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OPINION COMMITTEE

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OPEN RECORDS DIVISION

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FILE # ML-45832-08

I.D. # 45832

September 15, 2008

Office of the Attorney General

Attn: Opinions

P.O. Box 12548

Austin, Texas 78711-2548

Via CMRRR No. 7005 1160 0001 8579 8213

RQ-0745-GA

RE: Request for Opinion

QUESTION: Part One: Whether Section 43.052(h)(1) of the Texas Local Government Code can be utilized by a Municipality engaged in an annexation process even if there is not a residence on each tract of the area proposed for annexation; collateral to this question is whether a municipality can even utilize the exceptions set forth in Section 43.052(h) when said municipality has never adopted a Municipal Annexation Plan.

Part Two: If, notwithstanding the terminology of Section 43.052(h)(1), you determine that the answer to Part One is "Yes", then can a Municipality require residents of the area to be annexed pay for the capital improvements necessary to provide Municipal Services?

Dear Sir or Madam:

The City of Cibolo, Texas recently annexed two subdivisions into the corporate city limits. A true and correct copy of the Ordinance approving said annexation is attached hereto as Exhibit 1. The annexation was involuntary. Section 43.052(b) of the Local Government Code (LGC) states "A municipality may annex an area identified in the annexation plan *only* (emphasis added) as provided by this section." Further, Section 43.052(c) states that a city "shall prepare an annexation plan...". In statutory construction, the term "shall" is almost always viewed as a mandatory directive. Section 43.052(h) sets forth exceptions to the requirement of annexation pursuant to a municipal annexation plan. There are also other annexation procedures that can be utilized by a municipality that are inapplicable to the facts of the issues presented herein (See Sections 43.001-43.034 LGC).

The City of Cibolo, a Home Rule Municipality, has never adopted a Municipal Annexation Plan as set forth in Section 43.052 of the Local Government Code. The City has therefore relied upon various "exceptions" set forth in Section 43.052(h) in order to

annex land within their ETJ. Having “found” an exception to exist relative to the area to be annexed, the City then utilized the procedures set forth in Section 43.061 et. seq. to effectuate the annexation at issue in this opinion request.

The area annexed (referred to as Tract “A” in the Ordinance) consists of two separately platted and approved subdivisions. Tract “A” is composed of a total of 57 lots, each with its own tax ID. There is a residence located on only 56 of those lots and all of the homes in Tract “A” have a septic system. The City specifically stated that they utilized the exception set forth in Section 43.052(h)(1) to justify the annexation and by doing so, avoided all the obligations placed upon a Municipality seeking to annex property pursuant to a Municipal Annexation Plan. By finding an “exception” and then following the procedures set forth in Section 43.061 et. seq., the City avoided all the other obligations and procedures required of a city when annexing property pursuant to a Municipal Annexation Plan and likewise eliminated many of the rights of residents of a proposed annexation area. The residents of Tract “A” did not submit a written petition for inclusion in the Municipal Annexation Plan in that there was no Municipal Annexation Plan. The City of Cibolo did pass a resolution “...rejecting verbal Petitions (relative to Tract “A”) to be included in a municipal annexation plan...”, a copy of which is attached hereto as Exhibit 2.

At the meeting whereat the Ordinance was adopted, the residents of “Tract A” were presented with an Amended Service Plan, a copy of which is included with Exhibit 2. The Service Plan does not call for the provision of city sewer/wastewater service at any specified point in the future. It does however, in Section 5 on Page 7, identify a “triggering event” which would require a resident of Tract A to connect to City Sewer and pay for up to 500 feet of the sewer line. Arguably, this requirement would have such a resident to pay for the infrastructure/capital improvements necessary to construct the sewer line to that particular residence. Section 43.065 LGC states that Section 43.056(b)-(o) apply with respect to the provision of services to the annexed area. Section 43.056(f)(2) prohibits the Municipality from forcing a landowner to fund any capital improvements “necessary to provide municipal services in a manner inconsistent with Chapter 395 unless otherwise agreed to by the landowner”. Chapter 395 does allow a Municipality to charge a Developer of *New Development* (emphasis added) for capital improvements and hence would be inapplicable to the situation at issue in that Tract “A” is not new development.

Of further note: Section 43.065(a) LGC requires the Municipality to prepare a service plan prior to the publication of the notice of the first hearing. It is unknown whether this was done in that timeline. To the knowledge of this office, the first time a service plan, attached hereto as Exhibit “3”, was presented to the residents was at the first public hearing. This service plan was significantly different (with respect to wastewater/sewer services) than the plan ultimately adopted.

There is no case law specifically on point and interpreting the 43.052(h)(1) exception or the propriety of charging a landowner for capital improvements if the land was annexed utilizing that exception. There is one case wherein said exception was the basis for a “fast-track” annexation, but the issue of “residential dwellings located on each tract” was apparently not made an issue in that case: *In Re Spiritas Ranch Enterprises, L.L.P., Relator*, 218 S.W. 3d 887 (Tex.Civ.App.-Fort Worth, 2007).

From a grammatical interpretation standpoint, it would appear that the statute, 43.052(h)(1), would require a residential dwelling on **each** tract within the area proposed for annexation. The beginning of said section starts off with a reference to “an *area* proposed for annexation...”. Sub-section (1) then goes on to state that “*the area*” must contain less than 100 separate *tracts* on which one or more residential dwellings are located **on each tract**. “*The area*” can only and logically refer to the entire area proposed for annexation. “*Tract*” can only and logically refer to each parcel within that area.

If it was the intent of the Legislature to allow fast-track annexation of an area that contained less than 100 tracts, but did not have a residential dwelling on each tract within the area, 43.052(h)(1) would need to read essentially as follows: “the area contains fewer than 100 separate tracts of land and contains fewer than 100 residential dwellings within the area”. The clear language of 43.052(h)(1) requires otherwise.

All the above of course begs the question of whether a municipality can circumvent all the obligations placed upon a city when annexing property pursuant to a municipal annexation plan by simply not having one.

#### Part Two:

If, based upon your analysis, it is your opinion that a Municipality may rely upon the exception discussed above even if there is not a residential dwelling on each tract of the area and/or notwithstanding whether a city has adopted a municipal annexation plan, then may a Municipality charge for capital improvements necessary to provide services?

As discussed above, the “Service Plan” at issue will require a resident of the annexed area to hook up to City Sewer upon the simultaneous happening of certain events (the “triggering event”). It is clear from the terms of the “triggering event” that the City has no plan to provide sewer services at any time in the foreseeable future (the chance of “repair costs” to a septic system exceeding “replacement” of the entire system are virtually non-existent). Though extremely unlikely, should a triggering event occur, the affected resident would be obligated to pay for up to 500 feet of sewer line. This distance would not just be the distance from a residence to the street. If a residence were 75 feet away from the center of a street, that resident would be paying for not only that 75 feet, but a possible additional 425 feet. This additional 425 feet is customarily referred to as a “capital improvement” and/or “infrastructure”. The amended service plan adopted by the City does not limit the cost of connecting to existing City sewer lines to the distance from a residence to the center of a street or other public right-of-way.

Section 43.056(f)(2) prohibits a Municipality from requiring a landowner to fund any capital improvements necessary to provide municipal services. Said sub-section references Chapter 395 LGC, but that chapter deals solely with new development and, as stated earlier, Tract “A” is not new development. The City of Cibolo has therefore set up a scenario wherein they could require the landowner to fund capital improvements, to wit: city sewer lines. More importantly, and unlike the obligations placed upon a Municipality when annexing property pursuant to a Municipal Annexation Plan, the City of Cibolo has set up an annexation wherein the City would never have to provide city sewer services. Based upon information provided to this office, approximately 95% of homes/businesses in Cibolo are serviced by city sewer lines. Section 43.065(a) LGC mandates that the municipality’s service plan set forth how it intends to provide “full

municipal services”. Therefore, another issue raised by the procedures and service plan in this matter is whether the “service plan” to Tract “A” is in compliance with 43.065(a).

Should a “triggering event” occur, the City could waive the obligation to connect to city sewer or the City could “pro-rate” the cost of the sewer line to a resident. However, the Service Plan does not obligate the City to do either. Further, as structured, the Service Plan will not require the City to ever supply sewer services so long as a “triggering event” never occurs. This writer does want to point out though that no resident of Tract “A” will be billed for the provision of city sewer services, provided each resident’s respective septic system remains functional.

Sections 43.056(b)-(o) are applicable in the “fast-track” annexation process of Section 43.061 et seq. Section 43.056(l) allows a person owning land in an annexed area in a municipality of less than 1.6 million (the City of Cibolo is less than 1.6 million) to apply for a writ of mandamus if the municipality is not complying with the service plan. Since this service plan does not state how or when sewer services will be provided, a resident has effectively no remedy. Such a resident cannot seek to enforce a service plan when there is effectively no service plan to enforce.

In JM-944, the Texas Attorney General’s office discussed the provision of services to an annexed area and the remedies available to the residents of such an area when the services are not provided. One of the questions posed to the Attorney General was:

“If a city provides sewer service and has previously extended sewer lines within its existing city limits and such city annexes an area that has no sewer service, is the city required to extend lines to those newly annexed areas with land uses and population densities similar to the ones in the previous city limits?”

Citing the case of *Larkins v. City of Denison*, 683 S.W. 2d 754 (Tex.App.-Dallas 1984, no writ), the AG’s office at that time reached two conclusions: 1) “A City may not literally be required to provide services to an annexed area,” and 2) “If the city does not provide services in accordance with the service plan developed pursuant to Local Government Code section 43.056, disannexation under section 43.141 is the exclusive remedy available to aggrieved persons.”

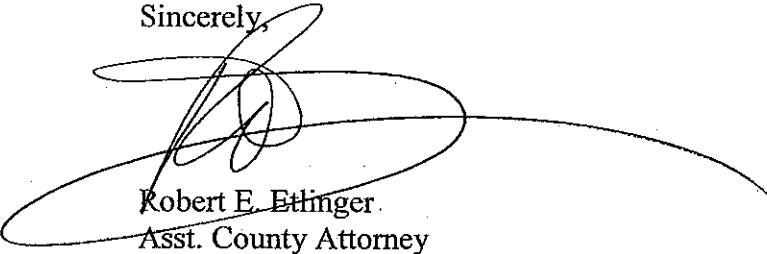
JM-944, in reliance upon the *Larkins* case, and without citing any other legal authority, leaps to the conclusion that “shall provide services” [currently section 43.056(a) LGC ] does not really mean what it says. In effect, this opinion provides authority for a city to ignore any obligation to provide full municipal services and just wait and see if the city gets sued for disannexation. In the interim of course, the newly annexed area pays city taxes.

Here, the residents of “Tract A” would ostensibly never even have the remedy of seeking disannexation (due to an alleged failure to provide a promised service) in that the City of Cibolo has not included in the service plan a promise to provide sewer services.

Based upon a cursory investigation, it appears that the 43.052(h)(1) LGC exception to inclusion of an area in a municipal annexation plan is not interpreted by any city to require that there be a residence on each tract of the area, notwithstanding the clear

language of that statute. Further, cities do annex areas at a time where the city might not have the resources to fund new infrastructure/capital improvements to a newly annexed area in a timely fashion. The *Larkins* case made that specific allegation. Consequently, your opinion could have far-reaching impact on the State of Texas. It is anticipated that specific cities and/or the Texas Municipal League may submit briefing materials to justify what has been done historically. This office would argue preemptively that laws passed by our Legislature should be interpreted by their clear language and that the rights of citizens take priority.

Sincerely,



Robert E. Etlinger  
Asst. County Attorney

xc: The Honorable Representative Edmund Kuempel  
xc: The Honorable Senator Jeff Wentworth

ORDINANCE NO. 857

EARL &amp; ASSOCIATES

JUL 08 2008

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**PROVIDING FOR THE EXTENSION OF CIBOLO, TEXAS CITY LIMITS BY THE ANNEXATION OF A TRACT OF LAND CONTAINING 65.00 ACRES GENERALLY LOCATED ALONG THE NORTH AND SOUTH SIDES OF GREEN VALLEY ROAD, EAST OF THE SCHERTZ CITY LIMITS AND WEST OF THE EXISTING CITY LIMIT LINE OF THE CITY OF CIBOLO, GUADALUPE COUNTY, TEXAS; AND APPROVING A SERVICE PLAN AS AMENDED FOR SUCH AREAS.**

**WHEREAS**, Texas Local Government Code section 43.021 authorizes the City of Cibolo, as a home-rule municipality, to extend its City limit boundaries through the annexation of area adjacent to those boundaries; and

**WHEREAS**, section 1.03 of the City Charter of the City of Cibolo provides that the City Council has authority by ordinance to fix the City limit boundaries, provide for the alteration and extension of said boundaries, and annex additional territory lying adjacent to said boundaries in any manner provided by law; and

**WHEREAS**, Texas Local Government Code section 43.052(h)(1) provides that an area proposed for annexation containing fewer than one hundred (100) separate tracts of land on which one or more residential dwellings are located on each tract is exempted from the state law requirement that an area proposed for annexation first be identified in an annexation plan; and

**WHEREAS**, the areas described herein contain fewer than one hundred (100) separate tracts of land on which one or more residential dwellings are located on each tract and are, therefore, exempted from the above-described annexation plan requirement; and

**WHEREAS**, on the 27<sup>th</sup> day of May, 2008 and the 29<sup>th</sup> day of May, 2008, the City Council of the City of Cibolo, Texas held public hearings on the proposed annexation of a tract of land containing 65.0 acres, situated outside of, but immediately adjacent to, the current corporate limits of the City of Cibolo, Texas and such public hearings gave all interested persons the right to appear and be heard on the proposed annexation of such land; and

**WHEREAS**, notice of the above referenced public hearings was published in The Seguin Gazette on May 16, 2008, a newspaper having general circulation in the City of Cibolo, Texas and within the territory to be annexed, in accordance with law; and

**WHEREAS**, the proposed service plan was made available for public inspection and explained to the inhabitants of the area at the public hearings held; and

**WHEREAS**, the aforementioned public hearings were conducted not more that forty (40) days nor less that twenty (20) days prior to the institution of annexation proceedings; and

EXHIBIT 1

WHEREAS, the population of the City of Cibolo, Texas is in excess of 11,000 inhabitants, and the area to be annexed lies within the extraterritorial jurisdiction of the City of Cibolo, Texas, and lies adjacent to and adjoins the City of Cibolo, Texas.

NOW THEREFORE:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CIBOLO, TEXAS:

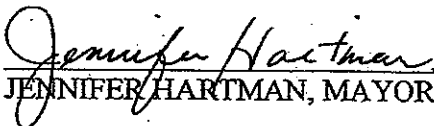
SECTION 1. The land and territory lying outside of, but adjacent to and adjoining the City of Cibolo, Texas, more particularly described as those portions of the tracts of land described in Exhibit 'A', attached hereto and incorporated herein by reference, is hereby added and annexed to the City of Cibolo, Texas, and said territory, as described, shall hereafter be included within the boundary limits of said City, and the present boundary limits of said City, at the various points contiguous to the area described in Exhibits 'A', are altered and amended so as to include said areas within the corporate limits of the City of Cibolo, Texas.

SECTION 2. The land and territory more particularly described as those portions of the tracts of land described in Exhibit 'A', attached hereto and incorporated herein by reference, shall be part of the City of Cibolo, Texas and inhabitants thereof shall be entitled to all of the rights and privileges as citizens and shall be bound by the acts, ordinances, resolutions, and regulations of the City of Cibolo, Texas.

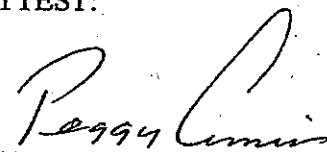
SECTION 3. An amended service plan outlining the provisions of necessary municipal service to the properties described in Exhibit 'A' is hereby approved and the implementation of said plan is hereby authorized. Such plan is attached hereto and incorporated herein as Exhibit 'B'.

SECTION 4. This ordinance shall be effective from and after June 24, 2008.

PASSED AND APPROVED this, the 24<sup>th</sup> day of June 2008.

  
JENNIFER HARTMAN, MAYOR

ATTEST:

  
PEGGY CIMICS, CITY SECRETARY

## EXHIBIT 'A'

**Tract A****BEGINNING:**

Along the Northwest Right-of-Way of Green Valley Road at a point adjacent to the City Limit line of the City of Cibolo, Guadalupe County, Texas.

**THENCE:**

NORTH 57° 28' 39" EAST, a distance of 260.42 to a point;  
 SOUTH 29° 48' 45" EAST, a distance of 507.57 to a point;  
 SOUTH 58° 51' 41" WEST, a distance of 209.01 to a point;  
 SOUTH 31° 38' 22" EAST, a distance of 912.92 to a point;  
 SOUTH 56° 24' 36" WEST, a distance of 226.72 to a point;  
 NORTH 32° 34' 18" WEST, a distance of 857.61 to a point;  
 SOUTH 58° 22' 45" WEST, a distance of 243.63 to a point;  
 SOUTH 31° 59' 21" EAST, a distance of 864.02 to a point;  
 SOUTH 56° 40' 09" WEST, a distance of 224.36 to a point;  
 SOUTH 33° 25' 19" EAST, a distance of 699.02 to a point;  
 SOUTH 58° 12' 58" WEST, a distance of 729.32 to a point;  
 NORTH 32° 16' 52" WEST, a distance of 794.21 to a point;  
 NORTH 57° 43' 35" EAST, a distance of 90.27 to a point;  
 Along a tangent curve to the left with a radius of 49.47 feet, a tangent length of 53.06 feet, a central angle of 94° 01' 06", a distance of the chord of which bears South 67° 40' 25" East for a distance of 72.36 feet and along the arc of said curve for a distance of 81.17 feet to a point;

**THENCE:**

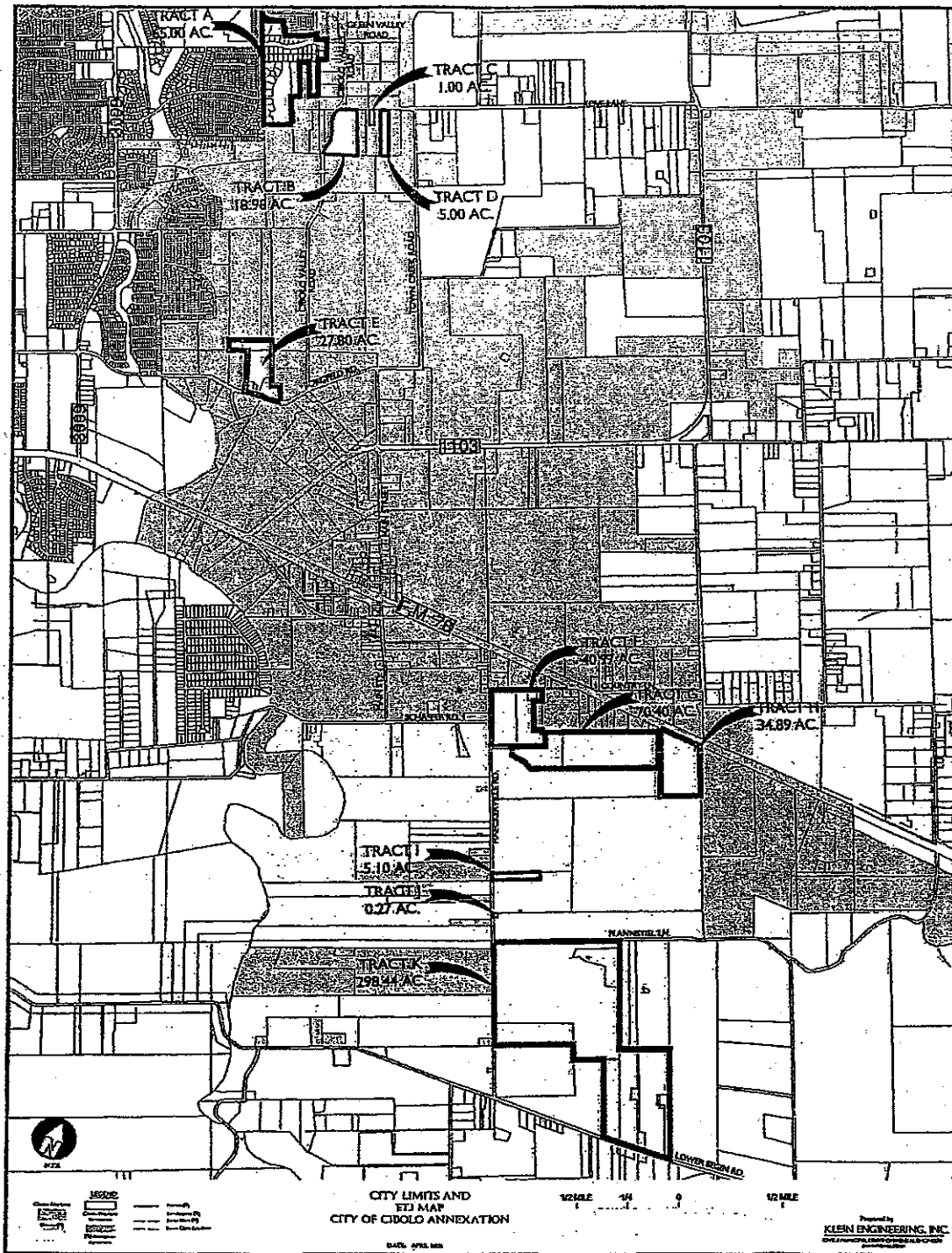
SOUTH 29° 09' 54" EAST, a distance of 106.33 to a point;  
 NORTH 60° 02' 21" EAST, a distance of 439.91 to a point;  
 SOUTH 36° 53' 28" EAST, a distance of 375.07 to a point;  
 NORTH 60° 02' 30" EAST, a distance of 556.71 to a point;  
 NORTH 46° 53' 10" EAST, a distance of 193.48 to a point;  
 NORTH 47° 59' 42" EAST, a distance of 60.60 to a point;

**THENCE:**

South 31° 09' 59" East, a distance of 141.29 feet, to the point of beginning and containing 65.00 Acres more or less.



EXHIBIT 'A'



## EXHIBIT 'B'

2008 ANNEXATION PROGRAM  
CITY OF CIBOLO, TEXAS**SERVICE PLAN FOR 2008 ANNEXATION**

Upon annexation of the area identified above the City of Cibolo will provide City services utilizing methods by which it extends services to any other equivalent area of the City.

## SERVICES PROVIDED BY THE EFFECTIVE DATE OF ANNEXATION

1. Police Protection

The City of Cibolo, Texas and its Police Department will provide police protection to newly annexed areas at the same or similar level of service now being provided to other areas of the City with like topography, land use and population density as those found within the newly annexed areas. The Police Department will have the responsibility to respond to all dispatched calls for service or assistance within the newly annexed areas.

2. Fire Protection and Emergency Medical Services

The City of Cibolo, Texas contracts with the Cibolo Volunteer Fire Department and will provide fire protection to newly annexed areas through that contract at the same or similar level of service now being provided to other areas of the City, with like topography, land use and population density as those found within the newly annexed areas.

The City of Cibolo, Texas contracts with the City of Schertz for EMS services and will provide EMS services through that contract to newly annexed areas at the same or similar level of service now being provided to other areas of the City, with like topography, land use and population density as those found within the newly annexed areas.

3. Maintenance of Water and Wastewater Facilities

All of the newly annexed properties are within either the water service area of Green Valley Special Utility District or Cibolo Water District.

All of the newly annexed properties are within either the wastewater service area of Green Valley Special Utility District or Cibolo Water District.

All water/wastewater facilities owned or maintained by the City of Cibolo at the time of the proposed annexation shall continue to be maintained by the City of Cibolo. All water/wastewater facilities which may be acquired subsequent to the annexation of the proposed areas shall be maintained by the City of Cibolo to the extent of its ownership. The now existing water/wastewater mains at existing locations shall be available for the point of use extension based upon the City of Cibolo standard extension policy now existing or as may be amended. On-site sewerage systems may be maintained in accordance with the City's Code of Ordinances.

4. Solid Waste Collection

The City of Cibolo, Texas contracts for the collection of solid waste and refuse within the corporate limits of the City with Waste Management. Solid waste collection will be provided to citizens in the newly annexed areas at the same or similar level of service now being provided to other areas of the City with like topography, land use and density as those found within the newly annexed areas. The

City may negotiate with annexed areas to allow continued services with an existing solid waste management provider. After the second anniversary of the annexation date, the City will impose fees and provide the service.

If areas with private roads and/or gates are arranged so that garbage may be collected without creating a safety hazard, the City, at its discretion, may collect the garbage provided proper indemnification is received from the community association or individual property owners. The City will then impose fees and provide the service. Garbage collection locations shall be subject to the approval of the Sanitation Manager. In the event the City does not collect garbage within the areas with private roads and/or gates, residents of these areas will not be billed for service after the two-year date.

5. **Maintenance of Roads and Streets**

Any and all public roads, streets or alleyways shall be maintained to the same degree and extent that other public roads, streets, and alleyways are maintained in areas of the City with like topography, land use and density as those found within the newly annexed areas. Private roads will remain under the ownership of the homeowners association and as such maintained by the association.

6. **Maintenance of Parks, Playgrounds, and Swimming Pools**

The City of Cibolo, Texas is not aware of the existence of any publicly owned parks, playgrounds or swimming pools now located in the proposed areas of annexation. In the event any such parks, playgrounds, or swimming pools do exist and are public facilities, the City will maintain such areas and facilities to the extent and degree and to the same or similar level of service now being provided to other such areas and facilities within the corporate limits of the City with like topography, land use and density as those found within the newly annexed areas. Private facilities will remain under the ownership of the homeowners association and as such maintained by the association.

7. **Maintenance of any Publicly owned Facility, Building or Municipal Service**

The City of Cibolo, Texas is not aware of the existence of any publicly owned facility, building, or other municipal service now located in the proposed areas of annexation. In the event any publicly owned facility, building, or other municipal service does exist and are public facilities, the City will maintain such areas and facilities to the extent and degree and to the same or similar level of service now being provided to other such areas and facilities within the corporate limits of the City with like topography, land use and density as those found within the newly annexed areas.

8. **Other Services**

The City of Cibolo, Texas finds and determines that such services as planning, code enforcement, animal control, library, parks and recreation, court and general administration will be made available after the effective date of annexation at the same or similar level of service now being provided to other areas of the City with similar topography, land use and density as those found within the newly annexed areas.

**CONSTRUCTION OF ANY CAPITAL IMPROVEMENTS TO BE COMPLETED WITHIN 2 ½ YEARS**

1. **Police and Fire Protection and Solid Waste Collection**

The City of Cibolo, Texas, finds and determines it is not necessary to acquire or construct any capital improvements within 2 ½ years of the effective date of the annexation of the particular annexed areas for the purpose of providing police protection, fire protection, emergency medical services or solid waste collection. The City finds and determines that it has at the present time adequate facilities and other resources to provide the same type, kind and level of service and protection which is presently being administered to other areas already incorporated in the City of Cibolo, Texas with like topography, land use and population density as those found within the newly annexed areas.

2. **Water/Wastewater Facilities**

For the next 2 ½ years, Cibolo finds and determines that there is sufficient capacity for wastewater to provide services to the annexed areas pursuant to the City of Cibolo's extension policies. The construction of any capital improvements for water and wastewater services to an annexed area will be completed pursuant to the City's infrastructure extension policies.

3. **Roads and Streets**

The City of Cibolo, Texas, finds and determines it is not necessary to acquire or construct any capital improvements within 2 ½ years of the effective date of the annexation of the particular annexed areas.

4. **Maintenance of Parks, Playgrounds, and Swimming Pools and Any Other Publicly Owned Facility, Building, or Service**

The City of Cibolo, Texas, finds and determines it is not necessary to acquire or construct any capital improvements within 2 ½ years of the effective date of the annexation of the particular annexed areas for the purpose of parks maintenance, playgrounds, swimming pools and other publicly owned facility, building or service.

5. **Maintenance of Current Septic System**

Any resident who currently utilizes a septic system to manage wastewater shall be entitled to continue said system except for the following:

Should a septic system located within 500-feet of an existing sewer main fail to the point where repair costs will exceed the cost of replacement, the property owner shall be required to connect to the sewer system.

**SPECIFIC FINDINGS**

The City of Cibolo, Texas, finds and determines that this proposed service plan will not provide any fewer services and will not provide a lower level of service in the areas being considered for annexation that were in existence in the proposed areas at the time immediately preceding the annexation process. Given the proposed annexation areas' topography, land utilization and population density, the service levels to be provided in the newly annexed areas will be equivalent to those provided to other areas of the City with similar characteristics.

**TERMS**

This plan shall be valid for a term of ten (10) years. Renewal of the Service Plan is at the discretion of the City of Cibolo.

**LEVEL OF SERVICE**

Nothing in this plan shall require the City to provide a uniform level of full municipal services to each area of the City, including the annexed areas, if different characteristics of topography, land use, and population density are considered a sufficient basis for providing different levels of service.

**AMENDMENTS**

The plan shall not be amended unless public hearings are held in accordance with Chapter 43 of the Texas Local Government Code.

# REGULAR CITY COUNCIL MEETING



CIBOLO MUNICIPAL BUILDING  
200 S. MAIN  
June 10, 2008  
7:00 P.M.

## AGENDA

1. Call to Order
2. Roll Call
3. Invocation
4. Pledge of Allegiance
5. Citizens to be Heard

This is the opportunity for visitors and guests to address the City Council on any issue. City Council may not debate any non-agenda issue, nor may any action be taken on any non-agenda issue at this time however City Council may present any factual response to items brought up by citizens. (Attorney General Opinion – JC-0169) (Limit of three minutes each).
6. Consent Agenda – Consent Items (General Items)

(All items listed below are considered to be routine and non-controversial by the council and will be approved by one motion. There will be no separate discussion of these items unless a councilmember so requests, in which case the item will be removed from the consent agenda and will be considered as part of the order of business.)

  - A. Approval of the minutes of the Regular City Council Meeting held on May 27, 2008
  - B. Approval of the minutes of the Special Council Meeting/Public Hearing held on May 29, 2008.
  - C. Approval of the minutes of the Special Council Meeting held on June 3, 2008.
7. Public Hearing
  - A. Conduct a Public Hearing on the rezoning of 25.5 acres of land from Residential Single Family Rural (RU) to Places of Assembly (AS). The tract is situated out of the Geronimo Leal Survey No. 85, Abstract No. 210, Guadalupe County, Cibolo, Texas and is located at 242 Country Lane, Cibolo, Texas.
8. Discussion/Action
  - A. Discussion/Action on the removal, appointments and re-appointments to Cibolo Boards, Commissions and Committees. (Staff)
  - B. Receive a report from the Parks and Recreation Commission. (Parks)
  - C. Discussion/Action regarding the bid results received for the Civil Site Work for the New Public Works Facility. (Staff)
  - D. Discussion/Action to award the bid for the Civil Site Work for the New Public Works Facility. (Staff)

EXHIBIT 2

- E. Discussion/Action regarding the bid results received for the City of Cibolo Public Works Facility. (Staff)
- F. Discussion/Action and direction to staff on awarding the bid for the City of Cibolo Public Works Facility. (Staff)
- G. Discussion/Action and provide direction to staff regarding a potential agreement with the City of San Antonio regarding release of Extraterritorial Jurisdiction. (Staff)
- H. Discussion/Action and provide direction to staff on creating a new position of City Engineer/Assistant City Manager and approving a job description for that position. (Staff)
- I. Discussion/Action on the updating and modification of the City's Internet site. (Hicks)
- J. Discussion/Action to provide direction to staff on Capital Projects contemplated for a November 2008 General Obligation Bond Proposition. (Staff)
- K. Discussion/Action on the review and confirmation of all upcoming special meetings and workshops and scheduling the time, date and place of additional special meetings or workshops. (Staff)

9. Ordinances

- A. Approval/Disapproval of an ordinance prohibiting parking of commercial vehicles in and around all City Parks in the City of Cibolo and directing the Chief of Police and City Engineer to erect the appropriate signs. (Winn)
- B. Approval/Disapproval of an ordinance establishing zoning classification for a 25.5 acre tract of land owned by Discovery Church to be re-zoned from Residential Single Family-Rural (R-U) to Places of Assembly (AS); and providing an effective date. (Staff)

10. Resolutions

- A. Approval/Disapproval of a resolution rejecting any verbal petitions to be included in a municipal annexation plan made by certain residents of "Tract A" generally located along Green Valley road, east of Schertz city limits containing 65 acres currently being considered for annexation by the City of Cibolo

11. Executive Session

The City Council will meet in Executive Session as authorized by the Texas Gov't Code Sec. 551.071, Consultation with Attorney and 551.074 Personnel Matters to discuss the following:

- A. Discuss potential litigation involving the Green Valley Special Utility District.
- B. Discussion regarding legal issues surrounding proposed annexation of "Tract A" scheduled for June 24, 2008.
- C. Discussion regarding the evaluation of the City Manager.

12. Open Session

Reconvene into Regular Session and take action/or give staff direction, if necessary, on items discussed in Executive Session.

13. Staff Updates

- A. Capital Projects Schedule – 2006/2007 Bond Projects
- B. Report on building permits for the FY 2008
- C. Veterans Memorial Park

14. City Council request(s) regarding specific items or staff reports to be scheduled for future agendas.

15. Adjournment

This Notice of Meeting is posted pursuant to the Texas Government Code 551.041 - .043 on the front bulletin board of the Cibolo Municipal Building, 200 South Main Street, Cibolo, Texas on Friday, June 6, 2008 at 5:00 P.M.

Peggy Cimics  
City Secretary

Pursuant to Section 551.071 of the Texas Government Code, the City of Cibolo reserves the right to consult in closed session with its attorney and to receive legal advice regarding any item listed on this agenda.

This facility is wheelchair accessible and accessible parking space is available. Request for accommodation or interpretive services must be made 48 hours prior to the meeting. Please contact the City Secretary at (210) 658-9900 or FAX (210) 658-1687. All cell phones must be turned off before entering the Council Meeting.

I certify that the attached notice and agenda of items to be considered by the City Council was removed by me from the City Hall bulletin board on the \_\_\_\_\_ day of \_\_\_\_\_ 2008.

\_\_\_\_\_  
Name and Title



RESOLUTION NO. 1367

**A RESOLUTION REJECTING VERBAL PETITIONS TO BE INCLUDED IN A MUNICIPAL ANNEXATION PLAN MADE BY CERTAIN RESIDENTS OF "TRACT A" GENERALLY LOCATED ALONG GREEN VALLEY ROAD, EAST OF SCHERTZ CITY LIMITS CONTAINING 65 ACRES CURRENTLY BEING CONSIDERED FOR ANNEXATION BY THE CITY OF CIBOLO**

**WHEREAS,** the power to annex is a legislative prerogative; and

**WHEREAS,** On March 25, 2008, the City Council of the City of Cibolo at a regularly scheduled meeting considered various locations within its Extra Territorial Jurisdiction which it desired to annex; and

**WHEREAS,** City Staff and the City Engineer, using generally accepted municipal planning principles and practices, determined that the area referred to on the annexation map as "Tract A" contained 65.00 acres and fewer than 100 separate tracts of land on which one or more residential dwellings are located on each tract was exempt from inclusion in a Municipal Annexation Plan pursuant Texas Local Government Code 43.052(h)(1); and

**WHEREAS,** the property within "Tract A" is completely surrounded by the corporate City limits except for its western border which is adjacent to corporate limits of the City of Schertz and the metes and bounds of said property are attached in **Exhibit A**; and

**WHEREAS,** pursuant to Texas Local Government Code Section 43.062(b)(1) the City Secretary mailed notices to all affected property owners, as indicated by the appraisal records, on April 11, 2008; and

**WHEREAS,** the City published notice in the newspaper of general circulation and posted notice on the City's website of public hearings on May 16, 2008, pursuant to Texas Local Government Code Sections 43.062 and 43.063; and



**WHEREAS**, the City has not circumvented the requirements of Texas Local Government Code Sections 42.052(a)-(g), and the area known as "Tract A" being considered for annexation is exempt from a Municipal Annexation Plan under Texas Local Government Code Section 43.052(h)(1); and

**WHEREAS**, at the public hearings on the proposed annexation held on May 27, 2008 and May 29, 2008 regarding the annexation of Tract A, Mrs. Audra Mead of 2084 Persimmon Drive, Cibolo Texas 78108, and Mr. Dean Danos of 108 Agarita Circle, Cibolo Texas 78108 verbally requested that the City Council consider placing the area known as "Tract A" in a Municipal Annexation Plan; and

**WHEREAS**, no written petitions have been received by the City, and the City believes that said verbal requests by the two property owners in "Tract A" do not meet statutory requirements; and

**WHEREAS**, the City believes that the property owners in "Tract A" are not entitled to be placed on a Municipal Annexation Plan because this area is exempt under 43.052(h)(1) of the Texas Local Government Code; and

**WHEREAS**, based on the aforementioned legislative findings, the City Council hereby states that any petitions by the residents of "Tract A" to be included in a Municipal Annexation Plan should be denied.

**NOW, THEREFORE**

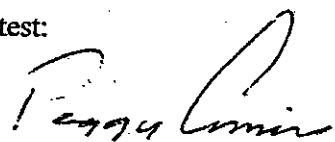
**BE IT RESOLVED** by the **CITY COUNCIL OF THE CITY OF CIBOLO, TEXAS:**

The verbal petitions to be included on a Municipal Annexation Plan received during the public hearings of May 27, 2008 and May 29, 2008 from Mrs. Audra Mead of 2084 Persimmon Drive, Cibolo Texas 78108, and Mr. Dean Danos of 108 Agarita Circle, Cibolo Texas 78108 respectively, are hereby denied.

**APPROVED AND ADOPTED** on this the 10 day of June, 2008.

  
Jennifer Hartman, Mayor

Attest:

  
Peggy Cimics, City Secretary

**EXHIBIT A**  
**LEGAL DESCRIPTION FOR TRACT A**

**Tract A**

**BEGINNING:**

Along the Northwest Right-of-Way of Green Valley Road at a point adjacent to the City Limit line of the City of Cibolo, Guadalupe County, Texas.

**THENCE:**

NORTH 57° 28' 30" EAST, a distance of 260.42 to a point;

SOUTH 29° 48' 00" EAST, a distance of 507.57 to a point;

SOUTH 58° 51' 00" WEST, a distance of 209.01 to a point;

SOUTH 31° 38' 00" EAST, a distance of 912.92 to a point;

SOUTH 56° 24' 00" WEST, a distance of 226.72 to a point;

NORTH 32° 34' 18" WEST, a distance of 857.61 to a point;

SOUTH 58° 22' 45" WEST, a distance of 243.63 to a point;

SOUTH 31° 59' 21" EAST, a distance of 864.02 to a point;

SOUTH 56° 40' 09" WEST, a distance of 224.36 to a point;

SOUTH 33° 25' 19" EAST, a distance of 699.02 to a point;

SOUTH 58° 12' 58" WEST, a distance of 729.32 to a point;

NORTH 32° 16' 52" WEST, a distance of 794.21 to a point;

NORTH 57° 43' 35" EAST, a distance of 90.27 to a point;

Along a tangent curve to the left with a radius of 49.47 feet, a tangent length of 53.06 feet, a central angle of 94° 01' 06", a distance of the chord of which bears South 67° 40' 25" East for a distance of 72.36 feet and along the arc of said curve for a distance of 81.17 feet to a point;

**THENCE:**

SOUTH 29° 09' 54" EAST, a distance of 106.33 to a point;

NORTH 60° 02' 21" EAST, a distance of 439.91 to a point;

SOUTH 36° 53' 28" EAST, a distance of 375.07 to a point;

NORTH 60° 02' 30" EAST, a distance of 556.71 to a point;

NORTH 46° 53' 10" EAST, a distance of 193.48 to a point;

NORTH 47° 59' 42" EAST, a distance of 60.60 to a point;

**THENCE:**

South 31° 09' 59" East, a distance of 141.29 feet, to the point of beginning and containing 65.00 Acres more or less.

## ORDINANCE NO. \_\_\_\_\_

PROVIDING FOR THE EXTENSION OF CIBOLO, TEXAS CITY LIMITS BY THE ANNEXATION OF A TRACT OF LAND CONTAINING 65.00 ACRES GENERALLY LOCATED ALONG THE NORTH AND SOUTH SIDES OF GREEN VALLEY ROAD, EAST OF THE SCHERTZ CITY LIMITS AND WEST OF THE EXISTING CITY LIMIT LINE OF THE CITY OF CIBOLO, GUADALUPE COUNTY, TEXAS; AND APPROVING A SERVICE PLAN FOR SUCH AREAS.

WHEREAS, Texas Local Government Code section 43.021 authorizes the City of Cibolo, as a home-rule municipality, to extend its City limit boundaries through the annexation of area adjacent to those boundaries; and

WHEREAS, section 1.03 of the City Charter of the City of Cibolo provides that the City Council has authority by ordinance to fix the City limit boundaries, provide for the alteration and extension of said boundaries, and annex additional territory lying adjacent to said boundaries in any manner provided by law; and

WHEREAS, Texas Local Government Code section 43.052(h)(1) provides that an area proposed for annexation containing fewer than one hundred (100) separate tracts of land on which one or more residential dwellings are located on each tract is exempted from the state law requirement that an area proposed for annexation first be identified in an annexation plan; and

WHEREAS, the areas described herein contain fewer than one hundred (100) separate tracts of land on which one or more residential dwellings are located on each tract and are, therefore, exempted from the above-described annexation plan requirement; and

WHEREAS, on the 27<sup>th</sup> day of May, 2008 and the 29<sup>th</sup> day of May, 2008, the City Council of the City of Cibolo, Texas held public hearings on the proposed annexation of a tract of land containing 65.0 acres, situated outside of, but immediately adjacent to, the current corporate limits of the City of Cibolo, Texas and such public hearings gave all interested persons the right to appear and be heard on the proposed annexation of such land; and

WHEREAS, notice of the above referenced public hearings was published in The Seguin Gazette on May 16, 2008, a newspaper having general circulation in the City of Cibolo, Texas and within the territory to be annexed, in accordance with law; and

WHEREAS, the proposed service plan was made available for public inspection and explained to the inhabitants of the area at the public hearings held; and

WHEREAS, the aforementioned public hearings were conducted not more than forty (40) days nor less than twenty (20) days prior to the institution of annexation proceedings; and

WHEREAS, the population of the City of Cibolo, Texas is in excess of 11,000 inhabitants, and the area to be annexed lies within the extraterritorial jurisdiction of the City of Cibolo, Texas, and lies adjacent to and adjoins the City of Cibolo, Texas.

NOW THEREFORE:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CIBOLO, TEXAS:

SECTION 1. The land and territory lying outside of, but adjacent to and adjoining the City of Cibolo, Texas, more particularly described as those portions of the tracts of land described in Exhibit 'A', attached hereto and incorporated herein by reference, is hereby added and annexed to the City of Cibolo, Texas, and said territory, as described, shall hereafter be included within the boundary limits of said City, and the present boundary limits of said City, at the various points contiguous to the area described in Exhibits 'A', are altered and amended so as to include said areas within the corporate limits of the City of Cibolo, Texas.

SECTION 2. The land and territory more particularly described as those portions of the tracts of land described in Exhibit 'A', attached hereto and incorporated herein by reference, shall be part of the City of Cibolo, Texas and inhabitants thereof shall be entitled to all of the rights and privileges as citizens and shall be bound by the acts, ordinances, resolutions, and regulations of the City of Cibolo, Texas.

SECTION 3. A service plan outlining the provisions of necessary municipal service to the properties described in Exhibit 'A' is hereby approved and the implementation of said plan is hereby authorized. Such plan is attached hereto and incorporated herein as Exhibit 'B'.

SECTION 4. This ordinance shall be effective from and after June 24, 2008.

PASSED AND APPROVED this, the 24<sup>th</sup> day of June 2008.

\_\_\_\_\_  
JENNIFER HARTMAN, MAYOR

ATTEST:

\_\_\_\_\_  
PEGGY CIMICS, CITY SECRETARY

## EXHIBIT 'A'

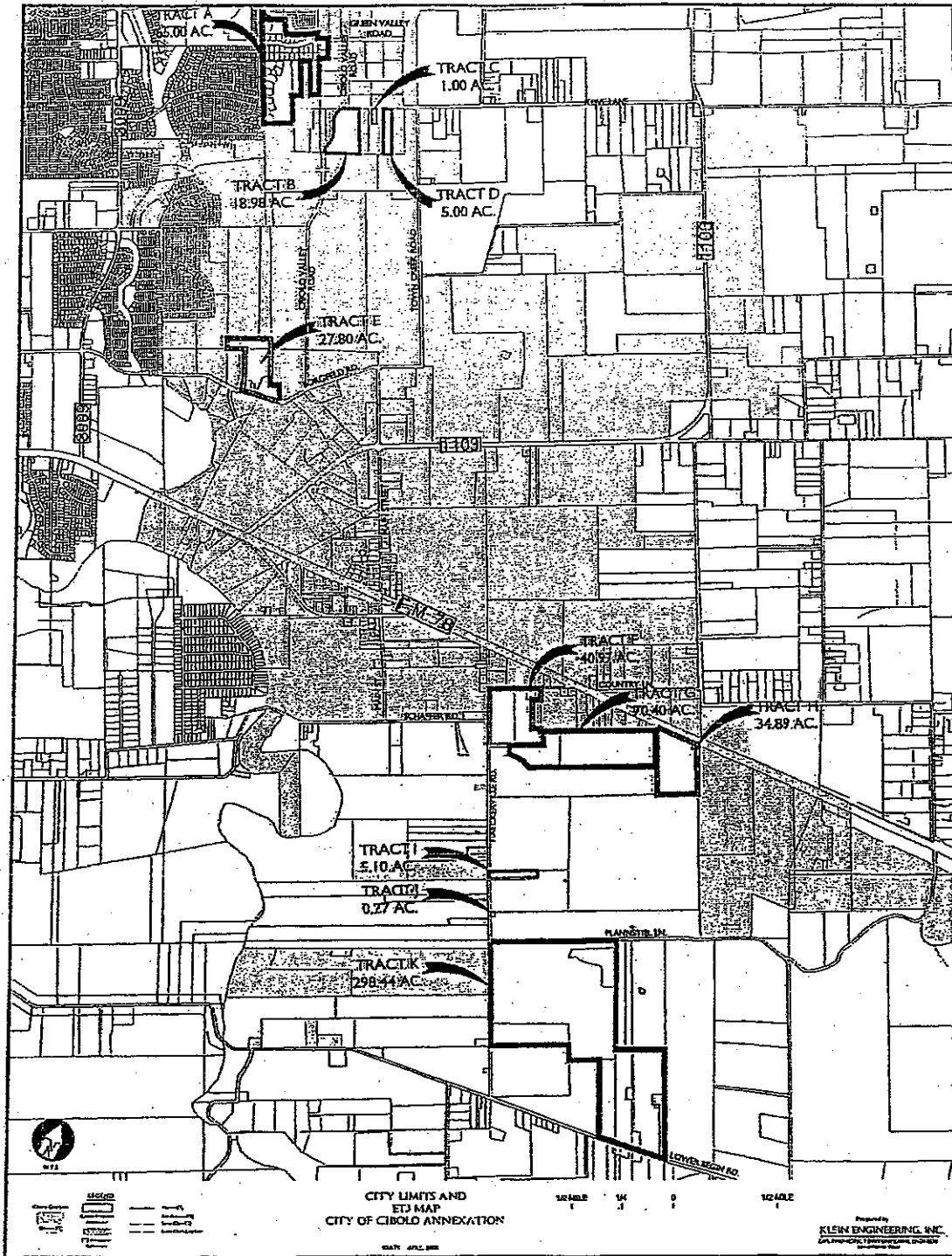
**Tract A**  
**BEGINNING:** Along the Northwest Right-of-Way of Green Valley Road at a point adjacent to the City Limit line of the City of Cibolo, Guadalupe County, Texas.

**THENCE:** NORTH 57° 28' 39" EAST, a distance of 260.42 to a point;  
 SOUTH 29° 48' 45" EAST, a distance of 507.57 to a point;  
 SOUTH 58° 51' 41" WEST, a distance of 209.01 to a point;  
 SOUTH 31° 38' 22" EAST, a distance of 912.92 to a point;  
 SOUTH 56° 24' 36" WEST, a distance of 226.72 to a point;  
 NORTH 32° 34' 18" WEST, a distance of 857.61 to a point;  
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 SOUTH 31° 59' 21" EAST, a distance of 864.02 to a point;  
 SOUTH 56° 40' 09" WEST, a distance of 224.36 to a point;  
 SOUTH 33° 25' 19" EAST, a distance of 699.02 to a point;  
 SOUTH 58° 12' 58" WEST, a distance of 729.32 to a point;  
 NORTH 32° 16' 52" WEST, a distance of 794.21 to a point;  
 NORTH 57° 43' 35" EAST, a distance of 90.27 to a point;  
 Along a tangent curve to the left with a radius of 49.47 feet, a tangent length of 53.06 feet, a central angle of 94° 01' 06"; a distance of the chord of which bears South 67° 40' 25" East for a distance of 72.36 feet and along the arc of said curve for a distance of 81.17 feet to a point;

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**THENCE:** South 31° 09' 59" East, a distance of 141.29 feet, to the point of beginning and containing 65.00 Acres more or less.

EXHIBIT 'A'



## EXHIBIT 'B'

**2008 ANNEXATION PROGRAM  
CITY OF CIBOLO, TEXAS****SERVICE PLAN FOR 2008 ANNEXATION**

Upon annexation of the area identified above the City of Cibolo will provide City services utilizing methods by which it extends services to any other equivalent area of the City.

**SERVICES PROVIDED BY THE EFFECTIVE DATE OF ANNEXATION****1. Police Protection**

The City of Cibolo, Texas and its Police Department will provide police protection to newly annexed areas at the same or similar level of service now being provided to other areas of the City with like topography, land use and population density as those found within the newly annexed areas. The Police Department will have the responsibility to respond to all dispatched calls for service or assistance within the newly annexed areas.

**2. Fire Protection and Emergency Medical Services**

The City of Cibolo, Texas contracts with the Cibolo Volunteer Fire Department and will provide fire protection to newly annexed areas through that contract at the same or similar level of service now being provided to other areas of the City, with like topography, land use and population density as those found within the newly annexed areas.

The City of Cibolo, Texas contracts with the City of Schertz for EMS services and will provide EMS services through that contract to newly annexed areas at the same or similar level of service now being provided to other areas of the City, with like topography, land use and population density as those found within the newly annexed areas.

**3. Maintenance of Water and Wastewater Facilities**

All of the newly annexed properties are within either the water service area of Green Valley Special Utility District or Cibolo Water District.

All of the newly annexed properties are within either the wastewater service area of Green Valley Special Utility District or Cibolo Water District.

All water/wastewater facilities owned or maintained by the City of Cibolo at the time of the proposed annexation shall continue to be maintained by the City of Cibolo. All water/wastewater facilities which may be acquired subsequent to the annexation of the proposed areas shall be maintained by the City of Cibolo to the extent of its ownership. The now existing water/wastewater mains at existing locations shall be available for the point of use extension based upon the City of Cibolo standard extension policy now existing or as may be amended. On-site sewerage systems may be maintained in accordance with the City's Code of Ordinances.

**4. Solid Waste Collection**

The City of Cibolo, Texas contracts for the collection of solid waste and refuse within the corporate limits of the City with Waste Management. Solid waste collection will be provided to citizens in the newly annexed areas at the same or similar level of service now being provided to other areas of the City with like topography, land use and density as those found within the newly annexed areas. The

City may negotiate with annexed areas to allow continued services with an existing solid waste management provider. After the second anniversary of the annexation date, the City will impose fees and provide the service.

If areas with private roads and/or gates are arranged so that garbage may be collected without creating a safety hazard, the City, at its discretion, may collect the garbage provided proper indemnification is received from the community association or individual property owners. The City will then impose fees and provide the service. Garbage collection locations shall be subject to the approval of the Sanitation Manager. In the event the City does not collect garbage within the areas with private roads and/or gates, residents of these areas will not be billed for service after the two-year date.

5. Maintenance of Roads and Streets

Any and all public roads, streets or alleyways shall be maintained to the same degree and extent that other public roads, streets, and alleyways are maintained in areas of the City with like topography, land use and density as those found within the newly annexed areas. Private roads will remain under the ownership of the homeowners association and as such maintained by the association.

6. Maintenance of Parks, Playgrounds, and Swimming Pools

The City of Cibolo, Texas is not aware of the existence of any publicly owned parks, playgrounds or swimming pools now located in the proposed areas of annexation. In the event any such parks, playgrounds, or swimming pools do exist and are public facilities, the City will maintain such areas and facilities to the extent and degree and to the same or similar level of service now being provided to other such areas and facilities within the corporate limits of the City with like topography, land use and density as those found within the newly annexed areas. Private facilities will remain under the ownership of the homeowners association and as such maintained by the association.

7. Maintenance of any Publicly owned Facility, Building or Municipal Service

The City of Cibolo, Texas is not aware of the existence of any publicly owned facility, building, or other municipal service now located in the proposed areas of annexation. In the event any publicly owned facility, building, or other municipal service does exist and are public facilities, the City will maintain such areas and facilities to the extent and degree and to the same or similar level of service now being provided to other such areas and facilities within the corporate limits of the City with like topography, land use and density as those found within the newly annexed areas.

8. Other Services

The City of Cibolo, Texas finds and determines that such services as planning, code enforcement, animal control, library, parks and recreation, court and general administration will be made available after the effective date of annexation at the same or similar level of service now being provided to other areas of the City with similar topography, land use and density as those found within the newly annexed areas.

**CONSTRUCTION OF ANY CAPITAL IMPROVEMENTS TO BE COMPLETED WITHIN 2 ½ YEARS**

1. Police and Fire Protection and Solid Waste Collection

The City of Cibolo, Texas, finds and determines it is not necessary to acquire or construct any capital improvements within 2 ½ years of the effective date of the annexation of the particular annexed areas for the purpose of providing police protection, fire protection, emergency medical services or solid waste collection. The City finds and determines that it has at the present time adequate facilities and other resources to provide the same type, kind and level of service and protection which is presently being administered to other areas already incorporated in the City of Cibolo, Texas with like topography, land use and population density as those found within the newly annexed areas.



2. Water/Wastewater Facilities

For the next 2 ½ years, Cibolo finds and determines that there is sufficient capacity for wastewater to provide services to the annexed areas pursuant to the City of Cibolo's extension policies. The construction of any capital improvements for water and wastewater services to an annexed area will be completed pursuant to the City's infrastructure extension policies.

3. Roads and Streets

The City of Cibolo, Texas, finds and determines it is not necessary to acquire or construct any capital improvements within 2 ½ years of the effective date of the annexation of the particular annexed areas.

4. Maintenance of Parks, Playgrounds, and Swimming Pools and Any Other Publicly Owned Facility, Building, or Service

The City of Cibolo, Texas, finds and determines it is not necessary to acquire or construct any capital improvements within 2 ½ years of the effective date of the annexation of the particular annexed areas for the purpose of parks maintenance, playgrounds, swimming pools and other publicly owned facility, building or service.

**SPECIFIC FINDINGS**

The City of Cibolo, Texas, finds and determines that this proposed service plan will not provide any fewer services and will not provide a lower level of service in the areas being considered for annexation that were in existence in the proposed areas at the time immediately preceding the annexation process. Given the proposed annexation areas' topography, land utilization and population density, the service levels to be provided in the newly annexed areas will be equivalent to those provided to other areas of the City with similar characteristics.

**TERMS**

This plan shall be valid for a term of ten (10) years. Renewal of the Service Plan is at the discretion of the City of Cibolo.

**LEVEL OF SERVICE**

Nothing in this plan shall require the City to provide a uniform level of full municipal services to each area of the City, including the annexed areas, if different characteristics of topography, land use, and population density are considered a sufficient basis for providing different levels of service.

**AMENDMENTS**

The plan shall not be amended unless public hearings are held in accordance with Chapter 43 of the Texas Local Government Code.