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SERVICE SOLUTIONS SUCCESS



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

DEPARTMENT: Planning and Economic Development

AGENDA DATE: CCA Consent: 5/31/2011

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

DISTRICT(S) AFFECTED: East ETJ

SUBJECT:

A Resolution authorizing the City Manager to sign an Annexation Agreement between the City of El Paso and River Oaks Properties, Ltd., for 42.225 acres of real property located north of Zaragoza Road and south of Montana Avenue, which will specify the terms and conditions in which the property will be annexed should the City annex the property. That the Deputy Director of Planning prepare an annexation service plan in accordance with Section 43.056 of the Local Government Code. AN08006 (East ETJ)

BACKGROUND / DISCUSSION:

See attached report.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

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

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) N/A

FINANCE: (if required) N/A

DEPARTMENT HEAD:



Mathew S. McElroy
Deputy Director – Planning

DATE: 5/29/11

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

Mayor
John F. Cook

City Council

District 1
Ann Morgan Lilly

District 2
Susie 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

RESOLUTION

WHEREAS, the City of El Paso and River Oaks Properties, Ltd., wish to annex approximately 42.225 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 2.817 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 42.225 acres of real property, located north of Zaragoza Road and south of Montana 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 _____ day of _____, 2011.

THE CITY OF EL PASO

John F. Cook, Mayor

ATTEST:

Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:

Lupe Cuellar,
Assistant City Attorney

APPROVED AS TO CONTENT:

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

SUB08-00094

Exhibit A

Property Description: Portion of Tract 1, Section 35, Block 79, Township 2, Texas and Pacific Railroad Surveys, El Paso County, Texas, and a portion of the right-of-way of Montana Avenue (U.S. Hwy 62-180).

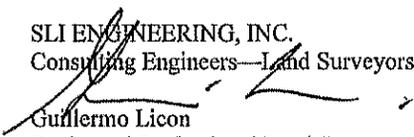
METES AND BOUNDS DESCRIPTION

The parcel of land herein described is a portion of Tract 1, Section 35, Block 79, Township 2, Texas and Pacific Railroad Surveys; comprising parcels known for tax purposes as "Tract 1A1", "Tract 1A3" and a remnant portion of "Tract 1A" El Paso County, Texas, and being a portion of the rights-of-way of Montana Avenue and Zaragoza Road; more particularly described as follows:

Commencing, for reference, at a #4 rebar with cap stamped "KECO IVEY" found for the west common corner of said Tract 1A1 and Tract 1A3, FROM WHICH a 3" pipe found in the northwesterly right-of-way line of Zaragoza Road (100' wide right-of-way) in the east boundary line of said Section 35 and said Tract 1A bears North 76° 20' 21" East 1623.12 feet (Basis of Bearing); THENCE, with the west boundary line of said Tract 1A3 North 00° 32' 00" West 1399.88 feet to the northwest corner of said Tract 1A3 in the southerly right-of-way line of Montana Avenue (US HWY 62-180, 200' wide right-of-way), witnessed by a #4 rebar (no ID) lying South 76° East, 0.5 feet distant; THENCE, with said right-of-way line, South 81° 18' 00" West 45.46 feet to the northwest corner of said Tract 1A, witnessed by a disturbed 1" iron pipe lying North 53° East 0.6 feet distant; said northwest corner of Tract 1A also being the northeast corner of Tract 1B and the POINT OF BEGINNING of this property description; THENCE, the following eight (8) courses:

1. North 08° 44' 28" West, a distance of 100.00 feet to a point in the center line of Montana Avenue;
2. With said center line, North 81° 18' 00" East 711.50 feet to a point;
3. South 08° 44' 28" East 100.00 feet to a point in the south right-of-way line of Montana Avenue and the northeast corner of the subject tract, witnessed by a 3" pipe lying South 42° West 0.3 feet distant;
4. Departing said right-of-way line, with the east boundary line of the subject parcel (the same being the boundary line common to Tract 1A3 and Tract 1A4), South 00° 32' 00" East 2111.08 feet to a point in said northwesterly right-of-way line of Zaragoza Road and the southeast corner of said portion of Tract 1A tract, witnessed by a #4 rebar with cap stamped "KECO IVEY" lying South 12° West 0.6 feet distant, and a chiseled "X" lying South 24° West 0.8 feet distant;
5. South 47° 30' 55" East a distance of 50.00 feet to a point in the center line of Zaragoza Road;
6. With said center line, South 42° 33' 00" West, a distance of 1031.52 feet to a point;
7. North 47° 30' 55" West a distance of 50.00 feet to a #5 rebar (no ID) found for the southwest corner of said portion of Tract 1A;
8. Departing said right-of-way line, with the boundary line common to Tract 1A and Tract 1B, North 00° 32' 00" West 2763.69 feet to the POINT OF BEGINNING and containing, in all, 42.225 acres (1,839,327 sq. ft.) of land, of which 2.817 acres (122,726 sq.ft.) are contained within said portion of the rights-of-way of Montana Avenue and Zaragoza Road, leaving a net of 39.408 acres (1,716,601 sq. ft.).

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

SLI ENGINEERING, INC.
Consulting Engineers—Land Surveyors

Guillermo Licon
Registered Professional Land Surveyor
Texas License No. 2998



July 9, 2008
Job Number 06-06-2454
M&B\1489
Page 1 of 2

Exhibit C
Annexation Agreement

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

ANNEXATION AGREEMENT
AN08006

THIS AGREEMENT made and entered into this ____ day of _____ 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 39.408, Owner's Property, of a 42.225 acre tract of real property described in Exhibit "A-1" 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, approximately a 2.817 acre portion of the Property ("Roads") is not owned by the Owner but is included in the annexation application and this agreement at the requirement of the City and,

WHEREAS, Owner desires that the Owner's 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 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 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 Owner's Property shall be in accordance with the applicable rules and regulations of the City, including Public Service Board Regulations in effect on the Effective Date of this Agreement, and subject to the application and payment of all necessary application and permit fees except as otherwise provided below 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 reviewed and approved as per the El Paso City Code. 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. 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. 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; provided however, that Owner shall not request reimbursement if Owner's paving exceeds one-half of the abutting roadway due to contractor error.

Three: Regardless of whether the Property falls within an exception or exemption under Title 19 (Subdivisions) of the El Paso City Code, Owner hereby agrees that within 360 days of the passage of the ordinance annexing Property, Owner shall submit a subdivision plat for approval. Owner shall be vested in the rules and ordinances in effect on the Effective Date of this Agreement. Provided however, that if Owner fails to submit a subdivision plat within 360 days as required herein, Owner's vesting rights shall be deemed waived and the property shall be subject to the rules and ordinance in effect at the time the Owner submits the subdivision plat for approval.

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

<u>Meter Size</u>	<u>(in Dollars)</u> <u>Water</u>	<u>(in Dollars)</u> <u>Wastewater</u>
5/8" x 3/4"	835	148
1"	2,059	365
1 1/2"	4,173	739
2"	6,677	1,183
3"	13,353	2,365
4"	20,864	3,696
6"	41,729	7,392
8"	77,615	13,748
10"	110,998	19,661

Based on gallons per minute water flow; EPWU-PSB Rules & Regulations No.1, Sec.7(J)
 The water and wastewater annexation fee shall be increased by three (3) percent on December 1, 2010, and each year thereafter, compounded annually. Payment of the water and wastewater annexation fee shall be due at the time of application for water and wastewater connection to the system. Existing water and wastewater connections are not subject to these fees. The annexation fee set forth herein shall not be increased in relation to the the nor shall the Owner be responsible for payment of impact fees or other new fees, regardless how named, which may serve purposes identical to or similar to the Annexation Fee.

Five: Owner shall provide the City with one (1) mylar and three (3) paper prints of a current aerial map of the Property depicting the condition of the Property at the time of annexation to the City. Such aerial, and any other evidence necessary to demonstrate the existence of any non-conforming lot, use or structure on the Property at the time of annexation, shall be provided by the Owner within thirty (30) days from passage of the ordinance annexing the 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-4. The ordinance which annexes the Property into the City will contain a provision which states that the Property, upon annexation, shall be zoned C-4.

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

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

Release or Partial Release of Requirement. Upon completion of the requirements ("Requirements") set forth herein by Owner, the Requirements shall be automatically released upon issuance of a letter by the City of El Paso's Development Services staff acknowledging the acceptance of the subdivision improvements called for by this Agreement or acknowledging that no subdivision improvements were required 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 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

ACCEPTANCE AND ACKNOWLEDGEMENT ON FOLLOWING PAGE

ACKNOWLEDGEMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____ 2011, by
Joyce Wilson, as City Manager of the City of El Paso, Texas

Notary Public, State of Texas

Notary's Printed or Typed Name

My Commission Expires:

ACCEPTANCE

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

RIVER OAKS PROPERTIES, LTD., a
Texas limited partnership

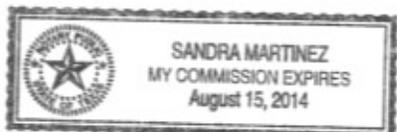
By: River Oaks Asset Management, Inc., a
Texas corporation, general partner

By: [Signature]
Adam Z. Frank
Its: 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, as President of River Oaks Properties, Ltd.



[Signature]
Notary Public, State of Texas

Sandra Martinez
Notary's Printed or Typed Name

8-15-2014
My Commission Expires:



PLANNING AND ECONOMIC DEVELOPMENT

MEMORANDUM

DATE: May 23, 2011
TO: The Honorable Mayor and City Council
Joyce A. Wilson, City Manager
FROM: Ernesto Arriola, Planner
SUBJECT: AN08006 Zaragoza and Montana Annexation

The City Plan Commission (CPC) on May 10, 2011 unanimously **recommended approval of the Annexation Agreement.**

The CPC determined that the annexation agreement 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 AN08-006
Application Type Annexation (Agreement Only)
CPC Hearing Date March 10, 2011
Staff Planner Ernesto Arriola, 541-4723, arriolaea@elpasotexas.gov

Location North of Zaragoza Road and south of Montana Avenue.
Legal Description A portion of Tract 1, Section 35, Block 79, Township 2, Texas and Pacific Railroad Surveys, El Paso County, Texas and a portion of the right-of-way of Montana Avenue (U.S. Hwy 62-180) Boulevard.

Acreage 42.225 acres
Rep District Adjacent to Representative District 5
Existing Use Vacant
Existing Zoning East ETJ
Proposed Zoning C-4 (Commercial)

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

Distance to Park: 3,675 feet (Eastside Regional Park)
Distance to School: 7,320 feet (Raphael Hernando III Middle School)

SURROUNDING ZONING AND LAND USE

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

THE PLAN FOR EL PASO DESIGNATION: Industrial

NEIGHBORHOOD ASSOCIATIONS: Las Tierras Neighborhood Association
East Side Civic Association

General Information:

The subject property is 42.225 acres in size and is currently vacant. There will be a zoning ordinance which will accompany the annexation ordinance, so that both ordinances will be considered by city council at the same time. Under the terms of the agreement, if the subject property is annexed, the subject property will be zoned to commercial.

Staff Recommendation:

The Development Coordinating Committee (DCC) recommends approval of this Annexation Agreement.

(Annexation Agreement – See Attachment 3)

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. Will Commercial development be compatible with adjacent land uses?
3. What is the relation of the proposed change to the city's Comprehensive Plan?
4. 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?

Planning and Economic Development - Planning Division:

Planning has no objection to annexation agreement. Planning recommends approval of this request.

Engineering & Construction Management - Building Permits and Inspections:

Comments are included in Annexation agreement.

Department of Transportation - Traffic Engineering:

Comments are included in Annexation agreement.

Fire Department:

No comments received

Police:

No objections.

Parks:

Comments are included in Annexation agreement.

El Paso Water Utilities:

Comments are included in Annexation agreement.

TxDOT:

No comments received.

County of El Paso:

No comments received.

Attachments

Attachment 1: Zoning Map

Attachment 2: Aerial

Attachment 3: Resolution and Agreement

Attachment 1: Zoning Map



Attachment 2: Aerial



Attachment 3: Resolution and Agreement

RESOLUTION

WHEREAS, the City of El Paso and River Oaks Properties, Ltd., wish to annex approximately 42.225 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 2.817 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,

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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 42.225 acres of real property, located north of Zaragoza Road and south of Montana 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 _____ day of _____, 2011.

THE CITY OF EL PASO

John F. Cook, Mayor

ATTEST:

Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:

Lupe Cuellar,
Assistant City Attorney

APPROVED AS TO CONTENT:

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

Exhibit A

Property Description: Portion of Tract 1, Section 35, Block 79, Township 2, Texas and Pacific Railroad Surveys, El Paso County, Texas, and a portion of the right-of-way of Montana Avenue (U.S. Hwy 62-180).

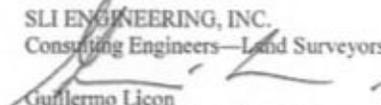
METES AND BOUNDS DESCRIPTION

The parcel of land herein described is a portion of Tract 1, Section 35, Block 79, Township 2, Texas and Pacific Railroad Surveys; comprising parcels known for tax purposes as "Tract 1A1", "Tract 1A3" and a remnant portion of "Tract 1A" El Paso County, Texas, and being a portion of the rights-of-way of Montana Avenue and Zaragoza Road; more particularly described as follows:

Commencing, for reference, at a #4 rebar with cap stamped "KECO IVEY" found for the west common corner of said Tract 1A1 and Tract 1A3, FROM WHICH a 3" pipe found in the northwesterly right-of-way line of Zaragoza Road (100' wide right-of-way) in the east boundary line of said Section 35 and said Tract 1A bears North 76° 20' 21" East 1623.12 feet (Basis of Bearing); THENCE, with the west boundary line of said Tract 1A3 North 00° 32' 00" West 1399.88 feet to the northwest corner of said Tract 1A3 in the southerly right-of-way line of Montana Avenue (US HWY 62-180, 200' wide right-of-way), witnessed by a #4 rebar (no ID) lying South 76° East, 0.5 feet distant; THENCE, with said right-of-way line, South 81° 18' 00" West 45.46 feet to the northwest corner of said Tract 1A, witnessed by a disturbed 1" iron pipe lying North 53° East 0.6 feet distant; said northwest corner of Tract 1A also being the northeast corner of Tract 1B and the POINT OF BEGINNING of this property description; THENCE, the following eight (8) courses:

1. North 08° 44' 28" West, a distance of 100.00 feet to a point in the center line of Montana Avenue;
2. With said center line, North 81° 18' 00" East 711.50 feet to a point;
3. South 08° 44' 28" East 100.00 feet to a point in the south right-of-way line of Montana Avenue and the northeast corner of the subject tract, witnessed by a 3" pipe lying South 42° West 0.3 feet distant;
4. Departing said right-of-way line, with the east boundary line of the subject parcel (the same being the boundary line common to Tract 1A3 and Tract 1A4), South 00° 32' 00" East 2111.08 feet to a point in said northwesterly right-of-way line of Zaragoza Road and the southeast corner of said portion of Tract 1A tract, witnessed by a #4 rebar with cap stamped "KECO IVEY" lying South 12° West 0.6 feet distant, and a chiseled "X" lying South 24° West 0.8 feet distant;
5. South 47° 30' 55" East a distance of 50.00 feet to a point in the center line of Zaragoza Road;
6. With said center line, South 42° 33' 00" West, a distance of 1031.52 feet to a point;
7. North 47° 30' 55" West a distance of 50.00 feet to a #5 rebar (no ID) found for the southwest corner of said portion of Tract 1A;
8. Departing said right-of-way line, with the boundary line common to Tract 1A and Tract 1B, North 00° 32' 00" West 2763.69 feet to the POINT OF BEGINNING and containing, in all, 42.225 acres (1,839,327 sq. ft.) of land, of which 2.817 acres (122,726 sq.ft.) are contained within said portion of the rights-of-way of Montana Avenue and Zaragoza Road, leaving a net of 39.408 acres (1,716,601 sq. ft.).

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

SLI ENGINEERING, INC.
Consulting Engineers—Land Surveyors

Guillermo Licon
Registered Professional Land Surveyor
Texas License No. 2998



July 9, 2008
Job Number 06-06-2454
M&B1489
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Exhibit C

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

ANNEXATION AGREEMENT
AN08006

THIS AGREEMENT made and entered into this ____ day of _____ 2010, 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 39.408, Owner's Property, of a 42.225 acre tract of real property described in Exhibit "A-1" 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, approximately a 2.817 acre portion of the Property ("Roads") is not owned by the Owner but is included in the annexation application and this agreement at the requirement of the City and,

WHEREAS, Owner desires that the Owner's 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 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 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 Owner's Property shall be in accordance with the applicable rules and regulations of the City, including Public Service Board Regulations in effect on the Effective Date of this Agreement, and subject to the application and payment of all necessary application and permit fees except as otherwise provided below 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 reviewed and approved as per the El Paso City Code. 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. 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. 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; provided however, that Owner shall not request reimbursement if Owner's paving exceeds one-half of the abutting roadway due to contractor error.

Three: Regardless of whether the Property falls within an exception or exemption under Title 19 (Subdivisions) of the El Paso City Code, Owner hereby agrees that within 360 days of the passage of the ordinance annexing Property, Owner shall submit a subdivision plat for approval. Owner shall be vested in the rules and ordinances in effect on the Effective Date of this Agreement. Provided however, that if Owner fails to submit a subdivision plat within 360 days as required herein, Owner's vesting rights shall be deemed waived and the property shall be subject to the rules and ordinance in effect at the time the Owner submits the subdivision plat for approval.

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

<u>Meter Size</u>	<u>(in Dollars)</u> <u>Water</u>	<u>(in Dollars)</u> <u>Wastewater</u>
5/8" x 3/4"	835	148
1"	2,059	365
1 1/2"	4,173	739
2"	6,677	1,183
3"	13,353	2,365
4"	20,864	3,696
6"	41,729	7,392
8"	77,615	13,748
10"	110,998	19,661

Based on gallons per minute water flow; EPWU-PSB Rules & Regulations No.1, Sec.7(J)
The water and wastewater annexation fee shall be increased by three (3) percent on December 1, 2010, and each year thereafter, compounded annually. Payment of the water and wastewater annexation fee shall be due at the time of application for water and wastewater connection to the system. Existing water and wastewater connections are not subject to these fees. The annexation fee set forth herein shall not be increased in relation to the the nor shall the Owner be responsible for payment of impact fees or other new fees, regardless how named, which may serve purposes identical to or similar to the Annexation Fee.

Five: Owner shall provide the City with one (1) mylar and three (3) paper prints of a current aerial map of the Property depicting the condition of the Property at the time of annexation to the City. Such aerial, and any other evidence necessary to demonstrate the existence of any non-conforming lot, use or structure on the Property at the time of annexation, shall be provided by the Owner within thirty (30) days from passage of the ordinance annexing the 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-4. The ordinance which annexes the Property into the City will contain a provision which states that the Property, upon annexation, shall be zoned C-4.

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, lightening, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests and restraints of governments and people, explosions, breakage or damage to machines or pipelines and any other incapacities of either Party, whether similar to those enumerated or otherwise, and not within the reasonable control of the Party claiming such inability.

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

Release or Partial Release of Requirement. Upon completion of the requirements ("Requirements") set forth herein by Owner, the Requirements shall be automatically released upon issuance of a letter by the City of El Paso's Development Services staff acknowledging the acceptance of the subdivision improvements called for by this Agreement or acknowledging that no subdivision improvements were required 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 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 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

ACCEPTANCE AND ACKNOWLEDGEMENT ON FOLLOWING PAGE

