



***City of El Paso – City Plan Commission Staff Report  
(Revised)***

**Application Type:** Development Agreement (prior to annexation)  
**CPC Hearing Date:** November 6, 2014

**Staff Planner:** Kimberly Forsyth, (915) 212-1563, [forsythkl@elpasotexas.gov](mailto:forsythkl@elpasotexas.gov)  
**Location:** East of Rich Beem Boulevard and South of Montwood Drive  
**Acreage:** 310.6 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:** El Dorado 9<sup>th</sup> Grade Academy (1.48 miles)  
**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:** ETJ/ Vacant

**THE PLAN FOR EL PASO DESIGNATION: 06- Potential Annexation**

**APPLICATION DESCRIPTION**

The applicant proposes to annex 310.6 acres, of which 227.275 acres (the Development Parcel) shall be privately developed in accordance with the attached development plan, 78.979 acres (Sports Complex Parcel) shall be donated to the City and dedicated as parkland for future development as a sports complex, and 1.191 acres (Hike and Bike Parcel) shall be donated to the

city for a future hike and bike trail abutting the sports complex. This property was previously reviewed and approved by the CPC on October 7, 2010 as Tierra del Este III Phase IV Land Study. One plat within the subject property, TDE 68, was approved by the CPC on Jan. 5, 2012 in accordance with the previous land study.

The development plan has been revised to show the proposed land donation and a reconfigured development. The private Development Parcel now includes 199.147 acres for residential, 16.007 acres for commercial, 5.937 acres of pond, a 1.562 acre park and 4.622 acres of hike and bike trail for a total of 227.275 acres. If the development agreement is approved by City Council, the property owner will submit an application to annex and rezone the property in accordance with the revised development plan.

The subject property has been granted vested rights as of August 2008. The property is also subject to impact fees for the Eastside Service Area.

Major provisions of the development agreement are:

- The revised Development Plan shall amend the previously-approved land study.
- The owner shall donate approximately 80 acres to the City for a future sports complex (Sports Complex Parcel) and hike and bike trail (Hike and Bike Parcel) abutting the sports complex.
- The City shall be responsible for all required improvements to these two parcels.
- The donation of the 80.17 acres shall satisfy parkland requirements for the private Development Parcel; save and except that owner shall additionally dedicate approximately 1.5 acres of parkland as shown on the Development Plan, and shall provide irrigation, turf and sidewalks within the park site.
- The owner shall relocate, at his expense, a waterline that currently exists within the easterly boundary of the Sports Complex Parcel, to an easement within the easterly five feet of the John Hayes ROW.
- The owner shall build the westerly fifty-five (55) feet of John Hayes Street, a major arterial on the City's MTP, in accordance with the cross section shown in the Development Plan.
- The owner shall build the entire width of Honey Dew Street, a local residential street, in accordance with City Code and the Development Plan.
- The City shall reimburse the owner for all costs of building the westerly fifty-five (55) feet of John Hayes and one half the costs of Honey Dew, upon completion of the improvements and receipt of an invoice from the Owner. (These streets abut the Sports Complex Parcel).
- Owner shall build the easterly fifty-five (55) feet of Rich Beem Blvd. in accordance with the cross-section shown in the Development Plan, and shall install street lights not to exceed one light per three hundred lineal feet. The City may elect to install additional lights at city's expense.
- The City shall reimburse the owner the cost of obtaining security for completion, maintenance and warranty of the City improvements.
- The Traffic Impact Analysis submitted with the original Land Study shall satisfy requirements for Traffic Impact studies for any development within the property as shown in the Development Plan.

- The City will waive the owner's portion of off-site traffic mitigation (approximately \$125,000) required in the previously-approved Land Study.
- The owner/developer shall submit annexation and rezoning applications upon approval of the development agreement.
- Annexation fees and other land development application fees (for applications required under Titles 19 and 20) shall be waived.
- City shall develop approximately 20 acres of the Sports Complex Parcel and the Hike and Bike Parcel within ten (10) years from the date of annexation.
- To screen the Development Parcel from the unimproved portion of the Sports Complex Parcel, owner shall build a screening wall along the westerly boundary of the Sport Complex Parcel and City shall reimburse owner for the cost of constructing this wall.
- The John Hayes ROW is subject to a surface lease for Cemex trucks to use the property for access, and the City will continue to permit street legal trucks to use John Hayes after construction of improvements.

**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, the City's annexation policy and City code requirements, and will provide a regional park site that is needed in this area. The development also proposes approximately 199 acres for residential use (1132 dwelling units), approximately 16 acres of commercial property, a 1.5 acre park, hike and bike trails along Rich Beem, Montwood and John Hayes, and 2 ponding areas.

**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 Department of Transportation**

EPDOT recommends that Rich Beem 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 Major Arterial.

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

about \$125,000.000. In the future the City will have to allocate additional funding for the construction and installation of warranted traffic signal infrastructure in the area.

Verify whose responsibility to repair the street if the Cemex water line, within easement on John Hayes right-of-way, would leak, break and damage the street infrastructure. What is the possibility that the water could damage the street infrastructure, and costly repairs could be incurred by the city? What is the time frame for repairs of the street, as it could limit access to Park Complex.

Informational comment on arterial streets within the Development Plan:

- Montwood (Rich Beem to John Hayes), Rich Beem (Pebble Hills to Montwood), John Hayes (Pebble Hills to Montwood) currently do not include median and parkway improvements and no project is currently programmed to include continuous arterial illumination, median, traffic signage, parkway trees, vegetation, landscape and irrigation improvements.

### **Parks and Recreation Department**

In order for the amended land study (Development Plan) to comply with the minimum "Parkland" requirements as per ordinance Title 19 – Subdivision and Development Plats, **Chapter 19.20 – Parks and Open Space** the following items are proposed between the Developer (Owner) and the City of El Paso and entered into a Development Agreement:

1. Owner (Developer) has agreed to donate to the City of El Paso a parcel of land of about **78.98 acres** for a Sports Complex; The City of El Paso has agreed to construct & make all improvements to the site.
2. Owner (Developer) has agreed to dedicate one "Park site" (**±1.56 acres**) to be included with-in the limits of Tierra Del Este #68 subdivision; Developer is only required to provide turf and irrigation improvements to the park (no amenities) and a five foot (5') sidewalk with-in the park.
3. Owner (Developer) has agreed to donate a parcel of land of about **1.24 acres** for a Hike & Bike Trail abutting the Sports Complex parcel along Montwood Drive; Owner (Developer) shall construct all the public improvements; upon completion of the public improvements, the City of El Paso shall reimburse the Owner (Developer) the cost of the project.
4. Owner (Developer) shall construct the required street improvements for the westerly fifty-five (55) foot width of John Hayes Street abutting the Sports Complex parcel including all required street lights as reflected in the cross section in the Development Plan; upon completion of the public improvements, the City of El Paso shall reimburse the Owner (Developer) the cost of the project.
5. Owner (Developer) shall construct all the required street improvements for the entire width of Honey Dew Street as reflected in the cross section in the Development Plan; upon completion of the public improvements, the City of El Paso shall reimburse the Owner (Developer) the cost for half (½) of the right-of-way width improvements.
6. Development Agreement needs to be presented to the City Plan Commission and City Council for review and approval.

7. After the effective date of the Agreement, the Owner (Developer) shall submit an application for annexation and rezoning of the property; the City of El Paso will process the annexation and rezoning applications concurrently.
8. Once the City of El Paso adopts the ordinances for annexation and rezoning of the property, the Owner (Developer/Donors) shall execute and deliver to the City of El Paso the "Donation Deeds".

### **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.*

### **Water**

Water storage improvements to the existing system are required to enable service to the subject property. Water service to the subject property will be provided by a proposed elevated tank (reservoir) and an existing twenty-four (24) inch water transmission main that extends along Montwood Drive located between Rich Beem Boulevard and John Hayes Street. No direct service connections are allowed to this main as per the El Paso Water Utilities - Public Service Board Rules & Regulations. The EPWU will construct the elevated tank as scheduled in EPWU's CIP.

There is an existing twelve (12) inch diameter water main along Montwood Drive between Rich Beem Boulevard and Honour Point Place.

Along Montwood Drive between John Hayes Drive and Honey Dew Street fronting the proposed sports complex there is an existing twelve (12) inch diameter water main.

Along Tim Foster Street north of Montwood Drive there is an existing twelve (12) inch diameter water main. This main dead-ends immediately north of Montwood Drive.

EPWU's water system expansion plan includes a proposed twenty-four (24) inch diameter water transmission main along Rich Beem Boulevard south of Montwood Drive along the entire frontage of Tierra Del Este Unit Sixty Eight (68). No direct service connections are allowed to this main as per the El Paso Water Utilities - Public Service Board Rules & Regulations.

EPWU's plan also includes a *proposed* twelve (12) inch diameter water main along Rich Beem Boulevard south of Montwood Drive along the entire frontage of Tierra Del Este Unit Sixty Eight (68).

### **Sanitary Sewer**

Along Rich Beem Boulevard between Montwood Drive and Ventana Avenue there is an existing fifteen (15) inch diameter sanitary sewer main. This main flows from Montwood Drive to Ventana Avenue.

Along Montwood Drive between Rich Beem Boulevard and the proposed Lawrence Robey Street there is an existing eight (8) inch diameter sanitary sewer main. This eight (8) diameter sanitary sewer main in turn, discharges into the above-described fifteen (15) inch diameter sanitary sewer main that extends along Rich Beem Boulevard.

Along Montwood Drive between Honey Dew Street and John Hayes Street fronting the proposed sports complex there is an existing twelve (12) inch diameter sanitary sewer main. This main extends along the southern portion of Montwood Drive.

EPWU's sanitary sewer system expansion plan includes the construction of a proposed fifteen (15) inch diameter sanitary sewer main located along the western portion of Rich Beem Boulevard south of Montwood Drive along the entire frontage of Tierra Del Este Unit Sixty Eight (68). Easements have been secured along the western portion of Rich Beem Boulevard from Montwood Drive towards the south to accommodate the proposed fifteen (15) inch diameter sanitary sewer main.

General

Coordination with the Developer is required to ascertain that the water transmission mains, storage improvements, and sewer interceptors are constructed in parallel with development.

EPWU requires a new service application to initialize design of the water and sanitary sewer main extensions to serve the subject property. New service applications are available at 1154 Hawkins, 3<sup>rd</sup> Floor. The following items are required at the time of application: (1) hard copy of subdivision plat; (2) finalized set of street improvement plans, including storm sewer; (3) digital copy of subdivision plat; (4) benchmark check; and (5) construction schedule. Service will be provided in accordance with the current EPWU – PSB Rules and Regulations. The owner is responsible for the costs of any necessary on-site and off-site extensions, relocations or adjustments of water and sanitary sewer lines and appurtenances.

Water and Wastewater Services. Owner will be responsible for paying any other fees required by the Public Service Board Rules and Regulations, Owner will be responsible for paying a water and/or wastewater fee to the El Paso Water Utilities for each three-quarter inch (3/4") equivalent water meter that is connected to the public water system and/or sanitary sewer service that is connected to the public sanitary sewer system as follows:

Meter size	Meter Capacity Ratio	Water (\$)	Wastewater (\$)	Total (\$)
Less than 1"	1.0	697.00	920.00	1,617.00
1"	1.67	1,163.00	1,537.00	2,700.00
1 1/2"	3.33	2,321.00	3,065.00	5,386.00
2"	5.33	3,714.00	4,905.00	8,619.00
3"	10.0	6,968.00	9,203.00	16,171.00

4"	16.67	11,615.00	15,341.00	26,956.00
6"	33.33	23,223.00	30,672.00	53,895.00
8"	53.33	37,158.00	49,077.00	86,235.00
10"	76.67	40,064.00	52,916.00	92,980.00
12"	143.33	74,899.00	98,924.00	173,823.00

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 Fire Department**

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

**Sun Metro**

Sun Metro requests/recommends the applicant coordinate with staff to identify the potential placement and construction of a bus stop site or sites.

**El Paso Electric Company**

No comments received.

**Texas Gas Company**

No comments received.

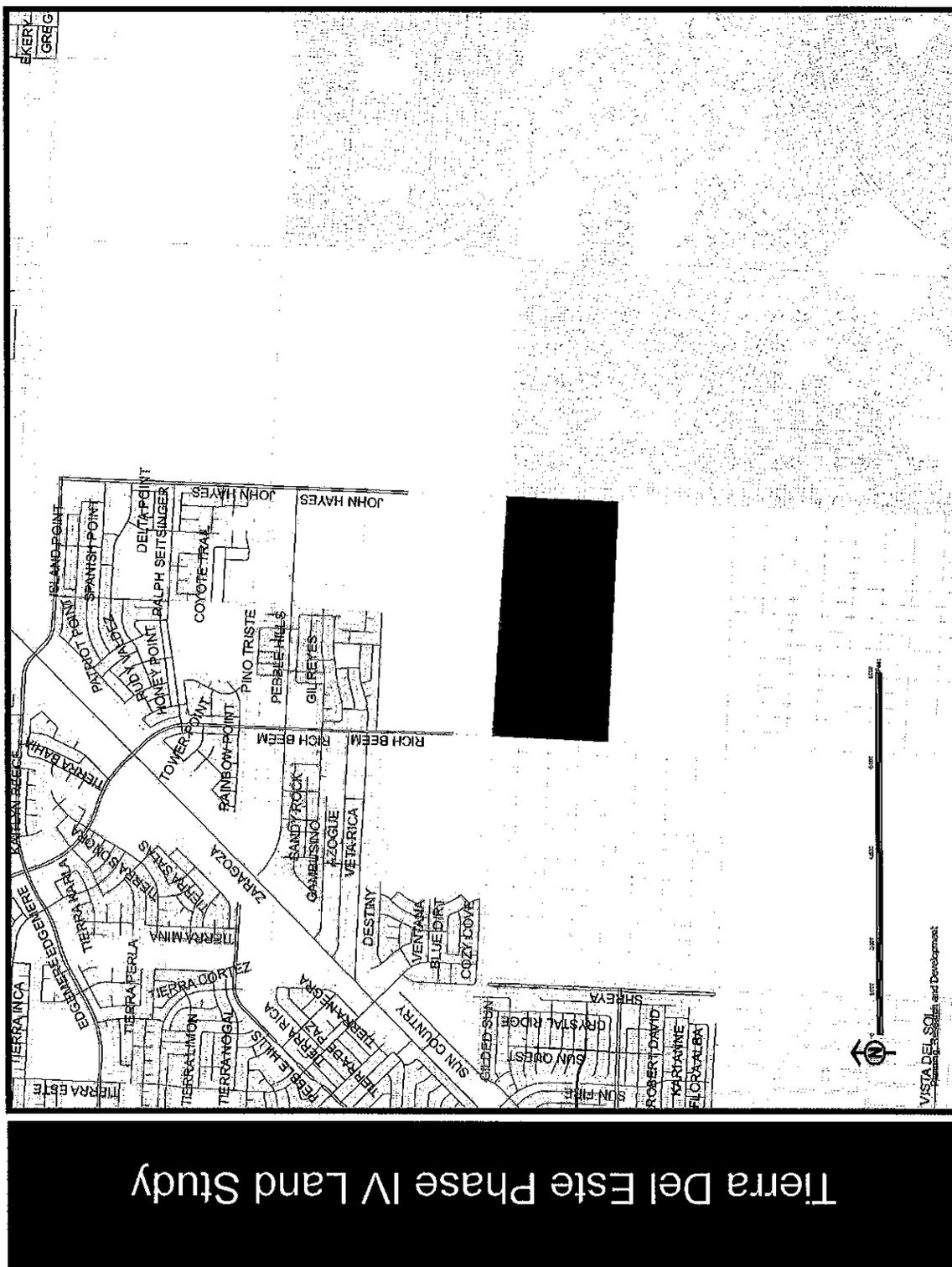
**Socorro Independent School District**

No comments received.

**Attachments**

- 1 – Location Map
- 2 – Aerial
- 3 – Major Thoroughfare Plan
- 4 – Previously approved TDE IV Land Study
- 5 – Proposed Development Plan
- 6 – Development Agreement and Exhibits

**ATTACHMENT 1**

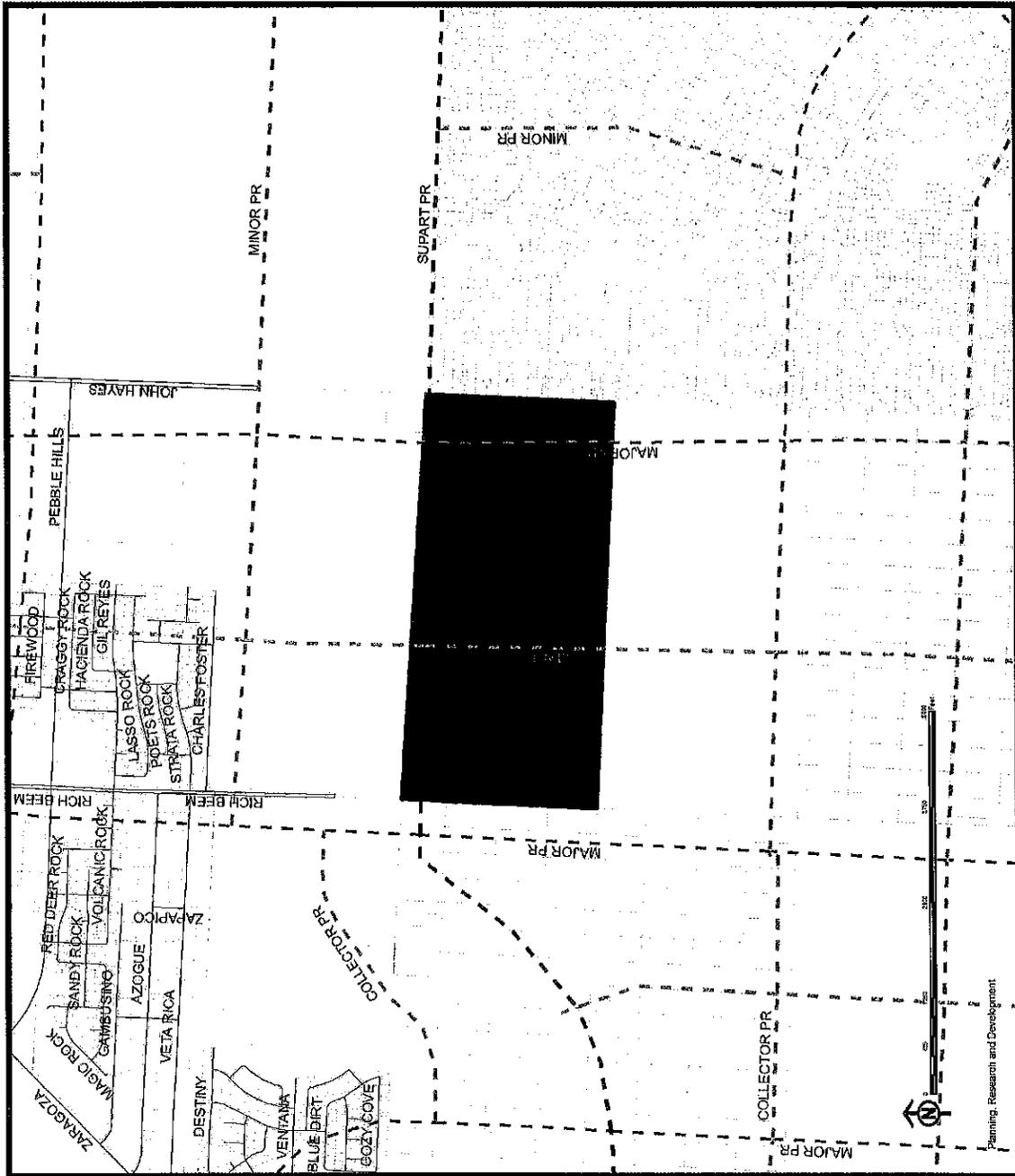


ATTACHMENT 2



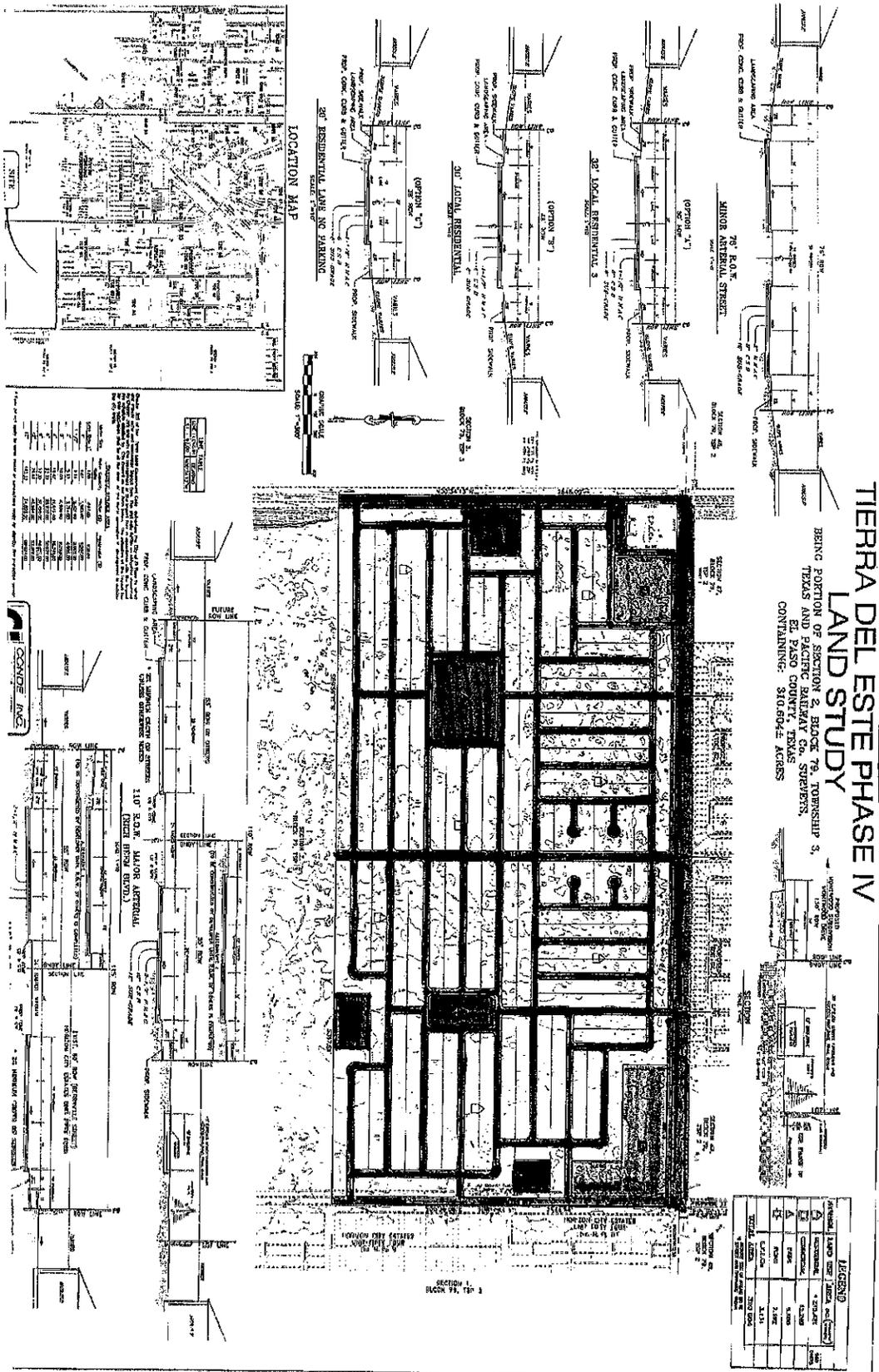
Tierra Del Este Phase IV Land Study

**ATTACHMENT 3**



**Tierra Del Este Phase IV Land Study**

# ATTACHMENT 4





**ATTACHMENT 6**  
**DEVELOPMENT AGREEMENT**

THE STATE OF TEXAS     )  
  )  
COUNTY OF EL PASO     )     **DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (the "Agreement") made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014 (the "Effective Date") by and between 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, RANCHOS REAL XV, LLC, a Texas limited liability company (hereinafter referred to as the "Owner") and EL PASO DESERT EAST INVESTMENTS VI, LTD., a Texas limited partnership and THE MESA GROUP V, LTD., a Texas limited partnership (collectively with Owner, the "Donors");

**RECITALS**

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

**WHEREAS**, the City's Annexation Plan 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**, the Parties agree that the Property should be annexed into the corporate limits of City on the terms and conditions of this Agreement; and

**WHEREAS**, Donors have agreed to collectively donate to the City the Sports Complex Parcel and the Hike and Bike Parcel which are part of the Property and the City has agreed to construct and make all improvements to each of these two parcels as required by the El Paso City Code; and

**WHEREAS**, the Owner has agreed that the Development Parcel will be developed, constructed, and improved by the Owner as required herein; and

**WHEREAS**, the Texas Local Government Code Chapter 212 Subchapter C authorizes the City to enter into a written agreement with the developer to participate in the construction costs, in an amount not to exceed thirty percent (30%) of the total contract price of improvements, without a competitive bidding procedure; and

**WHEREAS**, 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 aforementioned provisions of the Texas Local Government Code in order to agree on the matters set forth in this 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 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 Development Parcel and the City's development of the Sports Complex Parcel and the Hike and Bike Parcel 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.,

### **AGREEMENT**

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

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

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

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

"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 Park" means the 1.5 acre portion of the Development Parcel as shown on the Development Plan to be dedicated to the City.

"City Regulations" shall mean all duly enacted ordinances, rules, and regulations of the City, including the Code and the Subdivision Regulations, in effect on the Vesting Date.

"City's Project Costs" shall mean the costs listed on Exhibit "F," to be paid by the City to the Owner, as set forth herein. .

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

"Cost Estimates" shall have the meaning ascribed thereto in Exhibit "F".

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

"Cure Period" shall have the meaning ascribed thereto in Section 9(a).

"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."

"Developer participation agreement" means an agreement between the city and a property Owner through which the city or property Owner agrees to pay a proportional percentage of a required public improvement or public amenity or for a portion of improvements in excess of those required under current ordinance.

"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 agreement" means an agreement authorized and in accordance with Section 212.172 of the Texas Local Government Code between a city and a property Owner in the extra-territorial jurisdiction.

"Development application" either a petition for a legislative decision, such as a zoning amendment, or an application for a development permit, such as a plat or a building permit.

"Development Parcel shall mean the property described by metes and bounds in Exhibit "B-2".

"Development Plan" shall mean the plan for development of the project attached hereto as Exhibit "A", as same may hereafter be amended, modified or supplemented.

"Defaulting Party" shall have the meaning ascribed thereto in Section 9(a).

"Donors" means Ranchos Real XV, LLC,, El Paso Desert East Investments VI, LTD., and The Mesa Group V, LTD., and its successors and assigns of all or any part of the Property.

"Donation Deeds" shall mean the deeds in the forms attached hereto as Exhibits "E" and "E-1" to be executed by Donors, collectively conveying the Sports Complex Parcel and the Hike and Bike Parcel to the City.

"Effective Date" means the date to be inserted in the first paragraph of this Agreement, which shall be the date when City Council approves this Agreement.

"Force majeure" shall have the meaning ascribed thereto in Section 13(b).

"Hike and Bike Parcel" shall mean the real property described by metes and bounds in Exhibit "B-4" attached hereto immediately abutting the Sports Complex Parcel.

"Hike and Bike Parcel Improvements" shall have the meaning ascribed thereto in Section 3(c)(1)(v).

"Honey Dew Street Improvements" shall have the meaning ascribed thereto in Section 3(c)(1)(iv).

"John Hayes Improvements" shall have the meaning ascribed thereto in Section 3(c)(1)(iii).

"Land study" means the Tierra Del Este III Land Study approved by the CPC on October 7, 2010.

"Non-Defaulting Party" shall have the meaning ascribed thereto in Section 9(a).

"Owner" means Ranchos Real XV, 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 and the Owner, Donors, and their respective successors and assigns.

"Project" shall mean the development of the Property for the purposes shown on the Development Plan. A change that does not change, density by more than ten percent (10%), location of specific commercial or residential uses, lot sizes or street widths and locations shall not constitute a change in the Project under the Vesting Statute.

"Project Costs" shall have the meaning ascribed thereto in Section 3(c)(2).

"Property" shall mean the real property described by metes and bounds in Exhibit "B-1" attached hereto.

"Rich Beem Improvements" shall have the meaning ascribed thereto in Section 3(c)(1)(ii).

"Sports Complex Parcel" shall mean the real property described by metes and bounds on Exhibit "B-3".

"Subdivision Regulations" shall mean the regulations in Title 19 of the Code in effect on the Vesting Date as same may be amended.

"Term" shall have the meaning ascribed thereto in Section 11.

"Vesting Date" shall mean August 8, 2008.

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

2. **Agreement of the Parties as to the Procedures and Chronology of Events Necessary for the Commencement and Implementation of the Project.**

- (a) The parties agree that that this agreement will be implemented as follows:
1. City staff will present the development agreement to the City Planning Commission for review and recommendation.
  2. City staff will post this agreement on a City Council meeting agenda for consideration by the Council.
  3. After the effective date of the agreement, but within 30 days thereof, the Owner will submit applications for the annexation, rezoning, and platting of the Property.
  4. The City will process the annexation and rezoning applications for the property pursuant to State law and the City Codes and Regulations. The hearings for the Annexation proceedings and the Rezoning application shall be held at the same City Planning Commission meeting and at the same City Council meeting.
  5. Once the City has adopted ordinances for the annexation and rezoning of the property Donors, shall execute and deliver to the City the Donation Deeds, in accordance with Section 8,

3. **Development of the Property.**

(a) **Development Plan.** The parties hereby agree that the Property will be developed according to the terms described herein. The City hereby approves the Development Plan. 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 increase density by more than ten percent (10%)).

(b) **Applicable Law.** 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 Development Parcel 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 Development Parcel in accordance with this Agreement. 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 Development Parcel 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 Development Parcel, 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 thereto shall not affect or impair any of Owner's vested rights hereunder.

Comment [KMN1]: Deleted at the request of the EPWU.

Owner acknowledges that the annexed land is in an impact fee service area and agrees to pay impact fees in order to get water and wastewater service for the annexed land.

(c) **Public Improvements.**

(1) **Construction.** Owner shall construct all of the public improvements as depicted in the Development Plan, pursuant to the Code except as follows:

(i) **City Park Site:** Owner shall only be obligated to provide turf and irrigation improvements to the City Park and a five foot (5') sidewalk within the City Park. Owner shall not be obligated to dedicate or provide any other amenities to the City Park or to construct any other parks within the Development Parcel or to pay any fees in lieu thereof.

Homes fronting the City Park shall, however, be required to construct a five foot (5') high wall as depicted on Exhibit "M."

(ii) **Rich Beem Boulevard.** Notwithstanding anything in the Code to the contrary, Owner shall only be obligated to construct (i) the easterly fifty-five feet (55') of Rich Beem Boulevard, as reflected in the cross-section thereof in the Development Plan and (ii) street lights in Rich Beem Boulevard not to exceed one (1) light per three hundred (300) lineal feet (the "Rich Beem Improvements").

**Additional Street Lights:** At the City's expense, additional street lights may be installed in Rich Beem Boulevard per an illumination plan approved by the City.

(iii) **John Hayes:** Notwithstanding anything in the Code to the contrary, Owner shall only be obligated to develop and build the required street improvements for the westerly fifty-five (55) foot width of John Hayes Street, as reflected in the cross-section thereof in the Development Plan (the "John Hayes Improvements"), street light designs will comply with the City's Design Standards for Construction and Title 19 requirements. Owner agrees to build John Hayes within two (2) years of the effective date of this agreement.

Comment [KMN2]: New language

(iv) **Honey Dew:** Owner shall develop and build the required street improvements for the entire width of Honey Dew Street, as reflected in the cross-section thereof in the Development Plan (the "Honey Dew Improvements").

(v) **Hike and Bike Parcel.** Owner shall develop and build the required improvements for the hike and bike trail upon the Hike and Bike Parcel as reflected on the Development Plan (the "Hike and Bike Parcel Improvements"). The improvements for this parcel will be substantially similar to the hike and bike trail improvements that will be developed and built along Rich Beem and Montwood, as reflected on the Development Plan.

Comment [KMN3]: New Language

(vi) **Sports Complex Fencing.** Owner shall build a wall on the western boundary of the Sports Complex. The design and location of such wall is depicted on Exhibit O, for illustrative purposes only. The parties agree to coordinate the timing of the construction of this wall as well as the exact location

and length of each of the individual walls.

(vii) **Right of Entry/License Agreement.** The parties agree that on a mutually agreed date they will execute a Right of Entry Agreement for the construction of the Hike and Bike Parcel and the Sports Complex Fencing, in a substantially similar form to the document attached hereto as Exhibit P.

(2) **Public Improvement Costs.** Owner further agrees that it shall be solely responsible for payment of any and all costs, including but not limited to design and construction costs arising from the construction of required public improvements, except as provided herein (the "Project Costs").

(3) **City's Project Costs.** Upon completion of the public improvements, the Owner shall submit to the City an invoice for the City's Project Costs. Within thirty (30) days of receipt of such invoice, City shall inspect the improvements. The City will pay the Owner the City's Project Costs, as listed in Exhibit "F," when the public improvements listed in Subsections 3(c)(1)(ii) Additional Street Lights, (iii) John Hayes, (iv) Honey Dew (v) Hike and Bike Parcel, and the (vi) Sports Complex Fencing, have been completed by the Owner in accordance with the terms of this Agreement and accepted for maintenance by the City. Upon acceptance of these public improvements, the City will also reimburse the Owner for the costs to obtain security in the form of performance bonds for completion, maintenance, and warranty of improvements, for the public improvements.

**Comment [KMN4]:** Terri is asking if Doug intends for the City to pay him as the improvements are accepted? As written the City will pay only after all of the improvements are completed, and accepted.

(4) **Compliance with Law.** The Owner shall comply with the 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.

(5) **Project Construction Contracts.** Owner agrees to furnish the City with a copy of each written agreement entered into with a contractor or consultant retained to complete the construction of the public improvements for the Project. All of the books and records related to the construction of the public improvements for the Project shall be available for inspection by the City upon request. Any work performed by a contractor or consultant of the Owner will not, under any circumstances, relieve Owner of its responsibilities and obligations under this Agreement.

(6) **Construction Standards.** All work performed by the Owner or its agents shall be done in a good and workmanlike manner in accordance with the Code, except as otherwise set forth herein. Any contractor or consultant hired by Owner shall have sufficient skills and experience to properly perform its work and shall provide adequate supervision to assure competent performance of the work.

(7) **Security for Completion of Improvements.** If the Owner chooses to defer the installation of public improvements to serve the Development Parcel until after recordation of a final plat, the Owner will guarantee proper construction of any remaining public subdivision improvements by obtaining a bond executed by a surety company holding a license to do business in the State of Texas, and acceptable to the City of El Paso, as depicted on Exhibit J, in an amount equal to one hundred twenty-five percent

(125%) of the costs of public improvements remaining to be installed as required by City regulations. The performance bond shall be approved as to form by the City Attorney.

**Maintenance and Warranty of Improvements.** The Owner hereby covenants to warranty the required public improvements for a period of one year for defective material, construction or workmanship following acceptance by the city of all required public improvements and shall provide a maintenance bond, as depicted in Exhibit K, in the amount of fifty percent (50%) of the costs of the improvements for such period.

**Performance Bond.** Owner must execute and deliver to City, or cause its contractor to execute and deliver, a performance bond for one hundred percent (100%) of the City's Project Costs to secure fulfillment of Owner's obligations. The bond must be in the form attached hereto as Exhibit "L". The bond must be executed by a corporate surety in accordance with Chapter 2253, Texas Government Code. The bond shall identify the City as an additional named obligee.

(8) **Increased Costs.** In the event additional costs arise with respect to the items set forth on Exhibit F, the Owner agrees that it will be solely responsible for all increased costs and City's Project Costs shall not be increased.

(d) **City's Obligations.**

(1) **Payment of City's Project Costs.** The City shall pay the Owner the City's Project Costs as set forth in Section 3(c)(3) herein.

(2) **Traffic Impact Analysis.** The City has approved the traffic impact analysis conducted under the Land Study. Owner shall not be obligated to submit a traffic impact analysis with respect to any plat or other development application with respect to the Property.

(3) **Offsite Mitigation.** The City agrees to waive the Owner's percentage of the off-site traffic signal mitigation as required under the Land Study, which was approximately \$125,000.

(4) **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.

Comment [KMN5]: New language

(5) **Development of the Sports Complex Parcel.** Within ten (10) years from the date of annexation of the Property, City shall, at its sole cost and expense, develop a minimum of twenty (20) acres, except as herein agreed to, on the Sports Complex Parcel in accordance with Title 19 of the El Paso City Code. The Owner shall have no obligation to pay for any improvements to the Sports Complex Parcel.

Comment [KMN6]: New amendment per Mathew McElroy

(6) **Cemex Surface Lease.** City acknowledges that the John Hayes Improvements are to be constructed on a portion of property currently subject to Surface Lease No. 970025 of record under County Clerk's File No. 96075861,

Real Property Records of El Paso County, Texas (the "Surface Lease"). Owner and Cemex Materials Pacific, LLC, a Delaware limited liability company ("Cemex"), are the current lessor and lessee under the Surface Lease and have entered into agreements whereby Cemex has agreed to terminate the Surface Lease to the extent, and only to the extent, that the Surface Lease pertains to the N ½ of Section 2, Block 78, Township 3, T&P RR Surveys, El Paso County, Texas, subject to the City's agreement to (a) permit Cemex street legal trucks to use the John Hayes Improvements following construction and acceptance of John Hayes Improvements by the City, and (b) not construct or require the construction of any barricades on the John Hayes Improvements that would obstruct Cemex access to its leased premises under the Surface Lease at the southerly end of John Hayes Improvements or at the easterly side of the intersection of the John Hayes improvements and Montwood Drive, (collectively, the "Cemex Conditions"). Provided that appropriate grade transitions are maintained between the Cemex Surface Lease premises abutting the John Hayes Improvements and Montwood Drive, and as long as the Surface Lease remains in effect, the City agrees for the benefit of the Owner, Cemex and its successors and assigns of its interest under the Surface Lease, to the Cemex Conditions and further agrees that it will neither take any action nor adopt any ordinance or resolution contrary to the Cemex Conditions as long as the Surface Lease remains in effect.

Cemex and Owner have also entered into an easement agreement whereby Owner, at its sole cost and expense, will relocate an existing 4-inch waterline, which is currently located at the property also subject of Surface Lease No. 970025. The waterline will be relocated within the N 1/2 of Section 2 at the location described in Exhibit N. The location of the waterline is not under a roadway or proposed roadway and will reconnect the same to the existing waterline at the northerly and southerly boundaries of the Easement Property. The waterline will be relocated prior to the filing of a final plat map dedicating the right of way to the City and the acceptance of the public improvements by the City.

4. **New Regulations.** Notwithstanding anything herein to the contrary, the Parties agree that Owner may elect to apply the City Regulations in effect on the Vesting Date, or all or any portion of any New Regulations, to the development of the Development Parcel to the extent that Owner shall deem appropriate without forfeiting any rights under this Agreement.

5. **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.

6. **Annexation.** The Owner shall file an Application for Annexation of the Property with the City, within thirty (30) days after the Effective Date of this Agreement. Within one hundred 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, such action shall not constitute a breach of this Agreement, but such action

0014403-00101/TBIR/1161441.1

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 application 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 "D" and made a part hereof.

7. **Zoning.** 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. Owner acknowledges that under City Regulations, upon the annexation of the Property, the Property shall be classified as R-F (Ranch-Farm) for zoning purposes. 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 on the Development Plan. In the event that the City does not approve the applications to rezone the Development Parcel or rezones the Development Parcel 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 Development Parcel 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.

8. **Donation Deeds.** Upon City Council's adoption of the ordinance for the annexation of the Property in accordance with Section 6 and the rezoning of the Property in accordance with Section 7, Donors shall execute and deliver to the City the Donation Deeds, substantially in the form attached hereto as Exhibits "E" and "E-1" and pursuant to the Closing procedures, attached hereto as Exhibit "G-1".

9. **Default and Remedies.**

(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; provided, however, if the breach cannot be cured within the Cure Period, the Defaulting Party shall commence to cure such breach within said period and thereafter diligently continue such cure to completion (the "Cure Period").

(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.

10. **Non-Conforming Structures/Uses.** The Parties acknowledge that the Property is currently vacant and, except for improvements to be constructed by Owner hereunder, there are no pre-existing non-conforming uses or structures on the Property.

11. **Term.** The term of this Agreement shall be fifteen (15) years from the Effective Date.

12. **Notices.** 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 (a) delivering the same in person (b) depositing the same in the United States Mail, certified or registered, return receipt requested, postage prepaid (c) depositing the same with Federal Express or with another nationally recognized courier service guaranteeing "next day delivery" or (d) 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 79950-1890  
Physical Address: 300 N. Campbell  
El Paso, Texas 79901

AND

City of El Paso  
Attn: Parks Director

Mailing Address: 801 Texas  
El Paso, Texas 79902

Physical Address: Same as above

(2) Owner: Ranchos Real XV, LLC  
El Paso Desert East Investments VI, Ltd.  
The Mesa Group V, Ltd.  
Attn: Douglas Schwartz

Mailing Address: 6080 Surety Drive, Suite 300  
El Paso, Texas 79905

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

13. **Miscellaneous.**

(a) **Successors and Assigns.** This Agreement is binding upon and inures to the benefit of the Parties hereto, and their respective successors and assigns for the Term of this Agreement. This Agreement is not binding on, and does 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, lightning, 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 inability 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 delegates to the City Manager of the City, or his Designee the authority, without any further action being required of the City Council or the CPC to execute such amendments of or extensions to this Agreement, and to execute the required Right of Entry and such amendments of or extensions of the Right of Entry, as they may consider advisable, and consistent with the provisions of this Agreement.]

Comment [KMN7]: New language

(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) 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 of the effective date of any such contract, ordinance or regulation to incorporate the more-favorable provision herein.

(g) 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.

(h) 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.

(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) 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.

(l) 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.

(m) 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.

(n) Authority for Execution. Each Party hereby certifies, represents, and warrants that the execution of this Agreement has been duly authorized.

(o) 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.



**ACCEPTANCE**

The above Agreement, with all conditions thereof, is hereby accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**RANCHOS REAL XV, LLC**

By: \_\_\_\_\_  
Douglas A. Schwartz, Manager

STATE OF TEXAS        )  
                                  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by Douglas A. Schwartz, Manager of Ranchos Real XV, LLC, a Texas limited liability company, on behalf of said limited liability company.

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

*(Signatures Continued on Next Page)*



**ACCEPTANCE**

The above Agreement, with all conditions thereof, is hereby accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**THE MESA GROUP V, LTD.**

By: The Mesa Group, Inc., General Partner

By: \_\_\_\_\_  
Name: Scott Schwartz  
Title: President

STATE OF TEXAS        )  
                                  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by Scott Schwartz, President of The Mesa Group, Inc., General Partner of The Mesa Group V, Ltd., a Texas limited partnership, on behalf of said limited partnership.

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

**List of Exhibits**

- A - Development Plan (Includes Phasing Plan & Road Plan)
- B - Parcel Map
- B-1- Property
- B-2- Development Parcel
- B-3- Sports Complex Parcel
- B-4- Hike & Bike Parcel
- B-5- John Hayes Street
- C - Donation Parcel Map
- C-1- Metes & Bounds of Donation Parcel from El Paso Desert East Investments VI, Ltd. & The Mesa Group V, Ltd.
- C-2- Metes & Bounds description of Donation Parcel from Ranchos Real XV, LLC
- D - Annexation Service Plan
- E - Donation Deed
- E-1- Donation Deed
- F - City's Project Cost
- G - Closing procedure

0014403-00101/2B1R/1161441.1

- H - Application for Annexation
- I - Application for Zoning
- J - Performance Bond (Security for Improvements)
- K - Maintenance Bond
- L - Performance Bond (Security for City's Project Costs)
- M - Homes Fronting Park Wall Design/Sports Complex Fence
- N - Improvement Survey
- O - Sports Complex Fencing Proposed Design and Layout
- P - Right of Entry



# EXHIBIT "B"

## Parcel Map

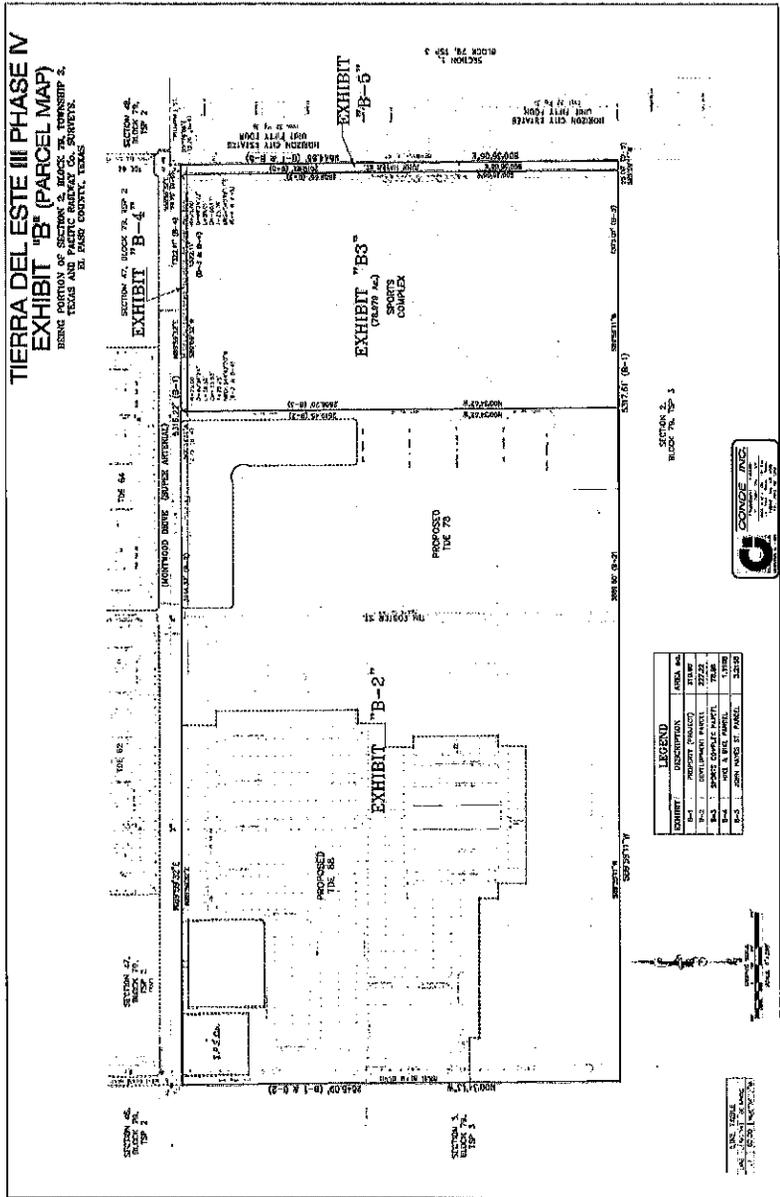


Exhibit "B"

**EXHIBIT "B-1"**

**Property (Project)**

Prepared For: Southwest Land Development Services  
October 1, 2014  
(Exhibit B-1)

**METES AND BOUNDS DESCRIPTION**

Description of a parcel of land being a Portion of Section 2, Block 79, Township 3, Texas and Pacific Railway Company Surveys, City Of El Paso, El Paso County, Texas, and being more particularly described by metes and bounds as follows:

Commencing for reference at an existing city monument at the centerline intersection of Montwood Drive Tim Foster Street from which an existing city monument at the centerline intersection of Montwood Drive and Honour Point Place bears South 89°59'32" West a distance of 1208.05 feet; Thence South 88°34'56" East to a distance of 2612.60 feet to a set ½" rebar with cap marked TX 5152 on the southerly right of way line of Montwood Drive for the "TRUE POINT OF BEGINNING".

Thence, South 00°36'06" East a distance of 2544.56 feet to a set ½" rebar with cap marked TX 5152;

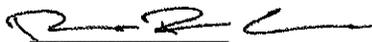
Thence, South 89°59'11" West a distance of 5317.61 feet to a set ½" rebar with cap marked TX 5152 on the common line of sections 2 and 3, Block 79, Township 3, Texas and Pacific Railway Company Surveys;

Thence along said line, North 00°34'13" West a distance of 2545.09 feet to a set ½" rebar with cap marked TX 5152 on the southerly right of way line of Montwood Drive;

Thence along said right of way line, North 89°59'32" East a distance of 5316.22 feet to the "TRUE POINT OF BEGINNING" and containing 310.60 acres of land more or less.

Note: Bearings based on plat of Montwood Street Subdivision as recorded in Clerk's file no. 20110065750, Real property records of El Paso County, Texas.

Note: A drawing of even date accompanies this description.

  
Ron R. Conde  
R.P.L.S. No. 5152



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CONDE INC  
ENGINEERING / LAND SURVEYING / PLANNING  
6080 SURETY DRIVE / SUITE 100 / EL PASO, TEXAS 79905  
(915) 592-0283 FAX (915) 592-0286

Exhibit "B-1"

**EXHIBIT "B-2"**

**Development Parcel**

Prepared For: Southwest Land Development Services  
March 7, 2014  
(Exhibit B-2)

**METES AND BOUNDS DESCRIPTION**

Description of a parcel of land being a Portion of Section 2, Block 79, Township 3, Texas and Pacific Railway Company Surveys, City Of El Paso, El Paso County, Texas, and being more particularly described by metes and bounds as follows:

Commencing for reference at an existing city monument at the centerline intersection of Montwood Drive Tim Foster Street from which an existing city monument at the centerline intersection of Montwood Drive and Honour Point Place bears South 89°59'32" West a distance of 1208.05 feet; Thence South 86°55'58" East to a distance of 1211.68 feet to a set ½" rebar with cap marked TX 5152 on the southerly right of way line of Montwood Drive for the "TRUE POINT OF BEGINNING".

Thence, 39.52 feet along the arc of a curve to the left which has a radius of 25.00 feet a central angle of 90°34'24" a chord which bears South 44°42'20" West a distance of 35.53 feet to a set ½" rebar with cap marked TX 5152;

Thence, South 00°34'52" East a distance of 2519.45 feet to a set ½" rebar with cap marked TX 5152;

Thence, South 89°59'11" West a distance of 3889.60 feet to a set ½" rebar with cap marked TX 5152 on the common line of sections 2 and 3, Block 79, Township 3, Texas and Pacific Railway Company Surveys;

Thence along said line, North 00°34'13" West a distance of 2545.09 feet to a set ½" rebar with cap marked TX 5152 on the southerly right of way line of Montwood Drive;

Thence along said right of way line, North 89°59'32" East a distance of 3914.37 feet to the "TRUE POINT OF BEGINNING" and containing 227.22 acres of land more or less.

Note: Bearings based on plat of Montwood Street Subdivision as recorded in Clerk's file no. 20110065750, Real property records or El Paso County, Texas.

  
Ron R. Conde  
R.P.L.S. No 5152



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ENGINEERING / LAND SURVEYING / PLANNING  
6080 SURETY DRIVE / SUITE 100 / EL PASO, TEXAS 79905  
(915) 592-0283 FAX (915) 592-0286

**EXHIBIT "B-3"**

**Sports Complex Parcel**

Prepared For: Southwest Land Development Services  
March 7, 2014  
(Exhibit B-3)

**METES AND BOUNDS DESCRIPTION**

Description of a parcel of land being a Portion of Section 2, Block 79, Township 3, Texas and Pacific Railway Company Surveys, City Of El Paso, El Paso County, Texas, and being more particularly described by metes and bounds as follows:

Commencing for reference at an existing city monument at the centerline intersection of Montwood Drive Tim Foster Street from which an existing city monument at the centerline intersection of Montwood Drive and Honour Point Place bears South 89°59'32" West a distance of 1208.05 feet; Thence South 85°02'25" East a distance of 1189.53 feet to a set ½" rebar with cap marked TX 5152 for the "TRUE POINT OF BEGINNING".

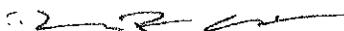
Thence, North 89°59'32" East a distance of 1372.11 feet to a set ½" rebar with cap marked TX 5152;

Thence, South 00°36'06" East a distance of 2506.56 feet to a set ½" rebar with cap marked TX 5152;

Thence, South 89°59'11" West a distance of 1373.01 feet to a set ½" rebar with cap marked TX 5152;

Thence, North 00°34'52" West a distance of 2506.70 feet to the "TRUE POINT OF BEGINNING" and containing 78.98 acres of land more or less.

Note: Bearings based on plat of Montwood Street Subdivision as recorded in Clerk's file no. 20110065750, Real property records or El Paso County, Texas.

  
Ron R. Conde  
R.P.L.S. No 5152



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CONDE INC  
ENGINEERING / LAND SURVEYING / PLANNING  
6080 SURETY DRIVE / SUITE 100 / EL PASO, TEXAS 79905  
(915) 592-0283 FAX (915) 592-0286

**EXHIBIT "B-4"**  
**HIKE AND BIKE PARCEL**

Prepared For: Southwest Land Development Services  
March 7, 2014  
(Exhibit B-4)

**METES AND BOUNDS DESCRIPTION**

Description of a parcel of land being a Portion of Section 2, Block 79, Township 3, Texas and Pacific Railway Company Surveys, City Of El Paso, El Paso County, Texas, and being more particularly described by metes and bounds as follows:

Commencing for reference at an existing city monument at the centerline intersection of Montwood Drive Tim Foster Street from which an existing city monument at the centerline intersection of Montwood Drive and Honour Point Place bears South 89°59'32" West a distance of 1208.05 feet; Thence South 86°55'58" East to a distance of 1211.68 feet to a set ½" rebar with cap marked TX 5152 on the southerly right of way line of Montwood Drive for the "TRUE POINT OF BEGINNING".

Thence along said right of way line, North 89°59'32" East a distance of 1322.11 feet to a set ½" rebar with cap marked TX 5152 for a point of curve;

Thence, 39.01 feet along the arc of a curve to the right which has a radius of 25.00 feet a central angle of 89°24'22" a chord which bears South 45°18'17" East a distance of 35.17 feet to a set ½" rebar with cap marked TX 5152;

Thence, South 00°36'06" East a distance of 13.26 feet to a set ½" rebar with cap marked TX 5152;

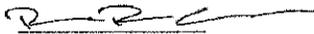
Thence, South 89°59'32" West a distance of 1372.11 feet to a set ½" rebar with cap marked TX 5152;

Thence, North 00°34'52" West a distance of 12.75 feet to a set ½" rebar with cap marked TX 5152 for a point of curve;

Thence 39.52 feet along the arc of a curve to the right which has a radius of 25.00 feet a central angle of 90°34'24" a chord which bears North 44°42'20" East a distance of 35.53 feet to a point for the "TRUE POINT OF BEGINNING" and containing 1.1908 acres of land more or less.

Note: Bearings based on plat of Montwood Street Subdivision as recorded in Clerk's file no. 20110065750, Real property records or El Paso County, Texas.

Note: A drawing of even date accompanies this description.

  
Ron R. Conde  
R.P.L.S. No. 5152



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CONDE INC  
ENGINEERING / LAND SURVEYING / PLANNING  
6080 SURETY DRIVE / SUITE 100 / EL PASO, TEXAS 79905  
(915) 592-0283 FAX (915) 592-0286

Exhibit "B-4"

**EXHIBIT "B-5"**

**John Hayes Street**

Prepared For: Southwest Land Development Services  
March 7, 2014  
(Exhibit B-5)

**METES AND BOUNDS DESCRIPTION**

Description of a parcel of land being a Portion of Section 2, Block 79, Township 3, Texas and Pacific Railway Company Surveys, City Of El Paso, El Paso County, Texas, and being more particularly described by metes and bounds as follows:

Commencing for reference at an existing city monument at the centerline intersection of Montwood Drive Tim Foster Street from which an existing city monument at the centerline intersection of Montwood Drive and Honour Point Place bears South 89°59'32" West a distance of 1208.05 feet; Thence South 88°32'14" East to a distance of 2532.88 feet to a set ½" rebar with cap marked TX 5152 on the southerly right of way line of Montwood Drive for the "TRUE POINT OF BEGINNING".

Thence, North 89°59'32" East a distance of 79.75 feet to a set ½" rebar with cap marked TX 5152 on the common line of Sections 1 and 2, Block 79, Township 2, Texas and Pacific Railway Company Surveys;

Thence along said line, South 00°36'06" East a distance of 2544.56 feet to a set ½" rebar with cap marked TX 5152;

Thence leaving said line, South 89°59'11" West a distance of 55.00 feet to a set ½" rebar with cap marked TX 5152;

Thence, North 00°36'06" West a distance of 2519.82 feet to a set ¼" rebar with cap marked TX 5152 for a point of curve;

Thence, 39.01 feet along the arc of a curve to the left which has a radius of 25.00 feet a central angle of 89°24'22" a chord which bears North 45°18'17" West a distance of 35.17 feet to a point for the "TRUE POINT OF BEGINNING" and containing 3.2158 acres of land more or less.

Note: Bearings based on plat of Montwood Street Subdivision as recorded in Clerk's file no. 20110065750, Real property records of El Paso County, Texas.

Note: A drawing of even date accompanies this description.

  
Ron R. Conde  
R.P.L.S. No. 5152



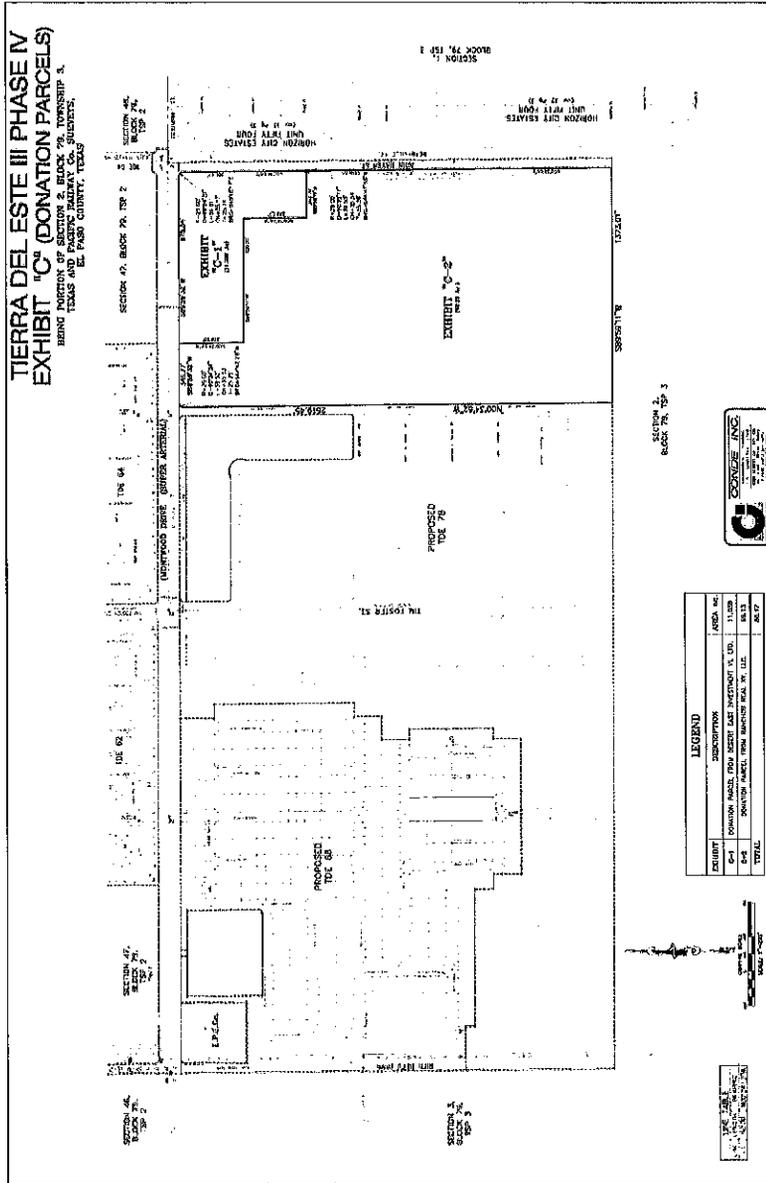
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CONDE INC  
ENGINEERING / LAND SURVEYING / PLANNING  
6080 SURETY DRIVE / SUITE 100 / EL PASO, TEXAS 79905  
(915) 592-0283 FAX (915) 592-0286

Exhibit "B-5"

**EXHIBIT "C"**

**Donation Parcel Map**



**TIERRA DEL ESTE III PHASE IV  
EXHIBIT "C" (DONATION PARCELS)**  
BEING PORTION OF SECTION 2, BLOCK 79, TOWNSHIP 3,  
TEXAS AND PART OF RAILWAY CO. SUBDIVISION,  
EL PASO COUNTY, TEXAS

LEGEND			
EXHIBIT	DESCRIPTION	AREA AC.	
C-1	DONATION PARCEL FROM SERRA LEE INVESTMENT CO. LTD.	11.08	SH.13
C-2	DONATION PARCEL FROM MANCHOS VALLEY CO. LTD.	14.13	SH.17
TOTAL		25.21	



Exhibit "C"

**EXHIBIT "C-1"**

**Metes and Bounds of Donation Parcel from  
El Paso Desert East Investments VI, Ltd and The Mesa Group V, Ltd.**

Prepared For: Southwest Land Development Services  
October 23, 2013  
(Exhibit C-1)

**METES AND BOUNDS DESCRIPTION**

Description of a parcel of land being a Portion of Section 2, Block 79, Township 3, Texas and Pacific Railway Company Surveys, City Of El Paso, El Paso County, Texas, and being more particularly described by metes and bounds as follows:

Commencing for reference at an existing city monument at the centerline intersection of Montwood Drive Tim Foster Street from which an existing city monument at the centerline intersection of Montwood Drive and Honour Point Place bears South 89°59'32" West a distance of 1208.05 feet; Thence South 87°37'00" East a distance of 1558.06 feet to a point on the southerly right of way line of Montwood Drive for the "TRUE POINT OF BEGINNING".

Thence along said right of way line, North 89°59'32" East a distance of 975.34 feet to a set ½" rebar with cap marked TX 5152;

Thence, 39.01 feet along the arc of a curve to the right which has a radius of 25.00 feet a central angle of 89°24'22" a chord which bears South 45°18'17" East a distance of 35.17 feet to a set ½" rebar with cap marked TX 5152;

Thence, South 00°36'06" East a distance of 701.47 feet to a set ½" rebar with cap marked TX 5152;

Thence, 39.53 feet along the arc of a curve to the right which has a radius of 25.00 feet a central angle of 90°35'17" a chord which bears South 44°41'33" West a distance of 35.54 feet to a set ½" rebar with cap marked TX 5152;

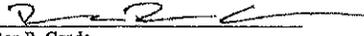
Thence, South 89°59'11" West a distance of 249.76 feet to a set ½" rebar with cap marked TX 5152;

Thence, North 00°36'06" West a distance of 373.02 feet to a set ½" rebar with cap marked TX 5152;

Thence, South 89°59'11" West a distance of 725.20 feet to a set ½" rebar with cap marked TX 5152;

Thence, North 00°34'52" West a distance of 378.55 feet to the "TRUE POINT OF BEGINNING" and containing 11.04 acres of land more or less.

Note: Bearings based on plat of Montwood Street Subdivision as recorded in Clerk's file no. 20110065750, Real property records or El Paso County, Texas.

  
Ron R. Conde  
R.P.L.S. No. 5152



CONDE INC  
ENGINEERING / LAND SURVEYING / PLANNING  
6080 SURETY DRIVE / SUITE 100 / EL PASO, TEXAS 79905  
(915) 592-0283 FAX (915) 592-0286

**EXHIBIT "C-2"**

**Metes and Bounds of Donation Parcel from  
Ranchos Real XV, LLC**

Prepared For: Southwest Land Development Services  
March 7, 2014  
(Exhibit C-2)

**METES AND BOUNDS DESCRIPTION**

Description of a parcel of land being a Portion of Section 2, Block 79, Township 3, Texas and Pacific Railway Company Surveys, City Of El Paso, El Paso County, Texas, and being more particularly described by metes and bounds as follows:

Commencing for reference at an existing city monument at the centerline intersection of Montwood Drive Tim Foster Street from which an existing city monument at the centerline intersection of Montwood Drive and Honour Point Place bears South 89°59'32" West a distance of 1208.05 feet; Thence South 86°55'58" East to a distance of 1211.68 feet to a set ½" rebar with cap marked TX 5152 on the southerly right of way line of Montwood Drive for the "TRUE POINT OF BEGINNING".

Thence along said right of way line, North 89°59'32" East a distance of 346.77 feet to a set ½" rebar with cap marked TX 5152;

Thence leaving said right of way line, South 00°34'52" East a distance of 378.55 feet to a set ½" rebar with cap marked TX 5152;

Thence, North 89°59'11" East a distance of 725.20 feet to a set ½" rebar with cap marked TX 5152;

Thence, South 00°36'06" East a distance of 373.02 feet to a set ½" rebar with cap marked TX 5152;

Thence, North 89°59'11" East a distance of 249.76 feet to a set ½" rebar with cap marked TX 5152 for a point of curve;

Thence, 39.53 feet along the arc of a curve to the left which has a radius of 25.00 feet a central angle of 90°35'17" a chord which bears North 44°41'33" East a distance of 35.54 feet to a set ½" rebar with cap marked TX 5152;

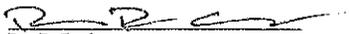
Thence, South 00°36'06" East a distance of 1818.35 feet to a set ½" rebar with cap marked TX 5152;

Thence, South 89°59'11" West a distance of 1373.01 feet to a set ½" rebar with cap marked TX 5152;

Thence, North 00°34'52" West a distance of 2519.45 feet to a set ½" rebar with cap marked TX 5152 for a point of curve;

Thence, 39.52 feet along the arc of a curve to the right which has a radius of 25.00 feet a central angle of 90°34'24" a chord which bears North 44°42'20" East a distance of 35.53 feet to the "TRUE POINT OF BEGINNING" and containing 69.13 acres of land more or less.

Note: Bearings based on plat of Montwood Street Subdivision as recorded in Clerk's file no. 20110065750, Real property records or El Paso County, Texas.

  
Ron R. Conde  
R.P.L.S. No 5152



CONDE INC  
ENGINEERING / LAND SURVEYING / PLANNING  
6080 SURETY DRIVE / SUITE 100 / EL PASO, TEXAS 79905  
(915) 592-0283 FAX (915) 592-0286

## **EXHIBIT "D"**

### **CITY OF EL PASO ANNEXATION SERVICE PLAN**

#### **INTRODUCTION**

This Service Plan (Plan) is made by the City of El Paso, Texas (City) pursuant to Chapter 43 Municipal Annexation of the Texas Local Government Code. This Plan is made specifically for a \_\_\_\_\_-acre parcel of property located in the City's East Extraterritorial Jurisdiction (ETJ), described by metes and bounds in Exhibit "A" of the Annexation Ordinance of which this Plan is a part (the "Property").

#### **EFFECTIVE TERM**

This Plan shall be in effect for a ten-year period commencing on the effective date of the annexation, unless otherwise stated in this Plan. Renewal of the Plan shall be at the option of the City. Such option may be exercised by the adoption of an ordinance by the City Council, which refers to this Plan and specifically renews this Plan for a stated period of time.

#### **INTENT**

It is the intent of the City of El Paso that services under this Plan shall provide full municipal services in accordance with State law and the Development Agreement entered into by the Owner and the City, such agreement being identified as Exhibit "\_\_\_" and is attached to the annexation ordinance.

The City reserves the right guaranteed to it under Section 43.056(k) Texas Local Government Code, to amend this Plan if the City Council determines that changed conditions or subsequent occurrence or any other legally sufficient circumstances exist under the Local Government Code, or other Texas laws to make this Plan unworkable or obsolete or unlawful.

#### **SERVICE COMPONENTS**

This Plan includes three service components: (1) Immediate Services Program, (2) Additional Services, and (3) a Capital Improvement Program.

As used in this Plan, providing services includes having services provided by any method or means by which the City extends municipal services to any other area of the City. This may include causing or allowing private utilities, governmental entities and other public service organizations to provide such services by contract, in whole or in part. It may also include separate agreements with associations or similar entities.

##### **1. Immediate Services Program**

The following services will be provided to the Property immediately upon the effective date of the annexation, unless otherwise noted.

a. Police Protection. The El Paso Police Department will provide protection and law enforcement services to the Property on the effective date of annexation. These services include:

- normal patrols and responses;
- handling of complaints and incident reports;
- special units, such as, traffic enforcement, criminal investigations, narcotics, gang suppressions, and special weapons and tactics team.

b. Fire Protection. The El Paso Fire Department will provide emergency medical services and fire protection services to the Property, on the effective date of annexation. These services include:

- fire suppression and rescue;
- emergency medical services;
- hazardous materials mitigation and regulation;
- emergency prevention and public education efforts;
- construction plan review;
- inspections.

c. Solid Waste Collection. The Environmental Services Department will provide solid waste collection services to the Property on the effective date of annexation. Services currently provided in the City for single-family residences include:

- Dead animal collection - dead animals are removed from roadways upon request.
- Residential garbage collection
- Residential recycling collection

Commercial garbage collection service for businesses, multi-family residences, and mobile home parks is available on a subscription basis from the City or private service providers.

d. Maintenance of Water and Wastewater Facilities. The City's Public Service Board/El Paso Water Utilities (EPWU) will maintain water and wastewater facilities serving the Property.

e. Maintenance of Roads and Streets, Including Street Lighting. The City's Department of Transportation will maintain public streets over which the City has jurisdiction. These services include:

- emergency pavement repair;
- ice and snow monitoring of major thoroughfares
- maintenance of public streets on as-needed basis and in accordance with established policies of the City.

- f. Maintenance of Parks, Playgrounds, and Swimming Pools. There are no public recreation facilities currently in the Property requiring immediate services. As the site develops, per the Development Agreement, maintenance services will be provided for Park Capital improvements by the City, in the same manner that it maintains all City Parks & Facilities.

## **2. Additional Services**

Certain services, in addition to the above services, will be provided to the Property. They are as follows:

- a. Drainage Services. The EPWU will provide drainage maintenance in the Property in accordance with established policies of the City and the EPWU. Services include:
- maintenance of existing public ponding areas and retention dams;
  - storm sewer maintenance;
  - emergency spills and pollution complaints response related to storm drainage systems;
- b. Watershed and Flood Plains. The City's Development Land Development Division shall provide:
- watershed development review and inspection;
  - flood plain office (information relating to flood plains).
- c. Library Department. All library services now provided to areas inside the City will be provided to the Property on the effective date of annexation in accordance with the City's existing policies and regulations.
- d. Inspection Services. All inspection services now provided within the City, including building, electrical, plumbing, gas, engineering, housing, and environmental will be extended to the Property on the effective date of annexation.
- e. Planning and Zoning. The planning and zoning jurisdiction of the City will be extended to the Property on the effective date of annexation.
- f. Other Services. The City will provide all other services, not specifically listed above, to the property according to established City policies and procedures.

## **3. Capital Improvements Program**

- a. Police Protection. No capital improvements are necessary to serve the annexed area.

- b. Fire Protection. No capital improvements are necessary to serve the annexed area. Fire services but may be necessary in the future. Fire Department coverage areas for the city are based on ISO standards that require a Fire Station to be a mile and a half (driving distance) from every facility and two and a half miles from a fire station with aerial capabilities.
- c. Solid Waste Collection. No capital improvements are necessary to serve the annexed area.
- d. Water and Wastewater Facilities. Water and wastewater service will be provided in accordance with the El Paso Water Utility's Rules and Regulations.
- e. Roads and Streets. The City shall share in the costs of public improvements as set forth in the Development Agreement. In general, the City will acquire control and jurisdiction of all public roads and public streets within the Property upon annexation. Future extensions of roads or streets and future installation of related facilities, such as traffic control devices, will be governed by the City's standard policies and procedures as modified by the Development Agreement.
- f. Parks, Playgrounds and Swimming Pools. No capital improvements or maintenance services are necessary at this time. As the site develops, per the Development Agreement, maintenance services will be provided for Park Capital improvements by the City, in the same manner that it maintains all City Parks & Facilities.
- g. Drainage Facilities. No capital improvements are necessary at this time to provide services but may be necessary in the future. The City will maintain any dedicated ponds.
- h. Street Lighting. It is anticipated that the developer of new subdivisions in the Property will install public street lighting in accordance with the City's standard policies and procedures as modified by the Development Agreement. In other cases, the City will install public street lighting in the Property upon request in accordance with established street lighting policies of the City.
- i. Other Publicly Owned Facilities, Building or Services. In general, other City functions and services, and the additional services described above can be provided for the Property by using existing capital improvements. Additional capital improvements are not necessary to provide City services.
- j. Capital Improvement Planning. The Property will be included in relevant capital improvement rules for new or expanded facilities, functions, and services in accordance with the Development Agreement and established policies of the City.

**AMENDMENT: GOVERNING LAW**

This Plan may not be amended or repealed except as provided by the Texas Local Government Code or other controlling law. Neither changes in the methods or means of implementing any part of the service programs nor changes in the responsibilities of the various departments of the City shall constitute amendments to this Plan, and the City reserves the right to make such changes. This Plan is subject to and shall be interpreted in accordance with the Constitution and laws of the United States of America and the State of Texas, the Texas Local Government Code, and the orders, rules regulations of governmental bodies and officers having jurisdiction.

**FORCE MAJEURE**

In case of an emergency, such as force majeure as that term is defined in this Plan, in which the City is forced to temporarily divert its personnel and resources away from the Property for humanitarian purposes or protection of the general public, the City obligates itself to take all reasonable measures to restore services to the Property of the level described in this Plan as soon as possible. Force Majeure shall include, but not be limited to, acts of God, acts of the public enemy, war, blockages, insurrection, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrest and restraint of government, explosions, collisions, and other inability of the City, whether similar to those enumerated or otherwise, which is not within the control of the City. Unavailability or shortage of funds shall not constitute Force Majeure.

**CONFLICT**

In the event of any conflict or inconsistency between the terms of this Annexation Service Plan and the Development Agreement, the terms of the Development Agreement shall control.

**EXHIBIT "E"**

**EXHIBIT "B"**

**Donation Deed**

THE STATE OF TEXAS        }  
COUNTY OF EL PASO        }

KNOW ALL MEN BY THESE PRESENTS: That RANCHOS REAL XV, LLC, a Texas limited liability company, ("Grantor"), does hereby give, dedicate, grant and convey unto the CITY OF EL PASO, ("Grantee"), for use as a park sports complex including a hike and bike trail, all that certain tract or parcel of real estate lying and being situated in the County of El Paso, State of Texas, to be used solely for the purposes set forth below and as described as follows:

A parcel of land containing 69.13 acres, more or less, being a portion of Section 2, Block 79, Township 3, Texas and Pacific Railroad Company Surveys, City of El Paso, El Paso County, Texas, and being more particularly described by metes and bounds attached hereto and made part hereof same as Exhibit "A" (the "Property").

This conveyance is subject to the Permitted Exceptions listed in Exhibit "B" attached hereto and made a part hereof.

TO HAVE AND TO HOLD the above described premises, together with all and singular, the rights and appurtenances thereto in anywise belonging unto the said Grantee, its successor and assigns forever; and Grantor does hereby bind itself, its successors, executors and administrators, to WARRANT AND FOREVER DEFEND all and singular and said Property unto the said Grantee, its successors and assigns, against every person whomsoever lawfully claiming, or to claim the same or any part thereof, by, through or under it, but not otherwise, except as to the reservations and exceptions referenced herein.

WITNESS my hand in El Paso, Texas on this \_\_\_\_ day of \_\_\_\_\_, 2014.

GRANTOR:  
RANCHOS REAL XV, LLC

By: \_\_\_\_\_  
Douglas A. Schwartz, Manager

*(Signatures Continued on Next Page)*

STATE OF TEXAS            }  
COUNTY OF EL PASO        }

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2014 by Douglas Schwartz, Manager of Ranchos Real XV, LLC, a Texas limited liability company on behalf of said limited liability company.

My Commission Expires: \_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

Accepted and agreed to this \_\_\_\_ day of \_\_\_\_\_, 2014.

GRANTER

CITY OF EL PASO

By: \_\_\_\_\_  
Tomás González, City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Karla M. Nieman  
Assistant City Attorney

\_\_\_\_\_  
Matthew McBroy  
Director of Development Services

**ACKNOWLEDGMENT**

STATE OF TEXAS            }  
COUNTY OF EL PASO        }

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014, by Tomás González, City Manager of the City of El Paso, a municipality, on behalf of said municipality.

My Commission Expires: \_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

AFTER RECORDING, RETURN TO:  
City of El Paso  
Attn: City Clerk's Office  
300 N. Campbell  
El Paso, Texas 79901

**EXHIBIT "A"**  
**to Donation Deed**

**EXHIBIT "A" TO DONATION DEED**

METES AND BOUNDS DESCRIPTION

Description of a parcel of land being a Portion of Section 2, Block 79, Township 3, Texas and Pacific Railway Company Surveys, City Of El Paso, El Paso County, Texas, and being more particularly described by notes and bounds as follows:

Commencing for reference at an existing city monument at the centerline intersection of Montwood Drive Tim Foster Street from which an existing city monument at the centerline intersection of Montwood Drive and Honour Point Place bears South 89°59'32" West a distance of 1208.05 feet; Thence South 86°53'58" East to a distance of 1211.68 feet to a set 1/2" rebar with cap marked TX 5152 on the southerly right of way line of Montwood Drive for the "TRUE POINT OF BEGINNING".

Thence along said right of way line, North 89°59'32" East a distance of 346.77 feet to a set 1/2" rebar with cap marked TX 5152;

Thence leaving said right of way line, South 00°34'52" East a distance of 378.55 feet to a set 1/2" rebar with cap marked TX 5152;

Thence, North 89°59'11" East a distance of 725.20 feet to a set 1/2" rebar with cap marked TX 5152;

Thence, South 00°36'06" East a distance of 373.02 feet to a set 1/2" rebar with cap marked TX 5152;

Thence, North 89°59'11" East a distance of 249.76 feet to a set 1/2" rebar with cap marked TX 5152 for a point of curve;

Thence, 39.53 feet along the arc of a curve to the left which has a radius of 25.00 feet a central angle of 90°35'17" a chord which bears North 44°41'33" East a distance of 35.54 feet to a set 1/2" rebar with cap marked TX 5152;

Thence, South 00°36'06" East a distance of 1818.35 feet to a set 1/2" rebar with cap marked TX 5152;

Thence, South 89°59'11" West a distance of 1373.01 feet to a set 1/2" rebar with cap marked TX 5152;

Thence, North 00°34'52" West a distance of 2519.45 feet to a set 1/2" rebar with cap marked TX 5152 for a point of curve;

Thence, 39.52 feet along the arc of a curve to the right, which has a radius of 25.00 feet a central angle of 90°34'24" a chord which bears North 44°42'20" East a distance of 35.53 feet to the "TRUE POINT OF BEGINNING" and containing 69.13 acres of land more or less.

Note: Bearings based on plat of Montwood Street Subdivision as recorded in Clerk's file no. 20110063750, Real property records of El Paso County, Texas.

  
Ron R. Conde  
R.P.L.S. No 5152



CONDE INC  
ENGINEERING / LAND SURVEYING / PLANNING  
6000 SURREY DRIVE / SUITE 100 / EL PASO, TEXAS 79905  
(915) 592-0283 FAX (915) 592-0286

**EXHIBIT "B"**  
**to Donation Deed**

EXHIBIT "E"

**EXCEPTIONS FROM COVERAGE**

- (a) Restrictive covenants recorded in The following restrictive covenants of record itemized below (We must either insert specific recording data or delete this exception):
- Clerk's File No. 20080066620, Real Property Records of El Paso County, Texas. (Deleting therefrom any restrictions indicating any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin.);
- (b) Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements;
- (c) Standby fees, taxes and assessments by any taxing authority for the year 2014, and subsequent years and subsequent taxes and assessments for any taxing authority for prior years due to change in land usage or ownership, but not those taxes or assessments for prior years because of an exemption granted to a previous owner of the Property under Section 11.13, Texas Tax Code, or because of improvements not assessed for a previous tax year;
- (d) Claims by the Tigua Indian Tribe of the Ysleta del Sur Pueblo, as evidenced by that certain Affidavit concerning filing of Notice of Claim to the Ysleta Grant and Aboriginal Title Areas, executed by Julian Granillo, Governor of the Ysleta del Sur Pueblo Indian Tribe, also known as the Tigua Indian Community, dated April 12, 1993, filed on April 16, 1993 in Volume 2553, Page 1958, of the Real Property Records, El Paso County, Texas. Company insures the Insured against loss, if any sustained by the Insured under the terms of this Policy by reason of a final, non-appealable judgment of a court of competent jurisdiction that divests the Insured of its interest as Insured because of this right, claim or interest. Company agrees to provide defense to the Insured in accordance with the terms of this Policy if suit is brought against the Insured to divest the Insured of its interest as Insured because of this right, claim or interest;
- (e) Terms, conditions and stipulations of Surface Lease No. 970025, dated December 4, 1996, by and between State of Texas and Jobe Concrete Products, Inc., recorded in Volume 3141, Page 2087, Real Property Records of El Paso County, Texas;
- (f) Easement to El Paso Electric Company recorded in Clerk's File No. 20110007604, Real Property Records, El Paso County, Texas;

- (g) Mineral reservations and/or mineral interests as set out in Clerk's File No. 20080066620, Real Property Records, El Paso County, Texas; and
- (h) Reservations by State of Texas, on behalf of the Permanent School Fund, as set out in Land Award and Receipt recorded in Clerk's File No. 20080066620, Real Property Records, El Paso County Texas.

**EXHIBIT "E-1"**

EXHIBIT "E-1"

**Donation Deed**

THE STATE OF TEXAS        }  
COUNTY OF EL PASO        }

KNOW ALL MEN BY THESE PRESENTS: That EL PASO DESERT EAST INVESTMENTS VI, LTD., a Texas limited partnership and THE MESA GROUP V, LTD., a Texas limited partnership, (collectively, referred to as "Grantors"), do hereby give, dedicate, grant and convey unto the CITY OF EL PASO, ("Grantee") for use as a park sports complex including a hike and bike trail, all that certain tract or parcel of real estate lying and being situated in the County of El Paso, State of Texas, to be used solely for the purposes set forth below and as described as follows:

A parcel of land containing 11.04 acres, more or less, being a portion of Section 2, Block 79, Township 3, Texas and Pacific Railroad Company Surveys, City of El Paso, El Paso County, Texas, and being more particularly described by metes and bounds attached hereto and made part hereof as Exhibit "A" (the "Property").

This conveyance is subject to the Permitted Exceptions listed in Exhibit "B" attached hereto and made a part hereof.

TO HAVE AND TO HOLD the above described premises, together with all and singular, the rights and appurtenances thereto in anywise belonging unto the said Grantee, its successor and assigns forever; and Grantors do hereby bind themselves, their successors, and assigns, to WARRANT AND FOREVER DEFEND all and singular and said Property unto the said Grantee, its successors and assigns, against every person whomsoever lawfully claiming, or to claim the same or any part thereof, by, through or under it, but not otherwise, except as to the reservations and exceptions referenced herein.

WITNESS my hand in El Paso, Texas on this \_\_\_\_ day of \_\_\_\_\_, 2014.

GRANTOR:  
EL PASO DESERT EAST INVESTMENTS VI, LTD.

By: EPDEVI Management Company, Inc., General Partner

By: \_\_\_\_\_  
Robert F. Foster, President

*(Signatures Continued on Next Page)*

**THE MESA GROUP V, LTD.**

By: The Mesa Group, Inc., General Partner

By: \_\_\_\_\_  
Scott M. Schwartz, President

STATE OF TEXAS     }  
                          }  
COUNTY OF EL PASO }

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by Robert F. Foster, President of EPDEVI Management Company, General Partner of El Paso Desert East Investment VI, Ltd., a Texas limited partnership, on behalf of said limited partnership.

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

STATE OF TEXAS     }  
                          }  
COUNTY OF EL PASO }

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by Scott M. Schwartz, president of The Mesa Group, Inc., General Partner of The Mesa Group V, Ltd., a Texas limited partnership, on behalf of said limited partnership.

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

*(Signatures Continued on Next Page)*

Accepted and agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

GRANTEE

CITY OF EL PASO

By: \_\_\_\_\_  
Tomás González, City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Karla M. Nieman  
Assistant City Attorney

\_\_\_\_\_  
Matthew McElroy  
Director of Development Services

**ACKNOWLEDGMENT**

STATE OF TEXAS            }  
COUNTY OF EL PASO    }

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by Tomás González, City Manager of the City of El Paso, a municipality, on behalf of said municipality.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

My Commission Expires:

AFTER RECORDING, RETURN TO:

City of El Paso  
Attn: City Clerk's Office  
300 N. Campbell  
El Paso, Texas 79901

0011403-00101/JBR/1188105

**EXHIBIT "A" TO DONATION DEED**

**METES AND BOUNDS DESCRIPTION**

Description of a parcel of land being a Portion of Section 2, Block 79, Township 3, Texas and Pacific Railway Company Surveys, City Of El Paso, El Paso County, Texas, and being more particularly described by metes and bounds as follows:

Commencing for reference at an existing city monument at the centerline intersection of Montwood Drive Tim Foster Street from which an existing city monument at the centerline intersection of Montwood Drive and Honour Point Place bears South 89°59'32" West a distance of 1208.05 feet; Thence South 87°37'00" East a distance of 1558.06 feet to a point on the southerly right of way line of Montwood Drive for the "TRUE POINT OF BEGINNING".

Thence along said right of way line, North 89°59'32" East a distance of 975.34 feet to a set 1/2" rebar with cap marked TX 5152;

Thence, 39.01 feet along the arc of a curve to the right which has a radius of 25.00 feet a central angle of 89°24'22" a chord which bears South 45°18'17" East a distance of 35.17 feet to a set 1/2" rebar with cap marked TX 5152;

Thence, South 00°36'06" East a distance of 701.47 feet to a set 1/2" rebar with cap marked TX 5152;

Thence, 39.53 feet along the arc of a curve to the right which has a radius of 25.00 feet a central angle of 90°35'17" a chord which bears South 44°41'33" West a distance of 35.54 feet to a set 1/2" rebar with cap marked TX 5152;

Thence, South 89°59'11" West a distance of 249.76 feet to a set 1/2" rebar with cap marked TX 5152;

Thence, North 00°36'06" West a distance of 373.02 feet to a set 1/2" rebar with cap marked TX 5152;

Thence, South 89°59'11" West a distance of 725.20 feet to a set 1/2" rebar with cap marked TX 5152;

Thence, North 00°34'52" West a distance of 378.55 feet to the "TRUE POINT OF BEGINNING" and containing 11.04 acres of land more or less.

Note: Bearings based on plat of Montwood Street Subdivision as recorded in Clerk's file no. 20110065750, Real property records of El Paso County, Texas.

  
Ron R. Conde  
R.P.L.S. No. 5152



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CONDE INC  
ENGINEERING / LAND SURVEYING / PLANNING  
6080 SURETY DRIVE / SUITE 100 / EL PASO, TEXAS 79905  
(915) 592-0283 FAX (915) 592-0296

EXHIBIT "B"

EXCEPTIONS FROM COVERAGE

- (a) Restrictive covenants recorded in The following restrictive covenants of record itemized below (We must either insert specific recording data or delete this exception):
- Clerk's File No. 20080066620, Real Property Records of El Paso County, Texas. (Deleting therefrom any restrictions indicating any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin.);
- (b) Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements;
- (c) Standby fees, taxes and assessments by any taxing authority for the year 2014, and subsequent years and subsequent taxes and assessments for any taxing authority for prior years due to change in land usage or ownership, but not those taxes or assessments for prior years because of an exemption granted to a previous owner of the Property under Section 11.13, Texas Tax Code, or because of improvements not assessed for a previous tax year;
- (d) Claims by the Tigua Indian Tribe of the Ysleta del Sur Pueblo, as evidenced by that certain Affidavit concerning filing of Notice of Claim to the Ysleta Grant and Aboriginal Title Areas, executed by Julian Granillo, Governor of the Ysleta del Sur Pueblo Indian Tribe, also known as the Tigua Indian Community, dated April 12, 1993, filed on April 16, 1993 in Volume 2553, Page 1958, of the Real Property Records, El Paso County, Texas. Company insures the Insured against loss, if any sustained by the Insured under the terms of this Policy by reason of a final, non-appealable judgment of a court of competent jurisdiction that divests the Insured of its interest as Insured because of this right, claim or interest. Company agrees to provide defense to the Insured in accordance with the terms of this Policy if suit is brought against the Insured to divest the Insured of its interest as Insured because of this right, claim or interest;
- (e) Terms, conditions and stipulations of Surface Lease No. 970025, dated December 4, 1996, by and between State of Texas and Jobe Concrete Products, Inc., recorded in Volume 3141, Page 2087, Real Property Records of El Paso County, Texas;
- (f) Easement to El Paso Electric Company recorded in Clerk's File No. 20110007604, Real Property Records, El Paso County, Texas;

- (g) Mineral reservations and/or mineral interests as set out in Clerk's File No. 20080066620, Real Property Records, El Paso County, Texas; and
- (h) Reservations by State of Texas, on behalf of the Permanent School Fund, as set out in Land Award and Receipt recorded in Clerk's File No. 20080066620, Real Property Records, El Paso County Texas.

001403-00101/JBR/1188103

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001403-00101/JBR/1161441.1

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**Exhibit "E-1"**

EXHIBIT "F"

**City's Project Cost**

	John Hayes 55' ROW	Honey Dew 52' ROW (1/2)	Hike & Bike Parcel	Total
Engineering	\$ 65,375.00	\$ 16,537.50	\$ -	\$ 81,912.50
Soils Engineering	13,075.00	5,512.50	-	18,587.50
City Fees	-	-	-	-
Grading	55,000.00	11,680.63	-	66,680.63
Concrete Curb & Gutter	37,917.50	15,986.25	-	53,903.75
Concrete Sidewalk	-	66,150.00	-	66,150.00
Water/Sewer Mains	-	88,200.00	-	88,200.00
Water & Sewer Services	-	-	-	-
Electric, Telephone & Cable	7,845.00	22,050.00	-	29,895.00
Gas Mains	7,845.00	18,742.50	-	26,587.50
Paving	255,037.50	65,721.25	-	320,758.75
Demolition of Existing Pavement	6,250.00	-	-	6,250.00
Utility Relocation	-	-	-	-
Striping	23,535.00	-	-	23,535.00
City Monuments	2,700.00	2,125.00	-	4,825.00
Traffic Control	6,406.75	-	-	6,406.75
Street Lights (Steel for JH & Wood for HD)	97,200.00	12,000.00	-	109,200.00
Landscaping	39,225.00	16,537.50	-	55,762.50
Hike & Bike	47,070.00	-	145,000.00	192,070.00
Drainage Pro-Ratio	7,594.40	2,895.20	-	10,489.60
Environmental & Archeological	386.36	147.29	-	533.66
TIA Mitigation	-	-	-	-
Performance Bond	10,224.63	6,164.28	3,175.00	19,563.91
Warranty Bond	5,533.48	2,343.67	1,968.50	9,845.65
Labor, Supervision & Overhead	134,492.50	68,857.12	29,000.00	232,349.63
<b>Sub-Total Estimated Cost</b>	<b>\$ 822,713.12</b>	<b>\$ 421,650.69</b>	<b>\$ 179,143.50</b>	<b>\$ 1,423,507.32</b>

**Additional Costs:**

(1) Wall Along Honey Dew  
 (a) Rock & Rod Iron \$81.50 per Linear Foot  
 (b) All Rock \$35.00 per Linear Foot

(2) Estimate for Developer Required Bonds For Adjacent Subdivisions (TDE 68 & 78):

Performance Bond for Plat Filing \$ 147,000.00  
 Maintenance/Warranty Bond \$ 94,700.00

10/29/2014

Exhibit "F"

**Exhibit "G"**

**Closing Procedure  
CLOSING TERMS AND PROCEDURES  
SPORTS COMPLEX PARCEL AND HIKE AND BIKE PARCEL**

Pursuant to Section 8 of the Development Agreement, upon adoption of the ordinance approving the annexation ("Annexation Approval Date") of the Property, the Donors will deliver to the City the Donation Deeds for the Sports Complex Parcel and the Hike and Ride Parcel (the "Donated Parcels"). 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 donation, the Owner and City agree to the following:

1. **Closing Date.** The "Closing" or "Closing Date" will be on the date that is thirty (30) days from the Annexation Approval Date. The Closing of this transaction shall take place at a time to be appointed by the parties at the offices of 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 Commitment.** Following the Annexation Approval Date, the City will obtain a current title commitment for the Donated Parcels from the Title Company, a copy of which will be provided to the Owner. The Title Commitment shall contain the express commitment of the Title Company to issue a Texas Form T-1 Owner Policy of Title Insurance for the Property, binding the Title Company to issue at the Closing an Owner's Policy of Title Insurance and all related endorsement and deletions required by City (the "Title Policy") on the standard form of policy prescribed by the Texas State Board of Insurance or applicable regulatory body, in an amount that represents the value of the property at Closing, as provided by the City. The Title Commitment shall be accompanied by copies of all instruments that create or evidence title exceptions affecting the Property.

For the purposes of the Closing, the Title Company shall be Lone Star Title Company, at 6701 N. Mesa, El Paso, Texas 79912, Attn: John Martin.

3. **Title Policy.** At the Closing, or as soon thereafter as the Title Company can issue the same, Owner shall cause, at City's sole cost and expense, a standard T-1 form Owner Policy of Title Insurance (the "Title Policy") to be furnished by the Title Company. The Title Policy shall be issued by the Title Company and shall insure that City has good and indefeasible fee simple title to the Property, subject only to the Permitted Exceptions. The Title Policy 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 Commitment shall be released and satisfied prior to or at Closing and such items and requirements shall not be exceptions to the Owner Title Policy to be provided by Owner.

**Exhibit "G"**

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

5. **Appraisal.** The value of the Donated Parcels has not been determined. Owner does not want an appraisal of the Donated Parcels to be conducted, and Owner releases the City from any obligation to appraise the Donated Property.

6. **Representations of Owner at Closing.** At the Closing Date, Owner represents to City as follows:

- (a) Owner has the full right, power, and authority to convey to City the Donated Parcels and to carry out Owner's obligations hereunder, and has taken all requisite action necessary to authorize the executing party to carry out Owner's obligations;
- (b) There are no adverse or other parties in possession of the Donated Parcels or who have any leasehold rights in the Donated Parcels;
- (c) Owner has removed all of Owner's inventory, goods, supplies, furniture or any other personal property (if any) located or stored on the Donated Parcels;
- (d) There is no litigation pending or, to Owner's current actual knowledge, threatened, affecting the Donated Parcels; and Owner 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 the Donated Parcels, or asserting any violation of any federal, state or municipal laws, ordinances, codes, orders, regulations or requirements affecting any portion of the Donated Parcels, including, without limitation, the Americans with Disabilities Act and any applicable environmental laws or regulations;
- (e) Owner has not received written notice of any pending condemnation action with respect to all or any portion of the Donated Parcels and there are no existing condemnation or other legal proceedings affecting the existing use of the Donated Parcels by any governmental authority having jurisdiction over or affecting all or any part of the Donated Parcels;
- (f) Owner shall have good and indefeasible title to the Donated Parcels free and clear of any claim, lien, or encumbrance, specifically including any claims for mechanics liens, subject only to the Permitted Exceptions;
- (g) Owner has no notice that the current use of the Donated Parcels does not comply with all currently applicable zoning ordinances and governmental requirements. Owner has not received any written notice of suspension or cancellation of any certificates of occupancy;
- (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 the Donated Parcels after the Closing Date and no contracts of any kind, including contracts for maintenance, security, disposal, or fire suppression will survive the Closing;
- (j) Owner 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 Owner's knowledge the Donated Parcels are not in violation of any applicable law, now, nor has it at any time during Owner's 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, 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 the Donated Parcels in violation of any applicable law. Owner has not received any written notice from any neighboring property Owners indicating they have any concerns about existing environmental conditions which could affect the Donated Parcels or indicating in any way they might hold Owner liable for any contribution to clean up and remediate such condition; and
- (l) No party (other than City) has any right or option to acquire all or any part of the Donated Parcels, whether subject to earnest money contract, option agreement, right of first refusal, reversionary or future interests, or right of reverter.

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 Donated 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 Donated 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, Donor will execute and deliver the Donation Deeds"; (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 each of Owner is not a "foreign person" as that term is defined in Section 1445, duly executed and acknowledged by Owner; (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 Survey (as described in Section 4 herein) and any fee (if any) due to a broker relating to the Donated Parcels. The City shall pay the premium for Title Policy and all endorsements requested by City; the cost of the updated or revised Survey (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 Donated Parcels.

12. **Prorations.** General real estate taxes for the then current year relating to the Donated 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, Owner and City shall adjust the proration of such taxes and Owner 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 Deed delivered hereunder but shall survive the Closing. All special taxes or assessments assessed prior to the Closing Date shall be paid by Owner. 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 Donated Parcels shall be delivered to City by Owner at the Closing subject to the rights of any approved third parties under the Permitted Exceptions.

EXHIBIT "H"

Application for Annexation



APPLICATION FOR ANNEXATION
PLANNING & ECONOMIC DEVELOPMENT
PLANNING DIVISION

City of El Paso, Texas
2 Civic Center Plaza
El Paso, TX 79901-1196
915-541-4024

1. CONTACT INFORMATION

PROPERTY OWNER(S):
ADDRESS: ZIP CODE: PHONE:
APPLICANT(S):
ADDRESS: ZIP CODE: PHONE:
REPRESENTATIVE(S):
ADDRESS: ZIP CODE: PHONE:
E-MAIL ADDRESS: FAX:

2. PARCEL ONE INFORMATION

PROPERTY IDENTIFICATION NUMBER:
LEGAL DESCRIPTION:
STREET ADDRESS OR LOCATION: REP DISTRICT:
ACREAGE: PRESENT ZONING: PRESENT LAND USE:
PROPOSED ZONING: PROPOSED LAND USE:

3. PARCEL TWO INFORMATION

PROPERTY IDENTIFICATION NUMBER:
LEGAL DESCRIPTION:
STREET ADDRESS OR LOCATION: REP DISTRICT:
ACREAGE: PRESENT ZONING: PRESENT LAND USE:
PROPOSED ZONING: PROPOSED LAND USE:

4. PARCEL THREE INFORMATION

PROPERTY IDENTIFICATION NUMBER:
LEGAL DESCRIPTION:
STREET ADDRESS OR LOCATION: REP DISTRICT:
ACREAGE: PRESENT ZONING: PRESENT LAND USE:
PROPOSED ZONING: PROPOSED LAND USE:

5. ADDITIONAL INFORMATION

OWNER(S) OF RECORD FOR THE ABOVE DESCRIBED PARCEL(S):
Printed Name: Signature:
Printed Name: Signature:
Printed Name: Signature:

Note: Signatures are required for all owners of record for the property proposed for annexation. Attach additional signatures on a separate sheet of paper.

\*\*OFFICE USE ONLY\*\*
Case# RECEIVED DATE: APPLICATION FEE: \$
DCC REVIEW DATE: (9:00 am, Conference Room, 2nd Floor, City Hall Building)
CPC REVIEW DATE: (1:30 pm, City Council Chambers, 2nd Floor, City Hall Building)
ACCEPTED BY:

Revised 4/12/11

## REQUIRED DOCUMENTATION FOR ANNEXATION APPLICATION

- PRE-APPLICATION MEETING**— A Pre-application meeting with Planning staff is required prior to submittal of an annexation application.
- APPLICATION FOR ANNEXATION** - Each item on this application shall be completed and all documentation required on this form shall be submitted before this application is accepted for processing. Submittal of an application does not constitute acceptance for processing until the Department reviews the application for accuracy and completeness.
- LOCATION MAP** - Property proposed for annexation must be accurately outlined in red ink.
- GENERALIZED PLOT PLANS** - Eight (8) copies of a generalized plot plan, including one (1) 8½" x 11" copy, are required with the following information:
  - a. General features or concept of development;
  - b. Lot lines with dimensions of the areas;
  - c. Legal description of the property;
  - d. Location of streets, and ingress and egress to the property;
  - e. Stamp or seal of a professional engineer, registered architect or registered land surveyor who prepared the plans.
- METES AND BOUNDS DESCRIPTION** - One (1) copy of a written, sealed metes and bounds description is required for the property proposed for annexation. The metes and bounds description shall contain the stamp or seal of a registered land surveyor, and shall be dated within one year of the application submittal date.
- SURVEY MAP** - The metes and bounds description shall be accompanied by (1) copies of a survey map that shall contain the legal description, the stamp or seal of a registered land surveyor, and shall be dated within one year of the application submittal date. If there are existing structures on the subject property, they will be described accurately on the survey map.
- PROOF OF OWNERSHIP** - One (1) copy of a certificate from a title company, warranty deed, or other legal document demonstrating that the individual(s) or corporation making the application for annexation is the current property owner.
- CASHIER'S VALIDATION** - Upon review and acceptance of the application by the Department, the required fee shall be paid at the Cashier, 5th Floor, City Hall Building. After validation of the payment, the application form shall be returned to the Development Services Department - Planning Division. Fees are nonrefundable. In addition to the application fees listed below, the City of El Paso will subsequently bill the applicant for public notice mailing and newspaper publication costs.

Annexation Application Fee: \$609.00

2

**EXHIBIT "I"**

**Application for Rezoning**



**REZONING APPLICATION  
CITY DEVELOPMENT DEPARTMENT  
PLANNING DIVISION**

**City of El Paso, Texas  
811 Texas Avenue  
El Paso, TX 79901  
915-212-0088**

**1. CONTACT INFORMATION**

PROPERTY OWNER(S): \_\_\_\_\_  
ADDRESS: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_ PHONE: \_\_\_\_\_  
APPLICANT(S): \_\_\_\_\_  
ADDRESS: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_ PHONE: \_\_\_\_\_  
REPRESENTATIVE(S): \_\_\_\_\_  
ADDRESS: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_ PHONE: \_\_\_\_\_  
E-MAIL ADDRESS: \_\_\_\_\_ FAX: \_\_\_\_\_

**2. PARCEL ONE INFORMATION**

PROPERTY IDENTIFICATION NUMBER: \_\_\_\_\_  
LEGAL DESCRIPTION: \_\_\_\_\_  
STREET ADDRESS OR LOCATION: \_\_\_\_\_ REP DISTRICT: \_\_\_\_\_  
ACREAGE: \_\_\_\_\_ PRESENT ZONING: \_\_\_\_\_ PRESENT LAND USE: \_\_\_\_\_  
PROPOSED ZONING: \_\_\_\_\_ PROPOSED LAND USE: \_\_\_\_\_

**3. PARCEL TWO INFORMATION**

PROPERTY IDENTIFICATION NUMBER: \_\_\_\_\_  
LEGAL DESCRIPTION: \_\_\_\_\_  
STREET ADDRESS OR LOCATION: \_\_\_\_\_ REP DISTRICT: \_\_\_\_\_  
ACREAGE: \_\_\_\_\_ PRESENT ZONING: \_\_\_\_\_ PRESENT LAND USE: \_\_\_\_\_  
PROPOSED ZONING: \_\_\_\_\_ PROPOSED LAND USE: \_\_\_\_\_

**4. PARCEL THREE INFORMATION**

PROPERTY IDENTIFICATION NUMBER: \_\_\_\_\_  
LEGAL DESCRIPTION: \_\_\_\_\_  
STREET ADDRESS OR LOCATION: \_\_\_\_\_ REP DISTRICT: \_\_\_\_\_  
ACREAGE: \_\_\_\_\_ PRESENT ZONING: \_\_\_\_\_ PRESENT LAND USE: \_\_\_\_\_  
PROPOSED ZONING: \_\_\_\_\_ PROPOSED LAND USE: \_\_\_\_\_

**5. ADDITIONAL INFORMATION**

OWNER(S) OF RECORD FOR THE ABOVE DESCRIBED PARCEL(S):  
Printed Name: \_\_\_\_\_ Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_ Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_ Signature: \_\_\_\_\_

*Note: Signatures are required for all owners of record for the property proposed for rezoning. Attach additional signatures on a separate sheet of paper.*

**\*\*OFFICE USE ONLY\*\***  
CASE # \_\_\_\_\_ RECEIVED DATE: \_\_\_/\_\_\_/\_\_\_ APPLICATION FEE: \$ \_\_\_\_\_  
CPC REVIEW DATE: \_\_\_/\_\_\_/\_\_\_ (1:30 pm, City Council Chambers, 1st Floor, City Hall Building, 300 N. Campbell)  
ACCEPTED BY: \_\_\_\_\_

1 Revised 4/19/2014

## EXHIBIT "I"

### Application for Rezoning

#### REQUIRED DOCUMENTATION FOR REZONING APPLICATION

- APPLICATION FOR REZONING** - Each item on this application shall be completed and all documentation required on this form shall be submitted before this application is accepted for processing. Submittal of an application does not constitute acceptance for processing until the Department reviews the application for accuracy and completeness.
- ZONING MAP SHEET** - Property proposed for rezoning must be accurately outlined in red ink. Zoning map sheets may be obtained at the City Development Department—One Stop Shop, 811 Texas Avenue.
- DETAILED SITE DEVELOPMENT PLANS** - If the property proposed for rezoning is occupied by existing structures or buildings, eight (8) copies of a detailed site development plan, including one (1) 8½" x 11" copy, are required with the following information:
- a. Legal description of the property;
  - b. Location and arrangement of structures;
  - c. Size and use of structures, including number of dwelling units;
  - d. Lot lines with dimensions of the areas;
  - e. Required yards and setbacks;
  - f. Landscaped planted areas, where applicable;
  - g. Open spaces, where applicable;
  - h. Curb cuts and driveways;
  - i. Pedestrian ways and sidewalks;
  - j. Stamp or seal of a professional engineer or registered architect who prepared the plans.
  - k. On-site parking areas, loading / unloading berths where applicable, number and size of on-site parking spaces (including accessible spaces, lighting of parking areas and bicycle spaces);
  - l. Storm water drainage;
  - m. Retaining walls, where applicable;
  - n. Screening walls or fences, where required;
  - o. Utility rights-of-way and easements;
  - p. Architectural design of buildings (and side elevations), show highest elevation
- GENERALIZED PLOT PLANS** - If the property proposed for rezoning is vacant, eight (8) copies of a generalized plot plan, including one (1) 8½" x 11" copy, are required with the following information:
- a. General features or concept of development;
  - b. Lot lines with dimensions of the areas;
  - c. Legal description of the property;
  - d. Location of streets, and ingress and egress to the property;
  - e. Stamp or seal of a professional engineer, registered architect or registered land surveyor who prepared the plans.
- METES AND BOUNDS DESCRIPTION** - If the legal description consists of portions of lots or blocks, or if a legal subdivision has not been recorded for the property, one (1) copy of a written, sealed metes and bounds description is required for the property proposed for rezoning. The metes and bounds description shall be accompanied by a survey map, shall contain the stamp or seal of a professional engineer or a registered land surveyor, and shall be dated within one year of the application submittal date.
- PROOF OF OWNERSHIP** - One (1) copy of a certificate from a title company, warranty deed, or other legal document demonstrating that the individual(s) or corporation making the application for rezoning is the current property owner.
- CERTIFIED CITY TAX CERTIFICATE** - One (1) copy is required for each parcel of property described in the application for rezoning. Certified city tax certificates may be obtained at the City Tax Office, Wells Fargo Plaza, 221 N. Kansas, 3rd Floor, Suite 300. For any rezoning application, delinquent taxes must be paid in full before a public hearing is held by the City Council.
- PROOF OF NOTICES SENT TO RECOGNIZED NEIGHBORHOOD ASSOCIATIONS** - Section 2.102 of the El Paso City Code requires that notices be sent to recognized neighborhood associations registered with the City of El Paso. Proof of notices sent is required and may be demonstrated by a copy of an email message, or a certified mail receipt, or an affidavit attesting hand delivery.
- ZONING CONDITIONS OR SPECIAL CONTRACTS** - One (1) copy of any special contracts or zoning conditions imposed on the property proposed for rezoning.
- SUBMITTAL VERIFICATION FORM** - One (1) copy of the submittal verification form, signed by the applicant and representative.
- CASHIER'S VALIDATION** - Upon review and acceptance of the application by the Department, the required fee shall be paid at the Cashier, One Stop Shop, 811 Texas Avenue. After validation of the payment, the application form shall be returned to the City Development Department - Planning Division. Fees are nonrefundable.

In addition to the application fees, the City of El Paso will subsequently bill the applicant for public notice mailing and newspaper publication costs.

## EXHIBIT "I"

### Application for Rezoning



#### REQUIREMENTS REGARDING RECOGNIZED NEIGHBORHOOD ASSOCIATIONS

Section 2.102 of the El Paso City Code requires that notices be sent to recognized neighborhood associations within the City of El Paso for rezoning, special permit, and zoning condition amendment or release applications. Notices to recognized neighborhood associations must be sent prior to submittal of the application to the City Development Department - Planning Division. Proof of notices may be demonstrated by providing a copy of the notification letter and a copy of an email message, a certified mail receipt, or an affidavit attesting hand delivery.

The notification letter sent by the applicant shall include the following information:

1. A detailed description of what is being applied for, including:
  - a. The street address and location of the property proposed for rezoning;
  - b. The legal description of the property proposed for rezoning; and,
  - c. Type of application being submitted (rezoning, special permit, or zoning condition amendment or release).
2. A statement as to the application's projected impact on the land comprising the geographic boundary of any affected recognized neighborhood associations.
3. The name, address, and telephone number of the applicant and/or representative as listed on the application.

## EXHIBIT "I"

### Application for Rezoning



#### REQUIREMENTS REGARDING ON-SITE POSTING OF NOTICE

The El Paso City Code requires on-site posting of notice by an applicant for rezoning, special permit, and zoning condition amendment or release applications for parcels of one acre or more in size. The on-site posting of notice shall comply with the following:

**Location.** The notice should be placed on the proposed site so that it is clearly visible and legible from each right-of-way abutting the property.

1. The sign(s) shall be placed perpendicular to the street frontage and be double sided.
2. One sign per right-of-way shall be required. However, if a property identified in an application is separated by a right-of-way, on-site postings shall be required on each side of the property divided by the right-of-way.
3. Required signage shall be made of durable material. Signage shall be properly anchored to the ground with at least two posts, or on a building, a fence, or a wall. The top of the text portion of such signage shall be a minimum of five feet above ground.

**Duration of posting.** On-site posting shall be continuous until final City Council action on the application. Posting shall commence at least **15 (fifteen) days** prior to the date of the first public hearing at the City Plan Commission. The applicant shall provide a digital or printed photograph to the Planning Division of the City Development Department showing that all required signage has been properly placed on the property. Failure to provide such photograph proving compliance with signage requirements shall result in postponement of the application until such time as a photograph is received. Any sign required by this provision shall be removed **no later than 10 (ten) days after final action** on the application. Posting is continuous so long as lost, stolen, or vandalized signage is **replaced within five (5) days** following the mailing of a letter to the applicant by the City notifying the applicant that the sign has been lost, stolen, or vandalized.

**Size and content.** A sign area with a minimum width of eight feet and a minimum height of four feet shall be required. The sign shall provide a caption stating ["Location of Proposed Rezoning (or other type of application). Public Hearings are scheduled. Please call (telephone number is provided by the planning official)."] The caption shall also be provided in Spanish. The caption shall be a minimum of four inch high bolded block lettering in black and appear on a light green background.

**EXHIBIT "I"**

**Application for Rezoning**



**SUBMITTAL VERIFICATION FORM**

I, the applicant and/or representative for this application, acknowledge the following:

1. I attest that this application is complete and accurate to the best of my knowledge. I understand that any inaccurate or incomplete information provided on this application may delay the processing of the application and may delay any scheduled public hearings.
2. I have checked for zoning conditions, special contract conditions, deed restrictions, restrictive covenants, and subdivision plat notes for the property proposed for rezoning. (If a conflict should result with this rezoning request due to zoning conditions, special contract conditions, deed restrictions, restrictive covenants, and subdivision plat notes, it will be the applicant's responsibility to resolve the conflict.) I understand the implications of use and development restrictions that are a result of any zoning conditions, special contract conditions, deed restrictions, restrictive covenants, and subdivision plat notes. I understand that if requested, I must provide copies of any zoning conditions, special contract conditions, deed restrictions, restrictive covenants, and subdivision plat notes that may apply to this property proposed for rezoning.
3. I understand that the applicant or representative is required to attend all scheduled meetings regarding this application, including the City Plan Commission public hearing, and the City Council public hearing. If the applicant or representative fails to appear at the scheduled public hearing before the City Plan Commission or City Council, the application may be postponed or may be heard without representation at the discretion of the body holding the hearing. I understand that if an applicant or representative fails to appear at the subsequent postponed hearing, this application may be dismissed for want of prosecution. Failure to receive a notice by the City shall not excuse failure to appear at the City Plan Commission or City Council public hearing.
4. I understand that the applicant is advised to meet with the City Representative where the property as listed on the application is located. It is recommended that the applicant keep the City Representative informed about the status of their application.
5. I understand that the City Council may approve, modify, deny, or table this application at its discretion and may or may not follow the recommendations of the City Plan Commission. A majority vote of all members of the City Council is required to overrule a recommendation of the City Plan Commission.

\_\_\_\_\_  
Name of Applicant

\_\_\_\_\_  
Name of Representative

\_\_\_\_\_  
Applicant's Signature

\_\_\_\_\_  
Representative's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**ADDITIONAL APPLICATIONS IN PROCESS REGARDING THIS PROPERTY (please check all boxes that apply):**

- |   |  |
|---|--|
| <input type="checkbox"/> Rezoning Application       | <input type="checkbox"/> Detailed Site Development Plan Application        |
| <input type="checkbox"/> Special Permit Application | <input type="checkbox"/> Zoning Condition Amendment or Release Application |
| <input type="checkbox"/> Subdivision Application    | <input type="checkbox"/> Historic Review Application                       |
| <input type="checkbox"/> Building Permit            | <input type="checkbox"/> Zoning Board of Adjustment Application            |
| <input type="checkbox"/> Other _____                |  |

For any information regarding this application, please contact the City Development Department--Planning Division at (915) 212-0088 or visit our website at <http://home.elpasotexas.gov/city-development/>.

**EXHIBIT "J"**

**PERFORMANCE BOND  
(Value of this Bond must be in the amount of 125% of  
the cost estimate for all remaining public improvements)**

KNOW ALL MEN BY THESE PRESENTS:

THAT \_\_\_\_\_, hereinafter called the "Principal", as Principal and \_\_\_\_\_, a Corporation organized and existing under the laws of the State of \_\_\_\_\_ with its principal office in the City of \_\_\_\_\_, hereinafter called the "Surety", as Surety, are held and firmly bound unto THE CITY OF EL PASO, TEXAS, hereinafter called the "Obligee", in the amount of \_\_\_\_\_ Dollars and \_\_\_\_\_ Cents (\$ \_\_\_\_\_), for the payment whereof, the said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain Development Agreement with the Obligee, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to develop and construct various public improvements \_\_\_\_\_, which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

WHEREAS, the Principal has filed a subdivision application with the Obligee, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to construct and develop the public improvements for \_\_\_\_\_. The Subdivision was approved at City Planning Commission on \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. That Subdivision is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that, if the said Principal shall faithfully perform the work in accordance with the plans, specifications and contract documents, then this obligation shall be void; otherwise, to remain in full force and effect.

IN WITNESS, WHEREOF, the said Principal and Surety have signed and sealed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

WITNESS: \_\_\_\_\_

ATTEST: \_\_\_\_\_

\_\_\_\_\_  
Principal - Company Name

\_\_\_\_\_  
Signed By (Principal Agent) (Seal)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Principal Agent's Name (Printed or Typed)

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Telephone No.

\_\_\_\_\_  
Fax No.

\_\_\_\_\_  
Surety - Company Name

\_\_\_\_\_  
Signed By (Surety Agent) (Seal)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Surety Agent's Name (Printed or Typed)

**EXHIBIT "J"**

City, State, Zip Code

\_\_\_\_\_  
Telephone No.

\_\_\_\_\_  
Fax No.

**INSERT**

**POWER OF ATTORNEY**

**AFTER**

**PERFORMANCE BOND**

**NOTE:**

- **DO NOT SUBSTITUTE BOND FORM**
- **BOND MUST BEAR FOUR (4) SIGNATURES: (1) WITNESS, (2) ATTEST, (3) CONTRACTOR AND (4) ATTORNEY-IN-FACT**
- **DATE ON POWER OF ATTORNEY MUST BE SAME AS DATE ON BOND**
- **SEPARATE POWER OF ATTORNEY FORMS MUST BE PROVIDED FOR EACH BOND (PERFORMANCE & PAYMENT BOND)**
- **AGENT RESIDENT DESIGNATION MUST CONTAIN SURETY'S SEAL, ASSIGNMENT BY SURETY AGENT, AND ACKNOWLEDGMENT OF SUCH ASSIGNMENT BY AGENT RESIDENT.**



**EXHIBIT "K"**

Principal - Company Name

Signed By (*Principal Agent*)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Principal Agent's Name (Printed or Typed)

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Telephone No.

\_\_\_\_\_  
Fax No.

\_\_\_\_\_  
Surety - Company Name

\_\_\_\_\_  
Signed By (*Surety Agent*)

(Seal)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Surety Agent's Name (Printed or Typed)

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Telephone No.

\_\_\_\_\_  
Fax No.

**INSERT**

**POWER OF ATTORNEY**

**AFTER**

**PERFORMANCE BOND**

**NOTE:**

- **DO NOT SUBSTITUTE BOND FORM**

**EXHIBIT "K"**

- **BOND MUST BEAR FOUR (4) SIGNATURES: (1) WITNESS, (2) ATTEST, (3) CONTRACTOR AND (4) ATTORNEY-IN-FACT**
- **DATE ON POWER OF ATTORNEY MUST BE SAME AS DATE ON BOND**
- **SEPARATE POWER OF ATTORNEY FORMS MUST BE PROVIDED FOR EACH BOND (PERFORMANCE & PAYMENT BOND)**
- **AGENT RESIDENT DESIGNATION MUST CONTAIN SURETY'S SEAL, ASSIGNMENT BY SURETY AGENT, AND ACKNOWLEDGMENT OF SUCH ASSIGNMENT BY AGENT RESIDENT.**

**EXHIBIT "L"**

**PERFORMANCE BOND  
(Value of this Bond must be for 100% of the City's Project Costs)**

KNOW ALL MEN BY THESE PRESENTS:

THAT \_\_\_\_\_, hereinafter called the "Principal", as Principal and \_\_\_\_\_, a Corporation organized and existing under the laws of the State of \_\_\_\_\_ with its principal office in the City of \_\_\_\_\_, hereinafter called the "Surety", as Surety, are held and firmly bound unto THE CITY OF EL PASO, TEXAS, hereinafter called the "Obligee", in the amount of \_\_\_\_\_ Dollars and \_\_\_ Cents (\$ ), for the payment whereof, the said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a Developer Participation Agreement with the Obligee, dated the \_\_\_ day of \_\_\_, 20\_\_\_ to develop and construct various public improvements, which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

WHEREAS, the Principal has filed a subdivision application with the Obligee, dated the \_\_\_ day of \_\_\_, 20\_\_\_ to construct and develop the public improvements for \_\_\_\_\_. The Subdivision was approved at City Planning Commission on \_\_\_ day of \_\_\_\_\_, 20\_\_\_. That Subdivision is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that, if the said Principal shall faithfully perform the work in accordance with the plans, specifications and subdivision application documents, then this obligation shall be void; otherwise, to remain in full force and effect.

PROVIDED, HOWEVER, that this Bond is executed pursuant to the provisions of Chapter 2253, Texas Government Code, as amended, and all liabilities on this Bond shall be determined in accordance with the provisions of said Chapter to the same extent as if it were copied at length herein. The Surety hereby waives notice of any change, including changes of time, to the construction contract, related subcontracts and purchase orders, which is made in accordance with Section 252.048, Texas Local Government Code.

IN WITNESS, WHEREOF, the said Principal and Surety have signed and sealed this instrument this \_\_\_ day of \_\_\_\_\_, 20\_\_\_.

WITNESS: \_\_\_\_\_

ATTEST: \_\_\_\_\_

\_\_\_\_\_  
Principal - Company Name

\_\_\_\_\_  
Signed By (Principal Agent) (Seal)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Principal Agent's Name (Printed or Typed)

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_

\_\_\_\_\_  
Telephone No.

\_\_\_\_\_  
Fax No.

\_\_\_\_\_  
\_\_\_\_\_ (Seal)

**EXHIBIT "L"**

Surety - Company Name

Signed By (*Surety Agent*)

Address

Surety Agent's Name (Printed or Typed)

City, State, Zip Code

Telephone No.

Fax No.

**INSERT**

**POWER OF ATTORNEY**

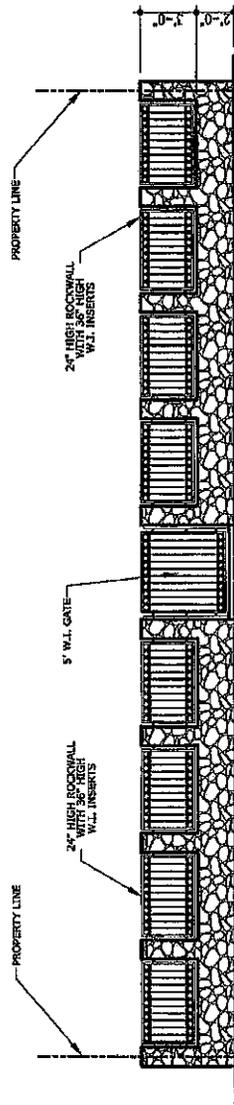
**AFTER**

**PERFORMANCE BOND**

**NOTE:**

- DO NOT SUBSTITUTE BOND FORM
- BOND MUST BEAR FOUR (4) SIGNATURES: (1) WITNESS, (2) ATTEST, (3) CONTRACTOR AND (4) ATTORNEY-IN-FACT
- DATE ON POWER OF ATTORNEY MUST BE SAME AS DATE ON BOND
- SEPARATE POWER OF ATTORNEY FORMS MUST BE PROVIDED FOR EACH BOND (PERFORMANCE & PAYMENT BOND)
- AGENT RESIDENT DESIGNATION MUST CONTAIN SURETY'S SEAL, ASSIGNMENT BY SURETY AGENT, AND ACKNOWLEDGMENT OF SUCH ASSIGNMENT BY AGENT RESIDENT.

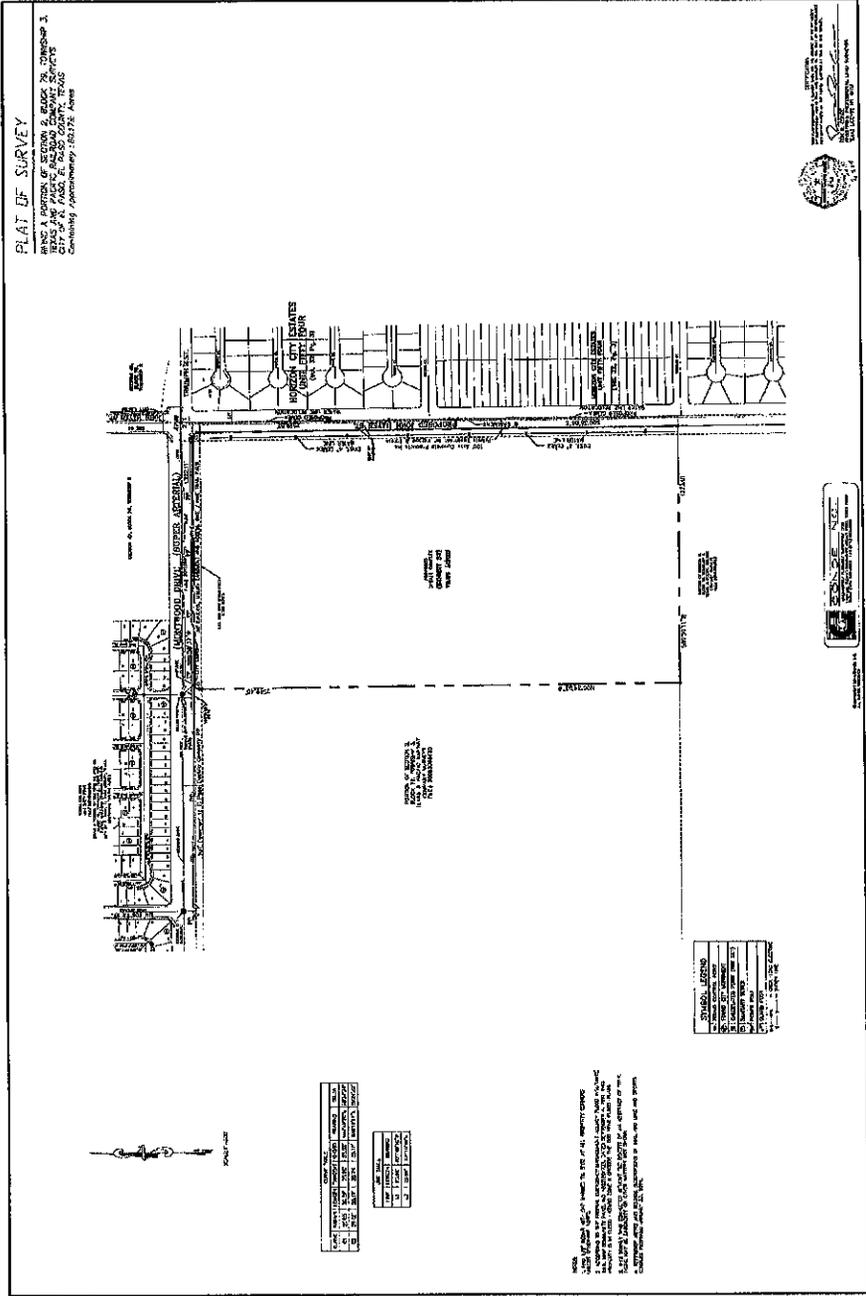
**EXHIBIT "M"**  
**HOMES FRONTING PARK/SPORTS COMPLEX FENCE**



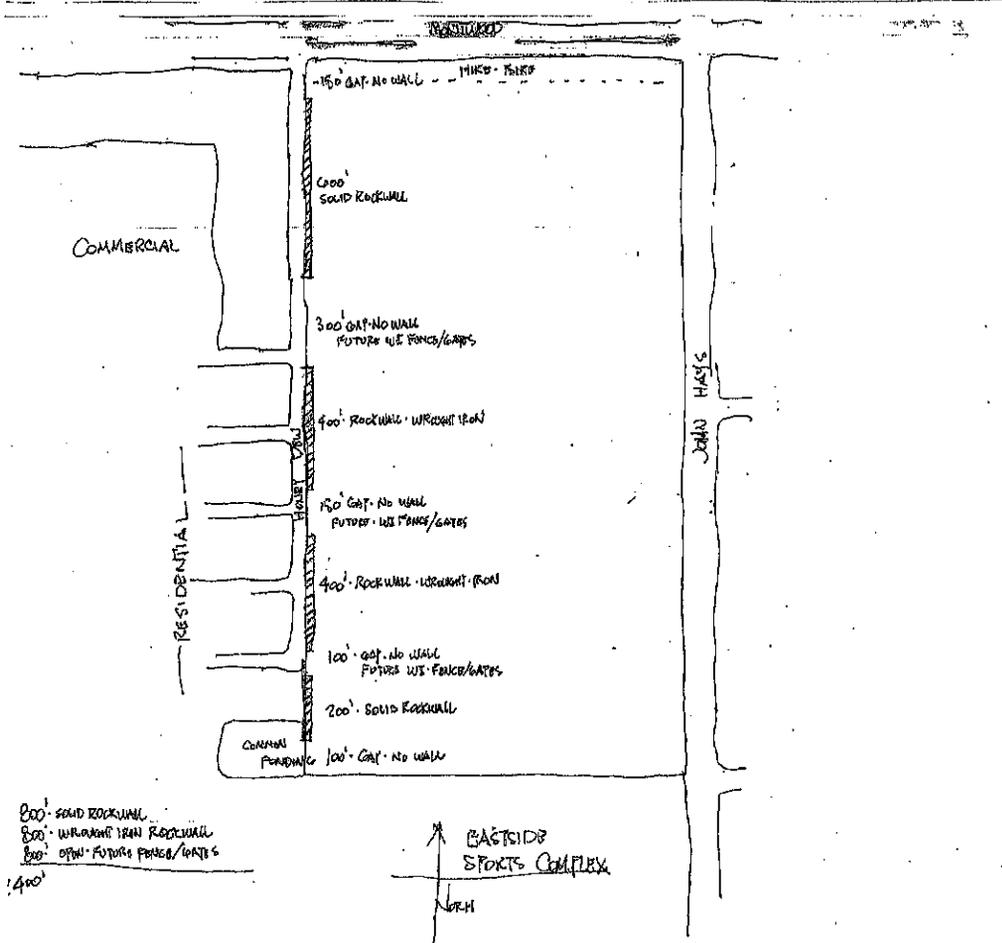
**TYPICAL ROCKWALL AT LOTS FACING PARK-1**

**TERRA DEL ESTE**  
**UNIT-SIXTY SEVEN**  
**LOTS-2,3,4 & 5 BLOCK-315**

# EXHIBIT "N" IMPROVEMENT SURVEY



**EXHIBIT "O"**  
**SPORTS COMPLEX FENCING PROPOSED DESIGN AND LAYOUT**



**EXHIBIT "P"**  
**RIGHT OF ENTRY**

THE STATE OF TEXAS     )  
                                  )                   **RIGHT OF ENTRY /LICENSE AGREEMENT**  
COUNTY OF EL PASO     )

This Temporary Right of Entry/LICENSE AGREEMENT is granted on this \_\_\_\_\_ day of \_\_\_\_\_, 201\_, by CITY OF EL PASO, a municipal corporation in the County of El Paso, State of Texas (collectively the "GRANTOR") to RANCHOS REAL XV, LLC, a Texas limited liability company ("GRANTEE").

**WHEREAS**, GRANTOR owns and controls that certain real property described as, a parcel of land being a Portion of Section 2, Block 79, Township 3, Texas and Pacific Railway Company Surveys, City of El Paso, El Paso County, Texas, approximately 80.17 acres as further described herein and generally located between Honey Dew and John Hayes (hereinafter refer to as the "City Property"); and

**WHEREAS**, the Parties entered into a Development Agreement on or about \_\_\_\_\_, 20\_\_\_, for the development and annexation of approximately 310 acres which includes the City Property; and

**WHEREAS**, as part of the Development Agreement, the GRANTEE agreed to construct certain public improvements upon the City Property; and

**WHEREAS**, GRANTEE has requested access to the City Property for the purpose of fulfilling its obligations pursuant to said Development Agreement, as part of the GRANTEE'S work on the Project; and

**WHEREAS**, GRANTOR consents to and approves of this entry onto the Property by GRANTEE and its contractors and subcontractors, subject to the provisions noted herein, in order to complete the Work;

**NOW THEREFORE, KNOW ALL BY THESE PRESENTS:**

That GRANTOR, as the lawful owner with control of the Property described more fully in **ATTACHMENT 1**, which is attached hereto and incorporated herein for all purposes, for and in consideration of the promises set forth herein, the receipt and sufficiency of which is hereby acknowledged, hereby grants a temporary right of entry upon, over, and through the Property described in **ATTACHMENT 1** as necessary to complete the Work.

**IT IS EXPRESSLY UNDERSTOOD AND AGREED** by the parties that:

1. **CONSTRUCTION OF IMPROVEMENTS.** Access to the Property shall be granted solely to allow GRANTEE through its contractors ("GRANTEE'S CONTRACTOR(S)") to build and develop the hike and bike trail upon the Hike and Bike Parcel, to build and develop the wall along the western boundary of the Sports Complex Parcel abutting Honey Dew, and related work. Except as otherwise stated in the Development Agreement, GRANTEE shall bear all costs and expenses associated with the work.
2. All Work to be performed on the Property shall be completed in a good, workmanlike manner and in accordance with all applicable federal, state, and local laws, rules, and regulations. GRANTEE shall obtain all applicable permits required for the completion of the work contemplated herein.
3. After the work is completed, GRANTEE shall restore the Property to substantially the same condition as found prior to commencement of said work, normal wear and tear excepted, and shall immediately remove its equipment or other equipment from the Property. Said restoration shall include, but not be limited to, the closure of any holes and replacement of any excavated dirt or other material.

**Exhibit "P"**

**EXHIBIT "P"**  
**RIGHT OF ENTRY**

Further, all work shall be completed in a manner to ensure that no damage shall be done to the Property. Should any damage occur, GRANTEE shall be fully responsible for the repair of such damage.

4. GRANTOR agrees that it will provide access to the GRANTEE to the Property in order to facilitate GRANTEE's work.

5. Except for the temporary rights expressly granted by execution of this instrument and reasonable access, and/or ingress and egress to the property, GRANTOR does not convey any other right, title, or interest in the Property herein.

6. This Temporary Right of Entry may be extended or amended in writing, upon execution of both parties.

7. **GRANTEE AGREES TO INDEMNIFY AND HOLD GRANTOR HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY, OR INDIRECTLY TO THE OPERATION, CONDUCT, OR MANAGEMENT OF GRANTEE'S ACTIVITIES ON THE CITY PROPERTY, OR FROM ANY BREACH ON THE PART OF GRANTEE OF ANY TERMS OF THIS TEMPORARY RIGHT OF ENTRY, OR FROM ANY ACT OR NEGLIGENCE OF GRANTEE, ITS AGENTS, CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, INVITEES, OR LICENSEES IN OR ABOUT THE CITY PROPERTY INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE, OR IN PART, FROM THE NEGLIGENCE OF GRANTOR. IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST GRANTOR BY REASON OF ANY SUCH CLAIM, GRANTEE, UPON NOTICE FROM GRANTOR, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO GRANTOR.**

8. INSURANCE. GRANTEE agrees it shall provide the following insurance:

GRANTEE shall provide or cause its contractor to provide, at its sole cost and expense shall, throughout the term of this agreement and any extensions thereto, provide and keep in force for the benefit of GRANTEE, with GRANTOR as additional insured, comprehensive general liability insurance in an amount not less than:

\$1,000,000 - Per Occurrence  
\$1,000,000 - General Aggregate  
\$1,000,000 - Products/Completed Operations - Occurrence & Aggregate

GRANTEE shall name the GRANTOR as an additional insured on the policy of general liability insurance referenced above. Such insurance shall provide coverage for any alleged acts or omissions of the GRANTEE or its Contractor(s), its agents, employees or independent contractors, alleged or asserted by any individual, in connection with the performance of this Agreement. GRANTEE shall maintain said insurance with a solvent insurance company authorized to do business in Texas. The policy shall provide that the insurer will defend against all claims and lawsuits which arise and will pay any final judgment of a court of competent jurisdiction against the GRANTOR, its officers, agents, servants.

This Temporary Right of Entry shall not be effective to authorize any entry into the Property until the GRANTEE submits a copy of the policy or certificate of liability insurance showing proof of the required insurance to the GRANTOR. Such policy or certificate shall provide that the insurance cannot be canceled or the amount of coverage changed without thirty (30) days prior written notice to the GRANTOR. Failure to keep the policy in full force and effect throughout the term of the Temporary Right of Entry shall be grounds for cancellation of this Temporary Right of Entry.

Exhibit "P"

**EXHIBIT "P"**  
**RIGHT OF ENTRY**

10. GRANTEE understands and agrees that in the event any federal or state regulatory agency assesses a civil penalty against the GRANTOR for any violation of applicable regulations, and such civil penalty shall be imposed as a result of any act or failure to act on the part of the GRANTEE, its agents, contractors, subcontractors, employees, invitees, or licensees, GRANTEE will immediately reimburse the GRANTOR in the amount of the civil penalty assessed.

11. In completing the referenced work, GRANTEE has represented it may use additional contractors and subcontractors. In the event that additional contractors or subcontractors are deemed necessary by GRANTEE, GRANTEE shall provide written notice to the GRANTOR of such additional contractor or subcontractor and compliance with the terms of this Right of Entry, including the indemnification and insurance requirements set forth in this agreement.

12. This instrument shall be governed, construed, and enforced in accordance with the laws of the State of Texas. Any controversy arising out of or connected with this Agreement or the underlying work shall be instituted and maintained in the courts of the State of Texas, County of El Paso.

13. Nothing in this Temporary Right of Entry shall be construed as creating the relationship of employer and employee or agent between any of the parties named herein.

14. GRANTOR, by granting this Temporary Right of Entry, does not warrant or represent that any permission for any real property interest, use in the Property, or other right shall be granted to GRANTEE. This instrument merely grants a temporary right of entry for the sole purpose of building and developing the hike and bike trail upon the Hike and Bike Parcel, to build and develop the wall along the western boundary of the Sports Complex Parcel abutting Honey Dew, and related work. The Parties expressly understand and agree that the granting of any related easement or other such rights shall require the execution of additional instruments and/or proper legal actions.

15. All notices to be given under this Temporary Right of Entry shall be delivered by hand or given by certified or registered mail, receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

TO GRANTOR:       CITY OF EL PASO  
                          Attn: City Manager  
                          P.O. Box 1890  
                          El Paso, Texas 79950-1890

With copy to:       CITY OF EL PASO  
                          Attn: City Attorney  
                          P.O. Box 1890  
                          El Paso, Texas 79950-1890

CITY OF EL PASO  
Engineering and Construction Management Dept.  
Attn: City Engineer  
218 N. Campbell Street, 2<sup>nd</sup> Floor  
El Paso, Texas 79901

TO GRANTEE:       Ranchos Real XV, LLC  
                          Attn: Douglas Schwartz  
                          6080 Surety Drive, Suite 300  
                          El Paso, Texas 79905

**EXHIBIT "P"**  
**RIGHT OF ENTRY**

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown on the return receipt for delivery, rejection, or undeliverable. Any party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to the other in the manner set forth in this paragraph.

16. GRANTEE shall not assign, sublet, sell, convey, or transfer all or any part of this Temporary Right of Entry in any way without the prior written consent of GRANTOR. Any attempt to transfer or assign without the prior written consent of GRANTOR shall be void and may result in the termination of this instrument.

*(Signatures follow on next page)*

**EXHIBIT "P"  
RIGHT OF ENTRY**

THE STATE OF TEXAS    )  
                                  )  
COUNTY OF EL PASO    )

**TEMPORARY RIGHT OF ENTRY**

*Signature Page*

EXECUTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 201\_.

**GRANTOR:  
CITY OF EL PASO, TEXAS**

\_\_\_\_\_  
Irene Ramirez, Interim City Engineer  
Engineering & Construction Management

**APPROVED AS TO FORM:**

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
Engineering & Construction Management

STATE OF TEXAS        )  
                                  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by Irene Ramirez, Interim City Engineer, for the City of El Paso, Texas.

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

**EXHIBIT "P"**  
**RIGHT OF ENTRY**

THE STATE OF TEXAS    )  
                                  )  
COUNTY OF EL PASO    )

**TEMPORARY RIGHT OF ENTRY**

EXECUTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 201\_.

**GRANTEE:**  
**RANCHOS REAL XV, LLC**

\_\_\_\_\_  
Douglas A. Schwartz, Manager

STATE OF TEXAS        )  
                                  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by Douglas A. Schwartz, Manager of Ranchos Real XV, LLC, a Texas limited liability company, on behalf of said limited liability company.

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

**EXHIBIT "P"**  
**RIGHT OF ENTRY**  
**ATTACHMENT 1**  
**PROPERTY DESCRIPTION**