

**AN ORDINANCE ADOPTING AN ANNEXATION AND DEVELOPMENT AGREEMENT FOR THE DIANE S. MYERS FAMILY TRUST ANNEXATION AND DEVELOPMENT AGREEMENT AREA CONSISTING OF APPROXIMATELY 206 ACRES OF LAND IN TRAVIS COUNTY, TEXAS.**

**PART 1. The Council finds that:**


- PART 2.** The Annexation and Development Agreement attached to this ordinance as Exhibit 1, is approved for the Diane S. Myers Family Trust Annexation and Development Agreement Area, and the City Manager is authorized to execute the Agreement in substantially the form as attached.

**PASSED AND APPROVED**

22

Lee Leffingwell  
Mayor

By: Karen M. Kennard Attest: \_\_\_\_\_  
Karen M. Kennard  
City Attorney

  
Shirley A. Gentry  
City Clerk

**EXHIBIT 1**

**DIANE S MYERS FAMILY TRUST  
ANNEXATION AND DEVELOPMENT AGREEMENT**

Date: \_\_\_\_\_

**DIANE S MYERS FAMILY TRUST**  
**ANNEXATION AND DEVELOPMENT AGREEMENT**

THE STATE OF TEXAS                   §  
  §  
COUNTY OF TRAVIS                   §

This Diane S Myers Family Trust 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 **JOHN MYERS**, Trustee for the Diane S Myers Family Trust, 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 206 acres of land located in Travis County, Texas described in the attached Exhibit "A" ("**Property**"). Subject 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 Property remain in the City's ETJ, in consideration for which the Owner agrees to enter into this Agreement.

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- D. This Agreement is entered into pursuant to Sections 43.035 and 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 agrees 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 mean the date of the latest signature by authorized representatives of the parties.

**"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.

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**"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 for fifteen (15) years from the Effective Date.

**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 not to use the Property for any use other than for agriculture, wildlife management, and/or timber management, and related incidental activities consistent with Chapter 23 of the Texas Tax Code without prior written consent of the City.
- B. The Owner covenants and agrees that the City's agricultural (AG) zoning requirements apply to the Property.
- C. 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 City's agricultural (AG) zoning requirements and the provisions of this Agreement.
- D. The Owner covenants and agrees not to construct, or allow to be constructed, any buildings on the Property that would require a building permit if the Property were in the city limits that is inconsistent with the City's agricultural (AG) zoning requirements.

## **ARTICLE III**

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### **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. Owner hereby waives 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 43.035(b)(1)(B) of the Texas Local Government Code, the City is authorized to enforce city regulations and planning authority that does not materially interfere with the use of the Property for agriculture, wildlife management, and/or timber management, in the same manner the regulations are enforced within the City's boundaries. The City specifically reserves its authority pursuant to Chapter 251 of the Texas Local Government Code to exercise eminent domain over property that is subject to a Chapter 43 and/or Chapter 212 development agreement.

#### **ARTICLE IV**

#### **ANNEXATION**

##### **Section 4.01 Annexation.**

- A. The parties intend that this Agreement guarantee the continuation of the extraterritorial status 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 Owners commence 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 and 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 agree 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.**

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- 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 he 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 8.01, 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 Owner. 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. Furthermore, the Owner and the Owner's heirs, successor, and assigns shall give the City written notice within 14 days of any change in the agricultural exemption status of the Property. 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.

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**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,**  
a home rule city and Texas municipal corporation

By:

\_\_\_\_\_  
Sue Edwards, Assistant City Manager

Date: \_\_\_\_\_

**OWNER:** **JOHN MYERS,**  
Diane S Myers Family Trust

By:

*John W. Myers*  
\_\_\_\_\_  
JOHN MYERS, Trustee

Date: *October 22, 2012*

Exhibit "A"

Map and Legal Description



Myers Development Agreement

(Approximately 206.452 acres of land out of the Thomas B. Westbrook Survey No. 5, Abstract No. 797 in Travis County, Texas)

LEGAL DESCRIPTION

LEGAL DESCRIPTION FOR A TRACT OF LAND CONTAINING APPROXIMATELY 206.452 ACRES OF LAND OUT OF THE THOMAS B. WESTBROOK SURVEY NO. 5, ABSTRACT NO. 797 IN TRAVIS COUNTY, TEXAS AND BEING ALL OF THAT CALLED 116.3 ACRE TRACT OF LAND REFERRED TO AS "TRACT ONE" AND A CALLED 94.37 ACRE TRACT OF LAND REFERRED TO AS "TRACT TWO", CONVEYED TO DIANE S. MYERS, TRUSTEE OF THE DIANE S. MYERS FAMILY TRUST CREATED UNDER THE OCTOBER 13, 1989 LAST WILL AND TESTAMENT OF WENDELL R. TOWERY, DECEASED BY CORRECTIVE WARRANTY DEED RECORDED IN DOCUMENT NO. 2000115109 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS. SAID APPROXIMATELY 206.452 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS IN EXHIBIT "A" ATTACHED HERETO:

BEING all that certain tract of land called 206.452 acres as surveyed by Chaparral Professional Land Surveying, Inc. on June 2, 2011 and signed by Joe Ben Early, Jr., R.P.L.S. No. 6016, State of Texas.

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

10-06-2011

*Mary P. Hawkins 10/6/11*

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

REFERENCES

Austin Grid Q-12  
TCAD MAP 3-3941



Exhibit A

**Professional Land Surveying, Inc.  
Surveying and Mapping**

Office: 512-443-1724  
Fax: 512-389-0943

3500 McCall Lane  
Austin, Texas 78744

**206.452 ACRES  
TRAVIS COUNTY, TEXAS**

A DESCRIPTION OF 206.452 ACRES IN THE THOMAS B. WESTBROOK SURVEY 5, ABSTRACT 797 IN TRAVIS COUNTY, TEXAS, BEING ALL OF A 116.3 ACRE TRACT AND ALL OF A 94.37 ACRE TRACT CONVEYED TO DIANE S. MYERS IN A CORRECTIVE WARRANTY DEED DATED JUNE 13, 2000 AND RECORDED IN DOCUMENT NO. 2000115109 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, BEING ALSO A PORTION OF A 331 ACRE TRACT DESCRIBED IN VOLUME 168, PAGE 135 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS; SAID 206.452 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**BEGINNING** at a 1/2" rebar found at the intersection of the north right-of-way line of Fagerquist Road (50' right-of-way width) as described in Volume 559, Page 442 of the Deed Records of Travis County, Texas and the east right-of-way line of Elroy Road (right-of-way varies), being the southwest corner of the said 116.3 acre tract;

**THENCE** North 27°19'25" East with the east right-of-way line of Elroy Road and the west line of the said 116.3 acre tract, a distance of 225.43 feet to a 1/2" rebar with "Chaparral" cap set in the south line of the said 331 acre tract, being an angle point in the north right-of-way line of Elroy Road;

**THENCE** North 62°40'35" West with the north right-of-way line of Elroy Road and the south line of the said 331 acre tract, a distance of 41.64 feet to an 8" diameter wood fence post found for a southwest corner of the said 331 acre tract, being the southeast corner of a 120 acre tract described in Volume 1017, Page 122 of the Deed Records of Travis County, Texas;

**THENCE** North 28°05'43" East with the west line of the said 331 acre tract and the east line of the said 120 acre tract, a distance of 1632.26 feet to an 8" diameter wood fence post found for an angle point in the south line of the said 331 acre tract, same being in the south line of the said 116.3 acre tract, being also the northeast corner of the said 120 acre tract;

**THENCE** North 61°43'15" West with the south line of the said 116.3 acre tract, same being the south line of the said 331 acre tract and the north line of the said 120 acre tract, a distance of 1586.45 feet to an 8" diameter wood fence post found for a southwest corner of the said 116.3 acre tract, same being a southwest of the said 331 acre tract, being in the east line of a 59.130 acre tract described in Document No. 2010055637 of the Official Public Records of Travis County, Texas, from which a 5/8"

**Exhibit A**

Page 2 of 2

rebar found for the southeast corner of the said 59.130 acre tract, bears South 27°07'11" West, a distance of 3.47 feet;

**THENCE** North 27°07'11" East with the west line of the said 116.3 acre tract, same being the west line of the said 331 acre tract and the east line of the said 59.130 acre tract, a distance of 1668.35 feet to a 60d nail found on top of a 10" diameter wood fence post for the northwest corner of the said 116.3 acre tract, same being the northwest corner of the said 331 acre tract, being the northeast corner of the said 59.130 acre tract, being also in the south line of a 657.227 acre tract described in Document No. 2005151331 of the Official Public Records of Travis County, Texas;

**THENCE** with the north line of the said 116.3 acre tract, the north line of the said 94.37 acre tract, same being the north line of the said 331 acre tract and the south line of the said 657.227 acre tract, the following four (4) courses and distances:

1. South 62°35'53" East, a distance of 1284.86 feet to a 1/2" rebar found;
2. South 62°33'16" East, a distance of 668.63 feet to a 1/2" rebar found;
3. South 62°37'58" East, a distance of 1239.49 feet to a 3/4" iron pipe found;
4. South 62°49'23" East, a distance of 190.58 feet to a 1/2" rebar found for the northeast corner of the said 94.37 acre tract, being the northwest corner of a 44.854 acre tract described in Volume 12010, Page 1550 of the Real Property Records of Travis County, Texas;

**THENCE** South 27°45'49" West with the east line of the said 94.37 acre tract and the west line of the said 44.854 acre tract, a distance of 3548.80 feet to a 1/2" rebar found in the north right-of-way line of Fagerquist Road, being the southeast corner of the said 94.37 acre tract, being also the southwest corner of the said 44.854 acre tract;

**THENCE** North 62°40'35" West with the north right-of-way line of Fagerquist Road and the south line of the said 94.37 acre and 116.3 acre tracts, a distance of 1744.48 feet to the **POINT OF BEGINNING**, containing 206.452 acres of land, more or less.

Surveyed on the ground June 2, 2011. Bearing Basis: Grid azimuth for Texas Central Zone state plane coordinates, 1983/93 HARN, based on GPS solutions from The National Geodetic Survey (NGS) On-line Positioning User Service (OPUS). Attachments: Drawing 812-001-BASE.

Joe Ben Early, Jr.  
Registered Professional Land Surveyor  
State of Texas No. 6016

