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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:** Introduction: June 21, 2011  
Public Hearing: July 12, 2011

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

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

**SUBJECT:**

An ordinance annexing the following real property described as a portion of Sections 37 and 48, Block 79, Sections 7 and 18, Block 78, Township 2, Texas and Pacific Railway Company Surveys, El Paso County, Texas. Property Owner: Ranchos Real IV, LTD. AN10-003 (ZON10-00075) (East ETJ)  
Staff Contact: Ernesto Arriola, arriolaea@elpasotexas.gov, (915) 541-4723

**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\*\*\*\*\*

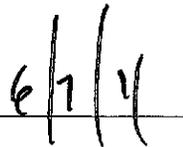
**LEGAL:** (if required) N/A

**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

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

**AN ORDINANCE ANNEXING THE FOLLOWING REAL PROPERTY DESCRIBED AS  
A PORTION OF SECTIONS 37 AND 48, BLOCK 79, SECTIONS 7 AND 18, BLOCK 78,  
TOWNSHIP 2, TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS, EL PASO  
COUNTY, TEXAS.**

**WHEREAS**, the Ranchos Real IV, LTD, owners of approximately 658.12 acres, lying in the City of El Paso's East Extraterritorial Jurisdiction; the property more fully described in the attached metes and bounds description, identified as Exhibit "A", and survey of the property, identified as Exhibit "B" and made a part hereof by reference, and Rancho Real IV, LTD request that this area be annexed into the El Paso City Limits; and,

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

**WHEREAS**, the City of El Paso and the Owners have entered into an Development Agreement on January 31, 2006 and amended July 8, 2008, attached as Exhibit "D", which governs the development after annexation of approximately 547.577 acres contained in this annexation ordinance; and,

**WHEREAS**, public hearings were held on May 16, 2011 and May 19, 2011 at which persons interested in the annexation were given the opportunity to be heard; and that no person voiced opposition to the annexation or Service Plan described as Exhibit "C";

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

That the boundaries of the CITY OF EL PASO are hereby extended so as to annex property, located in the City of El Paso's Extraterritorial Jurisdiction, described as a portion of Sections 37 and 48, Block 79, Sections 7 & 18, Block 78, Township 2, Texas and Pacific Railway Company Surveys, El Paso County, Texas, more particularly described in Exhibit "A" and Exhibit "B".

Further, that the City of El Paso adopts the Service Plan described in Exhibit "C"; and that the approximately 547.577 acres identified in the Development Agreement, entered into on January 31, 2006 and amended July 8, 2008, attached as Exhibit "D" is subject to all terms and conditions of the Development Agreement.

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

**SIGNATURES ON FOLLOWING PAGE**

**THE CITY OF EL PASO:**

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

**ATTEST:**

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

**APPROVED AS TO FORM:**

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

**APPROVED AS TO CONTENT:**

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

**Exhibit "A"**

Being a Portion of Sections 37 & 48, Block 79,  
And Sections 7 & 18, Block 78, Township 2,  
Texas and Pacific Railway Company Surveys,  
El Paso County, Texas  
January 27, 2011  
(Parcel 1 Annexation)

**METES AND BOUNDS DESCRIPTION**

Description of a parcel of land being a Portion of Section 37, 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 a point for the common corner of Sections 35, 36, 37, and 38, Block 79, Township 2, Texas and Pacific Railway Company Surveys from which the common corner of Sections 37, 38, 47, and 48, Block 79, Township 2, Texas and Pacific Railway Company Surveys bears South 00°35'06" East a distance of 5236.86 feet; Thence along the line between sections 36 and 37, North 89°58'06" East a distance of 55.00 feet to a point for the "TRUE POINT OF BEGINNING".

Thence along said line North 89°58'06" East a distance of 5258.88 feet to a point for the northeast corner of section 37, Block 79, Township 2, Texas and Pacific Railway Company Surveys;

Thence along the line between section 36 and 7, North 00°35'35" West a distance of 56.76 feet to a point;

Thence leaving said line North 87°24'29" East a distance of 65.04 feet to a point;

Thence 39.00 feet along the arc of a curve to the left which has a radius of 25.00 feet a central angle of 89°22'53" a chord which bears South 45°17'01" East a distance of 35.16 feet to a point;

Thence South 00°54'04" East a distance of 100.01 feet to a point;

Thence 39.54 feet along the arc of a curve to the left which has a radius of 25.00 feet a central angle of 90°37'02" a chord which bears South 44°43'01" West a distance of 35.55 feet to a point;

Thence South 00°35'30" East a distance of 74.19 feet to a point of curve;

Thence 177.59 feet along the arc of a curve to the right which has a radius of 2050.00 feet a central angle of 04°57'49" a chord which bears South 01°53'25" West a distance of 177.54 feet to a point of reverse curve;

Thence 168.93 feet along the arc of a curve to the left which has a radius of 1950.00 feet a central angle of 04°57'49" a chord which bears South 01°53'25" West a distance of 168.88 feet to a point;

Thence South 00°35'30" East a distance of 4651.49 feet to a point of curve;

Thence 39.00 feet along the arc of a curve to the left which has a radius of 25.00 feet a central angle of 89°23'00" a chord which bears South 45°17'00" East a distance of 35.16 feet to a point;

Thence South 03°26'40" East a distance of 50.09 feet to a point;

Thence North 89°58'30" West a distance of 77.23 feet to a point;

Thence South 00°35'30" East a distance of 77.27 feet to a point;

Thence North 87°09'36" West a distance of 50.09 feet to a point;

Thence 39.03 feet along the arc of a curve to the left which has a radius of 25.00 feet a central angle of 89°26'21" a chord which bears North 45°18'40" West a distance of 35.18 feet to a point;

Thence South 89°58'09" West a distance of 3256.47 feet to a point of curve;

Thence 558.41 feet along the arc of a curve to the left which has a radius of 1200.00 feet a central angle of 26°39'43" a chord which bears South 76°38'17" West a distance of 553.38 feet to a point;

Thence South 63°18'26" West a distance of 716.44 feet to a point of curve;

Thence 585.55 feet along the arc of a curve to the right which has a radius of 1258.00 feet a central angle of 26°40'09" a chord which bears South 76°38'30" West a distance of 580.28 feet to a point;

Thence South 89°58'35" West a distance of 149.03 feet to a point;

Thence North 00°50'04" West a distance of 110.01 feet to a point;

Thence 39.03 feet along the arc of a curve to the right which has a radius of 25.00 feet a central angle of 89°26'33" a chord which bears North 45°18'09" West a distance of 35.18 feet to a point;

Thence North 00°34'52" West a distance of 498.09 feet to a point;

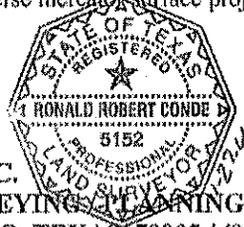
Thence North 00°35'06" West a distance of 4760.46 feet to a point;

Thence North 89°43'33" West a distance of 5.00 feet to a point;

Thence North 00°35'06" West a distance of 476.38 feet to a point for the "TRUE POINT OF BEGINNING" and containing 658.12 acres of land more or less.

Note: Not a ground survey, Bearing basis is true north for a transverse mercator surface projection as determined by GPS methods based near the center of this site.

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



job #\_510-88

CONDE, INC.  
ENGINEERING / LAND SURVEYING / PLANNING  
6080 SURETY DRIVE, SUITE 100 / EL PASO, TEXAS 79905 / (915) 592-0283

Exhibit "B"

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**Exhibit "C"**  
**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 631.696 - acre property located in the City's East Extraterritorial Jurisdiction (ETJ). A portion of Sections 37 and 48, Block 79, Sections 7 & 18, Block 78, 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 Development Agreement entered into by the property owners and the City on January 31, 2006 and amended July 8, 2008. In case of conflict between the terms of this Plan and the terms of the Development Agreement, the terms of the Development Agreement shall control.

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

**SERVICE COMPONENTS**

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

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

contract, in whole or in part. It may also include separate agreements with associations or similar entities.

## 1. Immediate Services Program

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

- a. Police Protection. The El Paso Police Department will provide protection and law enforcement services in the annexation area on the effective date of annexation. These services include:
  - average patrols and responses;
  - handling of complaints and incident reports;
  - special units, such as, traffic enforcement, criminal investigations, narcotics, gang suppressions, and special weapons and tactics team.
  
- b. Fire Protection. The El Paso Fire Department will provide emergency and fire prevention services in the annexation area, on the effective date of annexation. These services include:
  - fire suppression and rescue;
  - emergency medical services;
  - hazardous materials mitigation and regulation;
  - emergency prevention and public education efforts;
  - construction plan review;
  - inspections.
  
- c. Solid Waste Collection. The Environmental Services Department will provide solid waste collection services in the annexation area on the effective date of annexation. Services currently provided in the City for single-family residences include:
  - Dead animal collection - dead animals are removed from roadways upon request;
  - Residential garbage collection;
  - Residential recycling collection.

Commercial garbage collection service for businesses, multi-family residences, and mobile home parks is available on a subscription basis from the City or private service providers.

- d. Maintenance of Water and Wastewater Facilities. The City's Public Service Board/El Paso Water Utilities (EPWU) will maintain water and wastewater facilities in the annexed area that are not within the service area of another water or wastewater utility and as governed by their Rules and Regulations.

- e. Maintenance of Roads and Streets, Including Street Lighting. The City's Streets Department will maintain public streets over which the City has jurisdiction. These services include:
  - emergency pavement repair;
  - ice and snow monitoring of major thoroughfares;
  - repair maintenance of public streets on as-needed basis and in accordance with established policies of the City.
- f. Maintenance of Parks, Playgrounds, and Swimming Pools. There are no public recreation facilities in the annexation area.

## 2. Additional Services

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

- a. Drainage Services. The City's Streets Department will provide drainage maintenance in the annexation area in accordance with established policies of the City. Services include:
  - maintenance of existing public ponding areas and retention dams;
  - storm sewer maintenance;
  - emergency spills and pollution complaints response;
  - watershed development review and inspection is available through the City's Development Services Department;
  - flood plain office (information relating to flood plains) is available through the City's Engineering Department.
- b. Library Department. All library services now provided to areas inside the City will be provided to the annexed area on the effective date of annexation in accordance with the City's existing policies and regulations.
- c. Development Services Department. All inspection services now provided within the City, including building, electrical, plumbing, gas, engineering, housing, and environmental will be extended to the annexed area on the effective date of annexation.
- d. Planning and Zoning. The planning and zoning jurisdiction of the City will be extended to the annexed area on the effective date of annexation.
- e. Other Services. All other City Departments with jurisdiction in the area will provide services according to established City policies and procedures.

### 3. Capital Improvements Program

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

- a. Police Protection. Capital improvements are necessary at this time to provide Police services. The command will need to be staffed by all ranks from Commander to Patrol Officer along with Civilian support. A new regional command is overdue as the El Paso Police Department has determined that the current Pebble Hills Regional Command (PHRC) located at 10780 Pebble Hills is of inadequate size and lacks both adequate accommodations and location for the extended police personnel requirement necessary to meet population and development projections within its radically expanding Eastside Police Region. A proposed site at Edgemere and Rich Beem has been dedicated to the City and is of sufficient size to accommodate a joint facility use with the Fire Department and the Police Department. This location successfully meets the site selection criteria.
- b. Fire Protection. No capital improvements are necessary at this time to provide Fire services but may be necessary in the future. Fire Department coverage areas for the city are based on ISO standards that require a Fire Station to be a Mile and a Half (driving distance) from every facility and two and a half miles from a fire station with aerial capabilities.
- c. Solid Waste Collection. No capital improvements are necessary at this time to provide collection services but may be necessary in the future.
- d. Water and Wastewater Facilities. Water and wastewater service will be provided in accordance with the Development Agreement. Annexation fees will be due at the time of application.
- e. Roads and Streets. Edgemere Boulevard will be extended through the subject property and two unnamed collector arterials will be constructed through the subject property in accordance with the City's Master Thoroughfare Plan and will be dedicated and improved by the property owner in accordance with the Development Agreement. In general, the City will acquire control and jurisdiction of all public roads and public streets within the

annexation area upon annexation. Future extensions of roads or streets and future installation of related facilities, such as traffic control devices, will be governed by the City's standard policies and procedures.

- f. Parks, Playgrounds and Swimming Pools. No capital improvements are necessary at this time to provide services but may be necessary in the future.
- g. Drainage Facilities. No capital improvements are necessary at this time to provide services but may be necessary in the future.
- h. Street Lighting. It is anticipated that the developer of new subdivisions in the area will install public street lighting in accordance with the City's standard policies and procedures. In other cases, the City will install public street lighting in the annexation area upon request in accordance with established street lighting policies of the City.
- i. Other Publicly Owned Facilities, Building or Services: In general, other City functions and services, and the additional services described above can be provided for the annexation area by using existing capital improvements. Additional capital improvements are not necessary to provide City services.
- j. Capital Improvement Planning. The annexation area will be included with other territory in connection with planning for new or expanded facilities, functions, and services in accordance with established policies of the City and where applicable, the Development Agreement.

#### **AMENDMENT: GOVERNING LAW**

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

## **FORCE MAJEURE**

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

**Exhibit "D"**  
Development Agreement

**RESOLUTION**

**WHEREAS**, on January 31, 2006, the El Paso City Council approved a Development Agreement and subsequent amendments or extensions, by and between the CITY OF EL PASO, the EL PASO WATER UTILITIES-PUBLIC SERVICE BOARD, RANCHOS REAL IV, LTD., and RIVER OAKS PROPERTIES, LTD., to set forth the rights and responsibilities between the parties to allow for the development of the property located within the City's East Extraterritorial Jurisdiction; and,

**WHEREAS**, the applicant has requested that the City amend Exhibit B, Development Plan of the Development Agreement to allow an increase to the neighborhood commercial area abutting Rich Beam and Pebble Hills; and,

**WHEREAS**, the applicant has also an amendment to Exhibit B to allow an increase to the neighborhood commercial area abutting Tim Foster and Pebble Hills, John Wayne and John Hayes, plus Montwood and John Hayes and to allow the location of a public high school; and,

**NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

That the City Manager be authorized to sign an amendment to the January 31, 2006 Development Agreement by and between the City of El Paso, the El Paso Water Utilities-Public Service Board, Ranchos Real IV, LTD., and River Oaks Properties, LTD. to amend Exhibit B, Development Plan, to increase the neighborhood commercial area abutting Rich Beam and Pebble Hills and Tim Foster and Pebble Hills, John Wayne and John Hayes and Montwood and John Hayes and to allow the location of a public high school.

PASSED AND APPROVED this 8<sup>th</sup> day of July, 2008.

THE CITY OF EL PASO

John F. Cook  
John F. Cook  
Mayor

ATTEST:

Richarda Duffy Momsen  
Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:

Lupe Cuellar  
Lupe Cuellar  
Assistant City Attorney

APPROVED AS TO CONTENT:

Victor Q. Torres  
for Victor Q. Torres  
Development Services Department

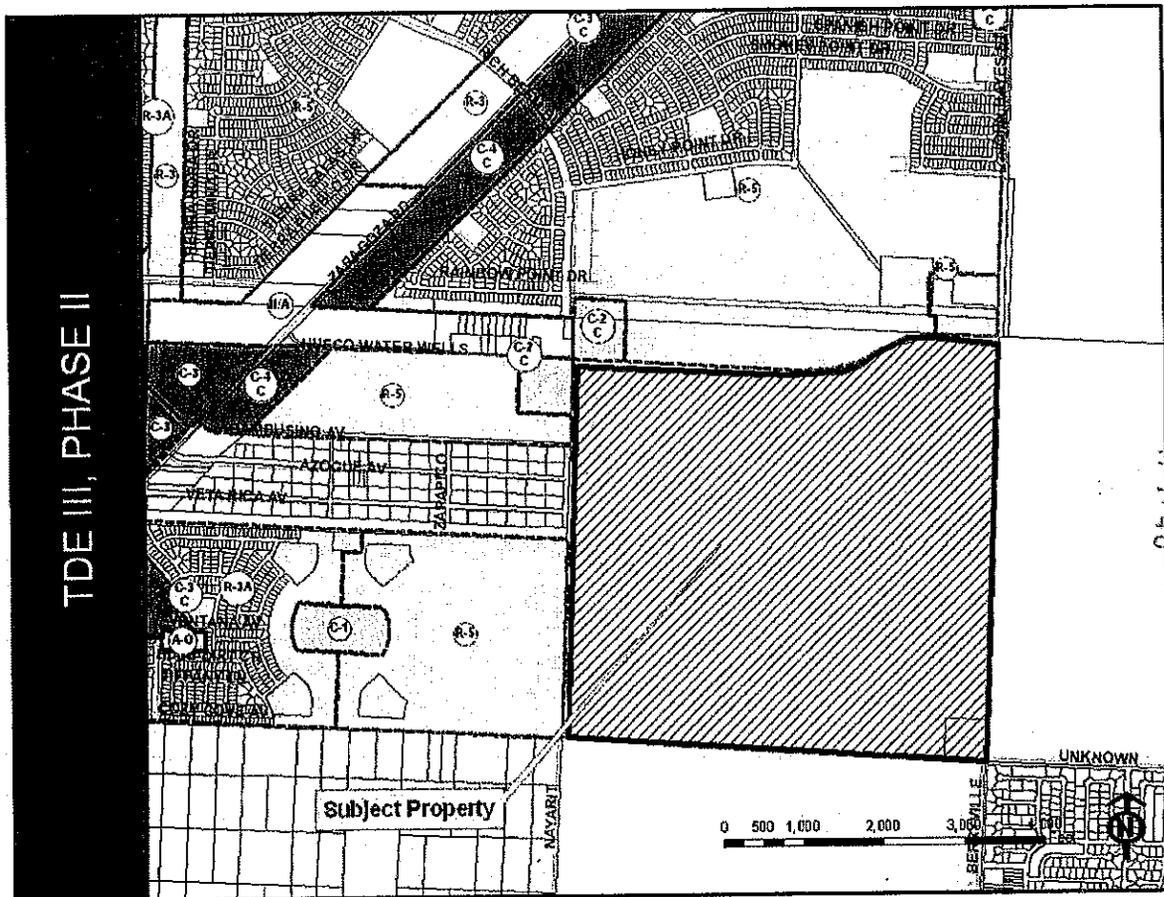
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CITY OF EL PASO  
DEVELOPMENT SERVICES DEPT.





## TDE III, PHASE II, DEVELOPMENT PLAN AMENDMENT

**Application Type:** Development Agreement/Plan Amendment  
**Property Owner(s):** Ranchos Real XII, LTD and River Oaks Properties Ltd.  
**Representative(s):** Conde, Inc.  
**Legal Description:** A portion of Sections 46, 47, and 48, Block 79, Township 2, Texas and Pacific Railway Company Surveys, El Paso County, Texas  
**Location:** Rich Beam Boulevard and Pebble Hills Boulevard  
**Representative District:** East ETJ (Adjacent to Districts 5 and 6)  
**Area:** Vacant  
**Proposed Use:** A mix of uses  
**Proposed Change:** Increase the neighborhood commercial area abutting Rich Beam and Pebble Hills; allow neighborhood commercial abutting Tim Foster and Pebble Hills, John Wayne and John Hayes, Montwood and John Hayes.  
**Surrounding Land Uses:** **North:** R-5, C-2 / TDE Phase I, Vacant; **South:** East ETJ / Vacant; **East:** East ETJ / Vacant; **West:** East ETJ, Zaragoza Road / Single-family Residential  
**Year 2025 Designation:** N/A, Residential (East ETJ)



**General Information:**

The applicant requests an amendment to the Development Agreement Plan (Exhibit B) that was approved with a development agreement dated January 31, 2006, pursuant to Subchapter G, Chapter 212, Local Government Code. The proposed changes to the development plan would allow an increase to the neighborhood commercial area abutting Rich Beam and Pebble Hills; allow neighborhood commercial abutting Tim Foster and Pebble Hills, John Wayne and John Hayes, Montwood and John Hayes. The proposed plan also shows the location of a public high school. The subject property is in the East ETJ and will be proposed for annexation at a later date as part of Phase II of the development agreement. The proposed development plan also includes areas that are not part of the original approved development plan and that are pending approval from City Council for annexation.

**Staff Recommendation:**

The Development Coordinating Committee (DCC) recommends **APPROVAL** of this request to amend the development plan.

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 designates portions of this property for **Residential** land uses.

In addition, recommendation for approval of was based on the overall long-term benefits to the City versus the short-term impacts. Approval of the amended development plan 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.

**Findings:**

The Commission must determine the following:

1. Will the proposed land use designations of the subject property protect the best interest, health, safety/welfare of the public in general?
2. Will the proposed land use designations be compatible with adjacent land uses?
3. What is the relation of the proposed the proposed land use designations to the city's Comprehensive Plan?
4. What effect will the proposed land use designations 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 for the following reasons.

Nodal commercial at the intersection of arterial and collector streets will allow for neighborhood services to the residential areas and serve as a buffer between the arterials and the residential.

**Engineering Department - Traffic Division Comments:**

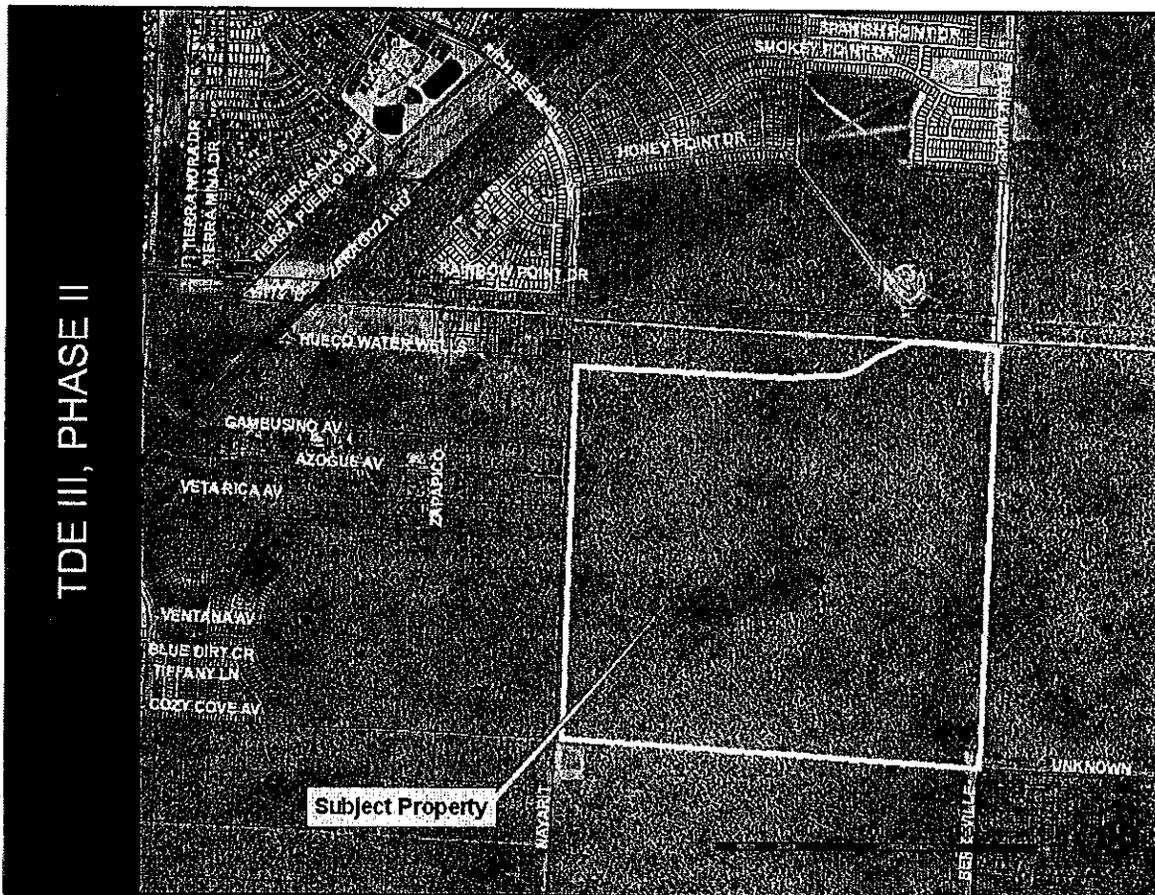
No comments received.

**Fire Department Comments:**

No comments received.

**El Paso Water Utilities Comments**

No comments received.



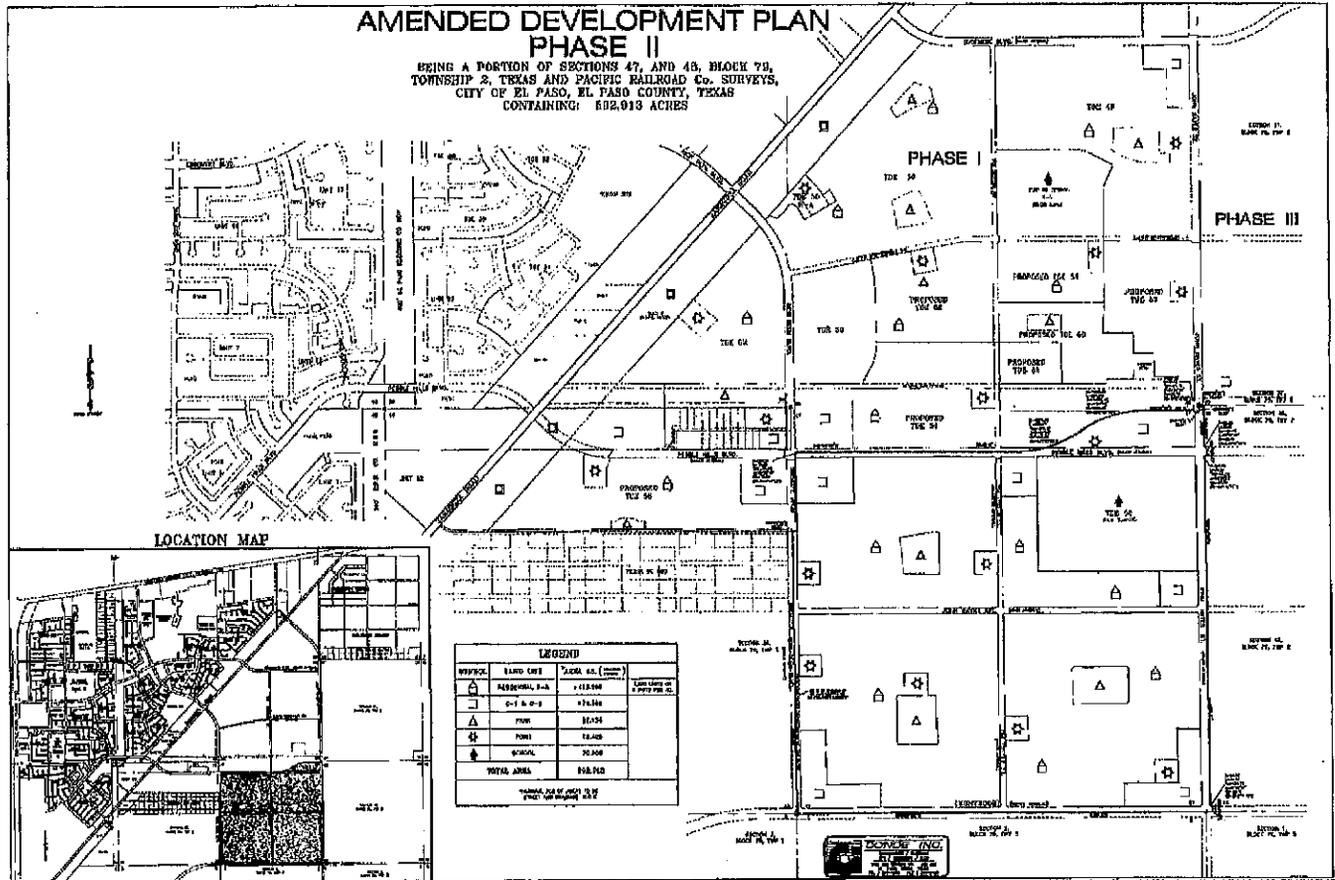
**List of Attachments**

Attachment 1: Proposed Development Plan

Attachment 2: Development Agreement

CITY CLERK DEPT.  
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**Attachment 1: Proposed Development Plan**



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 TDE III, Phase II

**Attachment 2: Development Agreement**

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**RESOLUTION**

**WHEREAS**, pursuant to state law the City of El Paso ("City") does not regulate the zoning or construction of improvements and structures outside of its corporate boundaries; and,

**WHEREAS**, Ranchos Real IV, Ltd. and River Oaks Properties, Ltd. (collectively the "Owner") are the owners of record of real property which is not located within the corporate limits of any municipality but is contiguous to the corporate limits of the City; and Owner desires that the property be subject to a development agreement and subsequently be annexed into the City; and,

**WHEREAS**, Subchapter G, Chapter 212 of the Texas Local Government Code, allows for the governing body of a municipality to enter into a written contract with an owner of land that is located in the extraterritorial jurisdiction of the municipality; and,

**WHEREAS**, further, Subchapter G, allows for the City to extend its planning authority over the land and authorize the enforcement of the City's land use and development regulations over the land in the same manner the regulations are enforced within the municipality's boundaries and provide for the annexation of the land in a timely manner; and,

**WHEREAS**, Owner, after full consideration, accepts the terms and conditions cited in the proposed Development Agreement due to the advantages and benefits resulting from the subsequent annexation of the property; and,

**WHEREAS**, the City, after due and careful consideration, and after consultation with the El Paso Water Utilities-Public Service Board, has concluded that the annexation of the property on the terms and conditions set forth in the Development Agreement is in the best interest of the City to protect and provide for the public health, safety, morals and general welfare.

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

That the City Manager be authorized to sign a Development Agreement, and subsequent amendments or extensions, by and between the CITY OF EL PASO, the EL PASO WATER UTILITIES-PUBLIC SERVICE BOARD, RANCHOS REAL IV, LTD., and RIVER OAKS PROPERTIES, LTD., to set forth the rights and responsibilities between the parties to allow for the development of the property located within the City's East Extraterritorial Jurisdiction and containing 2,287.593 acres; in accordance with Subchapter G, Chapter 212 of the Texas Local Government Code, and subject to the affirmative approval and execution of same agreement by the El Paso Water Utilities-Public Service Board.

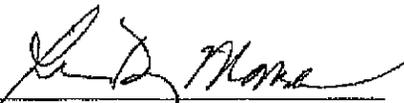
*(Signatures appear on the following page.)*

PASSED AND APPROVED this 31<sup>st</sup> day of January, 2006.

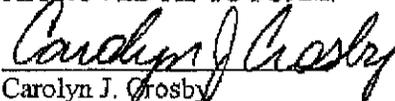
THE CITY OF EL PASO

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

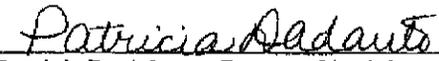
ATTEST: :

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Carolyn J. Crosby  
Assistant City Attorney

APPROVED AS TO CONTENT:

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



ONE: Unless the context requires otherwise, the following terms and phrases used in this Agreement shall have the meanings set out below:

"Agreement" means this Development Agreement by and between the City, the PSB, and the Owner.

"Annexation Fee" means the annexation fee described in Section Eleven of this Agreement previously adopted by the Board of the PSB.

"City" means the City of El Paso, Texas, a home rule municipality situated in El Paso County, Texas.

"City Council" means the City Council of the City or any successor governing body.

"City Regulations" shall mean all duly enacted ordinances, rules, and regulations of the City, including the Code, the Subdivision Regulations, and the PSB Regulations.

"Code" shall mean the El Paso Municipal Code.

"Development Plan" shall mean the plan for development of the Property attached to this Agreement as Exhibit "B". The Development Plan shall include the Phasing Plan and the Road Plan.

"District" shall have the meaning set forth in Section Sixteen.

"Effective Date" means the date set forth in the first paragraph of this Agreement.

"Major Thoroughfare Plan" or "MTP" shall mean the plan attached as Exhibit "C".

"New Regulations" shall mean City Regulations, or amendments to City Regulations, enacted after the Effective Date.

"Nominate" shall refer to the action of the Owner in submitting to the City a nomination.

"Nomination" means a written notice and application requesting annexation of the portion of the Property described in the notice.

"Owner" means collectively Ranchos Real IV, Ltd. being the owner of the real property described by metes and bounds on Exhibit "A-4", save and except the real property described by metes and bounds on Exhibit "A-5"; and River Oaks Properties, Ltd. being the owner of the real property described by metes and bounds on Exhibits "A-1", "A-2", and "A-3".

"Party" or "Parties" means a party or the parties to this Agreement, being the City, the PSB, and the Owner.

"Phase One" shall mean the first phase of development of the Property as set forth in the Phasing Plan.

"Phasing Plan" shall mean the plan, included in the Development Plan, for the phased development of the Property.

"Property" shall mean the 2,287.593-acre tract of land described by metes and bounds in Exhibits "A-1" through "A-4", save and except the tract of land described by metes and bounds in Exhibit "A-5".

"PSB Facilities" shall mean water and wastewater facilities to be constructed by and at the expense of the PSB, or constructed by the Owner under developer participation contracts executed in accordance with Chapter 212 of the Texas Local Government Code pursuant to which the PSB would reimburse the Owner for the costs in accordance with PSB Regulations in effect as of the Effective Date of this Agreement. The PSB Facilities are shown in Exhibits "D" and "E".

"PSB" or "Public Service Board" shall mean the El Paso Water Utilities Public Service Board, the trustee and governing board of the El Paso Water Utilities.

"PSB Regulations" shall mean the duly adopted rules and regulations of the PSB.

"Road Plan" shall mean the plan, included in the Development Plan that describes the roads within the Property to be constructed by the Owner and dedicated to the City.

"Subdivision Coordinator" shall mean the subdivision coordinator referenced in the Subdivision Regulations.

"Subdivision Regulations" shall mean the regulations in Title 19 of the El Paso Municipal Code.

"Vesting Statute" shall mean Chapter 245, Texas Local Government Code.

TWO: The Property shall be developed in phases in accordance with the Phasing Plan, and shall be developed in an orderly manner from adjacent existing development. In accordance with Texas Local Government Code Section 212.172(g), the Parties agree this Agreement constitutes a permit under Chapter 245 of the Texas Local Government Code. Owner expressly waives any and all vested rights accrued under this Agreement and agrees to the provisions related to vested rights as provided herein. Owner shall not file an application for the City's approval a subdivision plat for any portion of the Property for thirty (30) days after the Effective Date. Within ninety (90) days following the recording of the subdivision plat relating to Phase One, and within ninety (90) days following the recording of each subdivision plat with respect to future phases of development, the City shall provide to the portion of the Property covered by the plat all of the municipal services provided inside municipal boundaries, regardless of whether the portion of the Property covered by the subdivision plat has been annexed as

City of El Paso  
Planning Department  
10/10/00

of such date. However, the scheduling of water and wastewater services to the Property shall be in accordance with the provisions of Section Eleven.

THREE: The City agrees to annex the Property in accordance with the terms and conditions of this Agreement, provided that the terms and conditions of this Agreement are met by the Owner. (a) The Owner shall submit and initiate an application for annexation by filing a Nomination with the City, nominating Phase One of the Property no later than thirty (30) days after the Effective Date of this Agreement. Thereafter, the Owner shall submit and initiate applications for annexation by filing a Nomination with the City in accordance with the Phasing Plan. (b) The Owner shall use their best effort to coordinate and request that the owner of the real property described by metes and bounds in Exhibit "A-5", be included and part of the submission of the annexation application for the applicable Phase in which this property is located.

Within one hundred twenty (120) days, the City shall annex the nominated portion through passage of an annexation ordinance in accordance with applicable state law provisions regarding public notice and hearings. Whether the Owner nominates all of the Property for annexation at one time or nominates portions of the Property for annexation in phases, the Owner shall complete such nominations no later than the fourth anniversary of the Effective Date, so that all of the Property may be annexed by the City no later than the fifth anniversary of the Effective Date. It shall not be considered a breach of the terms of this Agreement by any party if the annexation of the Property is delayed, unless such delay is directly caused by that party. However, if all or a portion of an annexation application is delayed, this shall not relieve the Owner of the obligation to submit nominations of remaining Property for annexation, in accordance with the Phasing plan, and all of the Property must be nominated by the Owner within four years. (b) The City may annex all or a portion of the Property under this Agreement by enacting an ordinance annexing the Property. To the extent allowed by law, the enactment of an ordinance annexing the Property or portion thereof described in the Nomination shall be the only procedure required of the City to annex the Property or a portion thereof.

FOUR: Owner hereby agrees that the development of the Property shall be in accordance with the City Regulations, including the PSB Regulations, and subject to the application and payment of all necessary application and permit fees except as otherwise provided in this Agreement. Pursuant to Subchapter G, Chapter 212, Local Government Code, the City and Owner agree that, except as otherwise provided herein, the City Regulations shall be applicable to the Property on the Effective Date. Notwithstanding the Vesting Statute, the City may apply New City Regulations to any portion of the Property that is not the subject of a subdivision plat filed for approval with the City, provided the New City Regulations are otherwise valid and are applied equally to other similarly situated areas of the City. However, the Vesting Statute shall apply to a portion of the Property on and after the date a subdivision plat application is filed for approval with the City relating to such portion of the Property.

FIVE: Owner hereby agrees that prior to the development of any portion of the Property, a land study for such portion of the Property shall be required and an application filed with the Subdivision Coordinator for approval by the City. All provisions



shall be automatically classified as R-3 (Residential) for zoning purposes, but such classifications shall not affect (i) any structure on which construction commenced prior to the annexation or (ii) any development allowed under a subdivision plat, which was approved prior to annexation. In addition, Owner may petition the City, at any time, and at Owner's expense, for rezoning of the Property (or portion thereof) as provided in the Code.

EIGHT: Owner agrees to provide for the dedication and improvement of public neighborhood parkland within the Property to the extent required by the City Regulations. The approximate size and location of the parcel(s) shall be as provided in the Development Plan.

NINE: Owner agrees to provide for the dedication, at no cost to the City, in the aggregate, of up to four (4) acres, at not more than six (6) locations within the Property owned by Ranchos Real IV, Ltd., and described on Exhibit "A-4", for use by the City solely for public purposes, such as municipal offices, storage, police, fire and EMS protection, or other municipal operations to the extent required by the City. Such dedication shall be identified in the approved subdivision plat. The approximate size and location of the dedication(s) shall be as provided in the Development Plan.

TEN: Owner shall dedicate, construct and maintain for a one-year period after acceptance by the City the improvements for the full width of the necessary right-of-way for extensions of any arterial streets as shown in the City's official Major Thoroughfare Plan ("MTP") as of the Effective Date. Except as hereinafter set forth, Owner shall not request or be eligible for reimbursement for any costs associated or in connection with claims for overwidth paving from the City. Owner shall not be obligated to dedicate, construct, and maintain the improvements to the right-of-way for arterial streets added to the City's MTP after the Effective Date or not shown in the attached Road Plan, unless the MTP is amended at the request of the Owner(s) and results in the addition or upgrade of the status of the arterial street. If the City amends the MTP with respect to the Property, after the Effective Date, then the Owner may request or be eligible for reimbursement for any costs associated or in connection with claims for overwidth paving from the City.

ELEVEN: In addition to any other fees required by PSB Regulations, Owner agrees to pay an Annexation Fee to the El Paso Water Utilities for each three-quarter inch (3/4") equivalent water meter that is connected to the public water system (regardless of the timing of the annexation of the Property by phases) as follows:

<u>Meter Size</u>	<u>EAST ETJ Water (\$)</u>	<u>EAST ETJ Wastewater (\$)</u>
5/8" x 3/4"	566	328
1"	1,396	809
1 1/2"	2,830	1,640
2"	4,528	2,624
3"	9,056	5,248

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4"	14,150	8,200
6"	28,300	16,400
8"	52,827	30,613
10"	75,467	43,733

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

The Annexation Fee shall be increased by three (3) percent on March 1, 2006, and each year thereafter, compounded annually. Payment of the Annexation Fee shall be due at the time of application for connection of an individual meter to the water system. Notwithstanding the adoption of New City Regulations, the Annexation Fee set forth above 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.

The PSB agrees to impose on new Eastside developments that are annexed into the City after the Effective Date, or that are located in the Eastside PSB Planned Service Area and to which City water or wastewater services are connected after the Effective Date, Annexation Fees that are equal to or greater than the fees imposed on Owner under this Agreement. Notwithstanding the foregoing, the PSB shall not be required to impose an Annexation Fee to any Eastside development to the extent it is connected to and serviced by another entity, which is governed by a separate agreement and subsequently annexed by the City.

Immediately after the Effective Date, the PSB shall commence the engineering and construction activities necessary to provide retail water and wastewater services to the Owner's Property in order to ensure that the development of the Property in accordance with the Phasing Plan is not delayed. Within ninety (90) days following the Effective Date, water and wastewater services shall be made available to Phase One. In regard to future phases, water and wastewater services shall be available in accordance with the Phasing Plan. The water and wastewater facilities to be constructed by the Owner, and the PSB Facilities, to be constructed by the PSB, are addressed in Section Seventeen and in Exhibits "D" and "E".

Without limiting the foregoing, the provision of retail water and wastewater services shall not be delayed on the grounds that the Property has not been annexed in whole or in part. The rates for water and wastewater services shall be equal to the rates charged inside the incorporated boundaries of the City. However, if the Owner for whatever reason fails to submit annexation applications in accordance with the provisions of this Agreement or is in default of any obligation under this Agreement, then the rates for water and wastewater services shall be in accordance with the PSB regulations for outside City rates, in addition to any fees required herein. If the Property is subsequently annexed, inside City rates for the incorporated boundaries in accordance with PSB regulations in effect at the time of annexation shall apply. The City's obligation to provide water and wastewater services to the Property shall survive the expiration of the term of

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 PLANNING/DEVELOPMENT-ANNEXATION AGREEMENT  
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the Agreement. The obligation for the Owner to pay Annexation Fees as each water meter application is made survives the expiration of the Term of this Agreement.

TWELVE: 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. Such aerial, and any other evidence necessary to demonstrate the existence of any non-conforming lot, use or structure on the Property, shall be provided by the Owner within thirty (30) days after the date the City adopts an annexation ordinance annexing a portion of the Property. 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.

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

FOURTEEN: Any formal notices or other communications 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. Notice shall be effective only if and when received by the Party to be notified. For the purposes 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

Mailing Address:  
2 Civic Center Plaza  
El Paso, Texas 79901

Physical Address:  
Same as above

(2) **El Paso Water Utilities Public Service Board:**  
El Paso Water Utilities Department  
Attn: General Manager

Mailing Address:  
1154 Hawkins Boulevard  
El Paso, Texas 79925

Physical Address:  
Same as above

RECEIVED  
CITY OF EL PASO  
MAY 14 1991

(3) **Owner:**  
Ranchos Real IV, Ltd.  
Attn: Douglas Schwartz

Mailing Address:  
1790 Lee Trevino, Suite 601  
El Paso, Texas 79936

Physical Address:  
Same as above

River Oaks Properties, Ltd.  
Attn: Gerald J. Rubin

Mailing Address:  
One Helen of Troy Plaza  
El Paso, Texas 79912

Physical Address:  
Same as above

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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 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

FIFTEEN: This Agreement shall have a term of fifteen (15) years. The Parties may, by mutual agreement, as evidenced by a writing executed by the City Manager of the City, the General Manager of the El Paso Water Utilities Department, and a representative of the Owner, extend and/or renew the term, but only to the extent permitted by Subchapter G, Chapter 212, Local Government Code; provided, however, nothing contained in this section shall affect the Owner's obligation to submit nominations for annexation of all phases of the Property on or before the fourth (4<sup>th</sup>) anniversary of the Effective Date.

SIXTEEN: The Owner has previously sought from the City consent for the creation of a municipal utility district and/or water control and improvement district for the purpose of providing water and wastewater services to the Property (the "District"). In consideration of this Agreement, including the PSB's obligation hereunder to provide water and wastewater services to the Property, the Owner agrees to refrain from seeking the creation of the District.

SEVENTEEN: (a) Except for the PSB Facilities, the Owner agrees to construct at its expense the mains and pipes located inside the Property that are necessary to provide retail water and wastewater utility services to the Property. The mains and pipes shall be

designed and constructed in accordance with PSB Regulations. To the extent such facilities are oversized for the purpose of serving developments outside the Property, the cost of the oversized portion of the facilities shall be borne by the PSB. Notwithstanding the foregoing, the Owner shall not be obligated to construct or otherwise bear the costs of PSB Facilities, including water supply, water treatment facilities, wells, water storage tanks, desalinization facilities, or wastewater treatment facilities, in excess of the Annexation Fee provided for herein.

(b) The PSB shall acquire the right of way and construct at its expense the mains, pipes, and other facilities outside the Property that are necessary to provide water and wastewater services to the Property

(c) For greater certainty, Exhibits "D" and "E" describe the PSB Facilities to be constructed by the PSB at the PSB's expense.

EIGHTEEN: To the extent (if any) that this Agreement would obligate the City to make a payment or make an expenditure, the obligation shall be payable solely from revenues received by the City from current revenues, including revenues from the sale of water and wastewater utility services, it being the intention of the Parties that no obligation of the City in this Agreement shall be payable in whole or in part from property taxes, or from proceeds of obligations payable in whole or in part from property taxes, or otherwise constitute a debt of the City within the meaning of Article XI, Section 5 or Section 7 of the Texas Constitution.

**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.

PHILIP GARDNER  
JULY 11, 2011 11:11 AM

**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 the 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, and if the Owner has made such determination, the Owner shall have the option to terminate this Agreement. Such judgment or decree shall relieve the City and the Owner from performance under such invalid provision of this Agreement.

**Entire Agreement:** This Agreement contains the entire agreement of the Parties, and there are no other agreements or promises, oral or written, between the Parties regarding the subject matter of this Agreement. This Agreement may be amended only by written agreement signed by the Parties. By approving the execution of this Agreement, the City Council of the City, and the Public Utilities Board of the El Paso Water Utilities, delegate to the City Manager of the City, and to the General Manager of the El Paso Water Utilities, the authority, without any further action being required of the City Council or of the Public Utilities Board, to execute such amendments or extensions to this Agreement as they may consider advisable, and consistent with the provisions of law.

**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 state or federal courts situated in 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 other 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 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 event of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any Party on the basis that such Party did or did not author the same.

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

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

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

PLANNING DEVELOPMENT  
ANNEXATION AGREEMENT

THE CITY OF EL PASO

Joyce A. Wilson  
Joyce A. Wilson  
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

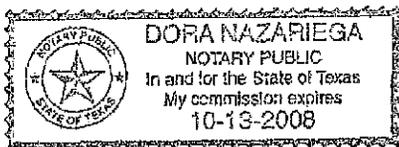
Carolyn J. Crosby  
Carolyn J. Crosby  
Assistant City Attorney

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

ACKNOWLEDGEMENT

STATE OF TEXAS     )  
                                  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on the 31<sup>st</sup> day of January, 2006, by Joyce A. Wilson, as City Manager of the City of El Paso, Texas.



Dora Nazariega  
Notary Public, State of Texas  
Dora Nazariega

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EL PASO WATER UTILITIES  
PUBLIC SERVICE BOARD

  
Edmund G. Archuleta, P.E.  
General Manager

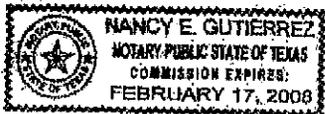
APPROVED AS TO FORM:

  
Robert D. Andron  
General Counsel

ACKNOWLEDGEMENT

STATE OF TEXAS        )  
                                  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on the 1st day of February, 2006, by Edmund G. Archuleta, as General Manager of the El Paso Water Utilities Public Service Board.



  
Notary Public, State of Texas  
Nancy E. Gutierrez

FILED  
FEB 17 2006  
EL PASO COUNTY  
TEXAS





EXHIBITS "A-1" through "A-5"

LEGAL DESCRIPTION

APR 11 1986  
CITY OF HOUSTON  
PLANNING DEPT.

Being a portion of Sections 33, Block 79,  
Township 2, Texas and Pacific Railway Company Surveys,  
El Paso County, Texas  
Prepared for: Southwest Land Development Services Inc.  
January 24, 2006

### METES AND BOUNDS DESCRIPTION

Description of a parcel of land being a portion of Sections 35, Township 2, Texas and Pacific Railway Company Surveys, El Paso County, Texas and being more particularly described by metes and bounds as follows:

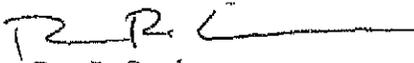
THE "TRUE POINT OF BEGINNING" being the corner common to Sections 35, 36, 37 and 38, Block 79, Township 2, Texas and Pacific Railway Company Surveys

Thence along the common line of Section 35 and 38, Block 79 Township 2, Texas and Pacific Railway Company Surveys South  $89^{\circ}59'07''$  West a distance of 3679.78 feet to a point on the southeasterly right of way line of Zaragoza Road;

Thence along said right of way line North  $42^{\circ}31'34''$  East a distance of 5382.79 feet to a point on the common line of Sections 35 and 36, Block 79, Township 2, Texas and Pacific Railway Company Surveys;

Thence along said line South  $00^{\circ}35'54''$  East a distance of 3966.22 feet to the "TRUE POINT OF BEGINNING" and containing 7,297,039 Sq. Ft. or 167.517 Acres of land more or less.

NOTE: Bearings basis is per plat of Tierra Del Este Unit Twenty Nine recorded in volume 79, Pages 104, Plat records of El Paso County, Texas

  
Ron R. Conde  
R.P.L.S. No. 5152  
Job# 106-50 R.C.

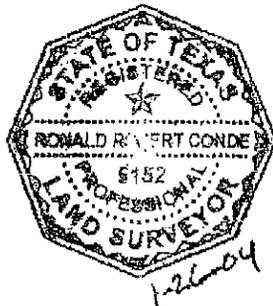


Exhibit A-1

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

141 141 05 2006 09  
141 141 05 2006 09

Being a portion of Section 39, Block 79,  
Township 2, Texas and Pacific Railroad Company Surveys  
El Paso County, Texas  
Prepared for: Edwards, Belk, Hunter, and Kerr  
July 27, 2004  
Parcel 4A

### METES AND BOUNDS DESCRIPTION

Description of a parcel of land being a portion of Section 39, Block 79, Township 2, Texas and Pacific Railroad Company Surveys El Paso County, Texas and being more particularly described by metes and bounds as follows:

Commencing for reference at a found 1/2" rebar with cap marked TX 5152 set for the common corner of sections 38, 39, 46 and 47, Block 79, TSP 2, T & P RR. Surveys from this point a 2" pipe found for the common corner of sections 34, 35, 38 and 39 bears North 00°33'11" West a distance of 5235.75 feet, Thence from said 1/2" rebar South 89°57'37" West with the common line between sections 39 and 46 a distance of 2542.84 feet to a set 1/2" rebar with cap marked TX 5152 for The "TRUE POINT OF BEGINNING";

Thence continuing along said boundary line South 89°57'37" West (West Book 1618, Page 1321) a distance of 678.89 feet to a set 1/2" rebar with cap marked TX 5152 on the southeasterly right of way line of Zaragoza Road (F.M. 659);

Thence along said right of way line North 42°31'34" East (N42°28'32"E Book 1618, Page 1321) a distance of 4716.77 (4776.06 Book 1618, page 1321) feet to a set 1/2" rebar with cap marked TX 5152 on the line between sections 38 and 39;

Thence along said line South 00°33'11" East a distance of 732.06 feet to a set 1/2" rebar with cap marked TX 5152;

Thence South 42°31'34" West a distance of 3722.85 feet to the "TRUE POINT OF BEGINNING" and containing 48.437 acres of land more or less.

NOTE: Bearings Basis is True North for a Transverse Mercator Surface Projection as determined by GPS Methods based on a set 1/2" rebar with cap marked TX 5152  
Latitude: 31°47'01.296"N Longitude: 106°14'58.705"W Height: 3928.22sft

A Plat of even date accompanies this description.

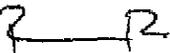
  
Ron R. Conde  
R.P.L.S. No. 5152



Exhibit A-2

job#704-46 R.C.  
LGL-04170446.LGL

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

Being all of Tract 1A4, Section 35  
and a portion of Sections 36,  
Block 79, Township 2,  
Texas and Pacific Railroad  
Company Survey,  
El Paso County Texas  
January 23, 2006

RECORDED  
1/23/06  
1:41

METES AND BOUNDS DESCRIPTION

Description of a parcel of land being all of Tract 1A4, Section 35 and a portion of Sections 36, Block 79, Township 2, Texas and Pacific Railroad Company Survey, El Paso County Texas, and being more particularly described by metes and bounds as follows:

Commencing at a found 2" pipe, said point being the northwesterly corner of Section 36, also being the common corner between sections 25, 26, and 35, Block 79, Township 2, Texas and Pacific Railroad Surveys; Thence South 00°32'00" East, along the common section line between Sections 35 and 36, a distance of 7.93 feet to a point lying on the southerly right-of-way line of Montana Avenue (US Highway No. 62-180) to a found 1/2" iron, said point being the TRUE POINT OF BEGINNING of this description;

Thence, North 81°18'00" East, along said right-of-way line, a distance of 52.48 feet to a point lying on the common boundary line between sections 25 and 36, Block 79, Township 2, Texas and Pacific Railroad Company Surveys;

Thence, North 89°59'29" East, along said boundary line, a distance of 1,122.58 feet to a point;

Thence, South 39°02'00" East, a distance of 0.41 feet to a point lying on the northerly right-of-way line of East Zaragoza Road (F.M. 659 Ysleta-Carlsbad cut-off road);

Thence, South 42°33'00" West, along said right-of-way line, a distance of 1,719.81 feet to a point lying on the common boundary line between Sections 35 and 36, Block 79, Township 2, Texas and Pacific Railroad Company Surveys;

Thence, South 42°33'00" West, continuing with said right-of-way line, a distance of 1,347.17 feet to a point;

Thence, North 00°32'00" West, a distance of 2,111.08 feet to a point lying on the southerly right-of-way line of Montana Avenue (US Highway No. 62-180);

Thence, North 81°18'00" East, along said right-of-way line, a distance of 894.19 feet to a point;

Thence, South 00°32'00" East, a distance of 218.16 feet to a point;

Thence, South 89°28'00" West, a distance of 125.00 feet to a point;

Thence, South 00°32'00" East, a distance of 175.00 feet to a point;

Thence, North 89°28'00" East, a distance of 155.00 feet to a point;

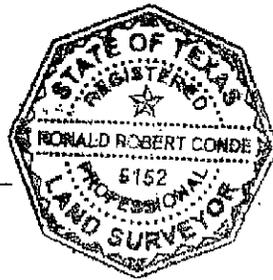
Thence, North 00°32'00" West, a distance of 397.47 feet to a point;

Thence, North 81°18'00" East, a distance of 5.12 feet to "TRUE POINT OF BEGINNING" and containing in all 2,261,201 square feet or 51.910 acres of land more or less.

Meets and bounds description is based on ALTA survey performed by SLI Engineering, dated December 14, 2005.

NOT A GROUND SURVEY.

Exhibit A-3  
(Page 2 of 2)



R R C

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

job #106-47

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

1991 11 16 09:07 AM  
1991 11 16 09:07 AM

Being a portion of Sections 37, 38, 39, 46 and 47, Block 79,  
Township 2, Texas and Pacific Railway Company Surveys,  
El Paso County, Texas  
Prepared for: Southwest Land Development Services Inc.  
January 24, 2006

#### METES AND BOUNDS DESCRIPTION

Description of a parcel of land being a portion of Sections 37, 38, 39, 46 and 47, 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:

THE "TRUE POINT OF BEGINNING" being the corner common to Sections 35, 36,  
37 and 38, Block 79, Township 2, Texas and Pacific Railway Company Surveys

Thence along the common line of Section 36 and 37, Block 79 Township 2, Texas  
and Pacific Railway Company Surveys North  $89^{\circ}58'06''$  East a distance of 5313.88  
feet to a point for the common corner of Sections 36 and 37, Block 79, Township 2,  
and Sections 7 and 18, Block 78, Township 2, Texas and Pacific Railway Company  
Surveys;

Thence along the common line of Sections 37, Block 79, Township 2 and Section 18,  
Block 78, Township 2, Texas and Pacific Railway Company Surveys South  $00^{\circ}35'30''$   
East a distance of 4736.94 feet to a point;

Thence leaving said line South  $89^{\circ}58'09''$  West a distance of 500.00 feet to a point;

Thence South  $00^{\circ}35'30''$  East a distance of 500.00 feet to a point on the common line  
of Sections 37 and 48, Block 79, Township 2, Texas and Pacific Railway Company  
Surveys;

Thence along the common line of Section 37 and 48, Block 79, Township 2, Texas  
and Pacific Railway Company Surveys South  $89^{\circ}58'09''$  West a distance of 4814.48  
feet to a point on the common corner of Sections 37, 38, 47 and 48, Block 79,  
Township 2, Texas and Pacific Railway Company Surveys;

Thence along the line of Sections 37 and 48, Block 79, Township 2, Texas and Pacific  
Railway Company Surveys South  $00^{\circ}34'52''$  East a distance of 4734.76 feet to a  
point;

Thence leaving said line South  $89^{\circ}59'32''$  West a distance of 500.00 feet to a point;

Thence South  $00^{\circ}34'52''$  East a distance of 500.00 feet to a point on the common line  
of Section 47, Block 79, Township 2, and Section 2, Block 79, Township 3, Texas  
and Pacific Railway Company Surveys;

Thence along said line South  $89^{\circ}59'32''$  West a distance of 4716.17 feet to a point;

Thence North  $00^{\circ}34'37''$  West a distance of 2853.01 feet to a point;

Thence North  $89^{\circ}58'26''$  West a distance of 100.01 feet to a point;

Thence North  $00^{\circ}34'37''$  West a distance of 809.08 feet to a point;

Thence South  $89^{\circ}58'35''$  West a distance of 4422.30 feet to a point of curve;

Thence 185.59 feet along the arc of a curve to the right which has a radius of 250.00  
feet a central angle of  $42^{\circ}32'00''$  a chord which bears North  $68^{\circ}45'25''$  West a  
distance of 181.35 feet to a point;

Thence North  $47^{\circ}29'25''$  West a distance of 20.86 feet to a point on the southeasterly  
right of way line of Zaragoza Road;

14-1-06 09:14:11  
COUNTY CLERK  
EL PASO COUNTY, TEXAS

Thence along said right of way line North 42°31'40" East a distance of 1314.56 feet to a point;

Thence leaving said right of way line North 89°58'35" East a distance of 3707.62 feet to a point on the common line of Sections 46 and 47, Block 79, Township 2, Texas and Pacific Railway Company Surveys;

Thence along said line North 00°34'37" West a distance of 524.76 feet to a point for the common corner of Section 38, 39, 46 and 47, Block 79, Township 2, Texas and Pacific Railway Company Surveys;

Thence along the common line of Sections 39 and 46, Block 79, Township 2, Texas and Pacific Railway Company Surveys South 89°57'37" West a distance of 2542.84 feet to a point;

Thence leaving said line North 42°31'34" East a distance of 3722.85 feet to a point on the common line of Sections 38 and 39, Block 79, Township 2, Texas and Pacific Railway Company Surveys;

Thence along said line North 00°33'11" West a distance of 732.06 feet to a point on the southeasterly right of way line of Zaragoza Road;

Thence along said right of way line North 42°31'34" East a distance of 2,390.93 feet to a point on the common line of Sections 35 and 38, Block 79, Township 2, Texas and Pacific Railway Company Surveys;

Thence along said line North 89°59'07" East a distance of 3679.78 feet to the "TRUE POINT OF BEGINNING" and containing 89,133,304 Sq. Ft. or 2,046.219 Acres of land more or less.

NOTE: Bearings basis is per plat of Tierra Del Este Unit Twenty Nine recorded in volume 79, Pages 104, Plat records of El Paso County, Texas

R R C  
Ron R. Conde  
R.P.L.S. No. 5152  
Job# 605-47 R.C.



RECORDED  
CITY OF EL PASO, TEXAS  
2-1-66 11:42 AM

Exhibit A-4  
(Page 2 of 2)

CONDE, INC.  
ENGINEERING / LAND SURVEYING / PLANNING  
1798 LEE TREYINO SUITE 400 / EL PASO, TEXAS 79936 / (915) 591-0283

Being a portion of Sections 38, Block ,  
Township 2, Texas and Pacific Railway Company Surveys,  
El Paso County, Texas  
Prepared for: Southwest Land Development Services Inc.  
January 24, 2006  
(Save and Except Portion)

### METES AND BOUNDS DESCRIPTION

Description of a parcel of land being a portion of Sections 38, 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 the corner common to Sections 37, 38, 47 and 48, Block 79, Township 2, Texas and Pacific Railway Company Surveys, Thence along the common line of Section 37 and 38, Block 79, Township 2, Texas and Pacific Railway Company Surveys North 00°32'27" West a distance of 222.61 feet to a point for THE "TRUE POINT OF BEGINNING"

Thence leaving said line North 89°46'19" West a distance of 5315.88 feet to a point on the common line of Sections 38 and 39, Block 79, Township 2, Texas and Pacific Railway Company Surveys;

Thence along said line North 00°30'31" West a distance of 59.97 feet to a point;

Thence leaving said line South 89°46'32" East a distance of 3815.98 feet to a point;

Thence North 00°28'20" West a distance of 465.30 feet to a point;

Thence North 40°37'29" West a distance of 4703.80 feet to a point on the southeasterly right of way line of Zaragoza Road;

Thence along said right of way line North 42°33'25" East a distance of 75.56 feet to a point;

Thence leaving said right of way line South 40°37'15" East a distance of 4623.41 feet to a point;

Thence North 00°33'24" West a distance of 77.62 feet to a point;

Thence South 89°46'48" East a distance of 659.70 feet to a point;

Thence South 00°33'24" East a distance of 599.67 feet to a point;

Thence South 89°46'48" East a distance of 839.84 feet to a point on the common line of Sections 36 and 37, Block 79, Township 2, Texas and Pacific Railway Company Surveys;

Thence along said line South 00°32'27" East a distance of 120.15 feet to the "TRUE POINT OF BEGINNING" and containing 1,153,971 Sq. Ft. or 26.49 Acres of land more or less.

NOTE: above description and bearings based on plat of survey prepared by Robert R. Seipel on February 8, 1999

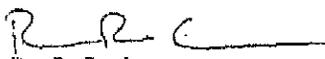
  
Ron R. Conde  
R.P.L.S. No. 5152  
Job# 106-50 R.C.



Exhibit A-5

2006 JAN 24 PM 11:42

EXHIBIT "B"  
DEVELOPMENT PLAN

24:11a 08:18:30  
08:41:50 PM 1:42  
COMMUNITY DEPT.

EXHIBIT "C"  
MAJOR THOROUGHFARE PLAN

COPY TO COUNTY CLERK  
NO. 19386 03 01 PM 2

# Exhibit "C"

**Legend**

**MTP Proposed**

**ARTERIAL** ———

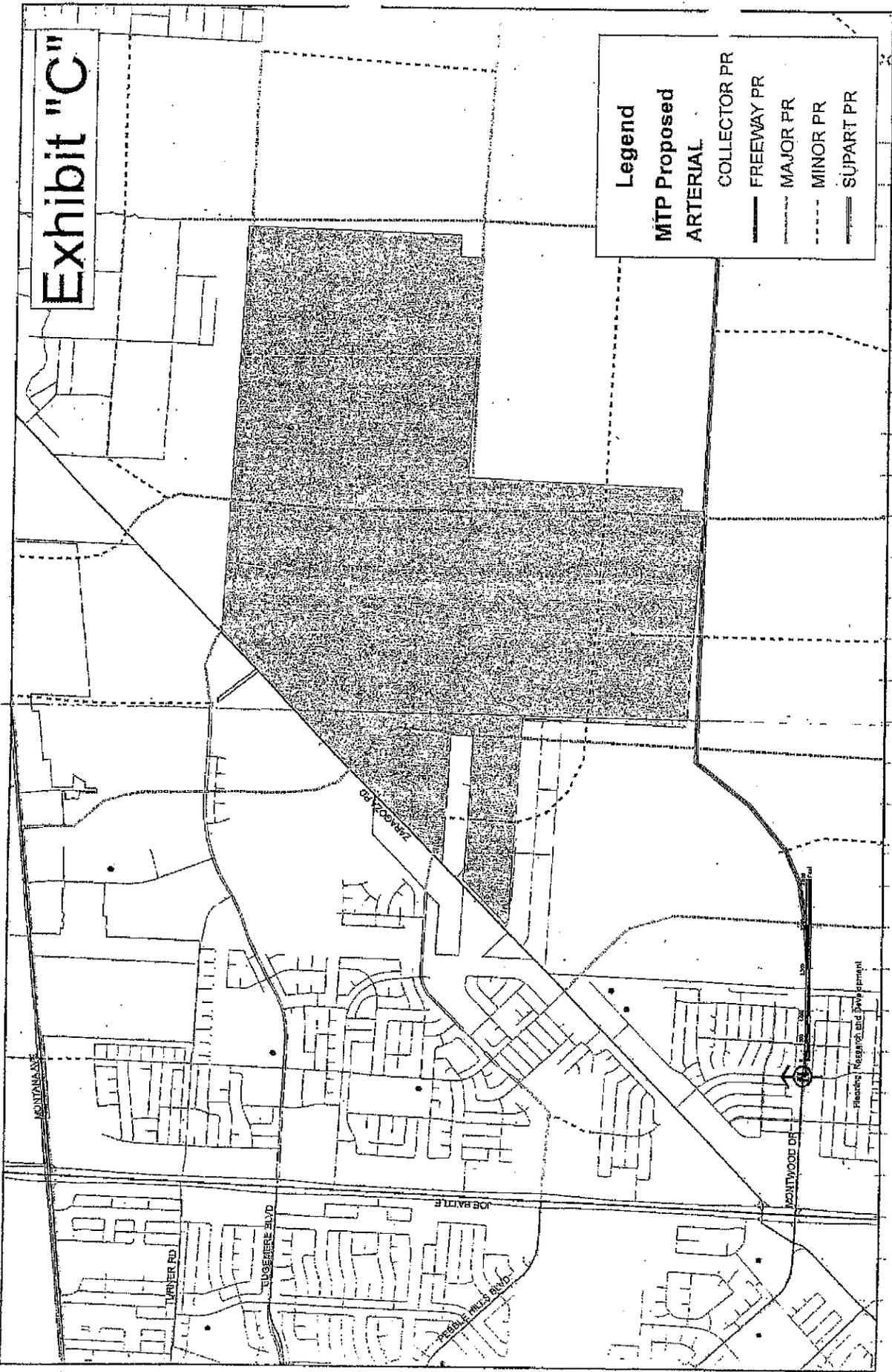
**COLLECTOR PR** - - - - -

**FREEWAY PR** ———

**MAJOR PR** - - - - -

**MINOR PR** - - - - -

**SUPART PR** ———



APPROVED  
MAY 14 1992

Planning, Research, and Development

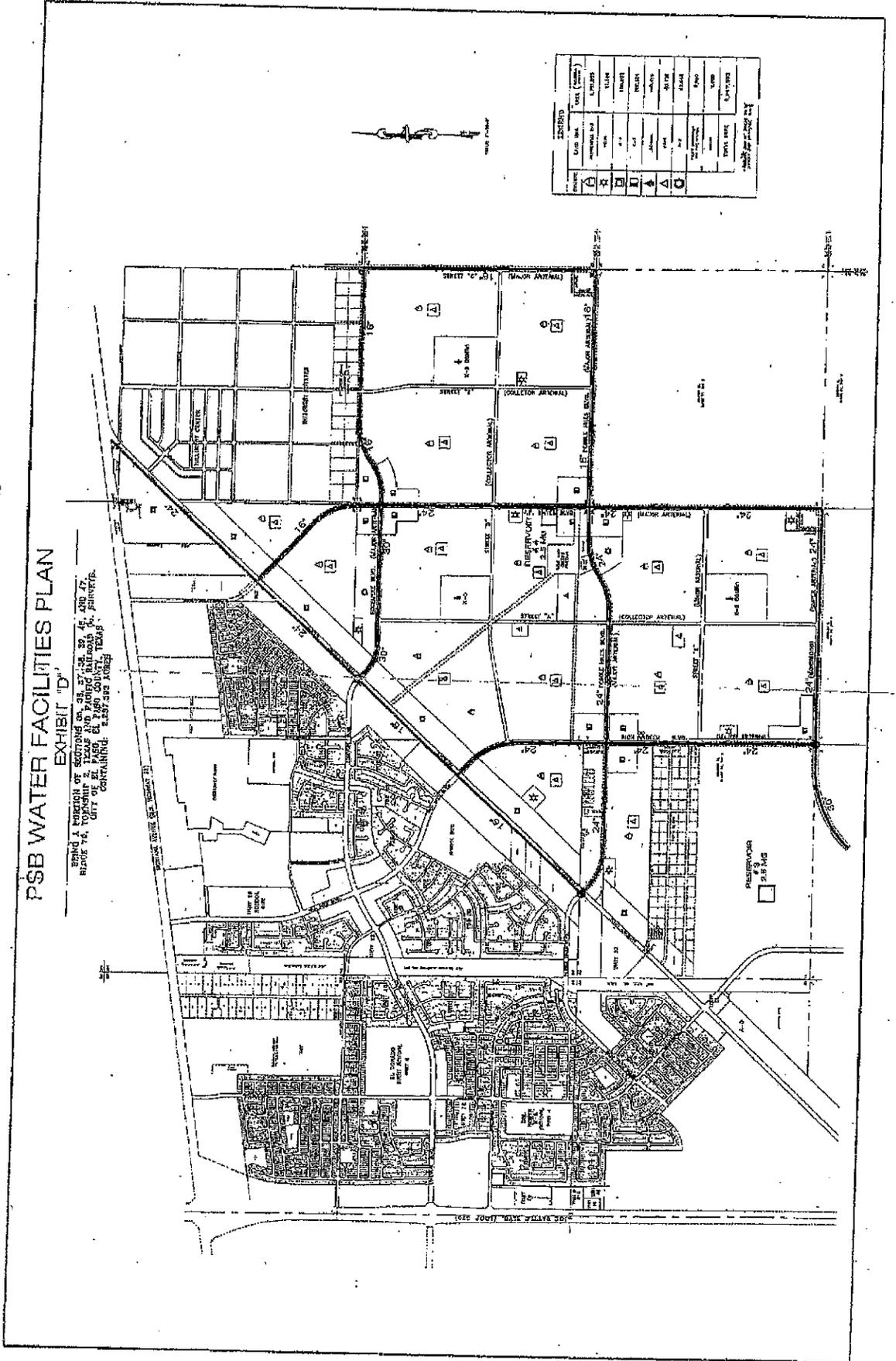
EXHIBIT "D"  
PSB WATER FACILITIES PLAN

2011 11 08 10:42  
01 30 00 01 14 42

CITY OF EL PASO  
 AUGUST 23 PM 1:42

PSB WATER FACILITIES PLAN  
 EXHIBIT "D"

SEAL & SIGNATURE OF ENGINEER  
 BOARD & NUMBER OF SECTIONS NO. 35, 37, 39, 41, AND 47.  
 BLOCK 16, TOWNSHIP 33S, RANGE 10E, COUNTY OF EL PASO, STATE OF TEXAS.  
 CITY OF EL PASO, TEXAS.  
 CITY ENGINEER: [Signature] 1,597 322 10825



SYMBOL	DESCRIPTION
(A)	12" WATER MAIN
(B)	18" WATER MAIN
(C)	24" WATER MAIN
(D)	30" WATER MAIN
(E)	36" WATER MAIN
(F)	42" WATER MAIN
(G)	48" WATER MAIN
(H)	54" WATER MAIN
(I)	60" WATER MAIN
(J)	66" WATER MAIN
(K)	72" WATER MAIN
(L)	78" WATER MAIN
(M)	84" WATER MAIN
(N)	90" WATER MAIN
(O)	96" WATER MAIN
(P)	102" WATER MAIN
(Q)	108" WATER MAIN
(R)	114" WATER MAIN
(S)	120" WATER MAIN
(T)	126" WATER MAIN
(U)	132" WATER MAIN
(V)	138" WATER MAIN
(W)	144" WATER MAIN
(X)	150" WATER MAIN
(Y)	156" WATER MAIN
(Z)	162" WATER MAIN
(AA)	168" WATER MAIN
(AB)	174" WATER MAIN
(AC)	180" WATER MAIN
(AD)	186" WATER MAIN
(AE)	192" WATER MAIN
(AF)	198" WATER MAIN
(AG)	204" WATER MAIN
(AH)	210" WATER MAIN
(AI)	216" WATER MAIN
(AJ)	222" WATER MAIN
(AK)	228" WATER MAIN
(AL)	234" WATER MAIN
(AM)	240" WATER MAIN
(AN)	246" WATER MAIN
(AO)	252" WATER MAIN
(AP)	258" WATER MAIN
(AQ)	264" WATER MAIN
(AR)	270" WATER MAIN
(AS)	276" WATER MAIN
(AT)	282" WATER MAIN
(AU)	288" WATER MAIN
(AV)	294" WATER MAIN
(AW)	300" WATER MAIN
(AX)	306" WATER MAIN
(AY)	312" WATER MAIN
(AZ)	318" WATER MAIN
(BA)	324" WATER MAIN
(BB)	330" WATER MAIN
(BC)	336" WATER MAIN
(BD)	342" WATER MAIN
(BE)	348" WATER MAIN
(BF)	354" WATER MAIN
(BG)	360" WATER MAIN
(BH)	366" WATER MAIN
(BI)	372" WATER MAIN
(BJ)	378" WATER MAIN
(BK)	384" WATER MAIN
(BL)	390" WATER MAIN
(BM)	396" WATER MAIN
(BN)	402" WATER MAIN
(BO)	408" WATER MAIN
(BP)	414" WATER MAIN
(BQ)	420" WATER MAIN
(BR)	426" WATER MAIN
(BS)	432" WATER MAIN
(BT)	438" WATER MAIN
(BU)	444" WATER MAIN
(BV)	450" WATER MAIN
(BW)	456" WATER MAIN
(BX)	462" WATER MAIN
(BY)	468" WATER MAIN
(BZ)	474" WATER MAIN
(CA)	480" WATER MAIN
(CB)	486" WATER MAIN
(CC)	492" WATER MAIN
(CD)	498" WATER MAIN
(CE)	504" WATER MAIN
(CF)	510" WATER MAIN
(CG)	516" WATER MAIN
(CH)	522" WATER MAIN
(CI)	528" WATER MAIN
(CJ)	534" WATER MAIN
(CK)	540" WATER MAIN
(CL)	546" WATER MAIN
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(CN)	558" WATER MAIN
(CO)	564" WATER MAIN
(CP)	570" WATER MAIN
(CQ)	576" WATER MAIN
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(CW)	612" WATER MAIN
(CX)	618" WATER MAIN
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(DD)	654" WATER MAIN
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(DF)	666" WATER MAIN
(DG)	672" WATER MAIN
(DH)	678" WATER MAIN
(DI)	684" WATER MAIN
(DJ)	690" WATER MAIN
(DK)	696" WATER MAIN
(DL)	702" WATER MAIN
(DM)	708" WATER MAIN
(DN)	714" WATER MAIN
(DO)	720" WATER MAIN
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(DR)	738" WATER MAIN
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(DT)	750" WATER MAIN
(DU)	756" WATER MAIN
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(DX)	774" WATER MAIN
(DY)	780" WATER MAIN
(DZ)	786" WATER MAIN
(EA)	792" WATER MAIN
(EB)	798" WATER MAIN
(EC)	804" WATER MAIN
(ED)	810" WATER MAIN
(EE)	816" WATER MAIN
(EF)	822" WATER MAIN
(EG)	828" WATER MAIN
(EH)	834" WATER MAIN
(EI)	840" WATER MAIN
(EJ)	846" WATER MAIN
(EK)	852" WATER MAIN
(EL)	858" WATER MAIN
(EM)	864" WATER MAIN
(EN)	870" WATER MAIN
(EO)	876" WATER MAIN
(EP)	882" WATER MAIN
(EQ)	888" WATER MAIN
(ER)	894" WATER MAIN
(ES)	900" WATER MAIN
(ET)	906" WATER MAIN
(EU)	912" WATER MAIN
(EV)	918" WATER MAIN
(EW)	924" WATER MAIN
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(FE)	972" WATER MAIN
(FF)	978" WATER MAIN
(FG)	984" WATER MAIN
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(FI)	996" WATER MAIN
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(FO)	1032" WATER MAIN
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(KX)	1866" WATER MAIN
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(LQ)	1980" WATER MAIN
(LR)	1986" WATER MAIN
(LS)	1992" WATER MAIN
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(LV)	2010" WATER MAIN
(LW)	2016" WATER MAIN
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(LY)	2028" WATER MAIN
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(MD)	2058" WATER MAIN
(ME)	2064" WATER MAIN
(MF)	2070" WATER MAIN
(MG)	2076" WATER MAIN
(MH)	2082" WATER MAIN
(MI)	2088" WATER MAIN
(MJ)	2094" WATER MAIN
(MK)	2100" WATER MAIN
(ML)	2106" WATER MAIN
(MM)	2112" WATER MAIN
(MN)	2118" WATER MAIN
(MO)	2124" WATER MAIN
(MP)	2130" WATER MAIN
(MQ)	2136" WATER MAIN
(MR)	2142" WATER MAIN
(MS)	2148" WATER MAIN
(MT)	2154" WATER MAIN
(MU)	2160" WATER MAIN
(MV)	2166" WATER MAIN
(MW)	2172" WATER MAIN
(MX)	2178" WATER MAIN
(MY)	2184" WATER MAIN
(MZ)	2190" WATER MAIN
(NA)	2196" WATER MAIN
(NB)	2202" WATER MAIN
(NC)	2208" WATER MAIN
(ND)	2214" WATER MAIN
(NE)	2220" WATER MAIN
(NF)	2226" WATER MAIN
(NG)	2232" WATER MAIN
(NH)	2238" WATER MAIN
(NI)	2244" WATER MAIN
(NJ)	2250" WATER MAIN
(NK)	2256" WATER MAIN
(NL)	2262" WATER MAIN
(NM)	2268" WATER MAIN
(NN)	2274" WATER MAIN
(NO)	2280" WATER MAIN
(NP)	2286" WATER MAIN
(NQ)	2292" WATER MAIN
(NR)	2298" WATER MAIN
(NS)	2304" WATER MAIN
(NT)	2310" WATER MAIN
(NU)	2316" WATER MAIN
(NV)	2322" WATER MAIN
(NW)	2328" WATER MAIN
(NX)	2334" WATER MAIN
(NY)	2340" WATER MAIN
(NZ)	2346" WATER MAIN
(OA)	2352" WATER MAIN
(OB)	2358" WATER MAIN
(OC)	2364" WATER MAIN
(OD)	2370" WATER MAIN
(OE)	2376" WATER MAIN
(OF)	2382" WATER MAIN
(OG)	2388" WATER MAIN
(OH)	2394" WATER MAIN
(OI)	2400" WATER MAIN
(OJ)	2406" WATER MAIN
(OK)	2412" WATER MAIN
(OL)	2418" WATER MAIN
(OM)	2424" WATER MAIN
(ON)	2430" WATER MAIN
(OO)	2436" WATER MAIN
(OP)	2442" WATER MAIN
(OQ)	2448" WATER MAIN
(OR)	2454" WATER MAIN
(OS)	2460" WATER MAIN
(OT)	2466" WATER MAIN
(OU)	2472" WATER MAIN
(OV)	2478" WATER MAIN
(OW)	2484" WATER MAIN
(OX)	2490" WATER MAIN
(OY)	2496" WATER MAIN
(OZ)	2502" WATER MAIN
(PA)	2508" WATER MAIN
(PB)	2514" WATER MAIN
(PC)	2520" WATER MAIN
(PD)	2526" WATER MAIN
(PE)	2532" WATER MAIN
(PF)	2538" WATER MAIN
(PG)	2544" WATER MAIN
(PH)	2550" WATER MAIN
(PI)	2556" WATER MAIN
(PJ)	2562" WATER MAIN
(PK)	2568" WATER MAIN
(PL)	2574" WATER MAIN
(PM)	2580" WATER MAIN
(PN)	2586" WATER MAIN
(PO)	2592" WATER MAIN
(PP)	2598" WATER

EXHIBIT "E"

PSB SEWER FACILITIES PLAN

RECEIVED  
01 JUN 58 04 1:42



SCANNED

Doc# 2006011845  
Pages 32 #Pages 1  
2/8/2006 10:31:43 AM  
Filed & Recorded in  
Official Records of  
EL PASO COUNTY  
WALDO ALARCON  
COUNTY CLERK  
Fees \$140.00

33

I hereby certify that this instrument was filed on the date and time stamped hereon by me and was duly recorded by document number in the Official Public Records of Real Property in El Paso County.



*Waldo Alarcon*

EL PASO COUNTY, TEXAS

CITY CLERK'S DEPT.  
ROOM 37 CH 1-62

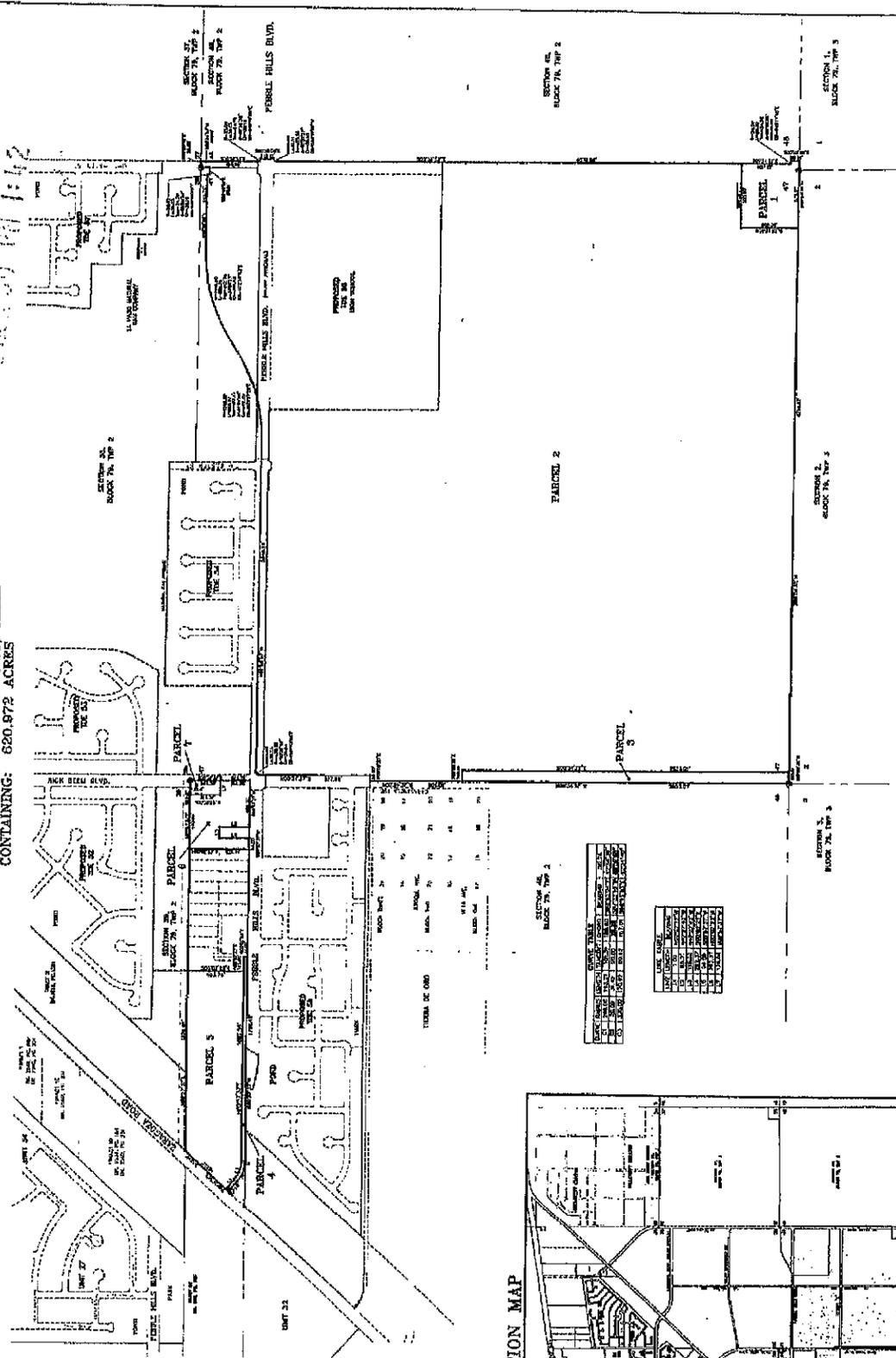
CITY CLERK'S OFFICE  
2 Civic Center Plaza  
El Paso, TX 79901-1198

*D. R. ...*

# ANNEXATION PHASE II

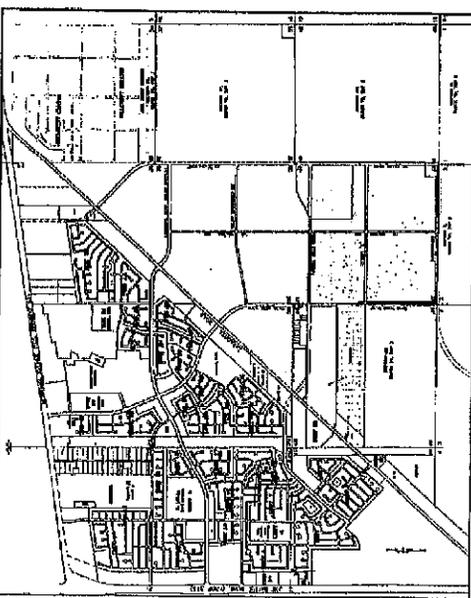
BEING A PORTION OF SECTIONS 46, 47, AND 48, BLOCK 79, TOWNSHIP 2, TEXAS AND PACIFIC RAILROAD CO. SURVEYS, CITY OF EL PASO, EL PASO COUNTY, TEXAS CONTAINING: 620.872 ACRES

CITY OF EL PASO 01/17/1917.  
 02/11/1919 01/14/2



PARCEL	OWNER	AREA AC.
1	MARSHALL REAL ESTATE CO.	6.417
2	MARSHALL REAL ESTATE CO.	579.885
3	EL PASO ELECTRIC CO.	6.830
4	MARSHALL REAL ESTATE CO.	1.478
5	EL PASO ELECTRIC CO.	14.880
6	MARSHALL REAL ESTATE CO.	1.881
7	MARSHALL REAL ESTATE CO.	6.744

LOCATION MAP



ANOT006, ANOT008

COMPILED BY JOHN W. HARRIS, JR., ENGINEER, 110 W. 11TH ST., EL PASO, TEXAS

*Dedicated to Outstanding Customer Service for a Better Community*

**SERVICE SOLUTIONS SUCCESS**

**PLANNING AND ECONOMIC DEVELOPMENT**

**MEMORANDUM**

**DATE:** June 2, 2011  
**TO:** The Honorable Mayor and City Council  
Joyce A. Wilson, City Manager  
**FROM:** Ernesto Arriola, Planner  
**SUBJECT:** John Hays/Edgemere Annexation

---

The City Plan Commission (CPC) on May 19, 2011 recommended **approval** of the proposed annexation and service plan.

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



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

**Attachment:** Staff Report



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

**Case No** AN10-003 (ZON10-00075)  
**Application Type** Annexation and Service Plan  
**CPC Hearing Date** May 19, 2011  
**Staff Planner** Ernesto Arriola, 541-4723, arriolaea@elpasotexas.gov

**Location** East of John Hays Street and South of Edgemere Boulevard  
**Legal Description** Being a portion of Sections 37 and 48, Block 79, Sections 7 & 18, Block 78, Township 2, Texas and Pacific Railway Company Surveys, El Paso County, Texas

**Acreage** 658.12 acres  
**Rep District** Adjacent to Representative District 5  
**Existing Use** Vacant  
**Existing Zoning** East ETJ  
**Proposed Zoning** C-2 / R-5

**Property Owner** Ranchos Real IV, LTD  
**Applicant** Ranchos Real IV, LTD  
**Representative** Conde, Inc.

**Distance to Park:** 455 ft. (Tim Foster Park)  
**Distance to School:** 1,503 ft (Proposed School)

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

**North:** R-5 (Residential), Vacant  
**South:** ETJ, Vacant  
**East:** ETJ, Vacant  
**West:** ETJ, Vacant/New Development

***THE PLAN FOR EL PASO DESIGNATION:*** N/A

**NEIGHBORHOOD ASSOCIATIONS:** N/A

### **APPLICATION DESCRIPTION:**

The applicant is requesting an annexation of vacant land within the City of El Paso's Extra Territorial Jurisdiction (ETJ) in conjunction with the approved Development Agreement dated January 31, 2006 and amended agreement dated July 8, 2008. The subject property is approximately 658.12 acres in size and is currently vacant. The Development Agreement described approximately 2287.593 acres of property to be annexed into the City of El Paso in phases. This annexation is the last phase of the agreement with approximately 658.12 acres of property.

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

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

*Land Development:* No comments received

**Department of Transportation - Traffic:**

No objections

**Department of Transportation - Streets:**

No objections

**El Paso Water Utilities:**

No objections

**Library:**

No objections

**Environmental Services Department - Solid Waste:**

No objections

**Environmental Services Department - Code Enforcement:**

No objections

**Police:**

No objections

**Fire Department:**

No objections

**Parks and Recreation:**

No objections

**Sun Metro:**

No objections

**TxDOT:**

No objections

**County of El Paso:**

No objections

**Attachments:**

**Attachment 1 - Location Map**

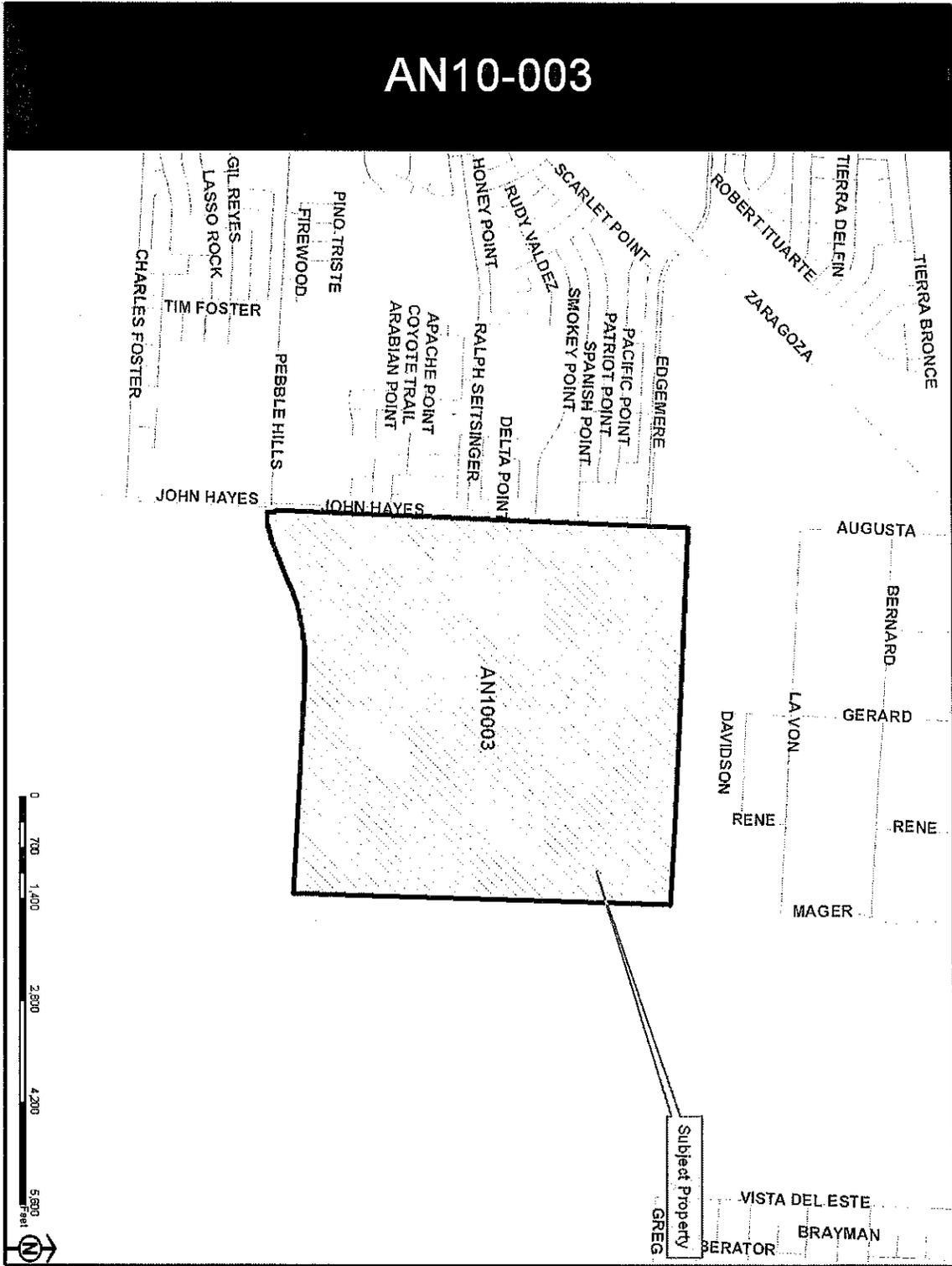
**Attachment 2 - Aerial**

**Attachment 3 - Schools and Parks**

**Attachment 4 - Ordinance**

Location Map

AN10-003



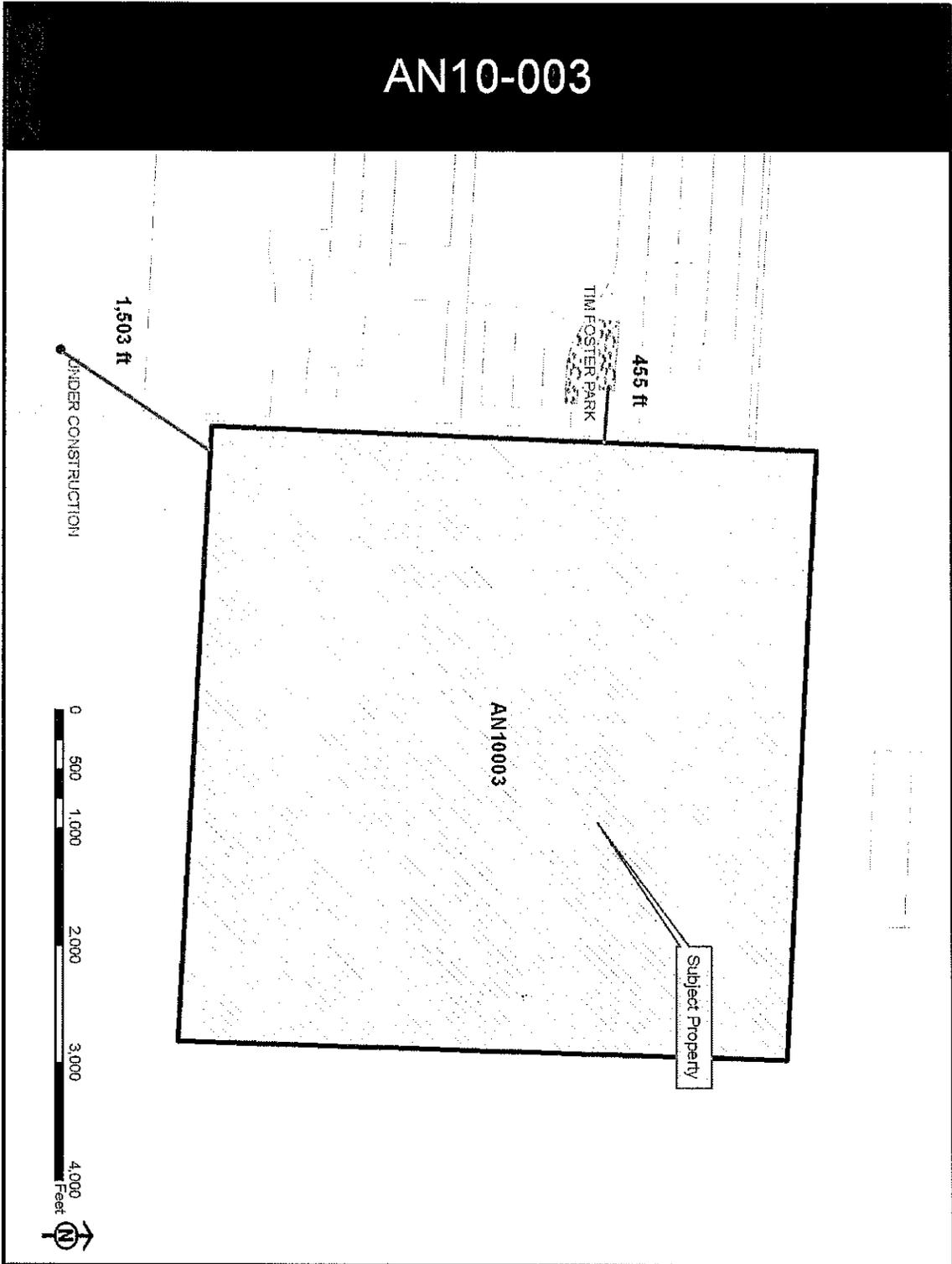
Aerial

AN10-003



Schools and Parks

AN10-003



**Ordinance**

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

**AN ORDINANCE ANNEXING THE FOLLOWING REAL PROPERTY DESCRIBED AS A PORTION OF SECTIONS 37 AND 48, BLOCK 79, SECTIONS 7 AND 18, BLOCK 78, TOWNSHIP 2, TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS, EL PASO COUNTY, TEXAS.**

WHEREAS, the Ranchos Real IV, LTD, owners of approximately 658.12 acres, lying in the City of El Paso's East Extraterritorial Jurisdiction; the property more fully described in the attached metes and bounds description, identified as Exhibit "A", and survey of the property, identified as Exhibit "B" and made a part hereof by reference, and Rancho Real IV, LTD request that this area be annexed into the El Paso City Limits; and,

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

WHEREAS, the City of El Paso and the Owners have entered into an Development Agreement on January 31, 2006 and amended July 8, 2008, attached as Exhibit "D", which governs the development of the property after the annexation; and,

WHEREAS, public hearings were held on May 16, 2011 and May 19, 2011 at which persons interested in the annexation were given the opportunity to be heard; and that no person voiced opposition to the annexation or Service Plan described as Exhibit "C";

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

That the boundaries of the CITY OF EL PASO are hereby extended so as to annex a portion of Sections 37 and 48, Block 79, Sections 7 & 18, Block 78, Township 2, Texas and Pacific Railway Company Surveys, El Paso County, Texas., more particularly described in Exhibit "A" and Exhibit "B".

Further, that the City of El Paso adopts the Service Plan described as Exhibit "C"; and that the annexation is subject to all terms and conditions of the Development Agreement, entered into on January 31, 2006 and amended July 8, 2008.

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

**THE CITY OF EL PASO**

**ATTEST:**

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

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

**APPROVED AS TO FORM:**

**APPROVED AS TO CONTENT:**

---

Lupe Cuellar,  
Assistant City Attorney

---

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

ORDINANCE \_\_\_\_\_

ANI0-003 (ZONI0-00075)

**Exhibit "A"**

Being a Portion of Sections 37 & 48, Block 79,  
And Sections 7 & 18, Block 78, Township 2,  
Texas and Pacific Railway Company Surveys,  
El Paso County, Texas  
January 27, 2011  
(Parcel 1 Annexation)

**METES AND BOUNDS DESCRIPTION**

Description of a parcel of land being a Portion of Section 37, 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 a point for the common corner of Sections 35, 36, 37, and 38, Block 79, Township 2, Texas and Pacific Railway Company Surveys from which the common corner of Sections 37, 38, 47, and 48, Block 79, Township 2, Texas and Pacific Railway Company Surveys bears South 00° 35' 06" East a distance of 5236.86 feet; Thence along the line between sections 36 and 37, North 89° 58' 06" East a distance of 55.00 feet to a point for the "TRUE POINT OF BEGINNING".

Thence along said line North 89° 58' 06" East a distance of 5258.88 feet to a point for the northeast corner of section 37, Block 79, Township 2, Texas and Pacific Railway Company Surveys;

Thence along the line between section 36 and 7, North 00° 35' 35" West a distance of 50.76 feet to a point;

Thence leaving said line North 87° 24' 29" East a distance of 65.04 feet to a point;

Thence 39.00 feet along the arc of a curve to the left which has a radius of 25.00 feet a central angle of 89° 22' 53" a chord which bears South 45° 17' 01" East a distance of 35.16 feet to a point;

Thence South 00° 54' 04" East a distance of 100.01 feet to a point;

Thence 39.54 feet along the arc of a curve to the left which has a radius of 25.00 feet a central angle of 90° 37' 02" a chord which bears South 44° 43' 01" West a distance of 35.55 feet to a point;

Thence South 00° 35' 30" East a distance of 74.19 feet to a point of curve;

Thence 177.59 feet along the arc of a curve to the right which has a radius of 2050.00 feet a central angle of 04° 57' 49" a chord which bears South 01° 53' 25" West a distance of 177.54 feet to a point of reverse curve;

Thence 168.93 feet along the arc of a curve to the left which has a radius of 1950.00 feet a central angle of 04° 57' 49" a chord which bears South 01° 53' 25" West a distance of 168.88 feet to a point;

Thence South 00° 35' 30" East a distance of 4651.49 feet to a point of curve;

Thence 39.00 feet along the arc of a curve to the left which has a radius of 25.00 feet a central angle of 89° 23' 00" a chord which bears South 45° 17' 00" East a distance of 55.16 feet to a point;

Thence South 03° 26' 40" East a distance of 50.09 feet to a point;

Thence North 89° 58' 30" West a distance of 77.23 feet to a point;

Thence South 00° 35' 30" East a distance of 77.27 feet to a point;

Thence North 87° 09' 36" West a distance of 50.09 feet to a point;

Thence 39.03 feet along the arc of a curve to the left which has a radius of 25.00 feet a central angle of 89° 26' 21" a chord which bears North 45° 18' 40" West a distance of 35.18 feet to a point;

Thence South 89° 58' 09" West a distance of 3256.47 feet to a point of curve;

Thence 558.41 feet along the arc of a curve to the left which has a radius of 1200.00 feet a central angle of 26° 39' 43" a chord which bears South 76° 38' 17" West a distance of 553.38 feet to a point;

Thence South 03° 18' 26" West a distance of 716.44 feet to a point of curve;

Thence 585.55 feet along the arc of a curve to the right which has a radius of 1258.00 feet a central angle of 26° 40' 09" a chord which bears South 76° 38' 30" West a distance of 580.28 feet to a point;

Thence South 89° 58' 35" West a distance of 149.03 feet to a point;

Thence North 00° 50' 04" West a distance of 110.01 feet to a point;

Thence 39.03 feet along the arc of a curve to the right which has a radius of 25.00 feet a central angle of 89° 26' 33" a chord which bears North 45° 18' 09" West a distance of 35.18 feet to a point;

Thence North 00° 34' 52" West a distance of 498.09 feet to a point;

Thence North 00° 35' 06" West a distance of 4760.46 feet to a point;

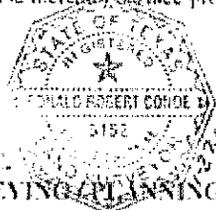
Thence North 89° 43' 33" West a distance of 5.00 feet to a point;

Thence North 00° 35' 06" West a distance of 476.38 feet to a point for the "TRUE POINT OF BEGINNING" and containing 658.12 acres of land more or less.

Note: Not a ground survey. Bearing basis is true north for a transverse mercator surface projection as determined by GPS methods based near the center of this site.

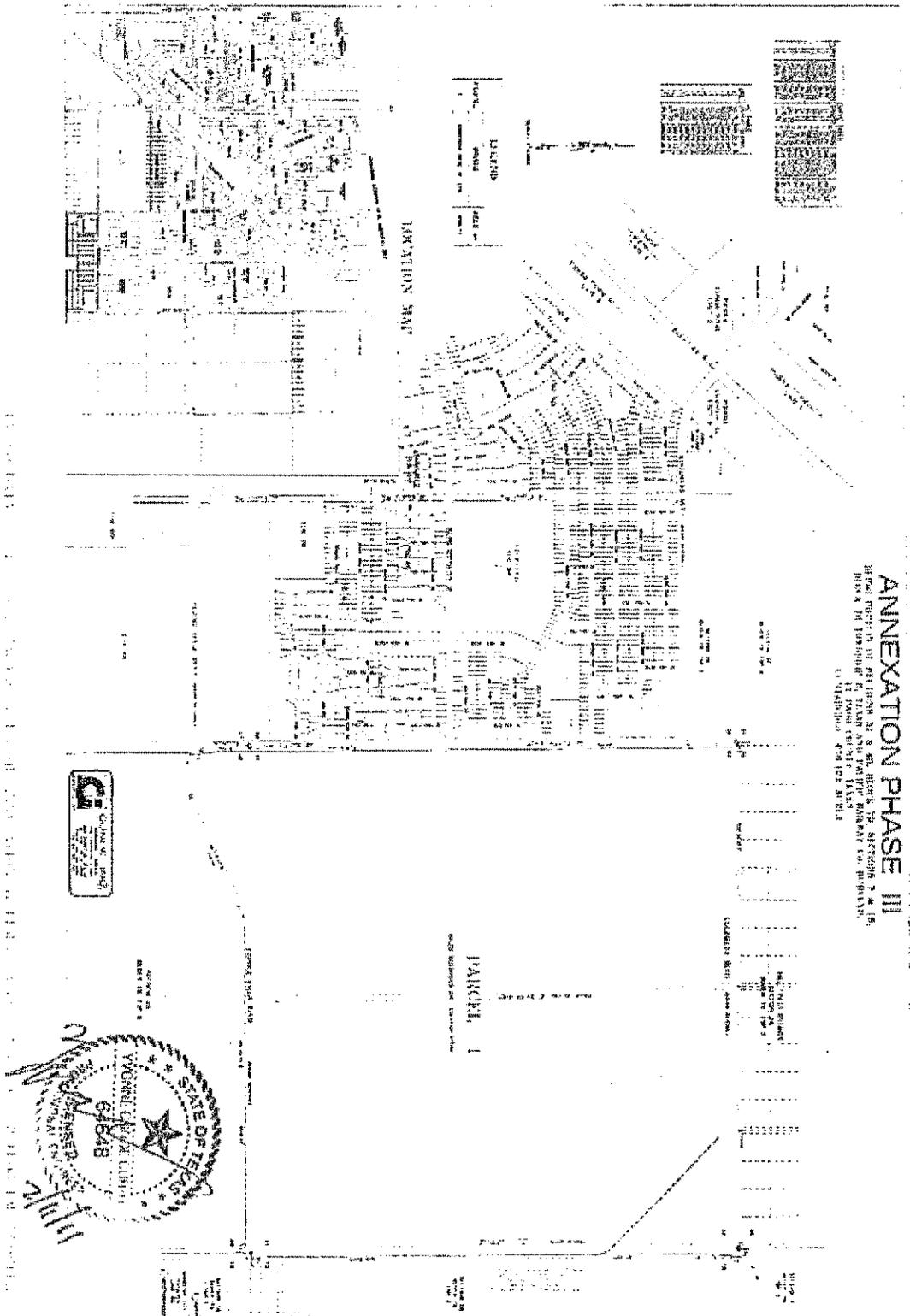


Ron R. Conde  
R.P.L.S. No. 5152



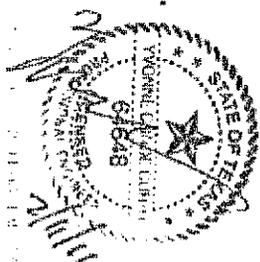
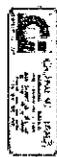
CONDE, INC.  
ENGINEERING / LAND SURVEYING / PLANNING  
6080 SURETY DRIVE, SUITE 100 / EL PASO, TEXAS 79905 / (915) 592-0283

Exhibit "B"



ANNEXATION PHASE III

BEING PORTION OF REFERENCE TO AN ORDER OF THE ATTORNEY GENERAL  
ISSUED IN 1908 AND THE PORTION OF THE ORDER OF THE ATTORNEY GENERAL  
ISSUED IN 1910 AND THE PORTION OF THE ORDER OF THE ATTORNEY GENERAL  
ISSUED IN 1912 AND THE PORTION OF THE ORDER OF THE ATTORNEY GENERAL  
ISSUED IN 1914



**Exhibit "C"**  
**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 631.696 - acre property located in the City's East Extraterritorial Jurisdiction (ETJ). A portion of Sections 37 and 48, Block 79, Sections 7 & 18, Block 78, 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 Development Agreement entered into by the property owners and the City on January 31, 2006 and amended July 8, 2008. In case of conflict between the terms of this Plan and the terms of the Development Agreement, the terms of the Development Agreement shall control.

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

**SERVICE COMPONENTS**

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

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

contract, in whole or in part. It may also include separate agreements with associations or similar entities.

1. Immediate Services Program

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

- a. Police Protection. The El Paso Police Department will provide protection and law enforcement services in the annexation area on the effective date of annexation. These services include:
- average patrols and responses;
  - handling of complaints and incident reports;
  - special units, such as, traffic enforcement, criminal investigations, narcotics, gang suppressions, and special weapons and tactics team.
- b. Fire Protection. The El Paso Fire Department will provide emergency and fire prevention services in the annexation area, on the effective date of annexation. These services include:
- fire suppression and rescue;
  - emergency medical services;
  - hazardous materials mitigation and regulation;
  - emergency prevention and public education efforts;
  - construction plan review;
  - inspections.
- c. Solid Waste Collection. The Environmental Services Department will provide solid waste collection services in the annexation area on the effective date of annexation. Services currently provided in the City for single-family residences include:
- Dead animal collection - dead animals are removed from roadways upon request;
  - Residential garbage collection;
  - Residential recycling collection.
- Commercial garbage collection service for businesses, multi-family residences, and mobile home parks is available on a subscription basis from the City or private service providers.
- d. Maintenance of Water and Wastewater Facilities. The City's Public Service Board/El Paso Water Utilities (EPWU) will maintain water and wastewater facilities in the annexed area that are not within the service area of another water or wastewater utility and as governed by their Rules and Regulations.

- e. Maintenance of Roads and Streets, Including Street Lighting. The City's Streets Department will maintain public streets over which the City has jurisdiction. These services include:
- emergency pavement repair;
  - ice and snow monitoring of major thoroughfares;
  - repair maintenance of public streets on as-needed basis and in accordance with established policies of the City.
- f. Maintenance of Parks, Playgrounds, and Swimming Pools. There are no public recreation facilities in the annexation area.

## 2. Additional Services

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

- a. Drainage Services. The City's Streets Department will provide drainage maintenance in the annexation area in accordance with established policies of the City. Services include:
- maintenance of existing public ponding areas and retention dams;
  - storm sewer maintenance;
  - emergency spills and pollution complaints response;
  - watershed development review and inspection is available through the City's Development Services Department;
  - flood plain office (information relating to flood plains) is available through the City's Engineering Department.
- b. Library Department. All library services now provided to areas inside the City will be provided to the annexed area on the effective date of annexation in accordance with the City's existing policies and regulations.
- c. Development Services Department. All inspection services now provided within the City, including building, electrical, plumbing, gas, engineering, housing, and environmental will be extended to the annexed area on the effective date of annexation.
- d. Planning and Zoning. The planning and zoning jurisdiction of the City will be extended to the annexed area on the effective date of annexation.
- e. Other Services. All other City Departments with jurisdiction in the area will provide services according to established City policies and procedures.

### 3. Capital Improvements Program

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

- a. Police Protection. Capital improvements are necessary at this time to provide Police services. The command will need to be staffed by all ranks from Commander to Patrol Officer along with Civilian support. A new regional command is overdue as the El Paso Police Department has determined that the current Pebble Hills Regional Command (PHRC) located at 10780 Pebble Hills is of inadequate size and lacks both adequate accommodations and location for the extended police personnel requirement necessary to meet population and development projections within its radically expanding Eastside Police Region. A proposed site at Edgemere and Rich Beem has been dedicated to the City and is of sufficient size to accommodate a joint facility use with the Fire Department and the Police Department. This location successfully meets the site selection criteria.
- b. Fire Protection. No capital improvements are necessary at this time to provide Fire services but may be necessary in the future. Fire Department coverage areas for the city are based on ISO standards that require a Fire Station to be a Mile and a Half (driving distance) from every facility and two and a half miles from a fire station with aerial capabilities.
- c. Solid Waste Collection. No capital improvements are necessary at this time to provide collection services but may be necessary in the future.
- d. Water and Wastewater Facilities. Water and wastewater service will be provided in accordance with the Development Agreement. Annexation fees will be due at the time of application.
- e. Roads and Streets. Edgemere Boulevard will be extended through the subject property and two unnamed collector arterials will be constructed through the subject property in accordance with the City's Master Thoroughfare Plan and will be dedicated and improved by the property owner in accordance with the Development Agreement. In general, the City will acquire control and jurisdiction of all public roads and public streets within the

annexation area upon annexation. Future extensions of roads or streets and future installation of related facilities, such as traffic control devices, will be governed by the City's standard policies and procedures.

- f. Parks, Playgrounds and Swimming Pools. No capital improvements are necessary at this time to provide services but may be necessary in the future.
- g. Drainage Facilities. No capital improvements are necessary at this time to provide services but may be necessary in the future.
- h. Street Lighting. It is anticipated that the developer of new subdivisions in the area will install public street lighting in accordance with the City's standard policies and procedures. In other cases, the City will install public street lighting in the annexation area upon request in accordance with established street lighting policies of the City.
- i. Other Publicly Owned Facilities, Building or Services: In general, other City functions and services, and the additional services described above can be provided for the annexation area by using existing capital improvements. Additional capital improvements are not necessary to provide City services.
- j. Capital Improvement Planning. The annexation area will be included with other territory in connection with planning for new or expanded facilities, functions, and services in accordance with established policies of the City and where applicable, the Development Agreement.

#### **AMENDMENT: GOVERNING LAW**

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

## **FORCE MAJEURE**

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

**Exhibit "D"**  
**Development Agreement**

RESOLUTION

WHEREAS, on January 31, 2006, the El Paso City Council approved a Development Agreement and subsequent amendments or extensions, by and between the CITY OF EL PASO, the EL PASO WATER UTILITIES-PUBLIC SERVICE BOARD, RANCHOS REAL IV, LTD., and RIVER OAKS PROPERTIES, LTD., to set forth the rights and responsibilities between the parties to allow for the development of the property located within the City's East Extraterritorial Jurisdiction; and,

WHEREAS, the applicant has requested that the City amend Exhibit B, Development Plan of the Development Agreement to allow an increase to the neighborhood commercial area abutting Rich Beam and Pebble Hills; and,

WHEREAS, the applicant has also an amendment to Exhibit B to allow an increase to the neighborhood commercial area abutting Tim Foster and Pebble Hills, John Wayne and John Hayes, plus Montwood and John Hayes and to allow the location of a public high school; and,

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

That the City Manager be authorized to sign an amendment to the January 31, 2006 Development Agreement by and between the City of El Paso, the El Paso Water Utilities-Public Service Board, Ranchos Real IV, LTD., and River Oaks Properties, LTD. to amend Exhibit B, Development Plan, to increase the neighborhood commercial area abutting Rich Beam and Pebble Hills and Tim Foster and Pebble Hills, John Wayne and John Hayes and Montwood and John Hayes and to allow the location of a public high school.

PASSED AND APPROVED this 8<sup>th</sup> day of July, 2008.

THE CITY OF EL PASO

John V. Cook  
John V. Cook  
Mayor

ATTEST:

Richarda Duffly Morsen  
Richarda Duffly Morsen  
City Clerk

APPROVED AS TO FORM:

Lupe Cuellar  
Lupe Cuellar  
Assistant City Attorney

APPROVED AS TO CONTENT:

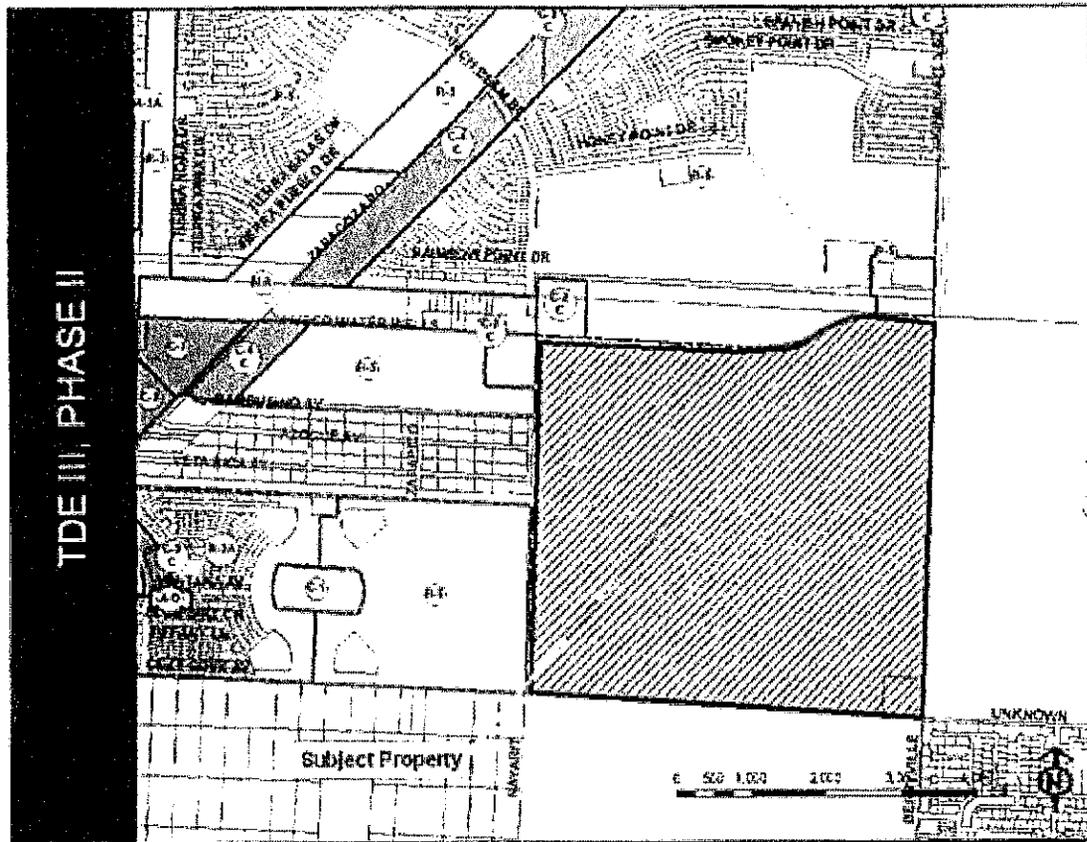
Victor Q. Torres  
for Victor Q. Torres  
Development Services Department





## TDE III, PHASE II, DEVELOPMENT PLAN AMENDMENT

**Application Type:** Development Agreement/Plan Amendment  
**Property Owner(s):** Ranchos Real XII, LTD and River Oaks Properties Ltd.  
**Representative(s):** Conde, Inc.  
**Legal Description:** A portion of Sections 46, 47, and 48, Block 79, Township 2, Texas and Pacific Railway Company Surveys, El Paso County, Texas  
**Location:** Rich Beam Boulevard and Pebble Hills Boulevard  
**Representative District:** East ETJ (Adjacent to Districts 5 and 6)  
**Area:** Vacant  
**Proposed Use:** A mix of uses  
**Proposed Change:** Increase the neighborhood commercial area abutting Rich Beam and Pebble Hills; allow neighborhood commercial abutting Tim Foster and Pebble Hills, John Wayne and John Hayes, Montwood and John Hayes.  
**Surrounding Land Uses:** North: R-5, C-2 / TDE Phase I, Vacant; South: East ETJ / Vacant; East: East ETJ / Vacant; West: East ETJ, Zaragoza Road / Single-family Residential  
**Year 2025 Designation:** N/A, Residential (East ETJ)



**General Information:**

The applicant requests an amendment to the Development Agreement Plan (Exhibit B) that was approved with a development agreement dated January 31, 2006, pursuant to Subchapter G, Chapter 212, Local Government Code. The proposed changes to the development plan would allow an increase to the neighborhood commercial area abutting Rich Beam and Pebble Hills; allow neighborhood commercial abutting Tim Foster and Pebble Hills, John Wayne and John Hayes, Montwood and John Hayes. The proposed plan also shows the location of a public high school. The subject property is in the East ETJ and will be proposed for annexation at a later date as part of Phase II of the development agreement. The proposed development plan also includes areas that are not part of the original approved development plan and that are pending approval from City Council for annexation.

**Staff Recommendation:**

The Development Coordinating Committee (DCC) recommends APPROVAL of this request to amend the development plan.

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 designates portions of this property for Residential land uses.

In addition, recommendation for approval of was based on the overall long-term benefits to the City versus the short-term impacts. Approval of the amended development plan 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.

**Findings:**

The Commission must determine the following:

1. Will the proposed land use designations of the subject property protect the best interest, health, safety/welfare of the public in general?
2. Will the proposed land use designations be compatible with adjacent land uses?
3. What is the relation of the proposed the proposed land use designations to the city's Comprehensive Plan?
4. What effect will the proposed land use designations 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 for the following reasons.

Nodal commercial at the intersection of arterial and collector streets will allow for neighborhood services to the residential areas and serve as a buffer between the arterials and the residential.





Attachment 2: Development Agreement

01/10/19

RESOLUTION

WHEREAS, pursuant to state law the City of El Paso ("City") does not regulate the zoning or construction of improvements and structures outside of its corporate boundaries; and,

WHEREAS, Ranchos Real IV, Ltd. and River Oaks Properties, Ltd. (collectively the "Owner") are the owners of record of real property which is not located within the corporate limits of any municipality but is contiguous to the corporate limits of the City; and Owner desires that the property be subject to a development agreement and subsequently be annexed into the City; and,

WHEREAS, Subchapter G, Chapter 212 of the Texas Local Government Code, allows for the governing body of a municipality to enter into a written contract with an owner of land that is located in the extraterritorial jurisdiction of the municipality; and,

WHEREAS, further, Subchapter G, allows for the City to extend its planning authority over the land and authorize the enforcement of the City's land use and development regulations over the land in the same manner the regulations are enforced within the municipality's boundaries and provide for the annexation of the land in a timely manner; and,

WHEREAS, Owner, after full consideration, accepts the terms and conditions cited in the proposed Development Agreement due to the advantages and benefits resulting from the subsequent annexation of the property; and,

WHEREAS, the City, after due and careful consideration, and after consultation with the El Paso Water Utilities-Public Service Board, has concluded that the annexation of the property on the terms and conditions set forth in the Development Agreement is in the best interest of the City to protect and provide for the public health, safety, morals and general welfare.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Development Agreement, and subsequent amendments or extensions, by and between the CITY OF EL PASO, the EL PASO WATER UTILITIES-PUBLIC SERVICE BOARD, RANCHOS REAL IV, LTD., and RIVER OAKS PROPERTIES, LTD., to set forth the rights and responsibilities between the parties to allow for the development of the property located within the City's East Extraterritorial Jurisdiction and containing 2,287.593 acres; in accordance with Subchapter G, Chapter 212 of the Texas Local Government Code, and subject to the affirmative approval and execution of same agreement by the El Paso Water Utilities-Public Service Board.

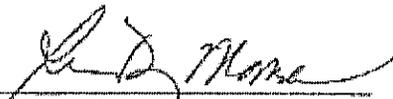
*(Signatures appear on the following page.)*

PASSED AND APPROVED this 31<sup>st</sup> day of January, 2006.

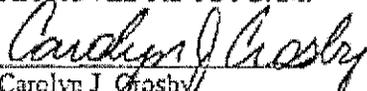
THE CITY OF EL PASO

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

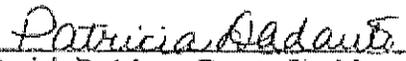
ATTEST:

  
\_\_\_\_\_  
Richards Duffy Momsen  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Carolyn J. Crosby  
Assistant City Attorney

APPROVED AS TO CONTENT:

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



ONE: Unless the context requires otherwise, the following terms and phrases used in this Agreement shall have the meanings set out below:

"Agreement" means this Development Agreement by and between the City, the PSB, and the Owner.

"Annexation Fee" means the annexation fee described in Section Eleven of this Agreement previously adopted by the Board of the PSB.

"City" means the City of El Paso, Texas, a home rule municipality situated in El Paso County, Texas.

"City Council" means the City Council of the City or any successor governing body.

"City Regulations" shall mean all duly enacted ordinances, rules, and regulations of the City, including the Code, the Subdivision Regulations, and the PSB Regulations.

"Code" shall mean the El Paso Municipal Code.

"Development Plan" shall mean the plan for development of the Property attached to this Agreement as Exhibit "B". The Development Plan shall include the Phasing Plan and the Road Plan.

"District" shall have the meaning set forth in Section Sixteen.

"Effective Date" means the date set forth in the first paragraph of this Agreement.

"Major Thoroughfare Plan" or "MTP" shall mean the plan attached as Exhibit "C".

"New Regulations" shall mean City Regulations, or amendments to City Regulations, enacted after the Effective Date.

"Nominate" shall refer to the action of the Owner in submitting to the City a nomination.

"Nomination" means a written notice and application requesting annexation of the portion of the Property described in the notice.

"Owner" means collectively Ranchos Real IV, Ltd. being the owner of the real property described by metes and bounds on Exhibit "A-4", save and except the real property described by metes and bounds on Exhibit "A-5"; and River Oaks Properties, Ltd. being the owner of the real property described by metes and bounds on Exhibits "A-1", "A-2", and "A-3".

"Party" or "Parties" means a party or the parties to this Agreement, being the City, the PSB, and the Owner.

"Phase One" shall mean the first phase of development of the Property as set forth in the Phasing Plan.

"Phasing Plan" shall mean the plan, included in the Development Plan, for the phased development of the Property.

"Property" shall mean the 2,287.593-acre tract of land described by metes and bounds in Exhibits "A-1" through "A-4", save and except the tract of land described by metes and bounds in Exhibit "A-5".

"PSB Facilities" shall mean water and wastewater facilities to be constructed by and at the expense of the PSB, or constructed by the Owner under developer participation contracts executed in accordance with Chapter 212 of the Texas Local Government Code pursuant to which the PSB would reimburse the Owner for the costs in accordance with PSB Regulations in effect as of the Effective Date of this Agreement. The PSB Facilities are shown in Exhibits "D" and "E".

"PSB" or "Public Service Board" shall mean the El Paso Water Utilities Public Service Board, the trustee and governing board of the El Paso Water Utilities.

"PSB Regulations" shall mean the duly adopted rules and regulations of the PSB.

"Road Plan" shall mean the plan, included in the Development Plan that describes the roads within the Property to be constructed by the Owner and dedicated to the City.

"Subdivision Coordinator" shall mean the subdivision coordinator referenced in the Subdivision Regulations.

"Subdivision Regulations" shall mean the regulations in Title 19 of the El Paso Municipal Code.

"Vesting Statute" shall mean Chapter 245, Texas Local Government Code.

TWO: The Property shall be developed in phases in accordance with the Phasing Plan, and shall be developed in an orderly manner from adjacent existing development. In accordance with Texas Local Government Code Section 212.172(g), the Parties agree this Agreement constitutes a permit under Chapter 245 of the Texas Local Government Code. Owner expressly waives any and all vested rights accrued under this Agreement and agrees to the provisions related to vested rights as provided herein. Owner shall not file an application for the City's approval a subdivision plat for any portion of the Property for thirty (30) days after the Effective Date. Within ninety (90) days following the recording of the subdivision plat relating to Phase One, and within ninety (90) days following the recording of each subdivision plat with respect to future phases of development, the City shall provide to the portion of the Property covered by the plat all of the municipal services provided inside municipal boundaries, regardless of whether the portion of the Property covered by the subdivision plat has been annexed as

of such date. However, the scheduling of water and wastewater services to the Property shall be in accordance with the provisions of Section Eleven.

THREE: The City agrees to annex the Property in accordance with the terms and conditions of this Agreement, provided that the terms and conditions of this Agreement are met by the Owner. (a) The Owner shall submit and initiate an application for annexation by filing a Nomination with the City, nominating Phase One of the Property no later than thirty (30) days after the Effective Date of this Agreement. Thereafter, the Owner shall submit and initiate applications for annexation by filing a Nomination with the City in accordance with the Phasing Plan. (b) The Owner shall use their best effort to coordinate and request that the owner of the real property described by metes and bounds in Exhibit "A-5", be included and part of the submission of the annexation application for the applicable Phase in which this property is located.

Within one hundred twenty (120) days, the City shall annex the nominated portion through passage of an annexation ordinance in accordance with applicable state law provisions regarding public notice and hearings. Whether the Owner nominates all of the Property for annexation at one time or nominates portions of the Property for annexation in phases, the Owner shall complete such nominations no later than the fourth anniversary of the Effective Date, so that all of the Property may be annexed by the City no later than the fifth anniversary of the Effective Date. It shall not be considered a breach of the terms of this Agreement by any party if the annexation of the Property is delayed, unless such delay is directly caused by that party. However, if all or a portion of an annexation application is delayed, this shall not relieve the Owner of the obligation to submit nominations of remaining Property for annexation, in accordance with the Phasing plan, and all of the Property must be nominated by the Owner within four years. (b) The City may annex all or a portion of the Property under this Agreement by enacting an ordinance annexing the Property. To the extent allowed by law, the enactment of an ordinance annexing the Property or portion thereof described in the Nomination shall be the only procedure required of the City to annex the Property or a portion thereof.

FOUR: Owner hereby agrees that the development of the Property shall be in accordance with the City Regulations, including the PSB Regulations, and subject to the application and payment of all necessary application and permit fees except as otherwise provided in this Agreement. Pursuant to Subchapter G, Chapter 212, Local Government Code, the City and Owner agree that, except as otherwise provided herein, the City Regulations shall be applicable to the Property on the Effective Date. Notwithstanding the Vesting Statute, the City may apply New City Regulations to any portion of the Property that is not the subject of a subdivision plat filed for approval with the City, provided the New City Regulations are otherwise valid and are applied equally to other similarly situated areas of the City. However, the Vesting Statute shall apply to a portion of the Property on and after the date a subdivision plat application is filed for approval with the City relating to such portion of the Property.

FIVE: Owner hereby agrees that prior to the development of any portion of the Property, a land study for such portion of the Property shall be required and an application filed with the Subdivision Coordinator for approval by the City. All provisions

for submittal, review, approval, amendment and withdrawal of an approved land study shall follow the procedures and requirements outlined in the Subdivision Regulations. The land study shall be consistent with and shall not be used to supersede the terms of this Agreement or the Development Plan, or require the development of the Property in a manner inconsistent with the Development Plan.

The City's review and approval of any submissions by Owner will not be unreasonably withheld or delayed. The City will review any plans, plat or other filing by Owner in accordance with the City Regulations, state law and this Agreement. If any submittal is not approved, the City will provide written comments to Owner specifying in detail all of the changes that will be required for the approval of the submitted application.

The City acknowledges that timely City reviews are necessary for the effective implementation of Owners' development program. Therefore, the City agrees that it will comply with all statutes and City Regulations establishing time periods for development reviews.

Due to the fact that the Property comprises a significant land area and its development will occur in phases over a number of years, modifications to the land study may become necessary due to changes in market conditions or other factors. In order to provide flexibility with respect to certain details of the development of the Project, Owner may seek changes in the location and configuration of the proposed uses shown on the land study and amendments may be submitted in accordance with the Code.

The Development Plan attached hereto has been prepared in accordance with the requirements of the current Subdivision Regulations. In the event that the Subdivision Regulations or zoning code are hereafter amended, Owner shall revise the Development Plan to conform to the revised Subdivision Regulations and zoning code with respect to those portions of the Property for which an application for a subdivision plat has not been filed. In addition to the foregoing, in the event that the City adopts a final ordinance within thirty (30) days of the Effective Date amending Title 19 of the Code which amendment is applied equally to all other subdivisions in the limits of the City or its ETJ (the "Parkland Dedication Amendment"), then Owner agrees to amend its Development Plan, if necessary, to incorporate the requirements of the Parkland Dedication Amendment. The Owner shall submit the revised Development Plan no later than fifteen (15) days from the adoption of the Parkland Dedication Amendment, and shall be subject to the review and approval of City staff.

SIX: Owner hereby agrees that prior to the issuance of any building permits or certificates of occupancy relating to the Property, Owner shall apply for and secure approval of a subdivision plat in accordance with the procedures of the Subdivision Regulations. Consistent with the Phasing Plan, City agrees to allow Owner to submit phased subdivision platting.

SEVEN: On and after the Effective Date, the Property may be developed in a manner consistent with the residential and commercial zoning classifications as shown in the Development Plan. Upon the annexation of a portion of the Property, such portion

shall be automatically classified as R-3 (Residential) for zoning purposes, but such classifications shall not affect (i) any structure on which construction commenced prior to the annexation or (ii) any development allowed under a subdivision plat, which was approved prior to annexation. In addition, Owner may petition the City, at any time, and at Owner's expense, for rezoning of the Property (or portion thereof) as provided in the Code.

EIGHT: Owner agrees to provide for the dedication and improvement of public neighborhood parkland within the Property to the extent required by the City Regulations. The approximate size and location of the parcel(s) shall be as provided in the Development Plan.

NINE: Owner agrees to provide for the dedication, at no cost to the City, in the aggregate, of up to four (4) acres, at not more than six (6) locations within the Property owned by Ranchos Real IV, Ltd., and described on Exhibit "A-4", for use by the City solely for public purposes, such as municipal offices, storage, police, fire and EMS protection, or other municipal operations to the extent required by the City. Such dedication shall be identified in the approved subdivision plat. The approximate size and location of the dedication(s) shall be as provided in the Development Plan.

TEN: Owner shall dedicate, construct and maintain for a one-year period after acceptance by the City the improvements for the full width of the necessary right-of-way for extensions of any arterial streets as shown in the City's official Major Thoroughfare Plan ("MTP") as of the Effective Date. Except as hereinafter set forth, Owner shall not request or be eligible for reimbursement for any costs associated or in connection with claims for overwidth paving from the City. Owner shall not be obligated to dedicate, construct, and maintain the improvements to the right-of-way for arterial streets added to the City's MTP after the Effective Date or not shown in the attached Road Plan, unless the MTP is amended at the request of the Owner(s) and results in the addition or upgrade of the status of the arterial street. If the City amends the MTP with respect to the Property, after the Effective Date, then the Owner may request or be eligible for reimbursement for any costs associated or in connection with claims for overwidth paving from the City.

ELEVEN: In addition to any other fees required by PSB Regulations, Owner agrees to pay an Annexation Fee to the El Paso Water Utilities for each three-quarter inch (3/4") equivalent water meter that is connected to the public water system (regardless of the timing of the annexation of the Property by phases) as follows:

<u>Meter Size</u>	<u>EAST ETJ Water (\$)</u>	<u>EAST ETJ Wastewater (\$)</u>
5/8" x 3/4"	566	328
1"	1,396	809
1 1/2"	2,830	1,640
2"	4,525	2,624
3"	9,056	5,248

4"	14,150	8,200
6"	28,300	16,400
8"	52,827	30,613
10"	75,467	43,733

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

The Annexation Fee shall be increased by three (3) percent on March 1, 2006, and each year thereafter, compounded annually. Payment of the Annexation Fee shall be due at the time of application for connection of an individual meter to the water system. Notwithstanding the adoption of New City Regulations, the Annexation Fee set forth above 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.

The PSB agrees to impose on new Eastside developments that are annexed into the City after the Effective Date, or that are located in the Eastside PSB Planned Service Area and to which City water or wastewater services are connected after the Effective Date, Annexation Fees that are equal to or greater than the fees imposed on Owner under this Agreement. Notwithstanding the foregoing, the PSB shall not be required to impose an Annexation Fee to any Eastside development to the extent it is connected to and serviced by another entity, which is governed by a separate agreement and subsequently annexed by the City.

Immediately after the Effective Date, the PSB shall commence the engineering and construction activities necessary to provide retail water and wastewater services to the Owner's Property in order to ensure that the development of the Property in accordance with the Phasing Plan is not delayed. Within ninety (90) days following the Effective Date, water and wastewater services shall be made available to Phase One. In regard to future phases, water and wastewater services shall be available in accordance with the Phasing Plan. The water and wastewater facilities to be constructed by the Owner, and the PSB Facilities, to be constructed by the PSB, are addressed in Section Seventeen and in Exhibits "D" and "E".

Without limiting the foregoing, the provision of retail water and wastewater services shall not be delayed on the grounds that the Property has not been annexed in whole or in part. The rates for water and wastewater services shall be equal to the rates charged inside the incorporated boundaries of the City. However, if the Owner for whatever reason fails to submit annexation applications in accordance with the provisions of this Agreement or is in default of any obligation under this Agreement, then the rates for water and wastewater services shall be in accordance with the PSB regulations for outside City rates, in addition to any fees required herein. If the Property is subsequently annexed, inside City rates for the incorporated boundaries in accordance with PSB regulations in effect at the time of annexation shall apply. The City's obligation to provide water and wastewater services to the Property shall survive the expiration of the term of

the Agreement. The obligation for the Owner to pay Annexation Fees as each water meter application is made survives the expiration of the Term of this Agreement.

TWELVE: 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. Such aerial, and any other evidence necessary to demonstrate the existence of any non-conforming lot, use or structure on the Property, shall be provided by the Owner within thirty (30) days after the date the City adopts an annexation ordinance annexing a portion of the Property. 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.

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

FOURTEEN: Any formal notices or other communications 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. Notice shall be effective only if and when received by the Party to be notified. For the purposes 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

Mailing Address:  
2 Civic Center Plaza  
El Paso, Texas 79901

Physical Address:  
Same as above

(2) El Paso Water Utilities Public Service Board:  
El Paso Water Utilities Department  
Attn: General Manager

Mailing Address:  
1154 Hawkins Boulevard  
El Paso, Texas 79925

Physical Address:  
Same as above

(3) Owner:  
Ranchos Real IV, Ltd.  
Attn: Douglas Schwartz

Mailing Address:  
1790 Lee Trevino, Suite 601  
El Paso, Texas 79936

Physical Address:  
Same as above

River Oaks Properties, Ltd.  
Attn: Gerald J. Rubin

Mailing Address:  
One Helen of Troy Plaza  
El Paso, Texas 79912

Physical Address:  
Same as above

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 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.

FIFTEEN: This Agreement shall have a term of fifteen (15) years. The Parties may, by mutual agreement, as evidenced by a writing executed by the City Manager of the City, the General Manager of the El Paso Water Utilities Department, and a representative of the Owner, extend and/or renew the term, but only to the extent permitted by Subchapter G, Chapter 212, Local Government Code; provided, however, nothing contained in this section shall affect the Owner's obligation to submit nominations for annexation of all phases of the Property on or before the fourth (4<sup>th</sup>) anniversary of the Effective Date.

SIXTEEN: The Owner has previously sought from the City consent for the creation of a municipal utility district and/or water control and improvement district for the purpose of providing water and wastewater services to the Property (the "District"). In consideration of this Agreement, including the PSB's obligation hereunder to provide water and wastewater services to the Property, the Owner agrees to refrain from seeking the creation of the District.

SEVENTEEN: (a) Except for the PSB Facilities, the Owner agrees to construct at its expense the mains and pipes located inside the Property that are necessary to provide retail water and wastewater utility services to the Property. The mains and pipes shall be

designed and constructed in accordance with PSB Regulations. To the extent such facilities are oversized for the purpose of serving developments outside the Property, the cost of the oversized portion of the facilities shall be borne by the PSB. Notwithstanding the foregoing, the Owner shall not be obligated to construct or otherwise bear the costs of PSB Facilities, including water supply, water treatment facilities, wells, water storage tanks, desalinization facilities, or wastewater treatment facilities, in excess of the Annexation Fee provided for herein.

(b) The PSB shall acquire the right of way and construct at its expense the mains, pipes, and other facilities outside the Property that are necessary to provide water and wastewater services to the Property

(c) For greater certainty, Exhibits "D" and "E" describe the PSB Facilities to be constructed by the PSB at the PSB's expense.

EIGHTEEN: To the extent (if any) that this Agreement would obligate the City to make a payment or make an expenditure, the obligation shall be payable solely from revenues received by the City from current revenues, including revenues from the sale of water and wastewater utility services, it being the intention of the Parties that no obligation of the City in this Agreement shall be payable in whole or in part from property taxes, or from proceeds of obligations payable in whole or in part from property taxes, or otherwise constitute a debt of the City within the meaning of Article XI, Section 5 or Section 7 of the Texas Constitution.

**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, tornados, hurricanes, arrests and restraints of governments and people, explosions, breakage or damage to machines or pipelines and any other inability of either Party, whether similar to those enumerated or otherwise, and not within the reasonable control of the Party claiming such inability.

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

**Entire Agreement:** This Agreement contains the entire agreement of the Parties, and there are no other agreements or promises, oral or written, between the Parties regarding the subject matter of this Agreement. This Agreement may be amended only by written agreement signed by the Parties. By approving the execution of this Agreement, the City Council of the City, and the Public Utilities Board of the El Paso Water Utilities, delegate to the City Manager of the City, and to the General Manager of the El Paso Water Utilities, the authority, without any further action being required of the City Council or of the Public Utilities Board, to execute such amendments or extensions to this Agreement as they may consider advisable, and consistent with the provisions of law.

**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 state or federal courts situated in 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 other 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 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 event of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any Party on the basis that such Party did or did not author the same.

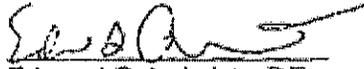
**Counterparts:** It is understood and agreed that this Agreement may be executed in any number of counterparts, each which shall be deemed an original for all purposes.

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

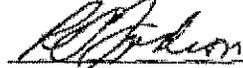
**IN WITNESS WHEREOF,** the parties have hereunto set their hands and seals and have caused this instrument to be executed by their duly authorized officials and the corporate seal affixed hereto, all on the day and year first above written.



EL PASO WATER UTILITIES  
PUBLIC SERVICE BOARD

  
Edmund G. Archuleta, P.E.  
General Manager

APPROVED AS TO FORM:

  
Robert D. Andron  
General Counsel

ACKNOWLEDGEMENT

STATE OF TEXAS        )  
                                  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on the 1st day of February, 2006, by Edmund G. Archuleta, as General Manager of the El Paso Water Utilities Public Service Board.



  
Notary Public, State of Texas    )  
Nancy E. Gutierrez





EXHIBITS "A-1" through "A-5"

LEGAL DESCRIPTION

EXHIBIT  
A-1  
A-2  
A-3  
A-4  
A-5

Being a portion of Sections 35, Block 79,  
Township 2, Texas and Pacific Railway Company Surveys,  
El Paso County, Texas  
Prepared for: Southwest Land Development Services Inc.  
January 24, 2006

### METES AND BOUNDS DESCRIPTION

Description of a parcel of land being a portion of Sections 35, Township 2, Texas and Pacific Railway Company Surveys, El Paso County, Texas and being more particularly described by metes and bounds as follows:

THE "TRUE POINT OF BEGINNING" being the corner common to Sections 35, 36, 37 and 38, Block 79, Township 2, Texas and Pacific Railway Company Surveys

Thence along the common line of Section 35 and 38, Block 79 Township 2, Texas and Pacific Railway Company Surveys South  $89^{\circ}59'07''$  West a distance of 3679.78 feet to a point on the southeasterly right of way line of Zaragoza Road:

Thence along said right of way line North  $42^{\circ}31'34''$  East a distance of 5382.79 feet to a point on the common line of Sections 35 and 36, Block 79, Township 2, Texas and Pacific Railway Company Surveys,

Thence along said line South  $00^{\circ}35'54''$  East a distance of 3966.22 feet to the "TRUE POINT OF BEGINNING" and containing 7,297,039 Sq. Ft. or 167.517 Acres of land more or less.

NOTE: Bearings basis is per plat of Tierra Del Este Unit Twenty Nine recorded in volume 79, Pages 104, Plat records of El Paso County, Texas

  
Ron R. Conde  
R.P.L.S. No. 5152  
June 10-30 P.C.

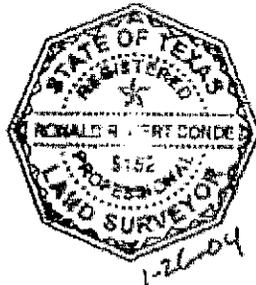


Exhibit A-1

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

Being a portion of Section 39, Block 79,  
Township 2, Texas and Pacific Railroad Company Surveys  
El Paso County, Texas  
Prepared for: Edwards, Belk, Hunter, and Kerr  
July 27, 2004  
Parcel: 4A

### METES AND BOUNDS DESCRIPTION

Description of a parcel of land being a portion of Section 39, Block 79, Township 2, Texas and Pacific Railroad Company Surveys El Paso County, Texas and being more particularly described by metes and bounds as follows:

Commencing for reference at a found 1/2" rebar with cap marked TX 5152 set for the common corner of sections 38, 39, 46 and 47, Block 79, TSP 2, T & P RR. Surveys from this point a 2" pipe found for the common corner of sections 34, 35, 38 and 39 bears North 00°33'11" West a distance of 5235.75 feet, Thence from said 1/2" rebar South 89°57'37" West with the common line between sections 39 and 46 a distance of 2542.84 feet to a set 1/2" rebar with cap marked TX 5152 for The "TRUE POINT OF BEGINNING":

Thence continuing along said boundary line South 89°57'37" West (West Book 1618, Page 1321) a distance of 678.89 feet to a set 1/2" rebar with cap marked TX 5152 on the southeasterly right of way line of Zaragoza Road (F.M. 659);

Thence along said right of way line North 42°31'34" East (N42°28'32"E Book 1618, Page 1321) a distance of 4716.77 (4776.06 Book 1618, page 1321) feet to a set 1/2" rebar with cap marked TX 5152 on the line between sections 38 and 39;

Thence along said line South 00°33'11" East a distance of 732.06 feet to a set 1/2" rebar with cap marked TX 5152;

Thence South 42°31'34" West a distance of 3722.85 feet to the "TRUE POINT OF BEGINNING" and containing 48.437 acres of land more or less.

NOTE: Bearings Basis is True North for a Transverse Mercator Surface Projection as determined by GPS Methods based on a set 1/2" rebar with cap marked TX 5152. Latitude: 31°47'01.296"N Longitude: 106°14'58.705W Height: 3928.22sf

A Plat of even date accompanies this description.

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

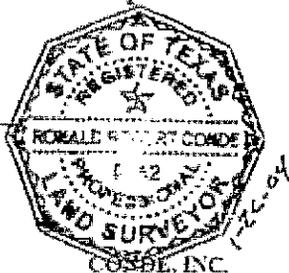


Exhibit A-2

Job# 704-46 R.C.  
LGI-6430446.LSL

Being all of Tract 1A4, Section 35  
and a portion of Sections 36,  
Block 79, Township 2,  
Texas and Pacific Railroad  
Company Survey,  
El Paso County Texas  
January 25, 2006

#### METES AND BOUNDS DESCRIPTION

Description of a parcel of land being all of Tract 1A4, Section 35 and a portion of Sections 36, Block 79, Township 2, Texas and Pacific Railroad Company Survey, El Paso County Texas, and being more particularly described by metes and bounds as follows:

Commencing at a found 2" pipe, said point being the northwesterly corner of Section 36, also being the common corner between sections 25, 26, and 35, Block 79, Township 2, Texas and Pacific Railroad Surveys; Thence South 00°32'00" East, along the common section line between Sections 35 and 36, a distance of 7.93 feet to a point lying on the southerly right-of-way line of Montana Avenue (US Highway No. 62-180) to a found 1/2" iron, said point being the TRUE POINT OF BEGINNING of this description;

Thence, North 81°18'00" East, along said right-of-way line, a distance of 52.45 feet to a point lying on the common boundary line between sections 25 and 36, Block 79, Township 2, Texas and Pacific Railroad Company Surveys;

Thence, North 89°59'29" East, along said boundary line, a distance of 1,122.58 feet to a point;

Thence, South 39°02'00" East, a distance of 0.41 feet to a point lying on the northerly right-of-way line of East Zaragoza Road (F.M. 659 Ysleta-Carlsbad cut-off road);

Thence, South 42°33'00" West, along said right-of-way line, a distance of 1,719.81 feet to a point lying on the common boundary line between Sections 35 and 36, Block 79, Township 2, Texas and Pacific Railroad Company Surveys;

Thence, South 42°33'00" West, continuing with said right-of-way line, a distance of 1,347.17 feet to a point;

Thence, North 00°32'00" West, a distance of 2,111.08 feet to a point lying on the southerly right-of-way line of Montana Avenue (US Highway No. 62-180);

Thence, North 81°18'00" East, along said right-of-way line, a distance of 894.19 feet to a point;

Thence, South 00°32'00" East, a distance of 218.16 feet to a point;

Thence, South 89°28'00" West, a distance of 125.00 feet to a point;

Thence, South 00°32'00" East, a distance of 175.00 feet to a point;

Thence, North 89°28'00" East, a distance of 155.00 feet to a point;

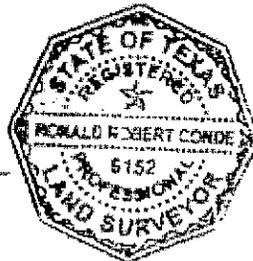
Thence, North 00°32'00" West, a distance of 397.47 feet to a point;

Thence, North 81°18'00" East, a distance of 5.12 feet to "TRUE POINT OF BEGINNING" and containing in all 2,261,201 square feet or 51.910 acres of land more or less.

Meets and bounds description is based on ALTA survey performed by SLJ Engineering, dated December 14, 2005.

NOT A GROUND SURVEY.

Exhibit A-3  
(Page 2 of 2)



R R C

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

job # 106-47

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

Being a portion of Sections 37, 38, 39, 46 and 47, Block 79,  
Township 2, Texas and Pacific Railway Company Surveys,  
El Paso County, Texas  
Prepared for: Southwest Land Development Services Inc.  
January 24, 2006

#### METES AND BOUNDS DESCRIPTION

Description of a parcel of land being a portion of Sections 37, 38, 39, 46 and 47, 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:

THE "TRUE POINT OF BEGINNING" being the corner common to Sections 35, 36,  
37 and 38, Block 79, Township 2, Texas and Pacific Railway Company Surveys

Thence along the common line of Section 36 and 37, Block 79 Township 2, Texas  
and Pacific Railway Company Surveys North  $89^{\circ}58'06''$  East a distance of 5313.88  
feet to a point for the common corner of Sections 36 and 37, Block 79, Township 2,  
and Sections 7 and 18, Block 78, Township 2, Texas and Pacific Railway Company  
Surveys;

Thence along the common line of Sections 37, Block 79, Township 2 and Section 18,  
Block 78, Township 2, Texas and Pacific Railway Company Surveys South  $00^{\circ}35'30''$   
East a distance of 4736.94 feet to a point;

Thence leaving said line South  $89^{\circ}58'09''$  West a distance of 500.00 feet to a point;

Thence South  $00^{\circ}35'30''$  East a distance of 500.00 feet to a point on the common line  
of Sections 37 and 48, Block 79, Township 2, Texas and Pacific Railway Company  
Surveys;

Thence along the common line of Section 37 and 48, Block 79, Township 2, Texas  
and Pacific Railway Company Surveys South  $89^{\circ}58'09''$  West a distance of 4814.48  
feet to a point on the common corner of Sections 37, 38, 47 and 48, Block 79,  
Township 2, Texas and Pacific Railway Company Surveys;

Thence along the line of Sections 37 and 48, Block 79, Township 2, Texas and Pacific  
Railway Company Surveys South  $00^{\circ}34'52''$  East a distance of 4734.76 feet to a  
point;

Thence leaving said line South  $89^{\circ}59'32''$  West a distance of 500.00 feet to a point;

Thence South  $00^{\circ}34'52''$  East a distance of 500.00 feet to a point on the common line  
of Section 47, Block 79, Township 2, and Section 2, Block 79, Township 3, Texas  
and Pacific Railway Company Surveys;

Thence along said line South  $89^{\circ}59'32''$  West a distance of 4716.17 feet to a point;

Thence North  $00^{\circ}34'37''$  West a distance of 2853.01 feet to a point;

Thence North  $89^{\circ}58'26''$  West a distance of 100.01 feet to a point;

Thence North  $00^{\circ}34'37''$  West a distance of 809.08 feet to a point;

Thence South  $89^{\circ}58'35''$  West a distance of 4422.30 feet to a point of curve;

Thence 185.59 feet along the arc of a curve to the right which has a radius of 230.00  
feet a central angle of  $42^{\circ}32'00''$  a chord which bears North  $68^{\circ}45'25''$  West a  
distance of 181.35 feet to a point;

Thence North  $47^{\circ}29'25''$  West a distance of 26.86 feet to a point on the southeasterly  
right of way line of Zaragoza Road;

Thence along said right of way line North 42°31'40" East a distance of 1314.56 feet to a point;

Thence leaving said right of way line North 89°58'35" East a distance of 3707.62 feet to a point on the common line of Sections 46 and 47, Block 79, Township 2, Texas and Pacific Railway Company Surveys;

Thence along said line North 00°34'37" West a distance of 524.76 feet to a point for the common corner of Section 38, 39, 46 and 47, Block 79, Township 2, Texas and Pacific Railway Company Surveys;

Thence along the common line of Sections 39 and 46, Block 79, Township 2, Texas and Pacific Railway Company Surveys South 89°57'37" West a distance of 2542.84 feet to a point;

Thence leaving said line North 42°31'34" East a distance of 3722.85 feet to a point on the common line of Sections 38 and 39, Block 79, Township 2, Texas and Pacific Railway Company Surveys;

Thence along said line North 00°33'11" West a distance of 732.06 feet to a point on the southeasterly right of way line of Zaragoza Road;

Thence along said right of way line North 42°31'34" East a distance of 2,390.93 feet to a point on the common line of Sections 35 and 38, Block 79, Township 2, Texas and Pacific Railway Company Surveys;

Thence along said line North 89°59'07" East a distance of 3679.78 feet to the "TRUE POINT OF BEGINNING" and containing 89,135.304 Sq. Ft. or 2,046.219 Acres of land more or less.

NOTE: Bearings basis is per plat of Tierra Del Este Unit Twenty Nine recorded in volume 79, Pages 104, Plat records of El Paso County, Texas

  
Ron R. Conde  
R.P.L.S. No. 5152  
Joh 608-F.R.C.



Exhibit A-4  
(Page 2 of 2)

CONDE, INC.  
ENGINEERING · LAND SURVEYING · PLANNING  
1790 LEE TRUVENO SUITE 400 / EL PASO, TEXAS 79936 · (915) 551-0253

Being a portion of Sections 38, Block  
Township 2, Texas and Pacific Railway Company Surveys,  
El Paso County, Texas  
Prepared for: Southwest Land Development Services Inc.  
January 24, 2006  
(Save and Except Portion)

#### METES AND BOUNDS DESCRIPTION

Description of a parcel of land being a portion of Sections 38, 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 the corner common to Sections 37, 38, 47 and 48, Block 79, Township 2, Texas and Pacific Railway Company Surveys, Thence along the common line of Section 37 and 38, Block 79, Township 2, Texas and Pacific Railway Company Surveys North  $00^{\circ}32'27''$  West a distance of 222.61 feet to a point for THE "TRUE POINT OF BEGINNING"

Thence leaving said line North  $89^{\circ}46'19''$  West a distance of 5315.88 feet to a point on the common line of Sections 38 and 39, Block 79, Township 2, Texas and Pacific Railway Company Surveys,

Thence along said line North  $00^{\circ}30'31''$  West a distance of 59.97 feet to a point;

Thence leaving said line South  $89^{\circ}49'30''$  East a distance of 3815.58 feet to a point;

Thence North  $00^{\circ}28'20''$  West a distance of 465.30 feet to a point,

Thence North  $40^{\circ}37'29''$  West a distance of 4703.80 feet to a point on the southeasterly right of way line of Zaragoza Road;

Thence along said right of way line North  $40^{\circ}35'25''$  East a distance of 75.58 feet to a point;

Thence leaving said right of way line South  $40^{\circ}37'15''$  East a distance of 4623.41 feet to a point;

Thence North  $00^{\circ}53'24''$  West a distance of 77.62 feet to a point;

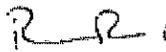
Thence South  $89^{\circ}46'48''$  East a distance of 659.70 feet to a point;

Thence South  $00^{\circ}33'24''$  East a distance of 599.67 feet to a point;

Thence South  $89^{\circ}46'48''$  East a distance of 839.84 feet to a point on the common line of Sections 36 and 37, Block 79, Township 2, Texas and Pacific Railway Company Surveys,

Thence along said line South  $00^{\circ}32'27''$  East a distance of 120.15 feet to the "TRUE POINT OF BEGINNING" and containing 1,155,971 Sq Ft or 26.49 Acres of land more or less.

NOTE: above description and bearings based on plat of survey prepared by Robert R. Seigel on February 8, 1999

  
Ree R. Conde  
R.P.L.S. No 5152  
June 12-90-P.C.

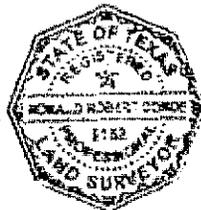


Exhibit A-3

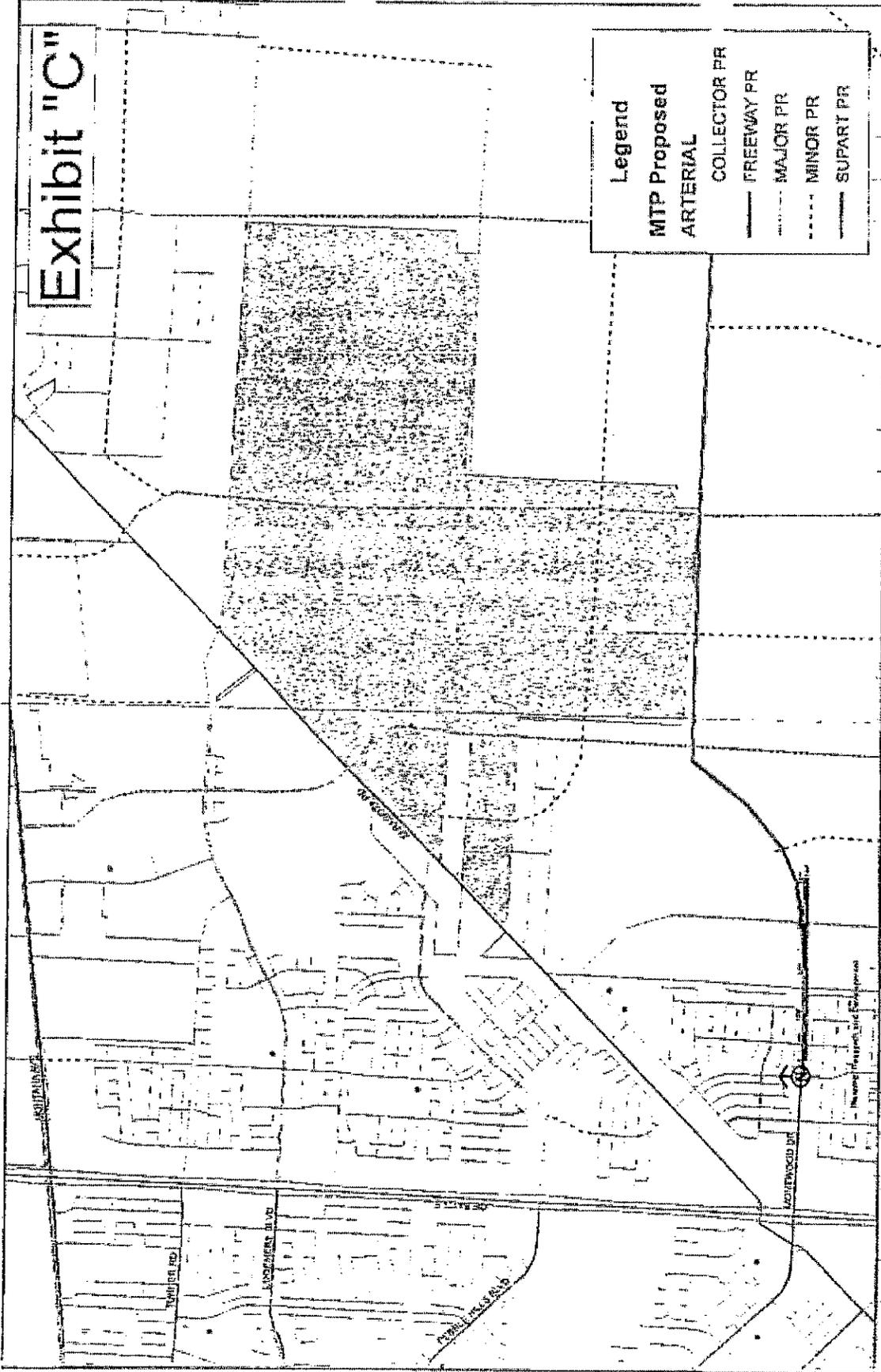
CONDE, INC.  
ENGINEERING LAND SURVEYING PLANNING  
1790 LEE FREYNO SUITE 400 EL PASO, TEXAS 79901-1015 907-425-1111



EXHIBIT "C"  
MAJOR THOROUGHFARE PLAN

2017  
11/13

# Exhibit "C"



2014

EXHIBIT "D"  
PSB WATER FACILITIES PLAN

2011

1142

# PSE WATER FACILITIES PLAN

## EXHIBIT 'A'

Map A, located in Appendix B, of the City of St. Paul, Minnesota, showing the location of the water facilities plan.

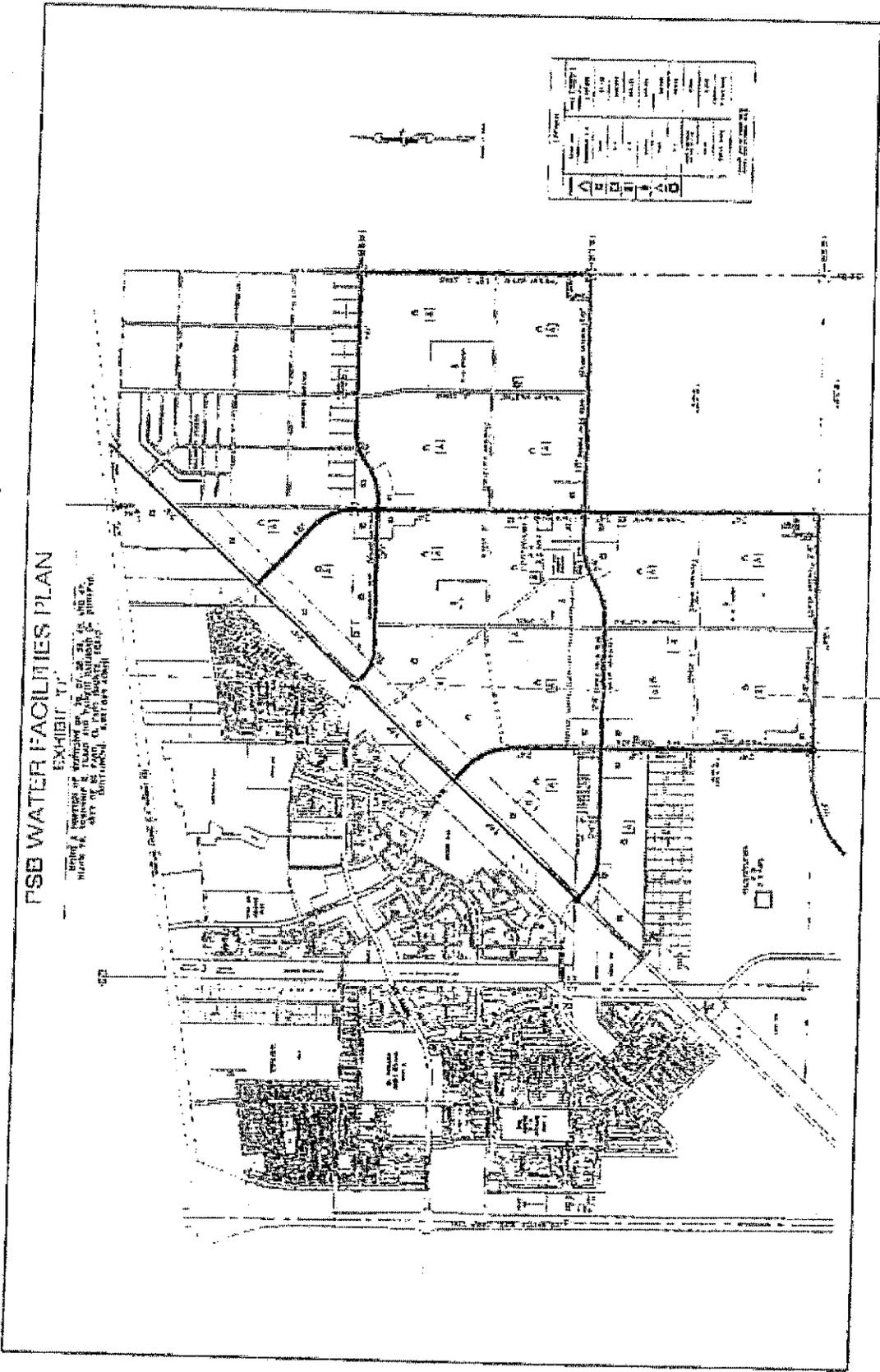


EXHIBIT "E"  
PSE SEWER FACILITIES PLAN

2012



SCANNED

Doc# 20050211045  
Pages 32 of Pages 1  
2/8/2006 10:31:43 AM  
Filed & Recorded in  
Official Records of  
EL PASO COUNTY  
WALDO ALARCON  
COUNTY CLERK  
Fees \$148.00

33

I hereby certify that this instrument was filed on the date and time stamped  
hereon by the AHD and was duly recorded by document number in the Official  
Public Records of Real Property in El Paso County.



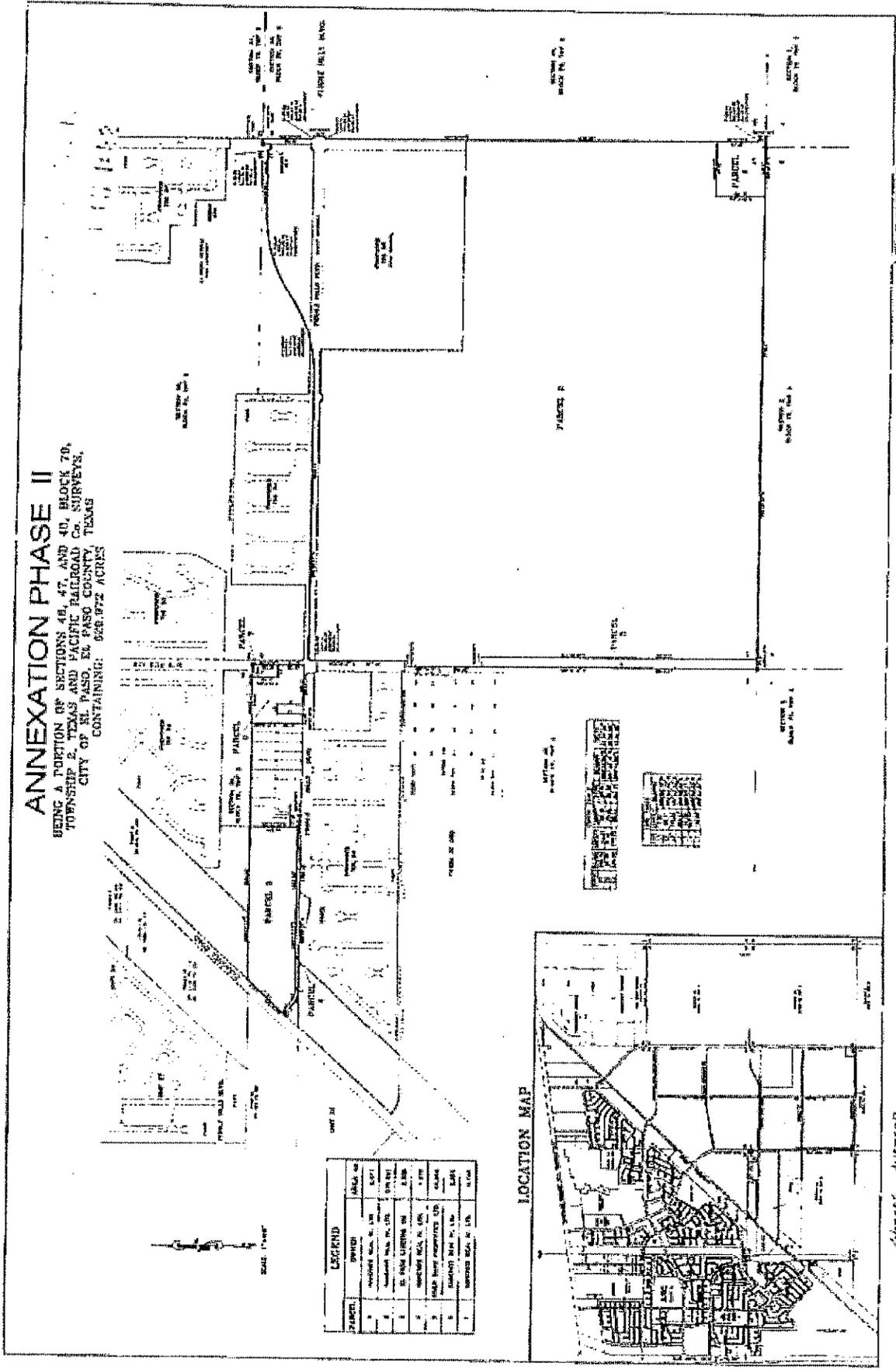
EL PASO COUNTY, TEXAS

*Waldo Alarcon*

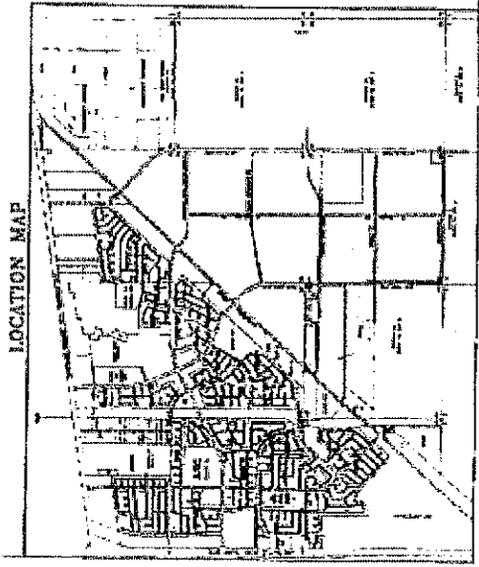
CITY CLERK'S OFFICE  
2000 Center Plaza  
El Paso, TX 79901-1198

D. ...

**ANNEXATION PHASE II**  
 BEING A PORTION OF SECTIONS 46, 47, AND 48, BLOCK 70,  
 TOWNSHIP 2, TEXAS AND PACIFIC RAILROAD CO. SURVEYS,  
 CITY OF EL PASO, EL PASO COUNTY, TEXAS  
 CONTAINING: 638.872 ACRES



PARCEL	OWNER	AREA AC
1	UNDEVELOPED	1.000
2	UNDEVELOPED	1.000
3	UNDEVELOPED	1.000
4	UNDEVELOPED	1.000
5	UNDEVELOPED	1.000
6	UNDEVELOPED	1.000
7	UNDEVELOPED	1.000
8	UNDEVELOPED	1.000
9	UNDEVELOPED	1.000
10	UNDEVELOPED	1.000



ANNEXATION 1 AUGUST 1988