

ORDINANCE NO. 975-E

AN ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF CLEVELAND, TEXAS, TO EMBRACE AND INCLUDE ALL OF THE TERRITORY WITHIN CERTAIN LIMITS AND BOUNDARIES AND ANNEXING TO THE CITY OF CLEVELAND, TEXAS, ALL OF THE TERRITORY WITHIN SUCH BOUNDARIES; APPROVING A SERVICE PLAN FOR ALL OF THE AREA WITHIN SUCH TERRITORY; MAKING FINDINGS; AND CONTAINING OTHER PROVISIONS RELATED TO THE SUBJECT.

WHEREAS, the City Council of the City of Cleveland, Texas (the "City") finds, determines and declares that the Territory hereinafter described in Exhibit "A", attached hereto and made part hereof, (the "Territory") is adjacent and contiguous to the present city limits of the City; that said Territory lies within the exclusive extraterritorial jurisdiction of the City; and that the annexation of the said Territory, less such property subject to a development agreement under Section 43.035 of the Local Government Code, to the City will promote the general health, safety and welfare of persons residing within the City and within said Territory, if any; and

WHEREAS, the City Council of the City has heretofore, on October 11, 2011, directed the staff to prepare a Service Plan that provides for the extension of municipal services to the area within the Territory; and

WEREAS, two public hearings were held on December 5, 2011 and December 6, 2011, in the City Council Chambers, City Hall, 907 East Houston, Cleveland, Texas, at which public hearings all interested parties were given an opportunity to be heard and the proposed Service Plan was made available for public inspection. Notice of such public hearings was given by publication in the *Cleveland Advocate* on November 23, 2011, said newspaper having general circulation within the City and within the Territory. Such notices and hearings were all in conformity with the Municipal Annexation Act, codified as Chapter 43, Texas Local Government Code, as amended; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLEVELAND:

Section 1. The facts and recitations set forth in the preamble of this Ordinance are hereby found to be true and correct.

Section 2. The boundary limits of the City of Cleveland, Texas, are hereby extended to embrace and include all of the Territory more particularly described by metes and bounds in Exhibit "A" attached hereto, less such property subject to a development agreement under Section 43.035 of the Local Government Code as described in Exhibit "C", and such Territory is hereby annexed to and made part of the City for general purposes.

Section 3. The plan for extension of municipal services into the Territory annexed to the City by the provisions of this Ordinance is set forth in the "Municipal Service Plan"

attached hereto as Exhibit "B" and made part hereof for all purposes. Such Municipal Service Plan is hereby approved.

Section 4. The City Council officially finds, determines, recites, and declares that a sufficient written notice of the date, hour, place, and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by Chapter 551, Texas Government Code; and that this meeting had been open to the public as required by law at all times during which this Ordinance and the subject matter hereof has been discussed, considered, and formally acted upon. The City Council further ratifies, approves, and confirms such written notice and the contents and posting thereof.

Section 5. If any section or part of this Ordinance be held unconstitutional, illegal, or invalid, or the application thereof ineffective or inapplicable as to any Territory, such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no wise affect, impair, or invalidate the remaining portion or portions thereof, but as to such remaining portion or portions, the same shall be and remain in full force and effect; and should this Ordinance for any reason be ineffective as to any part of the Territory hereby annexed to the City of Cleveland, such ineffectiveness of this Ordinance as to any such part or parts of any such Territory shall not affect the effectiveness of this Ordinance as to all of the remainder of such Territory or area, and the City Council hereby declares it to be its purpose to annex to the City of Cleveland every part of the Territory described in Section 2 of this Ordinance, regardless of whether any other part of such described Territory is hereby effectively annexed to the City. Provided, further, if there is included in the general description of the Territory set out in Section 2 of this Ordinance to be hereby annexed to the City of Cleveland any Territory which is already a part of and included within the general limits of the City of Cleveland, or which is presently part of and included in the limits or extraterritorial jurisdiction of any other city, town, or village, or which is not within the City of Cleveland's jurisdiction to annex, the same is hereby excluded and excepted from the Territory to be annexed hereby as fully as if such excluded and excepted Territory were especially and specifically described herein.

PASSED, APPROVED, AND ADOPTED this 27th day of December, 2011.



ATTEST:

Kelly McDonald
Kelly McDonald, City Secretary

Jill Barnett Kirkonis
Jill Barnett Kirkonis, Mayor

TRACT C

ANNEXATION TRACT 2011-C 76 ACRES MONTGOMERY COUNTY

BEING ALL THAT CERTAIN 76 ACRE TRACT OF LAND SITUATED IN THE T.J. WILLIAMS SURVEY, ABSTRACT A-593 IN MONTGOMERY COUNTY TEXAS, AND BEING FURTHER DESCRIBED AS FOLLOWS:

BEGINNING at the southwest corner of Annexation Tract 2008-C as described in Ordinance No. 865, an Ordinance passed by the City Council of the City of Cleveland, Texas extending the City Limits of the City of Cleveland, Texas. Said BEGINNING also being on the centerline meanders of Bee Branch and being the most southerly corner of said Annexation Tract 2008-C;

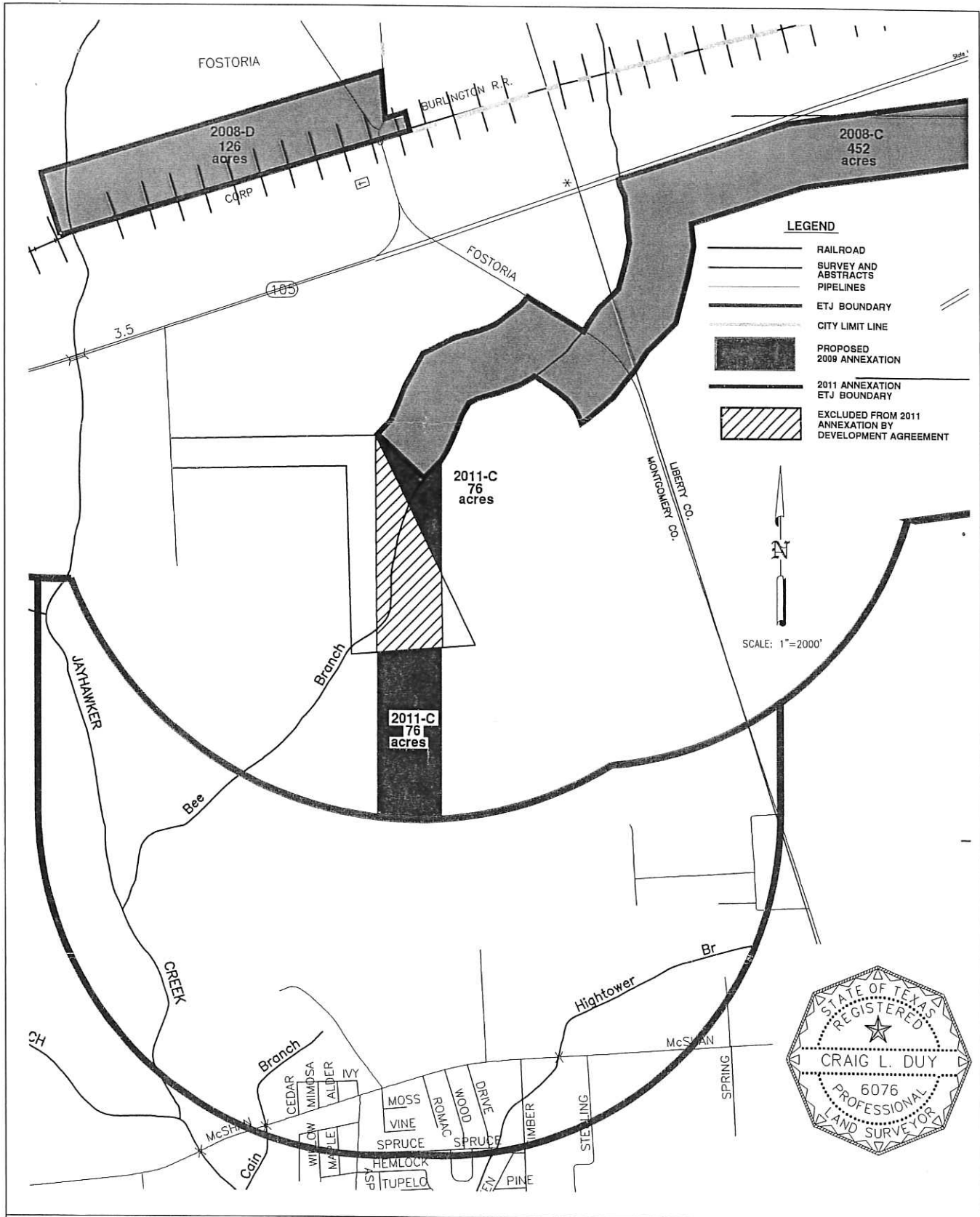
THENCE northwest along the current City Limit line of the City of Cleveland, Texas to a corner point in the current City Limit line of the City of Cleveland, Texas for a point for corner of the tract described herein;

THENCE south along a true north/south line for a distance of 5,893 lineal feet to a point for corner of the tract described herein;

THENCE east perpendicular to the aforementioned course for a distance of 1,000 lineal feet to a point for corner of the tract described herein;

THENCE north along a true north/south line to a point intersecting the current City Limit line of the City of Cleveland, Texas; said point also being on the centerline meanders of Bee Branch for a point for corner of the tract described herein;

THENCE southwest along the current City Limit line of the City of Cleveland, Texas; also being on the centerline meanders of Bee Branch to the POINT OF BEGINNING and containing 126 acres of land more or less (EXCEPTING THEREFROM, that part situated within the T.J. Williams TRACT 1 - Property ID: R247380 – 125.7216 acre tract), and containing 76 acres of land more or less.



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CITY OF CLEVELAND, TEXAS
 ANNEXATION OF 76 ACRE TRACT 2011-C

FILENAME:
 O:\85P110039 - Cleveland 2011
 Annexations\2011-C.dwg

DATE: DECEMBER 2011

EXHIBIT B

CITY OF CLEVELAND, TEXAS

MUNICIPAL SERVICE PLAN

I. INTRODUCTION

This Municipal Service Plan (the "Plan") is made by the City of Cleveland, Texas (the "City"), pursuant to Chapter 43 of the Texas Local Government Code. This Plan relates to the annexation by the City of the tract of land ("Tract") described by metes and bounds in "Exhibit A," which is attached to this Plan and to the annexation ordinance of which this Plan is a part.

II. EFFECTIVE TERM

This Plan shall be in effect for a period of ten (10) years commencing on the effective date of the annexation of the Tract, 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.

III. INTENT

It is the intent of the City that services under this Plan shall equal the number of services and the level of services in existence within the Tract prior to annexation and which are available in other parts of the City with land uses and population densities similar to those reasonably contemplated or projected within the Tract. However, it is not the intent of this Plan to require that a uniform level of service be provided to all areas of the City, including the Tract, where differing characteristics of topography, land utilization, and population density are considered as a sufficient basis for providing differing service levels.

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

IV. SERVICE PROGRAMS

A. In General.

1. This Plan includes the following service programs: A 60-Day Program and a Capital Improvement Program.

2. As used in this Plan, "providing services" shall include having services provided by any method or means by which the City may extend municipal services to any other area of the City. The City shall provide the area, or cause the area to be provided, with services in accordance with the Plan. This may include, but is not limited to, causing or allowing private utilities, governmental entities, and other public service organizations to provide such services, in whole or in part.

As used in this Plan, the phrase "standard policies and procedures" shall mean those policies and procedures of the City applicable to a particular service, which are in effect either at the time that the service is requested or at the time the service is made available or provided. Such policies and procedures may require a specific type of request be made, such as an application or a petition, may require that fees or charges be paid, and may include eligibility requirements or other similar provisions.

- B. 60-Day Program. The following services will be provided within the Tract within the period required by State law. State law requires the City to provide the following services within sixty (60) days after the effective date of the annexation: police protection, fire protection, emergency medical services, solid waste collection, operation and maintenance of water and wastewater facilities, operation and maintenance of roads and streets, including lighting, operation and maintenance of parks, playgrounds, and swimming pools, and maintenance of any other publicly owned facility, building or service. The 60-Day Program plan is as follows:

1. Police Protection. The Police Department of the City will provide protection and law enforcement within the Tract. These activities will include routine patrols and responses, handling of complaints and incident reports, and, as appropriate, support by special units. In order to provide the above services, the Police Department will operate from a City facility.
2. Fire Protection. The Cleveland Volunteer Fire Department of the City currently provides fire protection to the Tract. Fire protection will remain at the current level of service.
3. Emergency Medical Services. The EMS Department of the City currently provides emergency medical services to the Tract. Emergency medical services will remain at the current level of service.
4. Solid Waste Collection. All eligible residences will be provided solid waste collection service by the City's contractor. Such service will consist of twice-weekly curbside pickup of refuse. Special pickups will also be provided.

5. Maintenance of Water and Wastewater Facilities. There are no City water and wastewater facilities currently located within the Tract. If any such facilities are constructed or acquired by the City within the Tract, the City's Department of Public Works will operate and maintain such facilities at levels of service and maintenance comparable to those available for other such facilities in other parts of the City with similar topography, load use, and population density as those reasonably contemplated or projected within the Tract.
 6. Operation and Maintenance of Roads and Streets (including lighting). The City's Department of Public Works will provide for the maintenance of roads and streets over which the City will have jurisdiction. Such Department will also provide services relating to traffic control devices and will provide street lighting for such roads and streets through a electric utility company or by other means. The operation and maintenance of roads and streets, including street lighting and traffic control devices, shall be provided at levels of service and maintenance comparable to those available for other roads and streets in other parts of the City with similar topography, load use, and population density as those reasonably contemplated or projected within the Tract.
 7. Operation and Maintenance of Parks, Playground and Swimming Pools. There are no public parks, playgrounds, or swimming pools currently located within the Tract. If, as a result of acquisition of park land, any such facilities are constructed by the City within the Tract, the City's Parks Department will operate and maintain such facilities at levels of service and maintenance comparable to those available for other such facilities in other parts of the City with similar topography, load use, and population density as those reasonably contemplated or projected within the Tract.
 8. Operation and Maintenance of Any Other Publicly-Owned Facility, Building, or Service. Those drainage facilities associated with City-maintained public streets will be maintained by the City's Department of Public Works, as needed. Any other facility, building, or service existing or which may be constructed or located by the City within the Tract, will be operated and maintained by an appropriate City department at levels of service and maintenance comparable to those available to other such facilities in other parts of the City with similar topography, load use, and population density as those reasonably contemplated or projected within the Tract.
- C. Capital Improvement Program. It is the intent of the City to provide full City services within the Tract not less than four and one-half (4-1/2) years after the effective date of annexation of the Tract, in accordance with the Texas Local Government Code, § 43.056(e).

The City will initiate the acquisition and construction of the capital improvements necessary to provide municipal services adequate to serve the Tract. Any necessary construction or acquisition is indicated below, and any such construction or acquisition shall begin within two (2) years of the effective date of this Plan and shall be substantially completed within 4-1/2 years, except as otherwise indicated:

1. Police Protection. No capital improvements are necessary at this time to provide police protection services within the Tract. The Tract will be included with other City territory in connection with planning for new, revised, or expanded police facilities.
2. Fire Protection. No capital improvements are necessary at this time to provide fire protection services within the Tract. The Tract will be included with other City territory in connection with planning for new, revised, or expanded fire facilities.
3. Solid Waste Collection. No capital improvements are necessary at this time to provide solid waste collection services within the Tract. The Tract will be included with other City territory in connection with planning for new, revised, or expanded solid waste facilities and/or services.
4. Wastewater Facilities. The Tract will be included with other City territory in connection with planning for new, revised, or expanded public wastewater facilities. Wastewater services will be provided according to the standard policies and procedures of the City's Department of Public Works. A summary of the City's policies with regard to the extension of wastewater services is attached to and made a part of this Plan. If another entity has a certificate of convenience and necessity to provide service within the Tract, the City cannot provide the service.
5. Water Distribution. The Tract will be included with other City territory in connection with planning for new, revised, or expanded public water facilities. Water services will be provided according to the standard policies and procedures of the City's Department of Public Works. A summary of the City's policies with regard to the extension of water services is attached to and made a part of this Plan. If another entity has a certificate of convenience and necessity to provide service within the Tract, the City cannot provide the service.
6. Roads and Streets (including lighting). The City will acquire jurisdiction in and over all public roads and streets within the Tract upon annexation, pursuant to Section 311.001 of the Texas Transportation Code and other similar provisions, except for public roads and streets subject to the jurisdiction of other governmental entities. Additional roads, streets, or

related facilities are not necessary at this time to service the Tract. Future extensions of roads or streets and future installation of related facilities, such as traffic control devices or street lights, within the Tract will be governed by standard policies and procedures of the City. The Tract will be included with other City territory in connection with planning for new, improved, revised, widened, or enlarged roads, streets, or related facilities.

7. Parks, Playgrounds, and Swimming Pools. No capital improvements are necessary at this time to provide park and recreational services to the Tract. The Tract will be included with other City territory in connection with planning for new, revised, or expanded parks, playgrounds, and/or swimming pools.
8. Other Publicly-Owned Facilities, Buildings or Services: Additional Services. In general, other City functions and services can be provided to the Tract by using existing capital improvements. At this time, additional capital improvements are not necessary to provide City services. However, the Tract will be included with other City territory in connection with planning for new, revised, or expanded facilities, functions, and services.

V. 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 at any time. 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 any orders, rules, or regulations of any other governmental body having jurisdiction.

VI. FORCE MAJEURE

In the event the City is rendered unable, wholly or in part, by force majeure to carry out its obligations under this Plan, notice shall be given with full particulars of such force majeure, in writing, as soon as reasonably possible after the occurrence of the cause relied on, and the City's obligations, so far as effected by such force majeure, shall be suspended during the continuance of such inability so caused but for no longer period, and such cause shall, so far as possible, be remedied with all reasonable dispatch; provided, however, City shall not be required to settle a strike or dispute with workmen when such settlement is against the will of the City. The term "force majeure" shall mean acts of God, strikes, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and people, explosions, breakage or accident to machinery or lines of pipe, droughts, hurricanes and tornadoes, and

any other inability of either party, whether similar to those enumerated or otherwise, not within the control of the City, which, by the exercise of reasonable diligence, the City shall not have been able to avoid.

VIII. ENTIRE PLAN

This document contains the entire and integrated Plan relating to the Tract and supersedes all other negotiations, representations, plans, and agreements, whether written or oral.

If one or more provisions of this Plan is held to be invalid, unenforceable, or illegal in any respect, the remainder the Plan shall remain valid and in full force and effect.

Please return recorded document to:

*City Secretary
City of Cleveland
901 E. Houston
Cleveland, TX 77307*

FILED FOR RECORD

08/16/2012 2:53PM

Mark Tumbull

COUNTY CLERK
MONTGOMERY COUNTY, TEXAS

STATE OF TEXAS
COUNTY OF MONTGOMERY

I hereby certify this instrument was filed in file number
sequence on the date and at the time stamped herein
by me and was duly RECORDED in the Official Public
Records of Montgomery County, Texas.

08/16/2012



Mark Tumbull

County Clerk
Montgomery County, Texas