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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 2.054 acres of real property located northwest of Zaragoza Road and south of Edgemere Boulevard, 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. AN08008 (East ETJ)

**BACKGROUND / DISCUSSION:**

See attached report.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**BOARD / COMMISSION ACTION:**

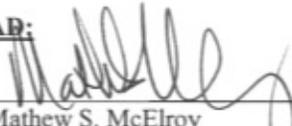
Development Coordinating Committee (DCC) – Unanimous Approval  
City Plan Commission (CPC) – Unanimous Approval

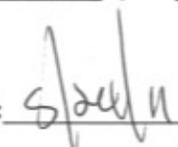
\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

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

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

**DEPARTMENT HEAD:**

  
\_\_\_\_\_  
Mathew S. McElroy  
Deputy Director – Planning

**DATE:** 

**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 2.054 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 0.212 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 2.054 acres of real property, located northwest of Zaragoza Road and south of Edgemere Boulevard, 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:**

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

## Exhibit A

Property Description: All of Tract 1, Section 38, Block 79, Township 2, Texas and Pacific Railroad Surveys, El Paso County, Texas, and a portion of the rights-of-way of Edgemere Boulevard and Zaragosa Road (F.M. 659).

### METES AND BOUNDS DESCRIPTION

The parcel of land herein described is all of Tract 1, Section 38, Block 79, Township 2, Texas and Pacific Railroad Surveys, El Paso County, Texas, and being a portion of the rights-of-way of Edgemere Boulevard and Zaragosa Road (FM. 659). and is more particularly described by metes and bounds as follows:

Beginning at a city monument found at the center line intersection of Edgemere Boulevard and Tierra Dorado Drive, said point bears South 89° 58' 25" West, along the center line of Edgemere Boulevard, a distance of 846.96 feet from a City Monument found at a P.C. in said center line;

THENCE, North 89° 58' 27" East, along the center line of Edgemere Boulevard, a distance of 69.58 feet to a point;

THENCE, South 00° 01' 35" East, a distance of 55.00 feet to a point lying on the southerly right-of-way line of Edgemere Boulevard marked by a 1/2" rebar with cap "5152";

THENCE, South 40° 39' 55" East, a distance of 1031.75 feet to a point on the northerly right-of-way line of Zaragosa Road, said point is marked by a 1/2" rebar with cap "5152";

THENCE, South 47° 28' 26" East, a distance of 50.00 feet to a point on the center line of Zaragosa Road (F.M. 659);

THENCE, South 42° 31' 34" West, along the center line of Zaragosa Road, a distance of 75.59 feet to a point;

THENCE, North 47° 28' 26" West, a distance of 50.00 feet to a point on the northerly right-of-way line of Zaragosa Road (F.M. 659), said point is marked by a 1/2" rebar with cap "5152";

THENCE, North 40° 40' 09" West, a distance of 1105.19 feet to a point on the southerly right-of-way line of Edgemere Boulevard, said point is marked by a 1/2" rebar with cap "5152";

THENCE, North 00° 01' 35" West, a distance of 55.00 feet to a point on the center line of Edgemere Boulevard;

THENCE, North 89° 58' 25" East, along the center line of Edgemere Boulevard, a distance of 29.43 feet to THE TRUE POINT OF BEGINNING of this description;

Said parcel of land contains 2.054 acres (89,459 sq. ft.) of land, more or less;

And contained within said parcel are 0.212 acres (9,228 sq. ft.) of land for said portions of the rights-of-way of Edgemere Boulevard and Zaragosa Road (F.M. 659), leaving a net of 1.842 acres (80,231 sq. ft.) of land, more or less, for said Parcel 7;

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 06-05-2286  
M&B1489  
Page 1 of 2



**Exhibit C**  
**Annexation Agreement**

THE STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

ANNEXATION AGREEMENT  
AN08008

**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 1.842 acres of a 2.054 acre tract of real property described in Exhibit "A" that is attached to the Ordinance approving the annexation of this property and this annexation agreement, which real property is hereinafter referred to as "Property," and which real estate is not within the corporate limits of any municipality but is contiguous to the corporate limits of the City; and,

**WHEREAS**, approximately a 0.212 acre portion of the Property ("Roads") is not owned by the Owner but is included in the annexation application and this agreement at the requirement of the City and,

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

**WHEREAS**, Owner desires that the Property be annexed to the City 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 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 and in the recitals set forth hereinabove, the parties hereto agree as follows:

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

Two: Owner hereby agrees that the development of the Property shall be in accordance with the applicable rules and regulations of the City, including Public Service Board Regulations 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. 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.
2. No off premise signs shall exist on the Property at the time of annexation.
3. Owner shall not request or be eligible for reimbursement for any cost associated or in connection with claims for overwidth paving from the City. Owner shall not request or be eligible for reimbursement for any cost associated or in connection with claims for over width paving from the City for paving of one-half of the abutting roadway classification existing on the date of this Agreement. Any request for over width paving by the City that exceeds one-half of the roadway classification shall be eligible for reimbursement of costs.

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

<u>Meter Size</u>	<u>(in Dollars) Water</u>	<u>(in Dollars) Wastewater</u>
5/8" x 3/4"	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 Property nor shall the Owner be responsible for payment of

impact fees or other new fees, regardless how named, which may serve purposes identical to or similar to the Annexation Fee.

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

**Notice:** Any formal notice or other communication ("Notice") required to be given by one party to the other under this Agreement shall be given in writing, addressed to the Party to be notified at the address set forth below, by (i) delivering the same in person, (ii) depositing the same in the United States Mail, certified or registered, return receipt requested, postage prepaid, (iii) depositing the same with Federal Express or with another nationally recognized courier service guaranteeing "next day delivery," or (iv) sending the same by telefax with confirming copy sent by certified or registered mail. For the purpose of notice, the addresses of the Parties, until changed as provided below, shall be as follows:

- (1) CITY: City of El Paso  
Attn: City Manager  
2 Civic Center Plaza  
El Paso, Texas 79901

Copy to: City Clerk  
Same Address as above

- (2) OWNER: River Oaks Properties, Ltd  
Attn: Adam Z. Frank, President  
106 Mesa Park Drive  
El Paso, TX 79912

The Parties shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America by giving at least five (5) days written notice to the other Party. If any date or any period provided in this agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating the notice shall be extended to the first business day following such Saturday, Sunday, or legal holiday.

**Successors and Assigns:** This Agreement is a restriction, condition and covenant running with the Property and a charge and servitude thereon, and shall be binding upon and inure to the benefit of the parties hereto, and their heirs, successors and assigns of all or any part of the Property. Any future conveyance of the Property shall contain the restrictions, conditions and covenants and shall embody this Agreement by express reference; provided, however, this Agreement shall not be binding on, and shall not create any encumbrance to title as to, any end-buyer of a fully developed and improved lot within the Property, except for land-use regulations that may apply to a specific lot.

**Remedies:** This Agreement shall be enforceable in any court of competent jurisdiction by any of the parties or by an appropriate action at law or in equity to secure the performance of the restrictions, conditions and covenants herein contained. In the event a Party (the "Defaulting Party") commits a breach of this Agreement, the other Party (the "Non-Defaulting Party"), shall, prior to bringing suit or pursuing any other remedy, provide written notice of such breach to the Defaulting Party. Following receipt of such notice, the Defaulting Party shall have thirty (30) days within which to cure the breach. If the breach cannot be cured within such thirty- (30-) day period, the Defaulting Party shall commence to cure such breach within said period and thereafter diligently continue such cure to completion. In the event the Defaulting Party fails to cure the breach within said period, then the Non-Defaulting Party may pursue any remedy provided at law or in equity.

**Force Majeure:** In the event that any Party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, it is agreed that on such Party's giving of notice and the full particulars of such force majeure in writing to the other Party as soon as possible after the occurrence of the cause relied upon, then the obligations of the Party giving such notice, to the extent it is affected by force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability but for no longer period. The term "force majeure" as used herein, shall include, but not be limited to, acts of God, strikes, governmental delays, 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

**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

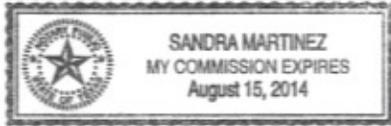
By: Adam Z. Frank  
Adam Z. Frank  
Its: President

**ACKNOWLEDGEMENT ON FOLLOWING PAGE**

ACKNOWLEDGEMENT

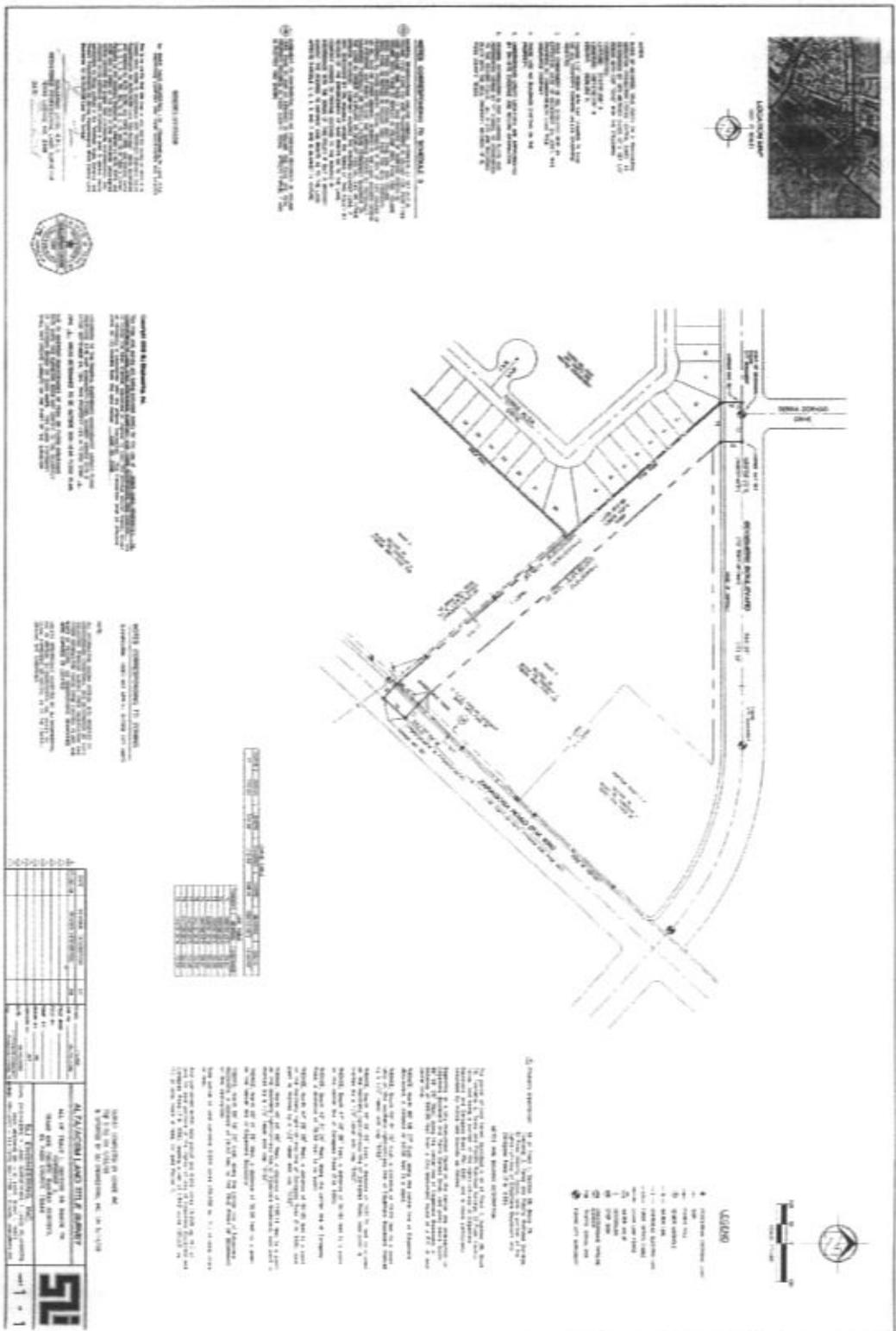
STATE OF TEXAS     )  
COUNTY OF EL PASO )

This instrument was acknowledged before me on the 21 day of March 2011, by Adam Z. Frank, as President of River Oaks Properties, Ltd.



Sandra Martinez  
Notary Public, State of Texas  
Sandra Martinez  
Notary's Printed or Typed Name  
8-15-2014  
My Commission Expires:

# Exhibit A Survey Map





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:** AN08008 Edgemere and Zaragoza Annexation

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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



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** AN08-008  
**Application Type** Annexation (Agreement Only)  
**CPC Hearing Date** March 10, 2011  
**Staff Planner** Ernesto Arriola, 541-4723, arriolaea@elpasotexas.gov

**Location** Northwest of Zaragoza Road and south of Edgemere Boulevard.  
**Legal Description** All of Tract 1, Section 38, Block 79, Township 2, Texas and Pacific Railroad Surveys, El Paso County, Texas and a portion of rights-of-way of Edgemere Boulevard and Zaragoza Road (F.M. 689).  
**Acreage** 2.054 acres  
**Rep District** Adjacent to Representative District 5  
**Existing Use** Vacant  
**Existing Zoning** East ETJ  
**Proposed Zoning** C-3 (Commercial)

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

**Distance to Park:** 560 feet (Tierra del Este #44 Park)  
**Distance to School:** 2,990 feet (Rafael Hernando III Elementary School)

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

**North:** R-5 (Residential), Single-Family Residences  
**South:** C-4 (Commercial), Vacant  
**East:** C-2 (Commercial), Vacant  
**West:** R-5 (Residential), Single-Family Residences  
C-3 (Commercial), Vacant

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

**NEIGHBORHOOD ASSOCIATIONS:** East Side Civic Association  
Las Tierras Neighborhood Association

### **General Information:**

The subject property is 2.054 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.

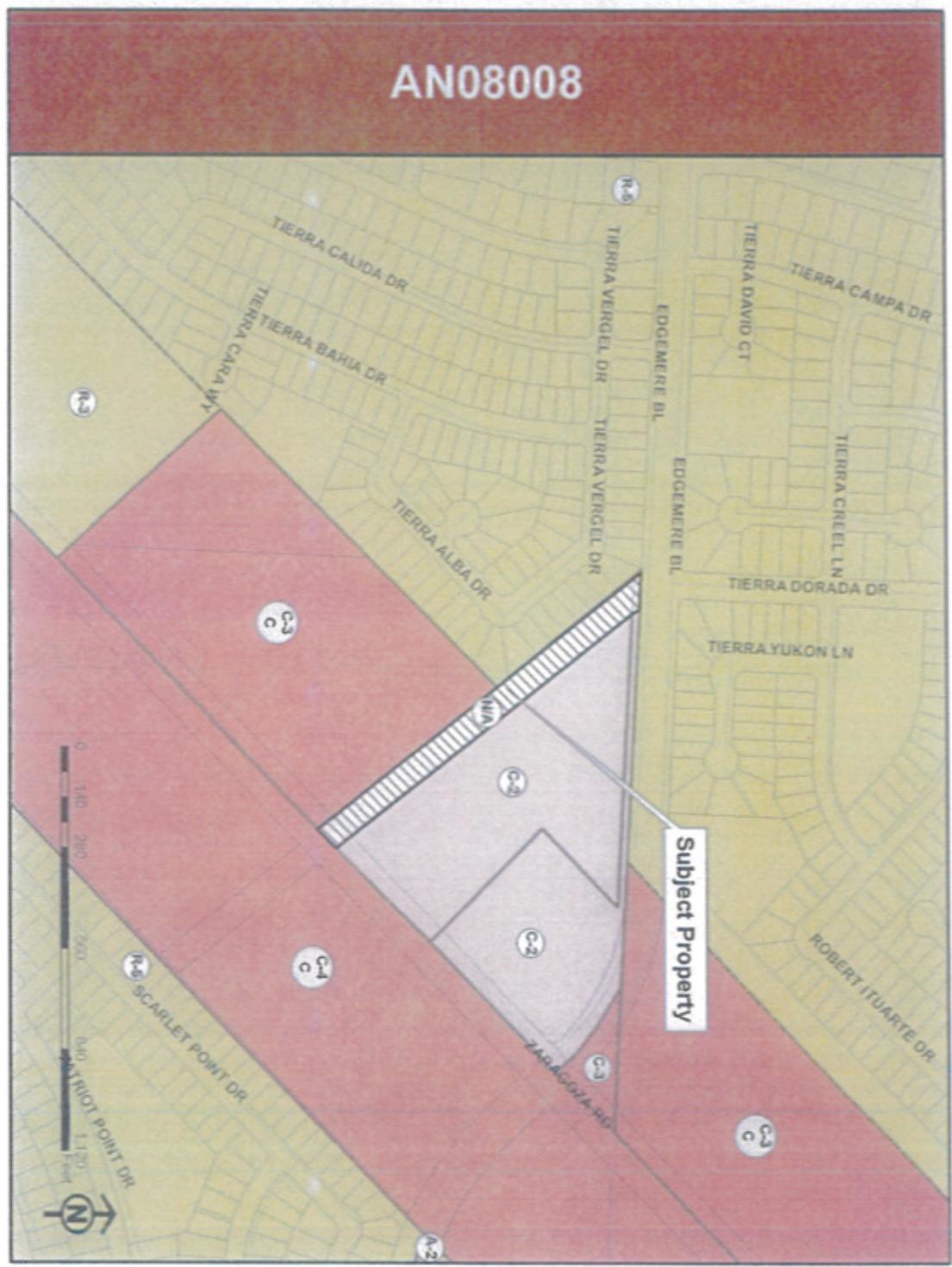
Attachments

Attachment 1: Zoning Map

Attachment 2: Aerial

Attachment 3: Resolution and Agreement

Attachment 1: Zoning Map





Attachment 3: Resolution and Agreement

**RESOLUTION**

**WHEREAS**, the City of El Paso and River Oaks Properties, Ltd., wish to annex approximately 2.054 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 0.212 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 2.054 acres of real property, located northwest of Zaragoza Road and south of Edgemere Boulevard, 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:**

**APPROVED AS TO CONTENT:**

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

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

## Exhibit A

Property Description: All of Tract 1, Section 38, Block 79, Township 2, Texas and Pacific Railroad Surveys, El Paso County, Texas, and a portion of the rights-of-way of Edgemere Boulevard and Zaragosa Road (F.M. 659).

### METES AND BOUNDS DESCRIPTION

The parcel of land herein described is all of Tract 1, Section 38, Block 79, Township 2, Texas and Pacific Railroad Surveys, El Paso County, Texas, and being a portion of the rights-of-way of Edgemere Boulevard and Zaragosa Road (F.M. 659). and is more particularly described by metes and bounds as follows:

Beginning at a city monument found at the center line intersection of Edgemere Boulevard and Tierra Dorado Drive, said point bears South  $89^{\circ} 58' 25''$  West, along the center line of Edgemere Boulevard, a distance of 846.96 feet from a City Monument found at a P.C. in said center line;

THENCE, North  $89^{\circ} 58' 27''$  East, along the center line of Edgemere Boulevard, a distance of 69.58 feet to a point;

THENCE, South  $00^{\circ} 01' 35''$  East, a distance of 55.00 feet to a point lying on the southerly right-of-way line of Edgemere Boulevard marked by a 1/2" rebar with cap "5152";

THENCE, South  $40^{\circ} 39' 55''$  East, a distance of 1031.75 feet to a point on the northerly right-of-way line of Zaragosa Road, said point is marked by a 1/2" rebar with cap "5152";

THENCE, South  $47^{\circ} 28' 26''$  East, a distance of 50.00 feet to a point on the center line of Zaragosa Road (F.M. 659);

THENCE, South  $42^{\circ} 31' 34''$  West, along the center line of Zaragosa Road, a distance of 75.59 feet to a point;

THENCE, North  $47^{\circ} 28' 26''$  West, a distance of 50.00 feet to a point on the northerly right-of-way line of Zaragosa Road (F.M. 659), said point is marked by a 1/2" rebar with cap "5152";

THENCE, North  $40^{\circ} 40' 09''$  West, a distance of 1105.19 feet to a point on the southerly right-of-way line of Edgemere Boulevard, said point is marked by a 1/2" rebar with cap "5152";

THENCE, North  $00^{\circ} 01' 35''$  West, a distance of 55.00 feet to a point on the center line of Edgemere Boulevard;

THENCE, North  $89^{\circ} 58' 25''$  East, along the center line of Edgemere Boulevard, a distance of 29.43 feet to THE TRUE POINT OF BEGINNING of this description;

Said parcel of land contains 2.054 acres (89,459 sq. ft.) of land, more or less;

And contained within said parcel are 0.212 acres (9,228 sq. ft.) of land for said portions of the rights-of-way of Edgemere Boulevard and Zaragosa Road (F.M. 659), leaving a net of 1.842 acres (80,231 sq. ft.) of land, more or less, for said Parcel 7;

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 06-05-2286  
M&B\1489  
Page 1 of 2



Exhibit C

THE STATE OF TEXAS    )  
  )  
COUNTY OF EL PASO    )

ANNEXATION AGREEMENT  
AN08008

**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 1.842 acres of a 2.054 acre tract of real property described in Exhibit "A" that is attached to the Ordinance approving the annexation of this property and this annexation agreement, which real property is hereinafter referred to as "Property," and which real estate is not within the corporate limits of any municipality but is contiguous to the corporate limits of the City; and,

**WHEREAS**, approximately a 0.212 acre portion of the Property ("Roads") is not owned by the Owner but is included in the annexation application and this agreement at the requirement of the City and,

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

**WHEREAS**, Owner desires that the Property be annexed to the City 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 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 and in the recitals set forth hereinabove, the parties hereto agree as follows:

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

Two: Owner hereby agrees that the development of the Property shall be in accordance with the applicable rules and regulations of the City, including Public Service Board Regulations 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. 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.
2. No off premise signs shall exist on the Property at the time of annexation.
3. Owner shall not request or be eligible for reimbursement for any cost associated or in connection with claims for overwidth paving from the City. Owner shall not request or be eligible for reimbursement for any cost associated or in connection with claims for over width paving from the City for paving of one-half of the abutting roadway classification existing on the date of this Agreement. Any request for over width paving by the City that exceeds one-half of the roadway classification shall be eligible for reimbursement of costs.

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

<u>Meter Size</u>	<u>(in Dollars) Water</u>	<u>(in Dollars) Wastewater</u>
5/8" x 3/4"	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 Property nor shall the Owner be responsible for payment of

impact fees or other new fees, regardless how named, which may serve purposes identical to or similar to the Annexation Fee.

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

**Notice:** Any formal notice or other communication ("Notice") required to be given by one party to the other under this Agreement shall be given in writing, addressed to the Party to be notified at the address set forth below, by (i) delivering the same in person, (ii) depositing the same in the United States Mail, certified or registered, return receipt requested, postage prepaid, (iii) depositing the same with Federal Express or with another nationally recognized courier service guaranteeing "next day delivery," or (iv) sending the same by telefax with confirming copy sent by certified or registered mail. For the purpose of notice, the addresses of the Parties, until changed as provided below, shall be as follows:

- (1) CITY: City of El Paso  
Attn: City Manager  
2 Civic Center Plaza  
El Paso, Texas 79901

Copy to: City Clerk  
Same Address as above

- (2) OWNER: River Oaks Properties, Ltd  
Attn: Adam Z. Frank, President  
106 Mesa Park Drive  
El Paso, TX 79912

The Parties shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America by giving at least five (5) days written notice to the other Party. If any date or any period provided in this agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating the notice shall be extended to the first business day following such Saturday, Sunday, or legal holiday.

**Successors and Assigns:** This Agreement is a restriction, condition and covenant running with the Property and a charge and servitude thereon, and shall be binding upon and inure to the benefit of the parties hereto, and their heirs, successors and assigns of all or any part of the Property. Any future conveyance of the Property shall contain the restrictions, conditions and covenants and shall embody this Agreement by express reference; provided, however, this Agreement shall not be binding on, and shall not create any encumbrance to title as to, any end-buyer of a fully developed and improved lot within the Property, except for land-use regulations that may apply to a specific lot.

**Remedies:** This Agreement shall be enforceable in any court of competent jurisdiction by any of the parties or by an appropriate action at law or in equity to secure the performance of the restrictions, conditions and covenants herein contained. In the event a Party (the "Defaulting Party") commits a breach of this Agreement, the other Party (the "Non-Defaulting Party"), shall, prior to bringing suit or pursuing any other remedy, provide written notice of such breach to the Defaulting Party. Following receipt of such notice, the Defaulting Party shall have thirty (30) days within which to cure the breach. If the breach cannot be cured within such thirty- (30-) day period, the Defaulting Party shall commence to cure such breach within said period and thereafter diligently continue such cure to completion. In the event the Defaulting Party fails to cure the breach within said period, then the Non-Defaulting Party may pursue any remedy provided at law or in equity.

**Force Majeure:** In the event that any Party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, it is agreed that on such Party's giving of notice and the full particulars of such force majeure in writing to the other Party as soon as possible after the occurrence of the cause relied upon, then the obligations of the Party giving such notice, to the extent it is affected by force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability but for no longer period. The term "force majeure" as used herein, shall include, but not be limited to, acts of God, strikes, governmental delays, lockouts or other industrial disturbances, acts of the public enemy, war, terrorism, blockades, insurrections, riots, epidemics, landslides, lightening, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests and restraints of governments and people, explosions, breakage or damage to machines or pipelines and any other incapacities of either Party, whether similar to those enumerated or otherwise, and not within the reasonable control of the Party claiming such inability.

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

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

ACKNOWLEDGEMENT

STATE OF TEXAS        )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_ 2010, 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 22nd day of November, 2010.

RIVER OAKS PROPERTIES, LTD., a Texas limited partnership

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

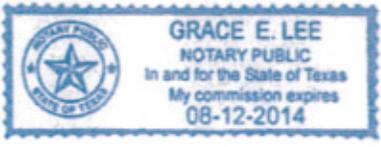
By: \_\_\_\_\_  
Adam Z. Frank  
Its: President

ACKNOWLEDGEMENT ON FOLLOWING PAGE

ACKNOWLEDGEMENT

STATE OF TEXAS     )  
COUNTY OF EL PASO )

This instrument was acknowledged before me on the 22<sup>nd</sup> day of November 2010, by Adam Z. Frank, as President of River Oaks Properties, Ltd.



Grace E. Lee  
Notary Public, State of Texas  
GRACE E. LEE  
Notary's Printed or Typed Name  
08-12-2014  
My Commission Expires:

# Exhibit A Survey Map

