ORDINANCE NO. 20121101-010

AN ORDINANCE ADOPTING AN ANNEXATION AND DEVELOPMENT AGREEMENT FOR THE MARBELLA ANNEXATION AND DEVELOPMENT AGREEMENT AREA CONSISTING OF APPROXIMATELY 114 ACRES OF LAND IN TRAVIS COUNTY, TEXAS.

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

PART 1. The Council finds that:

(A) The owner of the area referred to as the Marbella Annexation and Development Agreement Area has requested that the City enter into an Annexation and Development Agreement, and has agreed to the terms of the attached Agreement.

(B) The Annexation and Development Agreement attached to this ordinance as Exhibit 1, serves the public health, safety and welfare, and the interests of the current and future residents of the City of Austin.

PART 2. The Annexation and Development Agreement attached to this ordinance as Exhibit 1, is approved for the Marbella Annexation and Development Agreement Area, and the City Manager is authorized to execute the Agreement in substantially the form as attached.

PART 3. This ordinance takes effect on November 12, 2012.

PASSED AND APPROVED

§
§
November 1, 2012 §

Lee Leffingwell
Mayor

APPROVED: _____ **ATTEST:** _____

Karen M. Kennard
City Attorney

Shirley A. Gentry
City Clerk

MARBELLA TRACT
ANNEXATION AND DEVELOPMENT AGREEMENT

November 1, 2012

MARBELLA TRACT
ANNEXATION AND DEVELOPMENT AGREEMENT

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

This Marbella Tract Annexation and Development Agreement (the "**Agreement**") is made and entered into by and among the **CITY OF AUSTIN, TEXAS**, a municipal corporation acting by and through its duly authorized City Manager (the "**City**"); and **KALOGRIDIS AND KALOGRIDIS DEVELOPMENT LLC,** as owner of the Property, including without limitation its successors, assigns, agents, and affiliated entities ("**Owner**"). By the signature below, Owner warrants and represents that there are no other owners of any portion of the Property and no other third-parties holding an interest therein.

RECITALS

A. Owner owns, or represents the owners of, a total of approximately 117 acres of land located in Travis County, Texas a plat for which was filed in the Real Property Records of Travis County, Texas as Document No. 201200065 ("**Plat**"). A portion of this land, more particularly described in the attached Exhibit "A" ("**Property**"), is located in the City's extraterritorial jurisdiction ("**ETJ**"), but not within its corporate limits.

B. The City has begun the process to institute annexation proceedings for the Property.

C. The Owner desires to have the entire Property remain in the City's ETJ, in consideration for which the Owner agrees to enter into this Agreement.

D. This Agreement is entered into pursuant to Section 212.172 of the Texas Local Government Code, in order to address the desires of the Owner and the procedures of the City.

E. The Owner and the City acknowledge that this Agreement runs with the land and is binding upon the City and the Owner and his respective successors and assigns for the term of this Agreement, as defined below.

F. This Development Agreement is to be recorded in the Real Property Records of Travis County.

NOW, THEREFORE, for and in consideration of the mutual agreements, covenants, and conditions contained in this Agreement, and other good and valuable consideration, the City and Owner agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01 Terms Defined in this Agreement. In this Agreement, each of the following terms shall have the meanings indicated:

"**City Code**" means the City Code of Austin, together with all its related administrative rules and technical criteria manuals.

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

"Development Documents" mean any application or request made in connection with the proposed development of land, including but not limited to: (1) subdivision of the property by plat, including a preliminary plan for a subdivision; (2) building permit; (3) site plan permit; and (4) application for zoning, including an application for a Planned Unit Development (PUD).

"**Effective Date**" and similar references means November 12, 2012.

"**ETJ**" means all land located within the City's extraterritorial jurisdiction under Chapter 42 of the Texas Local Government Code, as reflected in the recitals of this Agreement.

"**Land Development Code**" shall mean the Land Development Code of the City, codified as Title 25 and Title 30 of the City Code.

"**Notice**" shall have the meaning set forth in Section 8.04.

"**Ordinances**" shall mean the ordinances of the City.

"**Property**" shall have the meaning set forth in the recitals to this Agreement.

"**Term**" and similar references shall mean the period of time commencing on the Effective Date and continuing until December 1, 2013.

Section 1.02 Other Definitions. All capitalized terms used but not defined in this Agreement shall have the meaning given to them in the City Code.

ARTICLE II

LAND USE

Section 2.01 Uses.

A. The Owner covenants and agrees to limit use of the Property in accordance with the following: (a) Owner will only develop and use Lot 1, Block A and Lot 2, Block A of the Property as described on the Plat for a use that is allowed under the City's MF-4 zoning district designation (Multi-Family Residence Moderate to High Density) in §25-2-65 of the Land Development Code; (b) Owner will only develop and use Lot 3, Block A of the Property as described on the Plat for a use that is allowed under the City's GR (Community Commercial) zoning district designations in §25-2-65 and §25-2-98 of the Land Development Code.

B. The Owner covenants and agrees that the Owner will not file any type of subdivision plat or related development document for Property with Travis County or the City that is inconsistent with the Plat and the provisions of this Agreement. If after the Effective Date Owner commences construction of a building on the Property, or allows construction of a building to commence on the Property, Owner agrees to comply with the Development Code and apply for and obtain all Development Documents required as if the Property were in the city limits as of the Effective Date; provided, however, this provision shall not apply to construction of buildings on Lot 1, Block A, of the Property that are constructed prior to annexation in accordance with: (i) City of Austin Site Development Permit SP-2011-0128D, (ii) all Land Development Code provisions applicable to development in the ETJ, (iii) all City of Austin utility service requirements and regulations, and (iv) all Travis County development and building construction requirements.

ARTICLE III

APPLICABLE ORDINANCES

Section 3.01 Applicable Requirements.

A. All of the City's laws, ordinances, manuals, and administrative rules, including but not limited to the Land Development Code, regarding land

development, as amended from time to time, shall apply to subdivisions within the Property except as otherwise specified in this Agreement. Prior to full purpose annexation, subdivisions are subject to applicable regulations in Title 30 of the Land Development Code, and after full purpose annexation, subdivisions are subject to applicable regulations in Title 25 of Land Development Code. Property shall be developed in accordance with plats and other permit applications submitted to, and approved by, the City and Travis County through their Single Office for subdivision regulation, and as finally approved by the appropriate approval bodies.

B. Owners hereby waive any and all claims under Section 43.002(a)(2) and Chapter 245 of the Texas Local Government Code that would otherwise exist by virtue of any actions Owner has taken in violation of Article II of this Agreement.

C. Pursuant to Section 212.172, the Owner and the City agree to application and enforcement of land use and development regulations consistent with terms limiting the uses of the property set forth herein. The City specifically reserves its authority pursuant to Chapter 251 of the Texas Local Government Code to exercise eminent domain over the Property that is the subject of this development agreement.

ARTICLE IV

ANNEXATION

Section 4.01 Annexation.

A. The parties intend that this Agreement guarantee the continuation of the extraterritorial status of the Property as herein set forth. The City guarantees the continuation of the extraterritorial status of the Property, its immunity from annexation by the City, and its immunity from City property taxes for the term of this Agreement, subject to the provisions of this Agreement. Except as provided in this Agreement, the City agrees not to involuntarily annex the Property for the term of this Agreement.

B. The Owner acknowledges that if (i) any plat or related development document is filed in violation of this Agreement, or (ii) the Owner commences use or development of the Property in violation of this Agreement, then in addition to the City's other remedies, such act will constitute a petition for voluntary annexation by the Owner, and the Property will be subject to annexation at the discretion of the City Council.

The Owner agrees that, if either condition B (i) or B (ii) is met, such annexation shall be voluntary, and Owner hereby consents to such annexation as though a petition for such annexation had been tendered by Owner.

C. Owner and City agrees that the City shall have the option, but not the obligation, to annex for full purposes pursuant to the terms of this Agreement. If the Property is annexed pursuant to the terms of this Agreement, then the City shall provide services to the Property pursuant to Chapter 43 of the Texas Local Government Code. Property voluntarily annexed pursuant to this Agreement may require infrastructure improvements to facilitate development, including but not limited to, streets and roads, street and road drainage, land drainage, and water, wastewater, and other utility systems. Owner hereby acknowledges the provision of infrastructure improvements necessitated by proposed future development, shall be the sole responsibility of the Owner.

D. After full purpose annexation, all city ordinances, regulations and requirements applicable in the City's full purpose jurisdiction, including city taxation, shall apply to the area annexed. From the date of annexation until the Property is zoned, Property is designated in accordance with the zoning district provided for under City Code Section 25-2-222. During the term of this Agreement, the City shall not annex any part of the Property except as provided in this Article IV.

ARTICLE V

LEGISLATIVE DISCRETION; REPRESENTATIONS AND WARRANTIES

Section 5.01 Legislative Discretion. This Agreement is not intended to bind, and the parties agree in fact and law that the Agreement does not bind, the legislative discretion of the City Council to approve or disapprove any proposed annexation ordinance for the Property, subject to and in accordance with the provisions hereof.

Section 5.02 Representations and Warranties of Owner.

A. **Organization and Good Standing**. Owner has full power and authority to conduct business as it is now being conducted, to own or use the properties and assets that it purports to own or use, and to perform all his obligations under this Agreement.

B. **Authority; No Conflict.** This Agreement constitutes a legal, valid and binding obligation of Owner, enforceable against Owner in accordance with its terms. Owner has the absolute and unrestricted right, power, authority, and capacity to execute and deliver this Agreement and to perform his obligations under this Agreement.

Section 5.03 Representations and Warranties of the City.

A. **Organization and Good Standing.** The City is a duly organized and validly existing municipal corporation in good standing under the laws of the State of Texas, with full power and authority to conduct its business as it is now being conducted, to own or use the properties and assets that it purports to own or use, and to perform all its obligations under this Agreement.

B. **Authority; No Conflict.** This Agreement constitutes a legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms. The City has the absolute and unrestricted right, power, authority, and capacity to execute and deliver this Agreement and to perform its obligations under this Agreement.

ARTICLE VI

FRUSTRATION OF PURPOSE

Section 6.01 Frustration of Purpose. If any word, phrase, clause, sentence, paragraph, section or other part of this Agreement is affected in whole or in part as a result of amendments to the underlying statutory authority for this Agreement, or a final judicial decree for which all appeals have expired or been exhausted, or if the Texas Legislature amends state law in a manner having the effect of limiting or curtailing any right or obligation of the parties under this Agreement, then the parties agree and understand that the purpose of this Agreement may be frustrated. In such case, the parties agree to work in good faith to amend this Agreement so that the purpose of this Agreement may be fully realized, including full purpose annexation if necessary. Owner agrees not to protest annexation of the Property in accordance with this Agreement, and further agrees not to sponsor or support legislation that would hinder the City's ability to annex any portion of the Property in accordance with the provisions hereof.

ARTICLE VII

DEFAULT AND REMEDIES FOR DEFAULT

Section 7.01 Default. It shall be a default under this Agreement by a party, if such party shall fail to perform any of its obligations under this Agreement and such failure shall remain uncured following the expiration of ten (10) business days after written notice of such failure. However, in the event the default is of a nature that cannot be cured within such ten (10) day period, the defaulting party shall have a longer period of time as may be reasonably necessary to cure the default in question, but in no event more than forty-five (45) days.

Section 7.02 Remedies between the City and Owner. Should any default between Owner and the City remain uncured after Notice to the other as provided in Section 7.01, the non-defaulting party, whether Owner or City, may pursue any remedy that is available at law or in equity at the time of breach.

Section 7.03 Mediation. In order to avoid unnecessary litigation, in the event either party fails to cure an alleged default within the cure period set out in Section 7.01 above, then if requested by either party, prior to seeking any form of relief from a court of law or agency of competent jurisdiction, each party agrees to enter into mediation concerning the alleged default for a period of not more than thirty (30) days prior to filing of any court action. Nothing in this Agreement shall be construed to limit the parties from mediating a default after any court or agency action may have been filed.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

Section 8.01 Amendments to Agreement. This Agreement may be amended only by a written agreement signed by the City and Owner.

Section 8.02 Termination. This Agreement may be terminated as to all of the Property only by express written agreement executed by the City and Owner. In the event this Agreement is terminated by mutual agreement of the parties or by its terms, the parties shall promptly execute and file of record in the Official Public Records of Travis County, Texas, a document confirming the termination of this Agreement, and such other documents as may be appropriate to reflect the basis upon which such termination occurs.

Section 8.03 Agreement Binds Successors and Runs with the Land. This Agreement shall bind and inure to the benefit of the parties, their successors and assigns. The terms of this Agreement shall constitute covenants running with the land comprising the Property and shall be binding on all Owners. After the

Effective Date hereof, this Agreement, at the City's cost, shall be recorded in the Official Public Records of Travis County, Texas.

Section 8.04 Notice. Any person who sells or conveys any portion of the Property shall, prior to such sale or conveyance, give written notice of this Agreement to the prospective purchaser or grantee and shall give written notice of the sale or conveyance to the City. A copy of either notice required by this section shall be forwarded to the City at the following address:

City of Austin
Attn: Planning and Development Review
PO Box 1088
Austin, TX 78767

Section 8.05 Severability. If any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws, then, and in that event, it is the intention of the parties that the remainder of this Agreement shall not be affected.

Section 8.06 Waiver. Any failure by a party to insist upon strict performance by the other party of any material provision of this Agreement shall not be deemed a waiver of such provision or of any other provision of this Agreement, and such party shall have the right at any time(s) thereafter to insist upon strict performance of any and all of the provisions of this Agreement.

Section 8.07 Applicable Law and Venue. The construction and validity of this Agreement shall be governed by the laws of the State of Texas (without regard to conflicts of law principles). Venue for any dispute arising from or related to this Agreement shall be in Texas state district court and shall be in accordance with the Texas Civil Practice and Remedies Code.

Section 8.08 Reservation of Rights. To the extent not inconsistent with this Agreement, each party reserves all rights, privileges and immunities under applicable laws.

Section 8.09 Counterparts. This Agreement may be executed in multiple counterparts, which shall be construed together as a single original instrument as though all parties had signed one instrument, and, when executed, each counterpart shall be binding upon and inure to the benefit of each of the parties executing the instrument whether or not all other parties have executed same.

Section 8.10 Survival. This Agreement shall survive its termination to the extent necessary for the implementation of the provisions of Articles II, III, and IV herein.

Section 8.11 Exhibits.

Exhibit "A" Description of Property.

EXECUTED in multiple counterparts, each of which shall constitute an original, to be effective as of the Effective Date.

CITY: **City of Austin, Texas**

By: Sue Edwards
Sue Edwards, Assistant City Manager

Date: 11/1/12

OWNER: **Kalogridis & Kalogridis Development LLC**

By: _____
Mitchell D. Kalogridis, Manager

Date: 10-25-12

THE STATE OF TEXAS
COUNTY OF TRAVIS

THIS INSTRUMENT is acknowledged before me on this 1st day of Nov, 2012, by Sue Edwards, Assistant City Manager, of the City of Austin, Texas, a municipal corporation, on behalf of that municipal corporation.

[SEAL]
DANA F. ESKEW
NOTARY PUBLIC
State of Texas
Comm. Exp. 01-26-2014

Dana F. Eskew
Notary Public, State of Texas

My Commission Expires: 1-26-14

THE STATE OF TEXAS
COUNTY OF TRAVIS

THIS INSTRUMENT is acknowledged before me on this 25th day of October 2012, by Mitchell D. Kalogridis, Manager of Kalogridis & Kalogridis Development LLC, a Texas limited liability company, on behalf of that company.

[SEAL]



Notary Public, State of Texas

My Commission Expires: 6/18/14

Exhibit "A"

Map and Legal Description

(to be inserted here)

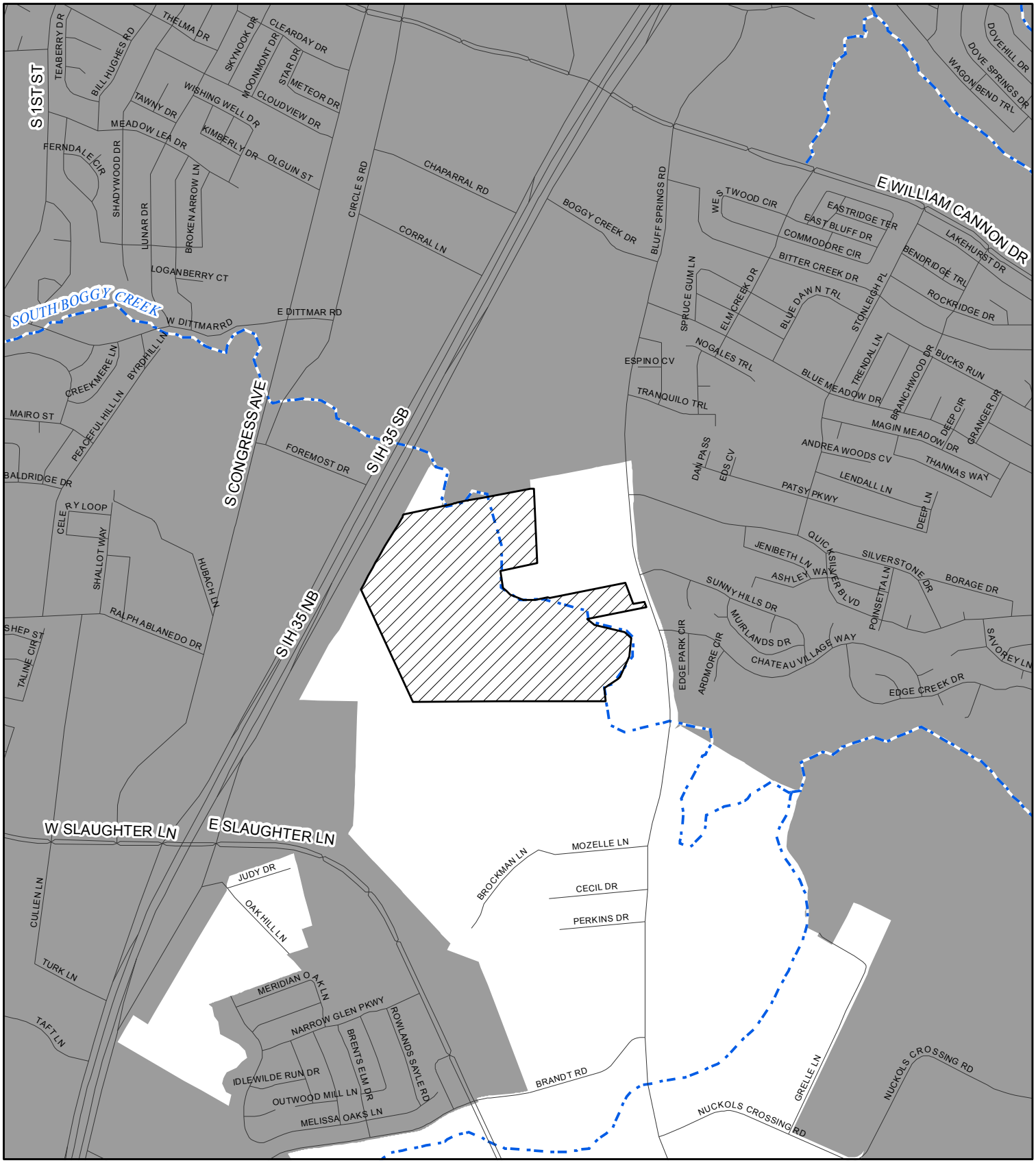


Exhibit A:
Marbella Annexation & Development Agreement Area

0 750 1,500 3,000 Feet

1 in = 1,500 feet

LEGEND

- Area of Development Agreement
- Street - Built
- Street - Planned
- Major Creek

CURRENT JURISDICTION

- Austin Full Purpose
- Austin Limited Purpose
- Austin ETJ

N

City of Austin PDRD
J. Chuter
October 25, 2012

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

This product has been produced by the Planning and Development Review Department for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.

Sources: All data by COA unless otherwise provided.

C7a-2012-0006
Marbella Annexation and Development Agreement

(Approximately 114 acres of land out of the Santiago Del Valle Survey, Abstract No. 24 in Travis County, Texas)
(Portion of Marbella Subdivision)

LEGAL DESCRIPTION

LEGAL DESCRIPTION FOR APPROXIMATELY 114 ACRES OF LAND OUT OF THE SANTIAGO DEL VALLE SURVEY, ABSTRACT NO. 24 IN TRAVIS COUNTY, TEXAS. SAID APPROXIMATELY 114 ACRES BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING approximately 114 acres of land being all of that portion of Marbella Subdivision, a subdivision of record in Document No. 201200065 of the Official Public Records of Travis County, Texas lying east of the present corporate limit line of the City of Austin as adopted by Ordinance No. 820603-P (Case No. C7a-80-023).

"This document was prepared under 22 TAC 663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared".

LEGAL DESCRIPTION: Mary P. Hawkins
10-02-2012

Mary P. Hawkins 10/10/12

APPROVED: Mary P. Hawkins, RPLS No. 4433
Quality and Standards Management Division
Department of Public Works
City of Austin

REFERENCES
Austin Grid G-14 & H-14
TCAD MAPS 4-3108