

STATE OF TEXAS §  
COUNTY OF HAYS §

**DEVELOPMENT AGREEMENT  
UNDER SECTION 43.016, TEXAS LOCAL GOVERNMENT CODE**

This Development Agreement under Section 43.016, Texas Local Government Code is entered between the City of Kyle, Texas (the “City”) and the undersigned property owner(s) (the “Owner”) (the “Agreement”). The term Owner shall include all owners of the Property. The City and the Owner are collectively referred to as the Parties.

**WHEREAS**, the Owner owns a parcel of real property in Hays County, Texas, which is more particularly described in the attached Exhibit “A” (the “Property”) that is appraised for ad valorem tax purposes as land for agricultural, wildlife management, or timber land under Chapter 23, Tax Code;

**WHEREAS**, the City initiated the process to annex all or portions of Owner’s Property;

**WHEREAS**, under Section 43.016, Texas Local Government Code, the City is required to offer to make a development agreement with the Owner that will provide for the continuation of the extraterritorial status of the area and authorize the enforcement of all regulations and planning authority of the City that do not interfere with the use of the area for agriculture, wildlife management, or timber;

**WHEREAS**, Section 43.016 provides that the restriction or limitation on the City’s annexation of all or part of the Property under this Agreement is void if the Owner files any type of subdivision plat or related development document for the Property, regardless of how the area is appraised for ad valorem tax purposes;

**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 43.016 and 212.172, Texas Local Government Code;

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

**Section 1. Extraterritorial Jurisdiction Status of Property.** The City agrees that the Property shall remain in the City’s extraterritorial jurisdiction (the “ETJ”) and the City shall discontinue the pending annexation proceedings as to the Property. The City further agrees that it shall not annex the Property during the term of this Agreement, subject to the terms and conditions of this Agreement.

**Section 2. Owner's Obligations.** In consideration of the City's agreement not to annex the Property and as a condition of the Property remaining in the City's ETJ, the Owner covenants and agrees to the following:

- (a) The Owner shall use the Property only for agriculture, wildlife management, and/or timber land use, as defined by Chapter 23 of the Texas Tax Code, that are existing on the Effective Date of this Agreement, except for single-family residential use existing on the Effective Date or as otherwise provided by this Agreement.
- (b) The Owner shall not subdivide the Property, or file for approval of a subdivision plat, site plan, or related development document for the Property with Hays County or the City until the Property is annexed into and zoned by the City. A "development document" is an application for a permit or approval that must be filed with a governmental entity that has jurisdiction over the Property in order to develop the Property.
- (c) The Owner shall not construct, or allow to be constructed, any building or structure on the Property that requires a building permit until the Property is annexed into and zoned by the City. Accessory structures authorized under the Agricultural District A (including but not limited to barns, sheds, fences, and corrals) and buildings or structures that are related to and necessary for the use of the Property as authorized under Section 2(a) (excluding new single family residences) are exceptions to this Section 2(c), provided that the Owner obtains required building permits prior to construction.
- (d) The City's Agricultural District A zoning regulations shall apply to the Property, and in addition to the uses authorized under Agricultural District A, the Property may also be used for wildlife management or timber land, as defined by Chapter 23 of the Texas Tax Code, if such uses existed on the Effective Date of this Agreement. Fences shall not be subject to setback requirements. The City's building codes and regulations shall apply to the Property except as provided otherwise in this Section 2(d). Any buildings or structures constructed on the Property after the Effective Date shall be constructed in compliance with the regulations for the Agricultural District A and applicable building codes and regulations, provided that building permits and related inspections shall only be required for additions to an existing single family residence that are authorized to be located on the Property under this Agreement.

**Section 3. Development and Annexation of Property.**

- (a) The following occurrences shall be deemed the Owner's petition for voluntary annexation of the Property, and the Property may subsequently be annexed at the discretion of the City Council:
  - (1) The filing of any application for plat approval, site plan approval, building

permit or related development document for the Property, or the commencement of development of the Property, except as specifically authorized in Section 2.

- (2) The Owner's failure to comply with Sections 2(a), 2(b), 2(c), or 2(d).
- (3) The Property is no longer appraised for ad valorem tax purposes as land for agricultural, wildlife management, or timber land under Chapter 23, Texas Tax Code, or successor statute, unless the Property is no longer appraised for such purposes because the Legislature has abolished agricultural, wildlife management, or timberland exemptions, provided that the Owner is in compliance with Section 2.
- (4) The filing for voluntary annexation of the Property into the City by the Owner.
- (5) The expiration of this Agreement.

- (b) The Owner agrees that annexation initiated due to an occurrence under Section 3(a) is an annexation by request consent of the Owner and the Owner hereby consents to such annexation as though a petition for such annexation had been tendered to the City by the Owner. Upon annexation, municipal services shall be provided to the Property in accordance with the adopted municipal services plan.

**Section 4. Application of City Regulations.** Pursuant to Section 43.016(b)(1)(B), Texas Local Government Code, the Property is subject to all of the City's regulations, as they are amended from time to time, 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 and the Owner acknowledges and agrees that the City is hereby authorized to enforce said regulations and planning authority except as specifically provided otherwise herein.

**Section 5. Term.** The term of this Agreement (the "Term") is fifteen (15) years from the Effective Date. On the date not more than 180 days before the expiration of this Agreement, until the expiration of this Agreement, and at the request of the Owner and/or the City, and upon written consent of both parties, this Agreement may be extended for an additional term of up to fifteen (15) years from the date of expiration of the previous Agreement. Two such extensions may be enacted beyond the original term of this Agreement.

**Section 6. Vested Rights Claims.** This Agreement is not a permit for the purposes of Chapter 245, Texas Local Government Code. Any claims regarding the City's ordinances and regulations that govern a project on the Property under Chapter 245 shall be determined as if the Property were located within the City limits and subject to Agricultural District A at the time that the application, plan for development, or plat application (except for those allowed under Section 2) was filed with a regulatory agency. The Owner further waives any and all claims that the Owner may have under Section 43.002(a) that would otherwise exist by virtue of any application, plan, plat or construction the Owner may file or initiate with respect to the Property

following the expiration of this Agreement prior to annexation of the Property by the City; provided that the City initiates annexation proceedings within one year following the expiration of this Agreement. Notwithstanding the foregoing, the Owner and City agree and acknowledge that any vested rights and claims pertaining to the use and development of the Property as authorized by Section 2 is not modified by this Agreement.

**Section 7. Authorization.**

- (a) All parties and officers signing this Agreement warrant to be duly authorized to execute this Agreement.
- (b) The Owner acknowledges that each and every owner of the Property or an authorized representative has signed this Agreement and that the Agreement is binding on all owners of the Property.

**Section 8. 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 the notices required by this Section shall be sent by personal delivery or certified mail, return receipt requested, to the City at the following address:

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

Notices required to be sent to the Owner shall be sent by personal delivery or certified mail, return receipt requested, to the Owner at the following address:

Barry Wukasch  
PO Box 4926  
Cave Creek, AZ 85327-4926

**Section 9. Covenant Running with the Land.** This Agreement shall run with the Property and is binding on future Owners of the Property, and a copy of this Agreement shall be recorded in the Official Public Records of Hays County, Texas. The Owner and the City acknowledge and agree that this Agreement is binding upon the City and the Owner and their respective successors, executors, heirs, and assigns, as applicable, for the term of this Agreement. Conveyance of the Property, or portions thereof, to subsequent owners does not trigger a request for voluntary annexation unless Section 2 is also violated.

**Section 10. Severability.** If any provision of this Agreement is held by a court of competent and final jurisdiction to be invalid or unenforceable for any reason, then the remainder of the

Agreement shall be deemed to be valid and enforceable as if the invalid portion had not been included.

**Section 11. Amendment and Modifications.** This Agreement may be amended or modified only in a written instrument that is executed by both the City and the Owner after it has been authorized by the City Council.

**Section 12. Gender, Number and Headings.** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The headings and section numbers are for convenience only and shall not be considered in interpreting or construing this Agreement.

**Section 13. Governmental Immunity; Defenses.** Nothing in this Agreement shall be deemed to waive, modify, or amend any legal defense available at law or in equity to either the City or Owner, including governmental immunity, nor to create any legal rights or claims on behalf of any third party.

**Section 14. Enforcement; Waiver.** This Agreement may be enforced by any Owner or the City 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 15. Effect of Future Laws.** No subsequent change in the 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 16. Venue and Applicable Law.** Venue for this Agreement shall be in Hays County, Texas. This Agreement shall be construed under and in accordance with the laws of the State of Texas.

**Section 17. Counterparts.** This Agreement may be separately executed in individual counterparts and, upon execution, shall constitute one and same instrument.

**Section 18. Effective Date.** This Agreement shall be in full force and effect as of the date of approval of this Agreement by the City Council, from and after its execution by the Parties.

**Section 19. Sections to Survive Termination.** This Agreement shall survive its termination to the extent necessary for the implementation of the provisions related to annexation of the Property into the City.

**Section 20. Cooperation of Parties; Intent.** The Parties shall reasonably cooperate in good faith to give effect to the provisions and intent of this Agreement. The intent of this Agreement is that the Property remain in the City's ETJ until the Property is developed or used for other than for agriculture, wildlife management, or timberland uses, as further defined in Section 2, and that development of the Property or changes in use of the Property, as defined in Section 3, will constitute the Owner's request to be annexed into the city so that the Property will be

annexed into the City.

Entered into this 26 day of August, 2019.

**Owner (s)**

Barry C. Wukasch

Printed Name: BARRY C. WUKASCH

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

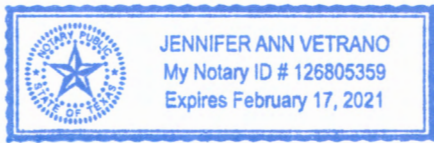
**City of Kyle, Texas**

Travis Mitchell  
Travis Mitchell, Mayor

STATE OF TEXAS §  
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BEFORE ME the undersigned authority on this day personally appeared Barry C. Wukasch, Owner of the Property, and acknowledged that s/he is fully authorized to execute the foregoing document and that s/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 26<sup>th</sup> day of August, 2019.



Jennifer A. Vetrano  
Notary Public - State of Texas

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BEFORE ME the undersigned authority on this day personally appeared \_\_\_\_\_, Owner of the Property, and acknowledged that s/he is fully authorized to execute the foregoing document and that s/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 \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public - State of Texas

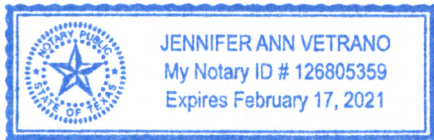
STATE OF TEXAS  
COUNTY OF HAYS

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**BEFORE ME** the undersigned authority on this day personally appeared Travis Mitchell, Mayor, City of Kyle, Texas 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 3<sup>rd</sup> day of September, 2019.

Jennifer A. Vetrano  
Notary Public - State of Texas





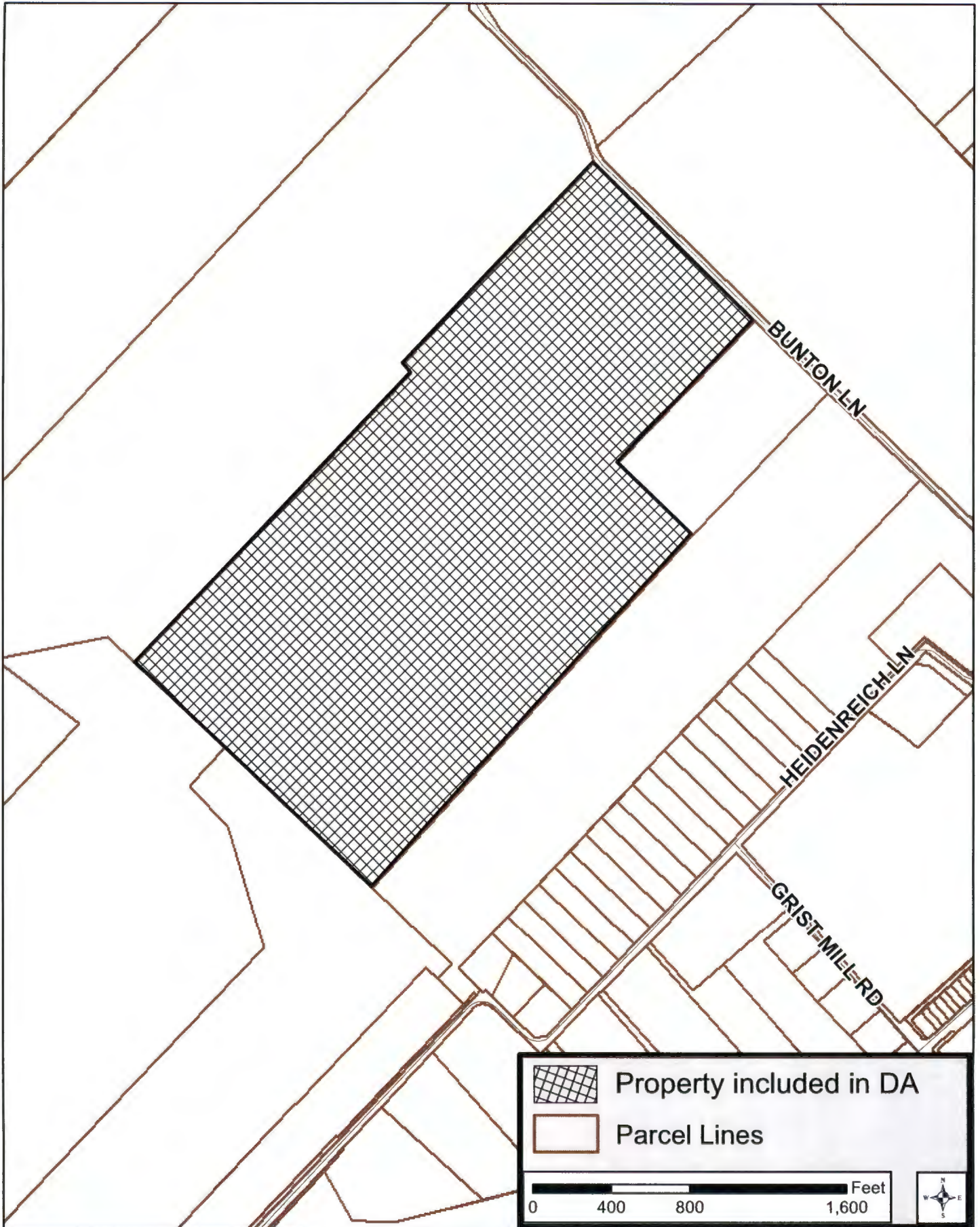
**EXHIBIT "A"**  
**Property Location Map**

# Exhibit A

Wukasch Development Agreement

HCAD ID: R17263

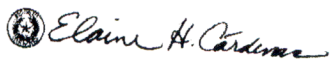
Approx. 120.4 Acres



THE STATE OF TEXAS  
COUNTY OF HAYS

I hereby certify that this instrument was FILED on the  
date and the time stamped hereon by me and was duly  
RECORDED in the Records of Hays County, Texas.

19031783 AGREEMENT  
09/09/2019 03:07:57 PM Total Fees: \$62.00

 Elaine H. Cardenas

Elaine H. Cardenas, MBA, PhD, County Clerk  
Hays County, Texas