

DECLINATION OF OFFER OF DEVELOPMENT AGREEMENT

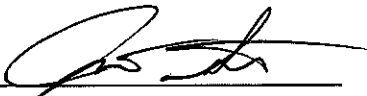
The attached Development Agreement was offered by the City of San Marcos to the owner of the property subject to the following application/petition (check one):

☐ Out of City Utility Connection of Extension Application

☒ Petition for Annexation (without OCU Request)

By signing below, the owner of the subject property declines the offer to enter into such Development Agreement.

OWNER (Entity):

By: 

Name: Jim Smith/Smithco Redwood LLC

Title: Manager

Date: 5/14/20

**DEVELOPMENT AGREEMENT PURSUANT TO
CHAPTERS 43 AND 212 OF THE TEXAS LOCAL GOVERNMENT CODE**

This Development Agreement (the "Agreement") is entered into pursuant to Section 43.016 and 212.172 of the Texas Local Government Code ("LGC") by and between the City of San Marcos, Texas (the "City") and the undersigned property owner(s) (the "Owner"). The term "Owner" includes all owners of the Property.

WHEREAS, the Owner owns a parcel of real property (the "Property") in _____ County, Texas which is more particularly and separately described in the attached Exhibit "A" which is made a part of this Agreement and incorporated herein; and

WHEREAS, the City desires to annex the Property; and

WHEREAS, the Owner desires to have the Property remain in the City's extraterritorial jurisdiction ("ETJ"), in consideration for which the Owner agrees to enter into this Agreement; and

WHEREAS, this Agreement is entered into pursuant to Sections 43.016 and 212.172, LGC, in order to address the desires of the Owner and the procedures of the City; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

SECTION 1. The City guarantees the continuation of the ETJ status of the Owner's 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 annex the Property, agrees not to institute proceedings to annex the Property, and further agrees not to include the Property in a statutory annexation plan for the term of this Agreement. However, if the Property is annexed pursuant to the terms of this Agreement, then the City shall provide services to the Property pursuant to the provisions of Chapter 43, LGC.

SECTION 2. The Owner covenants and agrees not to use the Property for any use other than for agriculture, wildlife management, and/or timber land consistent with Chapter 23, Texas Tax Code, except for existing single-family residential use of the Property without the prior written consent of the City.

The Owner covenants and agrees that it will not file for a concept plat, subdivision plat, or related development document for the Property with _____ County or the City until the Property has been annexed into, and zoned, or another development agreement has been entered into, by the City. This provision does not include permits for improvements, repairs, or utility connections to structures existing on the execution date of this Agreement.

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, until the

Property has been annexed into, and zoned, or another development agreement has been entered into, by the City; however, the Owner may construct an accessory structure or addition to an existing structure that is consistent with the use of the Property for agriculture, wildlife management, and/or timber land or as an existing single-family residence provided that same is done in compliance with all applicable City ordinances and codes.

The Owner acknowledges that each and every owner of the Property must sign this Agreement in order for the Agreement to take full effect, and the Owner who signs this Agreement covenants and agrees, jointly and severally, to indemnify, hold harmless and defend the City against any and all legal claims, by any person claiming an ownership interest in the Property who has not signed the Agreement, arising in any way from the City's reliance on this Agreement.

SECTION 3. The Owner acknowledges that if any concept plat, subdivision plat, or related development document is filed in violation of this Agreement, or if the Owner commences 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 of the City. The Owner agrees that such annexation will be voluntary and the Owner hereby consents to such annexation as though a petition for such annexation had been tendered by the Owner.

Furthermore, Owner hereby waives any and all vested rights and claims that it may have under Section 43.002(a)(2) and Chapter 245, LGC, that would otherwise exist by virtue of any actions Owner has taken in violation of Section 2 herein.

SECTION 4. The City is authorized to enforce all of the City's regulations and planning authority that do not materially interfere with the use of the Property for agriculture, wildlife management, or timber, in the same manner the regulations are enforced within the City's boundaries. The City states and specifically reserves its authority pursuant to Chapter 251, LGC, to exercise eminent domain over property that is subject to a Chapter 43 and/or Chapter 212 development agreement.

SECTION 5. The term of this Agreement (the "Term") is fifteen (15) years from the date that the City Manager's signature to this Agreement is acknowledged by a notary public. The parties to this Agreement may renew or extend the Term only by mutual written agreement, subject to any other agreed terms and conditions.

This Agreement is deemed to be a petition for voluntary annexation upon the expiration of the Term and the Property will be subject to annexation at the discretion of the City Council of the City. Thus, without further consent or petition by the Owner, the City may initiate the process for voluntary annexation of the Property: a) before the end of the Term, to be effective after the last day of the Term; or b) at any time after the end of the Term. In connection with annexation pursuant to this section, the Owners hereby waive any vested rights they may have under Section 43.002(a)(2) and Chapter 245, LGC, that would otherwise exist by virtue of any plat or construction that any of the owners may initiate during the time between the expiration of this Agreement and the institution of annexation proceedings by the City.

SECTION 6. Property annexed pursuant to this Agreement will be zoned in accordance with the City's Code of Ordinances and applicable law.

SECTION 7. Owner recognizes that for purposes of Section 43.003(2), LGC, or another law, including the City's Charter or an ordinance of the City, the Property that is the subject of this Agreement is, for the purposes relating to the City's authority to annex an area adjacent to the City, considered adjacent or contiguous to the City.

SECTION 8. 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, 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 San Marcos
Attn: City Manager
630 East Hopkins Street
San Marcos, Texas 78666

With a copy to:

City of San Marcos
Attn: Director of Planning
630 East Hopkins Street
San Marcos, Texas 78666

SECTION 9. This Agreement shall run with the Property and be recorded in the real property records of _____ County, Texas.

SECTION 10. If a court of competent jurisdiction determines that any covenant of this Agreement is void or unenforceable, including the covenants regarding voluntary annexation, then the remainder of this Agreement shall remain in full force and effect.

SECTION 11. This Agreement may be enforced by any Owner or the City by any proceeding at law or in equity. Failure by any Owner or the City to enforce any covenant shall in no event be deemed a waiver of the right to do so thereafter.

SECTION 12. No subsequent change in the law shall affect the validity or enforceability of this Agreement or the City's ability to annex the properties covered herein pursuant to the terms of this Agreement.

SECTION 13. This Agreement shall be construed in accordance with the laws of the state of Texas. Venue for any dispute or matter arising under this Agreement shall be in the state courts in _____ County, Texas, or if in federal court, the United States District Court for the Western District of Texas, Austin Division.

SECTION 14. This Agreement shall survive its termination to the extent necessary for the implementation of the provisions of Sections 3, 4 and 5 herein.

SECTION 15. This Agreement shall be recorded in the Official Public Records of the County in which the Property is located, and is binding upon the Owner's heirs, successors and assigns and future owners of the Property.

SECTION 16. This Agreement may be separately executed in any number of individual counterparts, and such counterpart signatures, when assembled together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Agreement shall become effective as of the date of the last properly authorized signature.

[SIGNATURES ON NEXT PAGE]

CITY OF SAN MARCOS, TEXAS:

By: _____
_____, City Manger

STATE OF TEXAS

§
§
§

COUNTY OF _____

This instrument was acknowledged before me on the ____ day of _____, 20____,
by _____, City Manager of the City of San Marcos, in such capacity, on
behalf of said municipality.

Notary Public, State of Texas

OWNER (Individual):

ACKNOWLEDGMENT

STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on _____, 20__ by
_____.

Notary Public, State of _____

OWNER (Entity):

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

STATE OF _____ §

§
COUNTY OF _____ §

This instrument was acknowledged before me on _____, 20__ by
_____, _____ of _____ in such
capacity on behalf of said entity.

Notary Public, State of _____

EXHIBIT A
[ATTACH PROPERTY DESCRIPTION]

SAMPLE