



COMMISSIONERS COURT COMMUNICATION

AGENDA DATE : 5/21/2012

CONSENT OR REGULAR: CONSENT

CONTRACT REFERENCE NO
(IF APPLICABLE): KK-11-253

SUBJECT: Approve and authorize the County Judge to execute the attached Developer Participation Agreement for the construction of Edgemere Boulevard Extension within the County Right-of-Way.

BACKGROUND/DISCUSSION OF TOPIC: To include statutory requirement, operational impact, or performance goal.

The Developer will be extending and re-aligning Edgemere Boulevard onto the existing County Right-of-Way (Davidson Boulevard). The re-alignment of the road will provide the opportunity for the County to extend Greg Drive to Edgemere Boulevard. The connection of Greg Drive to Edgemere Boulevard will provide a secondary access point to the residents of Montana Vista and the public traveling through the area. Ernesto Carrizal, Public Works Director will present item and will address any concerns.

FISCAL IMPACT: \$170,685.72

PRIOR COMMISSIONERS COURT ACTION (IF ANY): NONE

RECOMMENDATION: APPROVAL

COUNTY ATTORNEY APPROVAL

The attached document has been given legal review by the El Paso County Attorney's Office on behalf of the County of El Paso, its officers, and employees. Said legal review should not be relied upon by any person or entity other than the County of El Paso, its officers, and employees.

COUNTY ATTORNEY: Erich A. Morales

LEGAL REVIEW: KK-11-253

LEGAL REVIEW NOTES (If Applicable): See Attachment

DATE: 5/8/12

SUBMITTED BY:

Ernesto Carrizal III, P.E. Public Works Director. Public Works Dept. 915-546-2015

Gilbert Saldana

From: Erich Morales
Sent: Tuesday, May 08, 2012 5:58 PM
To: Ernie Carrizal; Gilbert Saldana
Cc: Josefina Vasquez
Subject: Rancho Real/Edgemere Blvd/ Developer Participation Agreement

COUNTY LEGAL REVIEW FORM

KK-11-253

Contract Description

Rancho Real/Edgemere Blvd/ Developer Participation

COUNTY ATTORNEY ACTION**

****Requested Amendments/Clarifications:** We assume you have submitted any questions or comments you have regarding the terms of the contract, as well as any specific provisions to which you object, or which you want to have changed.

☒ X Approved as to Form as Submitted
☐ Approved as to Form with Amendments/Modifications/Reservations Noted Below*
☐ Not Approved

This document has been given legal review by the El Paso County Attorney's Office on behalf of the County of El Paso, its officers, and employees. Said legal review should not be relied upon by any person or entity other than the County of El Paso, its officers, and employees.

Erich A. Morales
Assistant County Attorney

Erich A. Morales
Assistant County Attorney
General Counsel Division
Office of the El Paso County Attorney

DEVELOPER PARTICIPATION AGREEMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This Developer Participation Agreement (the "Agreement") is executed as of the _____ day of _____, 2012, by and between the COUNTY OF EL PASO (the "County") and RANCHOS REAL XIV, LLC, a Texas limited liability company ("Developer").

RECITALS

A. Developer is developing the property described in Exhibit "A" attached hereto and made a part hereof (the "Property").

B. A portion of the Property as described in Exhibit "B" attached hereto and made a part hereof (the "Ranchos Roadway Parcel") is to be developed as a major arterial street in accordance with the requirements of Section 19.15 of the El Paso City Municipal Code (the "Code").

C. The Ranchos Roadway Parcel is adjacent to a portion of a right-of-way of the County being more particularly described in Exhibit "C" attached hereto and made a part hereof (the "County Roadway Parcel").

D. The County has determined that Developer's construction of an improved roadway over the County Roadway Parcel and the Ranchos Roadway Parcel (collectively, the "Roadway") is in the best interest of the County.

E. Texas Local Government Code, § 232.105 allows the County to enter into a contract with a developer of a subdivision to construct public improvements related to the development, not including a building, without complying with the competitive sealed bidding procedure of Texas Government Code Chapter 262 provided that the participation by the County shall not exceed 30% of the contract price.

F. Texas Local Government Code § 232.105 allows the County to pay up to one hundred percent (100%) of the total cost of any oversizing of improvements required by the County.

G. The County has determined that Developer's construction of the Roadway is an economic benefit to County taxpayers and therefore, this Agreement is in the best interest of the citizens of the County.

H. As provided in Texas Local Government Code § 232.105, the Developer and the County agree that the Developer shall construct the Roadway and the County will participate in the construction costs as set forth herein.

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

1. PARTIES' OBLIGATIONS

A. Developer shall construct all improvements to the Roadway pursuant to the terms and conditions of the Code. The cost estimate for construction of the Roadway is attached hereto as Exhibit "D" (the "Cost Estimate").

B. Upon satisfactory completion of the improvements, the Developer shall submit to the County an invoice detailing the cost of construction of the Roadway.

C. Within thirty days (30) of receipt of such invoice, County shall inspect the improvements to the Roadway and if accepted, the County shall reimburse Developer the County's Share of the cost. The Parties agree that the following formula shall determine the cost to be paid by the County:

DEVELOPER'S SHARE = \$1,143,646.14 [Exhibit "D-1"]

COUNTY'S SHARE (*Not to Exceed*) = \$170,685.72 [Exhibit "D-2"]

D. Developer agrees to furnish the County with a copy of each written agreement entered into with a contractor or consultant for construction of the Roadway. All of the books and records related to the Roadway shall be available for inspection by the County.

2. TERM. This Agreement shall automatically terminate after the construction of the Roadway is completed, the City Engineer has inspected the Roadway to assure that the City of El Paso street specifications have been met and the County has paid the County's Share to the Developer.

3. TEMPORARY CONSTRUCTION EASEMENT. The County hereby grants Developer a non-exclusive temporary construction easement for the right of ingress and egress on, over, under and across the County Roadway Parcel and so much additional portion of the County right-of-way as may be reasonably required by Developer for the purposes of construction of the Roadway and utilities. This temporary easement shall automatically terminate upon completion of the Roadway.

4. BOND REQUIRED. The Developer must execute a performance bond for one hundred (100%) percent of the County's Share of the estimated Roadway costs to secure fulfillment of all the Developer's obligations under this Agreement. The bond must be in the form attached hereto as Exhibit "E" and incorporated herein for all purposes. The bond must be executed by a corporate surety in accordance with Chapter 2253, Government Code, Vernon's Annotated Civil Statutes. The bond shall identify the County as an additional named Obligee.

5. INCREASED COSTS. It may be anticipated that additional costs may arise from site conditions or latent defects; however, Developer agrees that he will be solely responsible for payment of all increased costs in the construction of the Roadway resulting from changed site conditions or latent defects.

6. INSURANCE. During construction of the Roadway, Developer shall carry and maintain, or cause to be carried and maintained, in full force and effect the following insurance coverage:

(a) Workers' compensation insurance as provided by law on Developer's employees;

(b) Commercial general liability insurance written on an occurrence basis, including independent contractors, products, completed operations and premises liability with broad form endorsement including blanket contractual liability and personal injury liability with combined single limits of not less than \$1,000,000.00 each occurrence/\$2,000,000.00 aggregate;

(c) Comprehensive automobile liability insurance of not less than \$300,000.00.

Each policy of insurance obtained by Developer shall provide, by endorsement or otherwise, (i) that such policy shall not be canceled, endorsed, altered or reissued to affect a change in coverage for any reason or to any extent whatsoever unless the insured shall first have given the County at least thirty (30) days' prior written notice thereof; (ii) name the County as an additional insured; (iii) contain a waiver by the insurer of any and all rights of subrogation with respect to the County. At the request of County, Developer shall provide County with certificates evidencing such insurance. In addition, Developer's liability insurance policy shall be deemed to be primary coverage over any general liability insurance carried by County and shall provide for the payment of all costs of defense of any claims.

7. THIRD PARTY RIGHTS OR OBLIGATIONS. No person or entity not a party to this Agreement shall have any third-party beneficiary or other rights under this Agreement.

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

COUNTY: County of El Paso
500 E. San Antonio, Room 301
El Paso, Texas 79901
Attn: County Judge

Copy to: Mr. Erich Morales
Assistant County Attorney
County of El Paso
500 E. San Antonio
El Paso, Texas 79901

DEVELOPER: Ranchos Real XIV, LLC
Attn: Douglas A. Schwartz
6080 Surety Drive, Suite 300
El Paso, Texas 79905

9. CUMULATIVE RIGHTS

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

10. GOVERNING LAW

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

11. INTERPRETATION

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

12. ASSIGNMENT

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

13. RELATIONSHIP

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

14. ENTIRE AGREEMENT

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

15. AUTHORIZED SIGNATURE

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

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

COUNTY OF EL PASO

By: _____
Veronica Escobar, County Judge

APPROVED AS TO FORM:

Erich A. Morales
Assistant County Attorney

DEVELOPER:

RANCHOS REAL XIV, LLC

By: _____
Douglas A. Schwartz, Manager

ACKNOWLEDGEMENTS

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2012,
by Veronica Escobar as County Judge of the County of El Paso, Texas, on behalf of said County.

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

My Commission Expires:

STATE OF TEXAS)
)
COUNTY OF EL PASO)

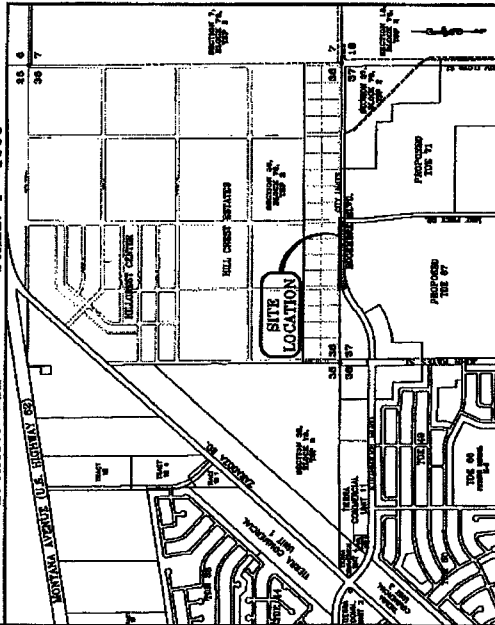
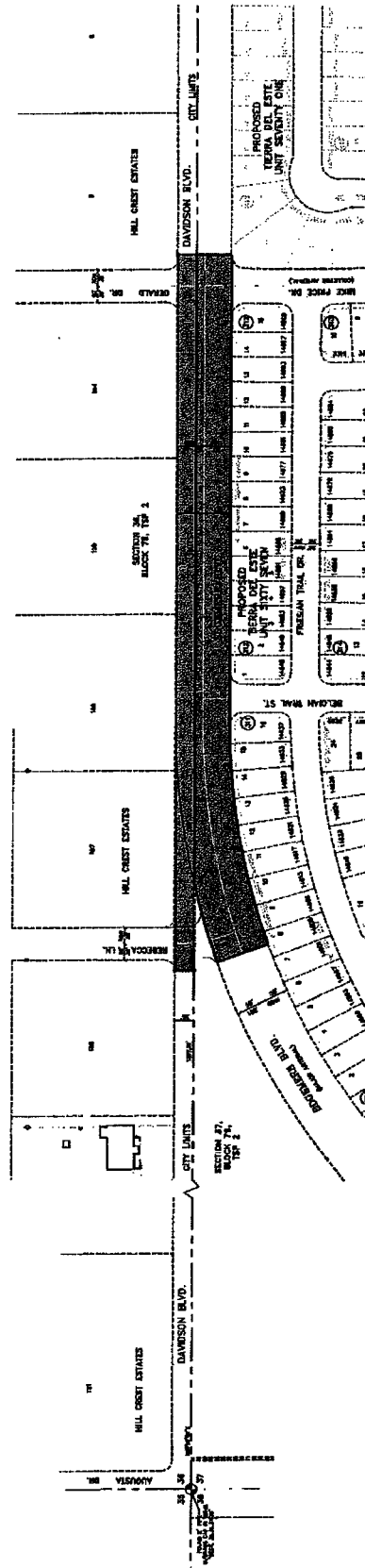
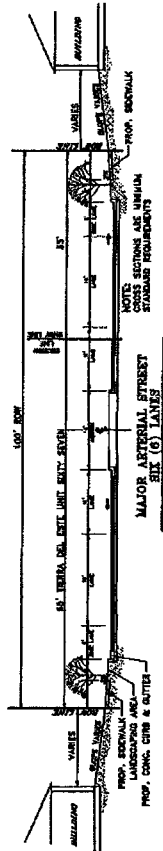
This instrument was acknowledged before me on the _____ day of _____, 2012,
by Douglas A. Schwartz, Manager of Ranchos Real XIV, LLC, a Texas limited liability company
on behalf of said limited liability company.

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

My Commission Expires:

BEING PORTION OF DAVIDSON BLVD.,
HILLS CREST ESTATES, EL PASO COUNTY, TEXAS,
AND PORTION OF SECTION 37, BLOCK 78, TOWNSHIP 2,
TEXAS AND PACIFIC RAILWAY Co. SURVEYS,
CITY OF EL PASO, EL PASO COUNTY, TEXAS

BEING PORTION OF DAVIDSON BLVD.,
HILLS CREST ESTATES, EL PASO COUNTY, TEXAS,
AND PORTION OF SECTION 37, BLOCK 78, TOWNSHIP 2,
TEXAS AND PACIFIC RAILWAY Co. SURVEYS,
CITY OF EL PASO, EL PASO COUNTY, TEXAS

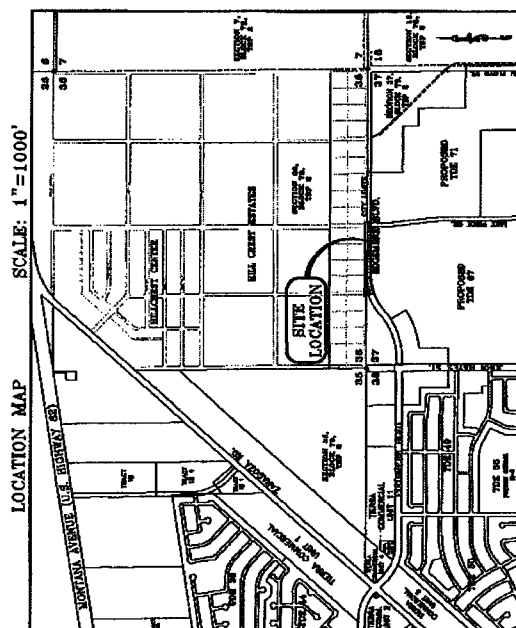
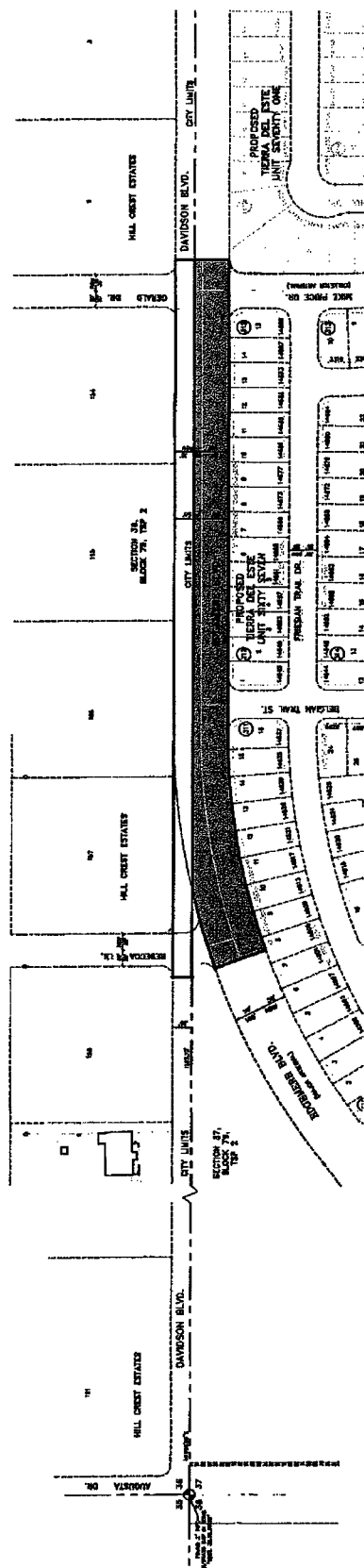
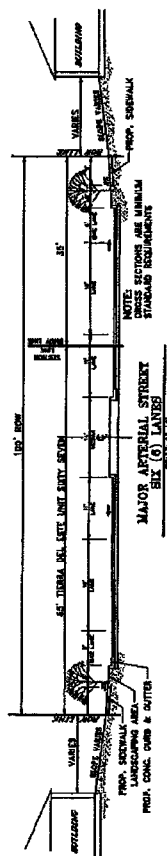


SCALE: 1"=200'

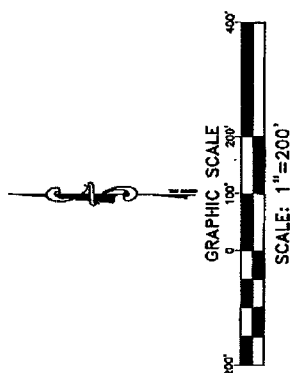


BEING PORTION OF SECTION 37, BLOCK 78, TOWNSHIP 2,
TEXAS AND PACIFIC RAILWAY Co. SURVEYS,
CITY OF EL PASO, EL PASO COUNTY, TEXAS

BEING PORTION OF SECTION 37, BLOCK 78, TOWNSHIP 2,
TEXAS AND PACIFIC RAILWAY Co. SURVEYS,
CITY OF EL PASO, EL PASO COUNTY, TEXAS



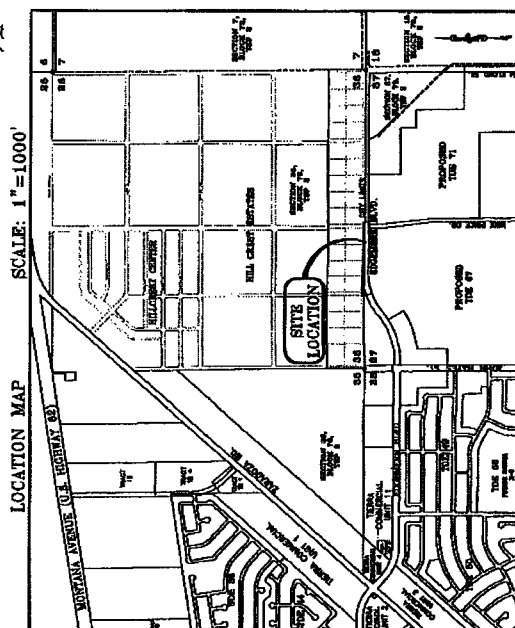
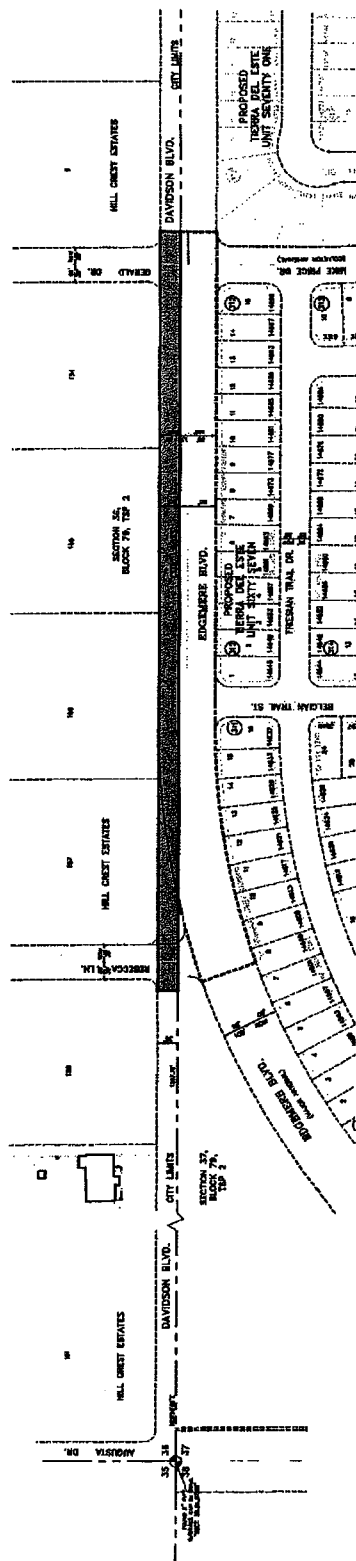
LOCATION MAP **SCALE: 1"=1000'**



SCHOOL DISTRICT
SOCORRO INDEPENDENT SCHOOL DISTRICT
12300 EAST AVE DRIVE



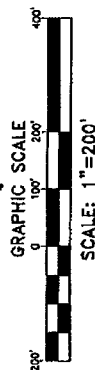
BEING PORTION OF DAVIDSON BLVD.,
HILLS CREST ESTATES,
EL PASO COUNTY, TEXAS

[illegible]

LOCATION MAP
SCALE: 1"=1000'



SCHOOL DISTRICT
SOCORRO INDEPENDENT SCHOOL DISTRICT
12300 EAST AVE. ROOM 400
SOCORRO, N.M. 87801



5/8/2012

EXHIBIT "D"

**Cost Estimate for Edgemere Blvd.
Tierra Del Este Unit 67**

Item Description	Cost
1. Engineering	\$ 10,649.73
2. Soil Engineering	\$ 6,389.84
3. County Fees/City Fees	\$ 5,819.00
4. Grading	\$ 20,172.08
5. Concrete Curb & Gutter	\$ 76,481.25
6. Water Mains	\$ 68,625.00
7. Sewer Mains	\$ 68,625.00
8. Paving	\$ 585,936.35
9. Street Lights	\$ 29,382.51
10. Drainage Structures Pro-rated Cost	\$ 11,987.46
11. Landscaped medians	\$ 68,625.00
12. Concrete Sidewalk	\$ 142,411.50
13. Labor, Supervision, Overhead	\$ 219,227.14
Total Cost	\$ 1,314,331.86

EXHIBIT "D-1"**Cost Estimate for Edgemere Blvd.
City Portion Within Tierra Del Este Unit 67**

Item Description	Cost
1. Engineering	\$ 7,548.75
2. Soil Engineering	\$ 4,529.25
3. County Fees/City Fees	\$ 5,819.00
4. Grading	\$ 15,017.20
5. Concrete Curb & Gutter	\$ 67,798.50
6. Water Mains	\$ 68,625.00
7. Sewer Mains	\$ 68,625.00
8. Paving	\$ 502,975.00
9. Street Lights	\$ 23,100.00
10. Drainage Structures Pro-rated Cost	\$ 10,183.25
11. Landscaped medians	\$ 68,625.00
12. Concrete Sidewalk	\$ 110,192.50
13. Labor, Supervision, Overhead	\$ 190,607.69
Total Cost	\$ 1,143,646.14

EXHIBIT "D-2"**Cost Estimate for Edgemere Blvd.
County Portion Adjacent to Tierra Del Este Unit 67**

Item Description	Cost
1. Engineering	\$ 3,100.98
2. Soil Engineering	\$ 1,860.59
3. County Fees	\$ -
4. Grading	\$ 5,154.88
5. Concrete Curb & Gutter	\$ 8,682.75
6. Water Mains	\$ -
7. Sewer Mains	\$ -
8. Paving	\$ 82,961.35
9. Street Lights	\$ 6,282.51
10. Drainage Structures Pro-rated Cost	\$ 1,804.21
11. Landscaped Medians	\$ -
12. Concrete Sidewalk	\$ 32,219.00
13. Labor, Supervision, Overhead	\$ 28,619.45
Total Cost	\$ 170,685.72

EXHIBIT "E"

PERFORMANCE BOND

Bond No. _____

Principal Amount _____

KNOWN ALL MEN BY THESE PRESENTS, That we [Name of Principal] as Principal, and [Name of Surety] as Surety, are held and firmly bound unto the County of El Paso, Texas, through El Paso County Judge Veronica Escobar in her official Capacity, or his successor-in office, as Oblige, in the penal sum of [Amount of Bond in written words] [Amount of Bond in Currency] to which payment well and truly to be made we do bind ourselves, our and each of our heirs, executors. Administrators, successors and assigns jointly and severally, firmly by these presents.

WHEREAS, [Name of Principal] has agreed to construct in [Name of Subdivision] that is located in [City, State] the following set of improvements [Identify Specifically the Property and Improvements Proposed to be Dedicated to the County of El Paso], which is to be dedicated to the County of El Paso.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION IS SUCH, that if [Name of Principal] shall construct, or have constructed, the improvements herein described, such improvements meet the criteria established by the County of El Paso Subdivision Regulations and have been constructed as required and within the time stated in the Subdivision Construction Agreement [and if no Subdivision Construction Agreement exists then remove the statement "have been constructed as required and within the time stated in the Subdivision Construction Agreement" and include "will be constructed by [DATE]" for [Name of Subdivision], and said Principal shall save the County of El Paso harmless from any loss, cost or damage by reason of its failure to complete said work, then this obligation shall be null and void, otherwise to remain in full force and effect, and the Surety, upon receipt of a written notice of the County of El Paso indicating that the improvements have not been installed or completed, will complete the improvements or pay the County of El Paso such amount up to the Principal amount of this bond which will allow the County of El Paso to complete the improvements.

Upon approval of the County of El Paso, this instrument may be proportionately reduced as the public improvements are completed

SIGNED, SEALED, AND DATED _____

Principal: _____

(Signature of Principal's Representative)

(Name of Principal's Representative)

(Title of Principal's Representative)

Surety: _____

(Signature of Surety's Representative)

(Name of Surety's Representative)

(Title of Surety's Representative)