

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

DEPARTMENT: Development Services – Planning Division

AGENDA DATE: CCA Regular 03/25/08

CONTACT PERSON/PHONE: Christina Valles, Lead Planner – 541-4930

DISTRICT(S) AFFECTED: District 1

SUBJECT:

A Resolution That the City Manager be authorized to sign a Construction and Use Agreement with Jack & Hersch Properties, LLC for the purpose of constructing a roadway bridge across an open drainage channel which is adjacent and parallel to the northerly edge of Escondido Drive, such roadway will be at a point approximately 456 feet from the intersection of Escondido and Los Robles Drive. Subject Property: Escondido Drive East of Westwind Drive. Applicant: Jack & Hersch Properties, LLC. (District 1)

BACKGROUND / DISCUSSION:

There is a related rezoning case in process for the subject property. There is an existing and unrelated crossing over the drainage channel on an adjacent property, similar the access point proposed, for which an agreement with the property owner already exists. A second point of access across the drainage channel is required for the development of the subject property.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

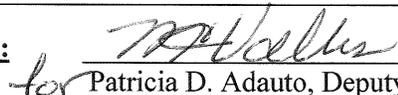
BOARD / COMMISSION ACTION:

Development Coordinating Committee (DCC) – Approval Recommendation

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

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

DEPARTMENT HEAD:  _____
for Patricia D. Adauto, Deputy City Manager, Development & Infrastructure Services

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

RESOLUTION

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

That the City Manager be authorized to sign a Construction and Use Agreement with JACK & HERSCH PROPERTIES, LLC for the purpose of constructing a roadway bridge across an open drainage channel which is adjacent and parallel to the northerly edge of Escondido Drive, such roadway will be at a point approximately 456 feet from the intersection of Escondido and Los Robles Drive

ADOPTED THIS _____ DAY OF _____, 2008.

THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:

Patricia D. Adauto

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

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THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

CONSTRUCTION AND USE AGREEMENT

THIS AGREEMENT, made as of the _____ day of _____, 2008, by and between JACK & HERSCH PROPERTIES, LLC, herein called "Property Owner," and the CITY OF EL PASO, TEXAS, herein called "City,"

WITNESSETH

WHEREAS, Property Owner owns that certain tract of real estate known as Lot 2, Block 15A, Chaparral Park Unit Seven, containing 3.272 acres (142,530 square feet), located near the intersection of Escondido and Los Robles Drive in the City of El Paso; and,

WHEREAS, the City has an open drainage channel which is adjacent and parallel to the northerly edge of Escondido Drive; and,

WHEREAS, Property Owner has requested permission from the City to construct a roadway bridge across said channel at a point approximately 456 feet from the intersection of Escondido and Los Robles Drive, which bridge will be approximately twenty nine feet wide with a twenty four foot wide roadway, and which will rest upon two concrete culvert boxes approximately five feet wide, five feet high and thirty-nine feet long installed by Winton and Associates in the drainage channel.

NOW THEREFORE, for and in consideration of the mutual promises and agreements herein contained, it is hereby agreed by and between the parties as follows:

1. The City hereby grants Property Owner permission to construct said bridge, roadway and two box concrete culvert boxes over the City's above-described drainage channel.
2. The City hereby grants Property Owner permission to install the above-described box culverts within the City's above-described drainage channel. Such construction and the location of the construction shall be in accordance with the plans attached as "Exhibit A" attached hereto and incorporated herein for all purposes. All construction shall conform to City standards and codes.
3. Such permission is granted subject, however, to the following conditions:
 - a. Property Owner and its successors in title shall, at their sole expense, clean, maintain and keep in good repair the bridge, roadway and box culverts and shall replace the same when necessary.
 - b. Property Owner and its successors in title shall, at their sole expense, keep the box culverts open and free of dirt, wilt and debris so as to permit the proper flow of storm water through the City's drainage channel.

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c. The City assumes no liability and Property Owner and its successors in title agree to **INDEMNIFY, DEFEND AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS FROM 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 THIS AGREEMENT.** Property Owner and its successors in title agree to hereby release the City from liability for any and all loss of every kind or description which may result from the construction and maintenance by Property Owner and its successors in title of the bridge, roadway and box culverts over and within the City's above-described drainage channel. The City will not be responsible for any loss of or damage to Contractor's property from any cause.

d. No additions or modifications shall be made to the bridge, roadway and box culverts and no construction shall be done within the drainage channel, unless written plans for such work have been submitted to the City Engineer of the City of El Paso and the City Engineer has approved such plans.

e. Prior to actual construction of the bridge, roadway and box culverts, Property Owner shall provide to the City Engineer for his review and approval, the design and plans for such construction.

f. The construction and use of the bridge, roadway and box culverts shall not interfere with the flow of storm water through the City's drainage channel or with the use of the drainage channel for its intended purpose.

g. After this Agreement is executed by both parties, the Agreement, along with the Exhibits, shall be filed for record with the Real Property Records of the County of El Paso. The recordation of this document shall be filed by City prior to commencement of any construction.

4. This agreement is a restriction, condition and covenant running with the land and a charge and servitude thereon, and shall bind Property Owner and its successors in title. Any future conveyance of the land shall contain this restriction, condition and covenant and shall embody this agreement by express references.

5. The City may enforce this agreement by injunction or any other legal or equitable remedy. The City Council of the City of El Paso may release the above restrictions, conditions and covenants in its discretion without the consent of any third person who may be benefited thereby.

6. All signatories to this Agreement warrant their authority to execute this document.

7. This Agreement constitutes and expresses the entire agreement between the parties.

8. For the purpose of determining the place of contract and the law governing the same, this Agreement is entered into in the City and County of El Paso, State of Texas, and shall be governed by the laws of the State of Texas.

9. Venue for all causes of action arising from or in connection with this Agreement shall be in El Paso County, Texas.

10. After this Agreement has been fully executed, the property owner shall file and record a copy of this Agreement with the El Paso County Property Records.

CITY OF EL PASO:

Joyce Wilson, City Manager

APPROVED AS TO FORM:

Guadalupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:

R. Alan Shubert, P.E.
City Engineer

APPROVED AS TO CONTENT:

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

Property Owner:
JACK & HERSCH PROPERTIES, LLC

Andy J. Winton
Chairman of Jack and Hersch
Properties, LLC

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ACKNOWLEDGMENTS ON FOLLOWING PAGE

ACKNOWLEDGMENTS

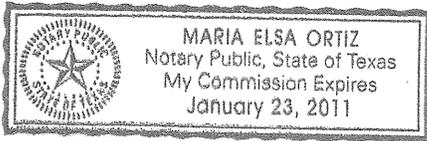
THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this _____ day of _____, 2008, by **Joyce Wilson**, as **City Manager** of the **City of El Paso**.

Notary Public, State of Texas

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

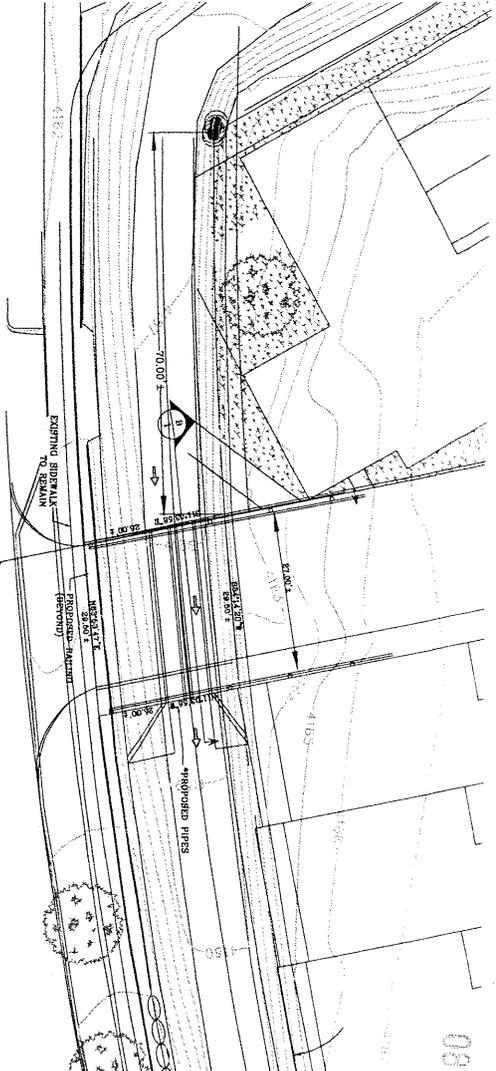
This instrument was acknowledged before me on this 13 day of March, 2008, by **Andy J. Winton** as **Chairman** of **Jack & Hersch Properties**.



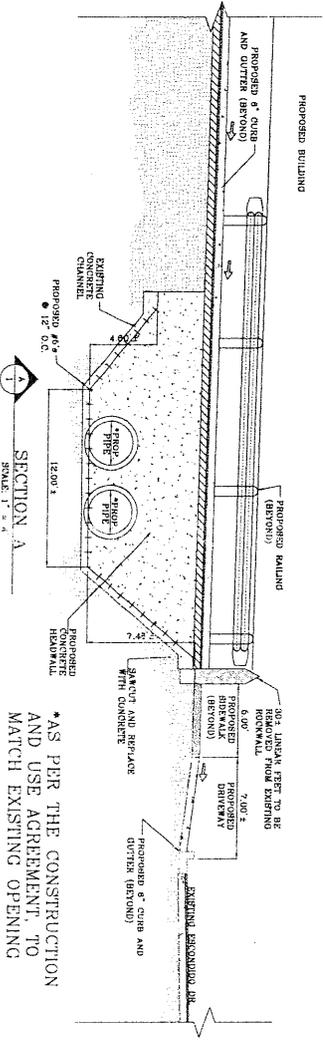
Maria Elsa Ortiz
Notary Public, State of Texas

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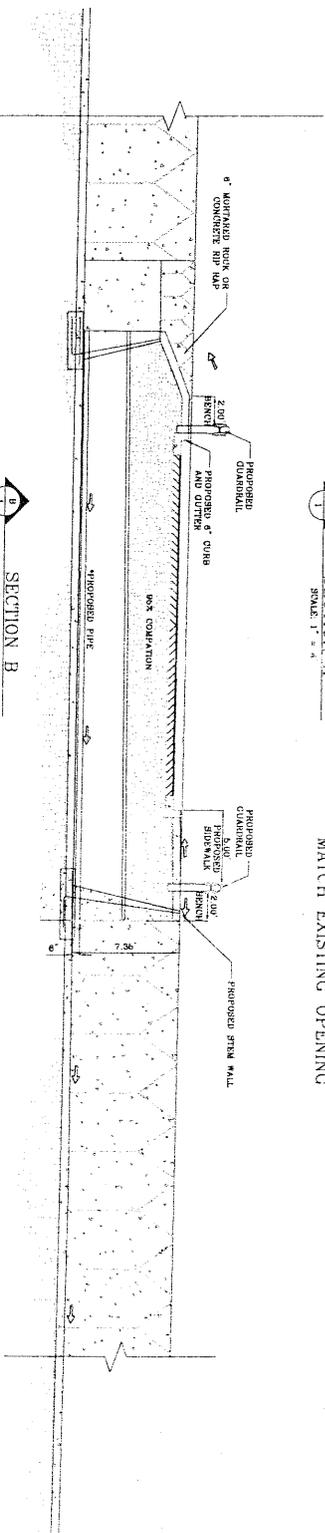
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PLAN VIEW
SCALE: 1" = 10'



*AS PER THE CONSTRUCTION AND USE AGREEMENT, TO MATCH EXISTING OPENING



SECTION B
SCALE: 1" = 4'

EXHIBIT "A"

DRIVEWAY CHANNEL CROSSING FOR ESCONDIDO DRIVE

SHEET NO. PLAN NUMBER CONDE INC.	CONDE INC. ENGINEERING / PLANNING SURVEYING / GPS 1790 LEE TRAVING DR EL PASO, TEXAS 79902	ENGINEER SEAL	SCALE Horiz. 1"=20' Vert. 1"=10'	PROJECT NAME DRIVEWAY CHANNEL CROSSING ESCONDIDO DRIVE BEING ALL OF LOT 2, BLOCK 16A, CHAPARRAL PARK UNIT SEVEN, CITY OF EL PASO, EL PASO COUNTY, TEXAS Containing: 3.272 Acres	REVISIONS
		DATE: MARCH 2008 DESIGN BY: Y.C. INITIATED BY: K.K. CHECK BY: Y.C. JOB NO.: 206-84	SHEET NO. OF		