



City of El Paso – City Plan Commission Staff Report

Application Type: Development Agreement (prior to annexation)
CPC Hearing Date: February 25, 2016

Staff Planner: Kimberly Forsyth, (915) 212-1563, forsythkl@elpasotexas.gov
Location: East of John Hayes and South of Pebble Hills Blvd.
Acreage: 618.73 acres
Rep District: ETJ (adjacent to District 5)
Existing Use: Vacant
Existing Zoning: ETJ
Proposed Zoning: ETJ

Nearest Park: Within proposed development area
Nearest School: Pebble Hills High School & within proposed development
Park Fees Required: N/A
Impact Fee Area: This property is within the impact fee area and is subject to impact fees.

Property Owner: Ranchos Real IV, LTD.
Applicant: Conde Inc.
Representative: Conde Inc.

SURROUNDING ZONING AND LAND USE

North: R-5/ Single-family residential
South: ETJ/ Vacant
East: ETJ/ Vacant
West: R-5 (Residential), S-D (Special Development) and C-2 (Commercial) / Single-family residential, High School

THE PLAN FOR EL PASO DESIGNATION: 05- Remote

APPLICATION DESCRIPTION

The applicant proposes to annex approximately 618.7 acres, to be privately developed in accordance with the attached development plan. This property was previously reviewed and approved by the CPC on March 21, 2013 as Tierra del Este III Phase V Land Study. The previously-approved land study was designed in accordance with county development standards, annexation was not proposed at that time.

The development plan has been revised to incorporate parkland to be dedicated in accordance with City standards. The development plan also shows a proposed change to the Major Thoroughfare Plan (MTP) to accommodate median parks within two collector roadways that bisect the development area. The two collector roadways provide better connectivity and will amend the existing MTP, which shows one Minor Arterial running east-west through the development area. The proposed development plan includes 510.61 acres for residential use (between 1,700 - 2,700 dwelling units), 19.898 acres for commercial use, between 17-27 acres of parkland (depending on number of dwelling units), 14.879 acres of ponds, and a 35 acre proposed school site. If the development agreement is approved by City Council, the property owner will submit applications to amend the Major Thoroughfare Plan, annex and rezone the property in accordance with the development plan.

The developer has agreed to donate seven (7) acres of land to the city for future public facilities to serve the area. A five-acre site for emergency services (Police and Fire) is proposed to be located at Pebble Hills and Tim Foster, combined with a previously-committed site of four acres at this location for a total nine acres. A two-acre site will be donated within the development area along John Hayes. In consideration of the value of this donated property, the owner and City propose various reductions and modifications to development fees and standards. The subject property has been granted vested rights as of August 2008 based on approvals for water service by the EPWU and ongoing development (TDE III Phase III and TDE III Phase IV). The property is subject to impact fees for the Eastside Service Area.

An important component of the development agreement is the City's and owner's concurrence to pursue a Public Improvement District (PID) and a Tax Increment Reinvestment Zone (TIRZ) for the property. Funding from the PID and TIRZ will be utilized for improvements to parks and other public facilities as determined by City Council to serve the area.

Other major provisions of the development agreement are:

- The revised Development Plan shall amend the previously-approved land studies.
- The owner/developer shall submit applications to amend the Future Land Use Map in Plan El Paso and the Major Thoroughfare Plan, to annex and rezone the property upon approval of the development agreement.
- City annexation fees and other land development fees (for applications required under Titles 19 and 20) shall be waived.
- The Traffic Impact Analysis submitted with the original Land Study shall satisfy requirements for Traffic Impact studies for development within the property as shown in the Development Plan.
- The City will waive the owner's portion of off-site traffic mitigation (approximately \$325,093) required in the previously-approved TDE III Phase V Land Study, and the remaining off-site traffic mitigation fees (approx. \$36,353) in the TDE III Phase III Land Study.
- The El Paso Water Utility will waive up to \$180,625 in plan checking fees.
- Owner shall install street lights on arterial streets not to exceed one light per three hundred lineal feet. The City may elect to install additional lights at city's expense.
- The median in the annexed portion of Tim Floyd (Attachment 7) shall require only rock

and/or chat landscape due to utility easements.

DEVELOPMENT COORDINATING COMMITTEE COMMENTS:

The Development Coordinating Committee recommends *Approval* of the development agreement as presented, subject to the following conditions and requirements:

Planning Division Recommendation:

Planning recommends approval of the development agreement. The development plan is consistent with City Council direction and the City's annexation policy. The development plan is significantly improved over the previously-approved Land Study and incorporates several smart growth elements including smaller blocks, high connectivity, alley-loaded lots fronting median parks, bikeways, and a school site providing a terminated vista. The owner's agreement to donate land for public facilities and to cooperate with the City to seek a PID and TIRZ to fund future public improvements provides a significant benefit to the area.

Transportation Planning

Include the following language under the Agreement Definitions for the MTP: "Major Thoroughfare Plan" or "MTP" shall refer to the thoroughfare plan element of the comprehensive plan including the "2025 Thoroughfare System Map" as amended, and all other adopted thoroughfare plans of the City of El Paso.

Land Development

No comments received.

El Paso Streets and Maintenance

SAM recommends that right-of-way construction and improvements include the arterial illumination as required by Subdivision Ordinance; the proposed street lights on wooden poles will not provide the adequate illumination of the Arterials.

Comment: As per the agreement, the mitigation proportionate money that will not be collected for off-site traffic signalization as per the TIA on file for the Land Study previously submitted is approx. \$325,093. In the future the City will have to allocate additional funding for the construction and installation of warranted traffic signal infrastructure in the area.

Parks and Recreation Department

Include various park typologies and include park/ponds if feasible. Parks recommends that developer provide a 12' meandering hike and bike path within the proposed median parks. Proposed parks shall comply with the minimum "Parkland" requirements as per ordinance Title 19 – Subdivision and Development Plats, **Chapter 19.20 – Parks and Open Space.**

El Paso Water Utilities

The subject property is located within the City of El Paso Eastside Impact Fee Service Area. Impact fees will be assessed at the time of the plat and collected by the El Paso Water Utilities after EPWU receives an application for water and sanitary sewer services.

EPWU-PSB supports and encourages voluntary annexation to the City of El Paso.

Payment of the water and/or wastewater fee shall be due from the applicant and collected by the El Paso Water Utilities prior to the installation of a water meter (including domestic and/or irrigation) and/or prior to EPWU providing sanitary sewer service.

El Paso Police Department

EPPD recommends that the City require additional land, adjoining the site previously identified in TDE III Phase I, for a future emergency service complex to serve the area. City will coordinate with developer on design of this site to be compatible with adjacent mixed-use development.

El Paso Fire Department

The Fire Department has no objections to the annexation or with any of the attached documents.

Sun Metro

Sun Metro does not oppose this request.

Sun Metro requests/recommends the applicant coordinate with staff to identify the potential placement and construction of a bus stop site or sites, and accommodate major roadways and roundabouts for potential public transit services where 40 and 60-foot Sun Metro buses can maneuver safely.

El Paso Electric Company

No comments received.

Texas Gas Company

No comments received.

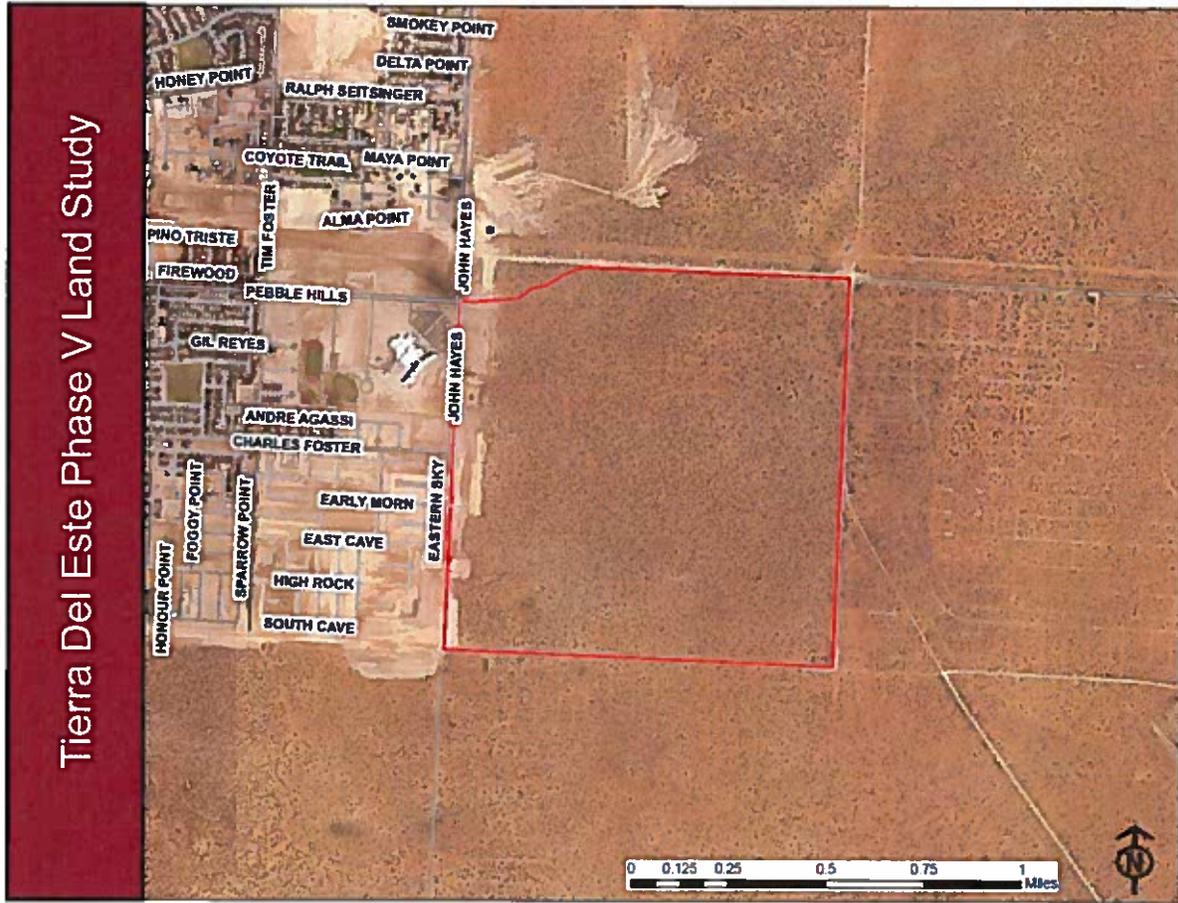
Socorro Independent School District

No comments received.

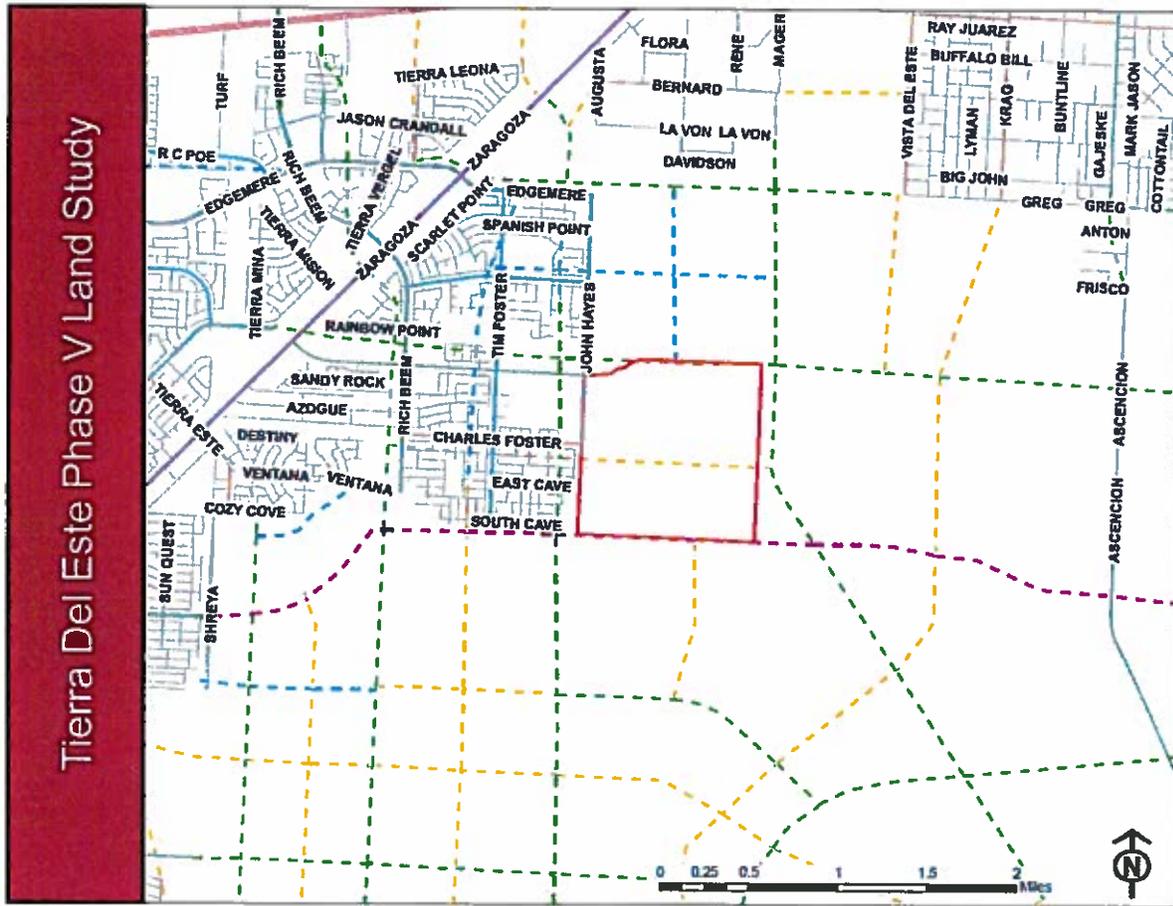
Attachments

- 1 – Location Map
- 2 – Aerial
- 3 – Major Thoroughfare Plan (existing)
- 4 – Proposed Development Plan
- 5 – Previously approved TDE III Phase V Land Study
- 6 – Previously approved TDE III Phase III Land Study
- 7 – Proposed cross-section of Tim Floyd
- 8 – Overall TDE Development Plan
- 9 – Development Agreement and Exhibits

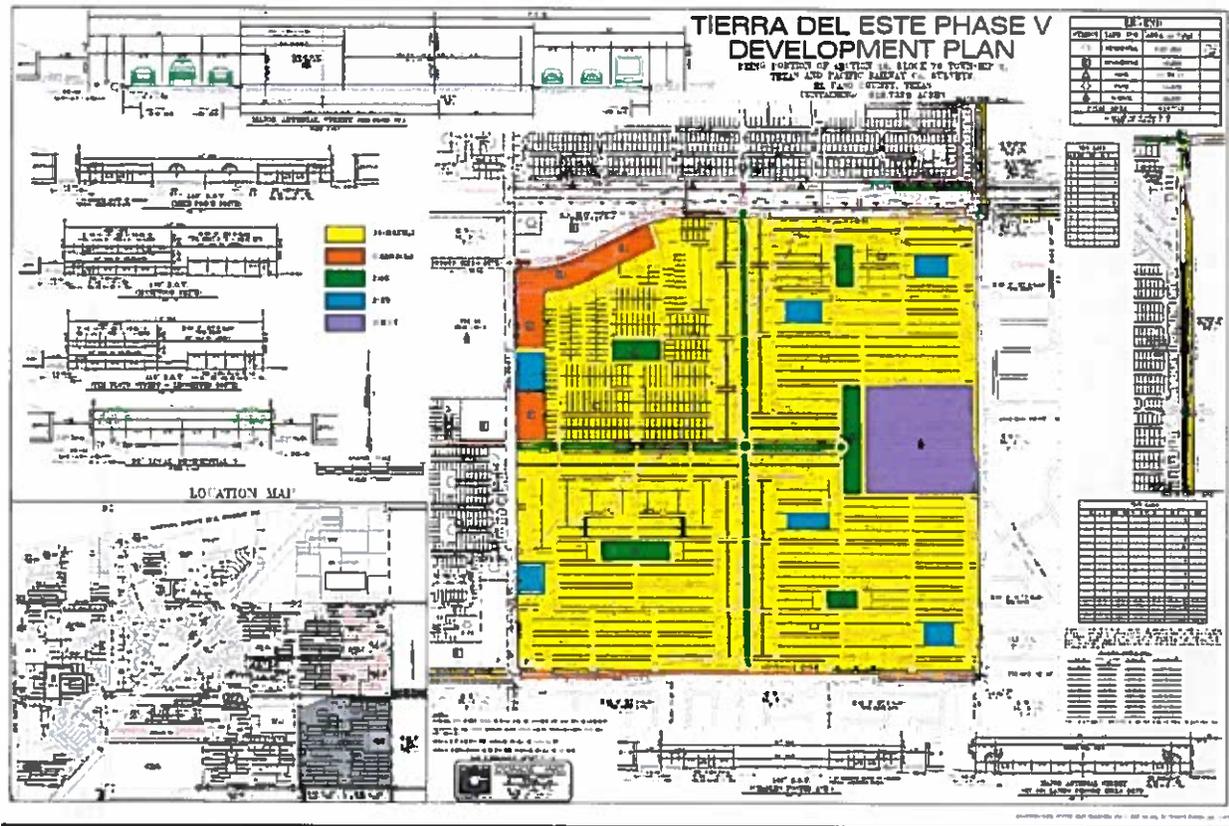
ATTACHMENT 2
(Aerial)



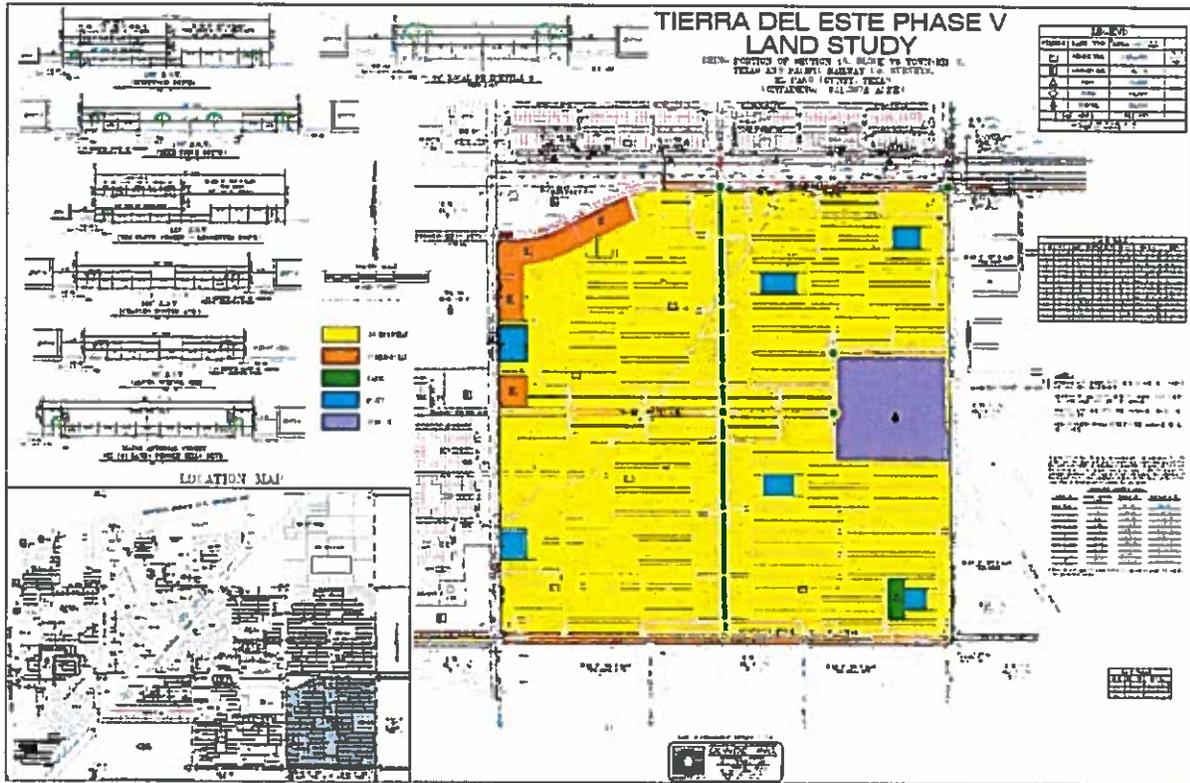
ATTACHMENT 3
(Major Thoroughfare Plan)



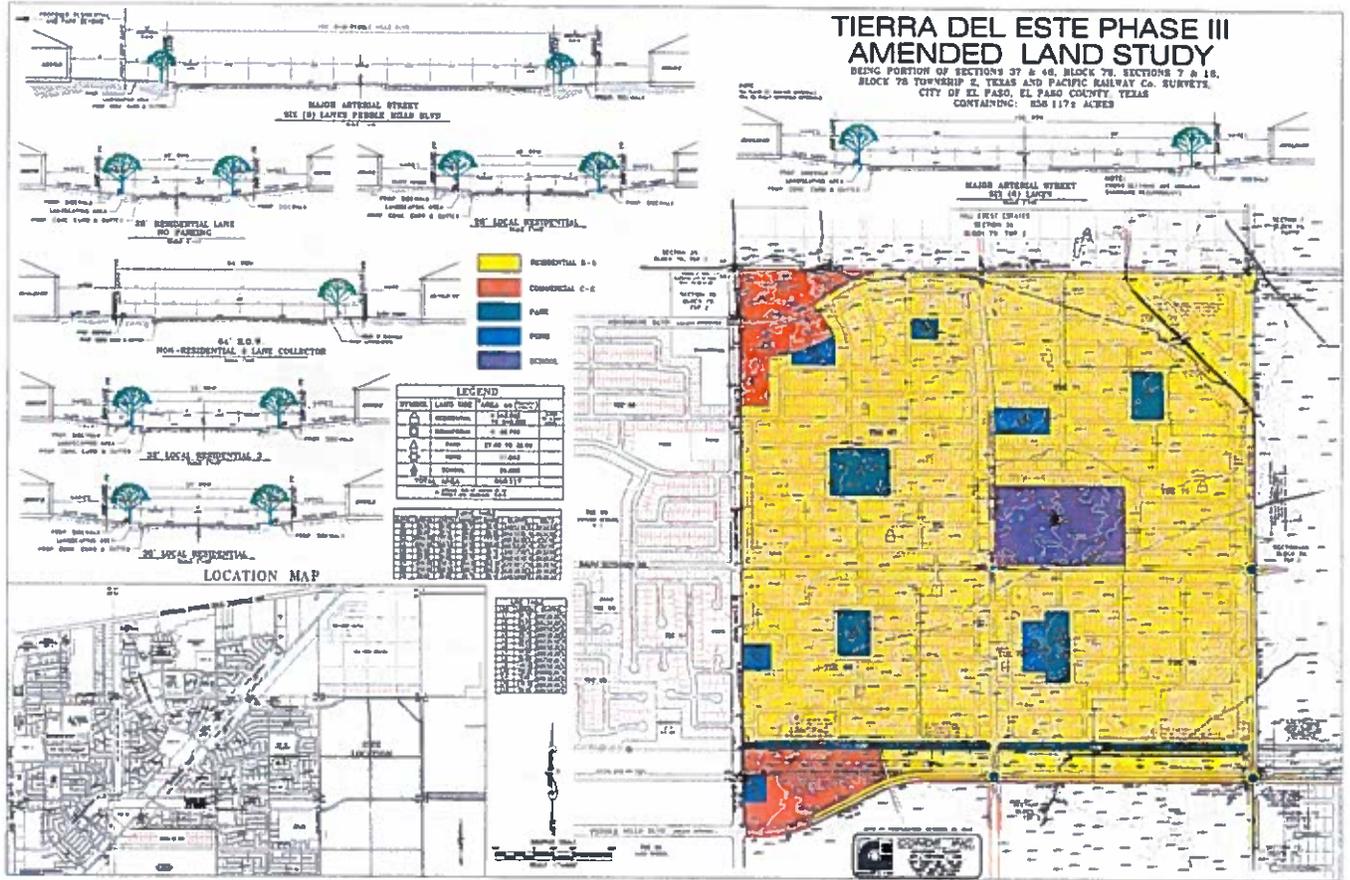
ATTACHMENT 4 (Proposed Development Plan)



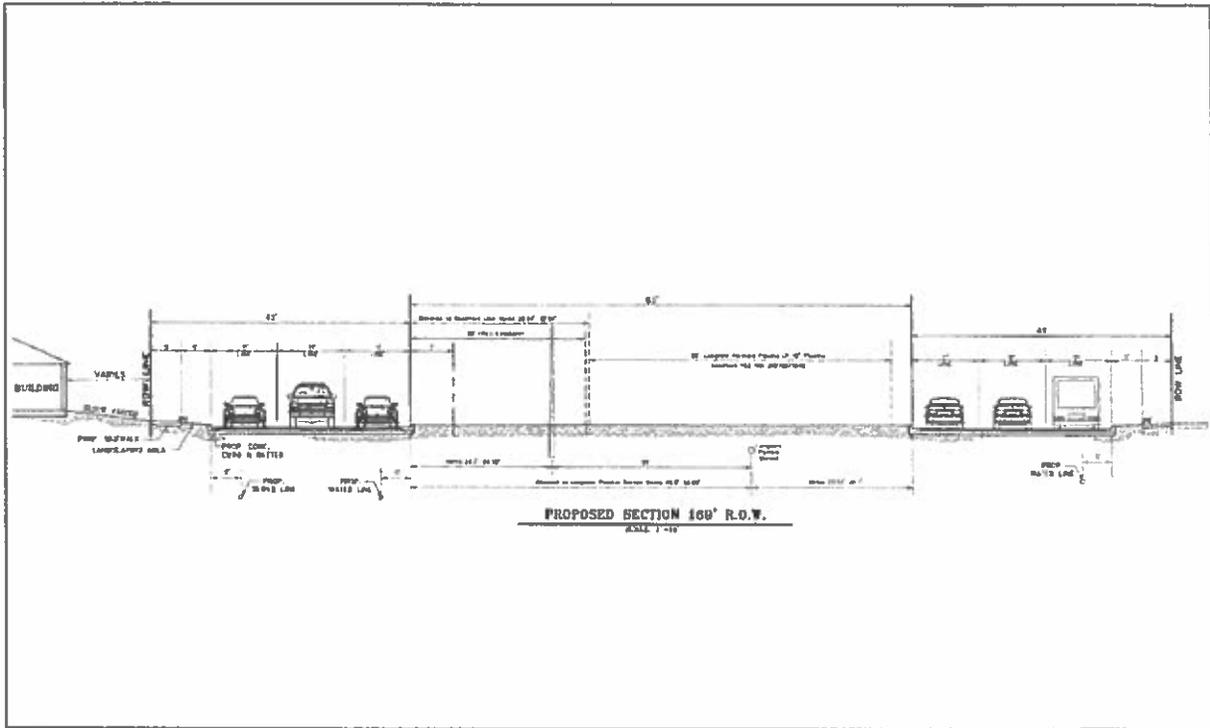
ATTACHMENT 5
(TDE III Phase V - approved by CPC March 21, 2013)



ATTACHMENT 6
(TDE III Phase III amended - approved by CPC March 7, 2013)



ATTACHMENT 7
(proposed Tim Floyd cross-section)



5-CENTRODATA-CENTER-15-17-2011-FLOYD-GAS-LINE-01-18-2016-Utility-UTILITIES-2015-2016-02-25-14-44-00-00-00

ATTACHMENT 9
DEVELOPMENT AGREEMENT
(revisions pending)

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

DEVELOPMENT AGREEMENT

THIS AGREEMENT made and entered into as of the effective date, by and among the **CITY OF EL PASO, TEXAS**, a municipal corporation, of the County of El Paso in the State of Texas (hereinafter referred to as "City"), acting through the City Council of the City, the **EL PASO WATER UTILITIES PUBLIC SERVICE BOARD** (hereinafter referred to as the "PSB"), and **RANCHOS REAL LAND HOLDINGS, LLC**, a Texas limited liability company (hereinafter referred to as the "Owner"), and _____ ("Donor 1"), _____ ("Donor 2"), and **RANCHOS REAL IV, LTD.**, a Texas limited partnership ("Ranchos IV"); and

WHEREAS, Owner is the owner of record of the Property and which Property is not within the corporate limits of any municipality but is contiguous to the corporate limits of the City; and,

WHEREAS, the development of this Property is in compliance with the City's Annexation Plan which states that all annexations will be voluntary and initiated by the property Owner; and

WHEREAS, the Owner desires to voluntarily annex the Property into the City limits on the terms and conditions of this Agreement; and

WHEREAS, Donor 1 has agreed to donate to the City the Donation 1 Land for future use as public facilities; and Donor 2 has agreed to donate to the City the Donation 2 Land for future use as public facilities; and

WHEREAS, Owner desires that the Property be annexed to the City in order to provide adequate and efficient improvements and facilities; and,

WHEREAS, the City and Owner have agreed that the Property will be developed constructed and improved by the Owner as required herein; and

WHEREAS, the PSB, after due and careful consideration, has concluded that the annexation of and supply of water and wastewater to the Property on the terms and conditions hereinafter set forth is in the best interest of the PSB; and the PSB's role is further set forth in this Agreement, and includes the provision, regulation, and connection of the water and wastewater system and rates inside and outside of the City, to protect and provide for the public health, safety, morals and general welfare; and,

WHEREAS, the City is authorized to make a written agreement with the Owner of land within the extraterritorial jurisdiction of the City for the purposes set forth in Subchapter G, Chapter 212, Local Government Code; and

WHEREAS, the parties desire to utilize the provisions of Subchapter G, Chapter 212, Local Government Code to agree on such matters as the method and timing of annexation, the regulations that are to be applicable to the Property before and after annexation, the provision of services to the Property, and related matters; and

WHEREAS, on January 31, 2006, the City, PSB, and Ranchos IV, entered into a development agreement pursuant to Subchapter G, Chapter 212, Local Government Code for the development of approximately 2,287.593 acres of property ("the January 2006 Agreement"); and

WHEREAS, pursuant to the terms of the January 2006 Agreement, Ranchos IV agreed to convey and dedicate, at no cost to the City a total of four (4) acres to be used by the City for public purposes, such as municipal offices, storage, police, fire and EMS protection, or other municipal operations; and

WHEREAS, Ranchos IV has agreed to convey and the City has agreed to accept the January 2006 Parcel in satisfaction of Ranchos IV's obligations under the January 2006 Agreement; and

WHEREAS, a public hearing regarding this Agreement was held before the City Plan Commission, and the Commission recommended approval of this Agreement; and,

WHEREAS, City, PSB and Owner find it to be to their mutual advantage to enter into this Agreement regarding the matters set forth herein; and,

WHEREAS, Owner, after full consideration, accepts the terms and conditions cited in this Agreement due to the advantages and benefits resulting from the annexation of the Property and the development of the Property in accordance with the terms of this Agreement; and,

WHEREAS, the City, after due and careful consideration, has concluded that the annexation of the Property and the Owner's development of the Property on the terms and conditions hereinafter set forth is in the best interest of the City to protect and provide for the public health, safety, morals and general welfare of the City.

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

SECTION ONE: Definitions Unless the context requires otherwise, the following terms and phrases used in this Agreement shall have the meanings set out below:

"Adjacent Parcel" means the real property described in Exhibit "I" attached hereto, owned by the Owner or an affiliate of Owner.

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

"Annexation Fee" means the annexation fee described in Title 20 of the Code.

"Application for Annexation" means the Application for Annexation in the form attached hereto as Exhibit "E".

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

"City Council" means the elected body that governs the City of El Paso under state law and charter.

"City Regulations" shall mean all duly enacted ordinances, rules, and regulations of the City, including the Code, the Subdivision Regulations and the PSB Regulations, in effect on the Vesting Date, but does not include the PSB Regulations relating to fees and rates, which shall be those in effect at the time that service is requested.

"Closing Terms and Procedures" shall mean the procedures set forth in Exhibit "G".

"Code" shall mean the El Paso City Code in effect on the Vesting Date.

"CPC" means the City Plan Commission for the City.

"Cure Period" shall have the meaning ascribed thereto in Section Twenty Three.

"Defaulting Party" shall have the meaning set forth in Section Twenty Three.

"Density" means the number of dwelling units that may be constructed per acre, calculated by dividing the site area by the minimum required lot area in the underlying zoning district.

"Developer" means a person or entity undertaking the division or improvement of land and other activities covered by this title, including the preparation of a plat showing the layout of the land and the public improvements involved therein. The term "developer" is intended to include the terms "subdivider" and, when submitting platting documents, "applicant."

"Development" means initiation of any activities related to the platting or subdivision of land or construction, reconstruction, conversion, or enlargement of buildings or structures, the construction of impervious surfaces (e.g., parking lots), the installation of utilities, roadways, drainage facilities or other infrastructure; or any disturbance of the surface or subsurface of the land in preparation for such construction activities, including without limitation removal of vegetation, grading,

paving, clearing, filling, or removal of soil, and any mining, dredging, excavation or drilling operations.

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

"Donation Deeds" shall mean the collective reference to the deeds in the forms attached hereto as Exhibits "D-1" and "D-2" to be executed by Donor 1 and Donor 2 respectively, conveying the Donation 1 Land and the Donation 2 Land to the City for public use.

"Donation 1 Land" shall mean the real property described in Exhibit "C-1".

"Donation 2 Land" shall mean the real property described in Exhibit "C-2".

"Effective Date" means fifteen days after all of the parties have signed this agreement.

"Force Majeure" shall have the meaning set forth in Section Twenty Four.

"Impact Fee" shall mean shall mean those fees specified in El Paso Water Utilities Public Service Board Rules and Regulations, Rule and Regulation Number 16, Administration of Water and Wastewater Impact Fees or as may be amended.

Comment [B1F1]: Provided by Lupe Cuellar by email on 11.13.2015

"January 2006 Parcel" means the real property described in Exhibit "J" which has been approved to be dedicated for public purposes in a Development Agreement dated January 31, 2006 and which is adjacent to the Donation 1 Land.

"Major Thoroughfare Plan" or "MTP" shall mean the Major Thoroughfare Plan in Plan El Paso, the comprehensive plan for the City of El Paso.

"New Regulations" shall mean City Regulations, or amendments to City Regulations, enacted after the Effective Date.

"Nominate" shall refer to the action of the Owner in submitting to the City a nomination.

"Nomination" means a written notice and application requesting annexation of the portion of the Property described in the notice.

"Non-Defaulting Party" shall have the meaning set forth in Section Twenty Four.

"Owner" means Ranchos Real Land Holdings, LLC and its successors and assigns of all or any part of the Property.

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

"Phasing Plan" shall mean the plan, included in the Development Plan, for the phased development of the Property.

"PID Act" means the Texas Local Government Code Chapter 372, Improvement Districts in Municipalities and Counties, Subchapter A, Public Improvement Districts, as amended.

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"PID Public Improvements" has the meaning set forth in

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"Property" shall mean the 618.732 acre tract of land described by metes and bounds in Exhibit "A".

Public Improvement District (PID) shall mean a district created pursuant to Chapter 372 of the Texas Local Government Code

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

"PSB Facilities" shall mean water and wastewater facilities described in to be constructed by and at the expense of the PSB or the Owner as determined by the Impact Fee Rules and Regulations No. 16, Administration of Water and Wastewater Impact Fees, or as may be amended.

Comment [BLF2]: Provided by Lupe Cuellar by email on 11.13.2015

~~"PSB Facilities" shall mean water and wastewater facilities described in Exhibit "F" to be constructed by and at the expense of the PSB, or the Owner as determined by the Impact Fee Rules and Regulations [LC is reviewing]~~

"PSB Regulations" shall mean the duly adopted rules and regulations of the PSB.

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

"Subdivision Regulations" shall mean the regulations in Title 19 of the El Paso City Code.

"Tax Increment Reinvestment Zone" (TIRZ) shall mean a zone created pursuant to Chapter 311 Tax Increment Financing Act of the Texas Tax Code.

"Tim Floyd Parcel" shall mean the real property described in Exhibit "H" to be included in Owner's Application for Annexation in order to provide the full modified right of way for Tim Floyd as shown on the Development Plan.

"Vesting Date" shall mean August 8, 2008.

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

SECTION TWO: Chronology for Development Process

The Parties agree to the following Procedures and Chronology of Events i

- (a) The parties agree that that this agreement will be implemented as follows:
1. After the Effective Date of this Agreement, but within thirty (30) days thereof, the Owner will submit an application for the annexation and rezoning of the Property.
 2. The City will process an amendment to the City's Comprehensive Plan in accordance with Section Five herein.
 3. After the Effective Date of this Agreement, but within thirty (30) days thereof, the Owner will submit an application to amend the City's Major Thoroughfare Plan in accordance with Section Six herein.
 4. The City will process the annexation, rezoning, Comprehensive Plan and Major Thoroughfare Plan applications for the Property concurrently and pursuant to State law and the City Codes and Regulations.
 5. Once the City has adopted ordinances for the annexation, rezoning, and amendment to the Master Thoroughfare Plan for the Property, Donors shall execute and deliver to the City the Donation Deeds, in accordance with Section Ten.
 6. The Owner will ~~submit petitions~~participate with the City necessary for the creation of a Public Improvement District and Tax Increment Reinvestment Zone.
- (b) Phasing of the Development: The Property shall be developed in phases in accordance with the Phasing Plan, and shall be developed in an orderly manner from adjacent existing development.

SECTION THREE: Development of the Property

The parties hereby agree that the Property will be developed according to the terms described herein. The City hereby approves the Development Plan (Exhibit "B") depicting current and proposed land uses and zoning and agrees to the following conditions for the development:

- (a) The Development Plan (Exhibit "B") attached hereto and incorporated into this agreement hereby constitutes an amendment to the Land Studies for Tierra del Este III Phases I, III, and V, approved by the City Plan Commission on February 10, 2011 and amended on March 7, 2013; and Tierra del Este III Phase V, previously approved by the City Plan Commission on March 21, 2013~~2~~.
- (b) City acknowledges that the entire Property was vested under Texas Local Government Code Section 245 on the Vesting

Date. The Parties agree that all permits or approvals by the City for the development of the Property shall be approved in accordance with the City Regulations as modified by the Development Plan and this Agreement. The Owner has express authority to develop the Property in accordance with this Agreement

- (c) Owner shall have the right to make modifications to the Development Plan, including the proposed arrangement of land uses, lot sizes, number of units, the locations of roadways and open spaces, as long as those modifications are substantially consistent with the Development Plan ["substantially consistent" means it does not alter any of the following by more than ten percent (10%): the arrangement of land use, acreage designated to land uses, density or open space areas; or relocate major circulation elements or alter the concept of development].
- (d) It is the intent of the City and Owner that the vesting of development rights in and to the Owner and its successors and assigns, to develop the Property in accordance with this Agreement shall include, but not be limited to, preliminary plats, final plats, minor plats and revisions to recorded plats, the character of land uses, street widths, lot sizes, number of units, zoning designations of all or any part of the Property, landscape requirements, street lighting requirements, park requirements and locations, traffic control devices and the general locations of roadways as shown in the Development Plan and in this Agreement, and that changes described in #3 above as "substantially consistent" thereto shall not affect or impair any of the Owner's vested rights hereunder.
- (e) Owner 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 required public improvements with respect to the Property, except as provided herein.
- (f) The Owner shall comply with the applicable City Regulations and all applicable Federal and State law, except as otherwise set forth herein. Failure to do so in any material manner shall constitute a material breach of this Agreement.

SECTION FOUR: New Regulations

Owner hereby agrees that the development of the Property shall be in accordance with the City Regulations, including the PSB Regulations, and subject to the application and payment of all necessary application and permit fees except as otherwise provided in this Agreement. Notwithstanding anything herein to the contrary, the Parties agree that Owner may elect to apply the New Regulations in effect on the Vesting Date, or all or related portions of any New Regulations, to the

development of the Property to the extent that Owner shall deem appropriate without forfeiting any rights under this Agreement.

SECTION FIVE: Comprehensive Plan Amendment

The property is currently designated in the City's Comprehensive Plan, "Plan El Paso" as "remote." The City desires to change the designation of the Property to "potential" in order to be eligible for annexation under the City's Annexation Policy. The City agrees to process this amendment concurrently with the annexation and rezoning of the Property. Failure of the City to amend the Comprehensive Plan will not affect the Owner's rights under this agreement.

SECTION SIX: MTP

The City's Major Thoroughfare Plan (MTP) currently designates an east-west road within the development, shown as "Charles Foster" on the Development Plan, as a minor arterial. Within thirty (30) days following approval of this Agreement, the Owner will submit an application to amend the MTP to reclassify "Charles Foster" from a Minor Arterial roadway to a Collector roadway, and to add "Mike Price" (north-south road) to the MTP as a Collector roadway. A Traffic Impact Analysis (TIA) for this property was submitted and reviewed by the City prior to approval of the TDE III Phase V Land Study, and a new TIA is not required. The MTP amendment shall be presented to City Council for action prior to approval of the annexation. The Development Plan shows the cross-sections for these two rights-of-way, which include fully improved median parks with twelve foot (12') wide hike and bike trails. These median parks shall be built by the Owner/Developer and the Owner/Developer shall receive full park credits under Title 19 for the improved median parks. Residential lots fronting on Charles Foster and Mike Price shall have vehicular access only from alleys at the rear of the lots as depicted on the Development Plan.

SECTION SEVEN: Modification to Development Plan

Due to the fact that the Property comprises a significant land area and its development will occur in phases over a number of years, modifications to the Development Plan may become necessary due to changes in market conditions or other factors. In order to provide flexibility with respect to certain details of the development of the Project, Owner may seek changes in the location and configuration of the proposed uses shown on the Development Plan and amendments may be submitted in accordance with the Code requirements for a land study.

SECTION EIGHT: Annexation

The Owner shall file an Application for Annexation of the Property and the Tim Floyd Parcel with the City, within thirty (30) days after the Effective Date of this Agreement. Within one hundred eighty (180) days after receipt of the Application for Annexation, the City shall process the Application for Annexation in accordance with applicable state law provisions, and the provisions of the Code, including public notice and hearings with no condition or obligation on Owner except as set forth herein. If the City Council elects not to annex all or any part of the Property

and the Tim Floyd parcel, such action shall not constitute a breach of this Agreement, but such action shall not affect or impair any of the Owner's vested rights hereunder or relieve the City of any of its obligations hereunder and Owner shall be entitled to apply for plats and other development applications **and related permits**, and obtain approval thereof by the City in accordance with the terms of this Agreement. If the City Council adopts an annexation ordinance pursuant to this Agreement, City will adopt a service plan for the provision of municipal services required by Texas Local Government Code §43.056 in the form attached hereto as Exhibit "K" and made a part hereof.

Comment [BLF3]: Doug and John to follow up with County.

SECTION NINE: Zoning

- (a) On and after the Effective Date, the Property may be developed in a manner consistent with the zoning classifications as shown in the Development Plan. Upon the annexation of a portion of the Property, such portion shall be automatically classified as R-F (Ranch and Farm) for zoning purposes.
- (b) Owner agrees that contemporaneous with the filing of the Application for Annexation, Owner will file applications for rezoning from the default R-F (Ranch-Farm) to the zoning classifications **as shown inconsistent with** the Development Plan. In the event that the City does not approve the applications to rezone the **Property or** rezones the Property in a manner other than that shown on the Development Plan, such action shall not constitute a breach or default under this Agreement nor affect or impair any of the Owner's vested rights hereunder and Owner may develop the Property in accordance with the zoning classifications shown on the Development Plan, as same may be amended. The public hearing by the CPC on the zoning classifications for the Property shall be held jointly with the public hearing required for annexation. In addition, Owner may petition the City, at any time, for rezoning of the Property (or portion thereof) as provided in the City Regulations. Any zoning change shall not affect or impair any of Owner's vested rights hereunder. The City's election not to rezone shall not, however, relieve the City of any of its obligations hereunder.

SECTION TEN: Donation of Land For Public Use

- (a) **Donation 1 Land:** Owner shall cause Donor 1 to donate to the City the Donation 1 Land, which is located within the Tierra del Este III Phase II Land Study (**also known as the East Zaragoza Land Study**).
- (b) The City shall engage a professional design firm, **in an amount not to exceed \$25,000**, approved by both Owner and City to prepare at **the City's** expense concept plans for the coordinated design, planning and access related to future improvements to be located on the Donation 1 Land, the January 2006 Parcel, and the Adjacent Parcel. Notwithstanding the preparation of the conceptual plans, neither the Owner nor the City shall be required to develop their respective properties in accordance with the concept plans.

(c) Donation 2 Land: Owner shall cause Donor 2 to donate to the City the Donation 2 Land.

(d) The Donation Deeds shall be executed and delivered in accordance with the Closing Procedures within thirty (30) days after the last of the following occurs: adoption of the ordinance annexing the property, adoption of the ordinance rezoning the land, or adoption of the ordinance amending the Master Thoroughfare Plan. -

(e) Donation of January 2006 Parcel: Owner shall cause Donor X to donate to the City the donation of this parcel.

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SECTION ELEVEN: Warranty of Public Improvements

Owner shall dedicate, construct and maintain for a one-year period after acceptance by the City the public improvements necessary for the right-of-way for extension of Charles Foster Ave. and Mike Price Drive, in accordance with the approved Development Plan. Owner shall dedicate, construct and maintain for a one-year period after acceptance by the City all public improvements in accordance with the Development Plan.

SECTION TWELVE: Creation of a Public Improvement District (PID)

(a) Pursuant to Texas Local Government Code Section 372, ~~and within 90 days of approval of this Agreement~~, the Owner shall cooperate with the City to create ~~a one or more~~ Public Improvement Districts ("PID" or "PIDs") for the property described by Exhibit "L" ~~with a maximum assessment of \$200 annually per year. The City contemplates issuing certificates of obligation pursuant to Chapter 271 of the Texas Local Government Code to fund its contribution obligations (the "Construction Certificates"). Revenue from assessments levied on properties in the PID will be pledged to secure the repayment of the Construction Certificates; therefore, all Public Improvements to be funded by the City must be located within the PID and must consist of authorized improvements under Section 372.003 of the PID Act as set forth in the City's ordinance levying the assessments within the PID (the "Assessment Ordinance"). The Public Improvements to be funded by the City are referred to in this Agreement as the "PID Public Improvements."~~The City will work with the Owner in establishing ~~these districts on the following terms: (a) funds shall be used to pay (or reimburse) the construction, maintenance, and operation costs of parks and other public facilities within the Public Improvement District; (b) the PID assessment shall not exceed Two Hundred Dollars (\$200.00) per lot per year; (c) once each is plat each recorded, assessment for lots within that recorded plat shall commence; assessments will commence with respect to each Phase of the development of the Property one (1) year after the time the first residential lot is platted and sold to a homeowner within such Phase. City agrees that it shall at its sole cost and expense, prepare the~~

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Comment [BLF4]: Run by Terri

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Comment [BLF5]: Run by Financial??

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~~petition for creation of the PIDs and all required documents and obtain all required approvals, at no cost or expense to the Owner and that Owner shall have no liability for the creation or operation of the PID. Notwithstanding the foregoing agreement to cooperate, Owner (b shall have the right to plat and sell lots prior to the creation of the PID:~~

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Comment [BLF6]: Strike??

Comment [KMN7]: yes

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~~(b) PID Related Obligations. Owner shall file a Declaration of Covenants, Conditions and Restrictions in the real property records of El Paso County encumbering all property within the PID and obligating all owners of privately-owned and taxable property located within the PID (i.e., the persons assessed pursuant to the Assessment Ordinance) to pay all assessments when due and payable, as provided in the Public Improvement Service and Assessment Plan authorized by the Assessment Ordinance. Further, Owner and all Owner related entities owning property within the PID shall authorize and execute a consent, in form and substance acceptable to the City, consenting to the boundaries of the PID, its formation and the levy of assessments pursuant to the Assessment Ordinance, as well as any additional consents reasonably required by the City to effectuate or evidence the purpose of the PID and the Assessment Ordinance.~~

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SECTION THIRTEEN: Creation of a Tax Increment Reinvestment Zone (TIRZ)

Pursuant to Texas Tax Code Section 311, ~~and within 90 days of approval of this Agreement,~~ the Owner shall submit a petition to the City to create a Tax Increment Reinvestment Zone ("TIRZ") on the property described by Exhibit "LM". The TIRZ revenue captured on an annual basis shall not exceed thirty three percent (33%) of the increment in any year. The City will work with the Owner in establishing this district. City agrees that it shall at its sole cost and expense, prepare the petition for creation of the TIRZ and all required documents and obtain all required approvals at no cost or expense to the Owner and that Owner shall have no liability for the creation or operation of the TIRZ. ~~Notwithstanding the foregoing agreement to cooperate, Owner shall have the right to plat and sell lots prior to the creation of the TIRZ.~~

Comment [BLF8]: Strike??

SECTION FOURTEEN: City Fees

City Fees. The City agrees to waive the Owner's obligation to pay any and all permit fees for the following development applications: city annexation application fees and the required annexation fee per dwelling unit, rezoning, subdivision plats, Chapter 18.44 grading, and permit fees for the review of the required subdivision improvement plans. All other fees not specifically waived in the preceding sentence must be paid in order to develop the Property.

~~Increased Costs. In the event additional costs arise with respect to the items set forth below, the Owner agrees that it will be solely responsible for all increased costs and the City's is under no obligation to waive fees above the amounts listed below.~~

Comment [BLF9]: Deletion signed off by Kimberly Forsyth and Mathew McElroy at 11.12.2015 meeting.

The City agrees to waive the Owner's obligation to pay the following fees:

- (a) All ~~A~~annexation ~~F~~fees.
- (b) All ~~S~~ubdivision ~~and zoning application~~ ~~F~~fees.
- (c) All ~~Proportionality fee~~traffic mitigation fees for TDE III, Phase III.
- (d) All ~~Proportionality-traffic mitigation~~ fees for TDE III, Phase VV.
- (e) All Chapter 18.44 grading and subdivision improvement plan review fees.
- (f) All ~~A~~application fees for amendments to Plan El Paso and the City's Major Thoroughfare Plan.
- (g) All El Paso Water Utility plan checking and inspection fees up to \$180,625.00.

Comment [BLF10]: Provided by Lupe Cuellar by email on 11.13.2015

SECTION FIFTEEN: City Payments.

- (a) The City shall pay to Owner the sum of ~~\$185,76,4~~100.00 contemporaneously with the delivery of the Donation Deeds in accordance with the Closing Procedures.
- ~~(b) Within 90 days of receipt of an invoice, The City will reimburse the Owner for incur the costs of obtaining security for subdivision improvements and maintenance of improvements bonds for plats within the annexed area.~~

Comment [KMN11]: Kim will confirm amount

SECTION SIXTEEN: Exceptions to the Code's Public Improvement Requirements

The City agrees to the following exceptions to the Code's public improvement requirements within the area proposed for annexation (Exhibit "A"):

- a. Arterial street lights on Montwood Drive may be on wooden poles placed at 300' intervals.
- b. Arterial street lights on Tim Floyd may be on wooden poles placed at 300' intervals within Tierra del Este III Phase V, and at staggered 150' intervals within Tierra del Este III Phase III.
- c. A modified cross-section for Tim Floyd, a major arterial on the City's MTP, north of Pebble Hills Blvd. will include easements for electric transmission lines and a petroleum pipeline within an 83' median. Landscaping within this median shall be comprised of rock and chat. Irrigation and landscaping other than rock and/or chat are not required.
- d. Plats may be recorded, lots sold and building permits issued within the annexed area after completion of curb and gutter, water, sewer and drainage facilities serving those lots and approval by PSB. Under no

circumstance will construction be allowed beyond the foundation stage until such time as fully charged fire hydrants and a deliverable surface acceptable to the fire marshal have been provided to such site. However, no Certificates of Occupancy shall be issued prior to completion of subdivision improvements.

SECTION SEVENTEEN: Registration of Nonconforming Uses or Structures

The Owner within one hundred and twenty (120) days after the date the City adopts an annexation ordinance annexing the Property will apply to register any legal nonconforming use or structure per the requirements of the City Code.

SECTION EIGHTEEN: Intentionally Omitted.

SECTION NINETEEN: Notice

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

- (1) **City:**
City of El Paso
Attn: City Manager
- Mailing Address:**
P.O. Box 1890
El Paso, Texas 79950-1890
- Physical Address:**
300 N. Campbell, 2nd Floor
El Paso, Texas, 79901
- City Attorney's Office**
Attn: City Attorney
- Mailing Address**
P.O. Box 1890
El Paso, Texas 79950-1890
- Physical Address:**
300 N. Campbell, 2nd Floor

El Paso, Texas 79901

- (2) **El Paso Water Utilities Public Service Board:**
El Paso Water Utilities Department
Attn: President/CEO

Mailing Address:
1154 Hawkins Boulevard
El Paso, Texas 79925

Physical Address:
Same as above

- (3) **Owner:**

Attn:

Mailing Address:
El Paso, Texas 79928

Physical Address:
Same as above

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

SECTION TWENTY: Term

This Agreement shall have a term of fifteen (15) years. The Parties may, by mutual agreement, as evidenced by a writing executed by the City Manager of the City, the President/CEO of the El Paso Water Utilities Department, and a representative of the Owner, extend and/or renew the term, but only to the extent permitted by Subchapter G, Chapter 212, Local Government Code; provided, however, nothing contained in this section shall affect the Owner's obligation to submit nominations for annexation of all phases of the Property on or before the fourth (4th) anniversary of the Effective Date. The El Paso Water Utilities has the authority to amend this agreement without further approval from the Public Service Board, provided that the amendment does not increase the El Paso Water Utilities' Financial contribution or reduce any fees owed to the El Paso Water Utilities.

Comment [BLF12]: Provided by Lupe Cuellar by email on 11.13.2015

SECTION TWENTY ONE: Water & Sewer.

(a) Owner agrees to construct at its expense the mains and pipes located inside the Property that are necessary to provide retail water and wastewater utility services to the Property. The mains and pipes shall be designed and constructed in accordance with PSB Regulations. Owner is responsible for paying the impact fees specified in the Rules and Regulations No. 16, Administration of Water and Wastewater Impact Fees, as may be amended. The PSB is responsible for constructing the PSB facilities specified in the Impact Fee Capital Improvement Plan in accordance with the Rules and Regulations No. 16. The Owner shall not be obligated to construct or otherwise bear the costs of PSB Facilities, including water supply, water treatment facilities, wells, water storage tanks, desalinization facilities, or wastewater treatment facilities, in excess of the Impact Fee. To the extent such facilities are oversized for the purpose of serving developments outside the Property, the cost of the oversized portion of the facilities shall be refunded to the Owner in accordance with PSB Rules and Regulations. Notwithstanding the foregoing, the Owner shall not be obligated to construct or otherwise bear the costs of PSB Facilities, including water supply, water treatment facilities, wells, water storage tanks, desalinization facilities, or wastewater treatment facilities, in excess of the Impact Fee provided for herein.

(b) The PSB shall acquire the right of way and construct at its expense the mains, pipes, and other facilities outside the Property that are necessary to provide water and wastewater services to the Property.

~~(c) For greater certainty, Exhibit "F" describes the PSB Facilities to be constructed by the PSB at the PSB's expense which PSB represents are included in its as reflected in the Impact Fee Capital Improvement Plan.~~

~~(d)~~(c) The PSB shall construct the PSB Facilities and the cost to the Owner and PSB for such construction shall be in accordance with the Impact Fee Rules and Regulations. Such Facilities shall be completed as development warrants.

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

Comment [BLF13]: Lupe to title

SECTION TWENTY THREE: *Default and Remedies*

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

- (a) **Default.** In the event a Party (the "Defaulting Party") commits a breach of this Agreement, the other Party (the "Non-Defaulting Party"), shall, prior to bringing suit or pursuing any other remedy, provide written notice of such breach to the Defaulting Party. Following receipt of such notice, the Defaulting Party shall have thirty (30) days within which to cure the breach.
- (b) **Remedies.** In the event a default is not cured within the Cure Period, the Non-Defaulting Party shall have all rights and remedies which may be available under law or equity, including, without limitation, the right to specifically enforce the terms or provisions hereof and/or the right to institute an action for damages, declaratory judgment, injunctive relief or mandamus.

SECTION TWENTY FOUR: Miscellaneous

- (a) **Successors and Assigns:** This Agreement is a restriction, condition and covenant running with the Property and a charge and servitude thereon, and shall be binding upon and inure to the benefit of the Parties hereto, and their heirs, successors and assigns of all or any part of the Property. Any future conveyance of the Property shall contain the restrictions, conditions and covenants and shall embody this Agreement by express reference; provided, however, this Agreement shall not be binding on, and shall not create any encumbrance to title as to, any end-buyer of a fully developed and improved lot within the Property, except for land use regulations that may apply to a specific lot.
- (b) **Force Majeure:** In the event any Party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, it is agreed that on such Party's giving of notice and the full particulars of such force majeure in writing to the other Party as soon as possible after the occurrence of the cause relied upon, then the obligations of the Party giving such notice, to the extent it is affected by force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability but for no longer period.

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

whether similar to those enumerated or otherwise, and not within the reasonable control of the Party claiming such inability.(c)

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

- (d) **Entire Agreement:** This Agreement contains the entire agreement of the Parties, and there are no other agreements or promises, oral or written, between the Parties regarding the subject matter of this Agreement. This Agreement may be amended only by written agreement signed by the Parties. By approving the execution of this Agreement, the City Council of the City, and the Public Utilities Board of the El Paso Water Utilities, delegate to the City Manager of the City, and to the President/CEO of the El Paso Water Utilities, the authority, without any further action being required of the City Council or of the Public Utilities Board, to execute such amendments of or extensions to this Agreement as they may consider advisable, and consistent with the provisions of law.
- (e) **Governing Law, Jurisdiction & Venue:** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, as it applies to contracts performed within the State of Texas and without regard to any choice of law rules or principles to the contrary. The Parties acknowledge that this Agreement is performable in El Paso County, Texas and hereby submit to the jurisdiction of the state or federal courts situated in that County, and hereby agree that any such Court shall be a proper forum for the determination of any dispute arising hereunder.
- (f) **No Third Party Beneficiary:** This Agreement is not intended, nor will it be construed, to create any third-party beneficiary rights in any person or entity who is not a Party, unless expressly otherwise provided.
- (g) **Waiver:** Any failure by a Party hereto to insist upon strict performance by the other Party of any material provision of this Agreement shall not be deemed a waiver thereof or of any other

provision hereof, and such Party shall have the right at any time thereafter to insist upon strict performance of any and all of the provisions of this Agreement.

- (h) **Reservation of Rights:** To the extent not inconsistent with this Agreement, each Party reserves all rights, privileges, and immunities under applicable laws.
- (i) **Further Documents:** Each Party agrees that at any time after execution of this Agreement, it will, upon request of the other Party, execute and deliver such further documents and do such further acts and things as the other Party may reasonably request in order to effectuate the terms of this Agreement.
- (j) **Incorporation of Exhibits and Other Documents by Reference:** All exhibits and other documents attached to or referred to in this Agreement are incorporated herein by reference for the purposes set forth in this Agreement.
- (k) **Effect of State and Federal Laws:** Notwithstanding any other provisions of this Agreement, each Party shall, in carrying out the terms of this Agreement, comply with all applicable State and Federal laws.
- (l) **Favored Nations:** In the event that City enters into any contracts or adopts ordinances or regulations pertaining to or related to the agreements contained herein which are more favorable than the provisions contained herein, the Parties agree to amend this Agreement effective as to the effective date of any such contract, ordinance or regulation to incorporate the more-favorable provision herein.
- (m) **Conflict with City Regulations:** In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the City Regulations, the terms of this Agreement shall control.
- (n) **Headings:** The headings as to contents of particular articles or sections herein are inserted only for convenience, and they are in no way to be construed as a limitation on the scope of the particular articles or sections to which they refer.
- (o) **Ambiguities:** In the event of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any Party on the basis that such Party did or did not author the same.
- (p) **Counterparts:** It is understood and agreed that this Agreement may be executed in any number of counterparts, each which shall be

deemed an original for all purposes.

- (q) **Authority for Execution:** Each Party hereby certifies, represents, and warrants that the execution of this Agreement has been duly authorized.
- (r) **Moratorium:** During the Term of this Agreement, City agrees to not adopt a moratorium upon the Property that would prohibit the Owner from making applications to City related to the development of the Property for the uses generally described in the Development Plan.
- (s) **List of Exhibits:** The following exhibits are attached hereto and made a part hereof:

- Exhibit "A" – Legal Description of Property
- Exhibit "B" – Development Plan
- Exhibit "C-1" – Donation 1 Land Description
- Exhibit "C-2" – Donation 2 Land Description
- Exhibit "D-1" – Donor 1 Donation Deed
- Exhibit "D-2" – Donor 2 Donation Deed
- Exhibit "E" – Application for Annexation
- Exhibit "F" – ~~Facilities to be Constructed by PSB~~ **Intentionally Omitted**
- Exhibit "G" – Closing Terms and Procedures
- Exhibit "H" – Tim Floyd Parcel
- Exhibit "I" – Adjacent Parcel
- Exhibit "J" – January 2006 Parcel
- Exhibit "J-1" – January 2006 Parcel Dedication Deed
- Exhibit "K" – Municipal Services Plan
- Exhibit "L" – PID Property
- Exhibit "M" – ~~TIRZ~~ **Property**

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

ACCEPTANCE

The above Agreement, with all conditions thereof, is hereby accepted this ____ day of _____, 2015.

THE CITY OF EL PASO

Tomás González

City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Karla M. Nieman
Assistant City Attorney

ACKNOWLEDGEMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2015, by Tomás González as City Manager of the City of El Paso, Texas.

Notary Public, State of Texas

DRAFT

ACCEPTANCE

The above Agreement, with all conditions thereof, is hereby accepted this _____ day of _____, 2015.

**EL PASO WATER UTILITIES
PUBLIC SERVICE BOARD**

John Balliew

President/CEO

APPROVED AS TO FORM:

General Counsel

ACKNOWLEDGEMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2015, as President/CEO of the El Paso Water Utilities Public Service Board.

Notary Public, State of Texas

DRAFT

ACCEPTANCE

The above Agreement, with all conditions thereof, is hereby accepted this _____ day of _____, 2015.

By: _____
Its Managing Member

By: _____
Its General Partner

By: _____
Name: _____
Title: President

ACKNOWLEDGEMENT

STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____ 2015,
by _____

Notary Public, State of Texas

ACCEPTANCE

The above Agreement, with all conditions thereof, is hereby accepted this _____ day of _____, 2015.

ACKNOWLEDGEMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____ 2015, by.

Notary Public, State of Texas

DRAFT

ACCEPTANCE

The above Agreement, with all conditions thereof, is hereby accepted this _____ day of _____, 2015.

By: _____
Name: _____
Title: _____

ACKNOWLEDGEMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____ 2015, by _____ of, INC., a Texas Corporation, on behalf of said corporation.

Notary Public, State of Texas



EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

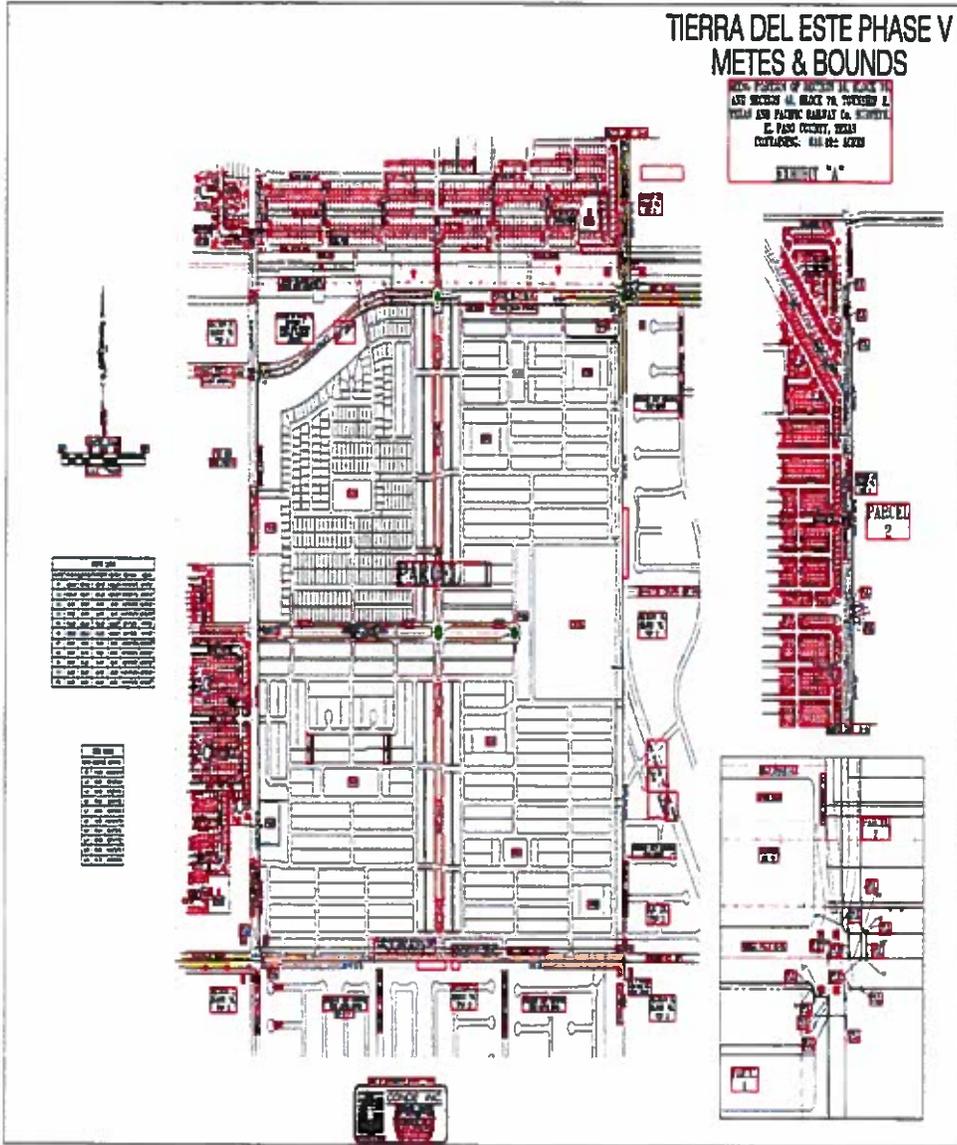


EXHIBIT "B"

DEVELOPMENT PLAN

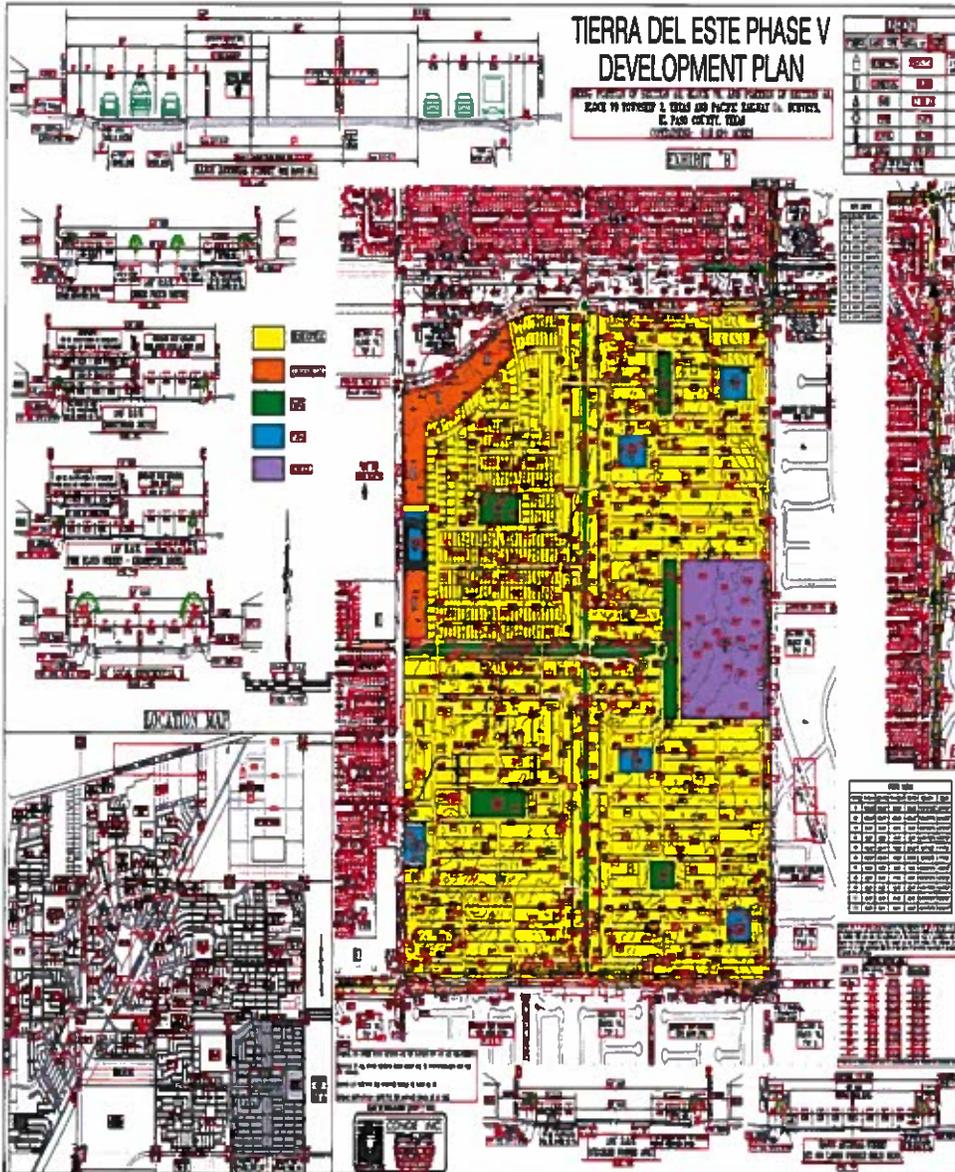


EXHIBIT "C-2"

Donation 2 Land Description

Property Description: Portion of Block 14, MILLS MAP ADDITION, an addition to the City of El Paso, El Paso County, Texas.

METES AND BOUNDS

The parcel of land herein described is a portion of Block 14, MILLS MAP ADDITION, an addition to the City of El Paso, El Paso County, Texas, filed for record on May 11, 1911, County Records of El Paso County, Texas, particularly known as 100, 104-106 San Antonio Avenue and 206 South El Paso Street and being more particularly described by metes and bound as follows:

Commencing at a City Monument found in the center line of Overland Avenue; THENCE South 74° 26' 15" West, along the center line of Overland Avenue, a distance of 346.00 feet to the centerline intersection of Overland Avenue and El Paso Street, at 10.00 feet passing the center line intersection of Overland Avenue and Oregon Street; THENCE North 15° 33' 45" West, along the center line of El Paso Street, a distance of 295.00 feet to a point; THENCE North 74° 26' 15" East, a distance of 35.00 feet to a point on the easterly right-of-way line of El Paso Street to the point for the northwest corner of said Block 14 to the TRUE POINT OF BEGINNING of this description;

THENCE, North 74° 26' 15" East, with said right-of-way line of San Antonio Avenue, a distance of 120.00 feet to a point on the westerly line of a 20 foot wide alley running north and south through said Block 14;

THENCE, South 15° 33' 45" East, along the westerly line of said alley, a distance of 98.33 feet to a point for a corner;

THENCE, South 74° 26' 15" West, abandoning said alley boundary line and into Block 14, a distance of 120.00 feet to a point for a corner lying on the easterly right-of-way line of South El Paso Street;

THENCE, North 15° 33' 45" West, with said right-of-way line, a distance of 98.33 feet back to the TRUE POINT OF BEGINNING of this description.

Said parcel of land contains 0.2709 acres (11,800 sq. ft.) of land more or less.



EXHIBIT "D-1"

Donor 1 Donation Deed

DRAFT

EXHIBIT "D-2"

Donor 2 Donation Deed

DRAFT



EXHIBIT "E"

Application for Annexation

DRAFT

EXHIBIT "F"

Facilities to be Constructed by PSB Intentionally Omitted

DRAFT

EXHIBIT "G"

Closing Terms and Procedures

Pursuant to the Development Agreement, the Owner will cause Donors 1 and 2 to execute and deliver to the City the Donation Deeds for the Donation 1 Parcel and Donation 2 Parcel and will cause Ranchos IV to execute and deliver the Dedication Deed to the City (collectively the "Parcels") on the terms contained herein. All initial capitalized terms used in this document are intended to have the same meaning as such capitalized terms used in the Development Agreement.

In order to effectuate the transfers, the Owner and City agree to the following:

1. **Closing Date.** The "Closing" or "Closing Date" will be within thirty (30) days after the last of the following to occur: adoption of the ordinance annexing the Property ("Annexation Approval Date"), adoption of the ordinance rezoning the Property and adoption of the ordinance amending the Master Thoroughfare Plan. The Closing of this transaction shall take place at a time to be appointed by the parties at the offices of Lone Star Title Company, 6701 N. Mesa, El Paso, Texas 79912, Attn: John Martin (the "Title Company") on the Closing Date, or such date as may be agreed by the parties. If the Closing Date falls on a Saturday, Sunday or legal holiday, the Closing shall take place on the next Business Day thereafter.

2. **Title Commitments.**

A. Owner has heretofore delivered to City a Commitment for Title Insurance T-7 issued by Title Company as agent for Alliant National Title Insurance effective August 24, 2015, together with copies of all instruments that create or evidence title exceptions contained therein, GF No. 15102938, pertaining to Donation 1 Parcel and the January 2006 Parcel. City acknowledges and agrees that the exceptions contained in Schedule B, Paragraph 10, are and shall be deemed Permitted Exceptions (the "Donation 1/January 2006 Permitted Exceptions").

B. City acknowledges that Donor 2 is not the current Owner of the Donation 2 Parcel, but will acquire said parcel on or before the Closing Date. City acknowledges receipt of a Commitment for Title Insurance T-7 issued by Title Company as agent for Commonwealth Land Title Insurance Company effective July 30, 2015, together with copies of all instruments that create or evidence the title exceptions contained therein, GF No. 15102710, pertaining to the Donation 2 Parcel. City acknowledges and agrees that the exceptions contained in Schedule B, Paragraph 10, are and shall be deemed Permitted Exceptions (the "Donation 2 Permitted Exceptions").

C. Following the Annexation Approval Date, the City may obtain updated title commitments for the Parcels from the Title Company, copies of which will be provided to the Owner (collectively the "Updated Commitments"). In the event that the Updated Commitments contain any exception to title not reflected in the title commitments described in paragraphs A and B above and not arising from the acts or omissions of the City, and if such exception is unacceptable to the City, City shall provide written notice to Owner and Owner shall, within ninety (90) days following receipt of City's Notice Letter (the "Cure Period"), at its option, attempt to cure such objectionable item within the Cure Period by causing the exception to be released of record, causing Title Company to

provide express insurance covering the exception or Owner will bond around such exception in such manner as shall enable the Title Company to delete the exception.

In the event that the Cure Period extends beyond the scheduled Closing Date, the Closing Date shall be extended until the exception has been removed or insured over, or expiration of the Cure Period, whichever occurs first.

3. Title Policies. At the Closing, or as soon thereafter as the Title Company can issue the same, Owner shall cause the Title Company, at City's sole cost and expense, to issue standard T-1 form Owner's Policy of Title Insurance (the "Title Policies"). The Title Policies shall insure that City has good and indefeasible fee simple title to the respective Parcels, subject only to the Permitted Exceptions. The Title Policies shall contain no exceptions other than Permitted Exceptions and shall provide that:

- (a) The survey exception may be amended, at City's expense, to except only "shortages in area";
- (b) The exception for rights of parties in possession shall be deleted;
- (c) The tax exception shall be limited to taxes for the year of Closing and subsequent years not yet due and payable; and
- (d) Unless waived by City, all exceptions, conditions, or requirements described in Schedule C of the Title Commitments shall be released and satisfied prior to or at Closing and such items and requirements shall not be exceptions in the Owner Title Policies.

4. Survey. The Owner has delivered to City a certified copy of the metes and bounds boundaries and improvements surveys of each of the Parcels (the "Surveys") as attached hereto as Exhibits "C-1," "C-2" and N. At its option, the City may obtain an update of any existing surveys or obtain new surveys at City's cost.

Comment [KM14]: John and Doug, please fill in the right exhibits references here.

5. Appraisal. The value of the Parcels has not been determined. Owner does not want an appraisal of the Parcels to be conducted, and Owner releases the City from any obligation to appraise the Parcels. At Closing, City shall execute and deliver IRS Form with respect to the Parcels.

6. Representations at Closing. Each of the Donors and Ranchos IV with respect to its respective Parcel represents to City as follows:

- (a) It has the full right, power, and authority to convey to City its Parcel and has taken all requisite action necessary to authorize the execution of their respective Deeds;
- (b) To its knowledge, there are no adverse or other parties in possession of its Parcel or who have any leasehold rights in its Parcel;
- (c) It shall remove all of its inventory, goods, supplies, furniture or any other personal property (if any) located or stored on the its Parcel;
- (d) To its knowledge, there is no litigation pending or, to its current actual knowledge, threatened, affecting its Parcel; and it has no knowledge of, and has received no

written notice from any governmental authority requiring any work, repairs, construction, alterations or installations on or in connection with its Parcel, or asserting any violation of any federal, state or municipal laws, ordinances, codes, orders, regulations or requirements affecting any portion of its Parcel, including, without limitation, the Americans with Disabilities Act and any applicable environmental laws or regulations;

- (e) It has not received written notice of any pending condemnation action with respect to all or any portion of its Parcel and to its knowledge, it has not received any such notice and there are no existing condemnation or other legal proceedings affecting the existing use of its Parcels by any governmental authority having jurisdiction over or affecting all or any part of its Parcel;
- (f) It has or will have on or before the Closing Date, good and indefeasible title to its Parcel free and clear of any claim, lien, or encumbrance, specifically including any claims for mechanics liens, subject only to the Permitted Exceptions;
- (g) It has no notice that the current use of its Parcel does not comply with all currently applicable zoning ordinances and governmental requirements;
- (h) There will be no unpaid bills or claims in connection with any repair of the improvements or other work performed or material purchased in connection with the Improvements;
- (i) No one will have the right to occupy its Parcel after the Closing Date and that it will terminate any service contract for maintenance, security, disposal, or fire suppression with respect to its Parcel will survive the Closing;
- (j) It is not a "foreign person" within the meaning of the Foreign Investment in Real Property Tax Act or the Tax Reform Act of 1986, and City is not obligated to withhold any portion of the Purchase Price for the benefit of the Internal Revenue Service;
- (k) To its knowledge its Parcel is not in violation of any applicable law, now, nor has it at any time during its Ownership thereof been, used for the manufacture, processing, distribution, use, treatment, storage, disposal, placement, transport or handling of toxic materials, hazardous wastes or hazardous substances (as those terms are defined in the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.) or the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.); oils, petroleum-derived compounds; or pesticides (the Hazardous Materials). In addition, to its knowledge, no (i) underground storage tanks, (ii) asbestos (either commercially processed or excavated raw materials), (iii) electrical transformers, fluorescent light fixtures with ballast, or other items or equipment containing polychlorinated biphenyls, or (iv) other Hazardous Materials are present on its Parcel in violation of any applicable law. It has not received any written notice from any neighboring property it indicating they have any concerns about existing environmental conditions which could affect its Parcel or indicating in any way they might hold it liable for any contribution to clean up and remediate such condition;

- (l) No party (other than City) has any right or option to acquire all or any part of its Parcel, whether subject to earnest money contract, option agreement, right of first refusal, reversionary or future interests, or right of reverter;
- (m) It will not, without City's prior written consent, enter into any agreement or contract that is binding on its Parcel;
- (n) It will pay or cause to be paid any taxes and assessments levied or assessed against its Parcel, as and when due; and
- (o) It will advise City promptly of any litigation, arbitration or administrative hearing concerning or affecting its Parcel over which it has actual knowledge.

7. **Agreements of Owner.** Owner covenants and agrees with City that within 10 Business Days following the Annexation Approval Date, Owner shall deliver to City a copy of current real estate and personal property tax bills or other documentation showing the amount of current real property taxes and the assessed value of the land and improvements with respect to the Parcels.

8. **City's Representations.** City hereby represents and warrants to Owner as of the Closing Date that once the Development Agreement is approved by City Council and signed by the City Manager, City has the full right, power, and authority to accept the Parcels from Owner.

9. **Survival Beyond Closing.** The representations, warranties, undertakings and agreements of City contained herein survive the Closing and are not merged therein.

10. **Closing Documents.** At Closing, each Donor and Ranchos IV will (a) execute and deliver its respective Donation Deeds and Ranchos IV will execute and deliver the Dedication Deed; (b) an affidavit, in compliance with Section 1445 of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder, stating under penalty of perjury the Owner's United States identification number and that it is not a "foreign person" as that term is defined in Section 1445, duly executed and acknowledged by it; (c) an affidavit stating that there are no unrecorded agreements and no rights of parties in possession; and (d) any other items reasonably requested by the Title Company as administrative requirements for consummating the Closing.

At the Closing, City shall deliver or cause to be delivered to Owner or the Title Company, (a) appropriate evidence of authorization reasonably satisfactory to Owner and the Title Company for the consummation of the transaction contemplated by this Contract; and (b) any other items reasonably requested by the Title Company as administrative requirements for consummating the Closing.

11. **Closing Costs.** Each party is responsible for paying the legal fees of its counsel in negotiating, preparing, and closing the transaction contemplated by this Contract. The Owner shall pay the cost of the initial surveys (as described in Section 4 herein) and any fee (if any) due to a broker relating to the Parcels. The City shall pay the premiums for the Title Policies and all endorsements requested by City; the cost of the updated or revised surveys (as described in Section 4 herein); its own engineering inspections as well as for the charges attributable to recording the Deed and the Title Company escrow fees and any other closing costs not payable by the Owner as set forth herein. City will deliver cash or immediately available funds equal to the title policy premiums, and all closing costs associated with such the Closing for the Parcels.

12. Prorations. General real estate taxes for the then current year relating to the Parcels shall be prorated as of midnight preceding the Closing Date. If the Closing occurs before the tax rate is fixed for the then current year, the apportionment of taxes shall be made upon the basis of the tax rate for the immediately preceding year applied to the latest assessed valuation of the land and improvements. Within 30 days after the actual taxes for the year in which the Closing occurs are determined, Donors, Ranchos IV and City shall adjust the proration of such taxes and Donors, Ranchos IV and City, as the case may be, shall pay to the other any amount required as a result of such adjustment and this covenant shall not merge with the Deeds delivered hereunder but shall survive the Closing. All special taxes or assessments assessed prior to the Closing Date shall be paid by the Donors or Ranchos IV, as applicable. In the event the Closing does not occur and fund as of 12:00 noon, local time, on the Closing Date, all prorations shall extend to the midnight of the following day.

13. Possession. Possession of the Parcels shall be delivered to City at the Closing subject to the rights of any approved third parties under the Permitted Exceptions.

EXHIBIT "H"

Tim Floyd Parcel

DRAFT

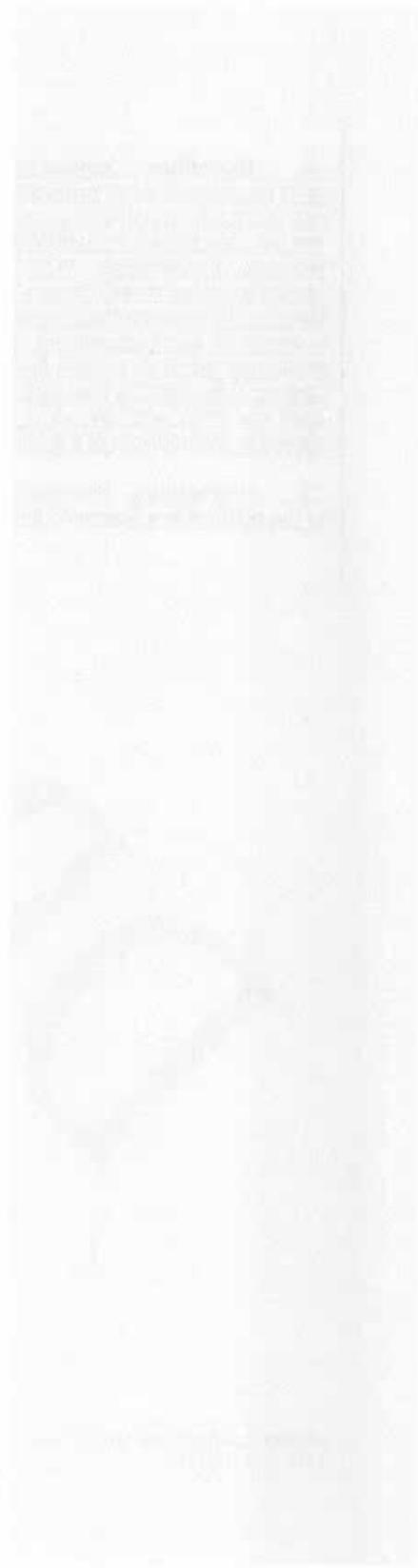


EXHIBIT "I"

Adjacent Parcel

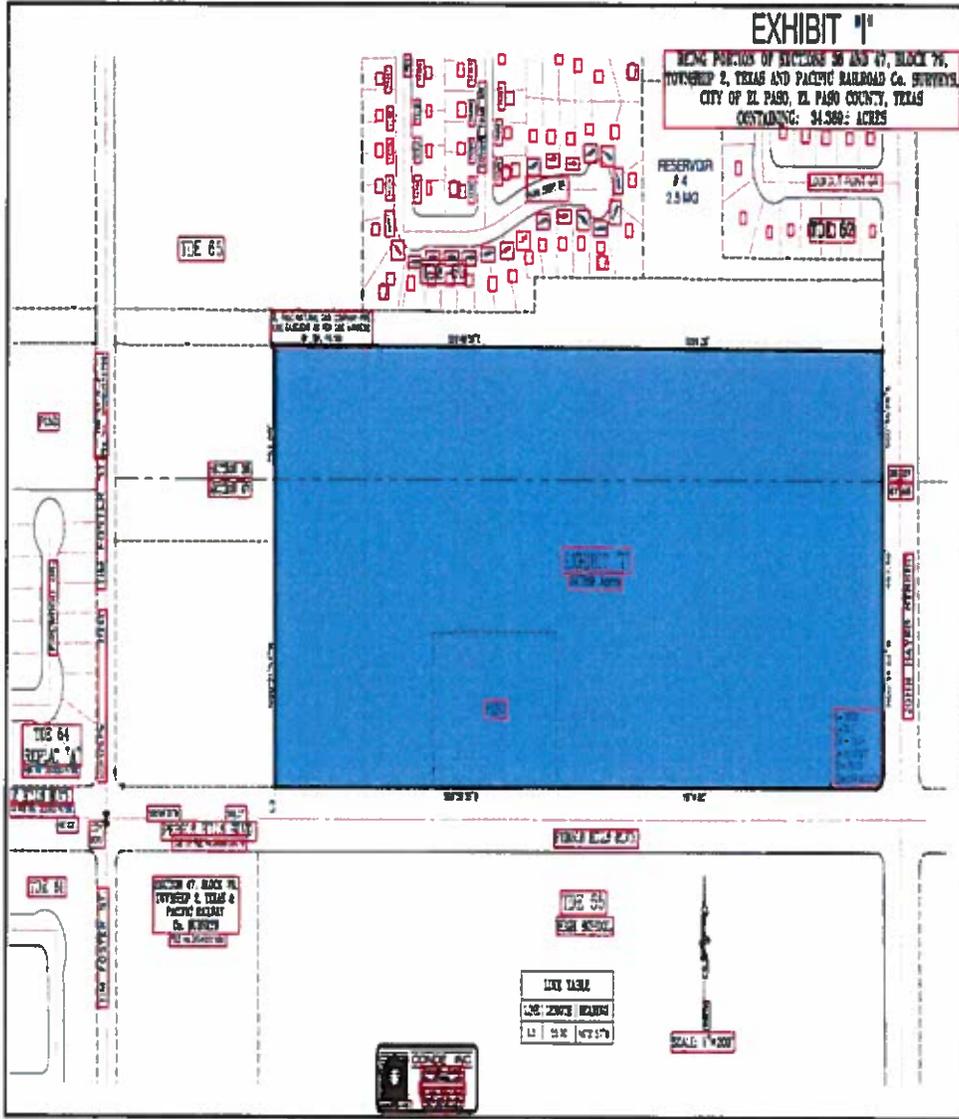


EXHIBIT "J"

January 2006 Parcel

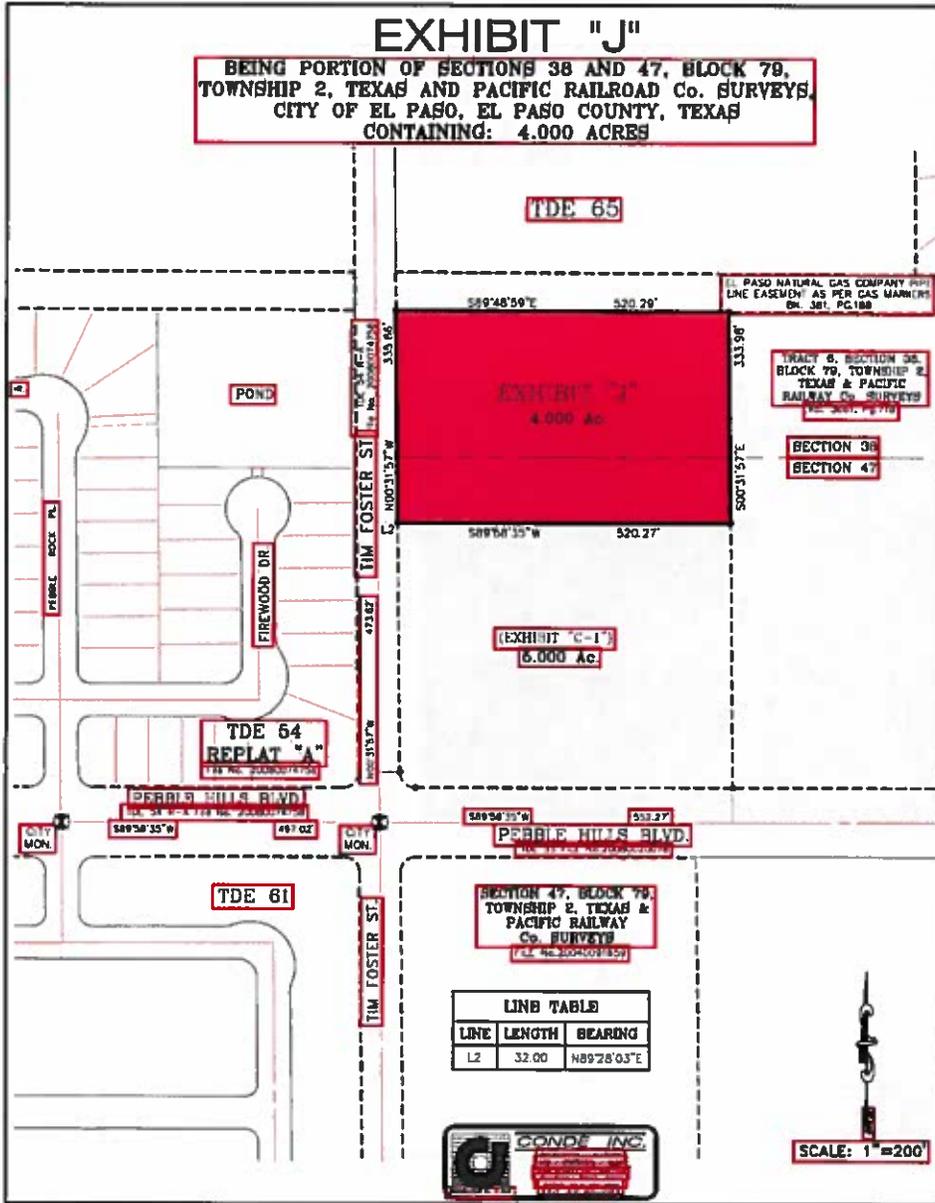


EXHIBIT "J-1"

January 2006 Parcel Dedication Deed

DRAFT

EXHIBIT "K"

Municipal Services Plan

DRAFT



EXHIBIT "M"

TIRZ Property

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