
Attention: Executive Director
5300 E. Paisano Drive
El Paso, Texas 79925-2931

G. This Agreement reflects the final, complete, and exclusive understandings of the parties hereto, and may not be waived, altered, or modified except by written agreement of the parties.

SIGNED this _____ day of _____, 2011.

THE CITY OF EL PASO

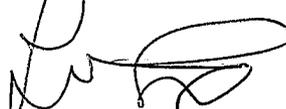
Joyce A. Wilson,
City Manager

APPROVED AS TO FORM:



Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:



William Lilly, Director
Dept. of Community and Human Development

APPROVED AS TO CONTENT:



Liza Ramirez-Tobias
Capital Assets Manager

(Signatures continued on next page)

ACKNOWLEDGMENT

STATE OF TEXAS)

)

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the ____ day of _____, 2011, by _____ of **THE CITY OF EL PASO**, a home-rule municipal corporation.

Notary's Commission Expires: _____

Notary Public, State of Texas
Notary's name (printed)

SIGNED this 5 day of APRIL, 2011.

APPROVED AS TO FORM:

M. [Signature]
ESQ. Legal Counsel

HOUSING AUTHORITY OF THE CITY OF EL PASO:

By: [Signature]
Gerald Cichon, Executive Director

Date: 3-31-11

ACKNOWLEDGMENT

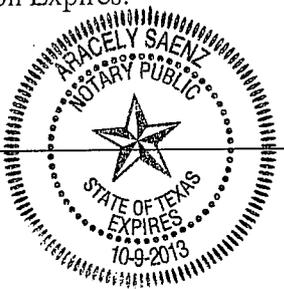
STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 5 day of APRIL, 2011, by Gerald Cichon, Executive Director of the **HOUSING AUTHORITY OF THE CITY OF EL PASO**, a Texas political subdivision.

Notary's Commission Expires: _____

[Signature]
Notary Public, State of Texas
Notary's name (printed)

10-9-13



ARACELY SAENZ

YSLETA GRANT, BLOCK 38
PORTION OF TRACT 23

Legal description of a parcel of land being a portion of Tract 23, Block 38, Ysleta Grant Surveys, belonging to Domecello, Inc. and being more particularly described as follows:

From a common corner to Tracts 23 and 24, Block 38, Ysleta Grant Surveys, being on the westerly right-of-way line of Old Country Road (40 foot right-of-way), same being the true point of beginning of this parcel of land.

Thence, South $54^{\circ}25'00''$ West along a line common to Tracts 23 and 24, Block 38, Ysleta Grant, a distance of one hundred ten and zero hundredths (110.00) feet,

Thence, North $35^{\circ}07'40''$ West, a distance of one hundred twenty seven and zero hundredths (127.00) feet,

Thence, North $58^{\circ}10'13''$ East, a distance of one hundred twenty seven and zero hundredths (127.00) feet, to the westerly right-of-way line of Old Country Road,

Thence, South $27^{\circ}05'00''$ East along a line common to Tract 23, Block 38, Ysleta Grant and the westerly right-of-way line of Old Country Road, a distance of one hundred twenty and zero hundredths (120.00) feet, to the point of beginning.

Said parcel of land contains 14,578.63 square feet or 0.3347 acre, more or less.

By: A. Borrego
Checked by: J. Baca
Reference No.: 251129
Date: July 24, 1981

/hd

Attachment "A"

1 of 2

1221-1734

Utilization Plan for the Julian Telles Community Center

The Community Center will provide services primarily to Census Tract 39.01, Block Group 200, as well as to HACEP's housing facilities at Graham, Telles and Ochoa Senior Communities. The Center will provide community space for programming and for supportive services by non-profit agencies for the target population to include but not be limited to:

1. A Computer Lab to be used as a clearinghouse for educational and job research purposes and to include at least six (6) computers
2. A Nutrition and Education Program for senior citizens
3. Community Center space for outreach and training classes and programming for target population
4. Community Center space for any other supportive services and outreach activities for target population that would generate program income to help offset operating, maintenance/upkeep, and repair expenses

Attachment "B"

1 of 1

EXHIBIT C

IMPROVEMENTS TIME SCHEDULE

Completion times are estimates from the date of closing the transfer of the property from the City of El Paso to the Housing Authority. Times include preparation of bid documents, advertising, award of contracts, and completion of work. Use of the building before completion of all work may be feasible, depending upon conditions encountered.

Site Work	60 days
Exterior Finishes	120 days
Roof Repairs	180 days
Interior Finishes	90 days
Mechanical-HVAC	60 days
Mechanical- Plumbing	60 days
Electrical	60 days
General Conditions	Continuing until completion
Pre-bid	180 days

The time of completion is dependent upon conditions encountered. The actual cost and necessity for repairs may vary from the schematic estimates on the following page. All items and expenses may not be necessary. Performance of work by in-house employees could result in substantial cost savings. Work not performed in-house will be done concurrently by contract after procurement requirements are met. In the event that engineering/architectural design services are required, the time of completion will be extended by procurement requirements.

Asbestos abatement is not included in the time and costs estimates.

Attachment C"
log1

8909 Old County Line Road

GeoID# Y80599903802387

