

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

**DEPARTMENT:** Planning and Economic Development Department, Planning Division

**AGENDA DATE:** Resolution, CCA 7/26/11

**CONTACT PERSON/PHONE:** Arturo Rubio, (915) 541-4633, [rubioax@elpasotexas.gov](mailto:rubioax@elpasotexas.gov)

**DISTRICT(S) AFFECTED:** 1

**SUBJECT:**

A Resolution that the City Manager be authorized to sign an amendment to the January 23, 2007, Development Agreement by and between the City of El Paso, the El Paso Water Utilities-Public Service Board and El Paso Jamas, Ltd. and B.A.R. Construction Inc. to extend the term of the Agreement and to amend the park provisions contained in the Agreement. Subject Property: North of Borderland Road and East of Westside Drive, Property Owner: Jamas, Ltd. and B.A.R. Construction Inc.

**BACKGROUND / DISCUSSION:**

On May 19, 2011, the CPC recommended denial of rezoning application PZRZ11-00012, contrary to the staff recommendation. Staff recommended approval of this request to allow a development that incorporates many smart growth principles. This development complies with the purpose of the G-MU District, and furthers the City Council direction to promote smart growth. The CPC also voted 4-2 to recommend denial of the amendment of the development agreement between the City of El Paso, the El Paso Water Utilities-Public Service Board and El Paso Jamas, Ltd. and B.A.R. Construction Inc. to extend the term of the Agreement and to amend the park provisions contained in the Agreement in support of the rezoning PZRZ11-00012 denial.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**BOARD / COMMISSION ACTION:**

Development Coordinating Committee (DCC) -- Reviewed  
City Plan Commission (CPC) -- Denial Recommendation 4-2

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

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

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

**DEPARTMENT HEAD:**

Mathew S. McElroy  
Deputy Director, Planning and Economic Development Department

**APPROVED FOR AGENDA:**

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

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

RESOLUTION

That the City Manager be authorized to sign an amendment to the January 23, 2007, Development Agreement by and between the City of El Paso, the El Paso Water Utilities-Public Service Board and El Paso Jamas, Ltd. and B.A.R. Construction Inc. to extend the term of the Agreement and to amend the park provisions contained in the Agreement.

ADOPTED this \_\_\_ day of \_\_\_\_\_, 2011.

**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:**

\_\_\_\_\_  
Mathew S. McElroy, Deputy Director  
Planning and Economic Development  
Department

THE STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

DEVELOPMENT AGREEMENT  
FIRST AMENDMENT

THIS Amendment to the AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011 by and between the **CITY OF EL PASO, TEXAS**, a municipal corporation, of the County of El Paso in the State of Texas (hereinafter referred to as "City"), acting through the City Council of the City, and the **EL PASO WATER UTILITIES PUBLIC SERVICE BOARD** (hereinafter referred to as the "PSB"), and **EL PASO JAMAS, LTD.** ("Jamás") and **B.A.R. CONSTRUCTION, INC.** ("B.A.R.") (hereinafter collectively referred to as the "Owners");

**WHEREAS**, the City, PSB and the Owners entered into a Development Agreement on January 23, 2007; and,

**WHEREAS**, the Owner, City and PSB wish to amend the Agreement to extend the term and to change the park provisions; and,

**WHEREAS**, the Owner, City and PSB agree to such amendment; and,

**WHEREAS**, the City Council, after due and careful consideration, concluded that the terms and conditions hereinafter set forth in this Amendment are in the best interest of the City to protect and provide for the public health, safety, morals and general welfare and authorized the City Manager to execute this Amendment;

**NOW THEREFORE**, in consideration of the mutual covenants and agreements herein contained, the Parties agree to amend the Agreement as follows:

1. Section Eight shall be amended as follows:

**EIGHT**: Owners agree to provide for the dedication and improvement of public neighborhood parkland within the Property as shown on the Development Plan. City acknowledges that the parkland shown on the Development Plan will also be used as a ponding area and is in excess of the acreage required by the City Regulations. City is in agreement of the concept of the size and location of the neighborhood park as shown on the Development Plan and its dual use as a ponding area, subject to review and approval by the City of all engineering documentation regarding the feasibility of the design of such ponding, and still allow the use of the area as a public park, given the possible soils conditions on the Property, and approval of the subdivision plat by the City Plan Commission.

The Owners shall dedicate sufficient parkland and improve it to the minimum parkland standards, required under Title 19, Subdivision Regulations in effect prior to February 28, 2006.

To the extent the size of the parkland dedicated exceeds the size required per the minimum standards set forth Subdivision Regulations prior to February 28, 2006, the Owners may request excess bonus park credits for subdivisions submitted within the same park zone, if requested and processed in accordance with the Subdivision Regulations in effect prior to February 28, 2006.

2. Section Fifteen shall be amended as follows:

FIFTEEN.

This Agreement shall have a term of ten (10) years. The Parties may, by mutual agreement, as evidenced by a writing executed by the City Manager of the City, the General Manager of the El Paso Water Utilities Department, and a representative of the Owner, extend and/or renew the term, but only to the extent permitted by Subchapter G, Chapter 212, Local Government Code.

3. Except as expressly herein amended all other provisions of the Development Agreement entered into on January 23, 2007 shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands and seals and have caused this instrument to be executed by their duly authorized officials and the corporate seal affixed hereto.

**THE CITY OF EL PASO**

\_\_\_\_\_  
Joyce A. Wilson  
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Lupe Cuellar  
Assistant City Attorney

\_\_\_\_\_  
Mathew McElroy, Deputy Director  
Deputy Director - Planning

EL PASO WATER UTILITIES PUBLIC SERVICE BOARD:

APPROVED AS TO FORM :

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Robert D. Andron, General Counsel

\_\_\_\_\_  
Edmund G. Archuleta, P.E.  
President/CEO

**ACKNOWLEDGEMENT**

STATE OF TEXAS            )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 2011, by Joyce A. Wilson, as City Manager of the City of El Paso, Texas.

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

ACKNOWLEDGEMENT AND ACCEPTANCE CONTINUE ON FOLLOWING PAGE

**ACKNOWLEDGEMENT**

STATE OF TEXAS       )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2011,  
by Edmund G. Archuleta, as President/CEO of the El Paso Water Utilities Public Service Board.

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

**ACCEPTANCE**

The above Agreement, with all conditions thereof, is hereby accepted this \_\_\_\_\_  
day of \_\_\_\_\_, 2011.

**OWNER: JAMAS, LTD. ("Jamas")**

By: \_\_\_\_\_

**ACKNOWLEDGEMENT**

STATE OF TEXAS       )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_ 2011,  
by \_\_\_\_\_, as \_\_\_\_\_ of Jamas LTD.

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

**ACCEPTANCE**

The above Agreement, with all conditions thereof, is hereby accepted this \_\_\_\_\_  
day of \_\_\_\_\_, 2011.

**OWNER: B.A.R. CONSTRUCTION,  
INC. ("B.A.R.")**

By: \_\_\_\_\_

**ACKNOWLEDGEMENT ON FOLLOWING PAGE**

STATE OF TEXAS       )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_ 2011,  
by \_\_\_\_\_, as \_\_\_\_\_ of Bar Construction Inc.

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

## MEMORANDUM

**DATE:** July 18, 2011

**TO:** The Honorable Mayor and City Council  
Joyce A. Wilson, City Manager

**FROM:** Arturo Rubio, Senior Planner

**SUBJECT:** PZRZ11-00012

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The City Plan Commission (CPC), on May 19, 2011 voted 4-2 to recommend **Denial** of the amendment to January 23, 2007, Development Agreement by and between the City of El Paso, The El Paso Water Utilities-Public Service Board and El Paso Jamas, Ltd. and B.A.R. Construction Inc. to extend the term of Agreement and amend the park provisions contained in the Agreement.

The CPC found that the amendment does not protect the best interest, health, safety and welfare of the public in general; that the proposed amendment will have negative effects on the natural environment, social economic conditions, and property values in the vicinity and the city as a whole.

**Attachment:** Original Development Agreement, Resolution



"Agreement" means this Development Agreement by and between the City, the PSB, and the Owners.

"Annexation Ordinance" has the meaning set forth in Paragraph Three.

"City" means the City of El Paso, Texas, a home rule municipality situated in El Paso County, Texas.

"City Council" means the City Council of the City or any successor governing body.

"City Regulations" shall mean all duly enacted ordinances, rules, and regulations of the City, including the Code, the Subdivision Regulations, and the PSB Regulations in effect on the Effective Date.

"Code" shall mean the El Paso Municipal Code.

"Development Plan" shall mean the plan for development of the Property attached to this Agreement as Exhibit "B".

"Effective Date" means the date that this Agreement has been approved by the City Council and the Board of the PSB.

"Owners" means collectively Jamas and B.A.R.

"Party" or "Parties" means a party or the parties to this Agreement, being the City, the PSB, and the Owners.

"Property" shall mean the 57.226-acre tract of land described as follows: All of Tract 10 and a portion of Tract 9D described by metes and bounds in Exhibit "A-1", and all of Tract 9C, Block 13, Upper Valley Surveys, El Paso County, Texas, owned by Jamas; and a portion of Tract 9D1, Block 13, Upper Valley Surveys, El Paso County, Texas, as further described by metes and bounds on Exhibit "A-2", owned by B.A.R.

"PSB Facilities" shall mean wastewater lift facilities and related lines as described in Exhibit "C" attached hereto at or about the locations shown on Exhibit "D", attached hereto for the benefit of the Far West County Service Area as noted on Exhibit "D" which are to be constructed by Jamas under a developer participation contract to be executed in accordance with Chapter 212 of the Texas Local Government Code pursuant to which the PSB will reimburse Jamas for the costs in accordance with Paragraph Eleven.

"PSB" or "Public Service Board" shall mean the El Paso Water Utilities Public Service Board, the trustee and governing board of the El Paso Water Utilities.

"PSB Regulations" shall mean the duly adopted rules and regulations of the PSB in effect on the Effective Date.

"Subdivision Coordinator" shall mean the subdivision coordinator referenced in the Subdivision Regulations.

"Subdivision Regulations" shall mean the regulations in Title 19 of the El Paso Municipal Code in effect on the Effective Date.

"Vesting Statute" shall mean Chapter 245, Texas Local Government Code.

TWO: On or after the Effective Date, the Owner may submit for City's approval a subdivision plat consistent with the Development Plan. Within ninety (90) days following the recording of the subdivision plat, the City shall provide to the Property all of the municipal services provided inside municipal boundaries, regardless of whether the Property covered by the subdivision plat has been annexed as of such date. However, the scheduling of water and wastewater services to the Property shall be in accordance with the provisions of Section Eleven.

THREE: The Owner shall initiate and submit an annexation application no later than ninety (90) days after the Effective Date requesting that the City annex all of the Property into the City's corporate limits.

The City agrees to annex the Property in accordance with the terms and conditions of this Agreement, provided that the terms and conditions of this Agreement are met by the Owners, and in accordance with applicable provisions of state law.

The City may annex all of the Property under this Agreement by enacting an ordinance annexing the Property ("Annexation Ordinance"). To the extent allowed by law, the enactment of an ordinance annexing the Property shall be the only procedure required of the City to annex the Property.

FOUR: Owners hereby agree that the development of the Property shall be in accordance with the City Regulations, including the PSB Regulations, and subject to the application and payment of all necessary application and permit fees except as otherwise provided in this Agreement. Pursuant to Subchapter G, Chapter 212, Local Government Code, the City and Owners agree that, except as otherwise provided herein, the City Regulations shall be applicable to the Property on the Effective Date. The Vesting Statute shall apply to the Property on and after the Effective Date of this Agreement.

FIVE: Owners hereby agree to submit a preliminary plat for the entire Property in accordance with the Development Plan. Accordingly, City acknowledges that a land study shall not be required, if the preliminary plat is submitted in accordance with the Subdivision Regulations.

The City's review and approval of any submissions by Owners will not be unreasonably withheld or delayed. The City will review any plans, plat or other filing by Owners in accordance with the City Regulations, state law and this Agreement. If any submittal is not approved, the City will provide written comments to Owners specifying in detail all of the changes that will be required for the approval of the submitted application.

The City acknowledges that timely City reviews are necessary for the effective implementation of Owners' development program. Therefore, the City agrees that it will comply with all statutes and City Regulations establishing time periods for development reviews.

SIX: Owners hereby agree that prior to the issuance of any building permits or certificates of occupancy relating to the Property, Owners shall apply for and secure approval of a subdivision plat in accordance with the procedures of the Subdivision Regulations.

SEVEN: On and after the Effective Date, the Property may be used and developed in a manner consistent with the Development Plan and all the uses and standards set forth in the Planned Residential District I ("PR-1") zoning classification, in effect at the time of the Effective Date of this Agreement. Concurrently with the consideration of this Annexation, Owners will petition the City, at their expense, for rezoning of the Property to PR-1 as provided in the Code. If PR-1 zoning classification is denied for any reason or approved with restrictions, such denial or restrictions shall not impair or restrict the Owner's right to develop and use the Property as set forth in the first sentence of this Paragraph Seven.

EIGHT: Owners agree to provide for the dedication and improvement of public neighborhood parkland within the Property as shown on the Development Plan. City acknowledges that the parkland shown on the Development Plan will also be used as a ponding area and is in excess of the acreage required by the City Regulations. City is in agreement of the concept of the size and location of the neighborhood park as shown on the Development Plan and its dual use as a ponding area, subject to review and approval by the City of all engineering documentation regarding the feasibility of the design of such ponding, and still allow the use of the area as a public park, given the possible soils conditions on the Property, and approval of the subdivision plat by the City Plan Commission.

The Owners shall dedicate sufficient parkland and improve it to the minimum parkland standards, required under Title 19, Subdivision Regulations in effect prior to February 28, 2006, and further install additional recreational improvements to the extent required herein. The recreational improvements installed above and beyond the minimum parkland improvement requirements shall equal a cost not to exceed the amount of parkland fees generated by the Rio Valley Addition Subdivision ("Rio Valley"), at a rate of three hundred dollars and no cents (\$300.00) per residential lot, and three hundred dollars and no cents (\$300.00) per gross acre of commercial property. Owners

may not receive any type of credit or bonus reduction for parkland dedication for the cost of the recreational improvements paid for by the fees generated by Rio Valley.

To the extent the size of the parkland dedicated exceeds the size required per the minimum standards set forth Subdivision Regulations prior to February 28, 2006, or the cost of the installation of the recreational improvements standards exceeds the amount of fees from Rio Valley, the Owners may request excess bonus park credits for subdivisions submitted within the same park zone, if requested and processed in accordance with the Subdivision Regulations in effect prior to February 28, 2006.

NINE: Owners agree to impose restrictive covenants on the Property in order to avoid a homogenous look of housing through varied architectural features and site-specific designs. The restrictive covenants shall require differences in bulk and massing of buildings, different housing types, include single and two-story, providing varied types of garages such as front-load garage (one-car, two-car, three-car), side-load garage, detached garage, or carport, and requiring different alternating roof types such as gable, hip, gambrel, mansard or flat.

TEN: Except as expressly provided for herein, no fee, except the annexation application filing fee, shall be assessed to Owners for annexation by the City nor shall Owners be obligated to pay any annexation fees to PSB.

ELEVEN: In lieu of any other fees required by PSB Regulations, Owners agree to construct, at their cost and expense (but subject to the refund rights hereinafter set forth), the PSB Facilities.

PSB has delivered to the Owners the engineering design for the construction of the PSB Facilities to provide retail water and wastewater services to the Property in order to ensure that the development of the Property is not delayed. Upon completion of the Far West County Lift Station, interim force main and Laguna Meadows Lift Station improvements, wastewater services for a maximum of two hundred thirty-seven (237) lots shall be made available to the Property and shall be distributed based on the developer participation contract executed between the Owners and PSB. Following the completion by PSB of the Easy Way II Lift station and associated Interceptor terminating on Strahan Road north of Borderland, projected in Summer 2007, the Owners are required to construct a 12-inch force main to the associated Interceptor on Strahan Road in order to provide wastewater service to the balance of the Property.

Without limiting the foregoing, the provision of retail water and wastewater services shall not be delayed on the grounds that the Property has not been annexed in whole or in part. The rates for water and wastewater services shall be equal to the rates charged inside the incorporated boundaries of the City. The City's obligation to provide water and wastewater services to the Property shall survive the expiration of the term of this Agreement.

Owners and PSB shall enter into a developer participation agreement for construction of the PSB Facilities. Notwithstanding the terms of the PSB Regulations, the developer participation agreement shall contain a refund agreement which will provide for the costs of the PSB Facilities to be eligible for a refund to the Owners as the Far West County Service Area is built out and connected to the PSB water and wastewater systems. A description of the PSB Facilities and an estimated cost of the PSB Facilities is attached hereto as Exhibit "C" and made a part hereof. Notwithstanding the PSB Regulations, Owners shall be entitled to a refund for each 5/8 x 3/4 inch equivalent domestic service meter unit (excluding irrigation and fireline service meter) per Exhibit "C" as identified on the developer participation agreement between the Owners and the PSB.

The actual refund, however, shall be based on the actual cost to construct and using the methodology set forth in Exhibit "C". Notwithstanding anything in the PSB Regulations to the contrary, refunds will be paid once a year as the Area served by the facility is developed and connects to the sewage system. The refund will be for a period not to exceed twenty (20) years, on a no interest paid note.

TWELVE: Owners shall provide the City with one (1) mylar and three (3) paper prints of a current aerial map of the Property depicting the condition of the Property. Such aerial, and any other evidence necessary to demonstrate the existence of any non-conforming lot, use or structure on the Property, shall be provided by the Owners within thirty (30) days after the date the City adopts an annexation ordinance annexing a portion of the Property. The aerial and other evidence shall be submitted to the Zoning Administrator in the Development Services Department of the City for validation of such non-conforming lot, use or structure within the Property.

THIRTEEN: Owners shall ensure that facilities and services of sufficient capacity, whether public or private, shall be provided as attributable to any development within the Property.

FOURTEEN: Any formal notices or other communications required to be given by one Party to the other under this Agreement shall be given in writing, addressed to the Party to be notified at the address set forth below, by (i) delivering the same in person (ii) depositing the same in the United States Mail, certified or registered, return receipt requested, postage prepaid (iii) depositing the same with Federal Express or with another nationally recognized courier service guaranteeing "next day delivery" or (iv) sending the same by telefax with confirming copy sent by certified or registered mail. Notice shall be effective only if and when received by the Party to be notified. For the purposes of notice, the addresses of the Parties, until changed as provided below, shall be as follows:

(1) City:  
City of El Paso  
Attn: City Manager

Mailing Address:  
2 Civic Center Plaza  
El Paso, Texas 79901

Physical Address:  
Same as above

- (2) **El Paso Water Utilities Public Service Board:**  
El Paso Water Utilities Department  
Attn: General Manager

Mailing Address:  
1154 Hawkins Boulevard  
El Paso, Texas 79925

Physical Address:  
Same as above

- (3) **Owners:**  
El Paso Jamas, Ltd.  
Attn: Bill Hagan

Mailing Address:  
P.O. Box 12122  
El Paso, Texas 79913-0122

Physical Address:  
741 Crestamira Drive  
El Paso, Texas 79912

B.A.R. Construction, Inc.  
Attn: Keith Alexander

Mailing Address:  
311 McClintock, Suite A,  
El Paso, Texas 79932

Physical Address:  
Same as above

The Parties shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America by giving at least five days written notice to the other Party. If any date or any period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating the notice shall be extended to the first business day following such Saturday, Sunday, or legal holiday.

**FIFTEEN:** This Agreement shall have a term of five (5) years. The Parties may, by mutual agreement, as evidenced by a writing executed by the City Manager of the City, the General Manager of the El Paso Water Utilities Department, and a representative of the Owners, extend and/or renew the term, but only to the extent permitted by Subchapter G, Chapter 212, Local Government Code.

**SIXTEEN:** Owners shall dedicate twelve (12) feet in width of property for use as public right-of-way for the widening of Borderland Road abutting the Property, as shown on the City's official Major Thoroughfare Plan ("MTP"), at their sole cost and shall not request any reimbursement from the City for the dedication. Owners shall not be responsible for the construction of the improvements to the additional right-of-way dedicated on Borderland, except as required to provide for paved entrances to the Property, and accommodate any drainage.

**SEVENTEEN:** The Owners agrees to construct at its expense the mains and pipes located inside the Property that are necessary to provide retail water and wastewater utility services to the Property. The mains and pipes shall be designed and constructed in accordance with PSB Regulations.

**EIGHTEEN:** To the extent (if any) that this Agreement would obligate the City to make a payment or make an expenditure, the obligation shall be payable solely from revenues received by the City from current revenues, including revenues from the sale of water and wastewater utility services, it being the intention of the Parties that no obligation of the City in this Agreement shall be payable in whole or in part from property taxes, or from proceeds of obligations payable in whole or in part from property taxes, or otherwise constitute a debt of the City within the meaning of Article XI, Section 5 or Section 7 of the Texas Constitution.

**Successors and Assigns:** This Agreement is a restriction, condition and covenant running with the Property and a charge and servitude thereon, and shall be binding upon and inure to the benefit of the Parties hereto, and their heirs, successors and assigns of all or any part of the Property. Any future conveyance of the Property shall contain the restrictions, conditions and covenants and shall embody this Agreement by express reference; provided, however, this Agreement shall not be binding on, and shall not create any encumbrance to title as to, any end-buyer of a fully developed and improved lot within the Property, except for land use regulations that may apply to a specific lot.

**Remedies:** This Agreement shall be enforceable in any court of competent jurisdiction by any of the Parties or by an appropriate action at law or in equity to secure the performance of the restrictions, conditions and covenants herein contained.

In the event a Party (the "Defaulting Party") commits a breach of this Agreement, the other Party (the "Non-Defaulting Party"), shall, prior to bringing suit or pursuing any other remedy, provide written notice of such breach to the Defaulting Party. Following

receipt of such notice, the Defaulting Party shall have thirty (30) days within which to cure the breach. If the breach cannot be cured within such thirty (30) day period, the Defaulting Party shall commence to cure such breach within said period and thereafter diligently continue such cure to completion. In the event the Defaulting Party fails to cure the breach within said period, then the Non-Defaulting Party may pursue any remedy provided at law or in equity. In the event the Defaulting Party fails to cure the breach within the identified time period, the Non-Defaulting Party may pursue specific performance of this agreement. The City and the PSB hereby waive immunity to suit for specific performance of this agreement only, and do not waive immunity from damages of any kind with respect to any suit for specific performance of this agreement nor do the City and the PSB agree to attorney's fees, under any cause of action.

**Force Majeure:** In the event any Party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, it is agreed that on such Party's giving of notice and the full particulars of such force majeure in writing to the other Party as soon as possible after the occurrence of the cause relied upon, then the obligations of the Party giving such notice, to the extent it is affected by force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability but for no longer period.

The term "force majeure" as used herein, shall include, but not be limited to, acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, war, terrorism, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests and restraints of governments and people, explosions, breakage or damage to machines or pipelines and any other incapacities of either Party, whether similar to those enumerated or otherwise, and not within the reasonable control of the Party claiming such inability.

**Severability:** If any provision of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be deemed to be excised herefrom and the invalidity thereof shall not affect any of the other provisions contained herein, provided that any invalid provisions are not deemed by the City or the Owners to be material to the overall purpose and operation of this Agreement. If the City or the Owners determines that the invalid provision is material, then, if the City has made such determination, the City shall have the option to deannex the Property, and if the Owners have made such determination, the Owners shall have the option to terminate this Agreement and to deannex the Property. Such judgment or decree shall relieve the City and the Owners from performance under such Invalid provision of this Agreement.

**Entire Agreement:** This Agreement contains the entire agreement of the Parties, and there are no other agreements or promises, oral or written, between the Parties regarding the subject matter of this Agreement. This Agreement may be amended only by written agreement signed by the Parties. By approving the execution of this Agreement, the City Council of the City, and the Public Utilities Board of the El Paso Water Utilities, delegate to the City Manager of the City, and to the General

Manager of the El Paso Water Utilities, the authority, without any further action being required of the City Council or of the Public Utilities Board, to execute such amendments of or extensions to this Agreement as they may consider advisable, and consistent with the provisions of law.

**Governing Law, Jurisdiction & Venue:** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, as it applies to contracts performed within the State of Texas and without regard to any choice of law rules or principles to the contrary. The Parties acknowledge that this Agreement is performable in El Paso County, Texas and hereby submit to the jurisdiction of the state or federal courts situated in that County, and hereby agree that any such Court shall be a proper forum for the determination of any dispute arising hereunder.

**No Third Party Beneficiary:** This Agreement is not intended, nor will it be construed, to create any third-party beneficiary rights in any person or entity who is not a Party, unless expressly otherwise provided.

**Waiver:** Any failure by a Party hereto to insist upon strict performance by the other Party of any material provision of this Agreement shall not be deemed a waiver thereof or of any other provision hereof, and such Party shall have the right at any time thereafter to insist upon strict performance of any and all of the provisions of this Agreement.

**Reservation of Rights:** To the extent not inconsistent with this Agreement, each Party reserves all rights, privileges, and immunities under applicable laws.

**Further Documents:** Each Party agrees that at any time after execution of this Agreement, it will, upon request of the other Party, execute and deliver such further documents and do such further acts and things as the other Party may reasonably request in order to effectuate the terms of this Agreement.

**Incorporation of Exhibits and Other Documents by Reference:** All exhibits and other documents attached to or referred to in this Agreement are incorporated herein by reference for the purposes set forth in this Agreement.

**Effect of State and Federal Laws:** Notwithstanding any other provisions of this Agreement, each Party shall, in carrying out the terms of this Agreement, comply with all applicable State and Federal laws.

**Headings:** The headings as to contents of particular articles or sections herein are inserted only for convenience, and they are in no way to be construed as a limitation on the scope of the particular articles or sections to which they refer.

**Ambiguities:** In the event of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any Party on the basis that such Party did or did not author the same.

**Counterparts:** It is understood and agreed that this Agreement may be executed in any number of counterparts, each which shall be deemed an original for all purposes.

**Authority for Execution:** Each Party hereby certifies, represents, and warrants that the execution of this Agreement has been duly authorized.

**IN WITNESS WHEREOF,** the parties have hereunto set their hands and seals and have caused this instrument to be executed by their duly authorized officials and the corporate seal affixed hereto, all on the day and year first above written.

**THE CITY OF EL PASO**

Joyce A. Wilson  
Joyce A. Wilson  
City Manager

APPROVED AS TO FORM:

Theresa Cullen-Garney  
Theresa Cullen-Garney  
Deputy City Attorney

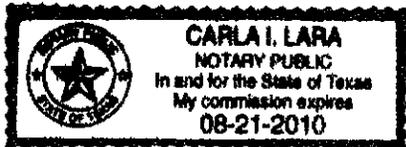
APPROVED AS TO CONTENT:

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

**ACKNOWLEDGEMENT**

STATE OF TEXAS     )  
COUNTY OF EL PASO    )

<sup>10</sup> This instrument was acknowledged before me on the 23<sup>rd</sup> day of January, 2008, by Joyce A. Wilson, as City Manager of the City of El Paso, Texas.



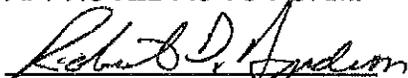
Carla I. Lara  
Notary Public, State of Texas  
Carla I. Lara

EL PASO WATER UTILITIES  
PUBLIC SERVICE BOARD



Edmund G. Archuleta, P.E.  
General Manager

APPROVED AS TO FORM:



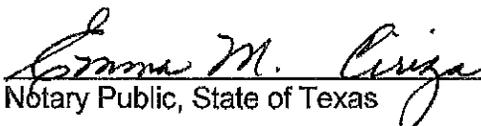
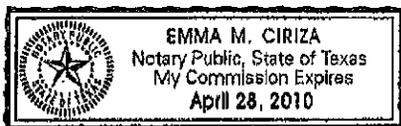
Robert D. Andron  
General Counsel

ACKNOWLEDGEMENT

STATE OF TEXAS )

COUNTY OF EL PASO )

*EC* This instrument was acknowledged before me on the 2<sup>nd</sup> day of January, 2008, by Edmund G. Archuleta, as General Manager of the El Paso Water Utilities Public Service Board.

  
Notary Public, State of Texas

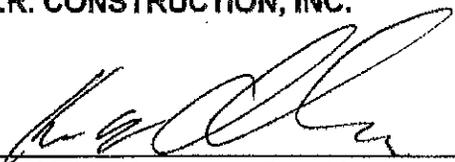
CITY CLERK DEPT.  
07 JAN 23 PM 2:34



**ACCEPTANCE**

The above Agreement, with all conditions thereof, is hereby accepted this 27  
day of December, 2006.

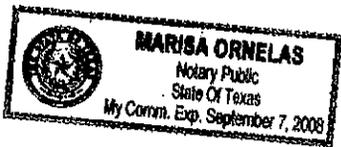
**B.A.R. CONSTRUCTION, INC.**

By:   
Keith Alexander, President

**ACKNOWLEDGEMENT**

STATE OF TEXAS        )  
                                  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on the 27 day of December  
2006, by Keith Alexander, President of B.A.R. Construction, Inc., a Texas corporation,  
on behalf of said corporation.



  
Notary Public, State of Texas

Marisa Ornelas

**EXHIBITS "A-1", "A-2", and "A-3"**

**LEGAL DESCRIPTION**

Exhibit A-1

POOR QUALITY ORIGINAL  
BEST AVAILABLE FILM

The parcel of land herein described is all of Tract 10 and a portion of Tract 90, Block 13, Upper Valley Surveys, El Paso County, Texas, and is more particularly described by metes and bounds as follows:

Commencing at a point, said point being a found iron lying on the centerline intersection of Westside Drive and Borderland Road; Thence, North 89°49'00" East, along the centerline of Borderland Road, a distance of 1010.25 feet to a point; Thence, North 00°11'00" West, a distance of 20.00 feet to a point, lying on the northerly right-of-way line of Borderland Road, said point being the TRUE POINT OF BEGINNING of this description;

THENCE, South 89°49'00" West, along said right-of-way line, a distance of 949.65 feet to a point for a corner, said point lying on the easterly right-of-way line of La Union East Lateral;

THENCE, North 01°30'00" East, along said right-of-way line, a distance of 394.85 feet to a point for a corner, said point lying on a southerly boundary line of Tract 90, Block 13, Upper Valley Surveys;

THENCE, South 89°54'00" East, along said boundary line, a distance of 923.36 feet to a point for a corner;

THENCE, South 00°11'00" East, a distance of 889.91 feet to the TRUE POINT OF BEGINNING of this description.

Said parcel of land contains 19.10181 acres (835,559.75 sq. ft.) of land more or less.

POOR QUALITY COPY  
BEST AVAILABLE FILM

## Exhibit A-2

Property description: A 5,000-acre portion of Tract 9D1, Block 13, Upper Valley Surveys, El Paso County, Texas

### METES AND BOUNDS DESCRIPTION

The parcel of land herein described is a 5,000-acre portion of Tract 9D1, Block 13, Upper Valley Surveys, El Paso County, Texas, and is more particularly described by metes and bounds as follows:

**COMMENCING** at a 5/8" rebar with cap marked "Subland Inc" found at the intersection of the common boundary between Tracts 9D1A and 9D1, Block 13, Upper Valley Surveys (August 28, 1986, Book 1713, Page 1443, Deed Records, El Paso County, Texas) and the northerly right-of-way of Borderland Road (40-foot right-of-way), from which a 1" rebar found at the intersection of the easterly boundary of Tract 9D1A and the northerly right-of-way of Borderland Road bears North 89°49'00" East, a distance of 243.58 feet; Thence, South 89°49'00" West, along said right-of-way, a distance of 245.25 feet to a 5/8" rebar with cap marked "RPLS 4178" set for the POINT OF BEGINNING of this description;

**THENCE**, South 89°49'00" West, continuing along said right-of-way, a distance of 244.91 feet to a 5/8" rebar with cap marked "RPLS 4178" set on the common boundary between Tracts 9D and 9D1, Block 13, Upper Valley Surveys;

**THENCE**, North 00°11'00" West, along said boundary, a distance of 889.91 feet to a 5/8" rebar with cap marked "RPLS 4178" set on the common boundary between Tracts 9D1 and 9C, Block 13, Upper Valley Surveys;

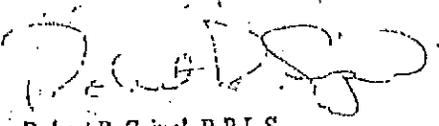
**THENCE**, South 89°54'00" East, along said boundary, a distance of 244.92 feet to a set 5/8" rebar with cap marked "RPLS 4178";

**THENCE**, South 00°11'00" East, a distance of 888.70 feet to the POINT OF BEGINNING of this description.

Said parcel of land contains 5,000 acres (217,802 square feet) of land more or less.

NOTE: A PLAT OF EVEN DATE HEREWITH ACCOMPANIES THIS DESCRIPTION.

ROBERT SEIPEL ASSOCIATES, INC.  
Professional Land Surveyors

  
Robert R. Seipel, R.P.L.S.  
President  
Texas License No. 4178

Job Number 02-0020B  
April 11, 2002

POOR QUALITY ORIGINAL  
BEST AVAILABLE FILM

## PROPERTY DESCRIPTION

33.045 Acres

Being the description of all of Tract 9C, Block 13, Upper Valley Surveys, El Paso County, Texas and being more particularly described by metes and bounds as follows:

COMMENCING FOR REFERENCE at a found ½ inch rebar at the intersection of Borderland Road (40 feet wide) and Westside Road (40 feet wide) and a found square bolt at the intersection of said Borderland Road and Upper Valley Road bears, North 89°49'00" East, 4,589.55 feet;

THENCE, along the centerline of said Westside Road, North 01°30'00" East, a distance of 1788.28 feet;

THENCE, leaving said centerline, North 89°59'00" East, a distance of 60.02 feet to a set ½ inch rebar with cap marked (Tx2027) at the Northwest corner of said Tract 9C and Southwest corner of Tract 9B1 (book 3620, page 1890) in the East right-of-way line of the La Union East Lateral (40 feet wide) and POINT OF BEGINNING for the herein described tract;

THENCE, along the North line of said Tract 9C, North 89°59'00" East, a distance of 1633.39 feet to a set ½ inch rebar with cap marked (Tx2027) at the Northeast corner of said Tract 9C in the Westright-of-way line of the Borderland Spur Drain (110 feet wide);

THENCE along the West line of said Spur Drain, South 00°11'00" East, a distance of 876.08 feet to a set ½ inch rebar with cap marked (Tx2027) at the Southeast corner of said Tract 9C and Northeast corner of Tract 9D1A (book 4241, page 1707);

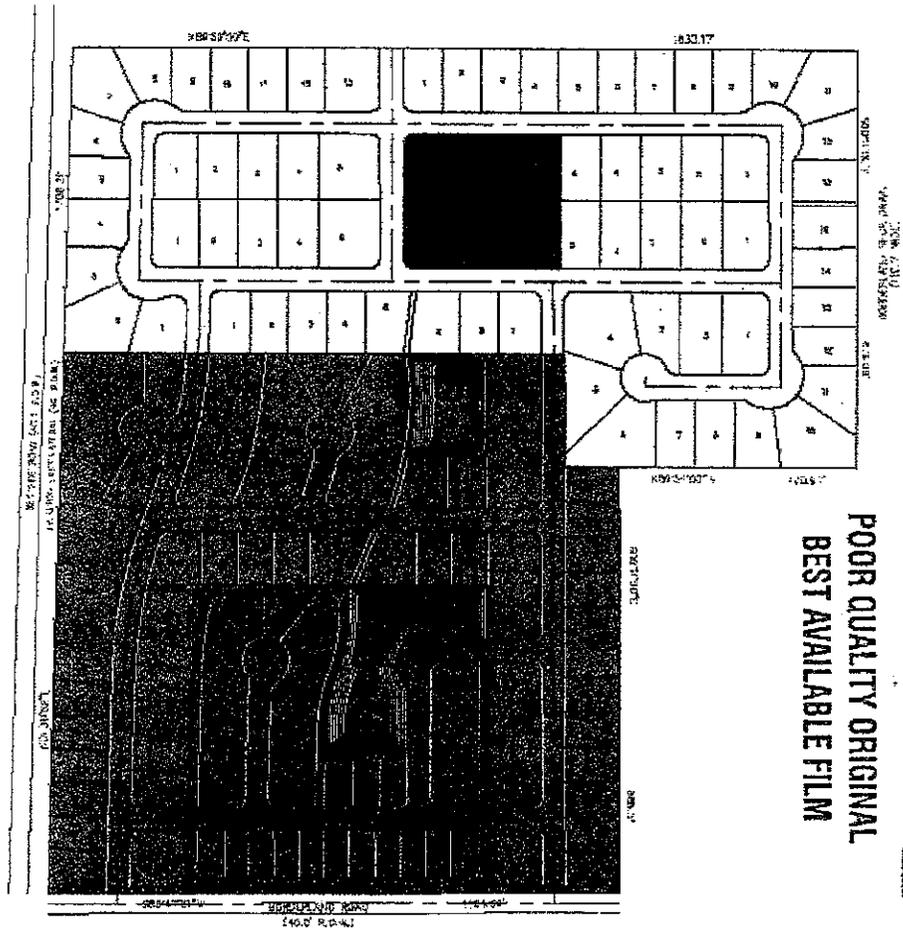
THENCE, leaving said West line and along the South line of said Tract 9C, North 89°54'00" West, a distance of 1659.05 feet to a set ½ inch rebar with cap marked (Tx2027) at the Southwest corner of said Tract 9C Northwest corner of Tract 9D (book 2823, page 1841) in said East right-of-way line of the La Union East Lateral (40 feet wide);

THENCE, along said East right-of-way line, North 01°30'00" East, a distance of 873.00 feet to the POINT OF BEGINNING and containing 33.045 acres of land.

POOR QUALITY ORIGINAL  
BEST AVAILABLE FILM

**EXHIBIT "B"**  
**DEVELOPMENT PLAN**

P16-1



# BORDERLAND DEVELOPMENT

BEING ALL OF TRACTS 90, 90 AND 901, BLOCK 13,  
UPPER VALLEY SURVEYS, EL PASO COUNTY  
CITY OF EL PASO, TEXAS  
CONTAINING 57.226± ACRES



1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173
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LEGEND

[Symbol]	1
[Symbol]	2
[Symbol]	3
[Symbol]	4

DEVELOPMENT PLAN  
173 LOTS

CEA  
Engineering Group

**EXHIBIT "C"**

**DESCRIPTION OF PSB FACILITIES AND LINES,  
ESTIMATED COST AND REFUND CALCULATION**

EXHIBIT "C"

Construction of the Far West Lift Station, firm pumping capacity 1.5 MGD, and associated 12-inch force main  
 Construction of an interim 6-inch force main and improvement to the existing Laguna Meadows Lift Station.

12/21/2006

Far West County Lift Station

Subdivision	Developer	Acres	LUE	Percent of Lots	Peak Flow	
					(gpm)	(MGD)
Hagan Property		60	192	12.71	118	0.17
Rio Valley Addition	(Winton)	62,626	188	12.44	115	0.17
Los Nogales		47.85	52	3.44	32	0.05
River Park West Unit 7	(O'Leary)	3	12	0.79	7	0.01
<b>SUBTOTAL</b>		198.5	444	29.39	272	0.39
Aircraft Estates	(Schwartz)	61.46	210	13.50	129	0.19
Cottonwood		82.8	42	2.78	26	0.04
Prado Verde		96.8	117	7.74	72	0.10
Carutilla Independent School District other properties		25	50	3.31	20	0.03
<b>TOTAL</b>		698.40	1511	100.00	915	1.32

Cost Sharing Breakdown	% of Participants	Refundable Amt. per Participant	Total cost per Participant	Cost per LUE
\$208,792	43.24	\$ 359,013.89	\$ 567,806.84	\$2,957.32
\$204,442	42.34	\$ 351,534.36	\$ 555,976.55	\$2,957.32
\$58,548	11.71	\$ 97,232.90	\$ 153,790.75	\$2,957.32
\$13,050	2.70	\$ 22,438.36	\$ 35,487.86	\$2,957.32
\$482,832	100.00	\$ 830,219.42	\$ 1,313,051.00	
\$228,366				
\$45,673				
\$127,233				
\$54,373				
\$704,574				
\$1,643,051				

Far West Lift Station and Associated Force Main (from Lift Station to int. Borderland and Strahan)

Description	Unit	Quantity	Cost/unit	Total
Installation of 1.5 MGD Lift Station (complete)	EA	1	\$375,000	\$1,100,000
Electrical	LS	1	\$69,000	\$27,491
12-inch Force Main	LF	4400	\$40	\$400,100
Trench Safety System	LF	4400	\$2.50	\$0
Pavement Cut & Restoration (2-inch H/MAC)	SF	22000	\$14	\$0
2-Sack Backfill	CY	815	\$40	\$0
Dewatering	LS	1	\$35,000	\$35,000
Sub-Total				\$1,562,591
Contingency	%	0		\$50,000
Payment and Performance Bond	%	0		\$30,550
<b>Total Estimate of Probable Cost</b>				<b>\$1,643,051</b>

Meter size	Demand (GPM)	Equivalent Meter size
5/8 x 3/4"	15	1
1"	37	2.47
1 1/2"	75	5
2"	120	8
3"	240	16
4"	375	25
6"	750	50
8"	1400	93.33
10"	2000	133.33

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BEST AVAILABLE FILM

Force Main (Int. Strahan and Borderland to Proposed Strahan Interceptor)

Description	Unit	Quantity	Cost/unit	Total
12-inch Force Main	LF	0	\$40	\$0
Trench Safety System	LF	0	\$2.50	\$0
Pavement Cut & Restoration (2-inch H/MAC)	SF	0	\$14	\$0
2-Sack Backfill	CY	0	\$40	\$0
Traffic Control	LS	0	\$15,000	\$0
Sub-Total				\$0
Contingency	%	0		\$0
Engineering	%	0		\$0
<b>Total Estimate of Probable Cost</b>				<b>\$0</b>

Alternative 1. Improvements to Lift Station #142 (Laguna Meadows)

Description	Unit	Quantity	Cost/unit	Total
Lift Station Equipment Upgrade (800 gpm at 56' TDH)	LS	1	\$38,154.00	\$38,154
Miscellaneous	LS	1	\$5,000.00	\$5,000
Installation/Labor	LS	1	\$3,000.00	\$3,000
Sub-Total				\$46,154
Contingency	%	15		\$5,923
Engineering	%	15		\$5,923
<b>Total Estimate of Probable Cost</b>				<b>\$60,000</b>

Total Cost of Lift Station

\$ 1,643,051

Participants in Lift Station

CISD ( thru the EPWU)	\$ 55,000
El Paso Water Utilities	\$ 275,000
Borderland Development	\$ 1,313,051
	\$ 1,643,051

Amount NOT Eligible to be Refunded

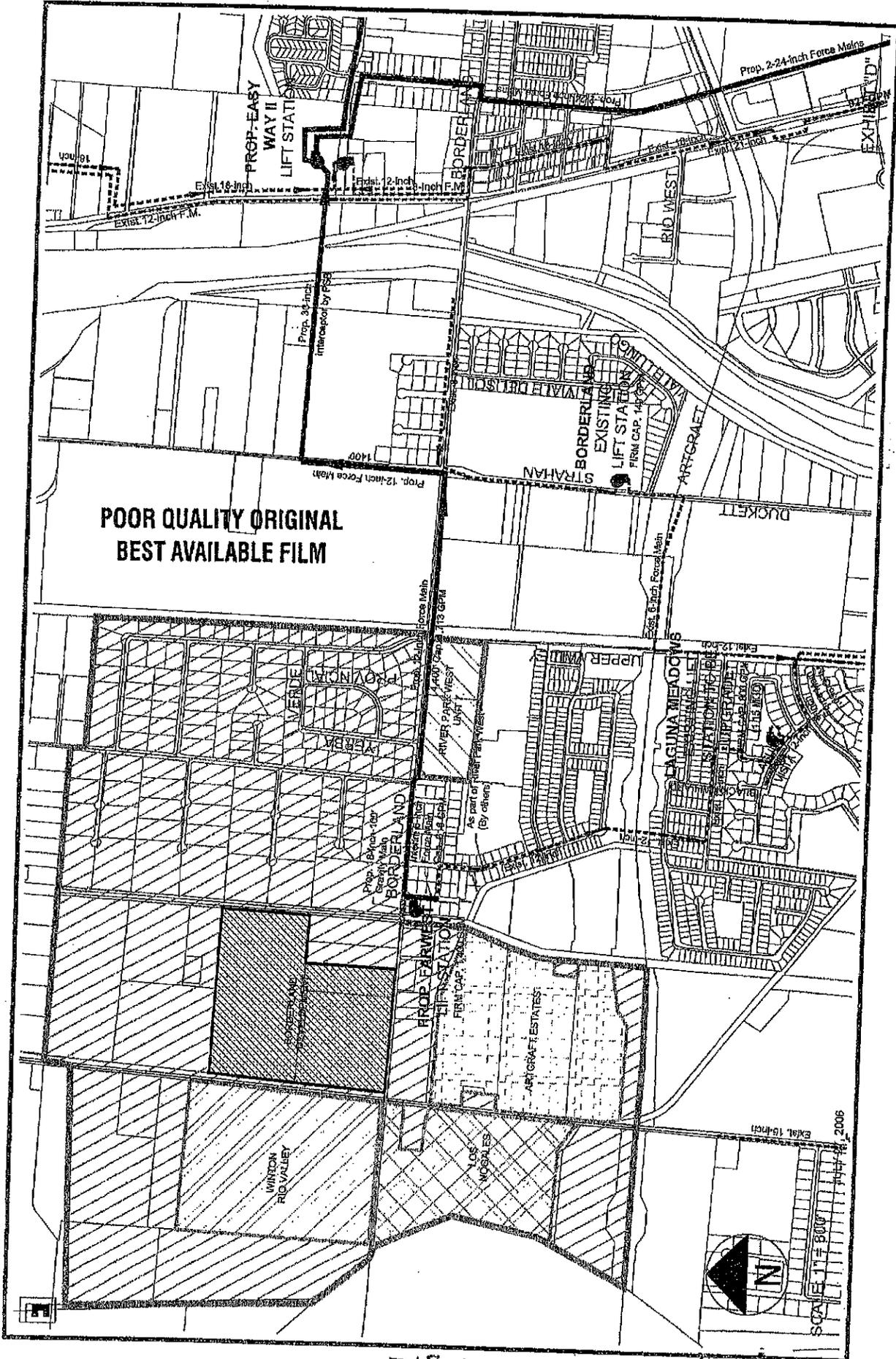
\$ 208,792	Hagan Property
\$ 204,442	Rio Valley Addition
\$ 58,548	Los Nogales
\$ 13,050	River Park West Unit 7
\$ 55,000	CISD
\$ 275,000	EPWU
\$ 812,832	

Amount Eligible to be Refunded

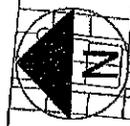
Refundable Number of Lots/LUE-Outside City	\$ 1,643,051	-	\$ 812,832	=	\$ 830,219
Refundable Amount per Lot/LUE	1511	-	50	=	1017
	\$ 830,219	+	1017	=	\$ 816

**EXHIBIT "D"**

**PSB FACILITIES LOCATIONS**



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BEST AVAILABLE FILM



SCALE 1" = 50'  
2006