



City of El Paso – City Plan Commission Staff Report

Case No AN08-009
Application Type Annexation and Service Plan
CPC Hearing Date November 15, 2012
Staff Planner Nelson Ortiz, 541-4931, Ortiznx@elpasotexas.gov

Location Southwest of the intersection of Pebble Hills Boulevard and Zaragoza Road
Legal Description All of Tract 2C, Section 46, Block 79, Township 2, Texas and Pacific Railroad Company Surveys, and a portion of Ysleta – Carlsbad Cut-off Road (Zaragoza Road), El Paso County, Texas
Acreage 20.552 acres
Rep District Adjacent to Representative District 5
Existing Use Vacant
Existing Zoning East ETJ
Proposed Zoning C-3 (Commercial) and A-3 (Apartment)

Property Owner Genagra, LP.
Applicant Genagra, LP.
Representative Roe Engineering, L.C., Yolanda Giner, Gordon Mott & Davis P.C.

Distance to Park: Abutting a future park to the north & 300 feet (Tierra del Este #1 to the west)
Distance to School: 2,950 feet (Roberto Ituarte Elementary & Raphael Hernando III Middle)

SURROUNDING ZONING AND LAND USE

North: R-3 (Residential)/ R-5 (Residential), ETJ (Extraterritorial Jurisdiction)/ Vacant
South: C-3 (Commercial)/ Vacant
East: C-4/c (Commercial/ condition)/ Vacant
West: R-3 (Residential)/ Vacant/ El Paso Electric Co. right-of-way

THE PLAN FOR EL PASO DESIGNATION: G-4 Suburban

NEIGHBORHOOD ASSOCIATIONS: Las Tierras Neighborhood Association

General Information:

The applicant is requesting an annexation of vacant land within the City of El Paso's Extra Territorial Jurisdiction (ETJ) in conjunction with the approved Annexation Agreement dated September 18, 2012. The subject property is 20.552 acres in size and is currently vacant. Under the terms of the approved agreement, if the subject property is annexed, the subject property will be rezoned to C-3 (Commercial) and A-3 (Apartment).

A zoning ordinance/case, ZON08-00080 accompanies the annexation ordinance, so that both ordinances are considered by City Council at the same time.

Neighborhood Input:

Notice of the public hearings were mailed to all property owners within 300 feet of this proposed annexation and published in the El Paso Times in accordance with the Texas Local Government Code. Planning did not receive any calls or letters in support or opposition.

DCC Recommendation:

The Development Coordinating Committee provides the following comments:

Planning and Economic Development - Planning Division:

Planning has no objection to the annexation request. The Service Plan shall be approved with the ordinance approving the annexation in accordance with the Texas Local Government Code 43.056. Planning recommends approval of this request.

Engineering & Construction Management - Building Permits and Inspections:

No comments received.

City Development Department - Land Development

We have reviewed subject plan and recommend approval, no objections.

Stormwater Comments:

We have reviewed the Annexation Service Plan described above and provide the following comments:

Exhibit “C” – City of El Paso Annexation Service Plan

1. Under service component (2) Additional Services, (a) Drainage Services, El Paso Water Utilities will provide drainage maintenance in the annexation area in accordance with established policies of the City.

Department of Transportation:

No comments received.

Fire Department:

No comments received.

Police:

No comments received.

Parks:

No comments received.

El Paso Water Utilities:

We have reviewed the proposed annexation service plan described above and provide the following comments:

1. EPWU planning and development section does not object to this request

Water:

There is an existing 24-inch diameter water transmission main along Pebble Hills Boulevard. No direct service connections are allowed to the transmission main as per the El Paso Water Utilities – Public Service Board Rules and Regulations.

There is an existing 8-inch diameter water main along Pebble Hills Boulevard that extends approximately 466-feet east of Tierra Cortez Drive. The main continues south within an easement along the eastern side of the El Paso Electric Company (EPEC) Right-of-Way for approximately 746-feet. From this point the

main continues east to Zaragoza Road within an easement located immediately south of and parallel to the common boundary line of the subject property and Tierra Del Este unit 32.

Water service to the subject property requires the extension of an 8-inch diameter water main along the entire Zaragoza Road frontage within a dedicated easement. Water service also requires the on-site water system to be looped to the existing water mains and proposed water main extensions.

Sanitary Sewer:

There is an existing 8-inch diameter sanitary sewer main that extends within an easement located immediately west of and parallel to the west Zaragoza right-of-way line. This sewer main dead-ends just south of the common boundary line of the subject property and Tierra Del Este unit 32.

Also, there is an existing 8-inch diameter sewer main along Pebble Hills Boulevard.

The Owner/Developer is to grade the subject property to allow sanitary sewer flows to be conveyed by gravity to the above mentioned sewer mains.

An 8-inch diameter sewer main extension along the entire Zaragoza Road frontage within a dedicated easement is required.

General:

EPWU requires a new service application to provide service to the property. Application for new water and sanitary sewer services should be made 6 to 8 weeks prior to construction to ensure water for construction work. A site plan, utility plan, grading and drainage plans, landscaping plan, the legal description of the property and a certificate-of-compliance are required at the time of application. Service will be provided in accordance with the current EPWU – PSB Rules and Regulations. The applicant is responsible for the costs of any necessary on-site and off-site extensions, relocations or adjustments of water and sanitary sewer lines, appurtenances. Annexation fees are due at the time of service application.

TxDOT:

No comments received.

County of El Paso:

No comments received.

Library Department:

No comments received.

Environmental Services:

No comments received.

Attachments

Attachment 1: Location Map

Attachment 2: Aerial

Attachment 3: Draft Ordinance

AN08009



Attachment 3: Draft Ordinance

ORDINANCE _____

AN ORDINANCE ANNEXING THE FOLLOWING REAL PROPERTY DESCRIBED AS ALL OF TRACT 2C, SECTION 46, BLOCK 79, TOWNSHIP 2, TEXAS AND PACIFIC RAILROAD COMPANY SURVEYS, AND A PORTION OF YSLETA – CARLSBAD CUT-OFF ROAD (ZARAGOZA ROAD), EL PASO COUNTY, TEXAS.

WHEREAS, Genagra, LP owners of approximately 20.552 acres and the County of El Paso owners of approximately 1.519 acres of country road, lying in the City of El Paso’s East Extraterritorial Jurisdiction; the property more fully described in the attached metes and bounds description, identified as Exhibit “A”, and survey of the property, identified as Exhibit “B” and made a part hereof by reference, and Genagra, LP request that this area be annexed into the El Paso City Limits; and,

WHEREAS, the attached Service Plan, identified as Exhibit “C”, identifies the municipal services to be extended to this annexed area and adopted as part of this ordinance; and,

WHEREAS, the City of El Paso and the Owners have entered into an Annexation Agreement on September 18, 2012, attached as Exhibit “D”, which governs the development of the property after the annexation; and,

WHEREAS, public hearings were held on November 12, 2012 and November 15, 2012 at which persons interested in the annexation were given the opportunity to be heard; and that no person voiced opposition to the annexation or Service Plan described as Exhibit “C”;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the boundaries of the CITY OF EL PASO are hereby extended so as to All of Tract 2C, Section 46, Block 79, Township 2, Texas and Pacific Railroad Company Surveys, and a portion of Yselta – Carlsbad cut-off road (Zaragoza Road), El Paso County, Texas, more particularly described in Exhibit “A” and Exhibit “B”.

Further, that the City of El Paso adopts the Service Plan described as Exhibit “C”; and that the annexation is subject to all terms and conditions of the Annexation Agreement, entered into on September 18, 2012.

PASSED AND APPROVED this _____ day of _____, 2012.

THE CITY OF EL PASO

ATTEST:

Richarda Duffy Momsen
City Clerk

John F. Cook
Mayor

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Lupe Cuellar,
Assistant City Attorney

Mathew S. McElroy
Deputy Director – Planning

ORDINANCE _____

AN08009 (SUB08-00129)

Exhibit "A"

METES AND BOUNDS DESCRIPTION (Proposed Annexation to the centerline of Ysleta - Carlsbad Cut-Off Road (Zaragoza Road))

Description of a 21.3709 acre parcel of land being all Tract 2C, Section 46, Block 79, Township 2, Texas and Pacific Railroad Company Surveys and a portion of Ysleta - Carlsbad Cut-Off Road (Zaragoza Road), El Paso County, Texas and being more particularly described by metes and bounds as follows to wit:

Starting from a existing City Monument located at the centerline of Pebble Hills Boulevard and Tierra Mina Drive, Thence South 52°35'20" East a Distance of 432.87 feet to a set 5/8" rebar with yellow plastic cap stamped TX 2449, Roe Engr., L.C., said rebar being the southeast corner of Lot 1, Block 108, Tierra Del Este Unit Twenty Seven and the southwest corner of Tract 1C, Section 46, Block 79, Township 2, Texas and Pacific Railroad Company Surveys; said rebar being the "TRUE POINT OF BEGINNING";

Thence North 89°57'19" East Field Bearing (North 89°58'07" East Deed Bearing) a Distance of 868.98 feet Field Distance to a point along the centerline of Ysleta - Carlsbad Cut-Off Road (Zaragoza Road);

Thence South 42°34'03" West Field Bearing along said along the centerline of Ysleta - Carlsbad Cut-Off Road (Zaragoza Road) a Distance of 713.44 feet Field Distance to a point;

Thence North 90°00'00" West Plat / Field Bearing (North 89°58'58" West Deed Bearing) along said common line of Tract 2C, Section 46, Block 79, Township 2, Texas and Pacific Railroad Company Surveys and the northeast corner of Lot 1, Block 132, Tierra Del Este Unit Thirty Two a Distance of 1531.12 Field Distance to a set 5/8" rebar with yellow plastic cap stamped TX 2449, Roe Engr., L.C., said rebar, said rebar being the southwest corner of Tract 2C, Section 46, Block 79, Township 2, Texas and Pacific Railroad Company Surveys and the northwest corner of Lot 2, Block 132, Tierra Del Este Unit Thirty Two;

Thence North 00°30'15" West Plat / Field Bearing (North 00°32'12" West Deed Bearing) along westerly tract line of Tract 2C, Section 46, Block 79, Township 2, Texas and Pacific Railroad Company Surveys a Distance of 523.88 feet Plat / Field Distance 524.76 feet Deed Distance) to a set 5/8" rebar with yellow plastic cap stamped TX 2449, Roe Engr., L.C., said rebar, said rebar being the northwest corner of Tract 2C, Section 46, Block 79, Township 2, Texas and Pacific Railroad Company Surveys;

Thence North 89°57'19" East Field Bearing (East Deed Bearing) along the northerly tract line of Tract 2C, Section 46, Block 79, Township 2, Texas and Pacific Railroad Company Surveys a Distance of 1149.36 feet Plat /Field Distance (1150.03 feet Deed Distance) back to the "TRUE POINT OF BEGINNING" and containing in all 930,917.13 square feet or 21.3709 acres of land more or less.

FILING INFORMATION	CERTIFICATION	METES AND BOUNDS DESCRIPTION	
<p>DATE: <u>DECEMBER 8, 2009</u> CENSUS TRACT: <u>N/A</u> DISTRICT: <u>EAST 5</u> AREA: <u>31</u> COUNTY PLAT RECORDS BOOK: <u>N/A</u> PAGE: <u>N/A</u> FIELD: <u>J.B.</u> OFFICE: <u>L.A.J.</u> W.O. <u>071108-3</u> FILE: <u>8.5 X 11 EXHIBIT.DWG</u> SCALE: <u>1" = 40'</u></p>	 <p>BRADLEY ROE, R.P.L.S. 2449</p>	<p>(Proposed Annexation to the centerline of Ysleta - Carlsbad Cut-Off Road (Zaragoza Road)) BEING ALL OF TRACT 2C, SECTION 46, BLOCK 79, TOWNSHIP 2, TEXAS AND PACIFIC RAILROAD COMPANY SURVEYS, EL PASO COUNTY, TEXAS CONTAINING IN ALL 930,917.13 SQ. FT. OR 21.3709 ACRES OF LAND MORE OR LESS. PREPARED FOR: GENAGRA, L.P., Luis Urreo, Managing Member of Genagra Holding, L.L.C. General Partner</p>	 <p>bnpRoe Engineering, L.C. 601 N. Cotton St. Suite No.6 El Paso, Tx, 79902 (915) 533-1418 - FAX: (915) 533-4978 EMAIL: roeeng@swbell.net ENGINEERING/LAND DEVELOPMENT/PLANNING/SURVEYING</p> <p style="font-size: 1.2em; font-weight: bold;">SHEET 1 OF 1</p>

EXHIBIT “C”

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 of the Texas Local Government Code. This Plan is made specifically for a 20.552 - acre property located in the City’s EAST Extraterritorial Jurisdiction (ETJ). Being all of Tract 2C, Section 46, Block 79, Township 2, Texas and Pacific Railroad Company Surveys, El Paso County, Texas. The area is more specifically described by metes and bounds in Exhibit, “A” which is attached to the annexation Ordinance of which this Plan is a part.

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 Annexation Agreement entered into by the property owners and the City on September 19, 2012. In case of conflict between the terms of this Plan and the terms of the Annexation Agreement, the terms of the Annexation Agreement shall control.

The City reserves the right guaranteed to it by Section 43.056(h) 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 in the annexation area 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 in the annexation area on the effective date of annexation. These services include:
 - average 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 and fire prevention services in the annexation area, 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 in the annexation area 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 (PSB/EPWU) will maintain water and wastewater facilities in the annexed area that are not within the service area of another water or wastewater utility and as governed by their Rules and Regulations.

- e. Maintenance of Roads and Streets, Including Street Lighting. The City of El Paso 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;
 - repair 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. The City Parks and Recreation Department will provide maintenance to public recreation facilities as they become available.

2. Additional Services

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

- a. Drainage Services. The El Paso Water Utilities will provide drainage maintenance in the annexation area in accordance with established policies of the City. Services include:
 - maintenance of existing public ponding areas and retention dams;
 - storm sewer maintenance;
 - emergency spills and pollution complaints response;
 - watershed development review and inspection is available through the City's Development Services Department;
 - flood plain office (information relating to flood plains) is available through the City's Engineering Department.
- b. Library Department. All library services now provided to areas inside the City will be provided to the annexed area on the effective date of annexation in accordance with the City's existing policies and regulations.
- c. Development Services Department. All inspection services now provided within the City, including building, electrical, plumbing, gas, engineering, housing, and environmental will be extended to the annexed area on the effective date of annexation.
- d. Planning and Zoning. The planning and zoning jurisdiction of the City will be extended to the annexed area on the effective date of annexation.
- e. Other Services. All other City Departments with jurisdiction in the area will provide services according to established City policies and procedures.

3. Capital Improvements Program

The City will initiate the construction of capital improvements necessary for providing municipal services for the annexation area as necessary. Any such construction or acquisition shall begin within two years of the effective date of the annexation and shall be substantially completed within 4 1/2 years after that date. Construction of any capital improvement within the annexation area will be done accordance with the established policies of the City.

- a. Police Protection. No capital improvements are necessary at this time to provide Police services, but may be necessary in the future.
- b. Fire Protection. No capital improvements are necessary at this time to provide 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 at this time to provide collection services but may be necessary in the future.
- d. Water and Wastewater Facilities. Water and wastewater service will be provided in accordance with the Annexation Agreement and the El Paso Water Utilities – Public Service Board Rules and Regulations. Annexation fees will be due at the time of application.
- e. Roads and Streets. No capital improvements are necessary at this time. All streets and rights of way shall be dedicated and improved by the property owner in accordance with the Annexation Agreement. In general, the City will acquire control and jurisdiction of all public roads and public streets within the annexation area 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.

Owner shall dedicate to the City a portion of ROW which is described in the Exhibit B (“ROW”), and contribute \$33,694.00 to a fund for the future Pebble Hills extension, attached hereto to the City as part of the subdivision plat approval process. Owner shall have no further obligations for off-site dedications, construction or improvements of streets except as required by the City of El Paso City Code.

- f. Parks, Playgrounds and Swimming Pools. No capital improvements are necessary at this time to provide services but may be necessary in the future.
- g. Drainage Facilities. No capital improvements are necessary at this time to provide services but may be necessary in the future.
- h. Street Lighting. It is anticipated that the developer of new subdivisions in the area will install public street lighting in accordance with the City's standard policies and procedures. In other cases, the City will install public street lighting in the annexation area 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 annexation area by using existing capital improvements. Additional capital improvements are not necessary to provide City services.
- j. Capital Improvement Planning. The annexation area will be included with other territory in connection with planning for new or expanded facilities, functions, and services in accordance with established policies of the City and where applicable, the Annexation Agreement.

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 annexation area for humanitarian purposes or protection of the general public, the City obligates itself to take all reasonable measures to restore

services to the annexation area 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.

RESOLUTION

WHEREAS, the City of El Paso and Genagra, LP, hereinafter referred to as "Property Owner" wish to annex approximately 21.3709 acres of real property described in Exhibit "A" and Exhibit "B" which is attached and incorporated for all purposes, and of which the County of El Paso is the owner of approximately 1.519 acres of such real property; and,

WHEREAS the Property Owner is the owner of approximately 20.552 acres out of the 21.3709 acre tract with the remainder being a county road; and,

WHEREAS, the Property is not within the corporate limits of any municipality but is contiguous to the corporate limits of the City and the Property Owner desires that the Property be annexed to the City in order to provide adequate and efficient improvements and facilities; and,

WHEREAS, the City has determined that if the Property is annexed, such annexation should be subject to terms and conditions which will require the Property Owner to assist in bearing the costs for municipal infrastructure and costs for providing municipal services to the annexed area; and,

WHEREAS, Property Owner, after full consideration, accepts the terms and conditions cited in the Annexation Agreement attached as Exhibit "C", due to the advantages and benefits resulting from the annexation of the Property; and,

WHEREAS, the City, after due and careful consideration, has concluded that should the City decide to annex the Property, the annexation should be under the terms and conditions hereinafter set forth and that such terms and conditions are in the best interest of the City to protect and provide for the public health, safety, morals and general welfare.

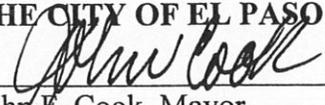
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

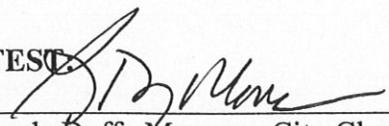
That the City Manager be authorized to sign an Annexation Agreement between the City and Genagra for 20.552 acres of real property, located west of Zaragoza Road and south of Pebble Hills Blvd., which will specify the terms and conditions in which the property will be annexed should the City annex the property; and,

That the Deputy Director of Planning prepare an annexation service plan in accordance with Section 43.056 of the Texas Local Government Code.

ADOPTED this 18th day of September, 2012.

THE CITY OF EL PASO


John F. Cook, Mayor

ATTEST:

Richarda Duffy Momsen, City Clerk

SIGNATURES CONTINUE ON FOLLOWING PAGE

ITY CLERK DEPT.
2012 AUG -7 AM 8:29

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

ANNEXATION AGREEMENT
AN08009

THIS AGREEMENT made and entered into this 18th day of September 2012, 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"), and Genagra, LP (hereinafter referred to as "Owner"); and,

WHEREAS, Owner is the owner of record of ("Owner's Property") a 20.552 acres out of a 21.3709 acre tract of real property described in Exhibit "A", which is attached to the Ordinance approving the annexation of this property and this annexation agreement (which real property is hereinafter referred to as "Property"), and which real estate is not within the corporate limits of any municipality but is contiguous to the corporate limits of the City; and,

WHEREAS, approximately a 0.8189 acre portion of the Property ("Roads") is not owned by the Owner but is included in the annexation application and this agreement at the requirement of the City; and,

WHEREAS, it is understood that the City shall be solely responsible for all necessary consents or approvals by the owners of the Roads for inclusion in this Agreement; and,

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

WHEREAS, the City, after due and careful consideration, has concluded that should the City decide to annex the Property the annexation should be under the terms and conditions hereinafter set forth and that such terms and conditions are in the best interest of the City to protect and provide for the public health, safety, morals and general welfare.

CITY CLERK DEPT.
2012 AUG -7 AM 8:29

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained and in the recitals set forth hereinabove, the parties hereto agree as follows:

One: Should the City annex the Property such annexation will be in accordance with the terms and conditions of this Agreement. This Agreement shall be an exhibit to the ordinance which annexes the Property and shall be incorporated for all purposes. It is understood by the Owner that there are significant costs to the City associated with the annexation of Property into the City and of paramount consideration for the City in entering into this Agreement is that the Owner participate in the municipal infrastructure costs and costs for providing municipal services as required in this Agreement.

Two: Owner hereby agrees that the development of the Property shall be in accordance with the applicable rules and regulations of the City, including Public Service Board Regulations in effect on the Effective Date of this Agreement, and subject to the application and payment of all necessary application and permit fees except as otherwise provided below in Section Three and Section Four of this Agreement. It is understood by the Owner that the requirements specified

below and specified in Section Three and Section Four of this Agreement are in addition to the requirements specified in the City of El Paso City Code, City ordinances, City rules and regulations, and Public Service Board Regulations, and Owner agrees to comply with such additional requirements. Owner agrees to develop the Property in accordance with the following additional conditions:

1. Development shall be constructed in accordance with the attached detailed site development plan, which is made a part of this agreement. Should the developer decide to make minor alterations to the detailed site development, such changes may be approved administratively prior to the issuance of building permits. Major changes to the plan will require review and approval, as per the El Paso City Code in effect on the date this Agreement is executed, prior to the issuance of building permits.

2. No off premise signs shall exist on the property at the time of annexation.

3. A twenty (20) foot wide landscaped buffer with high profile trees that meet the requirements set forth in Title 18 Section 18.46 shall be placed at fifteen (15) feet on center with irrigation systems, as per Title 18 Section 18.47, where commercial zoning districts abut residential zoning districts. Any landscaping required under this Agreement is in addition to the landscape requirements under the City Code and shall not be counted towards meeting the landscape requirements under the City Code.

4. Owner shall dedicate to the City a portion of ROW which is described in the attached Exhibit B ("ROW"), and contribute \$33,694.00 to a fund for the future Pebble Hills extension, attached hereto to the City as part of the subdivision plat approval process. Owner shall have no further obligations for off-site dedications, construction or improvements of streets except as required by the City of El Paso City Code.

5. Owner understands that a Traffic Impact Analysis (TIA) may be required by the Traffic Engineer. If a TIA is required, the Owner agrees to provide a (TIA) and the TIA submitted shall conform to the requirements of the City Code. Owner agrees to be responsible for constructing or contributing to the cost of construction of the traffic signalization and traffic calming devices ("Improvements") which the TIA indicates are necessary, attributable and proportional (the Owner's proportionate share) to the development of the Property. Notwithstanding the foregoing, the Owner shall be responsible for the construction of the interior road known as Morinda Court to a 54 foot width in accordance with City Code requirements.

6. Owner shall not request or be eligible for reimbursement for any cost associated or in connection with claims for overwidth paving from the City.

7. The City agrees that it has reviewed and approved the Owner's development plan a copy of which is attached hereto as Exhibit C ("Plan") which includes the construction of a proposed road referred to as Morinda Court and that Owner, may in its sole discretion, develop the Property in accordance with the Plan, provided that if Owner decides to develop the Property, the Property shall be developed in accordance with the Plan.

8. The City acknowledges that the Owner does not own the Roads and therefore Owner makes no representation, warranties or agreement as to the inclusion of the Roads in the application process. The city will coordinate and obtain the consent of any and all owners of the Roads for inclusion in the annexation process. The Owner shall not incur any costs or expenses as a result of the inclusion of the roads in the annexation application or this Agreement.

9. It is understood that the Owner's application for annexation was submitted prior to the adoption of the City of El Paso 2009 Annexation Policy and that the City Council directed that the Owner's application be processed under the City's Annexation Policy in existence prior to the adoption of the 2009 Annexation Policy. The Owner, its successors or assigns, shall not be responsible for the payment of any additional fees or costs required under City of El Paso 2009

Annexation Policy that were not a requirement under the Annexation Policy in existence prior to the adoption of the 2009 Annexation Policy.

Three: Owner hereby agrees that within 360 days of the passage of the ordinance annexing the Property, Owner shall apply for a subdivision plat in accordance with the procedures of Title 19 (Subdivisions) of the Code, provided, however, that if the extension of Pebble Hills to the intersection of Zaragosa has not been completed, then Owner is not required to submit a subdivision plat until the Pebble Hills extension has been completed. The Subdivision Code allows the Director of Parks and Recreation to accept park fees and to use those park fees in underdeveloped parks within the subdivisions park zone. The City agrees that such park fees shall be used to develop the park known as Tierra de Este 27, municipally addressed as 12701 Pebble Hills, which is an underdeveloped park within the subdivision's park zone. The Owner agrees that at the time the subdivision plat is submitted to the city, the Owner shall also submit covenants to restrict that portion of the Property designated in Section Five as C-3, to commercial use only.

Four: In addition to any other fees required by the Public Service Board Regulations, Owner agrees to pay a water and wastewater annexation fee to the El Paso Water Utilities-Public Service Board for each three-quarter inch (3/4") equivalent water meter that is connected to the public water system as follows:

<u>Meter Size</u>	<u>(in Dollars) Water</u>	<u>(in Dollars) Wastewater</u>
5/8" x 3/4"	885	157
1"	2,214	392
1 1/2"	4,427	784
2"	7,083	1,255
3"	14,166	2,509
4"	22,135	3,921
6"	44,270	7,842
8"	82,342	14,586
10"	117,758	20,859

The water and wastewater annexation fee shall be increased by three (3) percent on **December 1, 2012**, and each year thereafter, compounded annually.

Payment of the water and wastewater annexation fee shall be due at the time of application for water and wastewater connection to the system. Existing water and wastewater connections are not subject to these fees. The annexation fee set forth herein shall not be increased in relation to the

Property nor shall the Owner be responsible for payment of impact fees or other new fees, regardless how named, which may serve purposes identical to or similar to the Annexation Fee.

Five: Owner shall provide the City with one (1) mylar and three (3) paper prints of a current aerial map of the Property depicting the condition of the Property at the time of annexation to the City. Such aerial, and any other evidence necessary to demonstrate the existence of any non-conforming lot, use or structure on the Property at the time of annexation, shall be provided by the Owner within thirty (30) days from passage of the ordinance annexing Property to the City. The aerial and other evidence shall be submitted to the Zoning Administrator in the Development Services Department of the City for validation of such non-conforming lot, use or structure within the Property. City agrees that in conjunction with the annexation hearing process, the City will process an initial zoning of the property to C-3 and A-3 as shown in Exhibit C. The ordinance which annexes the property into the City will contain a provision which states that the property, upon annexation, shall be zoned C-3 and A-3 as shown in Exhibit C.

Notice: Any formal notice or other communication ("Notice") required to be given by one party to the other under this Agreement shall be given in writing, addressed to the Party to be notified at the address set forth below, by (i) delivering the same in person, (ii) depositing the same in the United States Mail, certified or registered, return receipt requested, postage prepaid, (iii) depositing the same with Federal Express or with another nationally recognized courier service guaranteeing "next day delivery," or (iv) sending the same by telefax with confirming copy sent by certified or registered mail. For the purpose 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
2 Civic Center Plaza
El Paso, Texas 79901
- Copy to: City Clerk
Same Address as above
- (2) OWNER: Genagra, L.P.
5009 Vista Del Monte
El Paso, Texas 79922

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 (5) 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.

Successors and Assigns: This Agreement is a restriction, condition and covenant running with the Property and a charge and servitude thereon, and shall be binding upon and inure to the benefit of the parties hereto, and their heirs, successors and assigns of all or any part of the Property. Any future conveyance of the Property shall contain the restrictions, conditions and covenants and shall embody this Agreement by express reference; provided, however, this Agreement shall not be

binding on, and shall not create any encumbrance to title as to, any end-buyer of a fully developed and improved lot within the Property, except for land use regulations that may apply to a specific lot.

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

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. If the breach cannot be cured within such thirty (30) day period, the Defaulting Party shall commence to cure such breach within said period and thereafter diligently continue such cure to completion. In the event the Defaulting Party fails to cure the breach within said period, then the Non-Defaulting Party may pursue any remedy provided at law or in equity.

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, governmental delays, lockouts or other industrial disturbances, acts of the public enemy, war, terrorism, blockades, insurrections, riots, epidemics, landslides, lightening, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests and restraints of governments and people, explosions, breakage or damage to machines or pipelines and any other incapacities of either Party, whether similar to those enumerated or otherwise, and not within the reasonable control of the Party claiming such inability.

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 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. 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.

Release or Partial Release of Requirement. Upon completion of the requirements ("Requirements") set forth herein by Owner, the Requirements shall be automatically released upon issuance of a letter by the City of El Paso's Development Services staff acknowledging the acceptance of the subdivision improvements called for by this Agreement or acknowledging that no subdivision improvements were required ("Approval Letter"). Once the Approval Letter is issued, no further action is required to release these provisions as to the Property covered by the City's

letter. Without limiting the foregoing, the Director of Development Services is hereby authorized to execute reasonable documentation of the release of the Requirements, in a recordable form, upon receipt of a request.

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.

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 courts of that County, and hereby agree that any such Court shall be a proper forum for the determination of any dispute arising hereunder.

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.

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 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.

Reservation of Rights: to the extent not inconsistent with this Agreement, each Party reserves all rights, privileges, and immunities under applicable laws.

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.

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.

Effect of State and Federal Laws: Notwithstanding any other provisions of this Agreement, each Party shall, in carrying out the terms of this Agreement, comply with all applicable State and Federal laws.

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.

Ambiguities: In the even 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.

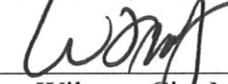
Counterparts: It is understood and agreed that this Agreement may be executed in any number of counterparts, each which shall be deemed an original for all purposes.

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

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

The effective date of this Agreement is the date the El Paso City Council adopts an ordinance annexing the Property.

THE CITY OF EL PASO



Joyce Wilson, City Manager

APPROVED AS TO FORM:



Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:



Mathew S. McElroy, Deputy Director
Planning and Economic Development Dept.

ACKNOWLEDGEMENT

STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 18th day of September, 2012, by ~~Joyce Wilson~~, as City Manager of the City of El Paso, Texas.

William Stuber Acting



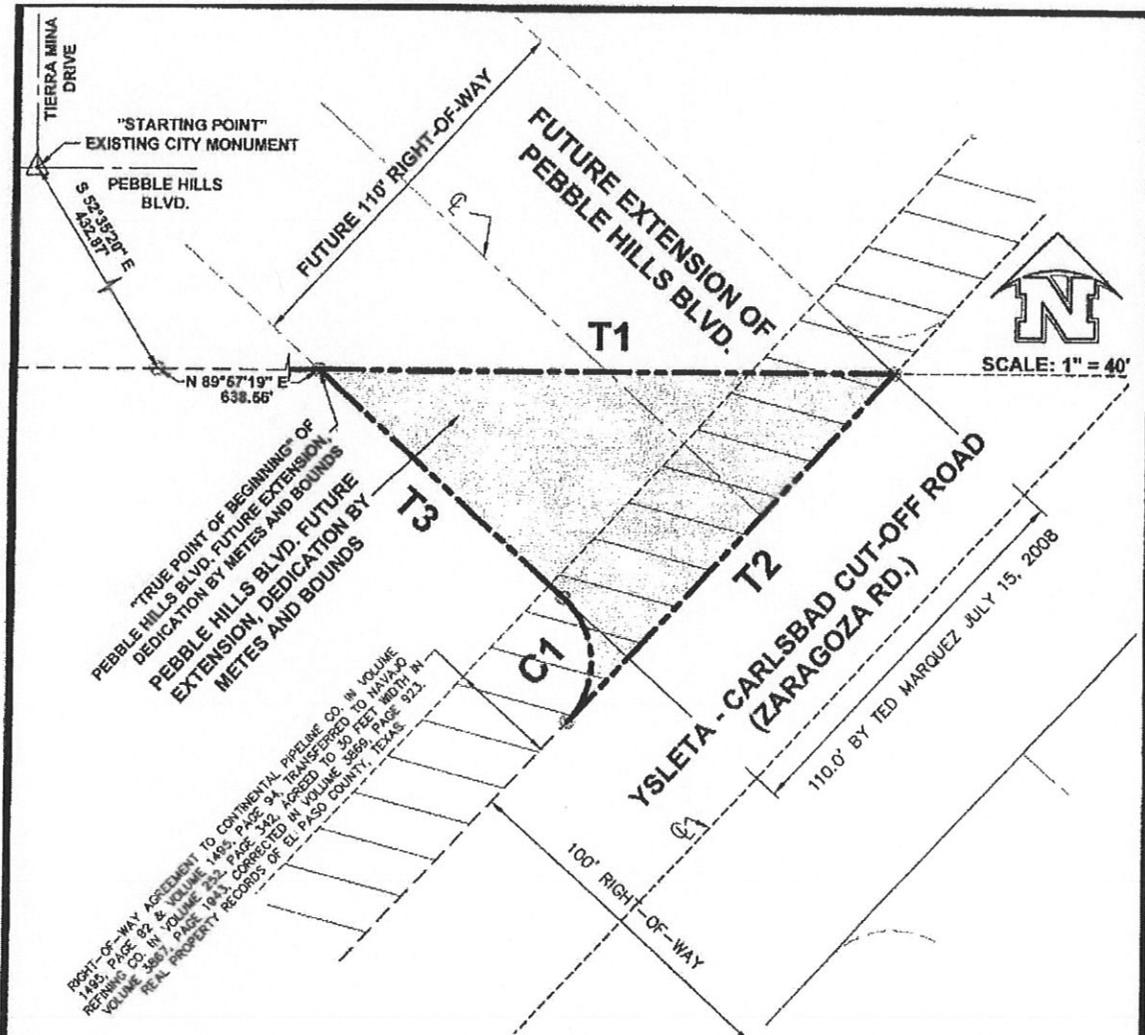
Notary Public, State of Texas

Notary's Printed or Typed Name
IRMA MARIE LOPEZ
In and for the State of Texas
My commission expires **01-25-2014**
My Commission Expires

ACCEPTANCE AND ACKNOWLEDGEMENT ON FOLLOWING PAGE

CITY CLERK DEPT.
2012 AUG - 7 AM 8:29

EXHIBIT "B"
R.O.W. Future Pebble Hills Extension



NOTE: The above referenced property is within Zone "X". (Explanation: Areas of 500-year flood; areas of 100-year flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 100-year flood.) according to the Federal Emergency Management Agency Flood Insurance Rate Maps, as per the unincorporated areas Community Plans No. 480212 G.73 B. Effective Date September 4, 1991.

LINE TABLE		
LINE	BEARING	LENGTH
T1	N 89°57'19" E	162.47'
T2	S 42°34'03" W	135.00'
T3	N 47°25'57" W	94.57'

CURVE TABLE						
CURVE	RADIUS	LENGTH	TANGENT	CHORD	BEARING	DELTA
C1	25.00	39.27'	25.00'	35.36'	N 02°25'57" W	89°58'52"

FILING INFORMATION
 DATE: DECEMBER 2, 2009
 CENSUS TRACT: N/A
 DISTRICT: EAST 5
 AREA: 31
 COUNTY PLAT RECORDS
 BOOK: N/A
 PAGE: N/A
 FIELD: 28
 OFFICE: L.A.
 W.C. 071108-3
 FILE: 8.5 X 11 EXHIBIT D
 SCALE: 1" = 40'

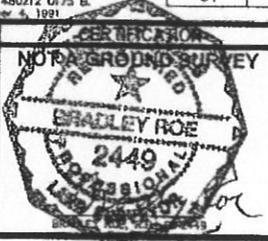


EXHIBIT OF
 BEING A PORTION OF TRACT 2C,
 SECTION 46, BLOCK 79, TOWNSHIP 2,
 TEXAS AND PACIFIC RAILROAD
 COMPANY SURVEYS,
 EL PASO COUNTY, TEXAS
 CONTAINING IN ALL 6,710.71 SQ. FT. OR
 0.1541 ACRES OF LAND MORE OR LESS.
 PREPARED FOR:
 GENAGRA, L.P., Luis Urrea, Managing Member
 of Genagra Holding, L.L.C. General Partner

Proe Engineering, L.C.
 901 N. Corbino Dr. Suite 1025 El Paso, TX 79902
 (910) 803-1418 - FAX (910) 863-4772
 EMAIL: rproe@proehall.net
 ENGINEERING/LAND DEVELOPMENT/PLANNING/SURVEYING
SHEET 1 OF 2

METES AND BOUNDS DESCRIPTION
(Proposed Dedication of the Future Extension of Pebble Hills Boulevard)

Description of a 0.1541 acre parcel of land being a portion of Tract 2C, Section 46, Block 79, Township 2, Texas and Pacific Railroad Company Surveys, El Paso County, Texas and being more particularly described by metes and bounds as follows to wit:

Starting from a existing City Monument located at the centerline of Pebble Hills Boulevard and Tierra Mina Drive, Thence South 52°35'20" East a Distance of 432.87 feet to a set 5/8"Ø rebar with yellow plastic cap stamped TX 2449, Roe Engr., L.C., said rebar being the southeast corner of Lot 1, Block 108, Tierra Del Este Unit Twenty Seven and the southwest corner of Tract 1C, Section 46, Block 79, Township 2, Texas and Pacific Railroad Company Surveys; Thence North 89°57'19" East a distance of 638.56 feet to a point, said point being the "TRUE POINT OF BEGINNING";

Thence North 89°57'19" East a Distance of 162.47 feet to a set 5/8"Ø rebar with yellow plastic cap stamped TX 2449, Roe Engr., L.C., said rebar lying along the Westerly right-of-way line of Zaragosa Road;

Thence South 42°34'03" West along said westerly right-of-way line of Zaragosa Road a Distance of 135.00 feet to a point;

Thence along an arc of a curve to the left a distance of 39.42 feet, whose radius 25.00 feet, whose central angle is 89°58'52" and whose chord bears North 02°25'57" West a distance of 35.36 feet to a point, said lying along the southerly right-of-way line of Pebble Hills Boulevard future extension;

Thence North 47°25'57" West along said southerly right-of-way line of Pebble Hills Boulevard future extension a Distance of 94.57 feet back to the "TRUE POINT OF BEGINNING" and containing in all 6,710.71 square feet or 0.1541 acres of land more or less.

FILING INFORMATION	CERTIFICATION	METES AND BOUNDS DESCRIPTION	
DATE: DECEMBER 2, 2009 CENSUS TRACT: N/A DISTRICT: EAST 3 AREA: 31 COUNTY PLAT RECORDS BOOK: N/A PAGE: N/A FIELD: J.B. OFFICE: L.A.J. W.O.: 071108-3 FILE: 8.5 X 11 EXHIBIT DWG SCALE: 1" = 40'		BEING A PORTION OF TRACT 2C, SECTION 46, BLOCK 79, TOWNSHIP 2, TEXAS AND PACIFIC RAILROAD COMPANY SURVEYS, EL PASO COUNTY, TEXAS CONTAINING IN ALL 6,710.71 SQ. FT. OR 0.1541 ACRES OF LAND MORE OR LESS. PREPARED FOR: GENAGRA, L.P., Luis Urrea, Managing Member of Genagra Holding, L.L.C. General Partner	 hnpRoe Engineering, L.C. 501 N. Griffin St. Suite 405 El Paso, TX 79902 (915) 552-1416 - FAX (915) 552-4972 EMAIL: roeeng@rvball.net ENGINEERING/LAND DEVELOPMENT/PLANNING/SURVEYING SHEET 2 OF 2

