

STATE OF TEXAS §
COUNTY OF HAYS §
CITY OF KYLE, TEXAS §

CHAPTER 43 TEXAS LOCAL GOVERNMENT CODE
DEVELOPMENT AGREEMENT

This Agreement is entered into pursuant to Sections 43.035 and 212.172 of the Texas Local Government Code by and between the City of Kyle, Texas (the “**City**”) and the trustee of the Rosalio and Angelita G. Tobias Trust (the “**Owner**”). The term “**Owner**” includes all owners of the Property. The City and the Owner are sometimes referred as the “**Parties**”.

WHEREAS, the Owner owns a parcel of real property (the “**Property**”) in Hays County, Texas, which is more particularly and separately described in the attached “Exhibit “A””; and

WHEREAS, the Property is currently located in the extraterritorial jurisdiction of the City, and has been appraised for *ad valorem* tax purpose as land for agricultural use under Subchapter C or D, Chapter 23, Texas Tax Code; and

WHEREAS, the City has begun the process to institute annexation proceedings on all or portions of the Property and held a public hearing on March 1, 2016, and its second public hearing on March 15, 2016; and

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

WHEREAS, 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; and

WHEREAS, the Owner and the City acknowledge that this agreement is binding upon the City and the Owner and their respective heirs, successors and assigns for the term (defined below) of this Agreement; and

WHEREAS, this Development Agreement is to be recorded in the Real Property Records of Hays County, Texas at the expense of the City.

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

Section 1. Continuance of Extraterritorial Jurisdiction Status.

1.1 The City guarantees the continuation of the extraterritorial 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.

1.2 Except as provided in this Agreement, the City agrees not to involuntarily annex the Property, agrees not to institute proceedings to involuntarily annex the Property, and further agrees not to include the Property in a statutory annexation plan or attempt to annex 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 Chapter 43 of the Texas Local Government Code.

Section 2. Continuance of Agriculture, Wildlife Management, or Timberland Use; Prohibition Against Other Uses

2.1 The Owner covenants and agrees not to use the Property for any use other than for agriculture, wildlife management, and/or timberland consistent with Chapter 23 of the Texas Tax Code, except for any existing single-family residential use of the Property, without the prior written consent of the City. The City hereby acknowledges that Rosalio and Angelita Tobias live on the Property and that the Property has an existing single family residential use.

2.2 Except as provided in Section 2.3, the Owner covenants and agrees that the Owner will not file any type of application for a subdivision plat or other development-related approval for the Property with Hays County or the City until the Property has been annexed into, and zoned by, the City. However, the property may be divided into up to five (5) tracts for the purpose of transfer to family members or not-profit foundation, so long as each tract is greater than five (5) acres, thus not requiring subdivision plat approval through the City of Kyle, and so long as no other development permit is requested. In the event that the property is partitioned into up to five (5) tracts as envisioned by the landowner, all successors will be bound by the terms of this agreement and any act of development on any piece of the property, except for the structures allowed in Section 2.3, will trigger annexation of the entire parent tract.

2.3 Except as provided in this Section 2.3, the Owner covenants and agrees not to construct, or allow to be constructed, any buildings on the Property that would require a buildings permit if the Property were in the city limits, until the Property has been annexed into, and zoned by the City. However, the Owner may construct (a) an accessory structure to an existing single-family dwelling; (b) an accessory structure used in conjunction with the existing single-family dwelling and/or; in compliance with all applicable City ordinances and codes. Rosalio Tobias and/or Angelita Tobias, but not their heirs, successors or assigns, may construct one additional single family residence on the Property for the housing of their caretakers ("**Caretaker House**"). Rosalio or Angelita Tobias must be living on the Property to exercise their right to construct the Caretaker House. The Parties agree that the permits required to drill a well, install a septic system and construct the Caretaker House (including accessory structures) do not constitute a subdivision plat or related development document that violate this Agreement or Section 43.035(d) Texas Local Government Code.

2.4 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 IDEMNIFY, 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. Effect of Certain Filings or Actions.

3.1 The Owner acknowledges that if any application for a plat or other development-related approval 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(s) 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 such annexation shall be voluntary and the Owner hereby consents to such annexation as though the Owner had tendered a petition for such annexation.

3.2 If annexation proceedings begin pursuant to this Section, the Owner acknowledges that this Agreement serves as an exception to Local Government Code Section 43.052, requiring a municipality to use certain statutory procedures either under an annexation plan or in accordance with Chapter 43 of the Local Government Code. Furthermore, the Owner hereby waives any and all vested rights and claims that they may have 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 Section 2 herein.

Section 4. Enforcement of City Regulations

4.1 Pursuant to Sections 43.035(b)(1)(B) of the Texas Local Government Code, 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 such regulations are enforced within the City's boundaries. The City agrees that the construction of the Caretaker House would not violate applicable City regulations. Notwithstanding any other provision of this Agreement, the Caretaker House is not required to connect to the City's water and wastewater systems.

4.2 The City states and 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.

Section 5. Term; Annexation On or After the End of the Term

5.1 The term of this Agreement (the "**Term**") is **fifteen (15) years** from the date that the Mayor's signature to this Agreement is acknowledged by a public notary, unless sooner terminated as provided for in Section 3, above, or if the Property no longer has an exemption from *ad valorem* taxes for agricultural, wildlife management, or timber land. This Agreement may be extended for an additional fifteen (15) year term if either Rosalio or Angelita Tobias lives on the Property at the end of the initial Term. Notice of the extension must be given to the City no sooner than ninety (90) days and no later than thirty (30) days before the end of the initial Term. If this Agreement is terminated because the Property no longer has an exemption from *ad valorem* taxes for agricultural, wildlife management, or timber land, then the effective date of such termination shall be the effective date of such change in exemption status for *ad valorem* tax purposes.

5.2 The Owner, and all of the Owner's heirs, successors and assigns shall be deemed to have filed a petition for voluntary annexation before the end of the Term, for annexation of the Property

to be completed on or after the end of the Term. Prior to the end of the Term, the City may commence the voluntary annexation of the Property. In connection with annexation of the Property pursuant to this section, the Owners hereby waive any vested rights they may have under Section 43.002(a)(2) and Chapter 245 of the Texas Local Government Code that would otherwise exist by virtue of any plat or construction 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. Notice

6.1 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.

6.2 Owner and the Owner's heirs, successors, and assigns shall give the City written notice within sixty (60) days of any change in the agricultural, wildlife management or timber land tax exemption status of the Property.

6.3 No Party shall be deemed to be in default hereunder until i) receipt from another party of a written notice of breach that specifies the nature of the breach, including the provision of the Agreement that has been breached ("**Notice of Breach**"); and ii) the passage of thirty (30) days after receipt of the Notice of Breach without cure of the breach. If the cure of the breach requires more than thirty (30) days and the breaching Party has begun to cure the breach, then the breaching party shall be deemed to have cured the breach so long as the breaching party diligently, continuously and timely cures said breach. Upon the passage of thirty (30) days without cure of the breach, such Party shall be deemed to have defaulted for purposes of this Agreement and the non-defaulting Party may pursue the remedies in accordance with Section 9 below.

6.4 A copy of any notice required by this Agreement shall be in writing and sent to the City via certified mail, return receipt requested, to the following address:

City of Kyle
Attn: Director of Planning
100 W. Center Street
Kyle, Texas 78640

Section 7. This Agreement shall run with the Property and be recorded in the real property records of Hays County, Texas; provided, however, that the right to construct the Caretaker House and the right to extend the Agreement for a second fifteen (15) year term are personal to Rosalio and Angelita Tobias and that said rights may not be conveyed or transferred to any assign, successor or heir of Rosalio and Angelita Tobias.

Section 8. If a court of competent jurisdiction determines that any covenant of this Agreement is void or unenforceable, including the covenants regarding involuntary annexation, then the remainder of this Agreement shall remain in full force and effect.

Section 9. Any Owner or the City may enforce this Agreement by any proceeding at law or in equity. Failure to do so shall not be deemed a waiver to enforce the provisions of this Agreement thereafter.

Section 10. No subsequent change in law regarding annexation shall affect the enforceability of this Agreement or the City's ability to annex the properties covered herein pursuant to the terms of this Agreement.

Section 11. This Agreement shall be governed, enforced and construed in accordance with the laws of the State of Texas. Venue for this Agreement shall be in Hays County, Texas.

Section 12. This Agreement may be separately executed in individual counterparts and, upon execution, shall constitute one and the same instrument.

Section 13. This Agreement shall survive its termination to the extent necessary for the implementation of the provisions of Sections 3, 4, and 5 herein.

[REMAINDER OF PAGE IS LEFT BLANK]

Entered into this 31st day of March, 2016.

OWNER:

ROSALIO AND ANGELITA G. TOBIAS TRUST

By: Rosalio Tobias Trustee
Rosalio Tobias, Trustee of the Rosalio and Angelita G. Tobias Trust

By: Angelita G. Tobias, Trustee
Angelita G. Tobias, Trustee of the Rosalio and Angelita G. Tobias Trust

THE CITY OF KYLE, TEXAS

Attest:

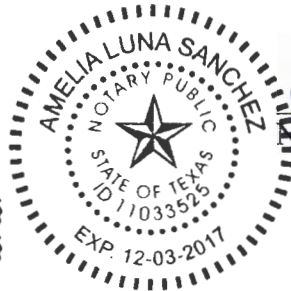
R. Todd Webster
R. Todd Webster
Mayor

(NOTARIES FOLLOW ON SEPARATE PAGES)

STATE OF TEXAS §
COUNTY OF HAYS §

BEFORE ME the undersigned authority on this day personally appeared Angelita G. Tobias, trustee of the Rosalio and Angelita G. Tobias Trust, Owner of the Property, and acknowledged that she is fully authorized to execute the foregoing document and that she executed such document for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 31st day of March, 2016.



Amelia Luna Sanchez
Notary Public - State of Texas

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BEFORE ME the undersigned authority on this day personally appeared Rosalio Tobias, trustee of the Rosalio and Angelita G. Tobias Trust, Owner of the Property, and acknowledged that he is fully authorized to execute the foregoing document and that he executed such document for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 31st day of March, 2016.

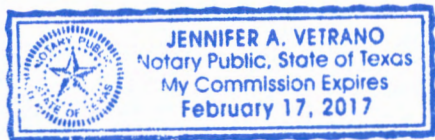


Amelia Luna Sanchez
Notary Public - State of Texas

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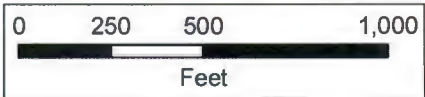
BEFORE ME the undersigned authority on this day personally appeared R. Todd Webster, Mayor, City of Kyle, and acknowledged that he is fully authorized to execute the foregoing document and that he executed such document for the purposes and consideration therein expressed and in the capacity therein stated.


GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 19th day of April, 2016.



Jennifer A. Vetrano
Notary Public - State of Texas

Exhibit A
Property Location
Rosalio & Angelita Tobias Trust
R14775, R136734



 Property Boundary

 Parcel Lines