



COMMISSIONERS COURT COMMUNICATION

AGENDA DATE : 03/22/2012

CONSENT OR REGULAR: CONSENT

CONTRACT REFERENCE NO

(IF APPLICABLE): 2013-0075

SUBJECT: Approve and authorize the County Judge to execute the attached Subdivision Construction Agreement for West Texas Estates subdivision.

BACKGROUND/DISCUSSION OF TOPIC:

West Texas Estates is a proposed subdivision in Precinct 3 located on Pellicano Drive approximately ½ mile east of Joe Battle. It is in the City of El Paso ETJ and will be provided with water & sewer by the El Paso Water Utilities.

The Subdivision Construction Agreement (SCA) is a standard agreement required by the County of El Paso to ensure that the proposed subdivision is constructed in compliance to the El Paso County Subdivision Regulations and Requirements. The SCA also includes the agreement for the County of El Paso to construct a by-pass road that is required for the reconstruction of a portion of Pellicano Drive. The developer will reimburse the County for the materials needed to construct a temporary by-pass road and the County would be responsible for up-grading the temporary road to a permanent section of Pellicano Drive.

Approved by PRP on April 19, 2013

FISCAL IMPACT:

County of El Paso to receive \$52,659.21 from developer in compensation for constructing the By-pass road.

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 Morales

LEGAL REVIEW: 2013-0075

LEGAL REVIEW NOTES (If Applicable): See Attachment

DATE: 4/12/13

SUBMITTED BY:

Ernesto Carrizal. Public Works Director. Public Works (915) 546-2015



**SUBDIVISION CONSTRUCTION AGREEMENT
(Without Plat Approval)**

with

AKAM PROPERTY DEVELOPMENT, LLC

for

WEST TEXAS ESTATES

1. **Parties.** This Subdivision Construction Agreement (the "**Agreement**") is by and between the *County* and the *Owner/Developer*. The County is **El Paso County, Texas**, acting by and through its Commissioners Court, or authorized representative as designated by the Commissioners Court. The Owner/Developer is **AKAM Property Development, LLC**, a Texas limited liability company, which is the owner of a tract of land located within the geographic area and jurisdiction of the County.

2. **Effective Date.** This Agreement will become effective on April ____, 2013 ("**Effective Date**"), regardless of the date executed, prior to commencement of construction of the proposed improvements to be dedicated to the County ("**Improvements**") within West Texas Estates.

RECITALS

3. Owner/Developer is the owner of the land included in the final plat for West Texas Estates and more particularly described by the metes and bounds description attached and incorporated into this Agreement as **Exhibit "A"**;

4. Owner/Developer seeks authorization from the County to subdivide the Property in accordance with the requirements imposed by Texas statute and the County's regulations and other requirements governing development of a subdivision;

5. County requires the completion of various improvements in connection with the development of the subdivision to protect the health, safety, and general welfare of the community and to limit the harmful effects of substandard subdivisions;

6. This Agreement is developed to protect the County from the expense of completing subdivision improvements required to be installed by the Owner/Developer; and

7. This Agreement is authorized by, consistent with, and subject to, Texas state law and the County's regulations and other requirements governing development of a subdivision.

IN CONSIDERATION of the foregoing recitals and the mutual covenants, promises, and obligations by the parties set forth in this Agreement, the parties agree as follows:

OWNER/DEVELOPER'S OBLIGATIONS

8. ***Prior to Construction of Proposed Dedicated Improvements to County.*** The Owner/Developer is required to sign this Subdivision Construction Agreement and attend a Pre-Construction meeting with the County prior to commencing construction of Improvements that are proposed to be dedicated to the County.

9. ***Dedicated Improvements to the County.*** The Owner/Developer agrees to construct and install, at Owner/Developer's expense (except as otherwise agreed in writing between Owner/Developer and the County), all subdivision Improvements required to comply with County reasonable orders, regulations, and policies governing subdivision approval, specifically including those improvements listed on Exhibit "B" ("*Improvements*") that is attached and incorporated by reference into this Agreement. The Improvements shall be constructed and inspected in accordance with the County of El Paso - Pre-Construction Conference Minutes, County of El Paso - Subdivision Regulations, County of El Paso - Subdivision Design Standards, Construction Plans that have been reviewed and concurred with by the County of El Paso, City of El Paso - Subdivision Improvement Design Standards, and also with good engineering practices and workmanship, whichever is the most stringent ("*Construction Guidelines*").

10. ***Construction of Proposed Dedicated Improvements to County.*** Construction of all the Improvements to be constructed by Owner/Developer shall be completed in 365 calendar days, by April ____, 2014, which shall be no later than two (2) years after the Effective Date. Upon completion of each of the improvements, the Owner/Developer agrees to provide to the County one (1) complete mylar set of "As-Built" drawings certified by the engineer responsible for preparing the approved construction plans and specifications and a CD with scanned PDF files of the certified "As-Built" drawings that meets County requirements. The Contractor to Owner/Developer shall be required to provide to the County an Irrevocable Letter of Credit (for Performance) substantially in the form as set forth in Exhibit "C", in an amount reasonably acceptable to both parties.

11. ***Warranty.*** The Owner/Developer warrants the Improvements constructed by Owner/Developer or Owner/Developer's agents, contractors, employees, tenants, or licensees, will be free from defects for a period of one (1) year ("*Warranty Period*") from the date the County accepts all of the completed Improvements. The Owner/Developer agrees to repair any damage to the Improvements before and during the Warranty Period. As a condition of the County's acceptance of dedication of any of the Improvements, the County will require the Owner/Developer to post a Maintenance Bond or Letter of Credit similar to that shown on Exhibit "D" or other financial security acceptable to the County.

COUNTY'S OBLIGATIONS

12. ***Inspections and Substantially Complete and Complete Acceptance Report.*** The County agrees timely to inspect Improvements during and at the completion of construction. Upon completion of the Improvement(s), the Owner/Developer shall provide a written request for a Substantially Complete Acceptance Inspection of Improvements that is expected to be dedicated to the County. The County will timely perform the Substantially Complete Acceptance Inspection along with the Owner/Developer and will either provide a Substantially Complete Acceptance Report that will include a "Punch List" indicating all areas requiring correction or repair by the Owner/Developer, or a Complete Acceptance Report identifying the improvement that is acceptable for dedication to the County. If a Substantially Complete Acceptance Report and "Punch List" are provided to the Owner/Developer, the Owner/Developer will be required,

within fourteen (14) calendar days, to provide a written plan and schedule indicating how and when correction and repairs will be performed. The County will review, within fourteen (14) calendar days of receipt of the proposed plan and schedule, the proposed methods for repairs and/or corrections of the deficiencies and the schedule, and shall either provide a Notice to Proceed concurring with the proposed plan and schedule, or shall request additional information and/or provide the repair methods to be used. Once the areas identified are corrected and repaired, the Owner/Developer may request, in writing, a Complete Acceptance Inspection. A half-size copy of the Final As-Builts shall be provided to the County Inspector prior to the Complete Acceptance Inspection. The County Inspector will timely review the As-Builts for concurrence to proceed with producing the required Final As-Built documentation. The County will perform the Complete Acceptance Inspection along with the Owner/Developer. Only after all Improvements are found to be acceptable by the County and required Final As-Built documentation and Maintenance Bond/Letter of Credit has been provided to the County will the one-year Warranty Period begin as identified in Paragraph 11. The Owner/Developer hereby grants the County, its agents, employees, officers, and contractors an easement and license to enter the property to perform such inspections as it deems appropriate.

13. Notice of Defect. The County will provide timely notice to the Owner/Developer whenever inspection reveals that an Improvement does not meet the workmanship required by the County or has not been constructed or completed in accordance with the Construction Guidelines.

On a monthly basis, as needed, the County will provide to the Owner/Developer a Notice of Defects letter that will include a Log of Deficiencies Report identifying work that is unacceptable to the County. The Owner/Developer will be given fourteen (14) calendar days to respond in writing to the notice identifying how and when the deficiencies will be corrected. If the notice of defect includes a statement stating that the defect creates an immediate and substantial harm, the cure period may be shortened to a reasonable time in accordance with the perceived harm. The County will review and, within fourteen (14) calendar days, either concur with a response to the Notice of Defect and issue a Notice to Proceed, or will not agree with the corrective procedure and will request additional information and/or provide the repair methods to be used. The Owner/Developer will have seven (7) calendar days to provide another corrective action. The Owner/Developer shall not proceed with any corrective action until a Notice to Proceed from the County has been received.

If after fourteen (14) calendar days after the Notice of Defects, the Owner/Developer does not provide a written response, the County may declare default under this Agreement and proceed to have the work corrected and completed to meet the workmanship required by the County, and will submit the charges to the Owner/Developer of actual cost incurred by the County for payment. The Owner/Developer will have thirty (30) calendar days of the date on the statement to make payment.

If the Owner/Developer does not reimburse the County within said thirty (30) day period, then a Condition of Draw (the "*Condition of Draw*") shall be deemed to exist under the applicable Letter of Credit referenced in paragraph 11, at which time the County shall be allowed to draw upon the Letter of Credit pursuant to the terms and condition of this Agreement and the Letter of Credit.

14. Cost Participation by County; Construction of By-Pass Road. If the County and Owner/Developer agree, the County will participate in the expense of installing any of the Improvements. The respective benefits and obligations of the parties shall be governed by the

terms of a Communities Facilities Construction Agreement executed by the parties thereto, and the terms of that agreement shall control to the extent of any inconsistency with this Agreement.

The County agrees that the County, at its sole cost and expense (except as otherwise provided herein) shall timely construct with its own contractors, a by-pass road on Pellicano Drive (the "**By-Pass Road**") so as to permit construction of the subdivision Improvements by Owner/Developer. The Owner/Developer agrees to provide elevation staking at the median cut location along Pellicano Drive for the use of the County's contractor to build the By-Pass Road; and the County agrees to use and coordinate with the Developer's elevations for the Improvements, in designing and constructing the elevations for the By-Pass Road. The County agrees to coordinate the timing of the construction of the By-Pass Road, with the construction of the Improvements by the Owner/Developer. Attached hereto as **Exhibit "E"** is the West Texas Estates Construction Progress Schedule, containing the line item called "By-Pass Road", which shows the time frames required for Bypass Road construction. Owner/Developer's time frame to start the construction on the Property is scheduled to start with the demolition of existing asphalt on Pellicano Drive on May 20, 2013. County agrees to the West Texas Construction Progress Schedule attached hereto as Exhibit "E". Any delay by the County in meeting its time frames for construction of the By-Pass Road, shall extend the completion obligations of Owner/Developer of the Improvements by the same number of days as the delay by the County. Notwithstanding the above, the Owner/Developer shall reimburse the County the sum of \$52,659.34 to be applied for the cost to the County of the By-Pass Road to be constructed by the County. Upon completion of the subdivision Improvements, the Owner/Developer shall make such reimbursement within thirty (30) days after written invoice by the County to the Owner/Developer.

15. Remedies. The remedies available to the County and the Owner/Developer under this Agreement and Texas state laws are cumulative in nature.

16. Indemnification. THE OWNER/DEVELOPER HEREBY EXPRESSLY AGREES TO INDEMNIFY AND HOLD THE COUNTY HARMLESS FROM AND AGAINST ALL CLAIMS, DEMANDS, COSTS, AND LIABILITY OF EVERY KIND AND NATURE, INCLUDING REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING FROM ANY ACT OR NEGLIGENCE OF OWNER/DEVELOPER OR OWNER/DEVELOPER'S AGENTS, CONTRACTORS, EMPLOYEES, IN THE CONSTRUCTION OF THE IMPROVEMENTS. THE OWNER/DEVELOPER IS NOT AN EMPLOYEE OR AGENT OF THE COUNTY. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, THE OWNER/DEVELOPER DOES NOT AGREE TO INDEMNIFY AND HOLD THE COUNTY HARMLESS FROM ANY CLAIMS, DEMANDS, COSTS, OR LIABILITIES ARISING FROM ANY ACT OR NEGLIGENCE OF THE COUNTY, ITS AGENTS, CONTRACTORS, EMPLOYEES, TENANTS, OR LICENSEES.

17. No Waiver. No waiver or any provision of this Agreement will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute continuing waiver unless expressly provided for by a written amendment to this Agreement; nor will the waiver of any default under this agreement be deemed a waiver of any subsequent defaults of the same type. The failure at any time to enforce this Agreement or covenant by the County or the Owner/Developer, their heirs, successors or assigns, whether any violations thereof are known or not, shall not constitute a waiver or estoppel of the right to do so.

18. Attorney's Fees. Should either party be required to resort to litigation to enforce the items of this agreement, the prevailing party, plaintiff or defendant, shall be entitled to recover its

costs, including reasonable attorney's fees, court costs, and expert witness fees, from the other party. If the court awards relief to both parties, each will bear its own costs in their entirety.

19. Assignability. The benefits and burdens of this Agreement are the obligations of the Owner/Developer and also are binding on its successors, and assigns of the Owner/Developer. The Owner/Developer's obligations under this Agreement may not be assigned without the express written approval of the County, which approval shall not unreasonably be withheld or delayed. The County's written approval may not be withheld if the Owner/Developer's assignee explicitly assumes all obligations of the Owner/Developer under this Agreement and has posted the required security. The County agrees to release or reduce, as appropriate, the Letter of Credit provided by the Owner/Developer if it accepts substitute security for all or any portion of the Improvements. The County, in its sole discretion, may assign some or all of its rights under this Agreement, and any such assignment shall be effective upon notice to the Owner/Developer, provided that such assignment shall not relieve the County of its obligations hereunder.

20. Expiration. This Agreement shall terminate upon the completion of all Improvements and the approval, agreement, and signature of the Maintenance Bond or Letter of Credit for Maintenance.

21. Notice. Any notice required or permitted by this Agreement is effective when personally delivered in writing or three (3) business days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows:

If to Owner/Developer:

Owner/Developer Name:	AKAM Property Development, LLC
Owner/Developer Representative's Name:	Jose Luis Martin
Owner/Developer Representative's Title:	Manager
Address:	310 N. Mesa, Ste. 518 El Paso, Texas 79901

If to County:

Name:	County of El Paso
County Judge's Name:	Veronica Escobar or her Successor-in-Office
Office Name:	Office of County Judge
Address:	Courthouse, 500 E. San Antonio Street El Paso, Texas 79901
Attention:	Gilberto Saldana Jr., Senior Civil Engineer, Public Works Department

The parties may, from time to time, change their respective addresses listed above to any other location in the United States for the purpose of notice under this Agreement. A party's change of address shall be effective when notice of the change is provided to the other party in accordance with the provisions of this Paragraph.

22. Severability. If any part, term, or provision of this Agreement is held by the courts to be illegal, invalid, or otherwise unenforceable, such illegality, invalidity, or enforceability shall not affect the validity of any other part, term, or provision, and the rights of the parties will be construed as if the part, term, or provision, and the rights of the parties will be construed as if the part, term, or provision was never part of this Agreement.

23. **Personal Jurisdiction and Venue.** Personal jurisdiction and venue for any civil action commenced by either party to this Agreement, whether arising out of or relating to the Agreement or the Letter of Credit, will be deemed to be proper only if such action is commenced in District Court for El Paso County, Texas, or the United States District Court for the Western District of Texas, El Paso Division. The Owner/Developer expressly waives any right to bring such an action in or to remove such an action to any other court, whether state or federal.

24. **Release upon Completion.** Upon acceptance of all Improvements; and approval, agreement, and signature of the Maintenance Bond, the County agrees:

- a. To issue to the Owner/Developer the Complete Acceptance Reports prepared by the County;
- b. To complete, execute and deliver to the Owner/Developer a complete acceptance in recordable form accepting the Improvements as identified in this Agreement with the exception of the conditions stated in Paragraph 11, and to return to the Owner/Developer the Subdivision Bond or Letter of Credit, and any funds not expended or obligated by the County and paid to the County by the Owner/Developer, Owner/Developer's heirs, successors, and assigns for the completion of the improvements.

25. **Captions Immaterial.** The numbering, order, and captions or headings of the paragraphs of this agreement are for convenience only and shall not be considered in construing this agreement.

26. **Entire Agreement.** This Agreement contains the entire agreement between the parties and correctly sets forth the rights, duties, and obligations of each to the other as of the Effective Date. Any oral representations or modifications concerning this Agreement shall be of no force or effect excepting a subsequent written modification executed by both parties.

27. **Authorization to Complete Blanks.** By signing and delivering this Agreement to the appropriate official of the County, the Owner/Developer authorizes the completion of this Agreement by filling in the Executed Date below.

28. **Binding Agreement.** The execution and delivery of this agreement and the performance of the transactions contemplated thereby have been duly authorized by all necessary corporate and governmental action of the County. This Agreement has been duly executed and delivered by each party, and constitutes a legal, valid, and binding obligation of each party enforceable in accordance with the terms as of the effective Date. The Parties hereto execute this instrument to be effective when signed by both parties.

[signatures on following page]

EXECUTED by the parties as of this _____ day of _____, 2013.

FOR THE COUNTY

County of El Paso, Texas

Date: _____

(Signature of County of El Paso Signatory)

(Type Name and Title of County of El Paso Signatory)

FOR THE OWNER/DEVELOPER

AKAM Property Development, LLC, a Texas limited liability company

Date: _____

By: _____
Jose Luis Martin, Manager

EXHIBITS:

EXHIBIT "A": METES AND BOUNDS DESCRIPTION OF PROPERTY

EXHIBIT "B": COST ESTIMATE OF PROPOSED IMPROVEMENTS TO BE DEDICATED
TO THE COUNTY

EXHIBIT "C": PERFORMANCE BOND/LETTER OF CREDIT

EXHIBIT "D": MAINTENANCE BOND/LETTER OF CREDIT

EXHIBIT "E": WEST TEXAS ESTATES CONSTRUCTION PROGRESS SCHEDULE

EXHIBIT A

METES AND BOUNDS DESCRIPTION OF PROPERTY

(attached)

PROPERTY DESCRIPTION**WEST TEXAS ESTATES
36.1678 ACRE PARCEL**

Description of a parcel of land being a 36.1678 acre parcel being a portion of the north 1/4 of Section 18, and a portion of Section 17, Block 79, Township 3, T&P RR Surveys, El Paso County, Texas, and also being a portion of that parcel recorded in book 1559, page 1565, and a portion of that parcel recorded in Clerks File #20080076201, El Paso County Clerks Records, and described as follows;

Commencing for reference (POC) at a rebar with cap found at the southwest corner of that parcel lying in the northwest 1/4 of Section 18 of said Block 79, Township 3, said parcel described in book 1559, page 1565, said rebar with cap also marking the northwest corner of that parcel described in book 2663, page 1535; Thence, with an extension of the common boundary line of this parcel and said parcel described in book 2663, page 1535, South 89°59'44" West (South 89°59'54" West record) a distance of 55.00' to a rebar with cap set at the southwest corner of this parcel, and being the "Point Of Beginning";


Thence, 55' west of and parallel with the west boundary line of said parcel described in book 1559, page 1565, North 00°33'12" West (North 00°33'30" West record) a distance of 921.75' to a point on the south ROW line of Pellicano Drive (120' wide and described in book 3893, page 1337);

Thence, with said south ROW line of Pellicano Drive, North 89°59'44" East (North 89°59'59" East record) passing the northwest corner of that said parcel recorded in book 1559, page 1565, at a distance of 55.00' and continuing with said south ROW line of Pellicano Drive, a total distance of 1709.30' to a found rebar at the northwest corner of that parcel described in book 1559, page 1570, and also being the northeast corner of this parcel;

Thence, with the common boundary line of this parcel and said parcel described in book 1559, page 1570, South 00°33'12" East (South 00°30'30" East record) a distance of 921.75' to the southeast corner of this parcel and the southwest corner of said parcel recorded in book 1559, page 1570, from whence a rebar with cap stamped 3190 found lies 0.4' northeasterly;

Thence, with the common boundary line of this parcel and that parcel described in book 2022, page 1573, South 89°59'44" West (South 89°59'54" West record) passing the northwest corner of said parcel described in book 2022, page 1573 at a distance of 325.35' and continuing along the common boundary line of this parcel and said parcel recorded in book 2663, page 1535, passing the POC at distance of 1653.30', and continuing an additional 55.00' for a total distance of 1709.30' to the "Point Of Beginning" and containing 1,575,470 sq. ft. or 36.1678 acres.

Based on a field survey performed under my supervision and dated Oct. 22, 2010.


John A. Eby, Texas R.P.L.S. 5372 NM PLS 17779

Paso Del Norte Surveying Inc.
13998 Bradley Road
El Paso, TX. 79938
915-241-1841

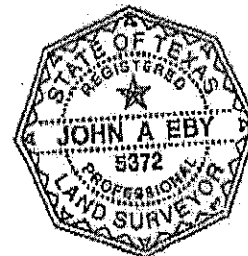


EXHIBIT B

DESCRIPTION	QUANTITY	UOM	COST/UOM	TOTAL
Subdivision HMAC	26734	SY	\$18.50	\$494,511.16
Subdivision Curb	14100	LF	\$10.88	\$153,408.00
Storm Drain Pipe System	2769	LF	\$60.29	\$166,940.53
Storm Drain Inlets & Manholes	16	EA	\$4,239.13	\$67,826.04
Pond	1	LS	\$120,498.70	\$120,498.70
Pellicano Improvements	1	LS	\$333,905.39	\$333,905.39
Pellicano Median Landscaping	1	LS	\$66,410.98	\$66,410.98
Mission Ridge Improvements	1	LS	\$150,430.64	\$150,430.64
Mission Ridge Landscaping	1	LS	\$45,109.35	\$45,109.35
			TOTAL	\$1,587,763.46

EXHIBIT C

IRREVOCABLE LETTER OF CREDIT (for Performance)

IRREVOCABLE LETTER OF CREDIT NO. _____

TO: County of El Paso, Texas

DATE: _____, 2013

We hereby authorize you to draw at sight on Inter National Bank, whose address is 175 East Arizona Street (79902), P. O. Box 1612, El Paso, Texas 79948 for the account of AKAM Property Development, LLC, a Texas limited liability company, whose address is 310 N. Mesa, Ste. 518, El Paso, Texas 79901, up to the aggregate amount of _____ and no/100 Dollars (\$_____) available by our draft, accompanied by a certification by the County Judge that the following conditions exists:

"I, as an authorized agent of the Beneficiary, hereby certify that a Condition of Draw (as defined in the Agreement) exists under Subdivision Construction Agreement (the "*Agreement*") dated _____, 2013, by and between AKAM Property Development, LLC and the County of El Paso for West Texas Estates specifically identified as:

- Construction by AKAM Property Development of the public roads in West Texas Estates, to be dedicated to the County and maintained by the County;
- Construction by AKAM Property Development of one drainage pond/park, and one drainage pond in West Texas Estates, to be dedicated to the County and maintained by the County; and
- Construction by AKAM Property Development of the two left turning lanes at the curb cut location in conjunction with the County's By-Pass road design and proposed grades, to be dedicated to the County and maintained by the County."

The County is in substantial compliance with the terms of said Agreement and has calculated the amount of this draft in accordance with the terms of this Agreement."

Drafts must be drawn and presented by or on _____, 2014 no later than 5:00 p.m. and must specify the date and number of this credit. Drafts will be honored within Five (5) calendar days of presentment. We hereby engage all drawers that drafts drawn and presented in accordance with this credit shall be duly honored. Partial Draws are permitted and the letter of credit shall be reduced by the amount of such partial draws as well as by any reduction letters authorized by the County. The sum of such partial draws shall on no account exceed the aggregate amount of this credit, and upon any draw or reduction letter that exhausts this credit, the original of this credit will be surrendered to us.

Excepted as expressly stated, this credit shall be subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce (Publication No. ICP600). This Letter of Credit is also governed by the laws of Texas, except for those laws that conflict with the Uniform Customs and Practice for Documentary Credits, Document ICP600.

EXHIBIT D

IRREVOCABLE LETTER OF CREDIT (for Maintenance)

IRREVOCABLE LETTER OF CREDIT NO. _____

TO: County of El Paso, Texas

DATE: _____, 2013

We hereby authorize you to draw at sight on Inter National Bank, whose address is 175 East Arizona Street (79902), P. O. Box 1612, El Paso, Texas 79948 for the account of AKAM Property Development, LLC, a Texas limited liability company, whose address is 310 N. Mesa, Ste. 518, El Paso, Texas 79901, up to the aggregate amount of _____ and no/100 Dollars (\$_____) available by our draft, accompanied by a certification by the County Judge for El Paso County, Texas that the following conditions exists:

"I, as an authorized agent of the Beneficiary, hereby certify that a Condition of Draw (as defined in the Agreement) exists by and between AKAM Property Development, LLC and the County of El Paso for maintenance of Improvements located in West Texas Estates specifically identified as:

- Construction by AKAM Property Development of the public roads in West Texas Estates, to be dedicated to the County and maintained by the County;
- Construction by AKAM Property Development of one drainage pond/park, and one drainage pond in West Texas Estates, to be dedicated to the County and maintained by the County; and
- Construction by AKAM Property Development of the two left turning lanes at the curb cut location in conjunction with the County's By-Pass road design and proposed grades, to be dedicated to the County and maintained by the County."

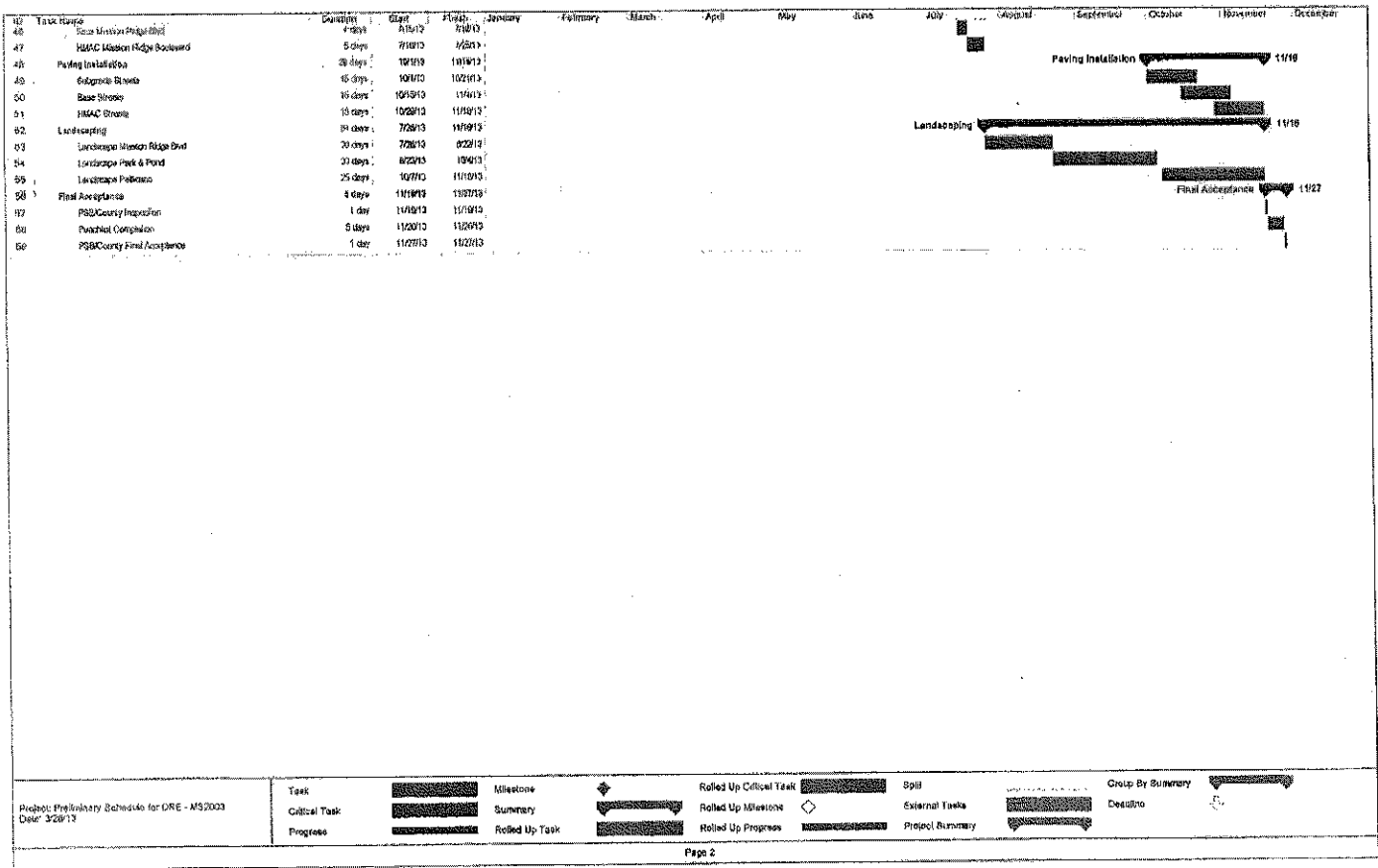
Drafts must be drawn and presented by or on _____, 2014 no later than 5:00 p.m. and must specify the date and number of this credit. Drafts will be honored within Five (5) calendar days of presentment. We hereby engage all drawers that drafts drawn and presented in accordance with this credit shall be duly honored. Partial Draws are permitted and the letter of credit shall be reduced by the amount of such partial draws as well as by any reduction letters authorized by the County. The sum of such partial draws shall on no account exceed the aggregate amount of this credit, and upon any draw or reduction letter that exhausts this credit, the original of this credit will be surrendered to us.

Excepted as expressly stated, this credit shall be subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce (Publication No. ICP600). This Letter of Credit is also governed by the laws of Texas, except for those laws that conflict with the Uniform Customs and Practice for Documentary Credits, Document ICP600.

EXHIBIT E

WEST TEXAS ESTATES CONSTRUCTION PROGRESS SCHEDULE

[attached]



WEST TEXAS ESTATES

