

STATE OF TEXAS

COUNTY OF HIDALGO

**CHAPTER 43 AND 212
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 McAllen, 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 Hidalgo County, Texas, which is more particularly and separately described in the attached Exhibit "A"; and

WHEREAS, the City has begun the process to institute annexation proceedings on all or portions of Owner's Property and has held public hearings on October 2, 2017 and October 9, 2017; 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 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 Hidalgo County.

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 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. Except as provided in this Agreement, the City agrees not to annex the Property, agrees not to involuntarily 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 Chapter 43

of the Texas Local Government Code.

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 of the 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 the Owner will not file any type of subdivision plat or related development document for the Property with Hidalgo County or the City until the Property has been annexed into, and zoned by, the City.

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 by, the City. The Owner also covenants and agrees that the City's A-O Agricultural-Open Space District zoning requirements apply to the Property, and that the Property shall be used only for A-O Agricultural-Open Space District zoning uses that exist on that Property at the time of the execution of this Agreement, unless otherwise provided in this Agreement. However, the Owner may construct an accessory structure to an existing single family dwelling 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 severably, 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 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 Commission. The Owner agrees that such annexation shall be voluntary and the Owner hereby consents to such annexation as though a petition for such annexation had been tendered by the Owner.

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 under an annexation plan.

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. Pursuant to Sections 43.035(b)(l)(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 the regulations are enforced within the City's boundaries. 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. 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 public notary.

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 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. Property annexed pursuant to this Agreement will initially be zoned A-O Agricultural-Open Space pursuant to the City's Code of Ordinances, pending determination of the property's permanent zoning in accordance with the provisions of applicable law and the City's Code of Ordinances.

SECTION 7. 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 McAllen
Attention: City Manager
P.O. Box 220
McAllen, Texas 78505

SECTION 8. This Agreement shall run with the Property and be recorded in the real property records of Hidalgo County, Texas.

SECTION 9. 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 10. 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 11. 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 12. Venue for this Agreement shall be in Hidalgo County, Texas.

SECTION 13. This Agreement may be separately executed in individual counterparts and, upon execution, shall constitute one and same instrument.

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.

WITNESS OUR SIGNATURES this _____ day of _____, 2017

CITY OF McALLEN

By: _____
Roel Rodriguez, P.E. City Manager

Approved as to form:

Kevin D. Pagan, City Attorney

PROPERTY OWNER

ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF HIDALGO

This instrument was acknowledged before me by _____ on this _____ day of _____, 2017.

Notary Public – State of Texas

CORPORATE ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF HIDALGO

This instrument was acknowledged before me by Roel Rodriguez, P.E., City Manager for the City of McAllen, a municipal corporation of the State of Texas, on behalf of said corporation, this _____ day of _____, 2017.

Notary Public – State of Texas

After original document has been recorded, please return to:

City of McAllen – City Secretary
P. O. Box 220
McAllen, Texas 78505-0220