

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

DEPARTMENT: Parks and Recreation
AGENDA DATE: July 24, 2007
CONTACT PERSON/PHONE: Barry Russell, 915-541-4292
DISTRICT(S) AFFECTED: District 6

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

An ordinance of City Council approving an off-site park dedication within the Mesquite Trails Subdivision.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

The developer made a decision to not include the park site within any of the plats and requested an off-site park dedication. This allows the developer to build the various units within the subdivision and then return to complete the park, still within the required two year window he has to complete all subdivision improvements.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

No.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

N/A

BOARD / COMMISSION ACTION:

The City Planning Commission approved these requests at their July 12, 2007 meeting.

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

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____
(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA: _____

CITY MANAGER: _____ **DATE:** _____

07 JUL 16 AM 11:37
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RESOLUTION

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

THAT the City Manager be authorized to sign the following Development Agreement by and between the City of El Paso and Americas Loop 375, L.P. for an off-site dedication of a park site per requirements of Chapter 19.12 of the El Paso City Code:

Mesquite Trails Development Agreement

PASSED AND APPROVED this _____ day of _____, 2007.

CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:



Barry Russell, Interim Director
Parks and Recreation Department

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STATE OF TEXAS)
)
COUNTY OF EL PASO)

DEVELOPMENT AGREEMENT

This Agreement is made this ____ day of **July, 2007**, by and between **AMERICAS LOOP 375, A TEXAS LIMITED PARTNERSHIP**, hereinafter referred to as the “Developer,” and the **CITY OF EL PASO**, a Texas municipal corporation hereinafter referred to as the “City.”

WITNESSETH:

WHEREAS, Title 19 (Subdivisions) of the El Paso Municipal Code permits the off-site dedication of parkland; and

WHEREAS, on July 5, 2006, City Council approved Ordinance Number 016391 (the “Ordinance”), which imposed in part a requirement that parkland be dedicated and improved or fees be paid to the City by the Developer; and

WHEREAS, the Developer proposes to dedicate **11.1025** acres of land to the City as off-site parkland in accordance with the El Paso City Code; and

WHEREAS, the City Plan Commission on July 12, 2007, authorized the off-site dedication of the park site per requirements of Chapter 19.12 of the El Paso City Code; and

WHEREAS, the City is not prohibited from entering into this agreement (“Agreement”) by Texas Local Government Code Section 212.071; and

WHEREAS, the El Paso City Council has authorized this Agreement and directed the execution of same by the City Manager.

NOW, THEREFORE, the parties hereby agree as follows:

1. **DESCRIPTION:** The Developer, being the owner of a **11.1025** acre parcel of land, more or less, being *a portion of Section 16, Block 79, Township 3, Texas and Pacific Railway Company Surveys, City of El Paso, El Paso, County, Texas*, being more particularly

described by metes and bounds in Exhibit “A,” which is attached hereto for all purposes and referred to hereinafter as the “Park Site,” hereby agrees to dedicate said property to the City for park purposes.

2. **PARKLAND DEDICATION CREDIT:** The Developer, by this off-site dedication, is not requesting and will not be granted by the City any parkland credit for land dedication applicable toward any subsequent parkland requirement within the Mesquite Trails Land Study Area (Park Zone E10), as shown on Exhibit “B,” which is attached hereto for all purposes, pursuant to any applicable provisions of the El Paso Municipal Code, hereinafter referred to as “Code.”

3. **PARKLAND CALCULATION:** The amount of parkland required for a subdivision plat submitted for residential development within the Mesquite Trails Land Study (Park Zone E10), is in accordance with Chapter 19.12 (Parkland Dedication) of the Code.

4. **PARK IMPROVEMENTS:** The Park Site shall be improved by the Developer in accordance with the requirements of Chapter 19.12.050(C) (Parkland Dedication) and all other applicable provisions of the Code.

4.1 Developer is herein authorized to enter the Park Site at any time for the purpose of completing said improvements as otherwise permitted in the City Code. The improvements must be completed in accordance with the Schedule of Improvements attached hereto as Exhibit “C”, which is incorporated for all purposes, and in accordance with the City’s Subdivision Ordinance and all directives of the City’s Parks and Recreation Department (the “Department”).

4.2 Upon completion of the improvements, which shall be considered to be accomplished when the last such improvement listed on Exhibit “C” is installed or planted in accordance with the Park Design Guidelines and Standards of the City’s Parks and Recreation

Department at the Park Site. Developer shall provide a copy of the release of lien from the Developer. Developer's books and other records related to the improvements shall be available for inspection by the City upon written request.

5. **CITY PARTICIPATION:** The City does not anticipate expending any of its own resources in the initial development of the Park Site.

6. **CONVEYANCE & TITLE:** The Developer agrees to pay the cost of providing a title search, preparation of the deed, as well as recording costs for the deed on the Park Site. Developer shall deliver to the Planning, Research and Development Department the deed conveying fee simple title of the Park Site in accordance with Chapter 19.12 (Parkland Dedication) of the Code.

7. **TAXES:** The Developer agrees to pay all ad valorem taxes, standby fees and assessments by any taxing authority on the City prorated through the date of acceptance of the deed conveying fee simple title by the City Council.

8. **PARKLAND DEDICATION ORDINANCE:** All provisions of this Agreement are subject to Title 19 (Subdivisions), Chapter 19.12 (Parkland Dedication) and all other applicable provisions of the Code, and nothing herein is intended to waive or modify any provision of the Code.

9. **STREET DEVELOPMENT:** The Developer agrees to provide all necessary drawings, plans, and specifications, according to current City design standards and policies for the improvement and extension of future subdivision streets, which abut the outer perimeter of the Park Site, in accordance with all applicable provisions of the Code. Street improvements shall include all sewer, water, gas, electric, curb, gutter and median landscaping in accordance with approved street plans. Construction of said streets shall be in accordance with the approved subdivision improvement plans, and shall be completely installed and constructed

by the Developer within the time period specified for construction of subdivision improvements in Title 19 (Subdivisions) of the Code.

10. **INSURANCE & INDEMNITY:** The Developer agrees to provide the following as a condition of the Agreement throughout the time that the improvements are under construction (the “Construction Period”): Developer shall have its contractor provide and keep in force, comprehensive general liability insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) for personal injuries sustained by one claimant from a single occurrence, TWO MILLION DOLLARS (\$2,000,000.00) for personal injuries to more than one claimant from a single occurrence, and ONE MILLION DOLLARS (\$1,000,000.00) for property damages from a single occurrence. Such policy shall name the City as an additional insured and shall be issued by an insurance company licensed to do business in Texas. Such policy shall provide for thirty (30) days written notice to the City prior to cancellation or material alteration of the insurance coverage.

10.1 Developer is required to purchase liability insurance on behalf of the City or, alternatively, may name the City as an additional insured on the policy of general liability insurance referenced above. Such insurance shall provide coverage for any alleged acts or omissions of the City, its agents, employees or independent contractors, alleged or asserted by any individual, in connection with the performance of this Agreement.

10.2 Developer shall maintain said insurance with a solvent insurance company authorized to do business in Texas. The policy shall provide that the insurer will defend against all claims and lawsuits which arise and will pay any final judgment of a court of competent jurisdiction against the City, its officers, agents, servants or employees and Developer, its officers, agents, servants or employees.

10.3 No installation or maintenance shall be conducted by Developer until Developer files a copy of the policy or certificate of liability insurance as herein set forth with the City Clerk, the City Attorney's Office, and the Director of the El Paso Parks and Recreation Department (the "Director"). Such policy or certificate shall provide that the insurance cannot be canceled or the amount of coverage changed without ten (10) days prior written notice to the City Clerk. Failure to keep the policy in full force and effect throughout the term of this Agreement shall be grounds for cancellation of this Agreement.

10.4 INDEMNIFICATION: As a condition of this Agreement, Developer or its insurer will INDEMNIFY, DEFEND AND HOLD the City, its officers, agents and employees, HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE, (INCLUDING BUT NOT LIMITED TO ATTORNEY FEES AND COSTS) FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON ARISING OUT OF OR RELATED TO THIS AGREEMENT. Without modifying the conditions precedent for preserving defenses, asserting claims or enforcing any legal liability, against the City as required by the City in any claim or legal proceeding contemplated herein. Developer will 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as Developer may deem expedient; and 3) defend or cause to be defended on behalf of the City all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages. Developer will pay all judgments in actions defended by Developer pursuant to this section along with all attorneys' fees and costs incurred by the City including interest accruing to the date of payment by Developer, and premiums on any appeal bonds. The City, at its

election will have the right to participate in any such negotiations or legal proceedings to the extent of its interest. The City will not be responsible for any loss of or damage to Developer's property from any cause.

11. **BOND REQUIRED.** Developer must provide a performance bond for the total improvement cost stated hereinabove to secure fulfillment of all of Developer's obligations under this Agreement. The bond shall be in a form approved by the City. The bond must be executed by a corporate surety in accordance with Texas Government Code Section 22.53. The bond shall identify the City as Owner and Obligee and shall bind both Developer's contractor and the Surety, their heirs, administrators, executors, successors and assignees, jointly and severally. The bond shall expressly provide that Developer's contractor shall faithfully render performance under this Agreement and shall remain in full force and effect until all requirements of the Agreement have been performed to the City's satisfaction.

12. **SUCCESSORS AND ASSIGNS:** All the terms, provisions, covenants and conditions of this Agreement shall inure to the benefit of and be binding upon the parties, their successors and assigns.

13. **ENTIRE AGREEMENT:** This document contains all of the agreements between the parties and may not be modified, except by a written agreement signed by both parties.

14. **SEVERABILITY:** Every provision of this Agreement is intended to be severable. If any term or provision contained herein is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

15. **LAW GOVERNING CONTRACT:** For purposes of determining the place of the Agreement and the law governing the same, it is agreed that the Agreement is

entered into in the City and County of El Paso, State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the courts of El Paso County, Texas.

16. **BINDING AGREEMENT:** The individual signing this Agreement, on behalf of the Developer, acknowledges that he or she is authorized to do so, and said individual further warrants that he or she is authorized to commit and bind the Developer to the terms and conditions of this Agreement.

17. **NOTICE:** All notices and communications under this Agreement shall be hand-delivered or mailed, postage pre-paid, to the representative parties at their respective addresses below, unless and until either party is otherwise notified in writing.

City of El Paso	Americas Loop 375, LP
Department of Parks & Recreation	Attn: Frank Arroyos, Managing Partner
Attn: Director	12200 Paseo Nuevo
2 Civic Center Plaza	El Paso, Texas 79928
El Paso, Texas 79901	

18. **REPRESENTATION OF COUNSEL:** Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction and construction of the parties, at arms' length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.

19. **WAIVER:** No waiver of any breach or default shall be deemed or construed to constitute a waiver of any other violation or other breach of any of the terms, provisions, and covenants contained in this Agreement, and forbearance to enforce one or more of the remedies provided upon an event of default shall not be deemed or construed to constitute a waiver of such default or of any other remedy provided for in this Agreement.

(Signatures follow on next page)

STATE OF TEXAS)
)
COUNTY OF EL PASO)

DEVELOPMENT AGREEMENT

Signature Page

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CITY OF EL PASO:

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:



Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:



Barry Russell, Interim Director
Parks and Recreation Department

AMERICAS LOOP 375, LP:



~~Frank Arroyas~~, Managing Partner
R.L. BOWLING III

(Acknowledgments on following page)

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ACKNOWLEDGMENTS

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the ____ day of _____, 2007, by JOYCE A. WILSON as City Manager of **THE CITY OF EL PASO**, a municipal corporation, on behalf of said corporation.

My Commission Expires:

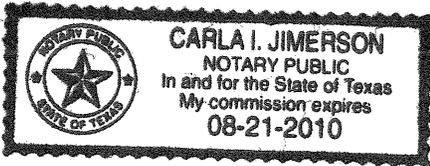
Notary Public, State of Texas
Notary's Printed or Typed Name:

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 17th day of July, 2007, by ~~FRANK ARROYOS~~ as Managing Partner of **AMERICAS LOOP 375, LP**, on behalf of said limited partnership. RL Bowling III

My Commission Expires:

Carla I. Jimerson
Notary Public, State of Texas
Notary's Printed or Typed Name:
Carla I. Jimerson



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EXHIBIT "A"



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1-2416

BARRAGAN & ASSOCIATES

Land Planning & Land Surveying

1450 Pendale Road, Suite "B" El Paso, Texas 79936

Ph. (915) 591-5709
Fax (915) 591-5706

DESCRIPTION (PARK SITE)

Description of a 11.1025 acre parcel out of a 381.90 acre tract filed in volume 2827, page 277, Deed Records of El Paso County, Texas, (n k as a portion of Tract 1A), being a portion of Section 16, Block 79, Township 3, Texas and Pacific Railway Company Surveys, El Paso, County, Texas, and being more particularly described as follows:

Commencing at a found iron pin with cap stamped "Landmark", marking the most southeasterly corner for Section 16, Block 79, Township 3, Texas and Pacific Railway Company Surveys, El Paso County, Texas; Thence, N 02°22'00" E, along the easterly line of said Section 16, a distance of 2641.30 feet to a point; Thence, N 87°30'02" W, a distance of 721.44 feet to the Point of Beginning of this Description;

THENCE, N 87°30'02" W, a distance of 977.22 feet to a point of curvature;

THENCE, 39.67 feet along an arc of curve to the right, with a radius of 20.00 feet, an interior angle of 113°38'15" and a chord which bears N 30°40'54" W, a distance of 33.48 feet to a point;

THENCE, 256.43 feet along an arc of curve to the right, with a radius of 788.00 feet, an interior angle of 18°38'42" and a chord which bears N 35°27'34" E, a distance of 255.30 feet to a point;

THENCE, 540.13 feet along an arc of curve to the left, with a radius of 1492.00 feet, an interior angle of 20°44'31" and a chord which bears N 34°24'40" E, a distance of 537.18 feet to a point;

THENCE, S 74°33'25" E, a distance of 542.49 feet to a point;

THENCE, S 02°22'00" W, a distance of 533.13 feet to a point on the northerly right-of-way line of a pipe line easement filed in volume 697, page 486, Deed Records of El Paso County, Texas;

THENCE, S 41°56'57" E, along the northerly right-of-way line of said pipe line easement a distance of 61.04 feet to POINT OF BEGINNING of the herein parcel being described, containing 11.1025 acres of land more less.

NOTES:

1. A Parcel Plan of even date accompanies this plat.
2. Bearings recited herein are based on Deed in volume 2827, page 277, Deed Records of El Paso, County, Texas..

[Signature]
Benito Barragan TX R.P.L.S. 5615, August 24, 2006



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TRUE AND CORRECT COPY OF THE ORIGINAL FILED IN

EL PASO COUNTY TEXAS

[Signature]
Dalia Briones, COUNTY CLERK

EXHIBIT "B"

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375

LOOP 375

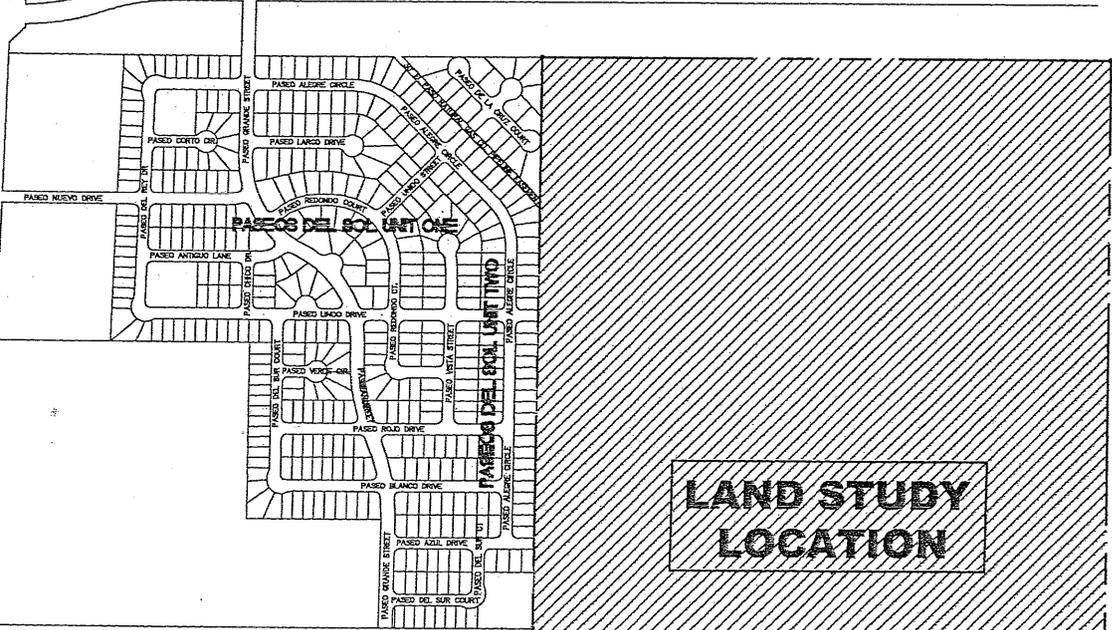
JOE BATTLE BLVD.

LOOP 375

JOE BATTLE BLVD.

375

OSTIA DEL SOL DRIVE

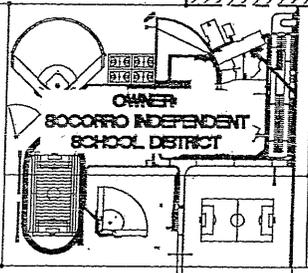


PASEOS DEL SOL UNIT ONE

LAND STUDY LOCATION

PROPOSED MINOR ARTERIAL W/BIKE LANES (84 FEET WIDE)

FUTURE COMMERCIAL
OWNER
COUNTY OF EL PASO



OWNER
BOCCO INDEPENDENT
SCHOOL DISTRICT

PELLICANO DRIVE



SCALE: N.T.S.

FIGURE 2
LOCATION MAP
PASEOS DEL SOL LAND STUDY

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EXHIBIT "C"

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EXHIBIT " C "

Schedule of Park Improvements as Per Chapter 19.12.05

- Paving frontage, curbing, gutter and utility extensions for all street frontage abutting the outside perimeter of the parkland;
- An accessible route installed adjacent to the curb on all street frontage abutting the outside perimeter of the parkland of a minimum width and construction to provide accessibility to individuals with disabilities as provided in the subdivision improvement design standards;
- Grading, automatic irrigation and turf within the parkland boundaries, the design and installation as approved by the director of the parks and recreation department.

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