

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

DEPARTMENT: Engineering and Construction Management

AGENDA DATE: August 14, 2012

CONTACT PERSON NAME AND PHONE NUMBER: R. Alan Shubert, P.E., City Engineer (X4423)

DISTRICT(S) AFFECTED: 6

SUBJECT:

That the City Manager be authorized to sign a Developer Participation Agreement between the City of El Paso and Hunt Communities GP, LLC for the design and construction of the Median Landscape Improvements for Paseo del Este Boulevard at Southview Drive, at no cost to the City.

BACKGROUND / DISCUSSION:

Hunt Communities GP, LLC, in conjunction with its design and construction of Americas Ten Replat D, which is part of the Paseo del Este Master Plan area, desires to proceed with the design and construction of the Median Landscape Improvements for Paseo del Este Boulevard at Southview Drive. Developer's design and construction of the Paseo del Este Boulevard Median Landscape Improvements will enhance Paseo del Este Boulevard which is the main entrance to the Development and will be consistent with the landscaping in and around the Development and will be an economic benefit to local tax payers, and therefore, is in the best interest of the citizens of the El Paso

PRIOR COUNCIL ACTION:

None

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, Hunt Communities GP, LLC ("Developer"), in conjunction with its design and construction of Americas Ten Replat D (the "Development"), which is part of the Paseo del Este Master Plan area, desires to proceed with the design and construction of the Median Landscape Improvements for Paseo del Este Boulevard at Southview Drive; and

WHEREAS, Texas Local Government Code 212.071 authorizes a municipality with 5,000 or more inhabitants to enter into a contract with a developer to construct public improvements related to the development, not including a building, without complying with the competitive bidding procedures of Local Government Code Chapter 252; and

WHEREAS, Developer's design and construction of the Paseo del Este Boulevard Median Landscape Improvements will enhance Paseo del Este Boulevard which is the main entrance to the Development and will be consistent with the landscaping in and around the Development and will be an economic benefit to local tax payers, and therefore, is in the best interest of the citizens of the El Paso; and

WHEREAS, the Developer and the City desire that the Developer shall design and construct the Median Landscape Improvements for Paseo del Este Boulevard at Southview Drive; and

NOW, THEREFORE, 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 between the City of El Paso and Hunt Communities GP, LLC for the design and construction of the Median Landscape Improvements for Paseo del Este Boulevard at Southview Drive, at no cost to the City.

ADOPTED this _____ day of _____, 2012.

THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Cynthia Osborn
Assistant City Attorney

APPROVED AS TO CONTENT:

R. Alan Shubert, P.E.
City Engineer

STATE OF TEXAS)
)
COUNTY OF EL PASO)

DEVELOPER PARTICIPATION AGREEMENT

This Developer Participation Agreement is made this _____ day of _____, 2012, by and between the **CITY OF EL PASO**, hereinafter referred to as the "City", and **HUNT COMMUNITIES GP, LLC** a Domestic Limited Liability Company, hereinafter referred to as the "Developer."

WITNESSETH:

WHEREAS, Developer, in conjunction with its design and construction of Americas Ten Replat D (the "Development"), which is part of the Paseo del Este Master Plan area, desires to proceed with the design and construction of the Median Landscape Improvements for Paseo del Este Boulevard at Southview Drive (the "Project"); and

WHEREAS, Texas Local Government Code 212.071 authorizes a municipality with 5,000 or more inhabitants to enter into a contract with a developer to construct public improvements related to the development, not including a building, without complying with the competitive bidding procedures of Local Government Code Chapter 252; and

WHEREAS, Texas Local Government Code 212.072 limits the municipality's participation in the cost of the public improvements to thirty percent (30%) of the total contract price for the additional public improvements; and

WHEREAS, Developer's design and construction of the Paseo del Este Boulevard Median Landscape Improvements will enhance Paseo del Este Boulevard which is the main entrance to the Development and will be consistent with the landscaping in and around the Development 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; and

WHEREAS, the Developer and the City agree that the Developer shall design and construct the Median Landscape Improvements for Paseo del Este Boulevard at Southview Drive; and

NOW, THEREFORE, in consideration of the promises and of the mutual covenants and agreements of the parties hereto, the City and Developer do agree as follows:

I
Scope of Project

The "Project" is defined as design and construction of the Median Landscape Improvements for Paseo del Este Boulevard at Southview Drive, pursuant to the Construction Drawings, Plans and Specifications attached hereto as **Exhibit "A"** and incorporated herein by reference for all purposes (the "Plans"). Construction and design plans 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**

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").

All Project construction shall be completed by the Developer within one hundred twenty (120) days from the Effective Date of this Agreement unless otherwise extended by written amendment and approval by the City.

It is hereby understood and mutually agreed, by the Developer and the City that the date of beginning and the time for completion 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 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 the Project is as shown in **Exhibit "B"** attached and incorporated herein by reference for all purposes, such amount being TWENTY NINE THOUSAND NINE HUNDRED AND NO/00 DOLLARS (\$29,900.00).

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 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 of the Project without receiving the written approval by the City Engineering and Construction Management Department 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.

(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) The Project shall be completed and accepted for operation and maintenance by the City within one hundred twenty (120) days following the Effective Date of this Agreement, unless otherwise extended by written amendment and approval by the City, 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 the Project are **ESSENTIAL CONDITIONS** in the Agreement. **It is further mutually understood and agreed that the construction on the Project shall begin promptly following the plan approval and communicated notice of that approval 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) 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 the Project for a period of one year for defective material, construction or workmanship following acceptance by the city of the Project and shall provide a maintenance bond in the amount of fifty percent of the costs 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 the Project. It is understood and agreed that, notwithstanding the acceptance of the Project by the City, the Developer remains fully responsible for the repair and maintenance of the Project as such relates

to the Developer's warranty of the Project, as set forth above, for a period of one (1) year from the date of the City's acceptance of the Project.

(10) If the Developer shall neglect, fail or refuse to complete the construction 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 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 the Project 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 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, 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.

(11) Pursuant to Local Government Code 212.074(b) 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 percent (100%) of the Project costs 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 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 project on the corresponding insurance certificate.

VII Indemnification

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. 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 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
 2 Civic Center Plaza, 10th Floor
 El Paso, Texas 79901

Copy to: The City of El Paso
 Engineering and Construction Management Department
 Attn: City Engineer
 2 Civic Center Plaza, 4th Floor
 El Paso, Texas 79901

DEVELOPER: Hunt Communities GP, LLC
 Attn: Jose Lares
 4401 North Mesa
 El Paso, Texas 79902
 (915) 298-0418
 jose.lares@huntcompanies.com

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

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.

IN WITNESS THIS _____ DAY OF _____, 2012.

CITY OF EL PASO:

Joyce A. Wilson,
City Manager

DEVELOPER:
HUNT COMMUNITIES GP, LLC

Justin Chapman,
President

APPROVED AS TO FORM:

Cynthia Osborn
Assistant City Attorney

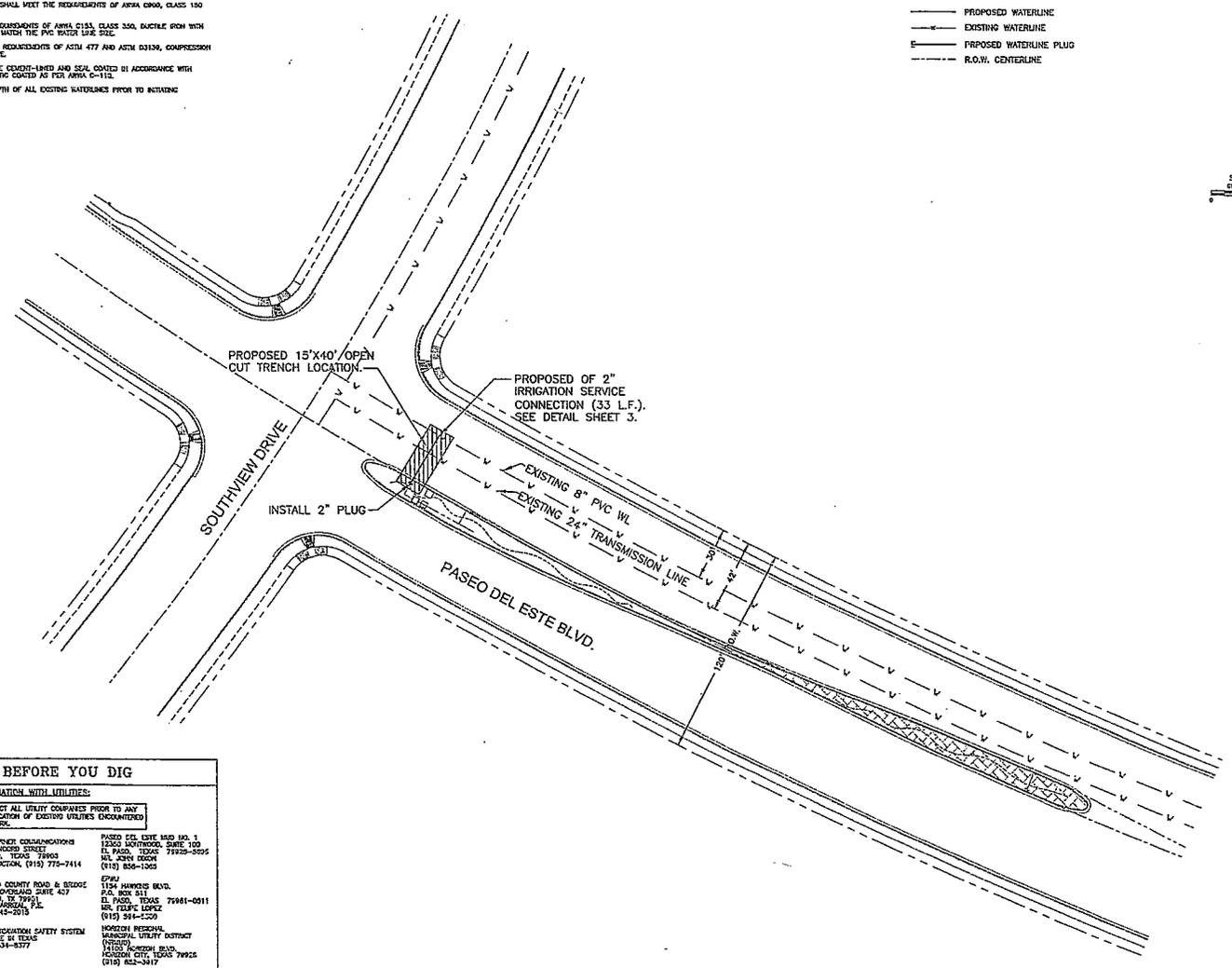
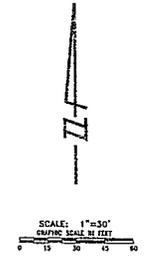
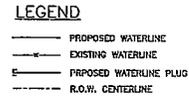
APPROVED AS TO CONTENT:

R. Alan Shubert, P.E.
City Engineer

(Acknowledgments begin on following page)

EXHIBIT "A"

- NOTES:**
1. CONTACT UTILITY COMPANIES FOR EXACT LOCATION OF ANY UNDERGROUND UTILITIES IN THIS AREA BEFORE EXCAVATION.
 2. INSTALL A TRENCH SAFETY SYSTEM TO PROTECT FOR THE SAFE EXCAVATION OF ALL TRENCHES EXCEEDING A DEPTH OF FIVE (5) FEET AS PER OSHA REQUIREMENTS.
 3. ALL 12" WATER LINE AND SMALLER PVC PIPE SHALL MEET THE REQUIREMENTS OF AWWA C900, CLASS 150 (OR 25).
 4. ALL WATER LINE FITTINGS SHALL MEET THE REQUIREMENTS OF AWWA C154, CLASS 300, DUCTILE IRON WITH MECHANICAL JOINTS, AND SHALL BE SIZED TO MATCH THE PVC WATER LINE SIZE.
 5. ALL PVC WATER LINE JOINTS SHALL MEET THE REQUIREMENTS OF ASTM 477 AND ASTM D3120, COMPRESSION SOCKET RING, RIBBED, BELL AND SPIGOT TYPE.
 6. ALL CAST IRON WATER LINE FITTINGS SHALL BE ENAMEL-LINED AND SEAL COATED BY ACCORDANCE WITH AWWA C-104 AND SHALL BE OUTSIDE ASPHALTIC COATED AS PER AWWA C-112.
 7. CONTRACTOR SHALL VERIFY LOCATION AND DEPTH OF ALL EXISTING WATERLINES PRIOR TO INITIATING CONSTRUCTION.



REGISTERED PROFESSIONAL ENGINEER
 STATE OF TEXAS
 ENGINEERING DIVISION
 No. 11111
 NAME: [Redacted]
 EXPIRES: [Redacted]

PROJECT NO.	DESIGNED BY	CHECKED BY	DATE	REVISION DESCRIPTION
102-1070-11	[Redacted]	[Redacted]		

**PASEO DEL ESTE BOULEVARD
 LANDSCAPE IMPROVEMENTS**

**IRRIGATION SERVICE
 CONNECTION PLAN**

NOTE:
 ALTERATION OF A SEALED DRAWING WITHOUT PROPER NOTIFICATION TO THE RESPONSIBLE ENGINEER IS A VIOLATION OF THE TEXAS ENGINEERING PRACTICE ACT.



FILE: P:\1502\Del Este\1502 PRE-BLD LANDSCAPE IMPROVEMENTS\1502 PRE-BLD LANDSCAPE IMPROVEMENTS.dwg DATE: 4/25/2012 3:17:28 PM BY: C004042Z

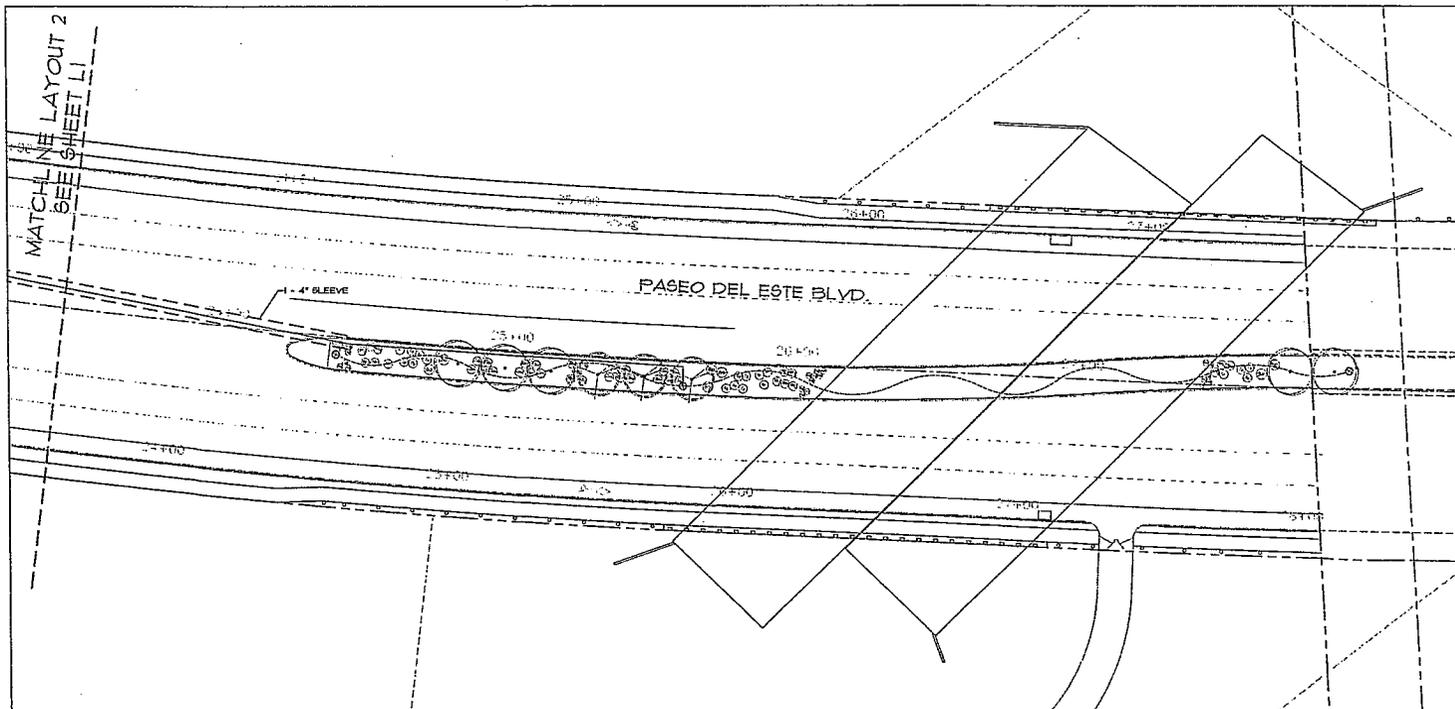
WARNING BEFORE YOU DIG

COORDINATION WITH UTILITIES:

CONTRACTOR SHALL CONTACT ALL UTILITY COMPANIES PRIOR TO ANY EXCAVATION AND/OR RELOCATION OF EXISTING UTILITIES ENCOUNTERED UNDER CONSTRUCTION.

- | | | |
|---|--|---|
| <p>EL PASO ELECTRIC CO.
 501 WEST SAN ANTONIO STREET
 EL PASO, TEXAS 79901
 MFL PAUL CUELL, (915) 543-4106</p> | <p>THE WORKER COORDINATIONS
 320 DANFORTH STREET
 EL PASO, TEXAS 79960
 CONSTRUCTION, (915) 775-7414</p> | <p>PASEO DEL ESTE 1502 102.1
 12200 NORTHWOOD, SUITE 100
 EL PASO, TEXAS 79926-3505
 MFL JERRY DODD
 (915) 656-1305</p> |
| <p>TEXAS GAS SERVICE
 4706 PALMARD STREET
 EL PASO, TEXAS 79130
 DISPATCH, (915) 699-8450</p> | <p>EL PASO COUNTY ROAD & BRIDGE
 305 E. CROWLAND SUITE 437
 EL PASO, TX 79901
 TRISTY GERRARD, P.E.
 (915) 545-2115</p> | <p>EP&J
 1516 HAWKINS BLVD.
 P.O. BOX 611
 EL PASO, TEXAS 79961-0511
 MR. FELIPE LOPEZ
 (915) 594-5207</p> |
| <p>AREA
 11200 PELICANO DRIVE
 EL PASO, TEXAS 79925
 MANNY ANDREWS
 (915) 585-0107</p> | <p>TEXAS EMERGENCY SAFETY SYSTEM
 ANYWHERE IN TEXAS
 1-800-334-8377</p> | <p>MUNICIPAL UTILITY DISTRICT
 (MUD)
 11101 ACORN BLVD.
 FORTWORTH, TEXAS 76126
 (817) 622-3417</p> |
| <p>EL PASO DEPARTMENT OF TRANSPORTATION
 7905 SHI PLAZA DRIVE
 EL PASO, TEXAS 79927
 BRUCE BERRY
 (915) 621-1163</p> | | |

EXHIBIT "A"



3 LAYOUT 3

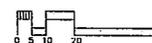
GENERAL NOTES

- 1. SEE IRRIGATION LEGEND, NOTES AND DETAILS SHEET FOR MORE INFORMATION.

KEY MAP NOT TO SCALE



NORTH



PROJECT NO.	DESIGNED BY	DATE	REVISION	DESCRIPTION
1002-1043	BT/MP	7-2-13		
	BT/MP			

COLEMAN & ASSOCIATES
 ENGINEERING SOLUTIONS
 11111 W. Loop West, Suite 200
 Houston, Texas 77042
 Tel: 281.486.8800
 Fax: 281.486.8801

PASEO DEL ESTE

IRRIGATION PLAN

ENGINEER'S SEAL
 ALTERATION OF A SEALED DRAWING WITHOUT PROPER NOTIFICATION TO THE RESPONSIBLE ENGINEER IS A VIOLATION OF THE TEXAS ENGINEERING PRACTICE ACT.

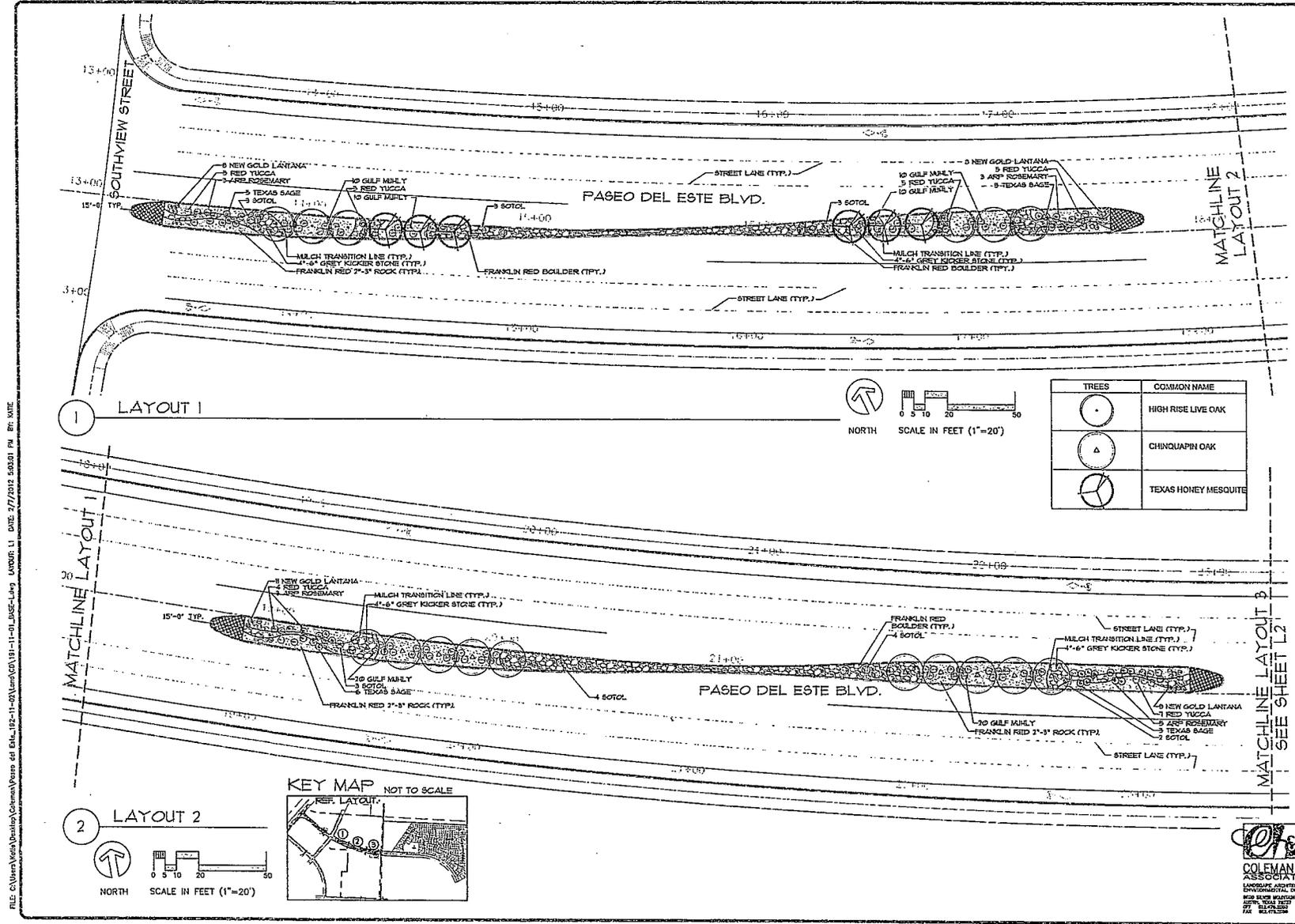


COLEMAN & ASSOCIATES
 LICENSED PROFESSIONAL ENGINEERS
 CIVIL ENGINEERING
 11111 W. Loop West, Suite 200
 Houston, Texas 77042
 Tel: 281.486.8800
 Fax: 281.486.8801



FILE: C:\Users\josh\Desktop\paseo del Este_102-11-02\AutoCAD\101-11-01_BUCE-irrigas_LAYOUT.dwg DATE: 2/7/2012 3:52:28 PM BY: MIE

EXHIBIT "A"



PROJECT NO.	1502-0023	DESIGNED BY:	RP
DWG. FILE:	2-2-15	DRAWN BY:	RP
DATE:	02-02-15	CHECKED BY:	RP
PROJ. BY:	DATE	REVISION	DESCRIPTION

PASEO DEL ESTE

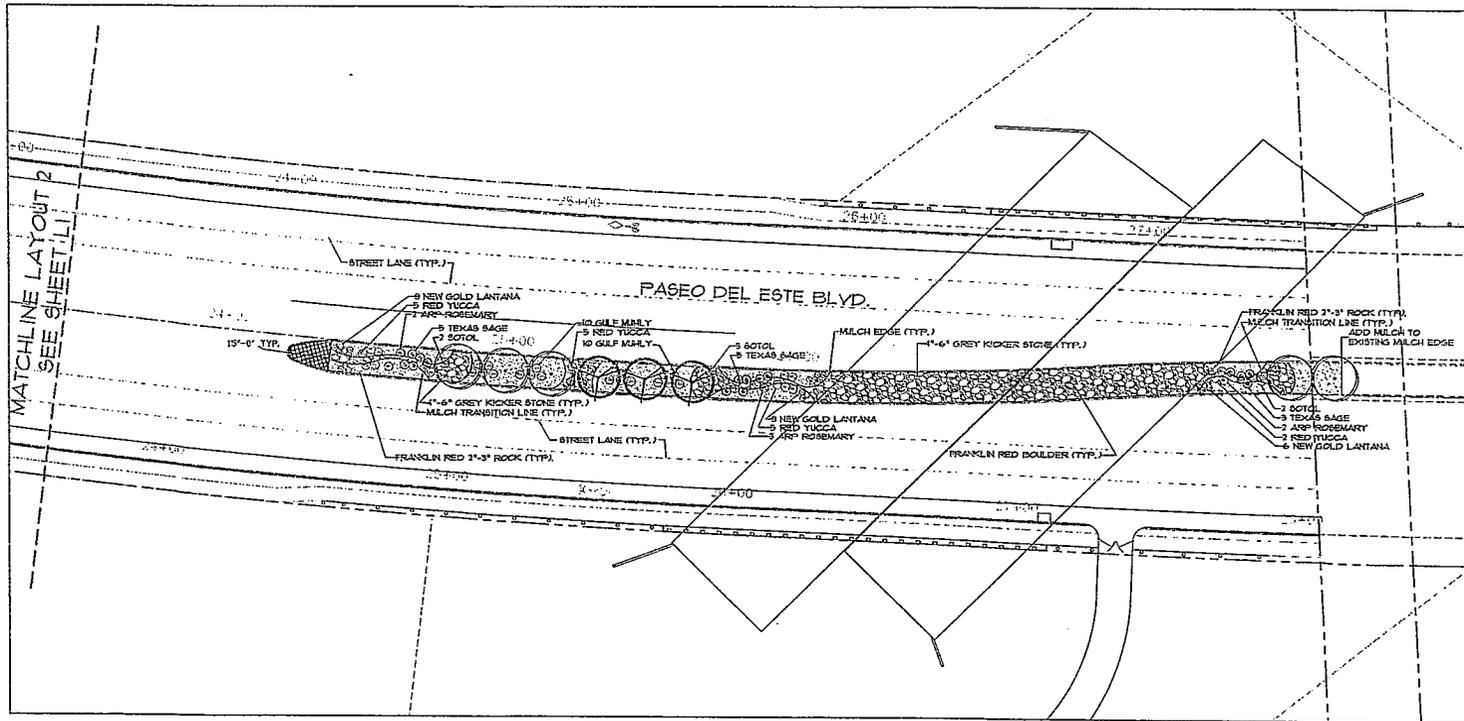
LANDSCAPE PLAN

NOTICE: ALTERATION OF A SEALED DRAWING WITHOUT PROPER NOTIFICATION TO THE RESPONSIBLE ENGINEER IS A VIOLATION OF THE TEXAS ENGINEERING PRACTICE ACT.



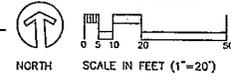
FILE: C:\Users\Wich\Desktop\Coleman\Forms s.d. 6/14/12-11-02\1502-0023-11-01_Landscape-Plan.dwg; L1 DATE: 2/7/2015 5:03:01 PM BY: WTC

EXHIBIT "A"

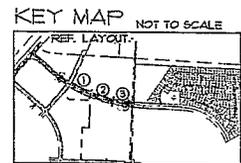


MATCHLINE LAYOUT 2
SEE SHEET 1.1

3 LAYOUT 3



TREES	COMMON NAME
	HIGH RISE LIVE OAK
	CHINQUAPIN OAK
	TEXAS HONEY MESQUITE



PROJECT NO. 102-10473 DESIGNED BY: MLP
 DRAWN BY: MLP
 DATE: 7-2-12 CHECKED BY: AGC
 NO. 1 BY DATE REVISION DESCRIPTION

PASEO DEL ESTE

LANDSCAPE PLAN

NOTICE:
 ALTERATION OF A SEALED
 DRAWING WITHOUT PROPER
 NOTIFICATION TO THE
 RESPONSIBLE ENGINEER IS
 A VIOLATION OF THE TEXAS
 ENGINEERING PRACTICE ACT.

FILE D:\Colman\Project-10\Paseo del Este_102-11-02\Drawings\101-11-01_BSC-Land LAYOUT 3 DATE: 7/2/12 8:43:10 AM BR: KARE

EXHIBIT "B"

ENGINEERS OPINION OF PROBABLE
QUANTITIES AND CONSTRUCTION COSTS

PROJECT: PDE BLVD. LANDSCAPING IMPROVEMENTS

JOB NO: 1502-10473-32

BASED ON: PDE BLVD. LANDSCAPING IMPROVEMENTS

DATE: 5/23/2012

PREPARED BY: DD/RR

PREPARED

CHECKED BY: LCT

BY: TRE & ASSOCIATES, LLC.

DATE: 5/23/2012

ESTIMATE OF QUANTITIES:

LANDSCAPING IMPROVEMENTS

ITEM	DESCRIPTION	QUANTITY	UNIT	COST/UNIT	TOTAL COST
1	MEDIAN LANDSCAPING W/ IRRIGATION	13,000	SF	\$1.50	\$19,500.00
2	2" IRRIGATION SERVICE CONNECTION	1	EA	\$2,000.00	\$2,000.00
3	BACKFLOW PREVENTER	1	EA	\$2,500.00	\$2,500.00
4	PAVEMENT REPLACEMENT	1	EA	\$2,000.00	\$2,000.00
SUBTOTAL - DRAINAGE					\$26,000.00
15% CONTINGENCY					\$3,900.00
TOTAL CONSTRUCTION COST					\$29,900.00

PERFORMANCE BOND
(Value of this Bond must be 100% of Contract amount)

Bond #PRF 09098401 & 8228-30-65

KNOW ALL MEN BY THESE PRESENTS:

THAT we Hunt Communities GP, LLC, of 4401 N. Mesa, EL Paso, TX 79902, hereinafter referred to as the Principal and Fidelity & Deposit Company of Maryland and Federal Insurance Company 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 Twenty-Nine Thousand, Nine Hundred Dollars and Zero Cents (\$29,900.00), 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 (also known as a Developer Participation Agreement) with the Obligee, dated the 7th day of August, 2012 to construct Median Landscape Improvements for Paseo Del Este Blvd., which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

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 7th day of August, 2012.

WITNESS: _____

ATTEST: [Signature] _____

Hunt Communities GP, LLC
Principal - Company Name

4401 N. Mesa
Address

El Paso, Tx 79902
City, State, Zip Code

915-533-7900
Telephone No.

Fidelity & Deposit Company of Maryland and Federal Insurance Company as Co-Sureties
Surety - Company Name

PO Box 981021
Address

El Paso, Texas 79998-1021
City, State, Zip Code

(915) 496-8500
Telephone No.

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

Principal Agent's Name (Printed or Typed)

Fax No. _____
[Signature] (Seal)
Signed By (Surety Agent)

Georgianne Milliken, Attorney-in-Fact
Surety Agent's Name (Printed or Typed)

(915) 496-8550
Fax No.

AGENT RESIDENT DESIGNATION

Median Landscape Improvements for Paseo Del Este Blvd.

Solicitation No.

SURETY INFORMATION

Fidelity & Deposit Company of Maryland and
Federal Insurance Company as Co-Sureties _____, as Surety on the Bid Bond for this contract,
hereby appoints the following resident agent who resides within the County of El Paso and to whom any
requisite notices may be delivered and on whom service of process may be had in matters arising out
of suretyship, pursuant to Section 3503.003 of the Texas Insurance Code and Chapter 2253, Texas
Government Code.

Assigned By:

John M. Rindt _____ (Seal)

Surety Agent



Surety Agent's Signature

08/07/2012

Date

AGENT INFORMATION

Agent Resident: JDW Insurance

Business Address: PO Box 981021

El Paso, Texas 79998-1021

Telephone & Fax Nos. (915) 496-8500 / (915) 496-8550

Acknowledged By:

John M. Rindt _____
Agent Resident's Name (Printed or Typed)



Agent Resident's Signature



Fidelity and Deposit Company of Maryland

Home Office: P.O. Box 1227, Baltimore, MD 21203-1227

IMPORTANT NOTICE

To obtain information or make a complaint:

You may call the Fidelity and Deposit Company of Maryland or Colonial American Casualty and Surety Company's toll-free telephone number for information or to make a complaint at:

1-800-654-5155

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights, or complaints at:

1-800-252-3439

You may write the Texas Department of Insurance:

P.O. Box 149104
Austin, TX 78714-9104
FAX # (512) 475-1771

PREMIUM OR CLAIM DISPUTES: Should you have a dispute concerning the premium or about a claim, you should first contact Fidelity and Deposit Company of Maryland or Colonial American Casualty and Surety Company. If the dispute is not resolved, you may contact the Texas Department of Insurance.

ATTACH THIS NOTICE TO YOUR POLICY: This notice is for information only and does not become a part or condition of the attached document.

Power of Attorney
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, and the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, corporations of the State of Maryland, by FRANK E. MARTIN JR., Vice President, and ERIC D. BARNES, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, does hereby nominate, constitute and appoint ~~John M. RINDT, Georgianne MILLIKEN and Joel T. STOLTZMAN, all of El Paso, Texas, EACH its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: any and all bonds and undertakings, EXCEPT bonds on behalf of Independent Executors, Community Survivors and Community Guardians.~~ and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md., in their own proper persons. This power of attorney revokes that issued on behalf of John M. RINDT, Georgianne MILLIKEN, dated January 13, 2005.

The said Assistant Secretary does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article VI, Section 2, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seals of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, and the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, this 24th day of June, A.D. 2011.

ATTEST:

FIDELITY AND DEPOSIT COMPANY OF MARYLAND
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY



Eric D. Barnes

Eric D. Barnes Assistant Secretary

Frank E. Martin Jr.

By: Frank E. Martin Jr. Vice President

State of Maryland }
 City of Baltimore } ss:

On this 24th day of June, A.D. 2011, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came FRANK E. MARTIN JR., Vice President, and ERIC D. BARNES, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, and the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself deposed and saith, that they are the said officers of the Companies aforesaid, and that the seals affixed to the preceding instrument is the Corporate Seals of said Companies, and that the said Corporate Seals and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



Constance A. Dunn

Constance A. Dunn Notary Public
 My Commission Expires: July 14, 2015

EXTRACT FROM BY-LAWS OF FIDELITY AND DEPOSIT COMPANY OF MARYLAND

“Article VI, Section 2. The Chairman of the Board, or the President, or any Executive Vice-President, or any of the Senior Vice-Presidents or Vice-Presidents specially authorized so to do by the Board of Directors or by the Executive Committee, shall have power, by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint Resident Vice-Presidents, Assistant Vice-Presidents and Attorneys-in-Fact as the business of the Company may require, or to authorize any person or persons to execute on behalf of the Company any bonds, undertaking, recognizances, stipulations, policies, contracts, agreements, deeds, and releases and assignments of judgements, decrees, mortgages and instruments in the nature of mortgages,...and to affix the seal of the Company thereto.”

EXTRACT FROM BY-LAWS OF COLONIAL AMERICAN CASUALTY AND SURETY COMPANY

“Article VI, Section 2. The Chairman of the Board, or the President, or any Executive Vice-President, or any of the Senior Vice-Presidents or Vice-Presidents specially authorized so to do by the Board of Directors or by the Executive Committee, shall have power, by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint Resident Vice-Presidents, Assistant Vice-Presidents and Attorneys-in-Fact as the business of the Company may require, or to authorize any person or persons to execute on behalf of the Company any bonds, undertaking, recognizances, stipulations, policies, contracts, agreements, deeds, and releases and assignments of judgements, decrees, mortgages and instruments in the nature of mortgages,...and to affix the seal of the Company thereto.”

CERTIFICATE

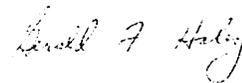
I, the undersigned, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, and the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that the Vice-President who executed the said Power of Attorney was one of the additional Vice-Presidents specially authorized by the Board of Directors to appoint any Attorney-in-Fact as provided in Article VI, Section 2, of the respective By-Laws of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, and the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990 and of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed."

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies,

this 7th day of August, 2012.



Assistant Secretary

Policyholder Information Notice

IMPORTANT NOTICE

To obtain information or make a complaint:

You may call Chubb's toll-free telephone number for information or to make a complaint at

1-800-36-CHUBB

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at

1-800-252-3439

You may write the Texas Department of Insurance

P.O. Box 149104
Austin, TX 78714-9104
FAX # (512) 475-1771
Web: <http://www.tdi.state.tx.us>
E-mail: ConsumerProtection@tdi.state.tx.us

PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim you should contact the agent first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

ATTACH THIS NOTICE TO YOUR POLICY:

This notice is for information only and does not become a part or condition of the attached document.

AVISO IMPORTANTE

Para obtener información o para someter una queja:

Usted puede llamar al número de teléfono gratis de Chubb's para información o para someter una queja al

1-800-36-CHUBB

Puede comunicarse con el Departamento de Seguros de Texas para obtener información acerca de compañías, coberturas, derechos o quejas al

1-800-252-3439

Puede escribir al Departamento de Seguros de Texas

P.O. Box 149104
Austin, TX 78714-9104
FAX # (512) 475-1771
Web: <http://www.tdi.state.tx.us>
E-mail: ConsumerProtection@tdi.state.tx.us

DISPUTAS SOBRE PRIMAS O RECLAMOS:

Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con el agente primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI).

UNA ESTE AVISO A SU POLIZA:

Este aviso es solo para propósito de información y no se convierte en parte o condición del documento adjunto.



**Chubb
Surety**

**POWER
OF
ATTORNEY**

**Federal Insurance Company
Vigilant Insurance Company
Pacific Indemnity Company**

**Attn: Surety Department
15 Mountain View Road
Warren, NJ 07059**

Know All by These Presents, That FEDERAL INSURANCE COMPANY, an Indiana corporation, VIGILANT INSURANCE COMPANY, a New York corporation, and PACIFIC INDEMNITY COMPANY, a Wisconsin corporation, do each hereby constitute and appoint Georgianne Milliken, John M. Rindt and Joel T. Stoltzman of El Paso, Texas -----

each as their true and lawful Attorney- In- Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY have each executed and attested these presents and affixed their corporate seals on this 17th day of June, 2011.


Kenneth C. Wendel, Assistant Secretary


David B. Norris, Jr., Vice President

STATE OF NEW JERSEY
County of Somerset ss.

On this 17th day of June, 2011 before me, a Notary Public of New Jersey, personally came Kenneth C. Wendel, to me known to be Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY, the companies which executed the foregoing Power of Attorney, and the said Kenneth C. Wendel, being by me duly sworn, did depose and say that he is Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY and knows the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of the By- Laws of said Companies; and that he signed said Power of Attorney as Assistant Secretary of said Companies by like authority; and that he is acquainted with David B. Norris, Jr., and knows him to be Vice President of said Companies; and that the signature of David B. Norris, Jr., subscribed to said Power of Attorney is in the genuine handwriting of David B. Norris, Jr., and was thereto subscribed by authority of said By- Laws and in deponent's presence.

Notarial Seal



**KATHERINE J. ADELAAR
NOTARY PUBLIC OF NEW JERSEY
No. 2316685
Commission Expires July 14, 2014**


Notary Public

CERTIFICATION

Extract from the By- Laws of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY:

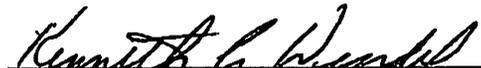
"All powers of attorney for and on behalf of the Company may and shall be executed in the name and on behalf of the Company, either by the Chairman or the President or a Vice President or an Assistant Vice President, jointly with the Secretary or an Assistant Secretary, under their respective designations. The signature of such officers may be engraved, printed or lithographed. The signature of each of the following officers: Chairman, President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Assistant Secretaries or Attorneys- In- Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached."

I, Kenneth C. Wendel, Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY (the "Companies") do hereby certify that

- (i) the foregoing extract of the By- Laws of the Companies is true and correct,
- (ii) the Companies are duly licensed and authorized to transact surety business in all 50 of the United States of America and the District of Columbia and are authorized by the U.S. Treasury Department; further, Federal and Vigilant are licensed in Puerto Rico and the U.S. Virgin Islands, and Federal is licensed in American Samoa, Guam, and each of the Provinces of Canada except Prince Edward Island; and
- (iii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Warren, NJ this 7th day of August, 2012




Kenneth C. Wendel, Assistant Secretary

IN THE EVENT YOU WISH TO NOTIFY US OF A CLAIM, VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT ADDRESS LISTED ABOVE, OR BY Telephone (908) 903- 3493 Fax (908) 903- 3656
e-mail: surety@chubb.com

NOTIFICATION TO CONSTRUCTION CONTRACTORS

INSURANCE REQUIREMENTS

Note: Refer to the Contract General Conditions, Paragraphs 5.11 through 5.12 for complete insurance requirements for this project.

1. Commercial General Liability, Property Damage Liability, and Vehicle Liability Insurance Requirements:

Commercial General Liability Bodily Injury	\$1,000,000.00 each person
Property Damage	\$1,000,000.00 each occurrence
General Aggregate	\$2,000,000.00
Vehicle Liability (<u>Any Auto</u>) Combined Single Limit	\$1,000,000.00

2. Builder's Risk Insurance (fire and extended coverage) for building projects - 100% of completed value.
3. The City of El Paso shall be named as an *Additional Insured* on all insurance policies except Workers' Compensation Insurance Coverage and project name shall be shown on certificate.
4. Statutory Texas Workers' Compensation Insurance Coverage:

Workers' Compensation policy shall be endorsed to provide that the insurer waives any right of subrogation it may require against the Owner, the Architect/Engineer of Record and Construction Manager where applicable, see General Conditions, 5.12 (M).

5. A 30-day notice of policy cancellation or material alteration.

6. **Important:**

The language of the cancellation notice must substantially contain the **unconditional** statement: "Should any of the described policies be canceled or materially altered before the expiration date, the issuing company shall provide thirty (30) days written notice to the Owner-City of El Paso by certified mail." See General Conditions 5.11 (E); the words "*endeavor to notify*" and "*failure to notify shall impose no obligation or liability upon the company ...*" are not acceptable.

INSERT

INSURANCE CERTIFICATE

HERE

NOTE:

- **BUILDER'S RISK COVERAGE REQUIRED FOR ALL BUILDING PROJECTS**
- **CITY OF EL PASO MUST BE SHOWN AS AN "ADDITIONAL INSURED" ON GENERAL LIABILITY AND AUTOMOBILE LIABILITY**
- **WORKERS' COMPENSATION CERTIFICATE MUST SHOW A WAIVER OF SUBROGATION AGAINST THE OWNER/CITY, ARCHITECT/ENGINEER AND CONSTRUCTION MANAGER, WHERE APPLICABLE**
- **ALL CERTIFICATES MUST CONTAIN THE FOLLOWING UNCONDITIONAL STATEMENT REGARDING CANCELLATION:**
"Should any of the described policies be canceled or materially altered before the expiration date, the issuing company **shall provide thirty (30) days written notice** to the Owner-City of El Paso by certified mail." See General Conditions 5.11 (E); the words "*endeavor to notify*" and "*failure to notify shall impose no obligation or liability upon the company...*" are not acceptable.