

CITY OF EL PASO, TEXAS
DEPARTMENT HEAD'S SUMMARY REQUEST FOR COUNCIL ACTION (RCA)

DEPARTMENT: Engineering

AGENDA DATE: May 12, 2009

CONTACT PERSON/PHONE: R. Alan Shubert, City Engineer (X4423)

DISTRICTS AFFECTED: 5

SUBJECT:

Resolution authorizing the City Manager to sign a Developer Participation Agreement for over width paving between the **CITY OF EL PASO** and **RANCHOS REAL XII, LTD**, to allow the City to participate in the cost of the construction of improvements for Rich Beem and Pebble Hills Street, in an amount not to exceed Three Hundred and seventy three thousand and four hundred and thirteen dollars (\$373,413) in accordance with Local Government Code Section 212.071.

BACKGROUND / DISCUSSION:

This agreement allows for the payment to Ranchos Real, the developer, for the construction of Rich Beem and Pebble Hills in accordance with the City's Major Thoroughfare Plan.

PRIOR COUNCIL ACTION:

Approved Development Agreement on January 31, 2006
Approved Phase 1 Annexation June 6, 2006.
Approved an amendment to the 2006 Development agreement with Ranchos Real on July 8, 2008.

AMOUNT AND SOURCE OF FUNDING:

\$373,413 Available in Project: PCP08ST03, Fund: 27263, Account: 508027
2008 Reprogramming

BOARD / COMMISSION ACTION:

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

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

DEPARTMENT HEAD: _____

(Example: if RCA is initiated by Engineering, client department should sign also)

Information copy to appropriate Deputy City Manager

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 Developer Participation Agreement for over width paving between the **CITY OF EL PASO** and **RANCHOS REAL XII, LTD**, to allow the City to participate in the cost of the construction of improvements for Rich Beem and Pebble Hills Street, in an amount not to exceed Three Hundred and seventy three thousand and four hundred and thirteen dollars (\$373,413) in accordance with Local Government Code Section 212.071.

ADOPTED this the _____ day of _____, 2009.

THE CITY OF EL PASO

John 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 for Development and
Infrastructure Services

STATE OF TEXAS §
 § **OVERWIDTH REIMBURSEMENT AGREEMENT**
COUNTY OF EL PASO §

This Agreement is entered into this _____ day of April 2009, by and between **THE CITY OF EL PASO**, a municipal corporation organized and existing under the laws of the State of Texas, hereafter referred to as "CITY", and **RANCHOS REAL XII, LTD.**, hereafter referred to as "DEVELOPER", and complies with the requirements of a developer participation contract allowed under the provisions of the Local Government Code Section 212.071.

WHEREAS, the Developer is the owner and developer of Tierra Del Este Unit 56 (the "Subdivision") and has submitted a subdivision application for approval by the El Paso City Plan Commission; and

WHEREAS, the Developer is constructing street improvements on Rich Beem and Pebble Hills and is willing to construct any overwidth paving required by the City provided that the Developer is reimbursed; and,

WHEREAS, the City desires to have the Developer construct the overwidth of Rich Beem and Pebble Hills and the Texas Local Government Code Section 212.072(b) allows participation by the municipality at a level not to exceed one hundred percent (100%) of the total cost for any oversizing of improvements required by the municipality, including but not limited to increased capacity of improvements to anticipate other future development in the area, without complying with the competitive bidding procedure of Chapter 252; and

WHEREAS, Texas Local Government Code Section 212.072 allows the municipality to participate in the construction cost and shall pay the agreed payment of its share, which shall be determined in advance either as a lump sum or as a factor or percentage of the total actual cost as determined by municipal ordinance; and

WHEREAS, the City has determined that Developer's construction of the Street will be an economic benefit to local taxpayers, therefore, this agreement is in the best interests of the citizens of the City; and

NOW, THEREFORE, in consideration of the promises, mutual agreements and in-kind services hereinafter set forth, the parties hereby do mutually agree as follows:

I. PARTIES' OBLIGATIONS

Developer shall construct all improvements to the Streets required under the El Paso City Code pursuant to the terms and conditions specified herein. Developer further agrees that it shall be solely responsible for payment of any and all costs, including but not limited to design and construction costs arising from the construction of required improvements to the Streets in the Subdivision, except as provided herein.

Upon satisfactory completion of the improvements, the Developer shall submit to the City an invoice detailing the cost of construction of the Street in the Subdivision.

Within thirty days (30) of receipt of such invoice, City shall inspect the improvements to the Street. The reimbursement of the cost attributable to the excess width shall be made when such Street is improved by the Developer and accepted for maintenance by the City.

The Parties agree that the provided that the terms of this Agreement are complied with by the Developer, that the City shall reimburse the Developer Three Hundred and seventy three thousand and four hundred and thirteen dollars (\$373,413) upon acceptance by the City of the Streets for maintenance.

The total width of the right of way required by ordinance is fifty two feet (52) and the total width of the right of way required by the City varies from sixty four feet (64) to seventy feet (70).

The metes and bounds descriptions attached and labeled as Exhibit "A", and incorporated herein for reference for all purposes, identifies the portion of the Streets to be constructed.

The Developer shall comply with all applicable federal, state and local law including all City ordinances, codes and regulations. 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 be responsible for any costs associated with obtaining such permits and inspections. A schedule shall be submitted to the City Engineer as to when work will be completed under this Agreement upon execution of this Agreement.

Developer agrees to furnish the City with a copy of each written agreement entered into with a contractor or consultant retained to complete the construction of the Street. All of the books and records related to the construction of the Street shall be available for inspection by the City upon request. 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 satisfactory to the City. Any contractor or consultant hired by Developer shall have sufficient skills and experience to properly perform the work described in the City's specifications and shall provide adequate supervision to assure competent performance of the work.

2. TERM

This Agreement shall automatically terminate after the construction of the Street is completed, the City Engineer has inspected the Street to assure that City street specifications have been met, the City has paid the City's share to the Developer, and the City has accepted the Street for maintenance. If the City Engineer determines that the City's specifications have not been met, Developer shall be responsible for any necessary corrections and alterations and all costs associated with any necessary corrections and alterations. The City shall not be responsible nor participate in any costs accrued in such instance. In addition, Developer agrees to give a warranty on its work in accordance with the requirements of the City Code.

3. BOND REQUIRED

The Developer must execute a performance bond for one hundred (100%) percent of the construction of the Street costs to secure fulfillment of all the Developer's obligations under this Agreement. The bonds must be in a form to be approved by the City. The bond must be executed by a corporate surety in accordance with Chapter 2253, Government Code, Vernon's

Annotated Civil Statutes. The bond shall identify the City as an additional named Obligee, and the City shall be notified of termination of such bond if prior to the end of the term of this Agreement.

4. INCREASED COSTS

It may be anticipated that additional costs may arise from change in site conditions or latent defects; however, Developer agrees that he will be solely responsible for payment of all increased costs in the construction of the Street in such instance.

5. NO THIRD PARTY RIGHTS OR OBLIGATIONS

No person or entity not a party to this Agreement shall have any third party beneficiary or any other rights against the parties to this Agreement.

This Agreement is not intended to alter or reallocate any defense or immunity presently authorized to either party by law.

The City shall not be subject to any obligations or liabilities of the Developer incurred in the performance of this agreement.

6. NOTICES

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

CITY: Deputy City Manager for Development & Infrastructure Services
City of El Paso
#2 Civic Center Plaza
El Paso, Texas 79901-1196

Copy to: City Engineer
City of El Paso
#2 Civic Center Plaza
El Paso, Texas 79901-1196

DEVELOPER: Ranchos Real XII, Ltd.
1790 Lee Trevino, Suite 601
El Paso, Texas 79936

7. CUMULATIVE RIGHTS

All remedies, either under this Agreement or at law or in equity or otherwise available to a party, are cumulative and not alternative and may be exercised or pursued separately or collectively in any order, sequence or combination.

8. GOVERNING LAW

All questions concerning the validity, operation, and interpretation of this Agreement 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.

9. INTERPRETATION

This Agreement shall be deemed to have been jointly prepared by all parties hereto, and no ambiguity herein shall be construed for or against any party based upon the identity of the author of this Agreement or any portion hereof.

10. ASSIGNMENT

The Developer shall have the right to assign its rights and obligations in this Agreement. In the event that the Developer does assign its rights under this Agreement, the assignee shall execute an assignment agreeing that it will be responsible for all of the obligations of Developer, a copy of which shall be sent to the City.

11. RELATIONSHIP

It is expressly understood and agreed by and between the parties that Developer is not an officer, agent or employee of the City and is not subject to the direct or continuous supervision and control of the City. City and Developer hereby acknowledge and agree that the City has not formed, and is not forming with Developer or any other party, a partnership, joint venture, or any other similar entity by entering into this Agreement; and this Agreement is not intended to and shall not be construed, to create any such entity or relationship.

12. ENTIRE AGREEMENT

This Agreement 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 Agreement. This Agreement may not be modified except by an instrument in writing signed by both parties.

13. AUTHORIZED SIGNATURE

The person executing this Agreement on behalf of the Developer warrants to the City that the Developer is a duly authorized and existing limited partnership, that Developer is qualified to do business in the State of Texas, that Developer has full right and authority to enter into this Agreement, and that every person signing on behalf of Developer is authorized to do so.

EXECUTED in El Paso, El Paso County, Texas on the date first mentioned above.

SIGNATURES ON NEXT PAGE

THE CITY OF EL PASO

Joyce Wilson, City Manager

APPROVED AS TO FORM:

Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:

Patricia D. Aduato
Patricia D. Aduato, Deputy City Manager
for Development and Infrastructure

DEVELOPER:

RANCHOS REAL XII, LTD.

By: Ranchos Real Developers, Inc.
Its: General Partner

By: Douglas A. Schwartz, Vice President

ACKNOWLEDGEMENTS

STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2009,
by Joyce Wilson, as City Manager of **THE CITY OF EL PASO, TEXAS** on behalf of said
City.

My Commission Expires:

Notary Public, State of Texas
Notary's Printed or Typed Name:

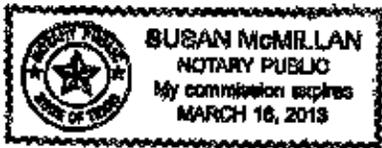
STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 22nd day of April, 2009,
by DOUGLAS A. SCHWARTZ, as Vice-President Ranchos Real Developers, Inc., general
partner of **RANCHOS REAL XII, LTD.**, on behalf of said partnership.

My Commission Expires:

Susan McMillan
Notary Public, State of Texas
Notary's Printed or Typed Name:

Susan McMillan



Being a Portion of Tract 2A,
 Section 46, Block 79, Township 2,
 Texas and Pacific Railway Company Surveys,
 City Of El Paso, El Paso County, Texas
 November 15, 2007

PEBBLES Hills

METES AND BOUNDS DESCRIPTION

Description of a parcel of land being a Portion of Tract 2A, Section 46, Block 79, Township 2, Texas and Pacific Railway Company Surveys, City Of El Paso, El Paso County, Texas, and being more particularly described by metes and bounds as follows:

Commencing for reference a found $\frac{1}{2}$ " rebar with cap "5152" set for the common corner of Sections 39, 38, 46, and 47, from which a found 2" pipe set in concrete for the common corner of Sections 37, 38, 47, and 48 bears North $89^{\circ}59'49''$ East a distance of 5315.81; Thence along the line between sections 46 and 47, South $00^{\circ}34'37''$ East a distance of 524.76 feet to a point; Thence leaving said line South $89^{\circ}58'35''$ West a distance of 409.52 feet to a point for the southeast corner of Tract 2D23, Section 46, Block 79, TSP 2, for the "TRUE POINT OF BEGINNING".

Thence South $00^{\circ}02'23''$ East a distance of 55.00 feet to a point on the proposed centerline of Pebbles Hills Blvd.;

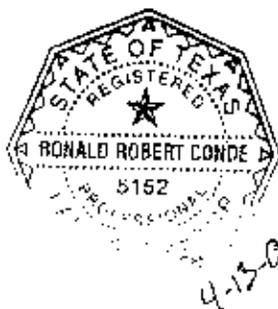
Thence along said line South $89^{\circ}58'35''$ West a distance of 94.00 feet to a point;

Thence North $00^{\circ}02'23''$ West a distance of 55.00 feet to a point on the southerly line of said tract 2D23;

Thence along said line North $89^{\circ}58'35''$ East a distance of 94.00 feet to a point for the "TRUE POINT OF BEGINNING" and containing in all 5,170 square feet or 0.1187 acres of land more or less.

Note: Not a ground survey. Bearing basis is true north for a transverse mercator surface projection as determined by GPS methods based near the center of this site.


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



job # 1107-08

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

Rich
BEEH

Being a Portion of Sections 46 and 47,
Block 79, Township 2, Texas and
Pacific Railway Company Surveys,
City Of El Paso, El Paso County, Texas
November 27, 2007

METES AND BOUNDS DESCRIPTION

Description of a parcel of land being a Portion of Sections 46 and 47, Block 79, Township 2, Texas and Pacific Railway Company Surveys, City Of El Paso, El Paso County, Texas, and being more particularly described by metes and bounds as follows:

Commencing for reference at a found 2" pipe for the common corner of Sections 46 and 47, Block 79, Township 2 and sections 2 and 3, Block 79, Township 5, Texas and Pacific Railway Company Surveys, from which a found 2" pipe for the common corner of Sections 45, 46, 3 and 4 bears South 89°59'06" West a distance of 5312.40; Thence with the line between section 46 and 47, North 00°34'37" West a distance of 2466.34 feet to a point for the "TRUE POINT OF BEGINNING"

Thence leaving said line North 90°00'00" West a distance of 60.00 feet to a point on the westerly right of way line of Caravanola Ave.;

Thence North 00°34'37" West a distance of 1195.78 feet to a point on the northerly right of way line of Gambusino Ave.;

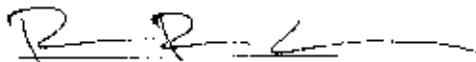
Thence, North 89°58'35" East a distance of 60.00 feet to a point on the easterly right of way line of Caravanola Ave;

Thence along said right of way line South 00°34'37" East a distance of 1195.80 feet to "TRUE POINT OF BEGINNING" and containing in all 71,744 square feet or 1.647 acres of land more or less.

Not a ground survey. Bearing basis is true north for a transverse mercator surface projection as determined by GPS methods based near the center of this site.



job # 1107-08


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

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

PEBBLE
HILLS

Being a Portion of Tract 2A,
Section 46, Block 79, Township 2,
Texas and Pacific Railway Company Surveys,
City Of El Paso, El Paso County, Texas
November 28, 2007

METES AND BOUNDS DESCRIPTION

Description of a parcel of land being a Portion of Tract 2A, Section 46, Block 79, Township 2, Texas and Pacific Railway Company Surveys, City Of El Paso, El Paso County, Texas, and being more particularly described by metes and bounds as follows:

Commencing for reference a found $\frac{1}{2}$ " rebar with cap "5152" set for the common corner of Sections 39, 38, 46, and 47, from which a found 2" pipe set in concrete for the common corner of Sections 37, 38, 47, and 48 bears North $89^{\circ}59'49''$ East a distance of 5315.81; Thence along the line between sections 46 and 47, South $00^{\circ}34'37''$ East a distance of 524.76 feet to a point, Thence leaving said line South $89^{\circ}58'35''$ West a distance of 597.52 feet to a point for the southeast corner of Tract 2119, Section 46, Block 79, TSP 2, for the "TRUE POINT OF BEGINNING".

Thence South $00^{\circ}02'23''$ East a distance of 55.00 feet to a point on the proposed centerline of Pebble Hills Blvd.;

Thence along said line South $89^{\circ}58'35''$ West a distance of 928.29 feet to a point;

Thence North $00^{\circ}02'23''$ West a distance of 55.00 feet to a point;

Thence North $89^{\circ}58'35''$ East a distance of 928.29 feet to a point for the "TRUE POINT OF BEGINNING" and containing in all 51,055 square feet or 1.1721 acres of land more or less.

Note: Not a ground survey, Bearing basis is true north for a transverse mercator surface projection as determined by GPS methods based near the center of this site.




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

JOB #_1107-38

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