

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

DEPARTMENT: Engineering and Construction Management

AGENDA DATE: May 28, 2013

CONTACT PERSON NAME AND PHONE NUMBER: Irene D. Ramirez, P.E., Interim City Engineer

DISTRICT(S) AFFECTED: 1, 8

SUBJECT:

That the City Manager be authorized to sign a Traffic Signal Agreement between the City of El Paso and EPT Mesa Development, LP for the design and construction of a four-way traffic signal within the right-of-way on State Highway 20 at Montecillo Drive, which shall be designed and constructed in two phases, at no cost to the City.

BACKGROUND / DISCUSSION:

EPT Mesa Development, LP in conjunction with its design and construction of Montecillo Unit Three and current design of Montecillo Unit Five, desires to proceed with the design and construction of a four-way traffic signal. The traffic signal will be designed and constructed in two phases. Phase I of the Project shall consist of the design and construction, at no cost to the City, of a three-way (T-intersection) traffic signal that will control the traffic flow for State Highway 20 (Mesa Street) for northbound and southbound approaches and Montecillo Blvd. for the eastbound approach. Phase II of the Project shall consist of the design and construction, at no cost to the City, of a four-way traffic signal that will replace the three-way traffic signal and will control all traffic flow approaches including the westbound traffic flow approach from the Montecillo Unit Five Subdivision (East of Mesa Street).

PRIOR COUNCIL ACTION:

The Developer Participation Agreement for design and construction of a median opening, left turn lanes and drainage improvements within State Highway 20 at the intersection of Montecillo Blvd was approved on December 11, 2012.

AMOUNT AND SOURCE OF FUNDING:

No cost to the City.

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:

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

RESOLUTION

WHEREAS, Developer has designed and is constructing Montecillo Unit Three Subdivision (the "Development"); and

WHEREAS, Developer is also currently designing Montecillo Unit Five Subdivision which is estimated to be approved within one-two years; and

WHEREAS, pursuant to Title 19, the Subdivision Code for the City of El Paso, Developers are required to improve, at Developer's cost, a development's proportional share of right-of-way and street improvements necessitated by the development, to assure that the development is served by adequate streets and thoroughfares; and

WHEREAS, development of the Montecillo Unit Three Subdivision has necessitated the installation of a three-way traffic signal at the intersection of State Highway 20 (Mesa Street) and Montecillo Blvd.; and

WHEREAS, development of the Montecillo Unit Five Subdivision will necessitate the installation of a four-way traffic signal at the intersection of State Highway 20 (Mesa Street) and Montecillo Blvd. (the "Project"); and

WHEREAS, Developer is responsible for 100% of the cost of the Project; and

WHEREAS, Developer desires to implement the Project in two phases; and

WHEREAS, Phase I of the Project shall consist of the design and construction, at no cost to the City, of a three-way (T-intersection) traffic signal that will control the traffic flow for State Highway 20 (Mesa Street) for northbound and southbound approaches and Montecillo Blvd. for the eastbound approach; and

WHEREAS, Phase II of the Project shall consist of the design and construction, at no cost to the City, of an additional traffic signal at the same intersection of the three-way traffic signal by adding one (1) additional traffic signal, to create a 4-way traffic signal that will control all traffic flow approaches including the westbound traffic flow approach from the Montecillo Unit Five Subdivision (East of Mesa Street); and

WHEREAS, Developer's design and construction of the Project will ensure that traffic flow moves as smoothly and safely as possible and that pedestrians are protected when they cross the roads, thereby increasing traffic safety at the main entrances of Montecillo Unit Three Subdivision and Montecillo Unit Five Subdivision and will be an economic benefit to local tax payers, and therefore, this Agreement is in the best interest of the citizens of the El Paso;

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

TRAFFIC SIGNAL AGREEMENT

This Agreement is made this _____ day of _____, 2013, by and between the **CITY OF EL PASO**, a Texas municipality, hereinafter "City" and **EPT MESA DEVELOPMENT, LP**, a Delaware Limited Partnership, hereinafter "Developer";

WITNESSETH:

WHEREAS, Developer has designed and is constructing Montecillo Unit Three Subdivision; and

WHEREAS, Developer is also currently designing Montecillo Unit Five Subdivision which is estimated to be approved within one-two years; and

WHEREAS, pursuant to Title 19, the Subdivision Code for the City of El Paso, Developers are required to improve, at Developer's cost, a Development's proportional share of right-of-way and street improvements necessitated by their development, to assure that the development is served by adequate streets and thoroughfares; and

WHEREAS, development of the Montecillo Unit Three Subdivision will necessitate the installation of a three-way traffic signal at the intersection of State Highway 20 (Mesa Street) and Montecillo Blvd.; and

WHEREAS, development of the Montecillo Unit Five Subdivision will necessitate the installation of a four-way traffic signal at the intersection of State Highway 20 (Mesa Street) and Montecillo Blvd.; and

WHEREAS, collectively, the installation of the three-way traffic signal and the four-way traffic signal shall be referred to as the "Project"; and

WHEREAS, Developer is responsible for 100% of the cost of the Project; and

WHEREAS, Developer desires to implement the Project in two phases; and

WHEREAS, Phase I of the Project shall consist of the design and construction, at no cost to the City, of a three-way (T-intersection) traffic signal that will control the traffic flow for State Highway 20 (Mesa Street) for northbound and southbound approaches and Montecillo Blvd. for the eastbound approach; and

WHEREAS, Phase II of the Project shall consist of the design and construction, at no cost to the City, of a four-way traffic signal that will replace the three-way traffic signal and will control all traffic flow approaches including the westbound traffic flow approach from the Montecillo Unit Five Subdivision (East of Mesa Street); and

WHEREAS, Phase I of the Project shall be completed within forty five (45) days from the date of the Notice to Proceed, while the timing for the implementation of Phase II of the Project shall be determined by the parties based on the approval of Montecillo Unit Five Subdivision and requirements in Title 19 for completion of subdivision improvements; and

WHEREAS, Developer's design and construction of the Project will ensure that traffic flow moves as smoothly and safely as possible and that pedestrians are protected when they cross the roads thereby increasing traffic safety at the main entrances of Montecillo Unit Three Subdivision and Montecillo Unit Five Subdivision and will be an economic benefit to local tax payers, and therefore, this Agreement is in the best interest of the citizens of the El Paso;

WHEREAS, Developer and City desire to enter into an agreement whereby each will bear certain responsibilities regarding the installation, maintenance and upkeep of the Project;

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the parties hereby agree as follows:

I SCOPE OF PROJECT

The "Project is defined as design and construction of a four-way traffic signal at the intersection of State Highway 20 (Mesa Street) and Montecillo Blvd., including but not limited to new pedestrian crossings, deceleration lanes, striping and signage, pedestrian and mast arm poles, audible pedestrian signal push buttons, ADA curb ramps, video detection, conduit and cable, sidewalk connectivity through the entire intersection and future bus drop-off areas and existing and future street connections. The Project shall be implemented in two phases.

Phase I shall consist of the design and construction, at no cost to the City, of a three-way (T-intersection) traffic signal that will control the traffic flow for State Highway 20 (Mesa Street) and Montecillo Blvd., including but not limited to new pedestrian crossings, striping and signage, pedestrian and mast arm poles, audible pedestrian signal push buttons, ADA curb ramps, video detection, conduit and cable and a southbound bus drop off area.

Phase II of the Project shall consist of the design and construction, at no cost to the City, of a four-way traffic signal that will replace the three-way traffic signal and will control all traffic flow approach from the Montecillo Unit Five Subdivision (East of Mesa Street) including but not limited to the following items such as new pedestrian crossings, deceleration lanes, striping and signage, pedestrian and mast arm poles audible pedestrian signal push buttons, ADA curb ramps, video detection, transit bus priority equipment for Mesa Street approaches, conduit and cable, and sidewalk connectivity through the entire intersection and existing street connections.

Phase I of the Project shall be constructed pursuant to the Construction Drawings, Plans and Specifications attached hereto as **Exhibit "A"** and incorporated herein by reference for all purposes (the "Plans").

The implementation of Phase II of the Project shall be determined by the parties based on the approval of the Montecillo Unit Five Subdivision and requirements in Title 19 for completion of subdivision improvements.

Construction and design plans for both phases shall be processed in accordance with the subdivision process established pursuant to the El Paso City Code Chapter 19.08. All work and construction shall comply with the City of El Paso Design Standards for Construction.

II TERM

(1) This Agreement becomes effective and binding and enforceable against the parties upon approval by the City Council for the City of El Paso (the "Effective Date").

(2) Phase I of the Project construction shall be completed by the Developer within forty five (45) days from the date of the Notice to Proceed unless otherwise extended by written amendment approved by the City.

(3) It is hereby understood and mutually agreed, by the Developer and the City that the date of beginning and the time for completion of Phase I of the Project are **ESSENTIAL CONDITIONS** in the Agreement.

III FUNDING

Developer understands and agrees that Developer will be responsible for all costs associated with Phase I and Phase II of 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 Phase I of the Project is as shown in **Exhibit "B"** attached and incorporated herein by reference for all purposes, such amount being **TWO HUNDRED FIFTY ONE THOUSAND TWO HUNDRED AND NO/00 DOLLARS (\$251,200.00)**. The estimated cost for Phase II of the Project shall be determined at a later date.

IV RESPONSIBILITIES OF DEVELOPER

(1) Developer shall construct the Project the subject of this Agreement pursuant to the terms and conditions specified herein and pursuant to the drawings, plans and specifications for Phase I attached hereto as **Exhibit "A"**. 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 the Project.

(2) In constructing the Project, 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, including but not limited to, Traffic Control Plan Permit and Landscape and Irrigation Permit.

(3) Developer shall not commence construction for either phase of the Project without receiving written approval from both the Texas Department of Transportation (TxDOT) and the El Paso Department of Transportation (EPDOT) 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 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 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. All Project materials must conform to the Plans and are subject to quality control testing by the City at the Developer's sole cost and expense.

(6) Additionally, the Developer shall provide all traffic control for construction. The Developer agrees to provide adequate traffic controls designed to cause minimum inconvenience to motorists, pedestrians and adjacent property owners. At least seventy-two (72) hours prior to the start of construction Developer shall submit a traffic control plan to both TxDOT and EPDOT for approval. Additionally, Developer is responsible for obtaining and necessary approvals required by TxDOT for performing work within TxDOT right-of-way.

(7) Developer agrees that construction of the Project shall be pursued regularly, diligently, and uninterrupted at such a rate of progress as shall ensure 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 completion of the Project is a reasonable time for completion.

(8) Phase I of the Project shall be completed and accepted for operation and maintenance by the City in accordance with Article II(2) of this Agreement, 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 completion of Phase I of the Project are **ESSENTIAL CONDITIONS** in the Agreement. **It is further mutually understood and agreed that the construction of Phase I of the Project shall begin promptly following the plan approval and written notice to proceed to Developer.** 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 Project. 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.

(9) The City will not accept Phase I of the Project until after inspection by the City and completion by the Developer of all punch list items for Phase I. The City will not accept Phase II of the Project until after inspection by the City and completion by the Developer of all punch list items for Phase II.

(10) 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 as otherwise provided in this Agreement. The Developer shall warrant each phase of the Project for a period of one (1) year for defective material, construction or workmanship following acceptance by the City of that phase of the Project and shall provide a maintenance bond in the amount of fifty percent of the costs of each phase of the Project 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 each phase of the Project. It is understood and agreed that, notwithstanding the acceptance of each phase of the Project by the City, the Developer remains fully responsible for the repair for defective material, construction or workmanship and maintenance in accordance with this Agreement of each phase of the Project as such relates to the Developer's warranty of each phase of the Project, as set forth above, for a period of one (1) year from the date of the City's acceptance of each phase of the Project.

(11) If the Developer shall neglect, fail or refuse to complete the construction of Phase I of the Project within the time herein specified, subject to delays by reason of Force Majeure, or any proper extension granted by the City, or to maintain either phase of the Project until inspected and accepted for maintenance by the City as specified in Article II hereof, and such neglect, failure or refusal to substantially complete or maintain either phase of the Project as provided herein 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 either phase of the Project, 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, and except for the negligence and/or willful misconduct by the City and the City's officers, agents, employees and Contractors, 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.

(12) All of Developer's books and other records related to the Project shall be available for inspection by the City.

V BOND REQUIRED

The Developer agrees to execute a performance bond for one hundred twenty five percent (125%) of the cost of each phase of the Project to secure fulfillment of all the Developer's

obligations under this Agreement. The bond will be in a form approved by the City. The bond must 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 bonds 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.

VI 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 Developer's 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
 - \$2,000,000.00 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 to the City Engineer prior to the date this Agreement is approved by City Council. All certificates shall also include the name of the Phase of the Project on the corresponding insurance certificate.

VII INDEMNIFICATION

EXCEPT FOR THE CITY, AND THE CITY'S OFFICERS, AGENTS, EMPLOYEES AND CONTRACTORS NEGLIGENCE AND WILLFUL MISCONDUCT, 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, OWNERSHIP AND OPERATION OF THE PROJECT OTHER THAN THE ACTIONS OF THE CITY AND/OR ACTIVITIES OF THE CITY PURSUANT TO ARTICLE VIII 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 shall 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 that is an indemnifiable obligation of the Developer under this Agreement. Developer shall 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 shall have the right 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.

VIII OWNERSHIP AND RIGHT OF ACCESS

Developer hereby acknowledges the rights of the City, its agents, contractors and subcontractors that upon thirty (30) days prior written notice to the developer to cure any breach under this Agreement, 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.

IX TERMINATION

(1) **Termination for Convenience.** This Agreement may be terminated by the City, upon thirty (30) days written notice for any reason.

(2) **Termination upon Completion of the Project.** This Agreement shall terminate upon completion of the following:

(a) The Project is completed and the City Engineer has accepted the Project for operation and maintenance by the City, and

(b) The Developer provides the required maintenance bond under the one year warranty provisions specified above.

(3) **Termination for Default.** In the event that Developer fails to complete the Project, and such failure continues for a period of 30 days after written notice is sent by the City, the City reserves the right to terminate this Agreement, secure completion through the performance bond, or complete the construction itself and assess the costs of completion not covered under the performance bond to the Developer for payment.

X 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 the Agreement.

XI INCREASED COSTS

It is anticipated that additional costs could arise from change, site conditions or latent defects; however, Developer agrees that the Developer will be solely responsible for payment of all increased costs in the construction of the Project, regardless of the cause.

XII NON-ASSIGNABILITY

The parties hereto agree that the rights of the Developer and the City under this Agreement are not assignable and will survive the sale, rental, gift or devise of any property adjacent to the Project.

XIII 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:

CITY: The City of El Paso
Attn: City Manager
P.O. Box 1890
El Paso, Texas 79950-1890

Copy to: The City of El Paso
El Paso Department of Transportation
Attn: Director, EPDOT
P.O. Box 1890
El Paso, Texas 79950-1890

DEVELOPER: EPT Mesa Development, LP
Attn: Tony G. Conde, P.E.
P.O. Box 920224
El Paso, TX 79902

Copy to: The Ehrlich Law Firm
Attn: William Ehrlich
444 Executive Center Blvd.
Suite 240
El Paso, TX 79902

or such other addresses as the parties may designate to each other in writing from time to time.

XIV LAW GOVERNING 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.

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

XVI 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.

**XVII
FUTURE MAINTENANCE WORK**

The City shall be responsible for any maintenance or repairs of the improvements. The City's obligations for such repairs and work shall begin upon completion of each Phase of the Project as defined by the Agreement and upon expiration of Developer's warranty for each Phase. The City agrees that Developer is not responsible for any maintenance and repair of such work after expiration of Developer's warranty for each Phase.

**XVIII
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.

**XIX
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.

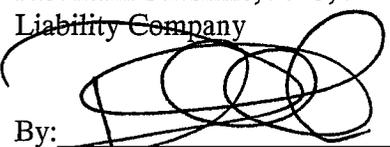
(Signatures begin on following page)

IN WITNESS THIS _____ DAY OF _____, 2013.

CITY OF EL PASO:

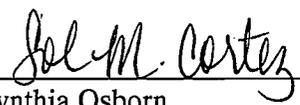
Joyce A. Wilson,
City Manager

DEVELOPER:
EPT MESA DEVELOPMENT, LP,
A Delaware Limited Partnership
By its general partner
EPT Mesa Development Management, LLC,
a Texas Limited Liability Company
By its Member/Manager
EPT Land Management, LLC, a Texas
Limited Liability Company
By its Member/Manager
Mountain Sunshine, LLC, a Texas Limited
Liability Company

By: 

Name: Richard Aguilar Its Manager

APPROVED AS TO FORM:



for Cynthia Osborn
Assistant City Attorney

APPROVED AS TO CONTENT:



Irene D. Ramirez, P.E.
Interim City Engineer

(Acknowledgements begin on following page)

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2013,
by **Joyce A. Wilson** as **City Manager** of the **City of El Paso**.

My Commission Expires:

Notary Public, State of Texas

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 9th day of May, 2013,
by **Richard Aguilar**, as **Manager** of **Mountain Sunshine, LLC**.

My Commission Expires:

5/7/2015



Notary Public, State of Texas

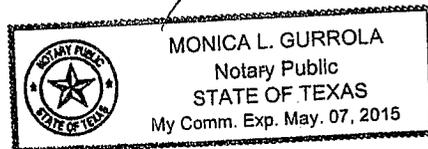


EXHIBIT "B"

Traffic Signal Mesa @ Montecillo							
Cost Estimate							
Work					Cost		
Design <i>and</i> Construction of					\$251,200		
traffic signal to be located at							
intersection of Mesa & Montecillo							
TOTAL					\$251,200		

Cost Estimate Provided By:
 Tony G. Conde

PERFORMANCE BOND
(Value of this Bond must be 125% of Contract amount)

Bond No. 0601753

KNOW ALL MEN BY THESE PRESENTS:

THAT EPT Mesa Development LP, hereinafter called the "Principal", as Principal and International Fidelity Insurance Company, a Corporation organized and existing under the laws of the State of New Jersey with its principal office in the City of Newark, New Jersey, hereinafter called the "Surety", as Surety, are held and firmly bound unto THE CITY OF EL PASO, TEXAS, hereinafter called the "Obligee", in the amount of Three Hundred Fourteen Thousand Dollars and 00 Cents (\$314,000.00), for the payment whereof, the said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee, dated the ___ day of ___, 20__ to construct **, Contract No. _____, which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein. **** Construction of traffic signals at Monticello Drive and Mesa Ave.**

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that, if the said Principal shall faithfully perform the work in accordance with the plans, specifications and contract documents, then this obligation shall be void; otherwise, to remain in full force and effect.

PROVIDED, HOWEVER, that this Bond is executed pursuant to the provisions of Chapter 2253, Texas Government Code, as amended, and all liabilities on this Bond shall be determined in accordance with the provisions of said Chapter to the same extent as if it were copied at length herein. The Surety hereby waives notice of any change, including changes of time, to the construction contract, related subcontracts and purchase orders, which is made in accordance with Section 252.048, Texas Local Government Code.

IN WITNESS, WHEREOF, the said Principal and Surety have signed and sealed this instrument this 18th day of December, 2012.

WITNESS: _____

ATTEST: _____

EPT Mesa Development LP
Principal - Company Name

8201 Lockheed Suite 235
Address

El Paso, TX 79925

City, State, Zip Code

915-775-1307

Telephone No.

International Fidelity Insurance Company

Surety - Company Name

4965 Preston Park Blvd., Suite 620 East
Address

Plano, TX 75093

City, State, Zip Code

972-312-0028

Telephone No.

[Signature] (Seal)
Signed By (Principal Agent)

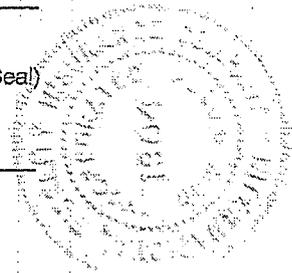
RICHARD AGUIZAR, MANAGER of THE GENERAL PARTNER
Principal Agent's Name (Printed or Typed)

[Signature] (Seal)
Signed By (Surety Agent)

Karen Carr, Attorney-in-Fact
Surety Agent's Name (Printed or Typed)

972-312-0029

Fax No.



NOTEPAD:

HOLDER CODE CITYOF
INSURED'S NAME EPT Mesa Development

EPTME-1
OP ID: SG

PAGE 2
DATE 03/12/13

Cont'd : company shall provide thirty (30) days written notice to the owner - City of El Paso by certified mail