



*City of El Paso – City Plan Commission Staff Report*

**Case No** AN08-004  
**Application Type** Annexation and Service Plan  
**CPC Hearing Date** December 15, 2011  
**Staff Planner** Geena Maskey, 541-4192, maskeyga@elpasotexas.gov

**Location** East of Joe Battle Boulevard and south of Windermere Avenue  
**Legal Description** Portion of Lot 1, Gateway Estates, El Paso County, Texas, as filed and recorded in volume 41, page 13b, Plat records of El Paso County, Texas and a portion of the rights-of-way of Windermere Avenue, Brandywine Road and Joe Battle Boulevard.

**Acreage** 7.887 acres  
**Rep District** Adjacent to Representative District 6  
**Existing Use** Vacant  
**Existing Zoning** East ETJ  
**Proposed Zoning** C-3 (Commercial)

**Property Owner** River Oaks Properties, Ltd.  
**Applicant** River Oaks Properties, Ltd.  
**Representative** Yolanda Giner, Gordon Mott & Davis P.C.

**Distance to Park:** 1,1310 feet (Montwood Heights Park)  
**Distance to School:** 3,000 feet (Helen Ball Elementary)

**SURROUNDING ZONING AND LAND USE**

**North:** C-4/c (Commercial/condition), Vacant  
**South:** ETJ (Extraterritorial Jurisdiction), Vacant  
**East:** ETJ (Extraterritorial Jurisdiction), Vacant  
**West:** C-3 (Commercial), Vacant

**THE PLAN FOR EL PASO DESIGNATION:** Residential

**NEIGHBORHOOD ASSOCIATIONS:** None

**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 June 7; 2011. The subject property is 7.887 acres and is currently vacant. A zoning ordinance accompanies the annexation ordinance, so that both ordinances will be considered by City Council at the same time. Under the terms of the approved agreement, if the subject property is annexed, the subject property will be zoned C-3(commercial).

**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 negative comments received.

**Department of Transportation - Traffic Engineering:**

No negative comments received.

**Fire Department:**

No negative comments received.

**Police:**

No negative comments received.

**Parks:**

No negative comments received. Fees shall be deposited into Park Zone E-7.

**El Paso Water Utilities:**

No negative comments received.

**TxDOT:**

No negative comments received.

**County of El Paso:**

No negative comments received.

**Library Department:**

No negative comments received.

**Environmental Services:**

No negative comments received. ESD has no objection to the service plan.

Attachments

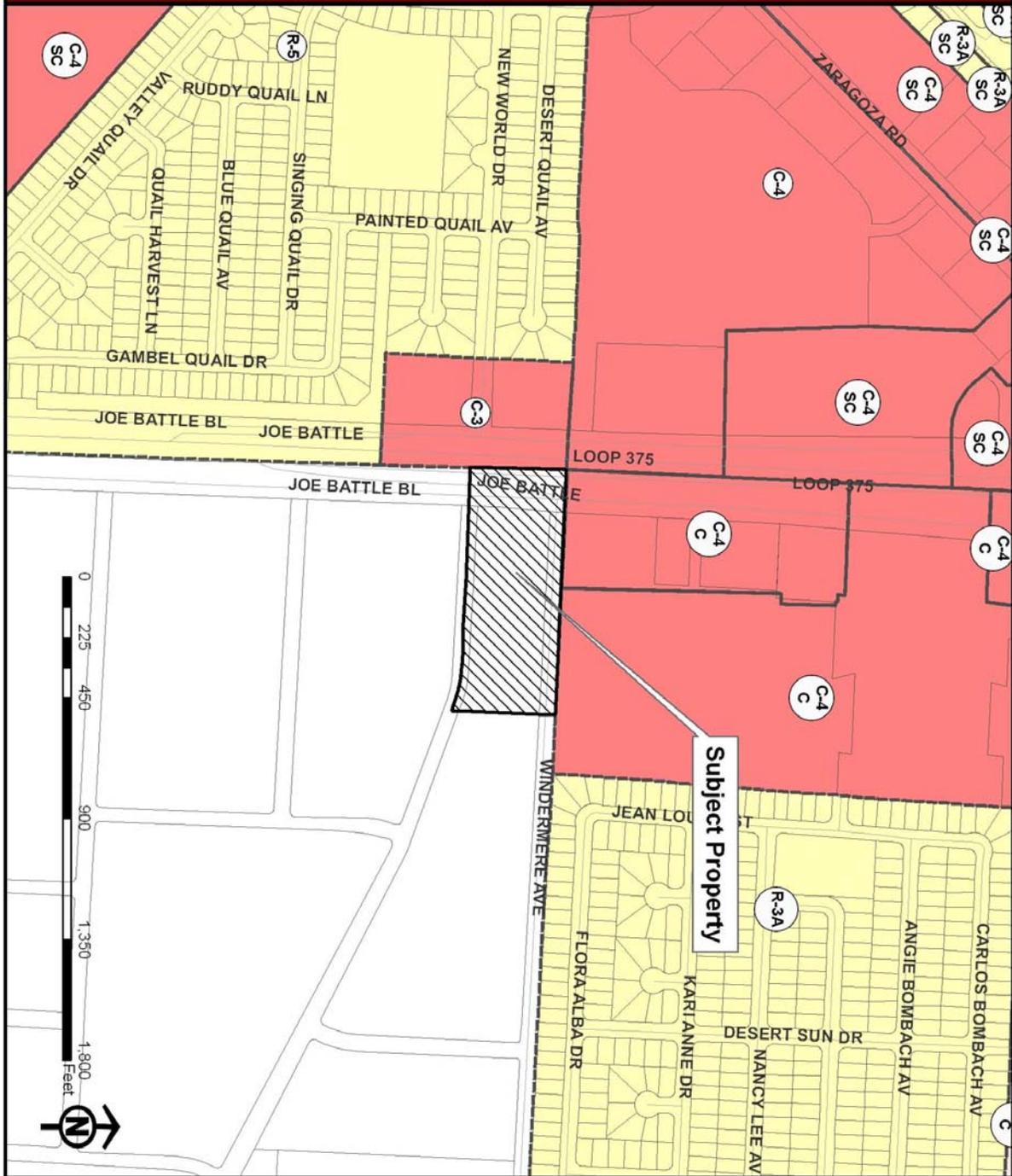
Attachment 1: Location Map

Attachment 2: Aerial

Attachment 3: Draft Ordinance

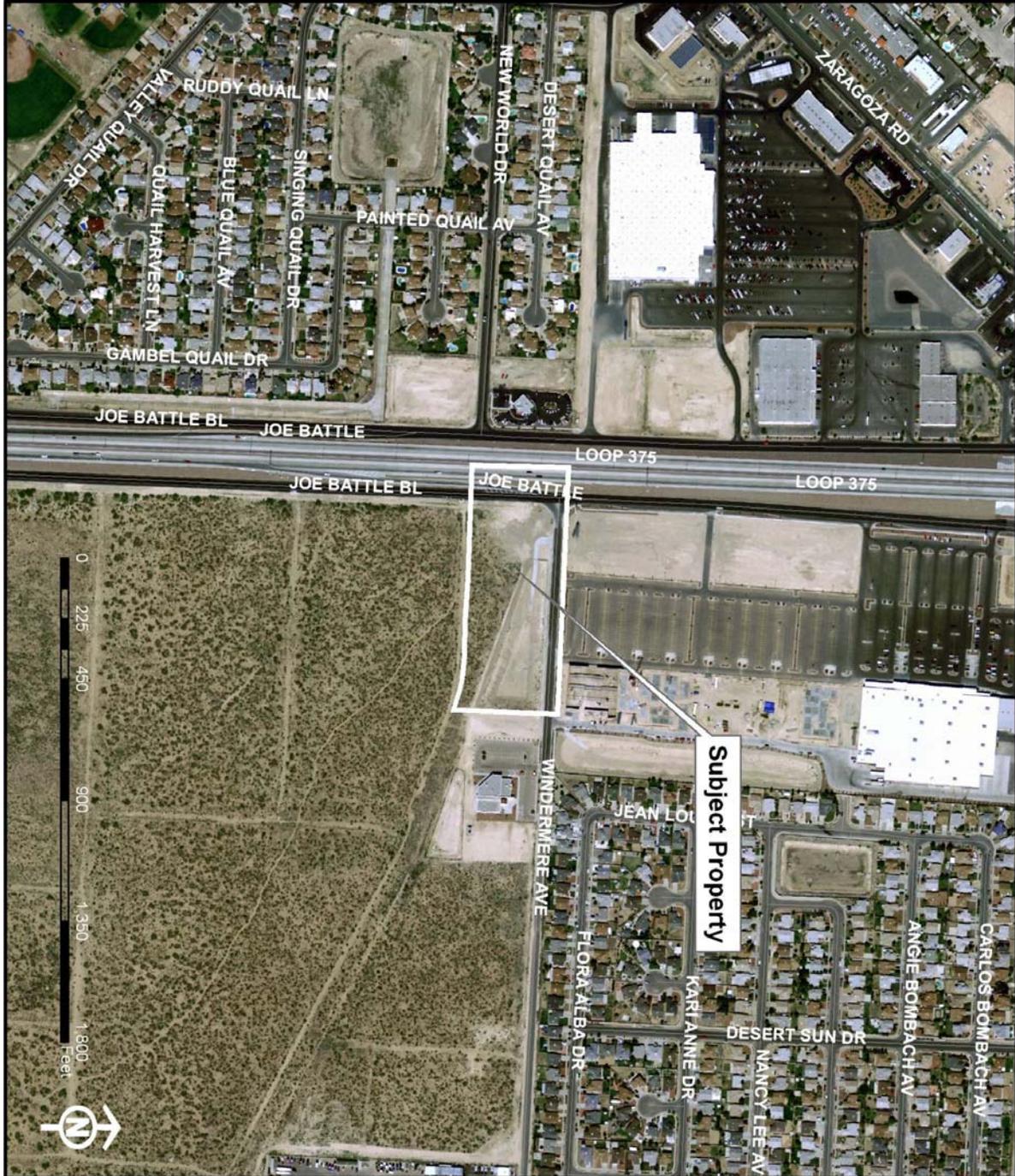
Attachment 1: Location Map

# AN08004



Attachment 2: Aerial

# AN08004



Attachment 3: Draft Ordinance

**ORDINANCE \_\_\_\_\_**

**AN ORDINANCE ANNEXING THE FOLLOWING REAL PROPERTY DESCRIBED A PORTION OF LOT 1, GATEWAY ESTATES, AN ADDITION TO THE COUNTY OF EL PASO, EL PASO COUNTY, TEXAS AND A PORTION OF THE RIGHTS-OF-WAY OF WINDERMERE AVENUE, BRANDYWINE ROAD AND JOE BATTLE BOULEVARD.**

**WHEREAS**, the County of El Paso owners of approximately 7.887 acres, 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 River Oaks Properties, Ltd. 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 June 7, 2011, attached as Exhibit “D”, which governs the development of the property after the annexation; and,

**WHEREAS**, public hearings were held on October 18, 2011 and October 20, 2011 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 a portion of Lot 1, Gateway Estates, an addition to the County of El Paso, El Paso County, Texas and a portion of the rights-of-way of Windermere Avenue, Brandywine Road and Joe Battle Boulevard., 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 June 7, 2011.

**PASSED AND APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

**THE CITY OF EL PASO**

**ATTEST:**

\_\_\_\_\_  
John F. Cook  
Mayor

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

**APPROVED AS TO FORM:**

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Lupe Cuellar,  
Assistant City Attorney

\_\_\_\_\_  
Mathew S. McElroy  
Deputy Director – Planning  
Planning and Economic Development

**ORDINANCE \_\_\_\_\_**

AN08004 (SUB08-00092)

# EXHIBIT "A"

Description: A portion of Lot 1, Gateway Estates, an addition to the City of El Paso, El Paso County, Texas and a portion of the rights-of-way of Windermere Avenue, Brandywine Road and Joe Battle Boulevard.

## METES AND BOUNDS DESCRIPTION

The parcel of land herein described is a portion of Lot 1, Gateway Estates, an addition to the county of EL Paso, El Paso County, Texas, as filed and recorded in volume 41, page 13, 13a and 13b, Plat records of EL Paso County, Texas and also being a portion of the right-of-ways of Windermere Avenue, Brandywine Road and Joe Battle Boulevard (Highway Loop 375), and is more particularly described by metes and bounds as follows:

Commencing at a found TX Department of Transportation disc in concrete lying on the centerline of Joe Battle Boulevard (Highway Loop 375, a 300 foot right-of-way, stamped Sta. 205+00); Thence, North 00° 40' 06" West, along said centerline, a distance of 1345.51 feet to a point lying at the center line intersection of Joe Battle Boulevard and Brandywine Road (60' right-of-way), said point being THE TRUE POINT OF BEGINNING of this description;

THENCE, North 00° 40' 06" West, continuing along said center line of Joe Battle Boulevard, a distance of 379.65 feet to a point lying at the intersection of the centerline of Joe Battle Boulevard and the northerly right-of-way line of Windermere Avenue (60' right-of-way);

THENCE, North 89° 58' 32" East, along said northerly right-of-way line of Windermere Avenue, a distance of 916.72 feet to a point;

THENCE, South 00° 01' 28" East, a distance of 394.22 feet to a point lying on the center line of Brandywine Road, at 30.00 feet and at 332.86 feet passing a found 1/2-inch iron with plastic cap stamped "TX 2564";

THENCE, along said center line, the following courses:

North 73° 05' 32" West, a distance of 28.72 feet to a point;

107.44 feet along the arc of a curve to the left, having a radius of 350.00 feet, a central angle of 17°35' 16" and a chord which bears North 81° 53' 11" West, a distance of 105.95 to a point;

South 89° 19' 11" West, a distance of 779.09 feet to THE TRUE POINT OF BEGINNING of this description;

Said parcel of land contains 7.887 acres (343,576 sq. ft.) of land, more or less;

Contained within said parcel are 2.887 acres (125,760 sq. ft.) of land for said rights-of-way of Windermere Avenue, Brandywine Road and Joe Battle Boulevard, leaving a net of 5.000 acres (217,816 sq. ft.) of land more or less for the portion of Lot 1, Gateway West Property

SLI ENGINEERING, INC.  
Consulting Engineers—Land Surveyors

Guillermo Licon  
Registered Professional Land Surveyor  
Texas License No. 2998



January 13, 2011  
Job Number 09-05-2385  
M&B\1688



**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 an 7.887 - acre property located in the City's EAST Extraterritorial Jurisdiction (ETJ). A portion of Lot 1, Gateway Estates, an addition to the City of El Paso, El Paso County, Texas and a portion of the rights-of-way of Windermere Avenue, Brandywine Road and Joe Battle Boulevard. 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 Development Agreement entered into by the property owners and the City on June 7, 2011. In case of conflict between the terms of this Plan and the terms of the Development Agreement, the terms of the Development 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's Streets Department 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 City's Streets Department 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 Development 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.
- 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 Development 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

2011 MAY 24 PM 5:56

WHEREAS, the City of El Paso and River Oaks Properties, Ltd., wish to annex approximately 7.887 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 2.887 acres of such real property; 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 River Oaks, Ltd., for 7.887 acres of real property, located east of Joe Battle Boulevard and south of Windermere Avenue, 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 7<sup>th</sup> day of June, 2011.

THE CITY OF EL PASO

*John F. Cook*  
John F. Cook, Mayor

ATTEST

*Richarda Duffy Momsen*  
Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:

*Lupe Cuellar*  
Lupe Cuellar,  
Assistant City Attorney

APPROVED AS TO CONTENT:

*Mathew S. McElroy*  
Mathew S. McElroy  
Deputy Director - Planning  
Planning and Economic Development

## Exhibit A

Description: A portion of Lot 1, Gateway Estates, an addition to the City of El Paso, El Paso County, Texas and a portion of the rights-of-way of Windermere Avenue, Brandywine Road and Joe Battle Boulevard.

### METES AND BOUNDS DESCRIPTION

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THENCE, along said center line, the following courses:

North  $73^{\circ} 05' 32''$  West, a distance of 28.72 feet to a point;

107.44 feet along the arc of a curve to the left, having a radius of 350.00 feet, a central angle of  $17^{\circ} 35' 16''$  and a chord which bears North  $81^{\circ} 53' 11''$  West, a distance of 105.95 to a point;

South  $89^{\circ} 19' 11''$  West, a distance of 779.09 feet to THE TRUE POINT OF BEGINNING of this description;

Said parcel of land contains 7.887 acres (343,576 sq. ft.) of land, more or less;

Contained within said parcel are 2.887 acres (125,760 sq. ft.) of land for said rights-of-way of Windermere Avenue, Brandywine Road and Joe Battle Boulevard, leaving a net of 5.000 acres (217,816 sq. ft.) of land more or less for the portion of Lot 1, Gateway West Property

SLI ENGINEERING, INC.  
Consulting Engineers—Land Surveyors

Guillermo Licon  
Registered Professional Land Surveyor  
Texas License No. 2998



January 13, 2011  
Job Number 09-05-2385  
M&B\1688



THE STATE OF TEXAS )  
COUNTY OF EL PASO )

ANNEXATION AGREEMENT  
AN08004

**THIS AGREEMENT** made and entered into this 7<sup>th</sup> day of June 2011, hereinafter referred to as 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," and River Oaks Properties, Ltd., hereinafter referred to as "Owner;" and,

**WHEREAS**, Owner is the owner-of-record of 5.0 acres of a 7.887 acre tract of real property described in Exhibit "A" that 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**, 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**, it is understood by the Owner that of paramount consideration for the City in entering into this Agreement is that the municipal infrastructure costs and costs for providing municipal services to the annexed area should be paid for, to the greatest extent allowed by law, by the Owner and not by the existing city taxpayers; and,

**WHEREAS**, Owner desires that the Property be annexed to the City under the policies in effect prior to the adoption of the 2009 Annexation Policy 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 Owner's 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**, 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 the 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, and

subject to the application and payment of all necessary application and permit fees in effect on the Effective Date of this Agreement except as otherwise provided below and 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 the additional requirements. Owner agrees to develop the Property in accordance with the following additional conditions:

1. Prior to the issuance of any building permits, a detailed site development plan for any commercial developments shall be submitted. The Owner shall follow the processing procedures of Title 20 (Zoning) of the El Paso City Code and approval or disapproval of the detailed site development plan shall be based on the provisions of Title 20 and the provisions contained in this Agreement.
2. No off premise signs shall exist on the Property at the time of annexation.
3. A twenty (20) foot-wide landscaped buffer with trees that meet the requirements set forth in Title 18 Section 18.46 at fifteen (15) feet-on-center with irrigation systems, as per Title 18 Section 18.47, shall be placed where commercial zoning districts abut residential zoning districts. Any portion of the landscape buffer from the back building wall to the front property line shall be counted toward the landscaping requirement. Any portion of the landscape buffer located from the back building wall toward the rear property line will be in addition to the landscape requirements.
4. All of Windermere Avenue and the portion of Brandywine Road to the center of the right of way abutting this Property shall be included in this annexation. 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 traffic signalization and traffic calming devices ("Improvements") which the TIA indicates are necessary, attributable and proportional to the development of the Property. The Owner shall only be responsible for its proportionate share of the Improvements as set forth in the TIA report.
5. A copy of deed restrictions or other legal instrument, restricting the Property to nonresidential uses shall be provided at the time of annexation. Owner shall be required to pay park fees in the amount of \$5,000 within 30 days of the passage of the ordinance annexing the Property.
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. Owner shall not request or be eligible for reimbursement for any cost associated or in connection with claims for over width paving from the City for paving of one-half of the abutting roadway classification existing on the date of this Agreement. Any request for over width paving by the City that exceeds one-half of the roadway classification shall be eligible for reimbursement of costs.

Three: The Property is located within the Eastside Impact Fee Service Area. Impact fees will be assessed by the City of El Paso at the time of platting and collected by EPWU prior to the issuance of a Building Permit or at the time of a new water and sanitary sewer service application is

received by the EPWU; in accordance with the City of El Paso's Ordinance #017113 and the EPWU-PSB Rules and Regulation No. 16.

#### Eastside Service Area

Meter Size	Meter Capacity Ratio	Water*	Wastewater
Less than 1 inch	1.00	\$697.00	\$920.00
1 inch	1.67	\$1,163.00	\$1,537.00
1 ½ inch	3.33	\$2,321.00	\$3,065.00
2 inch	5.33	\$3,714.00	\$4,905.00
3 inch	10.00	\$6,968.00	\$9,203.00
4 inch	16.67	\$11,615.00	\$15,341.00
6 inch	33.33	\$23,223.00	\$30,672.00
8 inch	53.33	\$37,158.00	\$49,077.00
10 inch	76.67	\$40,064.00	\$52,916.00
12 inch	143.33	\$74,899.00	\$98,924.00

\*Fees do not apply to water meter connections made for standby fire protection service.

The impact fees are in addition to any other fees and charges required by the Public Service Board Rules and Regulations.

The Owner is responsible for the cost and the installation of any on-site or off-site water and sewer mains to serve the Property that are not part of the EPWU's Impact Fee Capital Improvement Program.

*Four:* 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 as C-3. 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.

**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: River Oaks Properties, Ltd  
Attn: Adam Z. Frank, President  
106 Mesa Park Drive  
El Paso, TX 79912

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 that 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

inabilities 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 and acknowledgment that the provisions of this Agreement have been complied with ("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.

**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

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further acts and things as the other Party may reasonably request in order to effect 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 in carrying out the terms of this Agreement shall 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.

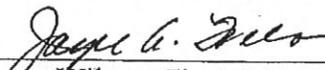
**Counterparts:** It is understood and agreed that this Agreement may be executed in any number of counterparts, each which shall be deemed an original for all purposes.

**Authority for Execution:** The City acknowledges that Owner does not own the Roads and as such, Owner's agreement to the terms of this Agreement shall relate only to the Property owned by Owner. Each Party hereby certifies, represents, and warrants that the execution of this Agreement has been duly authorized as it relates to the Owner's property only.

**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.

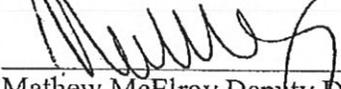
**THE CITY OF EL PASO:**

  
\_\_\_\_\_  
Joyce Wilson, City Manager

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Lupe Cuellar  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Mathew McElroy Deputy Director  
Development Services Department -  
Planning Division

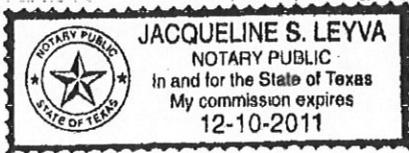
**ACKNOWLEDGEMENT AND ACCEPTANCE ON NEXT PAGE**

CITY CLERK DEPT.  
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ACKNOWLEDGEMENT

STATE OF TEXAS )  
COUNTY OF EL PASO )

This instrument was acknowledged before me on the 8<sup>th</sup> day of June 2011, by Joyce Wilson, as City Manager of the City of El Paso, Texas



Jacqueline S. Leyva  
Notary Public, State of Texas

Jacqueline S. Leyva  
Notary's Printed or Typed Name  
12/10/2011  
My Commission Expires:

ACCEPTANCE

The above Agreement, with all conditions thereof, is hereby accepted this 21 day of March, 2011.

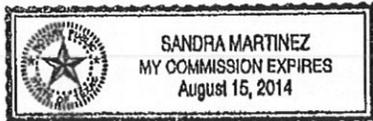
Corporation, general partner

Owner(s): River Oaks Properties, Ltd  
By: River Oaks Asset Management, Inc. a Texas  
By: Adam Z. Frank  
Adam Z. Frank  
Title: President

ACKNOWLEDGEMENT

STATE OF TEXAS )  
COUNTY OF EL PASO )

This instrument was acknowledged before me on the 21 day of March 2011, by Adam Z Frank, President of River Oaks Asset Management, Inc., general partner of River Oaks Properties Ltd., on behalf of said company.



Sandra Martinez  
Notary Public, State of Texas

Sandra Martinez  
Notary's Printed or Typed Name  
8-15-2014  
My Commission Expires:

