

CP 503 - RES SUBD
REV. 10/04

W.R.# 12627830
Town # Corpus Christi (Port Aransas)
County: Nueces
Submitted by: PSK
Date: June 8, 2006

AEP Texas Central
Right-Of-Way
355 W. Hwy. 77
San Benito, Texas 78586

CONTRACT, EASEMENT, AND USE RESTRICTION

This Contract this day made and entered into by and between AEP Texas Central Company, a Texas corporation, hereinafter called "Company," and Facey Enterprises NV, L.P., a Delaware Corporation hereinafter called "Owner."

WITNESSETH:

WHEREAS, Owner owns and is developing La Concha Estates, a residential subdivision in Nueces County, Texas, (the "Project") to be located on the tract of land described in Exhibit A, which is attached hereto and made a part hereof by this reference for all purposes (the "Property"); and

WHEREAS, Company is a certified provider of electric delivery service to the Property, including electric connection service; and

WHEREAS, Company typically provides electric connection service utilizing Standard Facilities, which are overhead distribution facilities; and

WHEREAS, Owner has requested Company to provide electric connection service to the Project utilizing the underground delivery system described in Paragraph 1 below, instead of the Standard Facilities; and

WHEREAS, Company is willing to do so, but only in accordance with the terms and conditions contained in this Contract;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties, intending to be legally bound, hereby agree as follows:

1. **DELIVERY SYSTEM** - Company will furnish, install, own, maintain, and operate at the Project an Underground Delivery System consisting of the following components, as required: primary terminal pole(s) and raceway riser(s) on terminal pole(s); associated primary facilities located between the terminal pole(s) and the service transformer(s) including the primary cable which will be installed in the trenches and/or raceways to be provided by Owner; necessary pad-mounted or other Company standard transformer foundation(s) and installation(s), secondary cable between transformer installation(s) and service pedestal(s); and service laterals from transformer(s) or service pedestal(s) to each dwelling unit ("Underground Delivery System").

The Underground Delivery System will be installed in accordance with, and at the locations shown in, the plat that is attached hereto as Exhibit B and made a part hereof by this reference for all purposes.

2. **OWNER OBLIGATION TO COMPANY** - Owner will stake all easements and appropriate control points and prepares the site at finish grade for the installation of the Underground Delivery System prior to initiation of any construction work by Company. Owner will be responsible for obtaining all necessary permits from governmental agencies. Owner will execute all contracts, deeds, easements, and other legal documents that the Company deems necessary or appropriate in a connection with the installation of the Underground Delivery Facilities.

Owner will locate and clearly mark all other underground facilities currently existing on the property. Owner will furnish, in accordance with Company standards, all necessary trenching and backfilling for the installation of the Underground Delivery System including the primary and

secondary cable, and in addition, Owner will furnish a rigid raceway, constructed in accordance with Company's standards, when required under paved, enclosed or otherwise inaccessible areas, or when required due to marina construction or unstable soil conditions. All raceways **MUST** be specifically approved by Company. Such installations and routings will be in complete conformance with the drawings and details provided by Company.

Service laterals will be installed from time to time as the dwelling units are constructed on lots at the Project. For each lot, Company will provide one service lateral.

Trenching and backfilling for service laterals from transformer, pedestal or other designated point to the individual dwelling units on the various lots in the subdivision will be performed by Owner, or Applicant for electric service (hereinafter referred to as "Applicant"), in accordance with the specifications below at such time as the individual dwelling units are constructed. Such trenching and backfilling may be required to be performed by Owner or Applicant on adjacent lots within Company easements. Owner or Applicant will reimburse Company for any additional costs incurred by Company as a result of any local codes, ordinances or soil conditions requiring a higher investment in the service lateral than would be required under Company's normal installation practices.

Owner or Applicant will receive an allowance for the installation of the requested Underground Delivery System facilities in accordance with Company's tariffs. Owner or Applicant will be responsible for the payment of all installation costs in excess of that allowance. Owner or Applicant will install, in accordance with Company's standards, one-meter socket for each family dwelling unit.

Owner or Applicant will furnish and install the service entrance raceway as required by Company, and all secondary distribution facilities beyond the load terminals of the meter. Service entrance feeder(s) and service entrance equipment for each dwelling unit will have a minimum rating of 150 amperes.

All installations by Owner or Applicant will conform to the current edition of the National Electrical Code, and National Electrical Safety Code, as applicable, together with current revisions thereof, and all other applicable codes or ordinances. Company will not be obligated to and does not hereby assume a duty to inspect or approve such installations.

OWNER OR APPLICANT AGREE TO INDEMNIFY AND HOLD HARMLESS COMPANY FOR AND FROM ALL CLAIMS FOR DAMAGES TO OTHER UNDERGROUND FACILITIES OR UTILITIES OF ANY NATURE, EXCEPT SUCH CLAIMS AND DAMAGES RESULTING SOLELY FROM THE NEGLIGENCE OF COMPANY. OWNER AND APPLICANT AGREE AND UNDERSTAND THAT THEY WILL INDEMNIFY THE COMPANY AND HOLD IT HARMLESS FROM CLAIMS ARISING IN PART FROM THE NEGLIGENCE OF THE COMPANY.

Owner and Applicant are and at all times shall be independent contractors, and neither Owner nor Applicant or any of their respective employees, contractors and subcontractors engaged in the performance of the work described hereinabove shall be considered employees of company. The method and manner of performance of Owner and Applicant undertakings hereunder shall be under the exclusive control of the Owner and Applicant, and Company shall have only the right to require completion of the work in compliance with Owner undertakings hereunder. No provision contained in this Contract between Owner and Company and no action on the part of any of the parties hereto shall be construed as creating an employer/employee relationship, joint venture or any other relationship other than that of independent contractor.

3. **SCOPE** - The parties agree and stipulate that only the Underground Delivery System will be authorized and installed to serve the lots as shown on Exhibit B. Owner hereby restricts said lots to underground electric delivery service and the parties agree and stipulate that the filing of this instrument in the real property records of the county in which the Project is located will have the same force and effect as a deed restriction running with said lots to the effect that only underground electric delivery service will be furnished thereto, except such overhead facilities as are shown on Exhibit B. Areas in the Project not served from the Underground Delivery System will be served by Company from Standard Facilities.

4. **INDEMNITY** –OWNER ASSUMES THE RISK OF, AND SHALL INDEMNIFY COMPANY AGAINST DAMAGES FOR INJURIES OR DEATH TO PERSONS OR LOSS TO OWNER'S PROPERTY, OR TO THE PROPERTY OF COMPANY, WHEN OCCASIONED BY ACTIVITIES OF OWNER OR THIRD PARTIES ON OWNER'S PREMISES, RESULTING FROM THE INSTALLATION, EXISTENCE, REPLACEMENT OR REPAIR OF COMPANY'S UNDERGROUND DELIVERY SYSTEM AS FURTHER PROVIDED IN THE TERMS OF "LIMITATION OF LIABILITY AND INDEMNIFICATION," SECTIONS 4.2 AND 5.2 OF COMPANY'S TARIFF FOR ELECTRIC DELIVERY SERVICE.

5. **COMPANY OBLIGATION TO OWNER** - The parties agree that Company is obligated to furnish nominal 120/240-volt electric delivery service to the Project. In the event Owner, its heirs, successors or assigns, should desire a different type of service to the Project in the future, then Company will have a reasonable time after notice is given that such service is desired in which to submit the terms and conditions upon which it will furnish such service, but the Company shall have no obligation to change the type of service until such terms and conditions covering the new service are met.

6. **COMPANY OBLIGATION TO APPLICANT** - Company will make underground electric delivery service available and provide delivery service to Applicant at the above described Project under Company's standard terms and conditions, at its regular published applicable delivery service rates at the nominal secondary service voltage specified in Paragraph 5 hereof, and at the load terminals of the individual meters or at an alternate delivery point acceptable to Company.

7. **EASEMENTS** - Owner grants to Company and its successors and assigns, easements for the Underground Delivery System and the overhead electric system in, over, under, and across those parts of the Project which are necessary for the purposes of installation, operation, inspection, repair, maintenance, replacement, enlargement, renewal, and removal of Company's facilities, as shown on Exhibit B, together with the rights of ingress and egress thereto from any adjacent lands and easements to effect such purposes; the right to relocate along the same general direction of such lines; and the right to remove from said lands all trees and parts thereof, using generally accepted vegetation management practices, structures or obstructions, which may, in the sole judgment of Company, endanger or may interfere with the safe or efficient operation and maintenance of said lines or appurtenances. All of Company's lines and equipment are to be installed in the general locations as shown on Exhibit B, which locations are mutual acceptable to the parties hereto. Owner also grants to Company and its successors and assigns an easement and right of way for the installation, operation, inspection, repair, maintenance replacement, renewal, and removal of an underground electric service lateral on and under each of the lots shown on Exhibit B, together with the rights of ingress and egress for such purposes, which easement and right of way will extend in as nearly a direct route as practicable from a point below ground at the meter location on the improvement to a point of connection with Company's facilities, shown on Exhibit B, and will be five feet (5') in width. In the event any action by Owner requires relocation of all or any part of Company's facilities. Owner agrees to reimburse Company in full for all of Company's expenses incurred in effecting such relocation. Owner will provide the Company with all easements, rights-of-way, licenses and other rights on and over the Project for purposes reasonably related to the Company's business, including, without limitation, the extension and furnishing of an electric connection to any retail customer, and services related to the electric connection such as demand signals. Such easements, rights-of-way and permits shall be permanent, unless otherwise agreed to by the Company.

8. **WARRANTY** - Owner warrants that it is the record owner of the property described in Exhibit A and that the easements and use restrictions granted herein are superior to any other interests in said property, including the interests of a lienholder, mortgagee or trustee under a deed of trust, if any. If the property is subject to a lien, mortgage or deed of trust, the lienholder, mortgagee or trustee for good consideration hereby joins in the execution of this Contract, but solely for the purpose of subordinating its interest in the property to the interests granted to Company herein.

9. **MISCELLANEOUS** - This Contract and the benefits and obligations hereof will be binding upon and inure to the benefit of the parties hereto, their heirs, successors, and assigns. This Contract will not be assigned by Owner without the Company's written consent.

Unless otherwise defined herein, capitalized terms used in this Contract shall have the meanings attributed to them by the terms and conditions of Company's Tariff for Electric Delivery Service.

This Contract constitutes the entire agreement of the parties hereto and supersedes all prior agreements and undertakings relating to the subject matter hereof. This Contract may not be modified, amended or discharged except by an instrument in writing signed by the party or parties sought to be bound by such instrument.

This Contract may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

The headings in this Contract are for convenience and reference only and in no way define, limit or describe the scope and intent of this Contract, nor in any way affect this Contract.

IN TESTIMONY WHEREOF, witness our hands to quadruplicate originals, this the _____ day of _____, _____.

COMPANY

AEP Texas Central Company

By: _____

James L. Brown
Distribution right of Way Coordinator
American Electric Power Service Corporation
Authorized Signer

OWNER

Facey Enterprises NV, L.P., a Delaware Corp.

By:  _____

Wellington Chan, Vice President/Secretary
(Typed or Printed Name & Title)

ACKNOWLEDGEMENT FOR AEP TEXAS CENTRAL COMPANY

**THE STATE OF TEXAS
COUNTY OF NUECES**

This instrument was acknowledged before me on this _____ day _____, _____, by James L. Brown of AEP Texas Central Company, a Texas corporation, on behalf of said corporation.

Notary Public, State of Texas

(Typed or Printed Name)

My Commission Expires: _____

ACKNOWLEDGEMENT FOR OWNER

**THE STATE OF California
COUNTY OF Los Angeles**

This instrument was acknowledged before me on this 11th day of July, 2006 by Wellington Chan, Vice President/Secretary, of Facey Enterprises NV, L.P., a Delaware Corporation. *Proved to me on the basis of satisfactory evidence to be the person who appeared before me.*

Daisy Quiñones
Notary Public, State of CA

Daisy Quiñones
(Typed or Printed Name)

My Commission Expires: 08/15/09

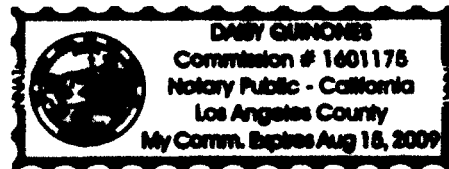
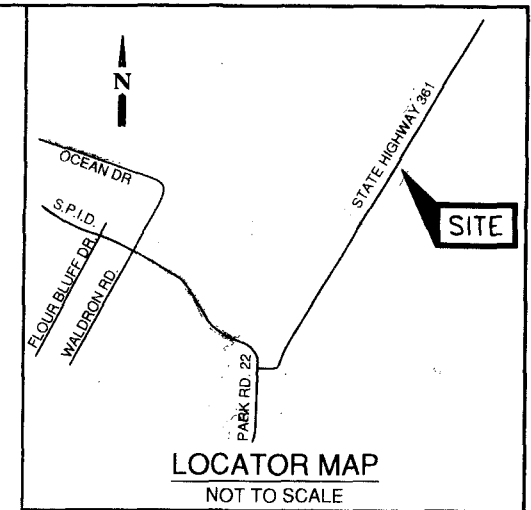
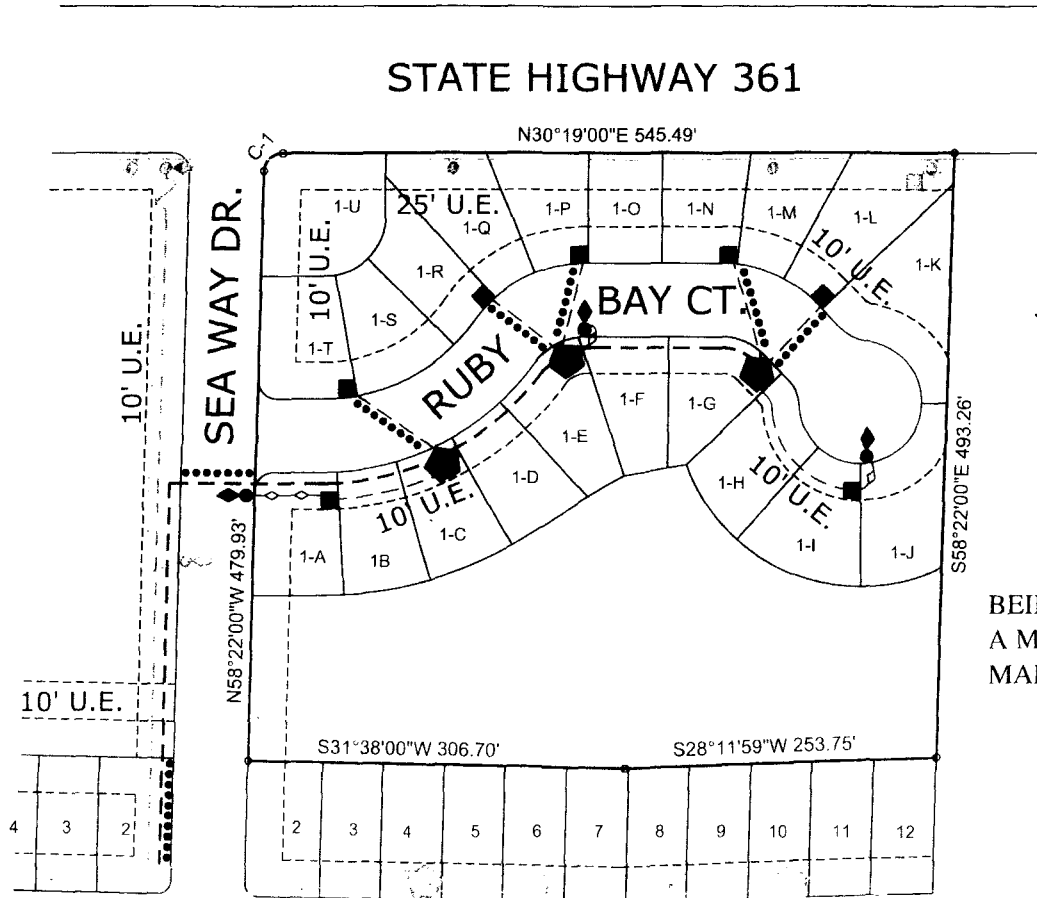


Exhibit "A"
La Concha Estates
Block 2, Lot 1-A thru 1-V

Being a replat of Lot 1, Block 2, La Concha Estates, a map of which is recorded in Volume 61, Pages 197-198, Map Records of Nueces County, Texas.

NOTE:

1. AEP CONTRACTOR AND / OR DEVELOPER TO DIG AND BACKFILL ELECTRICAL DISTRIBUTION DITCH, 4 FEET DEEP (WITH 4 FT. COVER) FOR PRIMARY CONDUCTOR; 3 FEET DEEP (WITH 3 FT. COVER) FOR SECONDARY AND STREET LIGHT CONDUCTOR.
2. DEVELOPER TO INSTALL 4 INCH PVC, SCHEDULE 40 ELECTRICAL DUCTS (WITH SLEEVES, 1FD 4-4) FOR STREET CROSSING UNDER FUTURE STREETS.
3. AEP TO STAKE CENTERLINE OF ELECTRICAL DISTRIBUTION DITCH.
4. DEVELOPER TO STAKE ALL STREET CROSSINGS.
5. DEVELOPER TO PROVIDE FINISHED GRADE ELEVATIONS FOR ALL AEP TRANSFORMERS AND EQUIPMENT FOUNDATIONS.
6. AEP ELECTRICAL FACILITIES ALIGNMENT WITHIN PLATTED UTILITY EASEMENTS (U.E.) WILL BE MORE OR LESS AS FOLLOWS:
 - A. 10 FT. (U.E.) OR LARGER = 5.0 FEET OFF PROPERTY LINE.
 - B. 7.5 FT. (U.E.) FOR U.G. = 3.5 FEET OFF PROPERTY LINE.
7.5 FT. (U.E.) FOR OH. = 2.5 FEET OFF PROPERTY LINE.
 - C. 5.0 FT. U.E. = 2.5 FT. OFF PROPERTY LINE.



PLAT OF
LA CONCHA ESTATES

BEING A REPLAT OF LOT 1, BLOCK 2, LA CONCHA ESTATES, A MAP OF WHICH IS RECORDED IN VOLUME 61, PAGES 197-198, MAP RECORDS OF NUECES COUNTY, TEXAS.

CURVE TABLE				
CURVE #	DELTA ANGLE	RADIUS	TANGENT	ARC LENGTH
C - 1	88°41'00"	15.00'	14.66'	23.22'

LEGEND

- PRIMARY UNDERGROUND CABLE
- - - SECONDARY UNDERGROUND CABLE
- ▮ PADMOUNT TRANSFORMER
- SECONDARY SERVICE PEDESTAL
- POLE
- PVC, DUCT
- ◇—◇— UNDERGROUND STREET LIGHT CIRCUIT
- ◆ STREET LIGHT
- ~ TERMINATOR FUSE AND ARRESTOR

NOTE: ALL FACILITIES IN GREEN ARE EXISTING.

LA CONCHA BLVD.

NOTE:

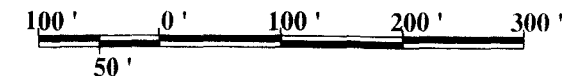
AEP TEXAS IS HEREBY GRANTED AN EASEMENT AND RIGHT OF WAY ON EACH LOT IN SAID SUBDIVISION FOR AN UNDERGROUND ELECTRICAL SERVICE LATERAL, TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS FOR SUCH PURPOSES AT THE LOCATION WHERE SUCH SAID SERVICE LATERAL IS TO BE OR IS INSTALLED AND MAINTAINED FROM TIME TO TIME.

EXHIBIT B

W. R. # 12627830

INSTALL UNDERGROUND ELECTRICAL DISTRIBUTION SYSTEM TO PROVIDE SERVICE TO LA CONCHA ESTATES, A SUBDIVISION CONSISTING OF 22 LOTS LOCATED BETWEEN ACCESS ROAD 2 AND BEACH VIEW STREET, APPROXIMATELY 8.8 MILES NORTH OF PARK ROAD 22 AND EAST OF STATE HIGHWAY 361 IN NUECES COUNTY, TEXAS.

AEP TEXAS
CORPUS CHRISTI DISTRICT



BY: MIKE ROBERSON

MAY 17, 2006

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of Race, Color, Religion, Sex, Handicap, Familial Status, or National Origin is invalid and unenforceable under FEDERAL LAW, 3/12/89

STATE OF TEXAS
COUNTY OF NUECES

I hereby certify that this instrument was FILED in file number sequence on the date and at the time stamped herein by me, and was duly RECORDED in the Official Public Records of Nueces County, Texas



Dianna T. Barrera

Dianna T. Barrera
NUECES COUNTY, TEXAS

*Please Return to
AEP Texas
2120 W. Wheeler
Aransas Pass, TX
78336*

Doc# 2006036791
Pages 8
07/19/2006 11:46AM
Official Records of
NUECES COUNTY
DIANA T. BARRERA
COUNTY CLERK
Fees \$43.00