

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

DEPARTMENT: Development Services / Planning Division
AGENDA DATE: Introduction 07/10/07; Public Hearing 07/17/07
CONTACT PERSON/PHONE: Christina Valles, Lead Planner – 541-4930
DISTRICT(S) AFFECTED: East ETJ - Adjacent to District 5

SUBJECT:

An Ordinance annexing a portion of Montana Avenue and a portion of Sections 28, 33 and 34, Block 79 Township 2, Texas and Pacific Railway Company Surveys into the City of El Paso, Texas.

Subject Property: North of Montana Avenue and East of Loop 375. Applicant: County of El Paso, Cesar Viramontes, Bam Joint Venture, Roberto Barron, Armando Barron and Daniel Barron. AN07003 (East ETJ – Adjacent to District 5)

BACKGROUND / DISCUSSION:

See attached report

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

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

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

LEGAL: (if required) N/A

FINANCE: (if required) N/A

DEPARTMENT HEAD: R. Alan Shubert

APPROVED FOR AGENDA: N/A

ORDINANCE NO. _____

AN ORDINANCE ANNEXING A PORTION OF MONTANA AVENUE AND A PORTION OF SECTIONS 28, 33 AND 34, BLOCK 79 TOWNSHIP 2, TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS INTO THE CITY OF EL PASO, TEXAS

WHEREAS, Wright and Dalbin Architects, Inc., owners of approximately 389 acres, lying in the City of El Paso's West Extraterritorial Jurisdiction; the property more fully described in the attached metes and bounds description, identified as Exhibit "A" and made a part hereof by reference, request that this area be annexed into the El Paso's City Limits; and,

WHEREAS, the City agrees to annex said property under certain terms and conditions identified under the Annexation Agreement, identified in Exhibit "C" and made a part hereof by reference; and,

WHEREAS, the attached Service Plan, described as Exhibit "B", identifies the municipal services to be extended to this annexed area and adopted as part of this ordinance; and,

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

That the boundaries of the *CITY OF EL PASO* are hereby extended so as to annex the territory described in Exhibit "A" lying adjacent to the city limits as they are at presently established. Further, that the City adopts the Service Plan described as Exhibit "B"; and that the annexation is subject to all terms and conditions cited in the Annexation Agreement, attached as Exhibit "C", by and between the City of El Paso, Texas and Wright and Dalbin Architects, Inc. and that the City Manager be authorized to sign the Annexation Agreement.

PASSED AND APPROVED THIS _____ day of _____, 2007.

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:

for _____
Kelly Carpenter, Deputy Director
Development Services Department

Being and a portion of Montana Avenue and
A Portion of Sections 28, 33 and 34, Block 79,
Township 2, Texas and Pacific Railway Company Surveys
El Paso County, Texas.
May 17, 200

METES AND BOUNDS DESCRIPTION

Description of a parcel of land being a portion of Montana Ave. and a portion of Section 28, 33 and 34, Block 79, Township 2, Texas and Pacific Railway Company Surveys El Paso County, Texas, and being more particularly described by metes and bounds as follows:

Commencing for reference at a set ½” rebar with cap “5152” at the northeast corner of Section 33, said point also being the “TRUE POINT OF BEGINNING”;

Thence along the north boundary line of Section 34, South 89°59'27” East a distance of 794.00 feet to a point at the northeast corner of Track 11-C;

Thence along the east boundary line of said tract, South 00°32'39” East a distance of 1,512.75 feet to a point on the southerly right of way line of Montana Avenue (U.S. Highway 62) as reference in TX D.O.T. right of way Map S-149, control No. 374;

Thence with said right of way line, South 81°17'02” West a distance of 5826.54 feet to a point;

Thence crossing said right of way, North 04°42'46” West a distance of 200.49 feet to a point on the northerly right of way line of Montana Avenue (U.S. Highway 62) as reference in TX D.O.T. right of way Map S-149, control No. 374;

Thence North 45°29'13” West a distance of 166.43 feet to a point on the easterly right of way line of Joe Battle Blvd. (loop 375);

Thence along said right of way line, North 00°29'13” West a distance of 100.00 feet to a point;

Thence along said right of way line, North 02°43'20” West a distance of 1984.00 feet to a point;

Thence leaving said right of way line, South 89°58'21” East a distance of 1795.37 feet to a point;

Thence North 00°40'51” West a distance of 5034.66 feet to a point;

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Thence North 89°59'35" East a distance of 193.85 feet to a found brass cap marked NW-160 AC-Texas GLO-1994;

Thence South 00°40'51" East a distance of 2251.46 feet to a found brass cap marked SW-160 AC-Texas GLO-1994;

Thence North 89°19'09" East a distance of 1105.99 feet to a point;

Thence South 00°40'51" East a distance of 361.50 feet to a point;

Thence North 89°19'09" East a distance of 361.50 feet to a point on the easterly line of tract 1, Section 28, Block 79, Township 2, Texas and Pacific Railway Company surveys;

Thence South 00°40'51" East a distance of 2439.97 feet to a point;

Thence South 89°58'21" East a distance of 1724.29 feet to "TRUE POINT OF BEGINNING" and containing in all 380.62 acres of land more or less.

Bearing basis is true north for a Transverse Mercator Surface Projection as determined by GPS methods based at center of this site.

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Ron R. Conde
R.P.L.S No. 5152
Job No. 507-60



RelayFax via port COM1

From: 915 592 0286

5/10/2007 1:40:42

05/10/2007 13:35 FAX 915 592 0286

CONDE INC

Exhibit 'A'

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Being a portion of Section 33,
Block 79, Township 2,
Texas and Pacific Railway Company Surveys,
El Paso County, Texas.
April 19, 2007;

METES AND BOUNDS DESCRIPTION

Description of a parcel of land being Tracts 2 and 3, and a portion of Tract 1, Section 33,
Block 79, Township 2, Texas and Pacific Railway Company Surveys, El Paso County,
Texas, and being more particularly described by metes and bounds as follows:

Commencing for reference at a found Brass Cap stamped "SW-TDC-TEXAS GLO-1994", whence N.G.S. station "East 15" bears South 12°14'59" West a distance of 2,251.55 feet; said Brass Cap also being the southeast corner of that parcel described as Tract 2 in Book 3215, Page 1802; Thence with the southerly line of said tract, South 89°19'09" West (South 89°18'53" West, Bk. 3215, Pg. 1802) a distance of 1,088.30 feet to a set 1/2" rebar with cap "5152" at the westerly right of way line of J.C. Viramontes Drive (90ft. R.O.W.), and the "TRUE POINT OF BEGINNING";

Thence with said right of way, South 00°40'51" East a distance of 216.13 feet to a found 1/2" rebar with cap "5152" at the northerly line of that parcel described as Tract 6A1 in Book 2172 Page 1024;

Thence with northerly line of said tract, North 89°58'21" West a distance of 573.07 feet to a set 1/2" rebar with cap "5152";

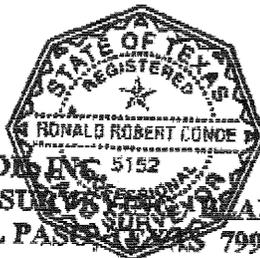
Thence, North 00°40'51" West a distance of 209.04 feet to a found 1/2" rebar with cap "5152" at the southwest corner of that parcel described as Tract 3 in Book 3215, Page 1802;

Thence with the southerly line of said tract, North 89°19'09" East (South 89°18'53" West, Bk. 3215, Pg. 1802) a distance of 573.02 feet to "TRUE POINT OF BEGINNING" and containing in all 121,816 square feet or 2.7965 acres of land more or less.

Bearing basis is true north for a transverse mercator surface projection as determined by GPS methods based on the near the center of this site.

Plat of even date accompanies this Metes and Bounds.


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



Job #407-70

CONDE INC 5152
ENGINEERING / LAND SURVEYING / PLANNING
1790 LEE TREVINO SUITE 400 / EL PASO, TEXAS 79936 / (915) 592-0283

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Being a portion of Section 33,
Block 79, Township 2,
Texas and Pacific Railway Company Surveys,
El Paso County, Texas.
April 19, 2007;

METES AND BOUNDS DESCRIPTION

Description of a parcel of land being a portion of Section 33, Block 79, Township 2,
Texas and Pacific Railway Company Surveys, El Paso County, Texas, and being more
particularly described by metes and bounds as follows:

Commencing for reference at a found Brass Cap stamped "SW-TDC-TEXAS GLO-
1994", whence N.G.S. station "East 15" bears South 12°14'59" West a distance of
2,251.55 feet; said Brass Cap also being the southeast corner of that parcel described in
Book 3215, Page 1802, and the "TRUE POINT OF BEGINNING";

Thence, **South 00°40'51" East** a distance of **229.58** feet to a set ½" rebar with
cap "5152" at the northerly line of that parcel described as Tract 6A1 in Book
2172 Page 1024;

Thence with northerly line of said tract, **North 89°58'21" West** a distance of
998.37 feet to a set ½" rebar with cap "5152" at the easterly right of way line of
J.C. Viramontes Drive (90ft. R.O.W.);

Thence with said right of way, **North 00°40'51" West** a distance of **217.24** feet
to a set ½" rebar with cap "5152" at the southerly line of that parcel described as
Tract 2 in Book 3215, Page 1802;

Thence with the southerly line of said tract, **North 89°19'09" East** (North 89°18'53"
East, Bk. 3215, Pg. 1802) a distance of **998.30** feet to "TRUE POINT OF BEGINNING"
and containing in all **223,030** square feet or **5.120** acres of land more or less.

Bearing basis is true north for a transverse mercator surface projection as determined by
GPS methods based on the near the center of this site.

Plat of even date accompanies this Metes and Bounds.

job #407-70

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

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

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**CITY OF EL PASO
ANNEXATION SERVICE PLAN**

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INTRODUCTION

This Service Plan (Plan) is made by the City of El Paso, Texas (City) pursuant to Chapter 43 of the Texas Local Government Code. This Plan is made specifically for a 389-acre property located in the City's East Extraterritorial Jurisdiction (ETJ). The area includes A portion of Montana Avenue and a portion of Sections 28, 33 and 34, Block 79 Township 2, Texas and Pacific Railway Company Surveys, El Paso County, Texas. The area is more specifically described by metes and bounds in Exhibit, "A" which is attached to the annexation ordinance of which this Plan is a part.

EFFECTIVE TERM

This Plan shall be in effect for a ten-year period commencing on the effective date of the annexation, unless otherwise stated in this Plan. Renewal of the Plan shall be at the option of the City. Such option may be exercised by the adoption of an ordinance by the City Council, which refers to this Plan and specifically renews this Plan for a stated period of time.

INTENT

It is the intent of the City of El Paso that services under this Plan shall provide full municipal services in accordance with State law and the Annexation Agreement entered into by the property owners and the City, such agreement being identified as Exhibit "C" and is attached to the annexation ordinance.

The City reserves the right guaranteed to it by Section 43.056(h) Texas Local Government Code, to amend this Plan if the City Council determines that changed conditions or subsequent occurrence or any other legally sufficient circumstances exist under the Local Government Code, or other Texas laws to make this Plan unworkable or obsolete or unlawful.

SERVICE COMPONENTS

This Plan includes three service components: (1) Immediate Services Program, (2) Additional Services, and (3) a Capital Improvement Program.

As used in this Plan, providing services includes having services provided by any method or means by which the City extends municipal services to any other area of the City. This may include causing or allowing private utilities; governmental entities and other public service organizations to provide such services by contract, in whole or in part. It may also include separate agreements with associations or similar entities.

1. Immediate Services Program

The following services will be provided in the annexation area immediately upon the effective date of the annexation, unless otherwise noted.

- a. Police Protection. The El Paso Police Department will provide protection and law enforcement services in the annexation area on the effective date of annexation. These services include:
 - normal patrols and responses;
 - handling of complaints and incident reports;

EXHIBIT "B"

- special units, such as, traffic enforcement, criminal investigations, narcotics, gang suppressions, and special weapons and tactics team.
- b. Fire Protection. The El Paso Fire Department will provide emergency and fire prevention services in the annexation area, on the effective date of annexation. These services include:
- fire suppression and rescue;
 - emergency medical services;
 - hazardous materials mitigation and regulation;
 - emergency prevention and public education efforts;
 - construction plan review;
 - inspections.
- c. Solid Waste Collection. The El Paso Solid Waste Management Department will provide solid waste collection services in the annexation area on the effective date of annexation. Services currently provided in the City for single-family residences include:
- garbage collection - once a week in accordance with established policies of the City;
 - dead animal collection - dead animals are removed from roadways upon request.
- Commercial garbage collection service for businesses, multi-family residences, and mobile home parks is available on a subscription basis from the City or private service providers.
- d. Maintenance of Water and Wastewater Facilities. The City's Public Service Board/El Paso Water Utilities (EPWU) will maintain water and wastewater facilities in the annexed area that are not within the service area of another water or wastewater utility and as governed by their Rules and Regulations.
- e. Maintenance of Roads and Streets, Including Street Lighting. The City's Public Works Department will maintain public streets over which the City has jurisdiction. These services include:
- emergency pavement repair;
 - ice and snow monitoring of major thoroughfares
 - repair maintenance of public streets on as-needed basis and in accordance with established policies of the City.
- f. Maintenance of Parks, Playgrounds, and Swimming Pools. There are no public recreation facilities in the annexation area but the City will provide maintenance of such facilities as they become available.

2. Additional Services

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

- a. Drainage Services. The City's Street Department will provide drainage maintenance in the annexation area in accordance with established policies of the City. Services include:

- maintenance of existing public ponding areas and retention dams;
- storm sewer maintenance;
- watershed development review and inspection;
- emergency spills and pollution complaints response;
- flood plain office (information relating to flood plains).

- b. Library Department. All library services now provided to areas inside the City will be provided to the annexed area on the effective date of annexation in accordance with the City's existing policies and regulations.
- c. Development Services Department. All inspection services now provided within the City, including building, electrical, plumbing, gas, engineering, housing, and environmental will be extended to the annexed area on the effective date of annexation.
- d. City-County Health Department. All of the City-County Health services codes and regulations will be extended to the annexed area on the effective date of annexation
- e. Planning and Zoning. The planning and zoning jurisdiction of the City will be extended to the annexed area on the effective date of annexation. All land annexed shall be classified in the R-F zoning district pending a public hearing by the City Plan Commission on the appropriate zoning classification and action by the City Council. Such hearing shall be held within sixty days after the effective date of annexation and such action shall be taken by the City Council within thirty days after the last adjournment of the public hearing.
- f. Other Services. All other City Departments with jurisdiction in the area will provide services according to established City policies and procedures.

3. Capital Improvements Program

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

- a. Police Protection. No capital improvements are necessary at this time to provide Police services but may be necessary in the future.
- b. Fire Protection. No capital improvements are necessary at this time to provide Fire services but may be necessary in the future.
- c. Solid Waste Collection. No capital improvements are necessary at this time to provide collection services but may be necessary in the future.
- d. Water and Wastewater Facilities. Water and wastewater service will be provided in accordance with the El Paso Water Utility's Rules and Regulations. Capital improvements will be initiated pursuant to the facilities plan for the annexed area. Water and Wastewater services to new subdivisions will be provided according to the standard policies and procedures of the El Paso Water Utilities, which may require the developer of a new subdivision to install water and wastewater utility lines. The extension of water and sewer service will be provided in

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

- e. Roads and Streets. No road or street related capital improvements are necessary at this time but may be necessary in the future. In general, the City will acquire control and jurisdiction of all public roads and public streets within the annexation area upon annexation. Future extensions of roads or streets and future installation of related facilities, such as traffic control devices, will be governed by the City's standard policies and procedures.
- f. Parks, Playgrounds and Swimming Pools. No capital improvements are necessary at this time to provide services but may be necessary in the future.
- g. Drainage Facilities. No capital improvements are necessary at this time to provide services but may be necessary in the future.
- h. Street Lighting. It is anticipated that the developer of new subdivisions in the area will install public street lighting in accordance with the City's standard policies and procedures. In other cases, the City will install public street lighting in the annexation area upon request in accordance with established street lighting policies of the City.
- i. Other Publicly Owned Facilities, Building or Services: In general, other City functions and services, and the additional services described above can be provided for the annexation area by using existing capital improvements. Additional capital improvements are not necessary to provide City services.
- j. Capital Improvement Planning. The annexation area will be included with other territory in connection with planning for new or expanded facilities, functions, and services in accordance with established policies of the City.

AMENDMENT: GOVERNING LAW

This Plan may not be amended or repealed except as provided by the Texas Local Government Code or other controlling law. Neither changes in the methods or means of implementing any part of the service programs nor changes in the responsibilities of the various departments of the City shall constitute amendments to this Plan, and the City reserves the right to make such changes. This Plan is subject to and shall be interpreted in accordance with the Constitution and laws of the United States of America and the State of Texas, the Texas Local Government Code, and the orders, rules regulations of governmental bodies and officers having jurisdiction.

FORCE MAJEURE

In case of an emergency, such as force majeure as that term is defined in this Plan, in which the City is forced to temporarily divert its personnel and resources away from the annexation area for humanitarian purposes or protection of the general public, the City obligates itself to take all reasonable measures to restore services to the annexation area of the level described in this Plan as soon as possible. Force Majeure shall include, but not be limited to, acts of God, acts of the public enemy, war, blockages, insurrection, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrest and restraint of government, explosions, collisions, and other inability of the City, whether similar to those enumerated or otherwise, which is not within the control of the City. Unavailability or shortage of funds shall not constitute Force Majeure.

Four: Immediately upon passage of the ordinance annexing Property, the Property shall automatically be classified as R-F (Ranch and Farm) in accordance with Section 20.08.060 of the Code, pending a public hearing by the City Plan Commission on the appropriate zoning classification and action by the City Council as provided in the case of amendment in Sections 20.04.340 through 20.04.380 and 20.04.400. Such public hearing shall be held within sixty days after the effective date of any such annexation and such action shall be taken by the City Council within thirty days after the last adjournment of the public hearing. A public hearing by the City Plan Commission on the appropriate zoning classification for a newly annexed parcel, as required by Sections 20.04.340 through 20.04.380 and 20.04.400, may be held jointly with the public hearing required for annexation; provided, that the Commission complies with all the procedures required for each public hearing.

Five: Owner(s) agree(s) to provide for the dedication and improvement of public neighborhood parkland or provide fees based on the requirements of Title 19 (Subdivisions) of the Code.

Six: Owner(s) agree(s) to pay a water and wastewater connection 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>Water (in Dollars)</u>	<u>Wastewater (in Dollars)</u>
5/8" x 3/4"	600	348
1"	1,481	858
1 1/2"	3,002	1,740
2"	4,804	2,784
3"	9,608	5,567
4"	15,012	8,699
6"	30,023	17,399
8"	56,044	32,477
10"	80,063	46,396

Based on gallons per minute water flow; EPWU-PSB Rules & Regulations No. 1, Sec. 7 (J)

The water and wastewater connection fee shall be increased by three (3) percent on March 1, 2008, and each year thereafter, compounded annually. Payment of the water and wastewater connection 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.

Seven: Owner(s) 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

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at the time of annexation, shall be provided by the Owner(s) within thirty (30) days from passage of the ordinance annexing Property to the City. The aerial and other evidence shall be submitted to the Zoning Administrator in the Development Services Department of the City for validation of such non-conforming lot, use or structure within the Property.

Eight: Owner(s) ensure(s) that facilities and services of sufficient capacity, whether public or private, shall be provided as attributable to any development within the Property.

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

- (1) CITY: City of El Paso
Attn: City Manager
2 Civic Center Plaza
El Paso, Texas 79901
- Copy to: City Clerk
Same Address as above
- (2) OWNER: (See Attached List)

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

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

developed and improved lot within the Property, except for land use regulations that may apply to a specific lot.

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

In the event a Party (the "Defaulting Party") commits a breach of this Agreement, the other Party (the "Non-Defaulting Party"), shall, prior to bringing suit or pursuing any other remedy, provide written notice of such breach to the Defaulting Party. Following receipt of such notice, the Defaulting Party shall have thirty (30) days within which to cure the breach. If the breach cannot be cured within such thirty (30) day period, the Defaulting Party shall commence to cure such breach within said period and thereafter diligently continue such cure to completion. In the event the Defaulting Party fails to cure the breach within said period, then the Non-Defaulting Party may pursue any remedy provided at law or in equity.

Force Majeure: In the event any Party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, it is agreed that on such Party's giving of notice and the full particulars of such force majeure in writing to the other Party as soon as possible after the occurrence of the cause relied upon, then the obligations of the Party giving such notice, to the extent it is affected by force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability but for no longer period.

The term "force majeure" as used herein, shall include, but not be limited to, acts of God, strikes, 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.

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Entire Agreement: This Agreement contains the entire agreement of the Parties, and there are no other agreements or promises, oral or written, between the Parties regarding the subject matter of this Agreement. This Agreement may be amended only by written agreement signed by the Parties.

Governing Law, Jurisdiction & Venue: This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, as it applies to contracts performed within the State of Texas and without regard to any choice of law rules or principles to the contrary. The Parties acknowledge that this Agreement is performable in El Paso County, Texas and hereby submit to the jurisdiction of the courts of that County, and hereby agree that any such Court shall be a proper forum for the determination of any dispute arising hereunder.

No Third Party Beneficiary: This Agreement is not intended, nor will it be construed, to create any third-party beneficiary rights in any person or entity who is not a Party, unless expressly otherwise provided.

Waiver: Any failure by a Party hereto to insist upon strict performance by the other Party of any material provision of this Agreement shall not be deemed a waiver thereof or of any provision hereof, and such Party shall have the right at any time thereafter to insist upon strict performance of any and all of the provisions of this Agreement.

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

Further Documents: Each Party agrees that at any time after execution of this Agreement, it will upon request of the other Party, execute and deliver such further documents and do such further acts and things as the other Party may reasonably request in order to effectuate the terms of this Agreement.

Incorporation of Exhibits and Other Documents by Reference: All exhibits and other documents attached to or referred to in this Agreement are incorporated herein by reference for the purposes set forth in this Agreement.

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

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

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

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

THE CITY OF EL PASO

Joyce Wilson
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Lupe Cuellar
Assistant City Attorney

Patricia D. Adauto

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

(Acknowledgement appears on the following page.)

ACKNOWLEDGEMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2006, 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:

CITY CLERK DEPT.
07 JUL -6 AM 8:18

CITY CLERK DEPT.

ACCEPTANCE

07 JUL -5 PM 4:26

The above Agreement, with all conditions thereof, is hereby accepted this 13th day of June, 2007.

Owner(s): *[Handwritten signatures]*

By: _____

Title: _____

ACKNOWLEDGEMENT

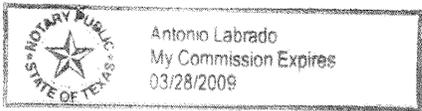
STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 13th day of June, 2007, by _____, on behalf of _____, Owner.

[Handwritten signature: Antonio Labrado]
Notary Public, State of Texas
Notary's Printed or Typed Name:

[Handwritten name: Antonio Labrado]

My Commission Expires:
[Handwritten date: 3/28/2009]



INITIALS *[Handwritten initials]*
7/8

CITY CLERK DEPT.

ACCEPTANCE

07 JUL -5 PM 4:26

The above Agreement, with all conditions thereof, is hereby accepted this _____ day of 6-14-, ~~2006~~. 07

Owner(s):

By: J.P. V...t

Title: _____

ACKNOWLEDGEMENT

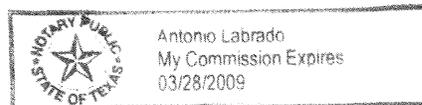
STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2006, by _____, on behalf of _____, Owner.

Antonio Labrado
Notary Public, State of Texas
Notary's Printed or Typed Name:

Antonio Labrado

My Commission Expires:



JOHN COOK
MAYOR



CITY COUNCIL
ANN MORGAN LILLY, DISTRICT 1
SUSANNAH M. BYRD, DISTRICT 2
J. ALEXANDRO LOZANO, DISTRICT 3
MELINA CASTRO, DISTRICT 4
RACHEL QUINTANA, DISTRICT 5
EDDIE HOLGUIN JR., DISTRICT 6
STEVE ORTEGA, DISTRICT 7
BETO O'ROURKE, DISTRICT 8

JOYCE WILSON
CITY MANAGER

R. ALAN SHUBERT, P.E., C.B.O.
DEVELOPMENT SERVICE DIRECTOR

DEVELOPMENT SERVICES

April 20, 2007

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

FROM: Christina Valles, Lead Planner

SUBJECT: Annexation – AN07003
LOCATION: North of Montana Avenue and East of Loop 375.

The City Plan Commission (CPC), on May 17, 2007, voted to recommend **APPROVAL** of annexing the subject property into the City of El Paso limits.

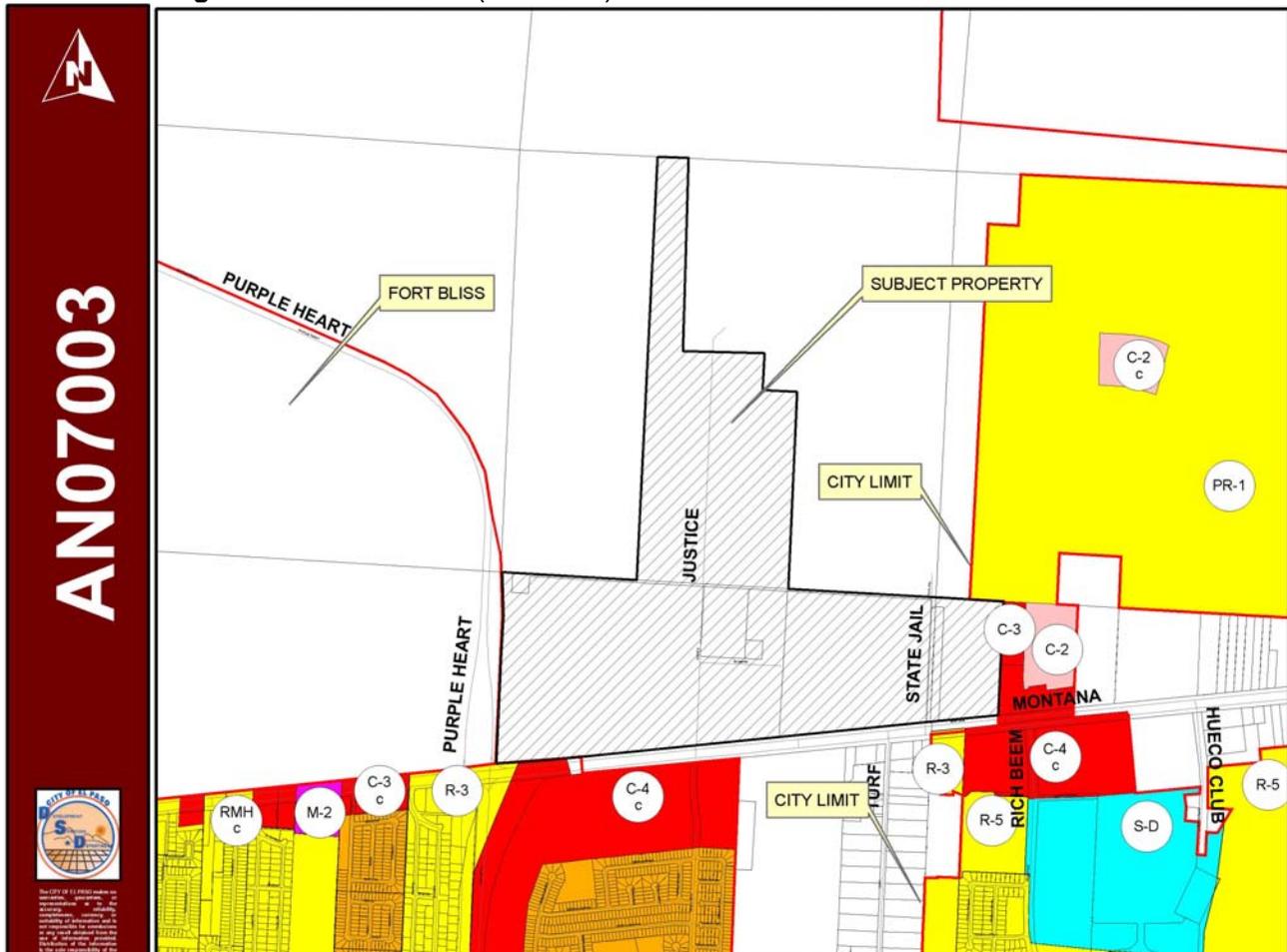
The CPC found that this annexation is in conformance with The Plan for El Paso. The CPC also determined that this change protects the best interest, health, safety and welfare of the public in general; and that the proposed uses are compatible with adjacent land uses.

Attachments:
CPC Staff Report
Service Plan



AN07003

Application Type: Annexation
Property Owner(s): County of El Paso, Cesar Viramontes, Bam Joint Venture, Roberto Barron, Armando Barron and Daniel Barron
Representative(s): Wright & Dalbin Architects, Inc.
Legal Description: A portion of Montana Avenue and a portion of Sections 28, 33 and 34, Block 79 Township 2, Texas and Pacific Railway Company Surveys, El Paso County, Texas
Location: North of Montana Avenue and East of Loop 375
Representative District: East ETJ (Adjacent to District 5)
Area: 389 Acres **Present Zoning:** N/A
Present Use: Vacant, Jail Annex, Juvenile Detention Facility, Water Wells, Lift Station, IGP Plant, Future Sherriff's Office
Proposed Use: Future Commercial Development
Surrounding Land Uses: **North:** East ETJ / Vacant, State Penitentiary; **South:** East ETJ, C-4/c, R-3 / Cemetery, Residential, Vacant; **East:** East ETJ, C-3, PR-1 / State Penitentiary, Commercial, Residential; **West:** East ETJ, Fort Bliss / Vacant
Year 2025 Designation: N/A (East ETJ)



General Information:

The applicant requests annexation in accordance with Chapter 43 Subchapter C of the Texas Local Government Code. The property consists of 343 acres of land and is currently vacant. There is an existing jail annex, juvenile detention facility, water wells, lift station, IGP plant, and future Sherriff's office on the subject property. The applicant is proposing commercial development on the western portion of the property abutting Montana and Loop 375.

The property will be annexed as R-F (Ranch and Farm) and a separate rezoning application will be required to permit the proposed commercial development.

Staff Recommendation:

The Development Coordinating Committee (DCC) recommends **APPROVAL** of this request for annexation. The approval is subject to an annexation agreement to be entered into by the owner and the City at the time of approval by the City Council of the area proposed to be annexed, and a service plan to be approved with the ordinance approving the annexation pursuant to Chapter 43 of the Texas Local Government Code.

The recommendation is based on the following:

- **The Plan for El Paso** City-Wide Land Use Goals recommends that El Paso "Evaluate annexation requests to determine feasibility and impact on existing City services and fiscal resources."
- **The Year 2025 Projected General Land Use Map** for the East ETJ has no designation for this property.

In addition, recommendation for approval of annexation was based on the overall long-term benefits to the City versus the short-term impacts. Annexation of the subject property would accomplish the following:

- ensure proper land use relationships with high standards of construction through zoning and building codes;
- protect the City's growth ability in the East ETJ;
- implement the long range goals of the City's Comprehensive Plan; and,

Findings:

The Commission must determine the following:

1. Will annexation of the subject property protect the best interest, health, safety/welfare of the public in general?
2. Will a commercial development be compatible with adjacent land uses?
3. What is the relation of the proposed annexation 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?

Development Services Department - Building Permits and Inspections Division Comments:

No comments received.

Development Services Department - Planning Division Comments:

Recommend approval.

Engineering Department - Traffic Division Comments:

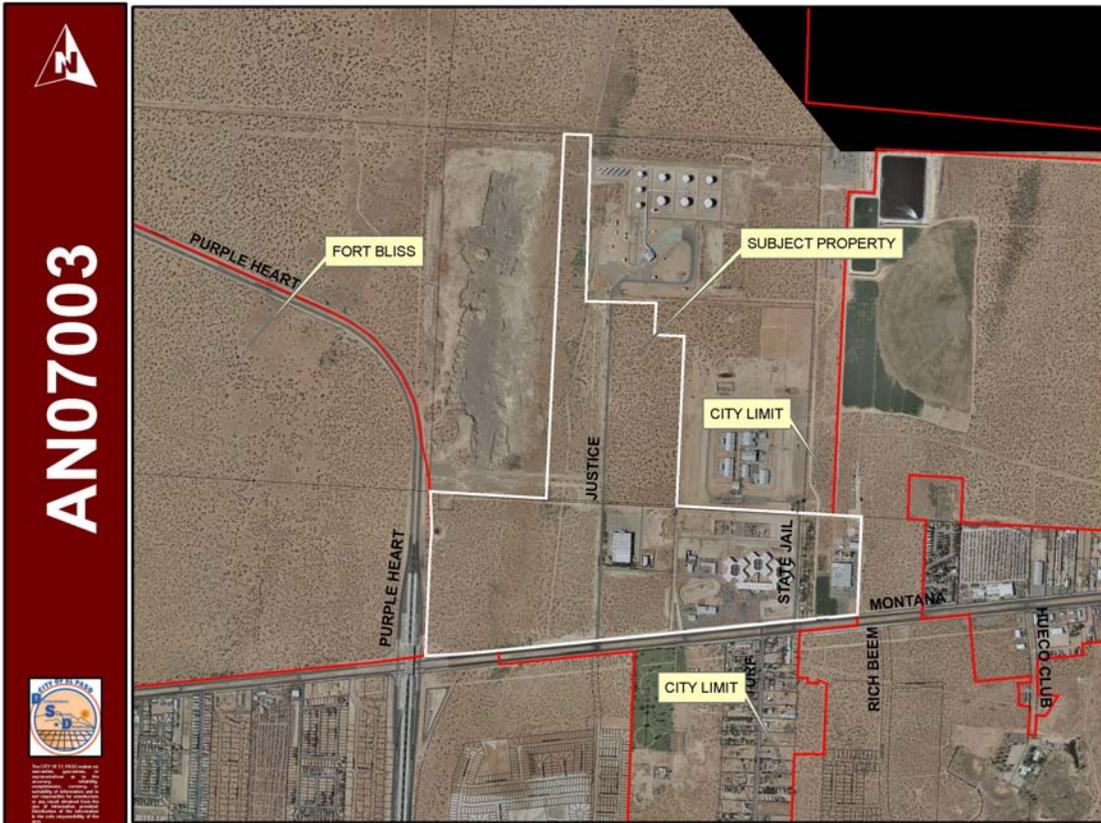
No comments received.

Fire Department Comments:

No comments received.

EI Paso Water Utilities Comments

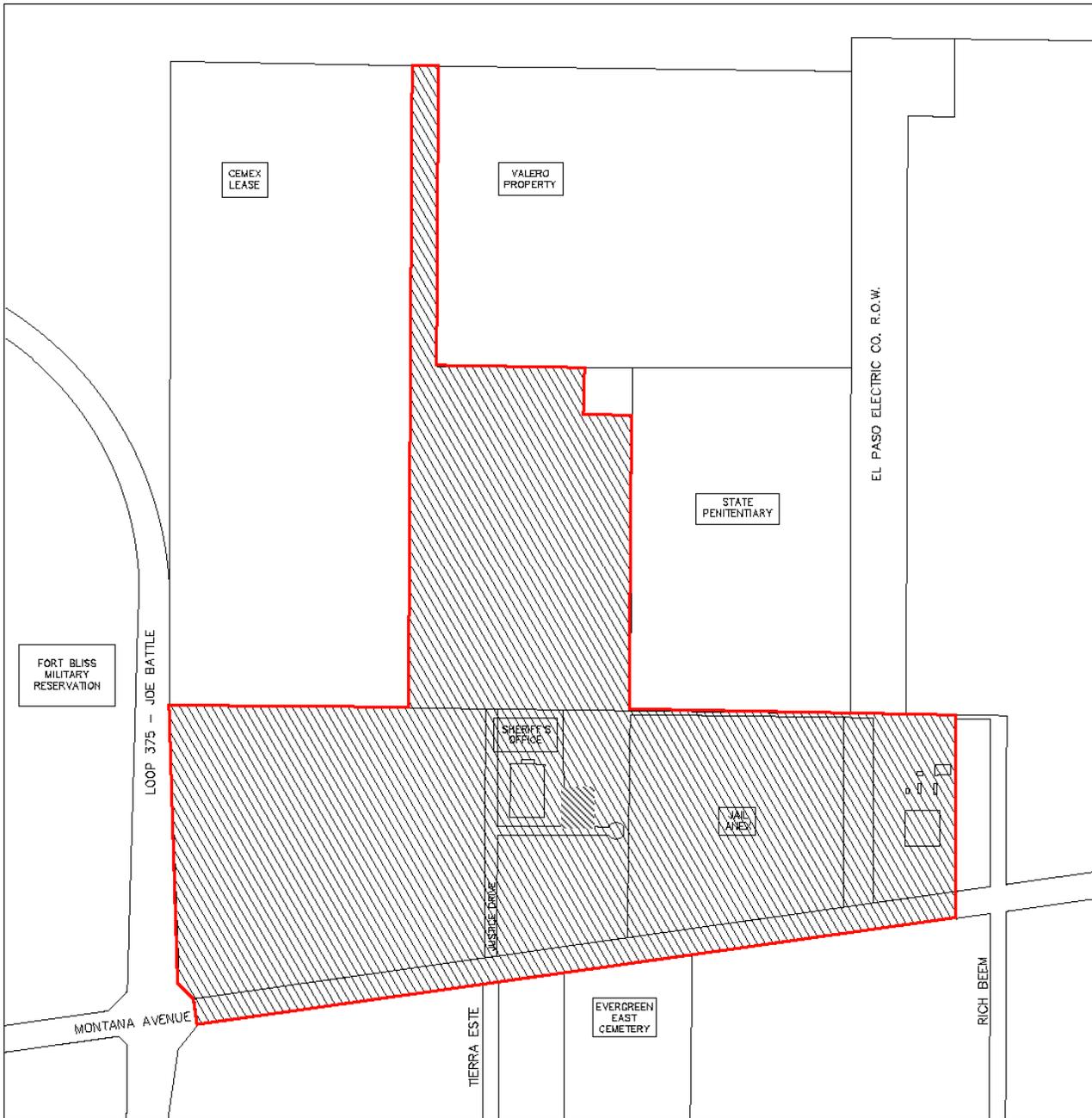
EPWU does not object to this annexation request.



List of Attachments

- Attachment 1: Site Plan
- Attachment 2: Application
- Attachment 3: Service Plan

Attachment 1:
Site Plan



Attachment 2:
Application

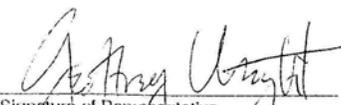
DEPARTMENT OF PLANNING, RESEARCH AND DEVELOPMENT
2 CIVIC CENTER PLAZA, 8TH FLOOR, CITY HALL BUILDING
EL PASO, TEXAS 79999



APPLICATION FOR ANNEXATION

1. Address and/or Location of Property: North of Montana Ave and East of Loop 375
2. Legal Description of Property: See attached.
3. Area of Property: Approximately 342 Acres
(square footage and/or acreage)
4. Name of Property Owner: Cesar Viramontes and Others (see attached)
Address: 12651 Montana Ave, El Paso, Texas, 79938
(Street) (City) (State) (Zip)
Telephone: 915 857-4545
IF MULTIPLE OWNERSHIP, IDENTIFY ALL PROPERTY OWNERS IN SPACE PROVIDED ON ITEM 9 ON THE BACK OF THIS FORM.
5. Name of Representative: Wright & Dalbin Architects, Inc.; Geoffrey Wright
Address: 2112 Murchison Dr., El Paso, Texas, 79930
(Street) (City) (State) (Zip)
Telephone: 915 533-3777
6. Existing Improvements on Property: Waterwells, lift station, IGP plant with adjacent parking, Jail Annex, future Sherriff's office, and see attached aerial photograph.
7. Proposed Improvements on Property: Commercial development.
8. Reasons for Request to Annex: For City services.

Signature of Owner of Record of the above described property; (if more than one property owner, all owners must sign in Item 9 on the back of this form).



Signature of Representative

FEE \$ 550 (2-0)
Cashier's Validated Stamp

FEES ARE NOT REFUNDABLE

APPLICATION FOR ANNEXATION

North of Montana Avenue and East of Loop 375

PROPERTY OWNER(S)

NAME ADDRESS SIGNATURE

Anthony Cobos
(County Judge)



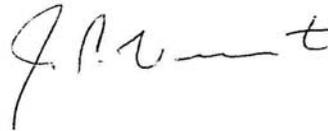
APPLICATION FOR ANNEXATION

North of Montana Avenue and East of Loop 375

PROPERTY OWNER(S)

NAME ADDRESS SIGNATURE

Cesar Viramontes
12651 Montana Avenue,
El Paso, Tx, 79938



APPLICATION FOR ANNEXATION

North of Montana Avenue and East of Loop 375

PROPERTY OWNER(S)

NAME ADDRESS SIGNATURE

Roberto Barron
12525 Montana 'C'
El Paso, TX 79938

Armando Barron
12525 Montana 'C'
El Paso, TX 79938

Daniel Barron
12525 Montana 'C'
El Paso, TX 79938



Attachment 3:
Service Plan

CITY OF EL PASO
ANNEXATION SERVICE PLAN

INTRODUCTION

This Service Plan (Plan) is made by the City of El Paso, Texas (City) pursuant to Chapter 43 of the Texas Local Government Code. This Plan is made specifically for a 343-acre property located in the City's East Extraterritorial Jurisdiction (ETJ). The area includes Tract 6A-3, a portion of Tracts 6A, 6A-1 and 6B, Section 33; Tracts 2, 3 and a portion of Tract 1, Section 28; Tract 11-C and a portion of Tract 11-C-1, Section 34, Block 79, Township 2, Texas and Pacific Railway Company Surveys; the Easterly 43 feet less the Northerly 120 feet of the portion of Section 33 lying North of U.S. Highway 62-180, Block 79, Township 2; and the portion of US 62/180 (Montana Avenue) right-of-way abutting the subject property, Texas and Pacific Railway Company Surveys, El Paso County, Texas. The area is more specifically described by metes and bounds in Exhibit, "A" which is attached to the annexation ordinance of which this Plan is a part.

EFFECTIVE TERM

This Plan shall be in effect for a ten-year period commencing on the effective date of the annexation, unless otherwise stated in this Plan. Renewal of the Plan shall be at the option of the City. Such option may be exercised by the adoption of an ordinance by the City Council, which refers to this Plan and specifically renews this Plan for a stated period of time.

INTENT

It is the intent of the City of El Paso that services under this Plan shall provide full municipal services in accordance with State law and the Annexation Agreement entered into by the property owners and the City, such agreement being identified as Exhibit "C" and is attached to the annexation ordinance.

The City reserves the right guaranteed to it by Section 43.056(h) Texas Local Government Code, to amend this Plan if the City Council determines that changed conditions or subsequent occurrence or any other legally sufficient circumstances exist under the Local Government Code, or other Texas laws to make this Plan unworkable or obsolete or unlawful.

SERVICE COMPONENTS

This Plan includes three service components: (1) Immediate Services Program, (2) Additional Services, and (3) a Capital Improvement Program.

As used in this Plan, providing services includes having services provided by any method or means by which the City extends municipal services to any other area of the City. This may include causing or allowing private utilities; governmental entities and other public service organizations to provide such services by contract, in whole or in part. It may also include separate agreements with associations or similar entities.

1. Immediate Services Program

The following services will be provided in the annexation area immediately upon the effective date of the annexation, unless otherwise noted.

- a. Police Protection. The El Paso Police Department will provide protection and law enforcement services in the annexation area on the effective date of annexation. These services include:
 - normal patrols and responses;

- handling of complaints and incident reports;
 - special units, such as, traffic enforcement, criminal investigations, narcotics, gang suppressions, and special weapons and tactics team.
- b. Fire Protection. The El Paso Fire Department will provide emergency and fire prevention services in the annexation area, on the effective date of annexation. These services include:
- fire suppression and rescue;
 - emergency medical services;
 - hazardous materials mitigation and regulation;
 - emergency prevention and public education efforts;
 - construction plan review;
 - inspections.
- c. Solid Waste Collection. The El Paso Solid Waste Management Department will provide solid waste collection services in the annexation area on the effective date of annexation. Services currently provided in the City for single-family residences include:
- garbage collection - once a week in accordance with established policies of the City;
 - dead animal collection - dead animals are removed from roadways upon request.
- Commercial garbage collection service for businesses, multi-family residences, and mobile home parks is available on a subscription basis from the City or private service providers.
- d. Maintenance of Water and Wastewater Facilities. The City's Public Service Board/El Paso Water Utilities (EPWU) will maintain water and wastewater facilities in the annexed area that are not within the service area of another water or wastewater utility and as governed by their Rules and Regulations.
- e. Maintenance of Roads and Streets, Including Street Lighting. The City's Public Works Department will maintain public streets over which the City has jurisdiction. These services include:
- emergency pavement repair;
 - ice and snow monitoring of major thoroughfares
 - repair maintenance of public streets on as-needed basis and in accordance with established policies of the City.
- f. Maintenance of Parks, Playgrounds, and Swimming Pools. There are no public recreation facilities in the annexation area but the City will provide maintenance of such facilities as they become available.

2. Additional Services

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

- a. Drainage Services. The City's Street Department will provide drainage maintenance in the annexation area in accordance with established policies of the City. Services include:
- maintenance of existing public ponding areas and retention dams;
 - storm sewer maintenance;
 - watershed development review and inspection;
 - emergency spills and pollution complaints response;
 - flood plain office (information relating to flood plains).

- b. Library Department. All library services now provided to areas inside the City will be provided to the annexed area on the effective date of annexation in accordance with the City's existing policies and regulations.
- c. Development Services Department. All inspection services now provided within the City, including building, electrical, plumbing, gas, engineering, housing, and environmental will be extended to the annexed area on the effective date of annexation.
- d. City-County Health Department. All of the City-County Health services codes and regulations will be extended to the annexed area on the effective date of annexation
- e. Planning and Zoning. The planning and zoning jurisdiction of the City will be extended to the annexed area on the effective date of annexation. All land annexed shall be classified in the R-F zoning district pending a public hearing by the City Plan Commission on the appropriate zoning classification and action by the City Council. Such hearing shall be held within sixty days after the effective date of annexation and such action shall be taken by the City Council within thirty days after the last adjournment of the public hearing.
- f. Other Services. All other City Departments with jurisdiction in the area will provide services according to established City policies and procedures.

3. Capital Improvements Program

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

- a. Police Protection. No capital improvements are necessary at this time to provide Police services but may be necessary in the future.
- b. Fire Protection. No capital improvements are necessary at this time to provide Fire services but may be necessary in the future.
- c. Solid Waste Collection. No capital improvements are necessary at this time to provide collection services but may be necessary in the future.
- d. Water and Wastewater Facilities. Water and wastewater service will be provided in accordance with the El Paso Water Utility's Rules and Regulations. Capital improvements will be initiated pursuant to the facilities plan for the annexed area.
Water and Wastewater services to new subdivisions will be provided according to the standard policies and procedures of the El Paso Water Utilities, which may require the developer of a new subdivision to install water and wastewater utility lines. The extension of water and sewer service will be provided in accordance with the adopted Rules and Regulations of the El Paso Water Utilities.
- e. Roads and Streets. No road or street related capital improvements are necessary at this time but may be necessary in the future. In general, the City will acquire control and jurisdiction of all public roads and public streets within the annexation area upon annexation. Future extensions of roads or streets and future installation of related facilities, such as traffic control devices, will be governed by the City's standard policies and procedures.
- f. Parks, Playgrounds and Swimming Pools. No capital improvements are necessary at this time to provide services but may be necessary in the future.
- g. Drainage Facilities. No capital improvements are necessary at this time to provide services but may be necessary in the future.

- h. Street Lighting. It is anticipated that the developer of new subdivisions in the area will install public street lighting in accordance with the City's standard policies and procedures. In other cases, the City will install public street lighting in the annexation area upon request in accordance with established street lighting policies of the City.
- i. Other Publicly Owned Facilities, Building or Services: In general, other City functions and services, and the additional services described above can be provided for the annexation area by using existing capital improvements. Additional capital improvements are not necessary to provide City services.
- j. Capital Improvement Planning. The annexation area will be included with other territory in connection with planning for new or expanded facilities, functions, and services in accordance with established policies of the City.

AMENDMENT: GOVERNING LAW

This Plan may not be amended or repealed except as provided by the Texas Local Government Code or other controlling law. Neither changes in the methods or means of implementing any part of the service programs nor changes in the responsibilities of the various departments of the City shall constitute amendments to this Plan, and the City reserves the right to make such changes. This Plan is subject to and shall be interpreted in accordance with the Constitution and laws of the United States of America and the State of Texas, the Texas Local Government Code, and the orders, rules regulations of governmental bodies and officers having jurisdiction.

FORCE MAJEURE

In case of an emergency, such as force majeure as that term is defined in this Plan, in which the City is forced to temporarily divert its personnel and resources away from the annexation area for humanitarian purposes or protection of the general public, the City obligates itself to take all reasonable measures to restore services to the annexation area of the level described in this Plan as soon as possible. Force Majeure shall include, but not be limited to, acts of God, acts of the public enemy, war, blockages, insurrection, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrest and restraint of government, explosions, collisions, and other inability of the City, whether similar to those enumerated or otherwise, which is not within the control of the City. Unavailability or shortage of funds shall not constitute Force Majeure.