CITY OF EL PASO, TEXAS
BUILDING & PLANNING SERVICES

MEMORANDUM

TO: The Honorable Mayor & City Council
Jim Martinez, Chief Administrative Officer
Adrian Ocegueda, Executive Assistant to the Mayor
Laura Uribarri, Executive Assistant to the Mayor

COPY TO: Lisa A. Elizondo, City Attorney
Theresa Cullen-Garney, Deputy City Attorney
Deborah G. Hamlyn, Deputy CAO for Quality of Life Services
Norman C. Merrifield, Director of Parks & Recreation
George G. Sarmiento, Director of Planning
Irene D. Ramirez, Interim City Engineer
David Almonte, OMB Director
Richarda D. Momsen, Municipal Clerk

FROM: Patricia D. Adauto, Deputy CAO for Building & Planning Services
PDAdauto

SUBJECT: City Council Agenda Items, April 20, 2004

DATE: April 15, 2004

The following related items have been scheduled for City Council action as noted above:

A. Resolution authorizing the Mayor to sign a Joint Resolution between the EL PASO WATER UTILITIES-PUBLIC SERVICE BOARD and the CITY OF EL PASO authorizing (1) the transfer of a 20-acre tract of land in H.G. Foster Survey No. 262, City of El Paso, El Paso County, Texas, from the jurisdiction of the El Paso Water Utilities-Public Service Board to the City of El Paso for use as a public park; (2) that the City of El Paso shall pay the El Paso Water Utilities-Public Service Board a total sum of $120,000 as consideration for the 20-acre land transfer; and (3) that the El Paso Water Utilities-Public Service Board shall accept reimbursement through deductions due the City from the proceeds derived from future El Paso Water Utilities-Public Service Board land sales in the amount of $120,000 to cover the land transfer. (District 1) 6G

B. Resolution authorizing the Mayor to sign a Developer Agreement between COLONY PARTNERS L.P. and the CITY OF EL PASO for the construction of certain improvements to 6B

Bear Ridge Drive and the abutting drainage channel in the vicinity of a certain 20-acre parcel contemplated for use as a City park. The developer agreement is made pursuant to Section 212.071 and 212.072 of the Texas Local Government Code as well as the City of El Paso Municipal Code. (District 1)

C. Budget Transfer Request – authorizing Building & Planning Services to appropriate $120,000 to pay for infrastructure improvements in connection with the development a 20-acre park at Franklin Hills. Funding source is HFC funds.

Attached is a copy of a memorandum dated April 2, 2004 sent to Mr. Ed Archuleta, General Manager of the El Paso Water Utilities that provides backup documentation regarding this item. The El Paso Water Utilities-Public Service Board met on April 14, 2004 and approved the 20-acre land transfer. The Board, however, did not authorize the deduction of an additional $120,000 for improvements to street and drainage rights-of-way abutting the site from proceeds derived from future land sales. A funding source has been identified from the Office of Management & Budget and the budget transfer will accomplish the needed authority to resolve this matter. Copies of the Resolutions are also attached for your information. Should you have any questions, please contact me at 541-4853 or Deborah Hamlyn at 541-4242. Staff will be available to fully brief the item at the Council meeting.

Office Use Only			
Mayor's Office (3 copies):	*date:* _____	*time:* _____	*by:* _____
Representative District 1:	*date:* _____	*time:* _____	*by:* _____
Representative District 2:	*date:* _____	*time:* _____	*by:* _____
Representative District 3:	*date:* _____	*time:* _____	*by:* _____
Representative District 4:	*date:* _____	*time:* _____	*by:* _____
Representative District 5:	*date:* _____	*time:* _____	*by:* _____
Representative District 6:	*date:* _____	*time:* _____	*by:* _____
Representative District 7:	*date:* _____	*time:* _____	*by:* _____
Representative District 8:	*date:* _____	*time:* _____	*by:* _____

DEPARTMENT 14-Building and Planning Services	**BUDGET TRANSFER REQUEST**	WHITE-COMPTROLLER CANARY-OMB PINK-DEPARTMENT

TRANSFER TYPE: (CHECK 1 OF 4)		DETAIL: (CHECK AS APPROPRIATE ON SAME LINE)		
1 [X]	TRANSFER OF APPROPRIATION:	A [ ] WITHIN PROGRAM	B [X] BETWEEN PROGRAMS	C [ ] RESTRICTED ACCOUNTS
2 [ ]	APPROPRIATION INCREASE:	A [ ] CONTINGENCY	B [ ] OTHER (EXPLAIN)	
3 [ ]	NEW APPROPRIATION:	A [ ] ESTIMATED REVENUE	B [ ] FUND BALANCE	C [ ] REVENUE RECEIVED
4 [X]	CAPITAL:	A [X] PROJECT	B [ ] EQUIPMENT LIST CHANGE	C [ ] OTHER

REASON FOR REQUEST: Building and Planning Services proposes to appropriate $120,000 to pay for infrastructure improvements in connection with the development of park site at Franklin Hills. Funding source is HFC funds. D1

DEPARTMENT APPROVAL

4-15-04
DATE

D/I	DEPT. ID	DESCRIPTION	ACCOUNT #	DESCRIPTION	PROJECT/GRANT	FUND	DESCRIPTION	AMOUNT	JOURNAL #
I	31125001	HFC Funded Projects	508027	Construction	PPR0003	27624	PPR0003 HFC Franklin Hills	120,000	
I	"	"	407002	Est Revenue	P501458	27610	P501458 HFC Mayors Unalloca	120,000	
D	"	"	507001	Intrafund Xfer	P501458	27610	"	120,000	
I	"	"	407001	Intrafund Xfer	PPR0003	27624	PPR0003 HFC Franklin Hills	120,000	

OMB USE ONLY

OFFICE OF MANAGEMENT & BUDGET

AVAILABLE BALANCE	RECOMMENDED	ANALYST	DATE
[ ] YES [ ] NO	[ ] YES [ ] NO		

COMMENTS:

APPROVALS	SIGNATURE	DATE
O.M.B. [ ] YES [ ] NO		
COMPTROLLER [ ] YES [ ] NO		
CHIEF ADM. OFFICER [ ] YES [ ] NO		

COMPTROLLER

COMMENTS:

DATA ENTRY CLERK	DATE

BT #

RESOLUTION

WHEREAS, the City of El Paso contemplates usage of a certain 20 acre tract of land as a City Park;

WHEREAS, this tract is intended for transfer from the El Paso Water Utilities to the City of El Paso inventory by joint resolution approved by the El Paso Water Utilities on April 14, 2004 and scheduled for action by City Council on April 20, 2004;

WHEREAS, access to this 20 acre parcel from Bear Ridge, where it abuts, is desirable and is intended to be an important access point necessary for future usage of the tract;

WHEREAS, Colony Partners, L.P. is willing to construct the necessary ROW and drainage channel structure where intersecting the 20 acre tract as part of contemplated improvements to their abutting development in consideration of the City's participation with costs incurred; and

WHEREAS, this Developer Agreement will allow improvement of Bear Ridge Drive and the drainage channel within the 20 acre tract in a more timely and cost-efficient manner that benefits both the City and Colony Partners, L.P..

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

That the Mayor be authorized to sign a Developer Agreement between Colony Partners L.P. and the City of El Paso for the construction of certain improvements to Bear Ridge Drive and the abutting drainage channel in the vicinity of a certain 20 acre parcel contemplated for use as a City park. This developer agreement is made pursuant to Section 212.071 and 212.072 of the Texas Local Government Code as well as the City of El Paso Municipal Code.

PASSED AND APPROVED this 20th day of April, 2004.

THE CITY OF EL PASO

_____

Joe Wardy
Mayor

MW: 99725

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Matt Watson
Assistant City Attorney

APPROVED AS TO CONTENT:

Pat Adauto
Deputy Chief Administrative Officer for
Building & Planning Services

MW: 99725

FRANKLIN HILLS DEVELOPER PARTICIPATION CONTRACT

This Franklin Hills Developer Participation Contract (Contract) is made by and between the **CITY OF EL PASO**, a municipal corporation in the State of Texas (the City), and **COLONY PARTNERS, L.P.**, a Texas limited partnership (Colony) and is made pursuant to Section 212.071 and 212.072 of the Texas Local Government Code and Sections 19.28.030 and 19.28.040 of the El Paso Municipal Code.

STATEMENTS OF FACT

1. Colony is the developer for the subdivision plat known as Franklin Hills Unit Four in El Paso, Texas which plat includes a portion of Bear Ridge Drive, and is the developer for the subdivision plat known as Franklin Hills Unit Six in El Paso, Texas which subdivision plat includes the remainder of Bear Ridge Drive and all of the drainage channel parallel to Bear Ridge Drive (the Drainage Channel).

2. The City, through its water utility Public Service Board, owns a 20-acre parcel it intends to develop as a park (the City Property). The subdivision plat for Franklin Hills Unit Six includes a portion of the City Property for the extension of the Drainage Channel that parallels Bear Ridge Drive, and a portion of the City Property for the extension of Bear Ridge Drive. The configuration of the City Property and the property within Units Four and Six is shown on **Exhibit "A".**

3. The right of way for the Drainage Channel will include a maintenance road for the City parallel to the Channel. The lineal feet of the Drainage Channel that will be located on the City Property is approximately 452 feet.

4. Bear Ridge Drive is a collector arterial with a 64 foot right of way. The frontage that the City has on Bear Ridge Drive is approximately 452 feet.

5. Colony will be developing Bear Ridge Drive and the Drainage Channel on its own property, and has made an offer of dedication of same for public use on the approved plats for Franklin Hills Units #4 and #6. The City desires to have Colony also construct Bear Ridge Drive and the Drainage Channel on the City Property substantially as shown on **Exhibit "B"** attached.

6. This Contract will allow improvement of the Drainage Channel and Bear Ridge Drive in a more timely and cost-efficient manner that benefits both Colony and the City, and that complies with statutory percentage limits on municipal participation under a developer participation contract.

AGREEMENTS OF THE PARTIES

7. Right of Way. Colony agrees to execute the subdivision plats for Franklin Hills Unit Four and Six that includes the offer of dedication of its property for the Bear Ridge Drive and Drainage Channel right of ways, and the City agrees to execute the subdivision plat for Franklin Hills Units Four and Six that includes the dedication of its property for the Bear Ridge Road and the Drainage Channel right of ways.

8. Design of Road and Drainage Channel . Colony's engineers will prepare the design for Bear Ridge Drive and the Drainage Channel and all improvements within the Colony property offered for dedication and that of the City as per the Franklin Hills Unit #4 and #6 subdivisions (collectively the Improvements), in accordance with City standards, and will submit same to the City Engineer for approval.

9. Construction of the Improvements. The Improvements will be constructed within two years from the filing of the respective Subdivision Plats for Units Four and Six. Upon completion of the construction of the Improvements by Colony, Colony will send the City an itemized bill showing a detailed computation supporting the City's contribution agreed to herein, as further described below.

10. City's Cost. The total cost to construct the portion of Improvements located within the City's 20 acre parcel is estimated by Colony to be no less than $240,000. Colony agrees that without approval by City Council, the City's portion of the design and construction costs of the Improvements as specified on **Exhibit "B"** attached, shall not exceed $120,000 to include City fees for design approval, plan review, city inspections and utility inspections for the City's portion of the project (collectively the "City's Costs"). Colony further agrees that not withstanding any of the foregoing, in no event shall the costs for which the City is billed exceed 30% of the actual costs of the Improvements.

11. Easements. The City will provide Colony with all necessary temporary construction easements to construct the Improvements.

12. Insurance. Throughout the time that the Improvements are under construction (the "Construction Period"), Colony shall have its contractor provide and keep in force, comprehensive general liability insurance in an amount not less than ONE MILLION DOLLARS ($1,000,000.00) for personal injuries sustained by one claimant from a single occurrence, TWO MILLION DOLLARS ($2,000,000.00) for personal injuries to more than one claimant from a single occurrence, and ONE MILLION DOLLARS ($1,000,000.00) for property damages from a single occurrence. The City shall be provided with a copy of the policy evidencing such coverage. Such policy shall name the City as additional insured and shall be issued by an insurance company licensed to do business in Texas. Such policy shall provide for 30 days written notice to the City prior to cancellation or material alteration of the insurance coverage.

13. Indemnity and Release. **EXCEPT TO THE EXTENT OF THE CITY'S CONSTRUCTION RELATED TO THE CITY PROPERTY AND OTHER IMPROVEMENTS CARRIED OUT BY THE CITY, COLONY AGREES TO INDEMNIFY AND HOLD THE CITY HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, INVESTIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY, OR INDIRECTLY TO THE CONSTRUCTION OF THE BEAR RIDGE ROAD AND DRAINAGE CHANNEL (FOR PURPOSES OF THIS PARAGRAPH 15 "THE COLONY CONSTRUCTION") SPECIFICALLY INCLUDING, BUT NOT LIMITED TO, CLAIMS FROM SUBCONTRACTORS, BONDING COMPANIES, EMPLOYEES OR OTHER INDIVIDUALS, FOR OBLIGATIONS ARISING FROM THE COLONY CONSTRUCTION, OR FROM ANY BREACH ON THE PART OF COLONY OF THE TERMS OF THIS CONTRACT, OR FROM ANY DAMAGE TO PROPERTY OR INJURY TO PERSON(S) ARISING FROM OR**

ALLEGEDLY ARISING FROM THE CITY'S INVOLVEMENT UNDER THIS CONTRACT.

COLONY FURTHER AGREES, WITH THE EXPRESS AUTHORITY OF ANY OTHER ENTITY OR INDIVIDUAL IN PRIVITY WITH COLONY, NOW OR IN THE PAST, THAT EXCEPT TO THE EXTENT OF THE CITY'S CONSTRUCTION RELATED TO THE CITY PROPERTY AND OTHER IMPROVEMENTS CARRIED OUT BY THE CITY, IT SHALL RELEASE AND FOREVER DISCHARGE THE CITY, ITS AGENTS, EMPLOYEES, REPRESENTATIVES, ATTORNEYS, AND ADMINISTRATORS FROM ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS, CAUSES OF ACTION OR SUITS IN EQUITY, OF ANY KIND OR NATURE, ACCRUING, WHETHER KNOWN OR UNKNOWN ON THIS DATE, FOR OR BECAUSE OF ANY MATTER OR THING DONE, OMITTED, OR SUFFERED TO BE DONE OR OMITTED IN ANY WAY DIRECTLY OR INDIRECTLY ARISING FROM THE COLONY CONSTRUCTION OF THE BEAR RIDGE ROAD, DRAINAGE CHANNEL, INCLUDING BUT NOT LIMITED TO, ATTORNEY'S FEES, COSTS OF PREPARING A CLAIM OR OTHER COSTS.

EXCEPT TO THE EXTENT OF THE CITY'S CONSTRUCTION RELATED TO THE CITY PROPERTY AND OTHER IMPROVEMENTS CARRIED OUT BY THE CITY, COLONY FURTHER EXPRESSLY AGREES TO INDEMNIFY THE CITY FROM ANY AND ALL CLAIMS ARISING, IN WHOLE OR IN PART, FROM THE CONDUCT, ACTS OR OMISSIONS OF THE CITY, EVEN WHERE SUCH CLAIMS MAY INVOLVE NEGLIGENCE OR ALLEGATIONS OF NEGLIGENCE ON THE PART OF THE CITY OR ITS OFFICERS, EMPLOYEES OR AGENTS.

14. Payment to Colony by City. The City agrees to pay Colony the City's payment of the City's Costs as defined in paragraph 10. The City agrees to pay Colony within 60 days from receipt of the itemized bill for the City's portion of Improvements.

15. Bond Required. Pursuant to §212.073 of the Texas Local Government Code, Colony, through its contractor, must provide a performance bond for Colony's portion of the Project costs to secure fulfillment of all of Colony's obligations under this Contract. The bonds will be in a form approved by the City. The bonds must be executed by a corporate surety in accordance with 2253 of the Texas Government Code. The bonds shall identify the City as Owner and Obligee and shall bind both Colony's contractor and the Surety, their heirs, administrators, executors, successors and assignees, jointly and severally. The bonds shall expressly provide that Colony's contractor shall faithfully render performance under this Contract and shall remain in full force and effect until all requirements of the Contract have been performed to the City's satisfaction.

16. Utilities. Colony will only be required to put the utilities in Bear Ridge Road that are necessitated by and attributable to its Franklin Hills subdivisions.

17. Governing Law. All questions concerning the validity, operation, and interpretation of this Contract and the performance of the obligations imposed upon the parties hereunder shall be governed by the laws of the State of Texas. Venue shall be in El Paso County, Texas.

18. Interpretation. This Contract shall be deemed to have been jointly prepared by the City and Colony, and no ambiguity herein shall be construed for or against any party based upon the identity of the author of this Contract or any portion thereof.

19. Entire Contract. This Contract embodies and constitutes the entire understanding between the parties with respect to the transactions contemplated herein, and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Contract. This Contract may not be modified except by an instrument in writing signed by both parties.

20. Notice. Any notice or communication required or permitted hereunder shall be given in writing and sent by (1) personal delivery, or (2) overnight delivery service with proof of delivery, or (3) United States Mail, postage prepaid, registered or certified mail, or (4) facsimile transmission addressed as follows:

The City:	City of El Paso Engineering Department 2 Civic Center Plaza El Paso, Texas 79901 (915) 541-4200 fax (915) 541-4441
With a copy to:	Office of the City Attorney Attn: Matt Watson, Asst. City Attorney 2 Civic Center Plaza, 9th Floor El Paso, Texas 79901 (915) 541-4550 fax (915) 541-4710
Colony:	Colony Partners, L.P. 4487 N. Mesa, Suite 201 El Paso, Texas 79902 Attn: Russell Hanson (915) 533-7900, Ext. 21 fax (915) 533-7926
With a copy to:	Mrs. Risher S. Gilbert Gilbert, Coffey & Hobson 201 E. Main, Suite 601 El Paso, Texas 79901 (915) 532-6622 fax (915) 541-6490

or to such other address or to the attention of such other person as hereafter shall be designated in writing by the applicable party sent in accordance herewith. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or overnight delivery or, in the case of certified or registered mail, as of the date of deposit or delivery to the United States Mail in the manner provided herein, or in the case of delivery by facsimile, upon receipt of confirmation of delivery by the party sending the notice or communication. Any notice required by this Contract or in any way related to the transaction contracted for herein, shall be void and of no effect unless given in accordance with the provisions of this Section. Either party hereto may

change the address for notice specified above by giving the other party ten (10) days advance written notice of such change of address.

Effective this ___ day of April 2004.

WITNESS THE FOLLOWING SIGNATURES:

ATTEST:

_____
Richarda Mumsen, City Clerk

CITY OF EL PASO

_____
Joe Wardy, Mayor

Developer:
COLONY PARTNERS L.P.
By: El Paso Colony, Inc.
Its: General Partner

By: _____
Russell Hanson, President

APPROVED AS TO FORM:

Matt Watson
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Irene Ramirez
Interim Director of Engineering

_____
Debbie Hamlyn
Deputy Chief Administrative Officer of
Quality of Life Services

Patricia D. Adauto
Pat Adauto
Deputy Chief Administrative Officer for
Building & Planning Services

STATE OF TEXAS §
§
COUNTY OF EL PASO §

MXW/97160

This instrument was acknowledged before me on this _____ day of April 2004, by Joe Wardy, Mayor of the City of El Paso.

_____
Notary Public, State of Texas

THE STATE OF TEXAS

COUNTY OF EL PASO

This instrument is acknowledged before me on this ____ day of April 2004, by Russell Hanson as President of El Paso Colony, Inc., general partner of Colony Partners L.P., a Texas limited partnership, on behalf of said limited partnership.

_____
Notary Public, State of Texas

List of Exhibits

1. Exhibit "A" – The Park and the Colony Property
2. Exhibit "B" – Right of way for Bear Ridge Road and the Channel

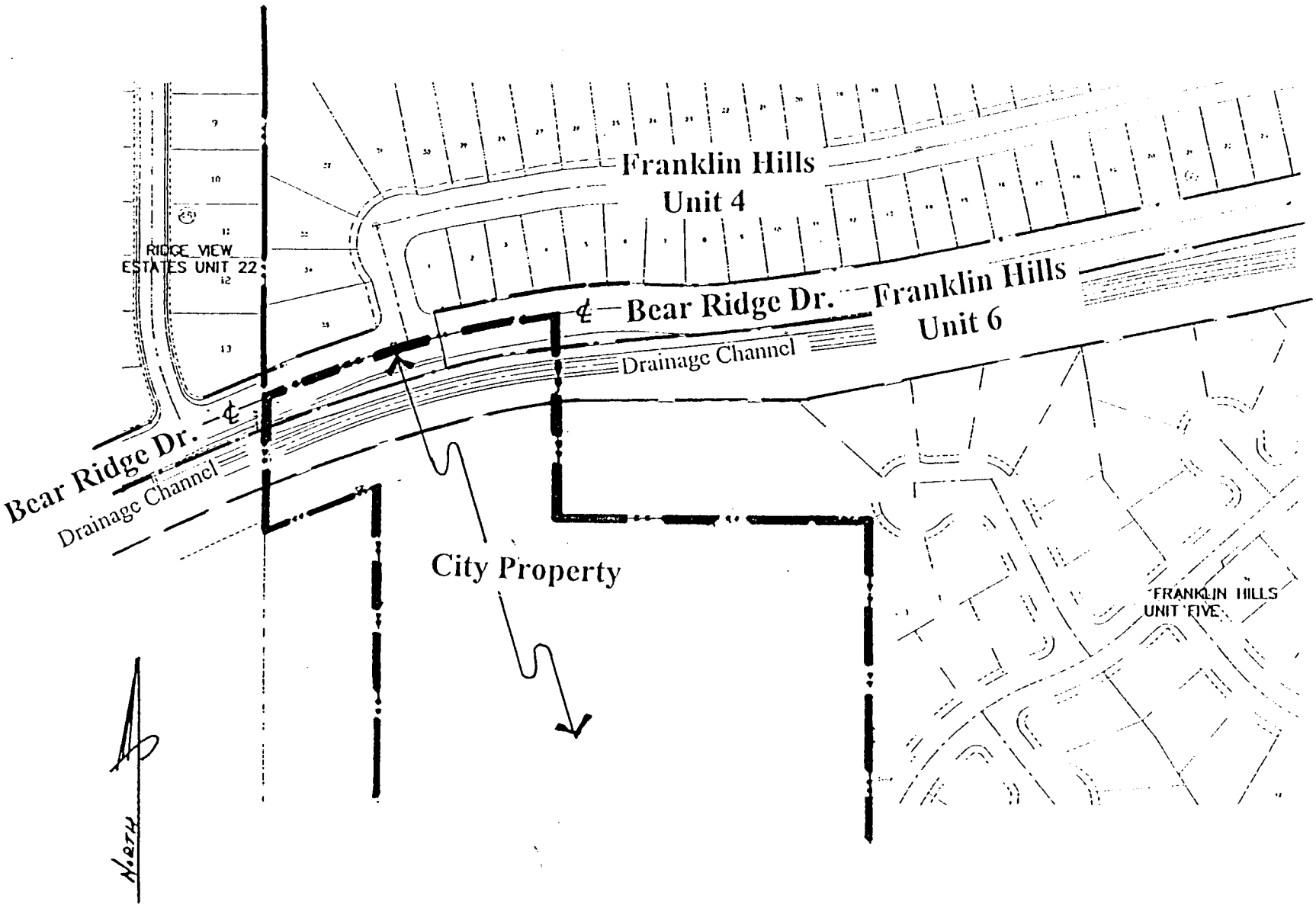
Franklin Hills
Unit 4
RIDGE VIEW
ESTATES UNIT 22
Bear Ridge Dr.
Franklin Hills
Unit 6
Drainage Channel
Bear Ridge Dr.
Drainage Channel
City Property
FRANKLIN HILLS
UNIT FIVE
NORTH

Exhibit "A"

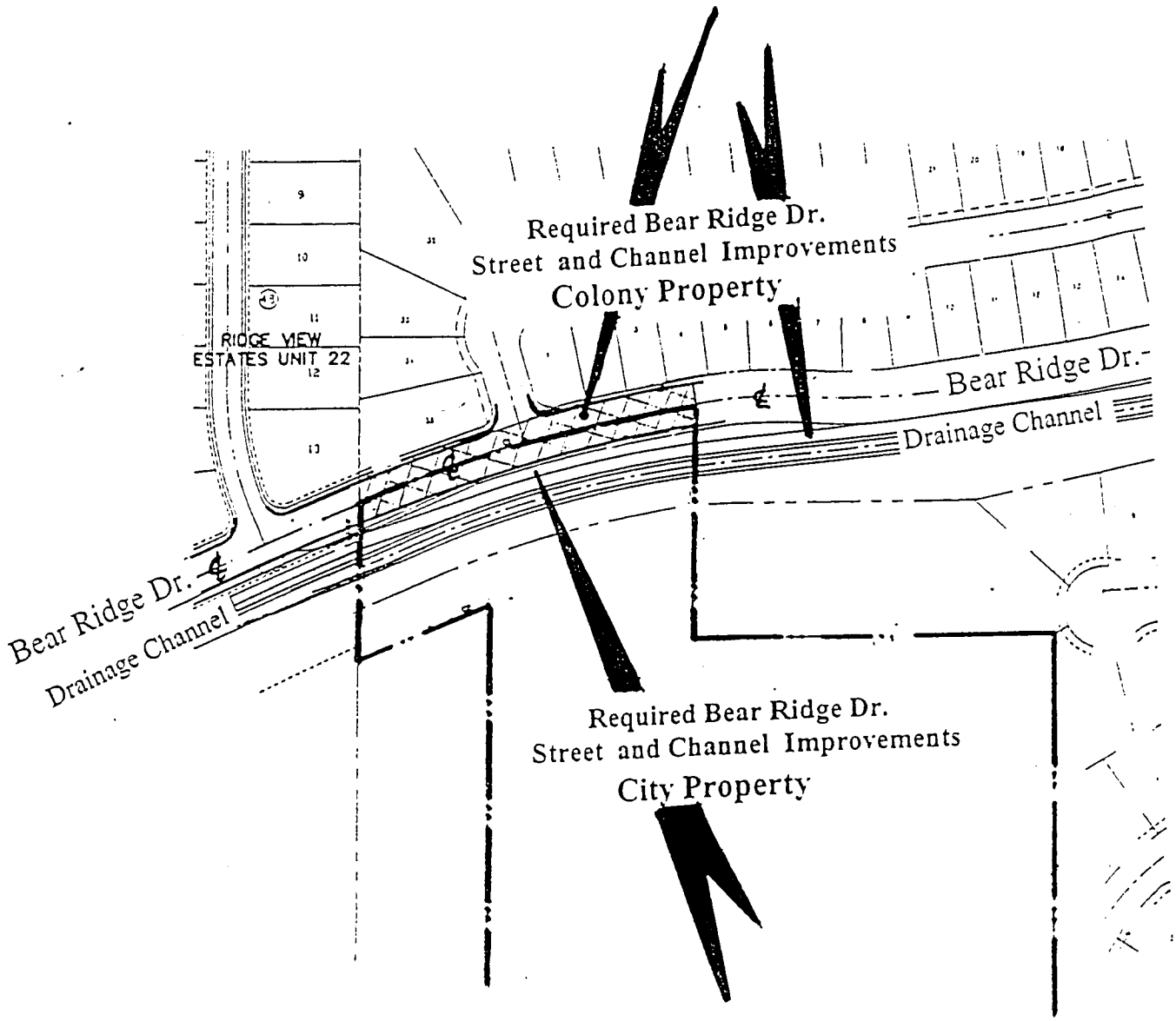
Required Bear Ridge Dr.
Street and Channel Improvements
Colony Property
RIDGE VIEW
ESTATES UNIT 22
Bear Ridge Dr.
Drainage Channel
Bear Ridge Dr.
Drainage Channel
Required Bear Ridge Dr.
Street and Channel Improvements
City Property

Exhibit "B"