

**CITY OF EL PASO, TEXAS**  
**AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:** Planning and Economic Development, Planning Division

**AGENDA DATE:** Introduction: December 21, 2010  
Public Hearing: January 6, 2011

**CONTACT PERSON/PHONE:** Ernesto Arriola, (915) 541-4723

**DISTRICT(S) AFFECTED:** East ETJ, Adjacent to District 5

**SUBJECT:**

An Ordinance annexing the following real property described as a portion of Subsection 46, Block 79, Township 2, Texas and Pacific Railway Company Surveys, El Paso County, Texas.  
Staff Contact: Ernesto Arriola, (915) 541-4723, arriolaea@elpasotexas.gov.  
Property Owner: County of El Paso. AN10-001 (SUB10-00020) (**East ETJ**)

**BACKGROUND / DISCUSSION:**

See attached report.

**PRIOR COUNCIL ACTION:**

Approved the Annexation Agreement on September 14, 2010

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**BOARD / COMMISSION ACTION:**

Development Coordinating Committee (DCC) – Approval recommendation  
City Plan Commission (CPC) – Unanimous approval recommendation

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**LEGAL:** (if required) N/A

**FINANCE:** (if required) N/A

**DEPARTMENT HEAD:** Mathew S. McElroy  
Deputy Director-Planning, Planning and Economic Development

  
\_\_\_\_\_

**DATE:** 12/8/10

**APPROVED FOR AGENDA:**

**CITY MANAGER:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

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

**AN ORDINANCE ANNEXING THE FOLLOWING REAL PROPERTY DESCRIBED AS A PORTION OF SUBSECTION 46, BLOCK 79, TOWNSHIP 2, TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS, EL PASO COUNTY, TEXAS.**

**WHEREAS**, the County of El Paso owners of approximately 1.4405 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 Rancho Real IV, 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 September 14, 2010, attached as Exhibit “D”, which governs the development of the property after the annexation; and,

**WHEREAS**, public hearings were held on November 29, 2010 and November 30, 2010 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 annex a portion of Section 46, Block 79, Township 2, Texas and Pacific Railway Company Surveys, City of El Paso, 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 14, 2010.

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

**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  
Planning and Economic Development

**Exhibit "A"**

Being a Portion of Section 46,  
Block 79, Township 2, Texas and  
Pacific Railway Company Surveys,  
City Of El Paso, El Paso County, Texas  
September 18, 2009  
(Parcel 1)

**METES AND BOUNDS DESCRIPTION**

Description of a parcel of land being a Portion of Section 46, Block 79, Township 2, Texas and Pacific Railway Company Surveys, City Of El Paso, El Paso County, Texas, and being more particularly described by metes and bounds as follows:

Commencing for reference at a found 2" pipe for the common corner of Sections 46 and 47, Block 79, Township 2 and sections 2 and 3, Block 79, Township 3, Texas and Pacific Railway Company Surveys, from which a found 2" pipe for the common corner of Sections 45, 46, 3 and 4 bears South 89°59'06" West a distance of 5312.40; Thence with the line between section 46 and 47, North 00°34'37" West a distance of 2616.36 feet to a point for the "TRUE POINT OF BEGINNING"

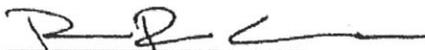
Thence leaving said line South 90°00'00" West a distance of 60.00 feet to a point on the westerly right of way line of Caravanola Ave.;

Thence North 00°34'37" West a distance of 1045.79 feet to a point;

Thence, North 89°58'35" East a distance of 60.00 feet to a point on the easterly right of way line of Caravanola Ave.;

Thence along said right of way line South 00°34'37" East a distance of 1045.79 feet to "TRUE POINT OF BEGINNING" and containing 1.4405 acres of land more or less.

Not a ground survey, Bearing basis is per plat of Tierra Del Este Unit Fifty Six recorded in clerks file no. 20080074768, Real property records of El Paso County, Texas.

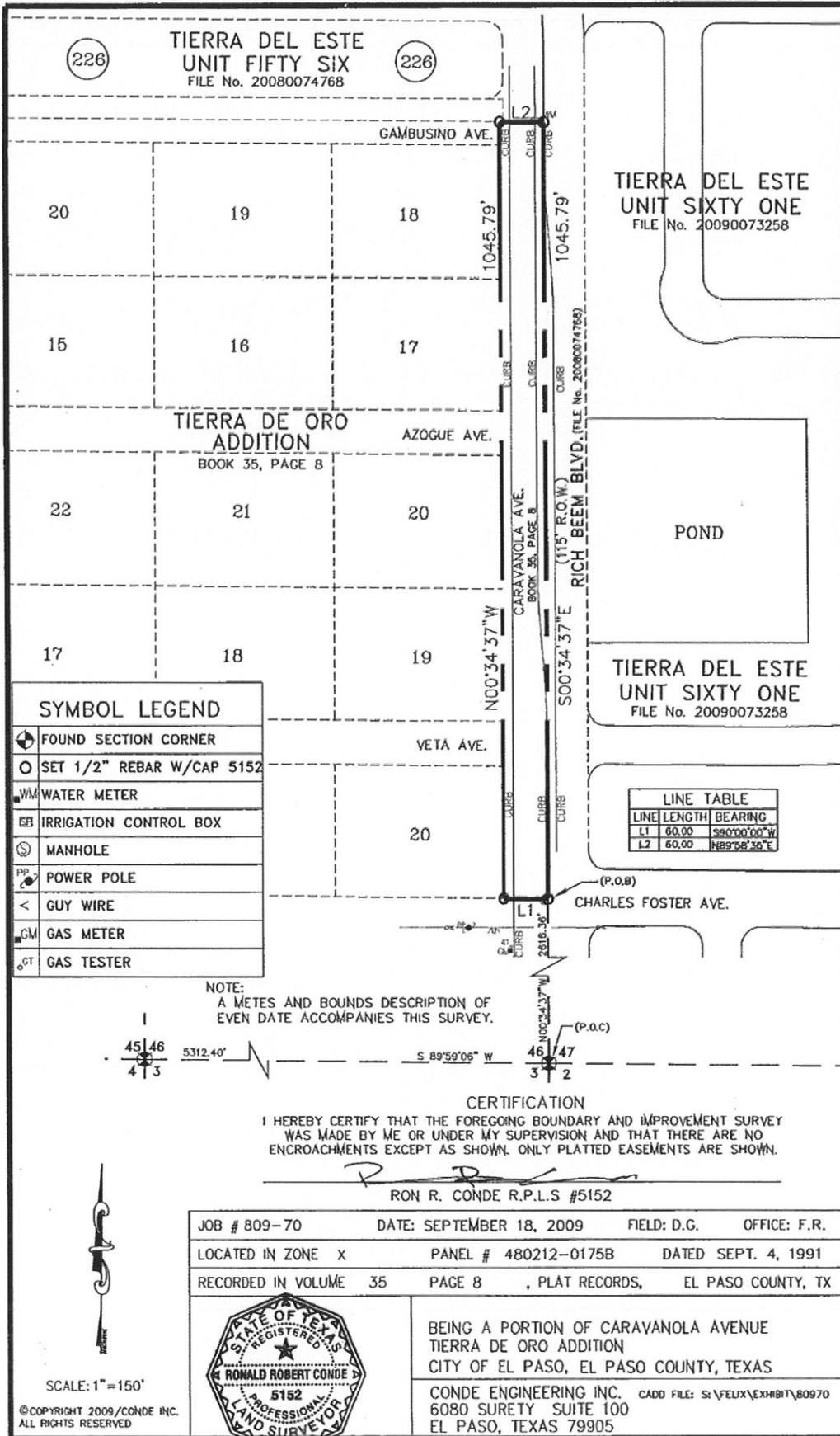
  
Ron R. Conde  
R.P.L.S. No. 5152



job #809-70

**CONDE, INC.**  
**ENGINEERING / LAND SURVEYING / PLANNING**  
1790 LEE TREVINO SUITE 400 / EL PASO, TEXAS 79936 / (915) 592-0283

Exhibit "B"



## 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 1.4405-acre property located in the City's East Extraterritorial Jurisdiction (ETJ). A portion of Section 46, Block 79, Township 2, Texas and Pacific Railroad Surveys, El Paso County, Texas. The area is more specifically described by metes and bounds in Exhibit "A" and the survey Exhibit "B", which are 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, such agreement being identified as Exhibit "D" and is attached to the annexation ordinance.

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:
  - normal patrols and responses;

- handling of complaints and incident reports;
  - special units, such as, traffic enforcement, criminal investigations, narcotics, gang suppressions, and special weapons and tactics team.
- b. Fire Protection. The El Paso Fire Department will provide emergency 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 El Paso Solid Waste Management 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:
- garbage collection - once a week in accordance with established policies of the City;
  - dead animal collection - dead animals are removed from roadways upon request.
- Commercial garbage collection service for businesses, multi-family residences, and mobile home parks is available on a subscription basis from the City or private service providers.
- d. Maintenance of Water and Wastewater Facilities. The City's Public Service Board/El Paso Water Utilities (EPWU) will maintain water and wastewater facilities 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 Public Works 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. No public recreation facilities will be located within the annexation area however, the nearest public neighborhood park is located within 1,413 feet of the annexed.

## 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 Street 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;
  - watershed development review and inspection;
  - emergency spills and pollution complaints response;
  - flood plain office (information relating to flood plains).
- 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. City-County Health Department. All of the City-County Health services codes and regulations will be extended to the annexed area on the effective date of annexation
  - e. Planning and Zoning. The planning and zoning jurisdiction of the City will be extended to the annexed area on the effective date of annexation. All land annexed shall be classified in the R-F zoning district pending a public hearing by the City Plan Commission on the appropriate zoning classification and action by the City Council. Such hearing shall be held within sixty days after the effective date of annexation and such action shall be taken by the City Council within thirty days after the last adjournment of the public hearing.
  - f. 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 to serve the annexed area.
- b. Fire Protection. No capital improvements are necessary to serve the annexed area.
- c. Solid Waste Collection. No capital improvements are necessary to serve the annexed area.
- d. Water and Wastewater Facilities. Water and wastewater service will be provided in accordance with the El Paso Water Utility's Rules and Regulations. Capital improvements will be initiated pursuant to the facilities plan for the annexed area. Water and Wastewater services to new subdivisions will be provided according to the standard policies and procedures of the El Paso Water Utilities, which may require the developer of a new subdivision to install water and wastewater utility lines. The extension of water and sewer service will be provided in

accordance with the adopted Rules and Regulations of the El Paso Water Utilities.

- e. Roads and Streets. No road or street related capital improvements are necessary at this time. 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 to serve the annexed area.
- g. Drainage Facilities. No capital improvements are necessary to serve the annexed area
- 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.

## **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.

THE STATE OF TEXAS     )  
   )  
 COUNTY OF EL PASO     )                    ANNEXATION AGREEMENT  
   )                    AN10-001

**THIS AGREEMENT** made and entered into this 14<sup>th</sup> day of September 2010, 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 the County of El Paso (hereinafter referred to as "Owner");

**WHEREAS**, Owner is the owner-of-record of 1.4405 acres of real property described in Exhibit "A" and Exhibit "B" that is attached to this annexation agreement (which real property is hereinafter referred to as "Property"), and which Property is not within the corporate limits of any municipality but is contiguous to the corporate limits of the City; and,

**WHEREAS**, 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.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements herein contained, 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 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 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 the Rules and Regulations of the El Paso Water Utilities/Public Service Board, and Owner agrees to comply with the additional requirements. Owner agrees to develop the Property in accordance with the following additional conditions:

1. No off premise signs shall be permitted on the property.

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THE STATE OF TEXAS     )  
  )  
COUNTY OF EL PASO     )

ANNEXATION AGREEMENT  
AN10-001

**THIS AGREEMENT** made and entered into this 9th day of August 2010, 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 the County of El Paso (hereinafter referred to as "Owner");

**WHEREAS**, Owner is the owner-of-record of 1.4405 acres of real property described in Exhibit "A" and Exhibit "B" that is attached to this annexation agreement (which real property is hereinafter referred to as "Property"), and which Property is not within the corporate limits of any municipality but is contiguous to the corporate limits of the City; and,

**WHEREAS**, 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.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements herein contained, 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 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 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 the Rules and Regulations of the El Paso Water Utilities/Public Service Board, and Owner agrees to comply with the additional requirements. Owner agrees to develop the Property in accordance with the following additional conditions:

1. No off premise signs shall be permitted on the property.

*KK-10-363*

CITY CLERK DEPT.  
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2. Property is to be used for Right of way purposes only (extension and improvements to Rich Beem).

*Three:* Owner hereby agrees that within 90 days of the passage of the ordinance annexing Property, Owner shall apply for a subdivision plat in accordance with the procedures of Title 19 (Subdivisions) of the Code.

*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:

EASTSIDE ANNEXATION FEES

<u>Meter Size</u>	<u>Water</u> (Dollars)	<u>Wastewater</u> (Dollars)
Less than 1"	656.00	380.00
1"	1,618.00	938.00
1 1/2"	3,281.00	1,901.00
2"	5,249.00	3,042.00
3"	10,498.00	6,084.00
4"	16,404.00	9,506.00
6"	32,807.00	19,012.00
8"	61,241.00	35,489.00
10"	87,487.00	50,699.00

The water and wastewater annexation fee shall be increased by three (3) percent on March 1, 2011, 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.

*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.

**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

OWNER: County of El Paso  
500 E. San Antonio  
El Paso, TX 79901

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, 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.

**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 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.

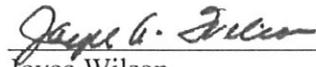
**Ambiguities:** In the even of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any Party on the basis that such Party did or did not author the same.

**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:** 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 CITY OF EL PASO**

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

**APPROVED AS TO FORM:**

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

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Patricia D. Adauto, Deputy City Manager  
Development & Infrastructure Services

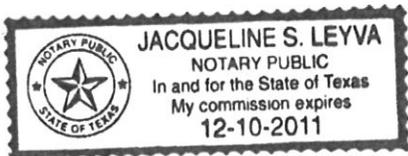
**ACKNOWLEDGMENT AND ACCEPTANCE ON FOLLOWING PAGE**

ACKNOWLEDGEMENT

STATE OF TEXAS )  
COUNTY OF EL PASO )

This instrument was acknowledged before me on the 15<sup>th</sup> day of September 2010,  
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 9<sup>th</sup>  
day of August, 2010.

Owner(s): County of El Paso  
By: Anthony Cobos

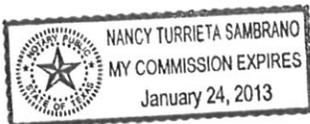
Title: County Judge Anthony Cobos  
County of El Paso

ACKNOWLEDGEMENT

STATE OF TEXAS )  
COUNTY OF EL PASO )

This instrument was acknowledged before me on the 17<sup>th</sup> day of August 2010,  
by Anthony Cobos, as County Judge of County of El Paso.

Nancy Turrieta Sambrano  
Notary Public, State of Texas



Nancy Turrieta Sambrano  
Notary's Printed or Typed Name

1/24/2013  
My Commission Expires:

**Exhibit A**  
**Metes and Bounds Description**

Being a Portion of Section 46,  
Block 79, Township 2, Texas and  
Pacific Railway Company Surveys,  
City Of El Paso, El Paso County, Texas  
September 18, 2009  
(Parcel 1)

METES AND BOUNDS DESCRIPTION

Description of a parcel of land being a Portion of Section 46, Block 79, Township 2, Texas and Pacific Railway Company Surveys, City Of El Paso, El Paso County, Texas, and being more particularly described by metes and bounds as follows:

Commencing for reference at a found 2" pipe for the common corner of Sections 46 and 47, Block 79, Township 2 and sections 2 and 3, Block 79, Township 3, Texas and Pacific Railway Company Surveys, from which a found 2" pipe for the common corner of Sections 45, 46, 3 and 4 bears South 89°59'06" West a distance of 5312.40; Thence with the line between section 46 and 47, North 00°34'37" West a distance of 2616.36 feet to a point for the "TRUE POINT OF BEGINNING"

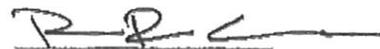
Thence leaving said line South 90°00'00" West a distance of 60.00 feet to a point on the westerly right of way line of Caravanola Ave.;

Thence North 00°34'37" West a distance of 1045.79 feet to a point;

~~Thence, North 89°58'35" East a distance of 60.00 feet to a point on the easterly right of way line of Caravanola Ave;~~

Thence along said right of way line South 00°34'37" East a distance of 1045.79 feet to "TRUE POINT OF BEGINNING" and containing 1.4405 acres of land more or less.

Not a ground survey, Bearing basis is per plat of Tierra Del Este Unit Fifty Six recorded in clerks file no. 20080074768, Real property records of El Paso County, Texas.

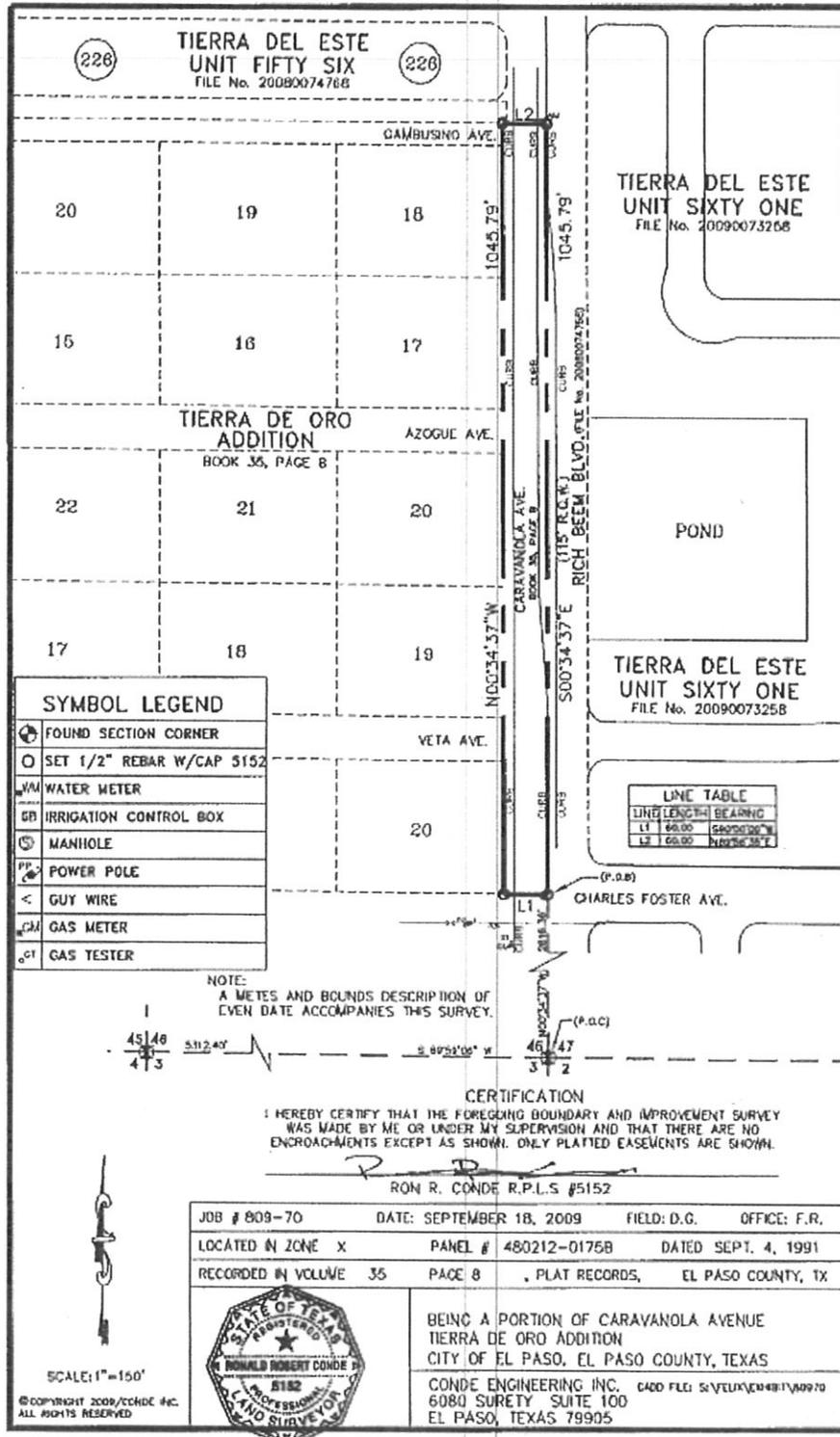
  
Ron R. Conde  
R.P.L.S. No. 5152



Job #809-70

CONDE, INC.  
ENGINEERING / LAND SURVEYING / PLANNING  
1790 LEE TREVINO SUITE 400 / EL PASO, TEXAS 79936 / (915) 592-0283

## Exhibit B Survey Map





PLANNING AND ECONOMIC DEVELOPMENT

MEMORANDUM

**DATE:** December 2, 2010

**TO:** The Honorable Mayor and City Council  
Joyce A. Wilson, City Manager

**FROM:** Ernesto Arriola, Planner

**SUBJECT: Rich Beem Extension Annexation**

---

The City Plan Commission (CPC) on November 18, 2010 unanimously **recommended approval of the Annexation and Service Plan.**

The CPC determined that the annexation and service plan protects the best interest, health, safety and welfare of the public in general; and will have no negative effect on the natural environment, social economic conditions, and property values in the vicinity and the city as a whole.

There has been **no opposition** to this request.

**Attachments:** Staff Report



Planning & Economic Development

Mayor  
John F. Cook

City Council

District 1  
Ann Morgan Lilly

District 2  
Susannah M. Byrd

District 3  
Emma Acosta

District 4  
Carl L. Robinson

District 5  
Rachel Quintana

District 6  
Eddie Holguin Jr.

District 7  
Steve Ortega

District 8  
Beto O'Rourke

City Manager  
Joyce A. Wilson



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

**Case No** AN10-001  
**Application Type** Annexation and Service Plan  
**DCC Date** October 13, 2010  
**CPC Hearing Date** November 18, 2010  
**Staff Planner** Ernesto Arriola, 541-4723, arriolaea@elpasotexas.gov

**Location** Southeast of Zaragoza Road and South of the Intersection of Rich Beem Avenue and Volcanic Rock Avenue.

**Legal Description** A portion of Section 46, Block 79, Township 2, Texas and Pacific Railroad Surveys, El Paso County, Texas

**Acreage** 1.4405 acres

**Rep District** Adjacent to Representative District 5

**Existing Use** Vacant

**Existing Zoning** East ETJ

**Proposed Zoning** R-F (Ranch Farm)

**Property Owner** County of El Paso

**Applicant** Ranchos Real IV, LTD

**Representative** Conde, Inc.

**Distance to Park:** 1,412 feet (Tierra Del Este 50B Park)

**Distance to School:** 6,052 feet (Sunridge Middle School)

### **SURROUNDING ZONING AND LAND USE**

**North:** R-5 (Residential), Vacant

**South:** R-5 (Residential), Vacant

**East:** R-5 (Residential), Vacant

**West:** East ETJ, Vacant

***THE PLAN FOR EL PASO DESIGNATION:*** None

**NEIGHBORHOOD ASSOCIATIONS:** None

### **General Information:**

The applicant is requesting an annexation of County Right of way currently known as Caravanola Avenue. The subject property is 1.44 acres in size and is currently vacant/Right of way. The subject property will be zoned R-F (Residential) at the time of annexation.

**Staff Recommendation:**

The Development Coordinating Committee (DCC) recommends **approval** of this annexation request along with the Service Plan.

The recommendation is based on the following:

**The Plan for El Paso** Citywide Land Use Goals recommends that El Paso “provide designated locations for commercial development that do not adversely affect the health, safety and welfare of the community and where essential infrastructure is available to serve the development.”

**Findings:**

The Commission must determine the following:

1. Will the annexation protect the best interest, health, safety and welfare of the public in general?
2. What is the relation of the proposed change to the city’s Comprehensive Plan?
3. What effect will the annexation have upon the natural environment social and economic conditions and property values in the vicinity and in the City as a whole?

**Development Services Department - Building Permits and Inspections Division:**

BP&I Plan Review has no objection or adverse comments to the proposed annexation of the portion of Caravanola Ave.

**Planning and Economic Development - Planning Division:**

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

*Land Development:*

- No comments received.

**Department of Transportation:**

No objection to annexation.

**Fire Department:**

The El Paso Fire Department Strategic Planning Division has reviewed SUB10-00020, Rich Beem Annexation, and has no objections or adverse comments.

**Parks:**

No objections to annexation.

**El Paso Water Utilities:**

EPWU does not object to this request.

**Water**

Water storage improvements to the existing system are required to enable service to the subject property. Water service to the subject property will be provided by a future elevated tank (reservoir) and an existing 24-inch water transmission main along Rich Beem Boulevard. This 24-inch main is located along the easternmost portion of Rich Beem Boulevard and extends between Gambusino Avenue and Charles Foster Avenue.

No direct service connections are allowed to the described 24-inch water main as per the El Paso Water Utilities – Public Service Board Rules and Regulations. Water service is anticipated to be provided by water distribution main extensions connecting to the proposed 24-inch transmission main.

Along Rich Beem Boulevard between Gambusino Avenue and Charles Foster Avenue there is an existing twelve (12) inch diameter water main located at approximately 30 feet west of the east right-of-way line of Rich Beem Boulevard.

**Sanitary Sewer**

Along Rich Beem Boulevard between Gambusino Avenue and Charles Foster Avenue there is an existing twelve (12) inch diameter sanitary sewer main located at approximately 76 feet west of the easternmost right-of-way line of Rich Beem Boulevard.

**General**

Annexation fees are due at the time of new service application for individual water meters within the subject property.

**TxDOT:**

No comments received.

**County of El Paso:**

No comments received.

**Attachments:**

**Attachment 1: Location Map**

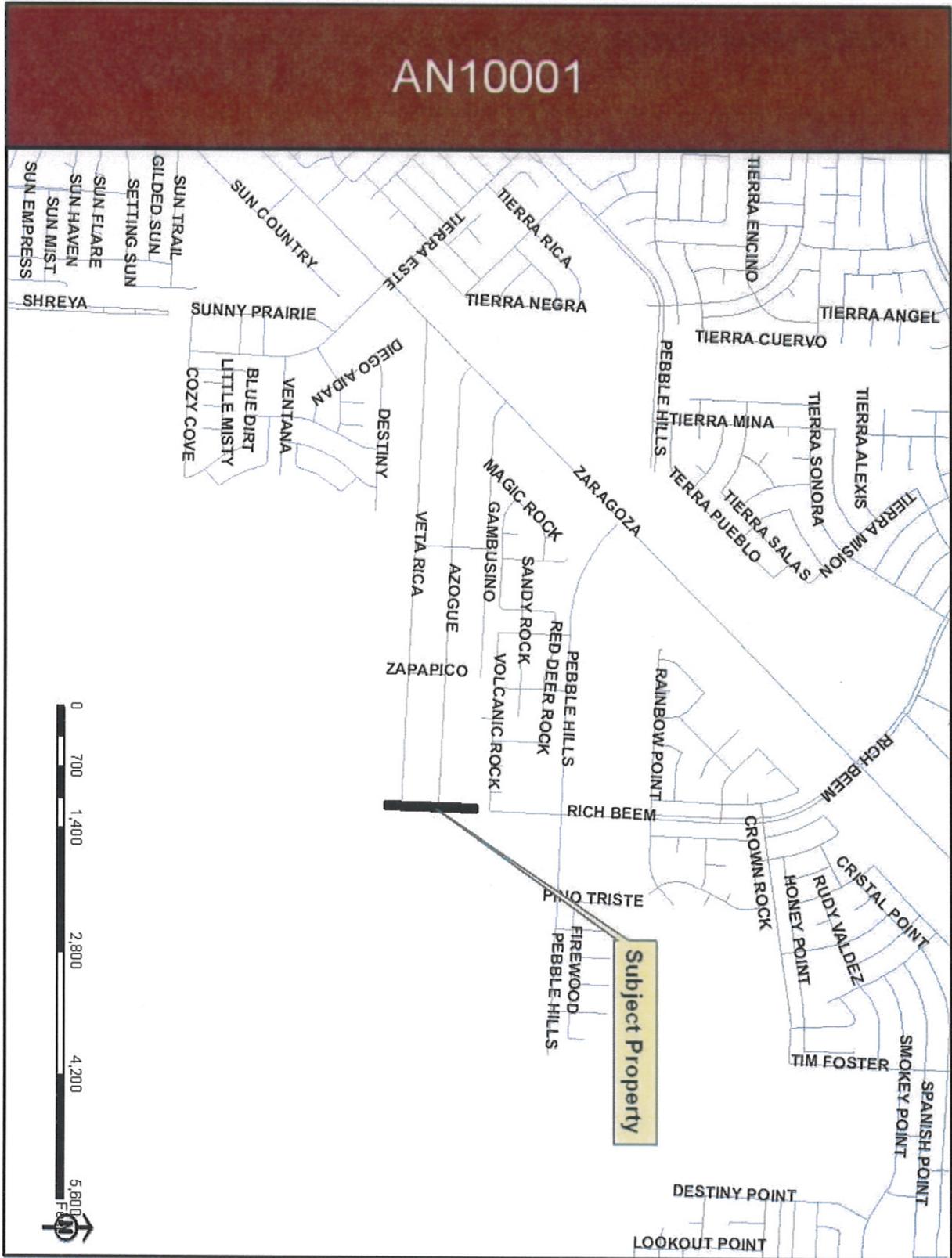
**Attachment 2: Subject Property Map**

**Attachment 3: Aerial Map**

**Attachment 4: Zoning**

**Attachment 5: Annexation Ordinance and Service Plan**

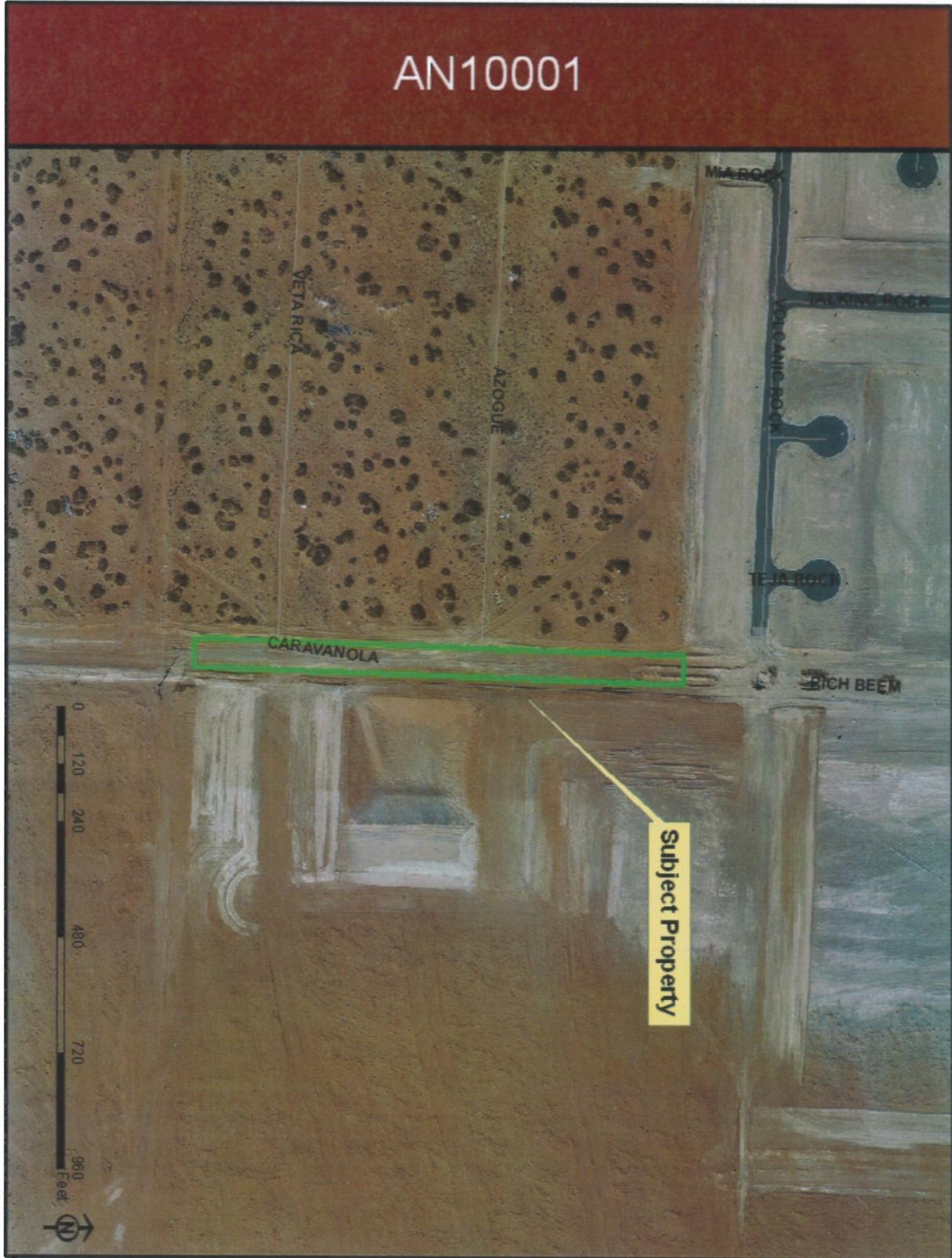
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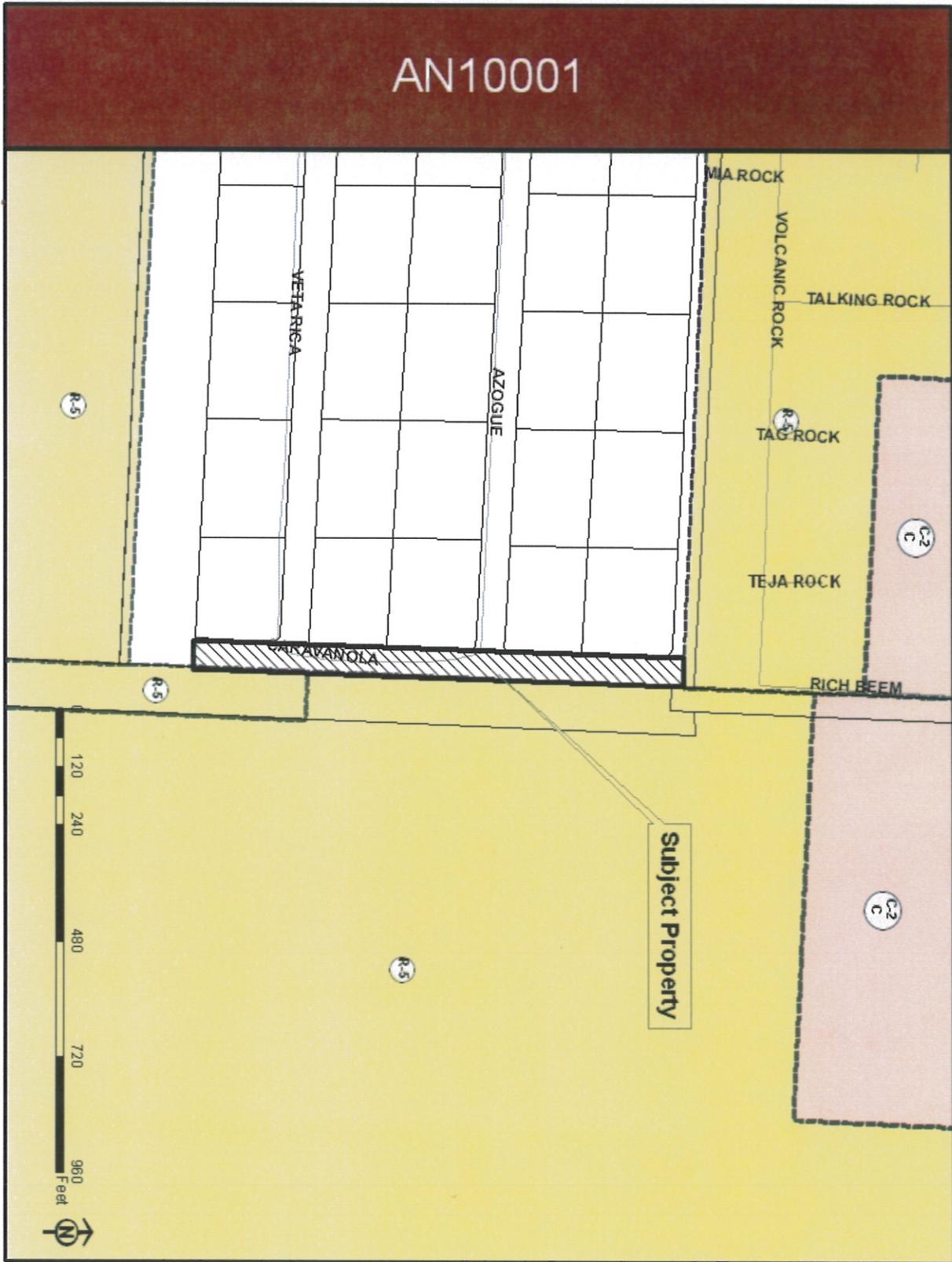
Attachment 2: Subject Property Map



Attachment 3: Aerial Map



Attachment 4: Zoning



**Attachment 5: Annexation Ordinance and Service Plan**

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

**WHEREAS**, the County of El Paso owners of approximately 1.4405 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 Rancho Real IV, LTD request that this area be annexed into the El Paso City Limits; and,

**WHEREAS**, the attached Service Plan, described 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 14, 2010, attached as Exhibit “D”, which governs the development of the property after the annexation;

**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 annex a portion of Section 46, Block 79, Township 2, Texas and Pacific Railway Company Surveys, City of El Paso, 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 14, 2010.

**PASSED AND APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

**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

**Exhibit "A"**

Being a Portion of Section 46,  
Block 79, Township 2, Texas and  
Pacific Railway Company Surveys,  
City Of El Paso, El Paso County, Texas  
September 18, 2009  
(Parcel 1)

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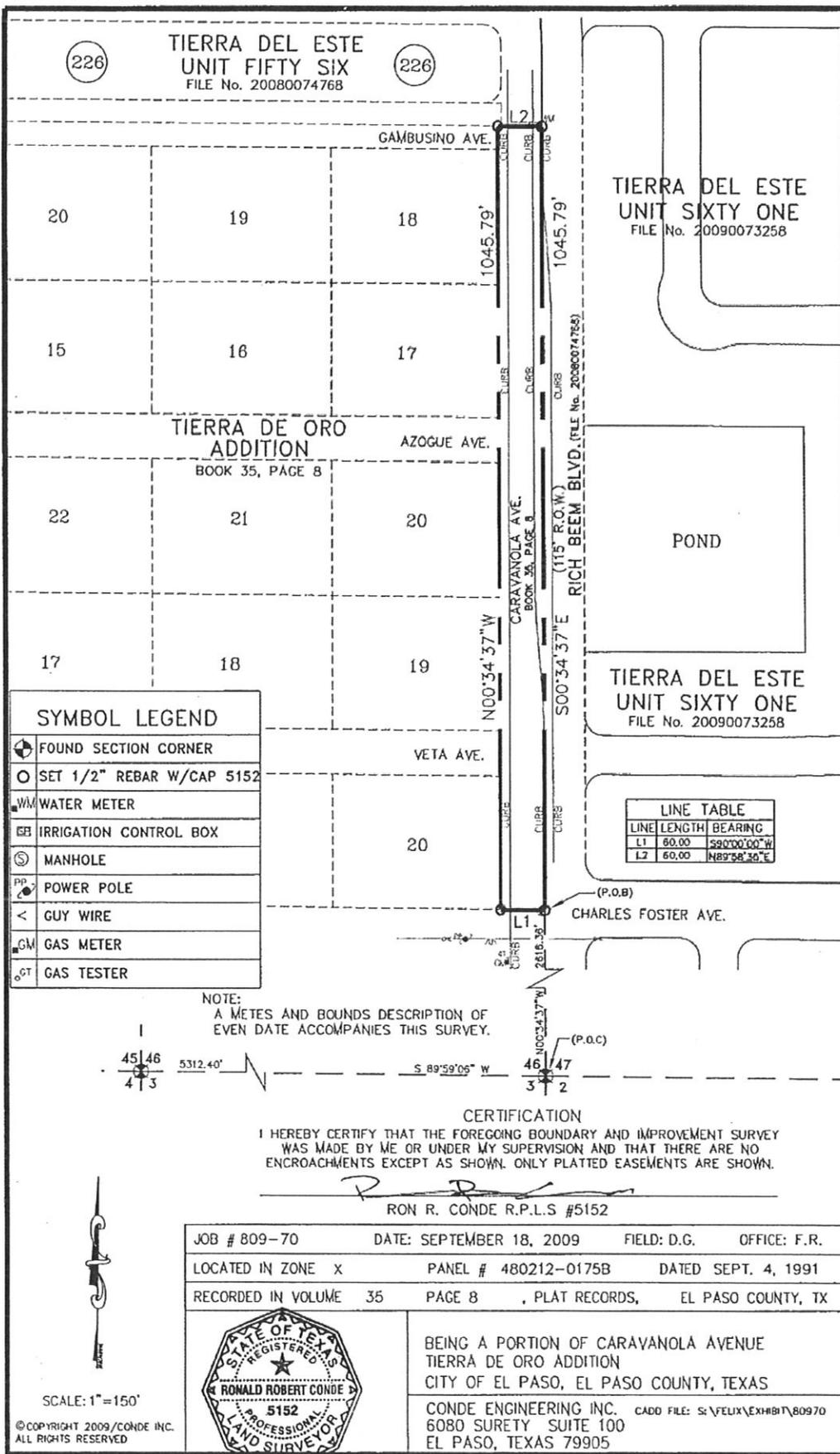
Ron R. Conde  
R.P.L.S. No. 5152



job #809-70

**CONDE, INC.**  
**ENGINEERING / LAND SURVEYING / PLANNING**  
1790 LEE TREVINO SUITE 400 / EL PASO, TEXAS 79936 / (915) 592-0283

Exhibit "B"



(226)

TIERRA DEL ESTE  
UNIT FIFTY SIX  
FILE No. 20080074768

(226)

TIERRA DEL ESTE  
UNIT SIXTY ONE  
FILE No. 20090073258

TIERRA DE ORO  
ADDITION  
BOOK 35, PAGE 8

TIERRA DEL ESTE  
UNIT SIXTY ONE  
FILE No. 20090073258

SYMBOL LEGEND	
	FOUND SECTION CORNER
	SET 1/2" REBAR W/CAP 5152
	WATER METER
	IRRIGATION CONTROL BOX
	MANHOLE
	POWER POLE
	GUY WIRE
	GAS METER
	GAS TESTER

LINE TABLE	
LINE	LENGTH BEARING
L1	60.00 S90°00'00"W
L2	60.00 N89°58'30"E

NOTE:  
A METES AND BOUNDS DESCRIPTION OF  
EVEN DATE ACCOMPANIES THIS SURVEY.



CERTIFICATION  
I HEREBY CERTIFY THAT THE FOREGOING BOUNDARY AND IMPROVEMENT SURVEY  
WAS MADE BY ME OR UNDER MY SUPERVISION AND THAT THERE ARE NO  
ENCROACHMENTS EXCEPT AS SHOWN. ONLY PLATTED EASEMENTS ARE SHOWN.

RON R. CONDE R.P.L.S #5152

JOB # 809-70	DATE: SEPTEMBER 18, 2009	FIELD: D.G.	OFFICE: F.R.
LOCATED IN ZONE X	PANEL # 480212-0175B	DATED SEPT. 4, 1991	
RECORDED IN VOLUME 35	PAGE 8	PLAT RECORDS, EL PASO COUNTY, TX	



BEING A PORTION OF CARAVANOLA AVENUE  
TIERRA DE ORO ADDITION  
CITY OF EL PASO, EL PASO COUNTY, TEXAS  
CONDE ENGINEERING INC. CADD FILE: S:\FELIX\EXHIBIT\80970  
6080 SURETY SUITE 100  
EL PASO, TEXAS 79905

SCALE: 1"=150'  
©COPYRIGHT 2009/CONDE INC.  
ALL RIGHTS RESERVED

## 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 1.4405-acre property located in the City's East Extraterritorial Jurisdiction (ETJ). A portion of Section 46, Block 79, Township 2, Texas and Pacific Railroad Surveys, El Paso County, Texas. The area is more specifically described by metes and bounds in Exhibit "A" and the survey Exhibit "B", which are 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, such agreement being identified as Exhibit "D" and is attached to the annexation ordinance.

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:

- normal patrols and responses;

- handling of complaints and incident reports;
  - special units, such as, traffic enforcement, criminal investigations, narcotics, gang suppressions, and special weapons and tactics team.
- b. Fire Protection. The El Paso Fire Department will provide emergency 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 El Paso Solid Waste Management 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:
- garbage collection - once a week in accordance with established policies of the City;
  - dead animal collection - dead animals are removed from roadways upon request.
- Commercial garbage collection service for businesses, multi-family residences, and mobile home parks is available on a subscription basis from the City or private service providers.
- d. Maintenance of Water and Wastewater Facilities. The City's Public Service Board/El Paso Water Utilities (EPWU) will maintain water and wastewater facilities 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 Public Works 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. No public recreation facilities will be located within the annexation area however, the nearest public neighborhood park is located within 1,413 feet of the annexed.

## 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 Street 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;
  - watershed development review and inspection;
  - emergency spills and pollution complaints response;
  - flood plain office (information relating to flood plains).
- 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. City-County Health Department. All of the City-County Health services codes and regulations will be extended to the annexed area on the effective date of annexation
- e. Planning and Zoning. The planning and zoning jurisdiction of the City will be extended to the annexed area on the effective date of annexation. All land annexed shall be classified in the R-F zoning district pending a public hearing by the City Plan Commission on the appropriate zoning classification and action by the City Council. Such hearing shall be held within sixty days after the effective date of annexation and such action shall be taken by the City Council within thirty days after the last adjournment of the public hearing.
- f. 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 to serve the annexed area.
- b. Fire Protection. No capital improvements are necessary to serve the annexed area.
- c. Solid Waste Collection. No capital improvements are necessary to serve the annexed area.
- d. Water and Wastewater Facilities. Water and wastewater service will be provided in accordance with the El Paso Water Utility's Rules and Regulations. Capital improvements will be initiated pursuant to the facilities plan for the annexed area. Water and Wastewater services to new subdivisions will be provided according to the standard policies and procedures of the El Paso Water Utilities, which may require the developer of a new subdivision to install water and wastewater utility lines. The extension of water and sewer service will be provided in

accordance with the adopted Rules and Regulations of the El Paso Water Utilities.

- e. Roads and Streets. No road or street related capital improvements are necessary at this time. 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 to serve the annexed area.
- g. Drainage Facilities. No capital improvements are necessary to serve the annexed area
- 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.

## **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.

EXHIBIT "D"

31

THE STATE OF TEXAS ) ANNEXATION AGREEMENT  
 )  
 ) AN10-001  
COUNTY OF EL PASO )

THIS AGREEMENT made and entered into this 14<sup>th</sup> day of September 2010, 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 the County of El Paso (hereinafter referred to as "Owner");

WHEREAS, Owner is the owner-of-record of 1.4405 acres of real property described in Exhibit "A" and Exhibit "B" that is attached to this annexation agreement (which real property is hereinafter referred to as "Property"), and which Property is not within the corporate limits of any municipality but is contiguous to the corporate limits of the City; and,

WHEREAS, 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.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, 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 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 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 the Rules and Regulations of the El Paso Water Utilities/Public Service Board, and Owner agrees to comply with the additional requirements. Owner agrees to develop the Property in accordance with the following additional conditions:

- 1. No off premise signs shall be permitted on the property.

CITY CLERK DEPT.  
10 SEP - 1 PM 2:22

THE STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

ANNEXATION AGREEMENT  
AN10-001

THIS AGREEMENT made and entered into this 9th day of August 2010, 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 the County of El Paso (hereinafter referred to as "Owner");

WHEREAS, Owner is the owner-of-record of 1.4405 acres of real property described in Exhibit "A" and Exhibit "B" that is attached to this annexation agreement (which real property is hereinafter referred to as "Property"), and which Property is not within the corporate limits of any municipality but is contiguous to the corporate limits of the City; and,

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1. No off premise signs shall be permitted on the property.

*KK-10-363*

CITY CLERK DEPT.  
10 SEP - 1 PM 2:20

2. Property is to be used for Right of way purposes only (extension and improvements to Rich Beem).

*Three:* Owner hereby agrees that within 90 days of the passage of the ordinance annexing Property, Owner shall apply for a subdivision plat in accordance with the procedures of Title 19 (Subdivisions) of the Code.

*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:

EASTSIDE ANNEXATION FEES

<u>Meter Size</u>	<u>Water</u> (Dollars)	<u>Wastewater</u> (Dollars)
Less than 1"	656.00	380.00
1"	1,618.00	938.00
1 1/2"	3,281.00	1,901.00
2"	5,249.00	3,042.00
3"	10,498.00	6,084.00
4"	16,404.00	9,506.00
6"	32,807.00	19,012.00
8"	61,241.00	35,489.00
10"	87,487.00	50,699.00

The water and wastewater annexation fee shall be increased by three (3) percent on March 1, 2011, 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.

*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.

**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

OWNER: County of El Paso  
500 E. San Antonio  
El Paso, TX 79901

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, 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 inability 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.

**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 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.

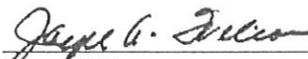
**Ambiguities:** In the even of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any Party on the basis that such Party did or did not author the same.

**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.

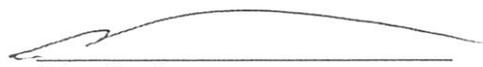
**Authority for Execution:** Each Party hereby certifies, represents, and warrants that the execution of this Agreement has been duly authorized.

**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.

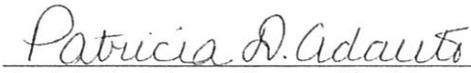
**THE CITY OF EL PASO**

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

**APPROVED AS TO FORM:**

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

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Patricia D. Adauto, Deputy City Manager  
Development & Infrastructure Services

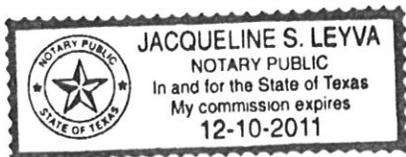
**ACKNOWLEDGMENT AND ACCEPTANCE ON FOLLOWING PAGE**

ACKNOWLEDGEMENT

STATE OF TEXAS )  
COUNTY OF EL PASO )

This instrument was acknowledged before me on the 15<sup>th</sup> day of September 2010,  
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 9<sup>th</sup>  
day of August, 2010.

Owner(s): County of El Paso  
By: Anthony Cobos

Title: County Judge Anthony Cobos  
County of El Paso

ACKNOWLEDGEMENT

STATE OF TEXAS )  
COUNTY OF EL PASO )

This instrument was acknowledged before me on the 17<sup>th</sup> day of August 2010,  
by Anthony Cobos, as County Judge of County of El Paso.

Nancy Turrieta Sambrano  
Notary Public, State of Texas  
Nancy Turrieta Sambrano  
Notary's Printed or Typed Name



1/24/2013  
My Commission Expires:

**Exhibit A**  
**Metes and Bounds Description**

Being a Portion of Section 46,  
Block 79, Township 2, Texas and  
Pacific Railway Company Surveys,  
City Of El Paso, El Paso County, Texas  
September 18, 2009  
(Parcel 1)

METES AND BOUNDS DESCRIPTION

Description of a parcel of land being a Portion of Section 46, Block 79, Township 2, Texas and Pacific Railway Company Surveys, City Of El Paso, El Paso County, Texas, and being more particularly described by metes and bounds as follows:

Commencing for reference at a found 2" pipe for the common corner of Sections 46 and 47, Block 79, Township 2 and sections 2 and 3, Block 79, Township 3, Texas and Pacific Railway Company Surveys, from which a found 2" pipe for the common corner of Sections 45, 46, 3 and 4 bears South 89°59'06" West a distance of 5312.40; Thence with the line between section 46 and 47, North 00°34'37" West a distance of 2616.36 feet to a point for the "TRUE POINT OF BEGINNING"

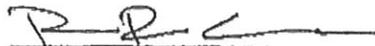
Thence leaving said line South 90°00'00" West a distance of 60.00 feet to a point on the westerly right of way line of Caravanola Ave.;

Thence North 00°34'37" West a distance of 1045.79 feet to a point;

Thence, North 89°58'35" East a distance of 60.00 feet to a point on the easterly right of way line of Caravanola Ave.;

Thence along said right of way line South 00°34'37" East a distance of 1045.79 feet to "TRUE POINT OF BEGINNING" and containing 1.4405 acres of land more or less.

Not a ground survey, Bearing basis is per plat of Tierra Del Este Unit Fifty Six recorded in clerks file no. 20080074768, Real property records of El Paso County, Texas.



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



job #809-70

CONDE, INC.  
ENGINEERING / LAND SURVEYING / PLANNING  
1790 LEE TREVINO SUITE 400 / EL PASO, TEXAS 79936 / (915) 592-0283

## Exhibit B Survey Map

