HELEN BOOTHE ET AL
ANNEXATION AND DEVELOPMENT AGREEMENT

December ~~October~~ 13, 2011

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THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

This Helen Boothe, et al 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 **HELEN BOOTHE, ET AL,** and the undersigned individuals as owners of the Property, including without limitation their successors, assigns, agents, and affiliated entities (collectively, the undersigned individuals will be known as "**Owners**"). By the signatures below, Owners warrant and represent that there are no other owners of any portion of the Property and no other third-parties holding an interest therein.

RECITALS

A. Owners own, or represent the owners of, a total of approximately 13 acres of land located in Travis County, Texas contained within the area 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 Owners desire to have the Property remain in the City's ETJ, in consideration for which the Owners agrees to enter into this Agreement.

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 Owners and the procedures of the City.

E. The Owners and the City acknowledge that this Agreement runs with the land and is binding upon the City and the Owners and their 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 Owners 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 December 19, 2011.

"**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 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 Owners covenant and agree 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 Owners covenant and agree that the City's agricultural (AG) zoning requirements apply to the Property.

C. The Owners covenant and agree that the Owners 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 Owners covenant and agree 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

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 Owners 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 Owners acknowledge 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 Owners, and the Property will be subject to annexation at the discretion of the City Council. The Owners agree that, if either condition B(i) or B(ii) is met, such annexation shall be voluntary and Owners hereby consent to such annexation as though a petition for such annexation had been tendered by Owners.

C. Owners 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. Owners hereby acknowledge the provision of infrastructure improvements necessitated by proposed future development, as listed in Article 4, shall be the sole responsibility of the Owners.

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**. Owners consist of individuals with 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 Owners, enforceable against Owners in accordance with its terms. Owners have 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. Owners agree not to protest annexation of the Property in accordance with this Agreement, and further agree 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 Owners. Should any default between Owners and the City remain uncured after Notice to the other as provided in Section 8.01, the non-defaulting party, whether Owners 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 Owners.

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 Owners. 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. Furthermore, the Owners and the Owners'

heirs, successors, 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.

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

Sue Edwards, Assistant City Manager

Date: 12·14·2011

OWNER:

TERRY BOOTHE

By: Terry Boothe

Terry Boothe, Owner

Date: 10-26-11

ROBERT BOOTHE

By: Robert Boothe

Robert Boothe, Owner

Date: Oct 24 - 011

PATSY DAUGHERTY

By: Patsy A. Daugherty

Patsy Daugherty, Owner

Date: Oct 26 - 2011

Exhibit "A"

Map and Legal Description

(to be inserted here)



Helen Boothe Etal Annexation and Development Agreement

City of Austin
PDRD
October18, 2011

N

Miles
0 0.125 0.25 0.5

Street - Built
Street - Platted, Unbuilt
Development Agreement
Lot Line

CURRENT JURISDICTION
Austin Full Purpose
Austin Limited Purpose
Austin ETJ - Ag Develoment Agmt
Austin ETJ

Boothe Development Agreement

(Approximately 13.172 acres of land out of the Santiago Del Valle Survey, Abstract No. 24 in Travis County, Texas)

LEGAL DESCRIPTION

LEGAL DESCRIPTION FOR A TRACT OF LAND CONTAINING APPROXIMATELY 13.172 ACRES OF LAND OUT OF THE SANTIAGO DEL VALLE SURVEY, ABSTRACT NO. 24 IN TRAVIS COUNTY, TEXAS. SAID APPROXIMATELY 13.172 ACRES BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING all of that tract of land called 13.172 acres owned by Helen Boothe, et al according to the Travis County Central Appraisal District (Parcel No. 03-2013-01-04), and being out of the remainder of that 246.21 acre tract of land conveyed to Arthur L. Boothe by deed recorded in Volume 1282, Page 82 of the Deed Records of Travis County, 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
11-02-2011

Mary P. Hawkins 11/7/11

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

REFERENCES
Austin Grid K-16, L-16
TCAD MAP 3-2013