

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

**DEPARTMENT:** Planning and Inspections Department, Planning Division

**AGENDA DATE:** Consent Agenda; Public Hearing: May 31, 2016

**CONTACT PERSON/PHONE:** Larry Nichols, (915) 212-1550, [nicholslf@elpasotexas.gov](mailto:nicholslf@elpasotexas.gov)  
Raul Garcia, (915) 212-1643, [garciar1@elpasotexas.gov](mailto:garciar1@elpasotexas.gov)

**DISTRICT(S) AFFECTED:** 7

**SUBJECT:**

A Resolution that the City Manager be authorized to sign the First Amendment to the Developer Participation Agreement between the City of El Paso and Ranchos Real VIII, LTD. executed on September 13, 2011 in order to allow the developer to pay to the city the value of the construction cost of the improvements in lieu of construction of the improvements. (District 1).

**BACKGROUND / DISCUSSION:**

N/A

**PRIOR COUNCIL ACTION:**

There is no prior City Council action on this Resolution.

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**BOARD / COMMISSION ACTION:**

On March 10, 2016, the City Plan Commission recommended unanimous approval of the amendment.

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**LEGAL:** (if required) N/A

**FINANCE:** (if required) N/A

**DEPARTMENT HEAD:**

Larry F. Nichols  
Director, Planning and Inspection Department

\_\_\_\_\_

**APPROVED FOR AGENDA:**

**CITY MANAGER:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

## **MEMORANDUM**

**DATE:** May 19, 2016

**TO:** The Honorable Mayor and City Council  
Tommy Gonzalez, City Manager

**FROM:** Raul Garcia, Lead Planner

**SUBJECT:** Resolution for First Amendment to Developer Participation Agreement

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The City Plan Commission (CPC), on March 10, 2016 voted 6-0 to recommend **Approval** of the First Amendment to the Developer Participation Agreement

The CPC found that the amendment is in conformance with Plan El Paso. The CPC also determined that the amendment protects the best interest, health, safety and welfare of the public in general; that the amendment is compatible with adjacent land uses; and, that the amendment will have no negative effects on the natural environment, social economic conditions, and property values in the vicinity and the city as a whole.

The Planning Division recommends approval of the amendment request.

**Property Owner:** Ranchos Real VIII, LTD  
**Applicant:** Ranchos Real VIII, LTD  
**Representative:** Conde, Inc.

**Attachments:**  
Resolution for the First Amendment to the Developer Participation Agreement  
Estimate of improvements  
Aerial  
Original Executed Developer Participation Agreement

## RESOLUTION

### BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

A Resolution that the City Manager be authorized to sign the First Amendment to the Developer Participation Agreement between the City of El Paso and Ranchos Real VIII, LTD. executed on September 13, 2011 in order to allow the developer to pay to the city the value of the construction cost of the improvements in lieu of construction of the improvements

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

#### THE CITY OF EL PASO

\_\_\_\_\_  
Tomás González  
City Manager

#### DEVELOPER:

**RANCHOS REAL VIII, LTD.**

By: Ranchos Real Developers, Inc., General Partner

  
\_\_\_\_\_  
Douglas A. Schwartz, Vice President

#### APPROVED AS TO FORM:

  
\_\_\_\_\_  
Karla M. Nieman  
Assistant City Attorney

#### APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Larry Nichols, Director  
Planning & Inspections Department

THE STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

**FIRST AMENDMENT TO THE  
DEVELOPER PARTICIPATION  
AGREEMENT**

This First Amendment to the Developer Participation Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the **CITY OF EL PASO**, (the "City") and **RANCHOS REAL VIII, LTD.**, a Texas limited partnership (the "Developer").

**WHEREAS**, on September 13, 2011, the City and Developer executed a Developer Participation Agreement (the "Agreement") for the construction of two crossings over the El Paso County Water Improvement District No. 1 ("EPCWID#1") irrigation lateral and right-of-way improvements on Westside Road for the purpose of gaining access to the Artcraft Estates subdivision;

**WHEREAS**, these right-of-way improvements on Westside Road included a sidewalk, retaining wall, trees, landscape and irrigation within portions of EPCWID#1's right-of-way (hereinafter referred to as the "Improvements");

**WHEREAS**, EPCWID#1 has determined that there is not sufficient right-of-way on Westside Road to allow for construction of the Improvements;

**WHEREAS**, the Section 19.15.030 of the City Code permits Developer to contribute to the City an amount of money equal to that of improvements required in Section 19.10.050; and

**WHEREAS**, the parties now wish to amend the Agreement in order to allow the Developer to pay to the City the value of the construction cost of the Improvements in lieu of construction of the Improvements.

**NOW, THEREFORE**, the parties hereby agree to amend the Agreement as follows:

1. Paragraph II. Scope of Project, 1. of the Agreement is hereby deleted in its entirety and replaced with the following:

1. The "Project" is defined as completion of public improvements defined as construction of two (2) concrete box culverts, within a portion of EPCWID#1 right-of-way, with concrete roadway surface crossings at La Union East Lateral Canal Station 471+48 (Willow River) and La Union East Lateral Canal Station 459+92 (Pecos River Drive) for access to Artcraft Estates subdivision as illustrated in the respective license agreements as well as new asphalt pavement and improvements, re-stripping, header curb, curb and gutter on Westside Road. Project improvement plans and drawings shall be included in the Artcraft Estates subdivision improvement plans set for review. Construction and design plans shall be processed in accordance with the subdivision process established under 19.08 of the El Paso City Code.

2. Paragraph II. Scope of Project, 1.a. of the agreement is amended to add the following subsection:

(6) Developer has paid to the City Ninety-Two Thousand Eight Hundred Eighty Nine and 24/100 (\$92,889.24) as the amount equal to the Improvements and as allowed by Section 19.15.030 of the City Code.

3. Exhibit "D" is replaced in its entirety with the attached Exhibit "D-1."
4. All public improvements as described in the Project have been completed.
5. All other terms and conditions of this agreement remain in full force and effect.

**WITNESS THE FOLLOWING SIGNATURES AND SEALS:**

**THE CITY OF EL PASO**

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Tomás González  
City Manager

**DEVELOPER:**

**RANCHOS REAL VIII, LTD.**

By: Ranchos Real Developers, Inc., General  
Partner

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Douglas A. Schwartz, Vice President

**APPROVED AS TO FORM:**


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Karla M. Nathan  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

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Larry Nichols, Director  
Planning & Inspections Department

**ACKNOWLEDGEMENT**

THE STATE OF TEXAS   §  
                                     §  
COUNTY OF EL PASO   §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_,  
2016, by Tomás González, as City Manager of the City of El Paso, Texas.

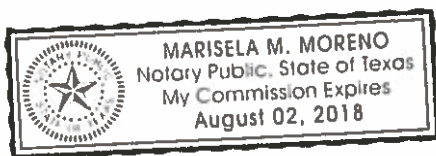
\_\_\_\_\_  
Notary Public, State of Texas

My commission expires:  
\_\_\_\_\_

**ACKNOWLEDGEMENT**

THE STATE OF TEXAS   §  
                                     §  
COUNTY OF EL PASO   §

This instrument was acknowledged before me on this 4<sup>th</sup> day of May,  
2016, by Douglas Schwartz, as Vice President of Ranchos Real VIII, LTD.



Marisela Moreno  
Notary Public, State of Texas

My commission expires:  
August 2, 2018

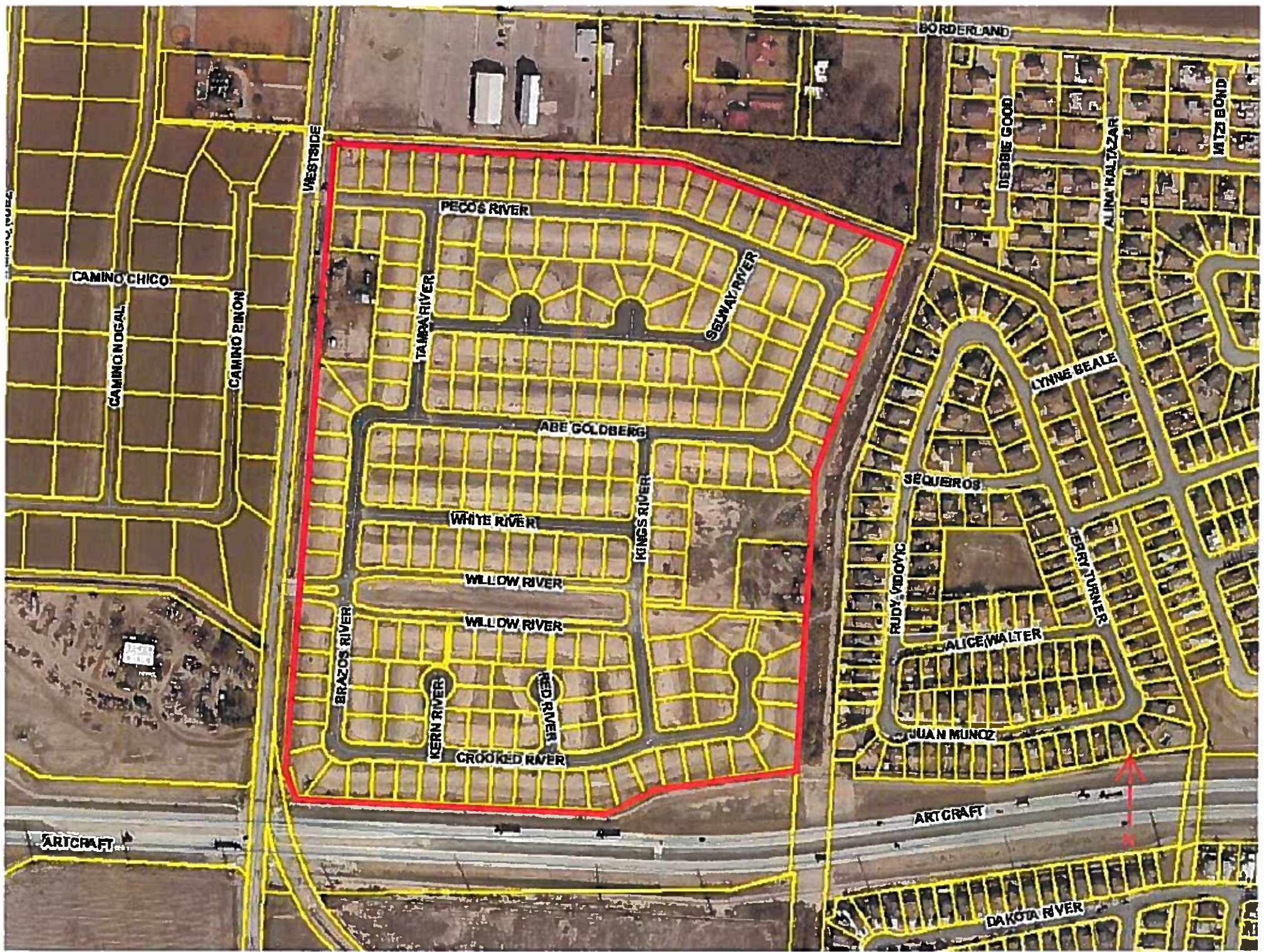
**Artcraft Preliminary Cost Estimate  
Westside Rd. and Crossings**

Item No.	Unit of Measure	Description	Unit Price	Quantity	Installation	Cost
1	S.Y.	Proposed Pavement	\$20.00	820	\$0.00	\$16,400.00
2	S.Y.	Pavement to be Removed	\$10.00	450	\$0.00	\$4,500.00
3	S.F.	Concrete Sidewalk	\$8.00	7,660.0	\$0.00	\$61,280.00
4	Perch	Retaining Wall	\$75.00	196.0	\$0.00	\$14,700.00
5	L.F.	Concrete Curb	\$10.00	4,450	\$0.00	\$44,500.00
6	L.F.	Box Culvert 6x6	\$400.00	88	\$0.00	\$35,200.00
7	S.F.	Headwall/Wingwalls	\$8.00	1,600	\$0.00	\$12,800.00
8	L.F.	Wrought Iron Fence	\$18.00	138	\$0.00	\$2,484.00
9	Each	Shrubs	\$30.00	78	\$234.00	\$2,574.00
10	Each	Trees	\$250.00	29	\$725.00	\$7,975.00
11	Each	Drip Emitter	\$20.00	55	\$110.00	\$1,210.00
12	Each	Schedule 80 Nipple	\$1.00	55	\$5.50	\$60.50
13	Each	Emission Stake	\$0.50	440	\$22.00	\$242.00
14	L.F.	1" Schedule 40 Pipe	\$0.32	1,522	\$48.70	\$535.74
15	L.F.	2" Schedule 40 Pipe	\$0.70	150	\$10.50	\$115.50
16	Each	1"x1"x1/2" PVC Tee	\$1.00	55	\$5.50	\$60.50
17	Each	Rainbird 100-PEB Control Valve	\$100.00	1	\$10.00	\$110.00
18	Each	Tbos Control Module	\$200.00	1	\$20.00	\$220.00
19	Each	Tbos Solenoid	\$50.00	1	\$5.00	\$55.00
20	Each	Carson Valve Box with lid	\$50.00	2	\$10.00	\$110.00
21	Each	Schedule 80 Union	\$50.00	1	\$5.00	\$55.00
22	Each	Wilkins Pressure Regulator	\$160.00	1	\$16.00	\$176.00
23	Each	Double Check Assembly	\$200.00	1	\$20.00	\$220.00
24	Each	Christy Conc. Utility Box W/lid	\$100.00	1	\$10.00	\$110.00
25	L.F.	24 Steel Casing	\$20.00	120	\$0.00	\$2,400.00
26	L.F.	16" Steel Casing	\$15.00	120	\$0.00	\$1,800.00
27	Each	1" Water Meter	\$2,800.00	1	\$280.00	\$3,080.00
28	each	Labor and Supervision (17%)		1		\$36,205.45
29	Each	Relocate Power Poles	\$3,000.00	2	\$0.00	\$6,000.00
30	Each	Remove wood bridge	\$2,000.00	1		\$2,000.00

**Estimated fees in lieu of improvements: \$92,889.24**

Items 1-8 installation cost in unit price







## RESOLUTION

## BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

THAT the City Manager be authorized to sign a Developer Participation Agreement between the CITY OF EL PASO and RANCHOS REAL VIII, LTD. for the construction of two crossings over the El Paso County Water Improvement District No. 1 irrigation lateral and right-of-way improvements on Westside Road, for the purpose of gaining access to the Artcraft Estates Subdivision.

ADOPTED this 13<sup>th</sup> day of September 2011.

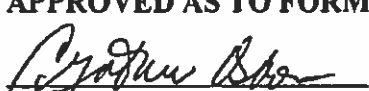
THE CITY OF EL PASO

  
John Cook  
Mayor

ATTEST:

  
Richarda Duffy Mommson  
City Clerk

APPROVED AS TO FORM:

  
Cynthia Osborn  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
R. Alan Shubert, P.E.  
City Engineer

CITY CLERK DEPT.  
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THE STATE OF TEXAS §  
§  
COUNTY OF EL PASO §

**DEVELOPER PARTICIPATION  
AGREEMENT**

This Developer Participation Agreement ("*Agreement*") is executed as of this 13<sup>th</sup> day of Sept., 2011, by and between the **CITY OF EL PASO**, hereinafter referred to as the "*City*", and **RANCHOS REAL VIII, LTD.**, a Texas limited partnership, hereinafter referred to as the "*Developer*".

**WITNESSETH**

**WHEREAS**, the Developer, is developing property described as Artcraft Estates Subdivision, as shown in Exhibit A attached hereto and incorporated herein for all purposes, hereinafter referred to as "the Property"; and

**WHEREAS**, in order for the Developer to gain access to the Property, the Developer must cross El Paso County Water Improvement District No. 1 (EPCWID#1) irrigation lateral at two separate locations; and

**WHEREAS**, the required crossings over the EPCWID#1 irrigation lateral will be used by the public; and

**WHEREAS**, the City of El Paso is willing to enter into License Agreements with EPCWID#1 for the construction of the two crossings and the use of the crossings as a public road for a period of 50 years, in the forms as shown in Exhibits B and C attached hereto and incorporated herein for all purposes (the "License Agreements"); and

**WHEREAS**, it is the intent of the parties that once the City obtains the License Agreements, the Developer shall construct the crossings over the lateral in conformance with the plans attached as Exhibit B to the respective License Agreements (the "Plans"), as well as the Westside Road right-of-way improvements in conformance with the conceptual plans as shown in Exhibit D attached hereto and incorporated herein for all purposes (the "Additional Improvements Plan"); and

**WHEREAS**, Texas Local Government Code §212.071 authorizes a municipality with 5,000 or more inhabitants to enter into a contract with a developer to construct public improvements, not including a building, without a competitive bidding procedure; and

**WHEREAS**, Texas Local Government Code §212.072 allows the municipality to participate in the construction cost, in an amount not to exceed thirty (30%) percent of the total contract price of improvements required to be made by the developer, and to participate at a level of 100% for any over sizing of improvements required by the Municipality; and

**WHEREAS**, the City has determined that Developer's construction of the crossings and the Westside Road right-of-way improvements is in the best interests of the citizens of the City; and

**NOW, THEREFORE**, in consideration of the promises and of the mutual covenants and agreements of the parties hereto, the City and Developer agree as follows:

## **I. Filing**

This Agreement shall be filed in the deed records of El Paso County, Texas. The provisions of this Agreement shall be deemed to run with the land and shall be binding on heirs, successors and assigns of Developer. Upon any sale or other transfer of all of Developer's ownership rights in the Property, Developer shall notify the City in writing of such sale or transfer within thirty (30) business days of such sale or transfer. Notice of the sale of lots within the Artcraft Estates Subdivision are not required.

## **II. Scope of Project**

1. The "Project" is defined as completion of public improvements defined as construction of two (2) concrete box culverts, within a portion of El Paso County Water Improvement District No. 1 right-of-way, with concrete roadway surface crossings at La Union East Lateral Canal Station 471+48 (Willow River) and La Union East Lateral Canal Station 459+92 (Pecos River Drive) for access to Artcraft Estates Subdivision as illustrated in the respective License Agreements as well as new asphalt pavement and improvements, re-stripping, header curb, curb and gutter on Westside Road including new 4 foot sidewalk, retaining rockwall, trees, vegetation, landscaping and irrigation system within the Westside Road parkway area, city right-of-way and, a portion of El Paso County Water Improvement District No. 1 right-of-way, as illustrated in Exhibit D. Project improvement plans and drawings shall be included in the Artcraft Estates Subdivision Improvement Plan set for review. Construction and design plans shall be processed in accordance with the subdivision process established under 19.08 of the City of El Paso City Code.

### **a. Responsibility of the Developer:**

(1) Developer shall construct all improvements required under this Agreement pursuant to the terms and conditions specified herein. Developer further agrees that it shall be solely responsible for payment of any and all costs associated with the Project, including but not limited to design and construction costs, arising from the construction of the improvements as well as the license fees required pursuant to the City's License Agreements with EPCWID #1 which shall be paid prior to the date this Agreement is approved by City Council. Developer understands and agrees that once the funds for the license fees have been paid to EPCWID #1, those funds shall not be reimbursed to the Developer, even if this Agreement is terminated.

(2) In constructing the improvements, Developer shall comply with all applicable federal, state and local laws including all City ordinances, codes and regulations as well as the terms of the EPCWID #1 License Agreements. Failure to do so in any manner shall constitute a material breach of this Agreement. In addition, Developer shall obtain all permits and inspections required by the City and EPCWID # 1 and be responsible for any costs associated with obtaining such permits and inspections.

(3) Developer shall not commence construction of the improvements without receiving the written approval by EPCWID # 1 and the City Engineering and Construction Management Department of the design, materials and construction plans which approval shall not be unreasonably withheld or delayed.

(4) Any work performed by a contractor or consultant of the Developer will not, under any circumstances, relieve Developer of its responsibilities and obligations under this



Agreement. All work performed by the Developer or its agent shall be done in a good and workmanlike manner and in accordance with the approved Plans and the approved Additional Improvement Plans. Any contractor or consultant hired by Developer shall have sufficient skills and experience to properly perform the work described in the Plans and Additional Improvement Plans and shall provide adequate supervision to assure competent performance of the work.

(5) The Developer agrees that all construction and materials shall be subject to inspection and approval by the City and EPCWID # 1. All Project materials must conform to the Plans and Additional Improvement Plans and are subject to quality control testing by the City at the Developer's sole cost and expense.

b. Responsibilities of the City:

(1) City agrees that during the term of the License and any renewal thereof, City shall comply with all the terms and conditions of the License Agreements and shall not abandon or voluntarily terminate the License Agreements. The provisions of this paragraph shall survive the termination of this Agreement.

2. Developer acknowledges and agrees that a performance bond in the amount of 125% of the value of the proposed improvements shall be provided prior to the time this Agreement is approved by City Council. In addition, construction of the improvements must be completed and accepted for operation and maintenance by the City prior to the issuance of any permits for the Property. The City will use its best efforts to cause the improvements to be approved by the City as soon as reasonably possible. **The City shall not be liable for any damages which may occur if the Project is abandoned for any reason because of the conduct of third parties or any other factors other than the breach by the City of its covenants made in this Agreement, and the Developer hereby releases the City from any such liability.**

3. All improvements shall be completed and accepted for operation and maintenance by the City within 36 months following the approval of the Subdivision Plat covering the Property, unless otherwise extended by written amendment and approval by the City, subject to delays by reason of Force Majeure. It is hereby understood and mutually agreed by the Developer and the City that the date of beginning and the time for substantial completion of the Project are **ESSENTIAL CONDITIONS** in the Agreement. The City Manager is authorized to approve any amendments required under this paragraph, provided that such amendments do not require the City to participate in the costs of the improvements. The term "Force Majeure" means an event that causes delay by reason of an act of God, fire, windstorm, flood, explosion, collapse of structure or other casualty, epidemic, infectious disease, riot, war, terrorism, military power, labor disputes, failure of utility service, court order, inability to obtain materials, adverse weather that is unusual and unanticipated for the period of time, or an act of like nature that is beyond the reasonable control of such party.

4. Developer agrees that construction of the improvements shall be pursued regularly, diligently, and uninterrupted at such a rate of progress as shall ensure substantial completion of the Project within the time specified. It is expressly understood and agreed, by the Developer and the City, that the time for the substantial completion of the Project is a reasonable time for substantial completion.

5. If the Developer shall neglect, fail or refuse to substantially complete the construction of the improvements within the time herein specified, subject to delays by reason of Force Majeure, or any proper extension granted by the City, or to maintain the Project until inspected and accepted for maintenance by the City as specified in paragraph 3 above, and such neglect, failure or refusal to substantially complete or maintain the Project results in any safety issue to persons or property as reasonably identified by the City Engineer or his designee, the Developer agrees that the City may issue a stop work order for any work in progress under any issued building permit for the Property, and the Developer waives any and all causes of action it may have against the City arising from the City's stop work order. Additionally, the Developer will defend, indemnify and hold the City harmless from any and all causes of action any third party may have against the City arising from the City's stop work order.

6. In the event that Developer fails to complete the Project within the time specified, and such failure continues for a period of 30 days after written notice is sent by the City, the City reserves the right to complete the construction, secure completion through the performance bond, and assess the costs of completion not covered under the performance bond to the Developer for payment.

7. Developer agrees to warrant to the City that all work in connection with the Project shall be performed in a good and workmanlike manner, strictly in accordance with the Plans and Additional Improvement Plan, and as otherwise provided in this Agreement. The Developer shall warrant the improvements for a period of one year for defective material, construction or workmanship following acceptance by the City of all improvements and shall provide a maintenance bond in the amount of fifty percent of the costs of the improvements for such period. This warranty shall remain in full force and effect for a period of one (1) year from and after the date of the City's final acceptance of the Project. It is understood and agreed that, notwithstanding the acceptance of the Project by the City, the Developer remains fully responsible for the repair and maintenance of the Project as such relates to the Developer's warranty of the Project, as set forth above, for a period of one (1) year from the date of the City's acceptance of the Project.

### **III. Project Funding**

Developer agrees that all the improvements under this Agreement are necessary and attributable to their proposed development and for the purpose of providing access to the Property. Developer understands and agrees that Developer will be responsible for all costs associated with the Project and this Agreement and shall not request reimbursement from the City, nor shall the Developer be eligible for reimbursement from the City for any improvements under this Agreement. The estimated cost for the Project is as shown in Exhibit D attached and incorporated herein for all purposes.

### **IV. Term Of The Agreement**

1. This Agreement becomes effective and binding and enforceable against the parties upon the execution of the License Agreements by the City and EPCWID #1. (*"Effective Date"*).

2. This Agreement shall terminate upon completion of the following:
- a. The improvements are completed and accepted by the City Engineer for operation and maintenance by the City.
  - b. The Developer provides the required maintenance bond under the one year warranty provisions specified above.

#### **V. Ownership and Right of Access**

Following a default by Developer and the failure of Developer to cure such default as set forth in Article II.6., Developer hereby acknowledges the rights of the City, its agents, contractors and subcontractors to enter upon and construct and install any equipment that may be required, pursuant to this Agreement to complete the Project. This right of access shall include the right to use or modify any Developer construction materials as deemed necessary by the City. Additionally, in the event that additional authorization is required, Developer agrees to promptly execute the required documents at the request of the City.

#### **VI. Relationship of the Parties**

Developer acknowledges that it is not an agent, servant, or employee of the City and is therefore responsible for its own actions performed by itself, its agents or employees during the term of this Agreement.

#### **VII. Insurance**

Developer agrees to procure and shall maintain during the life of this Agreement such Commercial General Liability, Property Damage Liability and Automobile Liability Insurance as shall protect the Developer and the Developer's employees performing work covered by this Agreement, and the City from claims for damages for personal injury, including accidental death, as well as from claims for property damages, which may arise from operations under this contract, whether such operations be by the Developer or by anyone directly or indirectly employed by the Developer. The minimum limits of liability and coverages shall be as follows:

- a) **COMMERCIAL GENERAL LIABILITY**
  - Personal Injury or Death**
    - \$1,000,000.00 for one person or occurrence
    - \$1,000,000.00 for two or more persons or occurrences
  - Property Damage**
    - \$1,000,000.00 per occurrence
  - General Aggregate**
    - \$1,000,000.00
- b) **AUTOMOBILE LIABILITY**
  - Combined Single Limit**
    - \$1,000,000.00 per accident



The insurance policies shall include an endorsement that the City is named as an additional insured to the full amount of the policy limits and that the City shall be notified at least thirty days in advance in the event the policy or policies are canceled and ten days in advance for non-payment of policy premiums. The endorsement shall contain substantially the following statement: "The insurance included within this policy shall not be cancelled or materially altered except after thirty (30) consecutive calendar days [ten (10) consecutive calendar days for non-payment of policy premiums] written notice by certified mail of intent to cancel or materially alter said insurance has been provided to the City of El Paso [additional insured]." Such insurance policy shall be issued by an insurance company duly authorized to do business in the State of Texas. The Developer shall furnish the City Engineer with certificates showing the type of insurance coverages, limits on each insurance policy, class of operations covered under each insurance policy, effective dates and expiration dates of policies, insurance companies providing the insurance coverages, name of agent/broker and include confirmation of any endorsement(s) required in this agreement.

All certificates shall be provided prior to the time this Agreement is approved by City Council. All certificates shall also include the name of the project on the corresponding insurance certificate. Further, each certificate shall contain the following statement:

"The insurance covered by this certificate will not be canceled, and there will be no change in coverage or deductibles, except after thirty (30) consecutive calendar days written notice of intent to cancel or change said insurance has been provided to the City of El Paso.

#### **VIII. Bond Required**

The Developer agrees to execute a performance bond for one hundred twenty-five percent (125%) of the Project costs to secure fulfillment of all the Developer's obligations under this Agreement. The bond shall be in a form approved by the City. The bond shall be executed by a corporate surety in accordance with Texas Government Code, Chapter 2253. The bond shall identify the City as Owner and Obligee and shall bind both the Developer and the Surety, their heirs, administrators, executors, successors and assignees, jointly and severally. The bond shall expressly provide that the Developer shall faithfully render performance under this Agreement and shall remain in full force and effect until all requirements of the Agreement have been performed to the City's satisfaction. The bond shall be provided to the City Engineer prior to the date this Agreement is approved by City Council.

#### **IX. Indemnification**

Through the one year warranty period following acceptance of the improvements by the City, Developer or its insurer shall INDEMNIFY, DEFEND AND HOLD the City, its officers, agents and employees, HARMLESS FOR AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE, (INCLUDING BUT NOT LIMITED TO ATTORNEY FEES AND COSTS) FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON ARISING OUT OF OR RELATED TO THE CONSTRUCTION OF THE PROJECT OTHER THAN THE ACTIONS OF THE CITY AND/OR ACTIVITIES OF THE CITY PURSUANT TO ARTICLE V HEREOF. Without modifying the conditions of preserving, asserting or enforcing any legal liability against the City as required by the City

Charter or any law, the City will promptly forward to Developer every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein. Developer will 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as the Developer may deem expedient; and 3) defend or cause to be defended on behalf of the City all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages. Developer will pay all judgments in actions defended by Developer pursuant to this section along with all attorneys' fees and costs incurred by the City including interest accruing to the date of payment by Developer, and premiums on any appeal bonds. The City, at its election will have the right, at its sole expense, to participate in any such negotiations or legal proceedings to the extent of its interest. The City will not be responsible for any loss of or damage to the Developer's property from any cause except arising out of its breach of the terms of this Agreement.

#### **X. Assignability**

The parties hereto agree that the rights of the Developer and the City under this Agreement are assignable.

#### **XI. Notice**

All notices provided for herein shall be sufficient if sent by certified mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses or such other addresses as the parties may designate to each other in writing from time to time:

CITY:                   The City of El Paso  
                          Attn: City Manager  
                          2 Civic Center Plaza, 10<sup>th</sup> Floor  
                          El Paso, Texas 79901-1196

Copy to:               City Engineer  
                          2 Civic Center Plaza, 4<sup>th</sup> Floor  
                          El Paso, Texas 79901-1196

DEVELOPER:          Ranchos Real VIII, Ltd.  
                          6080 Surety Drive, Suite 300  
                          El Paso, Texas 79905  
                          Attn: Mr. Douglas A. Schwartz

#### **XI. Law Govering Agreement**

The laws of the State of Texas shall govern the validity, performance, interpretation and enforcement of this Agreement. Venue shall be in the courts of El Paso, County, Texas.

#### **XII. Interpretation**

The City and Developer agree that this Agreement has been freely negotiated by both parties and that in any controversy, dispute or contest over the meaning, interpretation, validity or enforceability of this Agreement, or any of its terms or conditions, there shall be no inference,

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presumption or conclusion drawn whatsoever against either party by virtue of that party having drafted this Agreement or any portion thereof.

### **XIII. Severability**

If any provision of this Agreement is prohibited by law or otherwise determined to be illegal, invalid or unenforceable in a court of competent jurisdiction, such provision shall not affect the validity of the remaining provisions of this Agreement; instead, the Agreement shall be construed as if it did not contain the illegal, invalid or unenforceable provision(s) and the rights and obligations of the parties shall be construed and enforced accordingly.

### **XIV. Entire Agreement**

This Agreement constitutes and expresses the entire agreement between the parties and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement shall not be amended or modified except by written instrument signed by both parties.

### **XV. Authority to Contract**

All persons that are signatories to this Agreement represent that they have authority to enter into this Agreement and bind their respective organizations thereto.

### **XVI. No Third Party Rights or Obligations**

No person or entity not a party to this Agreement shall have third-party beneficiary or other rights under this Agreement.

#### **CITY OF EL PASO:**


  
Joyce Wilson  
City Manager

#### **DEVELOPER: RANCHOS REAL VIII, LTD.**


By: Ranchos Real Developers, Inc., General  
Partner

By:   
Douglas A. Schwartz, Vice President

#### **APPROVED AS TO FORM:**

  
Cynthia Osborn  
Assistant City Attorney

#### **APPROVED AS TO CONTENT:**

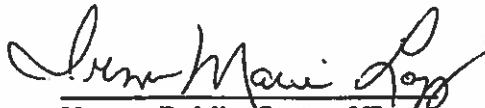
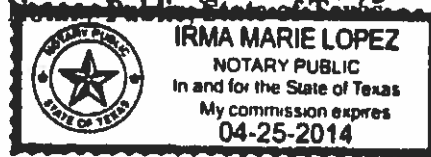
  
R. Alan Shubert, P.E.  
City Engineer



ACKNOWLEDGMENT

THE STATE OF TEXAS     )  
                                      )  
COUNTY OF EL PASO     )

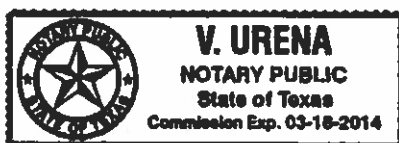
This instrument was acknowledged before me on this 13<sup>th</sup> day of September, 2011,  
by Joyce A. Wilson, as City Manager for the City of El Paso.

ACKNOWLEDGMENT

THE STATE OF TEXAS     )  
                                      )  
COUNTY OF EL PASO     )

This instrument was acknowledged before me on this 31<sup>st</sup> day of August, 2011,  
by Douglas A. Schwartz, as Vice President of Ranchos Real Developers, Inc., General  
Partner, of Ranchos Real VIII, Ltd., a Texas limited partnership.



  
Notary Public, State of Texas

List of Schedules and Exhibits:

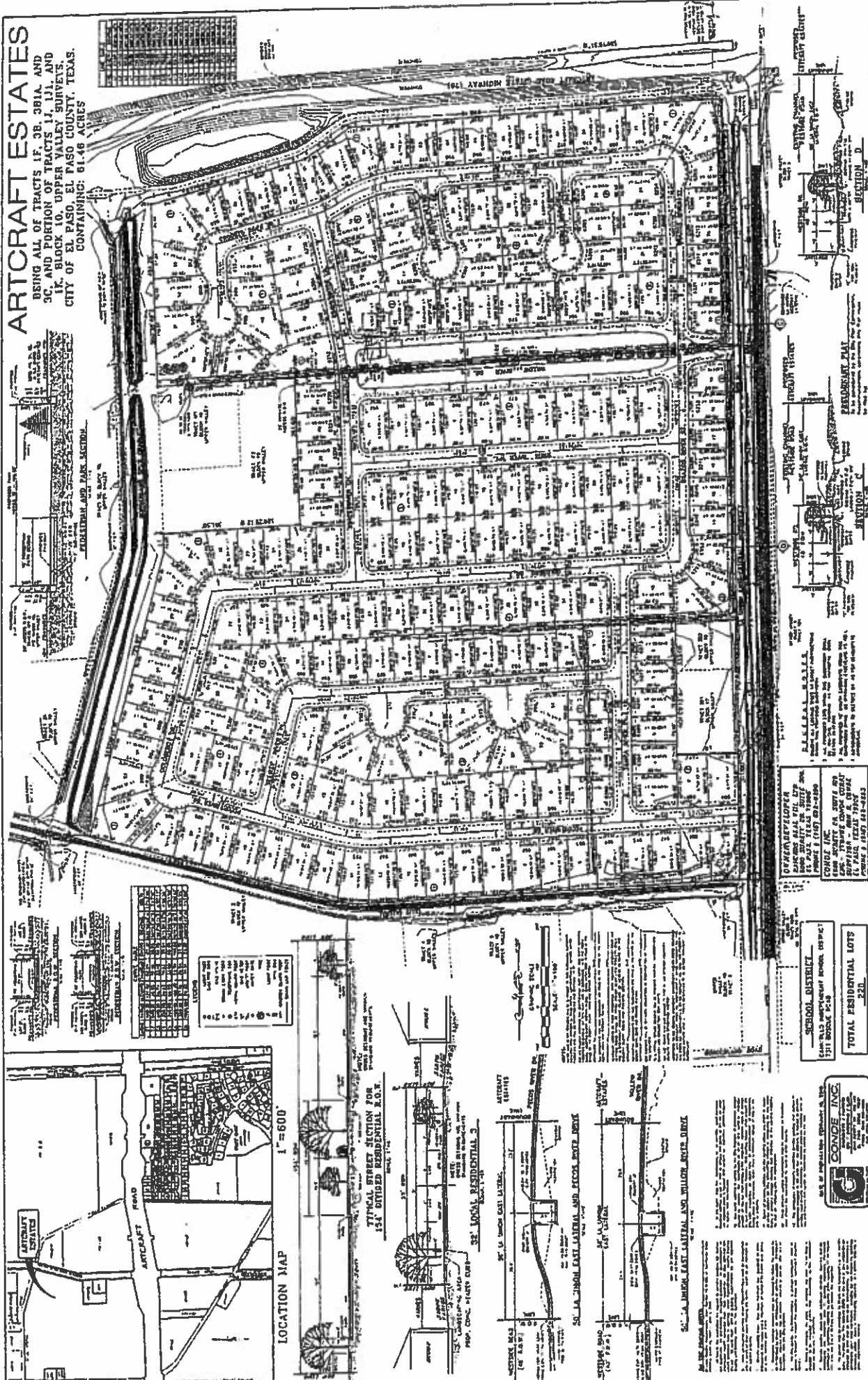
- Exhibit "A"     Property
- Exhibit "B"     License Agreement (La Union East Lateral Canal Station 471+48)
- Exhibit "C"     License Agreement (La Union East Lateral Canal Station 459+92)
- Exhibit "D"     Additional Improvements Plan
- Exhibit "E"     Project Cost Estimates

**EXHIBIT A  
PROPERTY**

CITY CLERK DEPT.  
2011 SEP -1 PM 5:55

# ARTCRAFT ESTATES

BEING ALL OF TRACTS 1F, 3B, 3B1A, AND 3C, AND PORTION OF TRACTS 1J, 1J1, AND 1K, BLOCK 10, UPPER VALLEY SURVEYS, CITY OF EL PASO, EL PASO COUNTY, TEXAS, CONTAINING: 61.46 ACRES





**EXHIBIT B**  
**LICENSE AGREEMENT (La Union East Lateral Canal Station 471+48)**

**LICENSE FOR PUBLIC-USE OF DISTRICT REAL PROPERTY**  
**The City of El Paso - 1 - 6' X 6' Concrete Box Culvert and Headwall Structure**  
**Crossing La Union East Lateral Canal at Station 471+48**

This License is entered into between the El Paso County Water Improvement District No. 1, a political subdivision of the State of Texas existing pursuant to Article XVI, Section 59, of the Constitution of the State of Texas ("District"), and The City of El Paso ("Licensee"), a home-rule municipal corporation.

**WITNESSETH**

In consideration of the mutual covenants and agreements of this License and other good and valuable consideration, the parties agree as follows:

**1.0 PURPOSE OF LICENSE**

Subject to the terms and conditions described herein, this License is for the sole purpose of the Licensee's use to construct, operate, install, maintain, inspect, repair, replace, or remove a 1 - 6' X 6' Concrete Box Culvert and Headwall Structure at the location shown as the "Easement" described and depicted on the survey drawings and field notes attached as Exhibit "A", being a total surface area of 5,300 square feet, and engineering drawing attached as Exhibit "B"; all of which are fully incorporated herein by this reference. The purpose of the Easement is limited to the construction of, and use as, a public road on the surface only and shall not extend to the use by any utility except as may be required by law. Any substantial or significant addition or changes to the use set forth in the application for this License may require administrative review and a reasonable fee for such review.

**2.0 TERM OF LICENSE**

The term of this License shall be for fifty (50) years commencing on August 10, 2011, (the Commencement Date) and expiring at midnight August 9, 2061, (the Expiration Date).

**3.0 CONSIDERATION**

This License is granted for good and valuable consideration including Licensee's payment to District of the sum of \$26,500.00 upon execution of this License.

#### **4.0 LICENSE RENEWAL**

Licensee may request that the District renew this License for a fifty (50) year term so long as Licensee has not breached the terms and conditions of this License during the initial term. Licensee shall make such request by written notice to the District at least sixty (60) days prior to the Expiration Date. Prior to the effective date of any renewal of this License, Licensee shall pay to the District a fee to be negotiated by the District and Licensee. **THE DISTRICT RETAINS THE RIGHT TO DENY ANY REQUEST TO RENEW THIS LICENSE FOR ANY REASON.** Nothing in this License shall prevent Licensee from exercising its eminent domain powers.

#### **5.0 RIGHT OF INGRESS AND EGRESS**

The District grants to Licensee the right of ingress and egress to the Easement for the purposes identified in this License in Section 1.0 set out above, provided that the Licensee shall not disturb or interfere with District's use of the Easement or any other property of District, including without limitation any surface, subsurface or aerial portions.

#### **6.0 COORDINATION OF CONSTRUCTION**

6.1 Licensee agrees to give notice to the District and coordinate with the District's Maintenance Supervisor forty-eight (48) hours prior to any construction by Licensee, its agent(s) or contractor(s) on the Easement. To the extent any construction on the Easement may have already commenced, the District shall have the right to inspect and review such construction to determine whether the same meets the District's Design Standards in effect at the time such inspection or review is done by the District. If the District determines that any part of such construction does not meet the District's Design Standards, then within twenty-one (21) calendar days after written notification from District, the Licensee shall modify or reconstruct any such construction in a manner consistent with the District's Design Standards, as well as applicable federal, state, local laws, and the National Electrical Safety Code (NESC) standards.

6.2 If the District determines that any part of such construction does not comply with the Application To Use District Property submitted by Licensee, does not meet the District's Design Standards, or interferes with the operation, maintenance or administration by the District of its facilities, the District shall have the right to order, on not less than three (3) hours written notice from the District's General Manager, that all construction cease until corrective action taken by Licensee, its contractors or agents which, in the sole and absolute judgment of the District's licensed engineer, is adequate to remedy the problem cited for the work stoppage.

## **7.0. OPERATING RULES AND LAWS**

Licensee represents, warrants, and agrees that it will conduct its activities on the Easement in compliance with all applicable environmental laws, ordinances, rules, regulations and policies and shall comply with all federal, state and local laws, ordinances, rules, regulations and policies applicable to its construction and operations under this License.

## **8.0 CULTURAL VALUES**

Should evidence of historical, archeological, or paleontological sites be discovered in the course of Licensee's construction or use of the Easement, Licensee shall immediately suspend construction or operations and advise the District. Licensee acknowledges the existence of an agreement between the District and the State of Texas and/or the State Historical Preservation Officer for the State of Texas and accepts this License subject to all provisions of such agreement.

## **9.0 CONCEALED CONDITIONS OR OBSTACLES**

Licensee accepts the Easement in its existing condition. Except to the extent liable under the Texas Tort Claims Act, District shall not be responsible for any condition (open or concealed), defects, or obstacles encountered by Licensee, and District makes no warranties or representations related to any condition of the Easement. .

## **10.0 INTERFERENCE PROHIBITED**

Licensee's activities shall be conducted so as not to interfere with the operation, maintenance or administration by District of its water improvement district and its facilities. Licensee shall reimburse District for any documented repairs, maintenance or expense required or incurred by District, which repair, maintenance, or expense is caused by Licensee's activities on the Easement. Licensee shall make such reimbursement within 30 days after written notice to Licensee.

## **11.0 USE LIMITATION**

11.1 Use of the Easement by Licensee is limited to those uses specified in this License. This License (a) does not grant any rights to water; and (b) does not allow Licensee to restrict entry or use by District, its agents, servants, employees, constructors, or invitees to the Easement, or any surface, subsurface or aerial portions of it.

11.2 Licensee shall never dedicate, grant, or convey any right to this Easement to a third party without the prior written consent of District. Any dedication, grant, or conveyance of any right to this Easement by the Licensee, including but not limited to, dedication,

grant, or conveyance of a public highway, street, or roadway, without the prior written consent of District shall not be valid and shall constitute a breach of the obligations imposed upon Licensee under this License and entitle District to invoke any remedy District may have under the terms of this License or otherwise by law.

## **12.0 INDEMNITY AND INSURANCE**

12.1 To the maximum extent allowable by law, Licensee agrees to indemnify and hold the District and its officers, directors, employees, engineers, attorneys, and agents harmless from any and all liability, loss, claims, demands or actions arising out of or resulting from injury to or death of persons, or damage to or loss of property, including environmental damage, in connection with Licensee's use of or presence on the Easement; but in each instance, only to the extent the liability, loss, claim, demand, or action is determined attributable to Licensee's negligence, gross negligence, strict liability in tort or willful misconduct. This provision shall survive the expiration or earlier termination of this License.

12.2 At all times during the term of this License, Licensee agrees to procure and maintain in force, at its expense, a commercial general liability insurance policy adequate to protect District against liability for damage claims through use of or arising out of accidents occurring in and around the Easement, in minimum coverage amounts acceptable to District. Such insurance policy shall name District as an additional insured and contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days' prior written notice has been given to District. Licensee shall provide to District, at the time this License is presented for approval by District's governing body, a certificate evidencing such insurance coverage. Licensee shall ensure that District is furnished evidence, satisfactory to District, of continuation of such insurance each year during the term of this License. If the Licensee is a governmental entity and is self-insured, then at all times during the term of this License, Licensee agrees to self insure against liability for damage claims through use of or arising out of accidents occurring in and around the Easement in minimum amount of coverage amounts acceptable to the District. Licensee shall provide to District, at the time this License is presented for approval by District's governing body, a letter evidencing such self insurance coverage. Licensee shall ensure that District is furnished evidence, satisfactory to District, of continuation of such insurance each year during the term of this License. The insurance requirements contained herein are not intended nor shall inure to the benefit of any third party.

12.3 District shall have no liability to Licensee for any damage to Licensee's property on the Easement, and Licensee shall hold District, its officers, directors, employees,

engineers, attorneys, and agents harmless from any claim, damage, or demand resulting from such damage.

### **13.0 MAINTENANCE**

13.1. Licensee shall be responsible for any and all maintenance associated with Licensee's use of its facilities in the Easement. Such maintenance shall include, but not be limited to: (a) repair and upkeep of the Easement and Licensee's facilities located thereon; (b) removal of deposited sediment, trash, weeds, and other debris from within the Easement; (c) control of vectors and other pests associated with the Easement and Licensee's facilities located thereon. Such maintenance shall be conducted by Licensee as needed, annually or on written request by District, between the end of each irrigation season and December 31, or at other times upon written notification by District or Licensee. Such maintenance shall not interfere in any manner whatsoever with the construction, operation, and maintenance of any part of District's facilities or the Rio Grande Reclamation Project. District shall be notified at least forty-eight (48) hours in advance of any planned maintenance, unless under emergency conditions when notification shall be timely. Any violation by Licensee of its maintenance obligation as set forth in this section shall constitute a breach of this License by Licensee and shall entitle District to invoke any and all remedies provided under this License or otherwise by law.

13.2 Damage to District's Facilities. In addition to all other remedies provided under this License and by law to District, Licensee shall repair or reimburse the District for the repair costs and any other actual damages to the District's facilities, which damages are caused by Licensee's maintenance, operation, or use of the Easement, whether or not such damages are caused by Licensee's negligence or Act of God.

### **14.0 NO WARRANTY OF TITLE**

District makes no warranties or representations of title or interest in the Easement or legal authority to make this License. This License is granted only to the extent of District's interest, if any, in the Easement and is subject to all prior and existing leases, easements, licenses, and other rights of use pertaining to the site of the Easement.

### **15.0 DEFAULT**

In the event of any breach by Licensee in the performance of any term or condition of this License which breach continues for thirty (30) days after written notice from District of such breach, District may declare a default and terminate this License without further notice, and/or invoke any other remedy provided by this license or law or equity,



including without limitation, injunctive relief and damages without refund of any consideration or of any amounts previously paid to District by Licensee.

## **16.0 USE OF EASEMENT BY DISTRICT**

District retains and reserves all right, title and interest in the Easement and in the site of the Easement, and shall continue to enjoy the use of the Easement, including all surface, subsurface and aerial portions, for any and all purposes not inconsistent with the use granted to Licensee by this License. District shall have the right to use the Easement without payment to Licensee.

## **17.0 NOTICES**

17.1 All notices, requests, demands, and other communications required by or made in connection with this License shall be in writing and shall be deemed given in personally delivered or mailed, certified mail, return receipt requested, or sent by overnight carrier to the following addresses:

If to Licensee, to:

City Manager  
The City of El Paso  
2 Civic Center Plaza, 4th Floor of City Hall  
El Paso, Texas 79901  
Phone (915) 541-4200  
Fax (915) 541-4441

If to District, to:

General Manager  
El Paso County Water Improvement District No. 1  
P.O. Box 749  
Clint, Texas 79836-0749  
Phone (915) 872-4000  
Fax (915) 851-0816

17.2 Any notice given in accordance with this Section shall be deemed received upon receipt if by personal delivery, two (2) days after deposit in the U.S. Mail if sent certified mail, or the following business day if sent by overnight carrier.

17.3 District and Licensee shall promptly notify the other party of any changes in address, telephone number or facsimile number.

## **18.0 EXPIRATION OR TERMINATION**

18.1 Within sixty (60) days after expiration or termination of this License, Licensee shall remove all of the Licensee's facilities from the Easement and shall restore the site of the Easement to the condition that such Easement existed at the commencement of this License or to a condition that is reasonably close to the condition that such Easement existed at the commencement of this License and is approved in writing by the District. Upon Licensee's failure to remove its facilities from the Easement within sixty (60) days after the expiration, termination, or revocation of this License, Licensee shall pay District for all of District's expenses related to removal of the facilities.

18.2 Any illegal use of or illegal activity by the License on the Easement or the site of the Easement shall be cause for immediate termination of this License.

## **19.0 ENTIRE AGREEMENT**

This License contains the entire agreement between the parties and supersedes previous agreements or licenses, if any, relating to the subject matter of this License. Any oral representations or modifications concerning this License shall be of no force and effect. Any subsequent amendment or modification must be in writing and agreed to by the parties.

## **20.0 ASSIGNMENT**

The Licensee may assign this License to any successor to the Licensee whether by merger, consolidation, sale of assets, or otherwise; provided that successor shall be bound by and comply with the terms of this License, that the successor is in good standing with the District, and that the Licensee first obtain the written approval of the District.

## **21.0 TEXAS LAW TO APPLY**

This License is to be construed under Texas law. Venue for any suit brought on this License by either party shall be El Paso County, Texas in a court of competent jurisdiction.

## **22.0 SEVERABILITY**

If any one or more of the provisions contained in this License are for any reason held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability will not affect any other provision of this License, which will be

construed as if it had not included the invalid, illegal, or unenforceable provision, provided such provision or provisions are not essential to the substance of this License. If such provision or provisions are essential to the substance of this License, this License shall be deemed null and void, and there shall be no refund of any consideration paid in connection with this License.

### **23.0 RIGHTS AND REMEDIES CUMULATIVE**

The rights and remedies provided by this License are cumulative, and either party's use of any right or remedy will not preclude or waive its right to use any other remedy. The rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

### **24.0 ATTORNEY'S FEES**

If, as a result of either party's default under this License, the other party employs an attorney or attorneys to enforce its rights under this License, then the party adjudged to be in default will pay the other party the reasonable attorney's fees and costs incurred to enforce the License.

### **25.0 TITLES**

The titles of the articles, paragraphs, and sections of this License are intended for the convenience of the parties and shall have no effect and shall neither limit nor amplify the provisions of this License.

### **26.0 RECORDING OF LICENSE**

The District may record this License with the Real Property Records of El Paso County, Texas.

### **27.0 APPLICATION TO USE DISTRICT REAL PROPERTY**

This License is granted, in part, based in the reliance on the information supplied and the interpretation made by the Licensee to the District in the Licensee's "Application to Use District Property" and that such information was true and correct. Should any part of such information be determined by the District to be incorrect or wrong, this License may be reevaluated by the District. If this License, based on the correct information, is found by the District to be detrimental to the District interests, then the Licensee may be determined by the District to be in breach and invoke the provisions of Section 15 of this License.

## **28.0 DISCHARGE OF NON-AGRICULTURAL STORM WATER OR RUNOFF**

This license does not permit the discharge of any kind into the District's drainage or irrigation canals or other facilities. Such prohibited discharges included, but are not limited to, non-agricultural storm water, runoff from non agricultural land, groundwater, effluent, sewage, or chemicals of any kind, with the single exception that if the location of the easement in consideration under this License is within the City of El Paso's Extra Territorial Jurisdiction, and the Licensee plans on discharging storm water runoff, the Licensee must obtain written permission from the City of El Paso for the term of this License to discharge storm water and the Licensee must provide a copy of such permission to the District. All types of discharge other than storm water permitted and approved by the City of El Paso are prohibited and any other discharge by the Licensee shall be reasons for immediate termination, without notice, of this License by the District.

## **29.0 ADEQUACY OF FACILITIES**

By executing this License, the Licensee acknowledges that District makes no warranty, promises, or conditions regarding the adequacy of the District's facilities, including but not limited to the District's drainage and irrigation canals, to convey water, including storm water runoff or flood water. The Licensee further acknowledges that during flooding water may flow from the District facilities and flood the easement under considered under this license, the Licensee's land, property, and/or facilities, and to the maximum extent allowable by law, Licensee agrees to indemnify and hold the District and its officers, directors, employees, engineers, attorneys, and agents harmless from any and all liability, loss, claims, demands or actions arising out of or resulting from injury to or death of persons, or damage to or loss of property, including environmental damage, in connection with any flooding or storm water that may result, in part or in full, because of the Licensee use of the easement considered under this License.

## **30.0 CONSTRUCTION CONTRACTOR**

Licensee shall incorporate the terms and conditions of this License in any construction contract applicable to this License. Any contractor employed by Licensee shall, in its contract with Licensee, expressly assume performance of the work subject to the terms and conditions of this License.


CITY CLERK DEPT.

2011 SEP -1 PM 5: 56

License L-1202

IN WITNESS WHEREOF, the parties have executed this License in duplicate counterparts, each of which has the full force and effect of an original. This License is effective on the date written below on the signature line for the District:

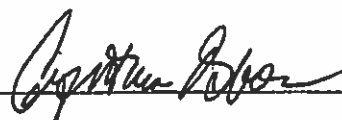
El Paso County Water Improvement District No. 1

By:  Date: 8/10/11  
JOHNNY STUBBS  
President, Board of Directors

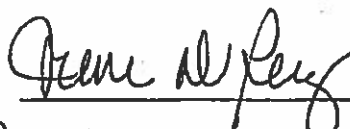
Licensee: The City of El Paso

  
Joyce Wilson, City Manager

APPROVED AS TO FORM:

  
Cynthia S. Osborn  
City Attorney

APPROVED AS TO CONTENT:

  
for R. Alan Shubert, P.E.  
City Engineer

Being a portion of  
La Union East Lateral,  
Block 10, Upper Valley Surveys  
City of El Paso, El Paso County, Texas  
April 16, 2010

### EASEMENT DESCRIPTION

Description of a portion of La Union East Lateral, out of Block 10 of the Upper Valley Surveys, El Paso County, Texas and being more particularly described by metes and bounds as follows:

The "TRUE POINT OF BEGINNING" being a set 1/2" rebar with cap marked TX 5152 for the northeasterly corner of said proposed crossing easement said point being on the common boundary line of tract 1F, Block 10, Upper Valley Surveys from which National Geodetic Survey Control Monument "Chino" bears North 41°12'04" East a distance of 20,369.19 feet, said point has a coordinate value of North 10,717,710.86, East 358,754.95 in the central zone of the Texas Coordinate System NAD 1983 Datum.


Thence along said common boundary line South 01°29'24" East (S01°45'00"E Vol. 4789, Pg. 1179) and passing the common boundary line of tracts 1F and 1J at a distance of 43.05 feet a total distance of 106.00 feet to a found 1/2" rebar with cap on the westerly line of Tract 1J, Block 10, Upper Valley Surveys;

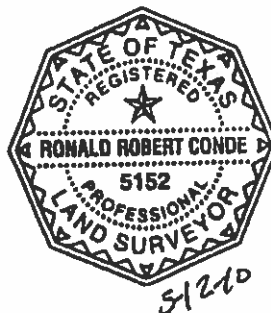
Thence leaving said boundary line South 88°30'36" West a distance of 50.00 feet to a found 1/2" rebar with cap marked TX 5152 on the easterly boundary line of a 50' La Union East Lateral;

Thence along said boundary line North 01°29'24" West a distance of 106.00 feet to a found 1/2" rebar with cap marked TX 5152;

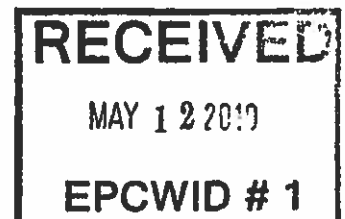
Thence leaving said boundary line North 88°30'36" East a distance of 50.00 feet to the "TRUE POINT OF BEGINNING" and containing in all 5300 square feet or 0.1217 Acres of land more or less.

A Plat of even date accompanies this description.

  
Ron R. Conde  
R.P.L.S. No. 5152



job#504-49  
LGL04\50449.LGL



CONDE, INC.  
ENGINEERING / LAND SURVEYING / PLANNING  
1790 LEE TREVINO SUITE 400 / EL PASO, TEXAS 79936 / (915) 592-0283

EXHIBIT A

1202



**EXHIBIT C**  
**LICENSE AGREEMENT (La Union East Lateral Canal Station 459+92)**

**LICENSE FOR PUBLIC-USE OF DISTRICT REAL PROPERTY**

**The City of El Paso - 1 - 6' X 6' Concrete Box Culvert and Headwall Structure  
Crossing La Union East Lateral Canal at Station 459+92**

This License is entered into between the El Paso County Water Improvement District No. 1, a political subdivision of the State of Texas existing pursuant to Article XVI, Section 59, of the Constitution of the State of Texas ("District"), and The City of El Paso ("Licensee"), a home-rule municipal corporation.

**WITNESSETH**

In consideration of the mutual covenants and agreements of this License and other good and valuable consideration, the parties agree as follows:

**1.0 PURPOSE OF LICENSE**

Subject to the terms and conditions described herein, this License is for the sole purpose of the Licensee's use to construct, operate, install, maintain, inspect, repair, replace, or remove a 1 - 6' X 6' Concrete Box Culvert and Headwall Structure at the location shown as the "Easement" described and depicted on the survey drawings and field notes attached as Exhibit "A", being a total surface area of 4,700 square feet, and engineering drawing attached as Exhibit "B"; all of which are fully incorporated herein by this reference. The purpose of the Easement is limited to the construction of, and use as, a public road on the surface only and shall not extend to the use by any utility except as may be required by law. Any substantial or significant addition or changes to the use set forth in the application for this License may require administrative review and a reasonable fee for such review.

**2.0 TERM OF LICENSE**

The term of this License shall be for fifty (50) years commencing on August 10, 2011, (the Commencement Date) and expiring at midnight August 9, 2061, (the Expiration Date).

**3.0 CONSIDERATION**

This License is granted for good and valuable consideration including Licensee's payment to District of the sum of \$23,500.00 upon execution of this License.

#### **4.0 LICENSE RENEWAL**

Licensee may request that the District renew this License for a fifty (50) year term so long as Licensee has not breached the terms and conditions of this License during the initial term. Licensee shall make such request by written notice to the District at least sixty (60) days prior to the Expiration Date. Prior to the effective date of any renewal of this License, Licensee shall pay to the District a fee to be negotiated by the District and Licensee. **THE DISTRICT RETAINS THE RIGHT TO DENY ANY REQUEST TO RENEW THIS LICENSE FOR ANY REASON.** Nothing in this License shall prevent Licensee from exercising its eminent domain powers.

#### **5.0 RIGHT OF INGRESS AND EGRESS**

The District grants to Licensee the right of ingress and egress to the Easement for the purposes identified in this License in Section 1.0 set out above, provided that the Licensee shall not disturb or interfere with District's use of the Easement or any other property of District, including without limitation any surface, subsurface or aerial portions.

#### **6.0 COORDINATION OF CONSTRUCTION**

6.1 Licensee agrees to give notice to the District and coordinate with the District's Maintenance Supervisor forty-eight (48) hours prior to any construction by Licensee, its agent(s) or contractor(s) on the Easement. To the extent any construction on the Easement may have already commenced, the District shall have the right to inspect and review such construction to determine whether the same meets the District's Design Standards in effect at the time such inspection or review is done by the District. If the District determines that any part of such construction does not meet the District's Design Standards, then within twenty-one (21) calendar days after written notification from District, the Licensee shall modify or reconstruct any such construction in a manner consistent with the District's Design Standards, as well as applicable federal, state, local laws, and the National Electrical Safety Code (NESC) standards.

6.2 If the District determines that any part of such construction does not comply with the Application To Use District Property submitted by Licensee, does not meet the District's Design Standards, or interferes with the operation, maintenance or administration by the District of its facilities, the District shall have the right to order, on not less than three (3) hours written notice from the District's General Manager, that all construction cease until corrective action taken by Licensee, its contractors or agents which, in the sole and absolute judgment of the District's licensed engineer, is adequate to remedy the problem cited for the work stoppage.

## **7.0. OPERATING RULES AND LAWS**

Licensee represents, warrants, and agrees that it will conduct its activities on the Easement in compliance with all applicable environmental laws, ordinances, rules, regulations and policies and shall comply with all federal, state and local laws, ordinances, rules, regulations and policies applicable to its construction and operations under this License.

## **8.0 CULTURAL VALUES**

Should evidence of historical, archeological, or paleontological sites be discovered in the course of Licensee's construction or use of the Easement, Licensee shall immediately suspend construction or operations and advise the District. Licensee acknowledges the existence of an agreement between the District and the State of Texas and/or the State Historical Preservation Officer for the State of Texas and accepts this License subject to all provisions of such agreement.

## **9.0 CONCEALED CONDITIONS OR OBSTACLES**

Licensee accepts the Easement in its existing condition. Except to the extent liable under the Texas Tort Claims Act, District shall not be responsible for any condition (open or concealed), defects, or obstacles encountered by Licensee, and District makes no warranties or representations related to any condition of the Easement. .

## **10.0 INTERFERENCE PROHIBITED**

Licensee's activities shall be conducted so as not to interfere with the operation, maintenance or administration by District of its water improvement district and its facilities. Licensee shall reimburse District for any documented repairs, maintenance or expense required or incurred by District, which repair, maintenance, or expense is caused by Licensee's activities on the Easement. Licensee shall make such reimbursement within 30 days after written notice to Licensee.

## **11.0 USE LIMITATION**

11.1 Use of the Easement by Licensee is limited to those uses specified in this License. This License (a) does not grant any rights to water; and (b) does not allow Licensee to restrict entry or use by District, its agents, servants, employees, constructors, or invitees to the Easement, or any surface, subsurface or aerial portions of it.

11.2 Licensee shall never dedicate, grant, or convey any right to this Easement to a third party without the prior written consent of District. Any dedication, grant, or conveyance of any right to this Easement by the Licensee, including but not limited to, dedication,

grant, or conveyance of a public highway, street, or roadway, without the prior written consent of District shall not be valid and shall constitute a breach of the obligations imposed upon Licensee under this License and entitle District to invoke any remedy District may have under the terms of this License or otherwise by law.

## **12.0 INDEMNITY AND INSURANCE**

12.1 To the maximum extent allowable by law, Licensee agrees to indemnify and hold the District and its officers, directors, employees, engineers, attorneys, and agents harmless from any and all liability, loss, claims, demands or actions arising out of or resulting from injury to or death of persons, or damage to or loss of property, including environmental damage, in connection with Licensee's use of or presence on the Easement; but in each instance, only to the extent the liability, loss, claim, demand, or action is determined attributable to Licensee's negligence, gross negligence, strict liability in tort or willful misconduct. This provision shall survive the expiration or earlier termination of this License.

12.2 At all times during the term of this License, Licensee agrees to procure and maintain in force, at its expense, a commercial general liability insurance policy adequate to protect District against liability for damage claims through use of or arising out of accidents occurring in and around the Easement, in minimum coverage amounts acceptable to District. Such insurance policy shall name District as an additional insured and contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days' prior written notice has been given to District. Licensee shall provide to District, at the time this License is presented for approval by District's governing body, a certificate evidencing such insurance coverage. Licensee shall ensure that District is furnished evidence, satisfactory to District, of continuation of such insurance each year during the term of this License. If the Licensee is a governmental entity and is self-insured, then at all times during the term of this License, Licensee agrees to self insure against liability for damage claims through use of or arising out of accidents occurring in and around the Easement in minimum amount of coverage amounts acceptable to the District. Licensee shall provide to District, at the time this License is presented for approval by District's governing body, a letter evidencing such self insurance coverage. Licensee shall ensure that District is furnished evidence, satisfactory to District, of continuation of such insurance each year during the term of this License. The insurance requirements contained herein are not intended nor shall inure to the benefit of any third party.

12.3 District shall have no liability to Licensee for any damage to Licensee's property on the Easement, and Licensee shall hold District, its officers, directors, employees,

engineers, attorneys, and agents harmless from any claim, damage, or demand resulting from such damage.

### **13.0 MAINTENANCE**

13.1. Licensee shall be responsible for any and all maintenance associated with Licensee's use of its facilities in the Easement. Such maintenance shall include, but not be limited to: (a) repair and upkeep of the Easement and Licensee's facilities located thereon; (b) removal of deposited sediment, trash, weeds, and other debris from within the Easement; (c) control of vectors and other pests associated with the Easement and Licensee's facilities located thereon. Such maintenance shall be conducted by Licensee as needed, annually or on written request by District, between the end of each irrigation season and December 31, or at other times upon written notification by District or Licensee. Such maintenance shall not interfere in any manner whatsoever with the construction, operation, and maintenance of any part of District's facilities or the Rio Grande Reclamation Project. District shall be notified at least forty-eight (48) hours in advance of any planned maintenance, unless under emergency conditions when notification shall be timely. Any violation by Licensee of its maintenance obligation as set forth in this section shall constitute a breach of this License by Licensee and shall entitle District to invoke any and all remedies provided under this License or otherwise by law.

13.2 Damage to District's Facilities. In addition to all other remedies provided under this License and by law to District, Licensee shall repair or reimburse the District for the repair costs and any other actual damages to the District's facilities, which damages are caused by Licensee's maintenance, operation, or use of the Easement, whether or not such damages are caused by Licensee's negligence or Act of God.

### **14.0 NO WARRANTY OF TITLE**

District makes no warranties or representations of title or interest in the Easement or legal authority to make this License. This License is granted only to the extent of District's interest, if any, in the Easement and is subject to all prior and existing leases, easements, licenses, and other rights of use pertaining to the site of the Easement.

### **15.0 DEFAULT**

In the event of any breach by Licensee in the performance of any term or condition of this License which breach continues for thirty (30) days after written notice from District of such breach, District may declare a default and terminate this License without further notice, and/or invoke any other remedy provided by this license or law or equity,



including without limitation, injunctive relief and damages without refund of any consideration or of any amounts previously paid to District by Licensee.

#### **16.0 USE OF EASEMENT BY DISTRICT**

District retains and reserves all right, title and interest in the Easement and in the site of the Easement, and shall continue to enjoy the use of the Easement, including all surface, subsurface and aerial portions, for any and all purposes not inconsistent with the use granted to Licensee by this License. District shall have the right to use the Easement without payment to Licensee.

#### **17.0 NOTICES**

17.1 All notices, requests, demands, and other communications required by or made in connection with this License shall be in writing and shall be deemed given in personally delivered or mailed, certified mail, return receipt requested, or sent by overnight carrier to the following addresses:

If to Licensee, to:

City Manager  
The City of El Paso  
2 Civic Center Plaza, 4th Floor of City Hall  
El Paso, Texas 79901  
Phone (915) 541-4200  
Fax (915) 541-4441

If to District, to:

General Manager  
El Paso County Water Improvement District No. 1  
P.O. Box 749  
Clint, Texas 79836-0749  
Phone (915) 872-4000  
Fax (915) 851-0816

17.2 Any notice given in accordance with this Section shall be deemed received upon receipt if by personal delivery, two (2) days after deposit in the U.S. Mail if sent certified mail, or the following business day if sent by overnight carrier.

17.3 District and Licensee shall promptly notify the other party of any changes in address, telephone number or facsimile number.

## **18.0 EXPIRATION OR TERMINATION**

18.1 Within sixty (60) days after expiration or termination of this License, Licensee shall remove all of the Licensee's facilities from the Easement and shall restore the site of the Easement to the condition that such Easement existed at the commencement of this License or to a condition that is reasonably close to the condition that such Easement existed at the commencement of this License and is approved in writing by the District. Upon Licensee's failure to remove its facilities from the Easement within sixty (60) days after the expiration, termination, or revocation of this License, Licensee shall pay District for all of District's expenses related to removal of the facilities.

18.2 Any illegal use of or illegal activity by the License on the Easement or the site of the Easement shall be cause for immediate termination of this License.

## **19.0 ENTIRE AGREEMENT**

This License contains the entire agreement between the parties and supersedes previous agreements or licenses, if any, relating to the subject matter of this License. Any oral representations or modifications concerning this License shall be of no force and effect. Any subsequent amendment or modification must be in writing and agreed to by the parties.

## **20.0 ASSIGNMENT**

The Licensee may assign this License to any successor to the Licensee whether by merger, consolidation, sale of assets, or otherwise; provided that successor shall be bound by and comply with the terms of this License, that the successor is in good standing with the District, and that the Licensee first obtain the written approval of the District.

## **21.0 TEXAS LAW TO APPLY**

This License is to be construed under Texas law. Venue for any suit brought on this License by either party shall be El Paso County, Texas in a court of competent jurisdiction.

## **22.0 SEVERABILITY**

If any one or more of the provisions contained in this License are for any reason held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability will not affect any other provision of this License, which will be

construed as if it had not included the invalid, illegal, or unenforceable provision, provided such provision or provisions are not essential to the substance of this License. If such provision or provisions are essential to the substance of this License, this License shall be deemed null and void, and there shall be no refund of any consideration paid in connection with this License.

### **23.0 RIGHTS AND REMEDIES CUMULATIVE**

The rights and remedies provided by this License are cumulative, and either party's use of any right or remedy will not preclude or waive its right to use any other remedy. The rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

### **24.0 ATTORNEY'S FEES**

If, as a result of either party's default under this License, the other party employs an attorney or attorneys to enforce its rights under this License, then the party adjudged to be in default will pay the other party the reasonable attorney's fees and costs incurred to enforce the License.

### **25.0 TITLES**

The titles of the articles, paragraphs, and sections of this License are intended for the convenience of the parties and shall have no effect and shall neither limit nor amplify the provisions of this License.

### **26.0 RECORDING OF LICENSE**

The District may record this License with the Real Property Records of El Paso County, Texas.

### **27.0 APPLICATION TO USE DISTRICT REAL PROPERTY**

This License is granted, in part, based in the reliance on the information supplied and the interpretation made by the Licensee to the District in the Licensee's "Application to Use District Property" and that such information was true and correct. Should any part of such information be determined by the District to be incorrect or wrong, this License may be reevaluated by the District. If this License, based on the correct information, is found by the District to be detrimental to the District interests, then the Licensee may be determined by the District to be in breach and invoke the provisions of Section 15 of this License.

## **28.0 DISCHARGE OF NON-AGRICULTURAL STORM WATER OR RUNOFF**

This license does not permit the discharge of any kind into the District's drainage or irrigation canals or other facilities. Such prohibited discharges included, but are not limited to, non-agricultural storm water, runoff from non agricultural land, groundwater, effluent, sewage, or chemicals of any kind, with the single exception that if the location of the easement in consideration under this License is within the City of El Paso's Extra Territorial Jurisdiction, and the Licensee plans on discharging storm water runoff, the Licensee must obtain written permission from the City of El Paso for the term of this License to discharge storm water and the Licensee must provide a copy of such permission to the District. All types of discharge other than storm water permitted and approved by the City of El Paso are prohibited and any other discharge by the Licensee shall be reasons for immediate termination, without notice, of this License by the District.

## **29.0 ADEQUACY OF FACILITIES**

By executing this License, the Licensee acknowledges that District makes no warranty, promises, or conditions regarding the adequacy of the District's facilities, including but not limited to the District's drainage and irrigation canals, to convey water, including storm water runoff or flood water. The Licensee further acknowledges that during flooding water may flow from the District facilities and flood the easement under considered under this license, the Licensee's land, property, and/or facilities, and to the maximum extent allowable by law, Licensee agrees to indemnify and hold the District and its officers, directors, employees, engineers, attorneys, and agents harmless from any and all liability, loss, claims, demands or actions arising out of or resulting from injury to or death of persons, or damage to or loss of property, including environmental damage, in connection with any flooding or storm water that may result, in part or in full, because of the Licensee use of the easement considered under this License.

## **30.0 CONSTRUCTION CONTRACTOR**


Licensee shall incorporate the terms and conditions of this License in any construction contract applicable to this License. Any contractor employed by Licensee shall, in its contract with Licensee, expressly assume performance of the work subject to the terms and conditions of this License.

2011 SEP -1 PM 5: 57

License L-1203

IN WITNESS WHEREOF, the parties have executed this License in duplicate counterparts, each of which has the full force and effect of an original. This License is effective on the date written below on the signature line for the District:


El Paso County Water Improvement District No. 1

By: 

Date: 8/10/11

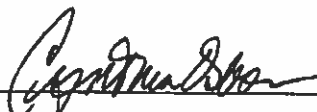
JOHNNY STUBBS  
President, Board of Directors

Licensee: The City of El Paso



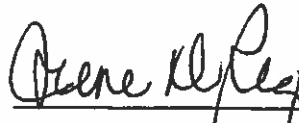
Joyce Wilson, City Manager


APPROVED AS TO FORM:



Cynthia S. Osborn  
City Attorney

APPROVED AS TO CONTENT:



 R. Alan Shubert, P.E.  
City Engineer

Being a portion of  
La Union East Lateral,  
Block 10, Upper Valley Surveys  
City of El Paso, El Paso County, Texas  
April 16, 2010

### EASEMENT DESCRIPTION

Description of a portion of La Union East Lateral, Block 10 of the Upper Valley Surveys, El Paso County, Texas and being more particularly described by metes and bounds as follows:

The "TRUE POINT OF BEGINNING" being a set 1/2" rebar with cap marked TX 5152 on the common boundary line of tract 3B, block 10, Upper Valley Surveys with the easterly boundary line of a 50' La Union East Lateral, from which National Geodetic Survey Control Monument "Chino" bears North 43°29'16" East a distance of 19,539.63 feet, said point has a coordinate value of North 10,717,710.86, East 358,754.95 in the central zone of the Texas Coordinate System NAD 1983 Datum.


Thence along said common boundary line South 01°29'24" East (S01°45'00"E Vol. 4785, Pg. 1729) a distance of 94.00 feet to a found 1/2" rebar with cap on the westerly line of Tract 3B;

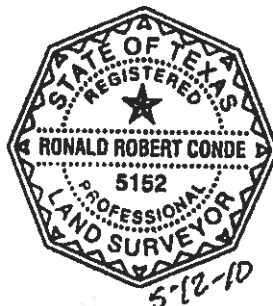
Thence leaving said boundary line South 88°30'36" West a distance of 50.00 feet to a found 1/2" rebar with cap marked TX 5152 on the easterly boundary line of a 50' La Union East Lateral;

Thence along said boundary line North 01°29'24" West a distance of 94.00 feet to a found 1/2" rebar with cap;

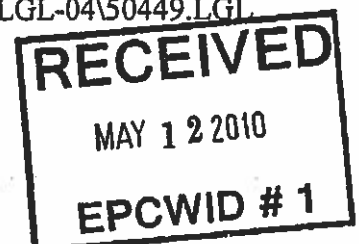
Thence leaving said boundary line North 88°30'36" East a distance of 50.00 feet to the "POINT OF BEGINNING" and containing in all 4700 square feet or 0.1079 Acres of land more or less.

A PLAT OF EVEN DATE ACCOMPANIES THIS DESCRIPTION.

  
Ron R. Conde  
R.P.L.S. No. 5152



job# 50449-1  
LGL-04\50449.LGL



CONDE, INC.  
ENGINEERING / LAND SURVEYING / PLANNING  
1790 LEE TREVINO SUITE 400 / EL PASO, TEXAS 79936 / (915) 592-0283

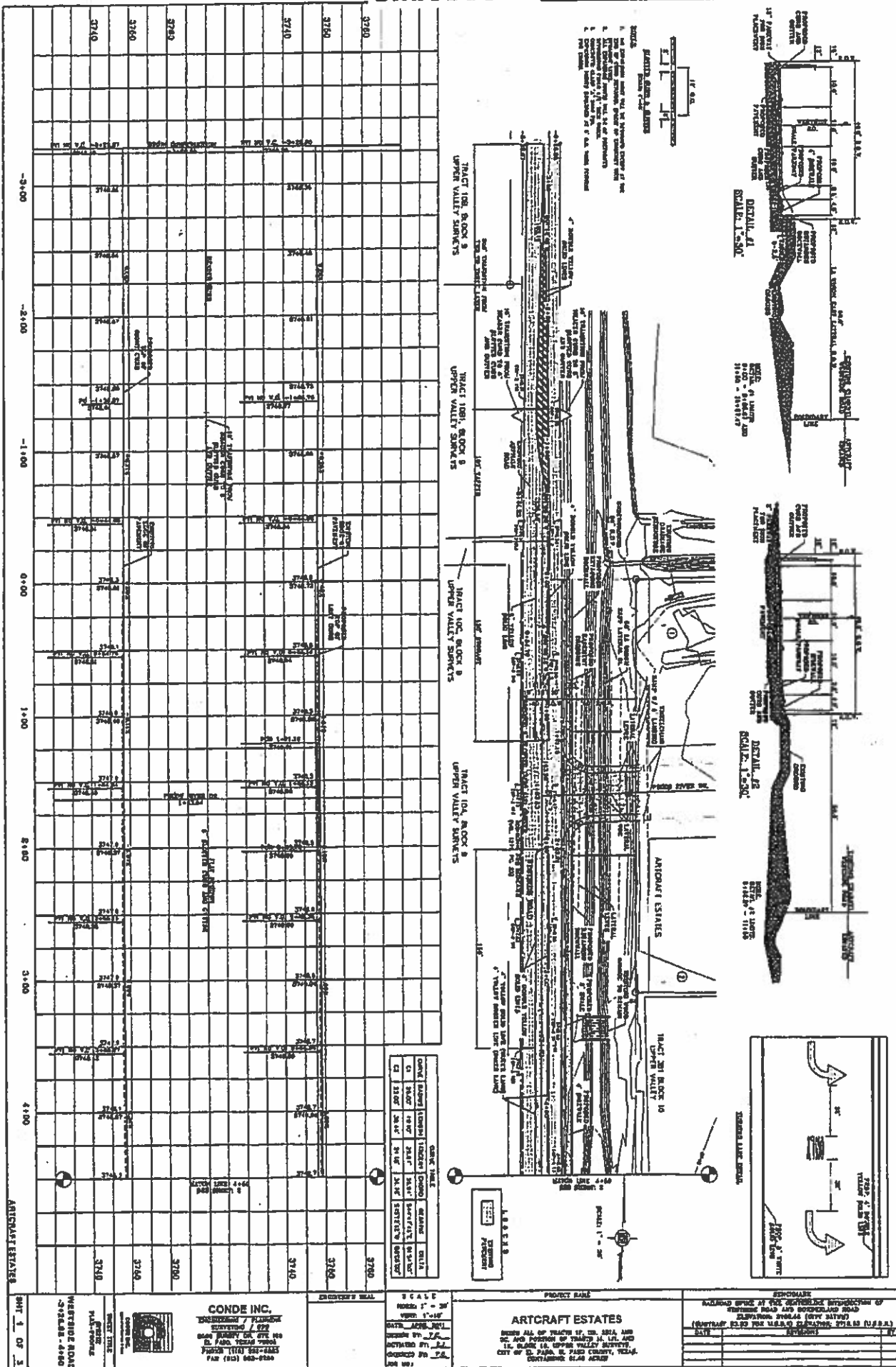
EXHIBIT A

1203

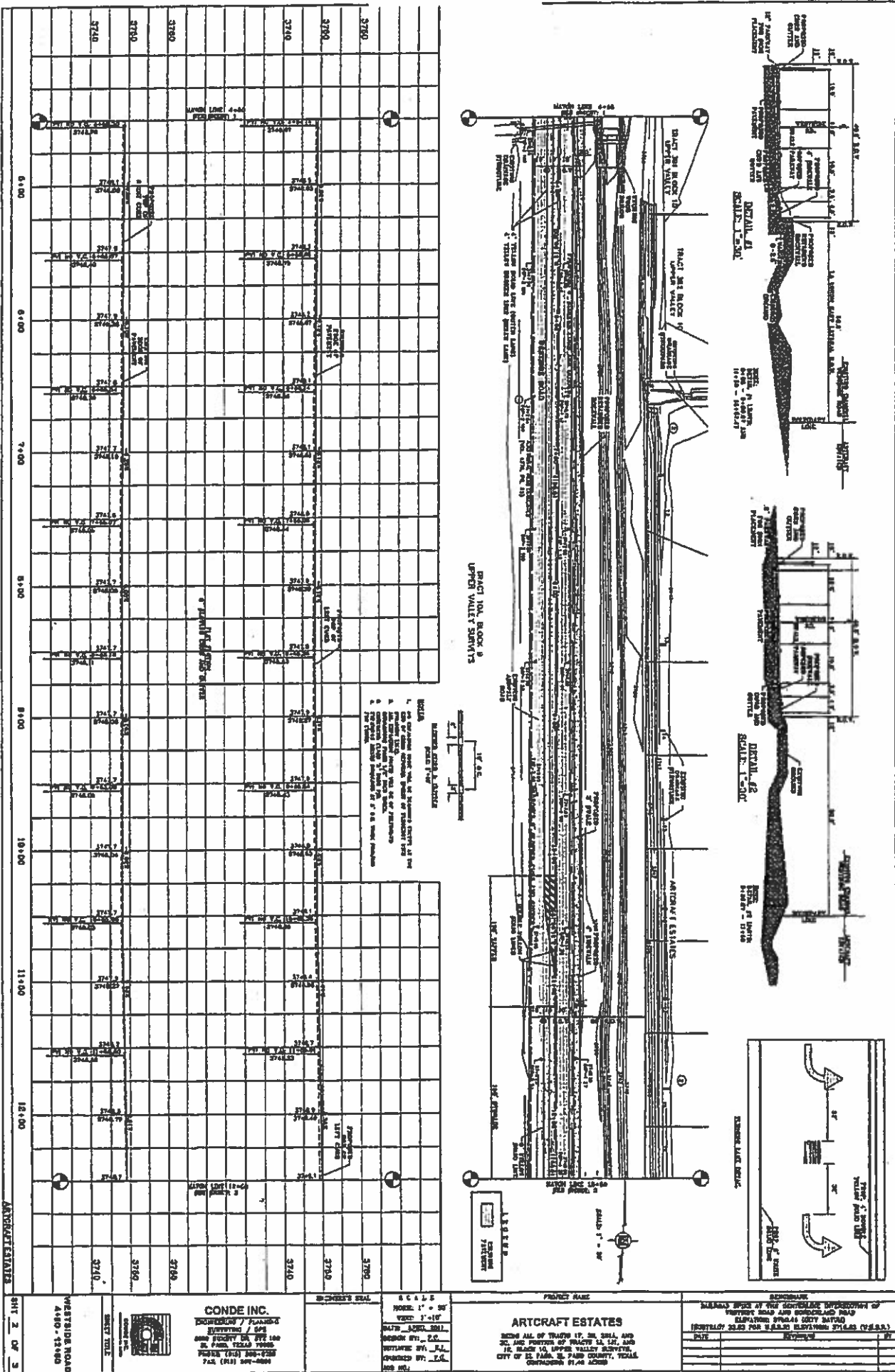


**EXHIBIT "D"**  
**Additional Improvements Plan**

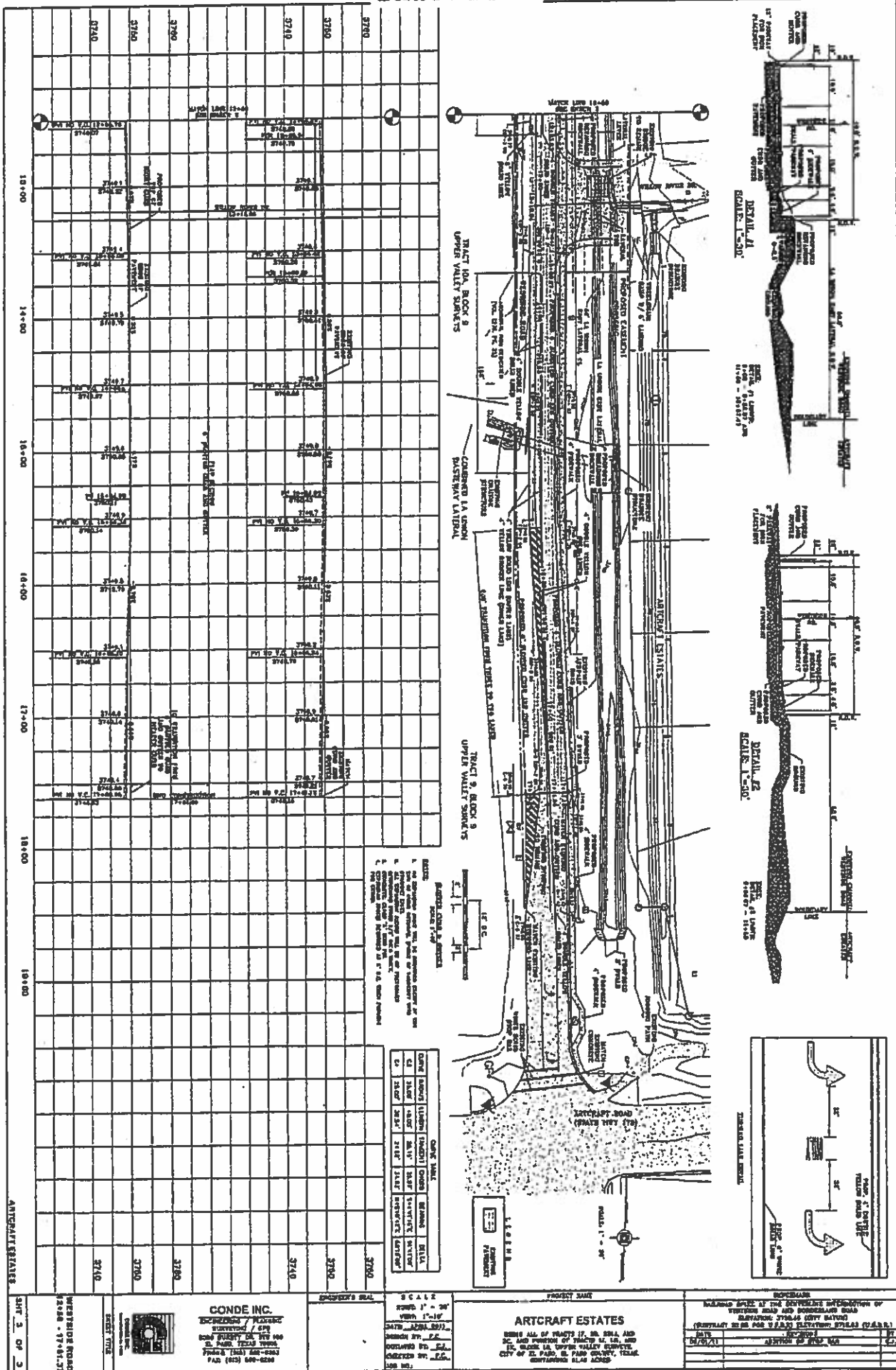
## EXHIBIT D



## EXHIBIT D



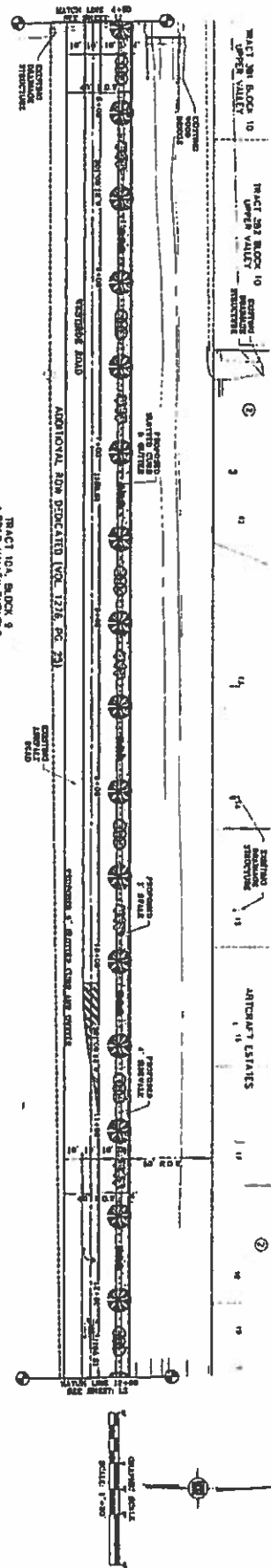
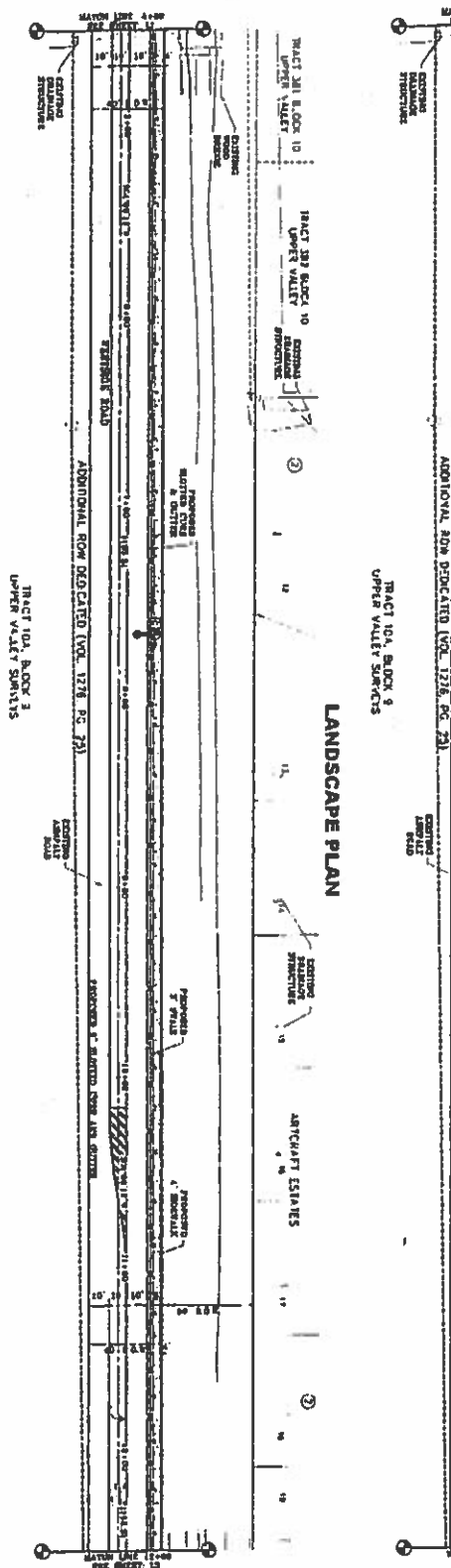
## EXHIBIT D




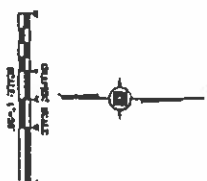




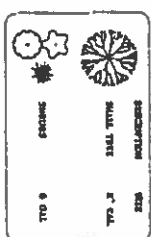
## **AIRCRAFT ESTIMATES**



SHEET NO. OF TOTAL SHEETS 13 OF 15	LANSBERRY LANSBERRY AND ASSOCIATES REMEDIATION CONSULTING PLAN	 CONDE INC. 10000 FIVE SHORT TUNE	<b>CONDE INC.</b> ENGINEERING / PLANNING SURVEYING / GPS 10000 FIVE SHORT TUNE ST. PAUL, MN 55126-3567 PHONE (763) 492-0023 FAX (763) 492-0080	ENGINEER'S SEAL	SCALE HORIZONTAL 1" = 30' VERTICAL 1" = 10' DATE: APRIL 2011 DRAWN BY: E.D. CHECKED BY: J.L. FOR MR.	PROJECT NAME <b>ARTCRAFT ESTATES</b> BEING ALL OF TRACTS 17, 20, 20A, 21, AND 22 AND PORTIONS OF TRACTS 11, 14, AND 15 LOCATED IN OPPOKE KALPIT SURVEY, CITY OF ST. PAUL IN POND COUNTY, TEXAS CONTAINING 61.49 ACRES	EXPLANATION SHALLOAN NOTES AT THE ESTABLISHING INTERSECTION OF VETERANS ROAD AND WOODBRIDGE ROAD ELEVATION 7794.40 (CITY DATUM) (SURVEYED ALSO FOR U.S.G.P.S. ELEVATION 7795.42 (U.S.G.P.S.)) DATE: 10/20/2010
				SHEET TITLE			



## IRRIGATION PLAN

**ARTCRAFT ESTATE**

SHEET NO. 13 OF 13	PARTIAL PARCELS AND IMPOSITION PLAN		<b>CONDE INC</b> ENGINEERING / PLANNING SURVEYING / CIVIL 6000 SHIRLEY HWY. STE. 100 FARMER, TEXAS 77060 PHONE (817) 267-6264 FAX (817) 500-0204	SCALES HORIZ. 1" = 50' VERT. 1" = 10' DATE: APRIL 20, 1994 DRAWN BY: J.A. CHECKED BY: J.L. DATE:	<b>ARTCRAFT ESTATES</b> 2000 S. 401 OF TRACTS 17, 18, 20, 21, AND 22, AND S.E. AND PORTION OF TRACTS 1, 11, AND 12, BLOCK 10, UPPER VALLEY CITY SUBDIVISION CITY OF EL PASO, EL PASO COUNTY, TEXAS CONTAINING 61.69 ACRES	SURVEYMAN HALLMARK SURVEYING, INC. A PROFESSIONAL CORPORATION 10000 W. 10TH STREET, SUITE 100 EL PASO, TEXAS 79906 PHONE (915) 762-1111	DATE: _____ SIGNATURE: _____ TITLE: _____





**EXHIBIT "E"**  
**Project Cost Estimates**

# EXHIBIT E

## Artcraft Preliminary Cost Estimate Westside Rd. and Crossings

revised 8/18/11

Item No.	Unit of Measure	Description	Unit Price	Quantity	Installation	Cost
1	S.Y.	Proposed Pavement	\$20.00	820	\$0.00	\$16,400.00
2	S.Y.	Pavement to be Removed	\$10.00	450	\$0.00	\$4,500.00
3	S.F.	Concrete Sidewalk	\$8.00	7,660.0	\$0.00	\$61,280.00
4	Perch	Retaining Wall	\$75.00	196.0	\$0.00	\$14,700.00
5	L.F.	Concrete Curb	\$10.00	4,450	\$0.00	\$44,500.00
6	L.F.	Box Culvert 6x6	\$400.00	88	\$0.00	\$35,200.00
7	S.F.	Headwall/Wingwalls	\$8.00	1,600	\$0.00	\$12,800.00
8	L.F.	Wrought iron Fence	\$18.00	138	\$0.00	\$2,484.00
9	Each	Shrubs	\$30.00	78	\$234.00	\$2,574.00
10	Each	Trees	\$250.00	29	\$725.00	\$7,975.00
11	Each	Drip Emitter	\$20.00	55	\$110.00	\$1,210.00
12	Each	Schedule 80 Nipple	\$1.00	55	\$5.50	\$60.50
13	Each	Emission Stake	\$0.50	440	\$22.00	\$242.00
14	L.F.	1" Schedule 40 Pipe	\$0.32	1,522	\$48.70	\$535.74
15	L.F.	2" Schedule 40 Pipe	\$0.70	150	\$10.50	\$115.50
16	Each	1"x1"x1/2" PVC Tee	\$1.00	55	\$5.50	\$60.50
17	Each	Rainbird 100-PEB Control Valve	\$100.00	1	\$10.00	\$110.00
18	Each	Tbos Control Module	\$200.00	1	\$20.00	\$220.00
19	Each	Tbos Solenoid	\$50.00	1	\$5.00	\$55.00
20	Each	Carson Valve Box with lid	\$50.00	2	\$10.00	\$110.00
21	Each	Schedule 80 Union	\$50.00	1	\$5.00	\$55.00
22	Each	Wilkins Pressure Regulator	\$160.00	1	\$16.00	\$176.00
23	Each	Double Check Assembly	\$200.00	1	\$20.00	\$220.00
24	Each	Christy Conc. Utility Box W/lid	\$100.00	1	\$10.00	\$110.00
25	L.F.	24 Steel Casing	\$20.00	120	\$0.00	\$2,400.00
26	L.F.	16" Steel Casing	\$15.00	120	\$0.00	\$1,800.00
27	Each	1" Water Meter	\$2,800.00	1	\$280.00	\$3,080.00
28	each	Labor and Supervision (17%)		1		\$36,205.45
29	Each	Relocate Power Poles	\$3,000.00	2	\$0.00	\$6,000.00
30	Each	Remove wood bridge	\$2,000.00	1		\$2,000.00
Sub Total						\$257,178.69
15% Contingency						<u>\$38,576.80</u>
Total						<b>\$295,755.50</b>

Items 1-8 installation cost in unit price

**RESOLUTION****BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

That the City Manager be authorized to sign the following two Licenses from the El Paso County Water Improvement District Number 1, to the City of El Paso:

1. License L-1202: A six foot by six foot concrete box culvert and headwall structure with concrete roadway surface crossing at La Union East Lateral Canal Station 471+48 for a 50 year term at a total cost to the City of \$26,500.00.
2. License L-1203: A six foot by six foot concrete box culvert and headwall structure with concrete roadway surface crossing at La Union East Lateral Canal Station 459+92 for a 50 year term at a total cost to the City of \$23,500.00.


ADOPTED THIS 13<sup>th</sup> DAY OF September 2011.

CITY OF EL PASO:

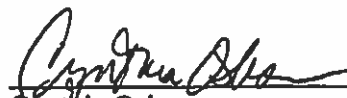


  
John F. Cook, Mayor


ATTEST:

  
Richarda Duffy Morrison  
City Clerk

APPROVED AS TO FORM:

  
Cynthia Osborn  
Assistant City Attorney

APPROVED AS TO CONTENT

  
R. Alan Shubert, P.E.  
City Engineer

**LICENSE FOR PUBLIC-USE OF DISTRICT REAL PROPERTY**

**The City of El Paso - 1 - 6' X 6' Concrete Box Culvert and Headwall Structure**

**Crossing La Union East Lateral Canal at Station 471+48**

This License is entered into between the El Paso County Water Improvement District No. 1, a political subdivision of the State of Texas existing pursuant to Article XVI, Section 59, of the Constitution of the State of Texas ("District"), and The City of El Paso ("Licensee"), a home-rule municipal corporation.

**WITNESSETH**

In consideration of the mutual covenants and agreements of this License and other good and valuable consideration, the parties agree as follows:

**1.0 PURPOSE OF LICENSE**

Subject to the terms and conditions described herein, this License is for the sole purpose of the Licensee's use to construct, operate, install, maintain, inspect, repair, replace, or remove a 1 - 6' X 6' Concrete Box Culvert and Headwall Structure at the location shown as the "Easement" described and depicted on the survey drawings and field notes attached as Exhibit "A", being a total surface area of 5,300 square feet, and engineering drawing attached as Exhibit "B"; all of which are fully incorporated herein by this reference. The purpose of the Easement is limited to the construction of, and use as, a public road on the surface only and shall not extend to the use by any utility except as may be required by law. Any substantial or significant addition or changes to the use set forth in the application for this License may require administrative review and a reasonable fee for such review.

**2.0 TERM OF LICENSE**

The term of this License shall be for fifty (50) years commencing on August 10, 2011, (the Commencement Date) and expiring at midnight August 9, 2061, (the Expiration Date).

**3.0 CONSIDERATION**

This License is granted for good and valuable consideration including Licensee's payment to District of the sum of \$26,500.00 upon execution of this License.