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

DEPARTMENT: **Financial Services**

AGENDA DATE: **Introduction December 8, 2009**
Public Hearing December 15, 2009

CONTACT PERSON NAME AND PHONE NUMBER: Liza Ramirez-Tobias (915) 541-4074

DISTRICT(S) AFFECTED: District 1, Rep. Lilly

SUBJECT:
An Ordinance amending Ordinance No. 017216, which authorized the City Manager to execute a lease agreement between the City of El Paso and River Oaks Properties, Ltd. And other related documents, to allow the surface use of a portion of Tract 1P1, H.G. Foster Survey No. 256, City of El Paso, El Paso County, Texas, for the purpose of correcting a clerical error in the legal description of the premises.

BACKGROUND / DISCUSSION:

Ordinance No. 017216 described the "Premises" as a 60-foot wide tract located in Tract 1P1, H.G. Foster Survey No. 526, City of El Paso, El Paso County, Texas;

The "Premises" should be described as a 60-foot wide tract located in Tract 10, H.G. Foster Survey No. 256, City of El Paso, El Paso County, Texas.

This amendment will only correct the legal description; all other terms and conditions of the Lease Agreement remain in full force and effect.

PRIOR COUNCIL ACTION:
City Council approved Ordinance No. 017216

AMOUNT AND SOURCE OF FUNDING: None

BOARD / COMMISSION ACTION:

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

DEPARTMENT HEAD: Carmen Arrieta Candelaria
(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE NO. 017216, WHICH AUTHORIZED THE CITY MANAGER TO EXECUTE A LEASE AGREEMENT BETWEEN THE CITY OF EL PASO AND RIVER OAKS PROPERTIES, LTD. AND OTHER RELATED DOCUMENTS, TO ALLOW THE SURFACE USE OF A PORTION OF TRACT 1P1, H.G. FOSTER SURVEY NO. 256, CITY OF EL PASO, EL PASO COUNTY, TEXAS, FOR THE PURPOSE OF CORRECTING A CLERICAL ERROR IN THE LEGAL DESCRIPTION OF THE PREMISES.

WHEREAS, the City Council approved Ordinance No. 017216, which authorized the City Manager to execute a Lease Agreement and other related documents between the City of El Paso and River Oaks Properties, Ltd., to allow the surface use of a 60-foot wide tract of land located in Tract 1P1, H.G. Foster Survey No. 256, City of El Paso, El Paso County, Texas;

WHEREAS, Ordinance No. 017216 described the "Premises" as a 60-foot wide tract located in Tract 1P1, H.G. Foster Survey No. 526, City of El Paso, El Paso County, Texas;

WHEREAS, the "Premises" should be described as a 60-foot wide tract located in Tract 10, H.G. Foster Survey No. 256, City of El Paso, El Paso County, Texas;

WHEREAS, the City of El Paso and River Oaks Properties, Ltd. now desires to correct the clerical error in Ordinance No. 017216.

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

1. That Ordinance No. 01726 is hereby amended to delete all references to Tract 1P1, H.G. Foster Survey No. 256 in Ordinance No. 017216 be deleted and to replace the description of the "Premises" with the following legal description: "A 60-foot wide tract located in a portion of Tract 10, H.G. Foster Survey No. 256, El Paso, El Paso County, Texas more fully described on Exhibit "A" attached hereto and incorporated herein by reference."

2. That the City Manager be authorized to sign the First Amendment to Lease Agreement, attached hereto as **EXHIBIT "B"**, and made a part hereof, to correct the legal description of the Premises. All other terms and conditions of the Lease Agreement remain in full force and effect.

3. That the City Manager be authorized to sign an amended Memorandum of Lease Agreement reflecting the corrected legal description and exhibits.

ADOPTED THIS ___ DAY OF _____ 2009.

THE CITY OF EL PASO

_____
John F. Cook
Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Sylvia Borunda Firth
Senior Assistant City Attorney

APPROVED AS TO CONTENT:

Liza Ramirez-Tobias
Capital Assets Manager

ORDINANCE NO. _____

Doc. No.: 52755
Doc. Name: Ord. Amend. River Oaks
Doc. Author: SFIR

60_FOOT EL PASO NATURAL GAS Co.
RIGHT-OF-WAY

Property Description: A portion of Tract 10, H.G. Foster Survey No. 256, El Paso, El Paso, County, Texas.

METES AND BOUNDS DESCRIPTION

The parcel of land herein described is a portion of Tract 10, H.G. Foster Survey No. 256, El Paso, El Paso County, Texas, and is more particularly described by metes and bounds as follows:

Commencing at an existing city monument lying on the centerline intersection of E. Redd Road (120' public right-of-way) and Resler Drive (130' public right-of-way); Thence, North 89° 44' 36" West, along said centerline of E. Redd Road, a distance of 742.30 feet to a point; Thence, abandoning said center line, North 00° 15' 24" East, a distance of 60.00 feet to a point lying on the northerly right-of-way line of E. Redd Road and the common boundary line of said El Paso Natural Gas Co. and Westview Place Subdivision, also being the TRUE POINT OF BEGINNING of this description;

THENCE, North 88° 56' 04" West, along said right-of-way line, a distance of 63.83 feet to a point for a corner;

THENCE, North 21° 01' 27" East, a distance of 155.36 feet to a point for a corner;

THENCE, North 13° 37' 29" East, a distance of 611.60 feet to a point for a corner;

THENCE, South 89° 57' 30" East, a distance of 61.73 feet to a point for a corner lying on the common boundary line between El Paso Natural Gas Co. Right-of-way and the westerly boundary line of Westview Place Subdivision;

THENCE, South 13° 37' 29" West, a distance of 629.98 feet to a point for a corner;

THENCE, South 21° 01' 27" West, a distance of 137.45 feet to the TRUE POINT OF BEGINNING of this description.

Said parcel of land contains 1.057 acres (46,032 Sq. Ft.) of land more or less.

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

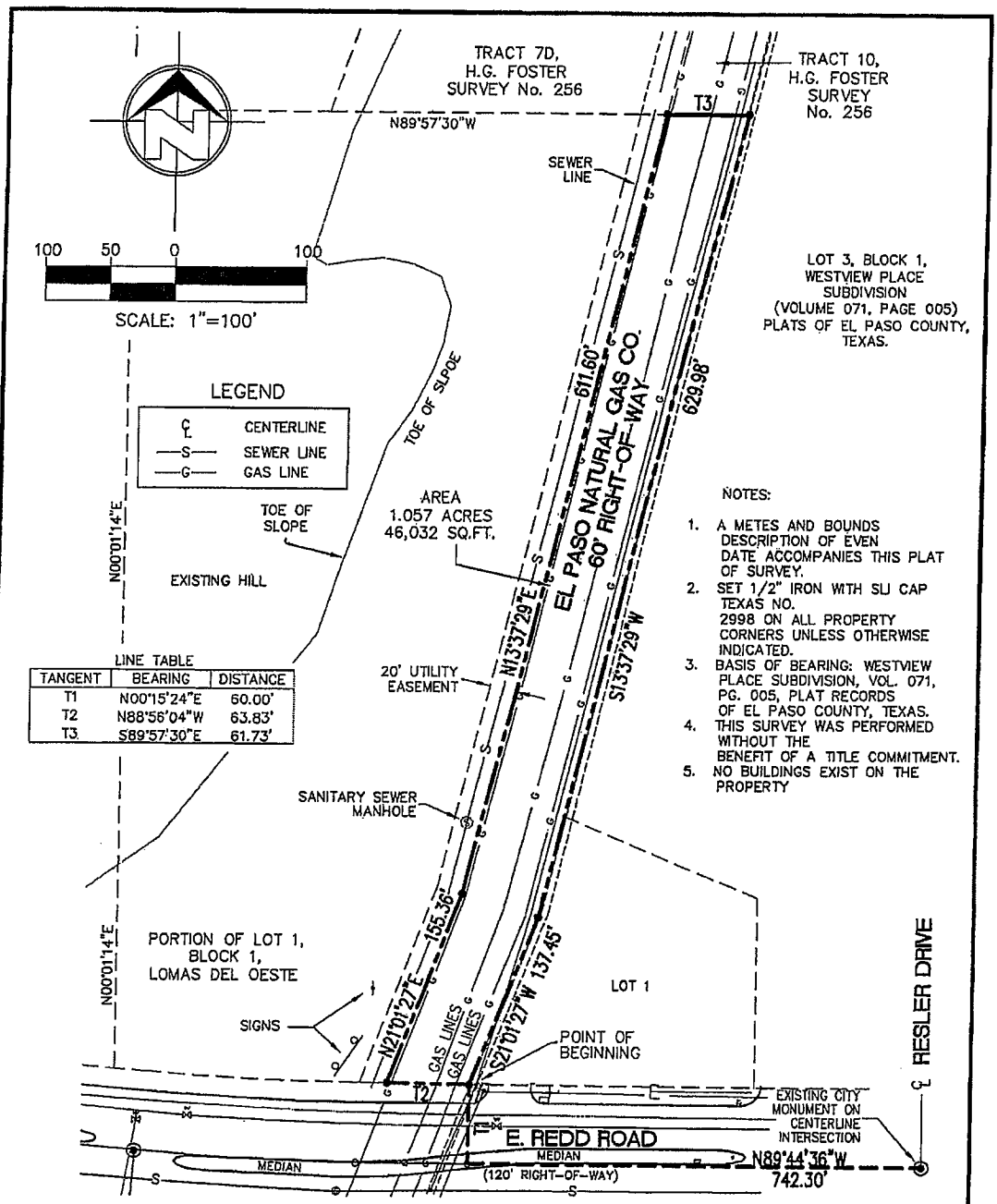
SLI ENGINEERING, INC,
Consulting Engineers—Land Surveyors

STATE OF TEXAS REGISTERED GUILLERMO LICON 2998 PROFESSIONAL LAND SURVEYOR

Guillermo Licon
Registered Professional Land Surveyor
Texas License No. 2998
September 26, 2008
Rev. January 13, 2009
Job # 09-07-2550

M&B/1510

EXHIBIT "A"



ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP COMMUNITY-PANEL NUMBER 480214 0022 E, DATED JANUARY 3, 1997, THIS PROPERTY LIES IN FLOOD ZONE C. ZONE C AREAS OF MINIMAL FLOODING.

DUE TO INHERENT INACCURACIES OF FEMA OR FLOOD INSURANCE RATE MAPS THIS SURVEYOR DOES NOT CERTIFY TO THE ACCURACY OF LOCATIONS BASED ON SUCH MAPS. THIS FLOOD STATEMENT SHALL NOT CREATE LIABILITY ON THE PART OF THE SURVEYOR.

NOTE:
ALL INFORMATION SHOWN HEREON WITH RESPECT TO UNDERGROUND CONDITIONS WAS DETERMINED BY DATA COLLECTED THROUGH SURVEY CREW OBSERVATION AND OTHER INFORMATION TAKEN FROM EXISTING PLANS AND MAPS OF RECORD. NO UNDERGROUND UTILITIES EXISTING OR ABANDONED WERE EXPOSED OR LOCATED. UNLESS SPECIFICALLY ACCEPTED BY SLI ENGINEERING, INC. IN WRITING, SLI ENGINEERING, INC. MAKES NO CLAIM, EXPRESSED OR IMPLIED, AS TO THE UNDERGROUND SITE CONDITIONS.

STATE OF TEXAS
REGISTERED
GUILLERMO LICON
2998
PROFESSIONAL
LAND SURVEYOR

Copyright 2008 SLI Engineering, Inc.
This map and survey are being provided solely for the use of and no license has been created, expressed or implied, to copy the surveys and/or map(s) except as necessary in conjunction with the original transaction. This transaction shall be effective within six (6) months from the date hereon September 26, 2008.

Rev. 01/13/2009

PLAT OF SURVEY

SLI ENGINEERING, INC.
CIVIL ENGINEERS
LAND SURVEYORS
LAND PLANNERS
6600 WESTWIND DRIVE
EL PASO, TEXAS 79912
915-584-4457

JOB #: 09-07-2550 DR. BY: MN
SCALE: 1"=100' M.B. #: 1510
DATE: 11/18/2009 DWG.: F:\Projects\Impsurv\HGF256-70-1P1-[EPNGease].dwg

EXISTING 60_FOOT EL PASO NATURAL GAS CO. R.O.W. BEING A PORTION OF TRACT 10, H.G. FOSTER SURVEY No. 256, CITY OF EL PASO, EL PASO COUNTY, TEXAS.

CERTIFICATION
I HEREBY CERTIFY THAT THE FOREGOING BOUNDARY SURVEY WAS PERFORMED UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

GUILLERMO LICON, R.P.L.S.
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS LICENSE NO. 2998

STATE OF TEXAS	)	
	)	**FIRST AMENDMENT TO**
COUNTY OF EL PASO	)	**LEASE AGREEMENT**

This First Amendment to the Lease Agreement ("First Amendment ") is made by and between the City of El Paso ("City") and River Oaks Properties, Ltd. ("Lessee") on this ____ day of _____, 2009.

WHEREAS, City and Lessee entered into a Lease Agreement ("Agreement") dated October 13, 2009 granting Lessee the right to use a portion of an identified portion of a 60-foot wide tract leased to El Paso Natural Gas in Tract 1P1, H.G. Foster Survey No., 256, City of El Paso, El Paso County, Texas;

WHEREAS, a clerical error was made in the Agreement as it pertains to the description of the premises to be leased; and

WHEREAS, the City and the Lessee now desire to correct that error.

NOW, THEREFORE, for and in consideration of the following mutual covenants and agreements set forth herein, and other good and valuable consideration, the parties agree as follows:

1. **DESCRIPTION OF PREMISES.** City and Lessee mutually agree that Section 1.0. Premises, subsection 1.1 is revised to read as follows:

   1.0 PREMISES.

   1.1 The CITY hereby grants to the LESSEE a lease of a 1.057-acre parcel, more or less, located within an existing 60-foot wide El Paso Natural Gas Company Easement, being a portion of Tract 10, H.G. Foster Survey No. 256, City of El Paso, El Paso County, Texas, being more particularly described in Exhibit "A" attached hereto and made a part hereof by reference, and referred to throughout this Lease Agreement as the "Premises," for the limited use defined herein.

2. **RATIFICATION**. Except as herein amended, all other terms and conditions of the Agreement, not specifically changed by this First Amendment, shall remain unchanged and in full force and effect.

3. **EFFECTIVE DATE.** Regardless of the date of execution, this First Amendment shall be effective on December _____, 2009.

EXHIBIT "B"

IN WITNESS WHEREOF, this First Amendment was approved on the date first noted above.

CITY OF EL PASO

_____
Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

Sylvia Borunda Firth
Senior Assistant City Attorney

APPROVED AS TO CONTENT:

Liza Ramirez-Tobias
Capital Assets Manager

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this _____ day of _____, 2009, by **Joyce A. Wilson**, as **City Manager** of the **City of El Paso, Texas**.

_____
Notary Public, State of Texas

_____
My Commission Expires

(Signatures and acknowledgments continue on next page)

RIVER OAKS PROPERTIES, LTD.

By: River Oaks Asset Management, Inc.
Its: General Partner

By: _____
Printed Name: Adam Z. Frank
Title: President

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this 1ST day of December 2009, by ADAM Z. FRANK, as President of River Oaks Asset Management, Inc., the general partner of **RIVER OAKS PROPERTIES, LTD.**

Debbie L Reed
Notary Public, State of Texas

My Commission Expires:

1-20-10

DEBBIE L. REED
NOTARY PUBLIC
In and for the State of Texas
My commission expires
01-20-2010

N
CANYON RUN
DESERTO SECO
IMPERIAL RIDGE
RESLER
RESLER
RESLER
THORN
REDD
REDD
DERRICKSON
ALFREDO ANDO
SAM HORRELL