

Property Owner: James L. Wyatt, Jr. Property Management Trust and Mildred M. Wyatt Property Management Trust

CHAPTER 43 TEXAS LOCAL GOVERNMENT CODE
DEVELOPMENT AGREEMENT

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, and agrees not to involuntarily institute proceedings to annex the Property. However, if the Property is annexed pursuant to the terms of this Agreement, then the City may provide services as so agreed 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 Kendall 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 most restrictive zoning, Residential-Agricultural zoning requirements apply to the Property, and that the Property shall be used only for Residential-Agricultural 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 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 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. The Owner agrees that such annexation shall be voluntary and the Owner hereby consents pursuant to Section 212.172(b)(7). Owner hereby waives any requirement in Chapter 43 related to procedures or service provision. Services will be provided to Owner's Property in accordance with existing city policy on the date of annexation, and as amended thereafter.

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 43.016(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 current use of the Property for residential, 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 10 years from the date that the City Manager’s signature to this Agreement is acknowledged by a public notary. Upon written request by Owner no later than one month prior to the Agreement’s expiration and written concurrence by the city, which shall not be unreasonably withheld, the term of this Agreement may be extended for successive ten (10) year terms. This Agreement may not extend past forty-five (45) years cumulatively.

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. The Owner agrees that such annexation shall be voluntary and the Owner hereby consents pursuant to Section 212.172(b)(7). Owner hereby waives any requirement in Chapter 43 related to procedures or service provision. Services will be provided to Owner’s Property in accordance with existing city policy on the date of annexation, and as amended thereafter.

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.

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 Holding zoning, 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 Boerne, Texas
Attn: City Manager
P.O. Box 1677 Boerne, Texas 78006

Section 8. This Agreement shall run with the Property and be recorded in the real property records of Kendall 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 Kendall 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.

Entered into this _____ day of September 2021.

OWNER:

James L. Wyatt, Jr. Property Management Trust

Mildred M. Wyatt, Property Management Trust

By: _____
James Leslie Wyatt, III, Trustee

By: _____
Roberta Belanger, Senior Vice
President of Frost Bank, Trustee

By: _____
Amy McFee, Trustee

THE STATE OF TEXAS }

COUNTY OF }

This instrument was acknowledged before me on the ____ day of September 2021 by James Leslie Wyatt, III, Trustee of James L. Wyatt, Jr. Property Management Trust, an Owner.

Notary Public, State of Texas

THE STATE OF TEXAS }

COUNTY OF }

This instrument was acknowledged before me on the ____ day of September 2021 by Amy McFee, Trustee of James L. Wyatt, Jr. Property Management Trust, an Owner.

Notary Public, State of Texas

THE STATE OF TEXAS }

COUNTY OF KENDALL }

This instrument was acknowledged before me on the ____ day of September 2021 by Roberta Belanger, Senior Vice President of Frost Bank, Trustee of Mildred M. Wyatt Property Management Trust, an Owner.

Notary Public, State of Texas

CITY

Ben Thatcher, City Manager

THE STATE OF TEXAS }

COUNTY OF KENDALL }

This instrument was acknowledged before me on the ____ day of September 2021, by Ben Thatcher, City Manager, City of Boerne, Texas.

Notary Public, State of Texas

EXHIBIT 1

Description of Land

An approximately 10-acre parcel of real property commonly known as 36025 I-10, Boerne, Texas 78006, more particularly described as set forth below and the attached Exhibit A and Exhibit B:

Tract 1:

1.534 acre portion of that (called) 10.022 acre tract as described in Deed recorded in Volume 104, Page 824, Official Public Records, Kendall County, Texas; said 1.534 acres being more particularly described by metes and bounds on Exhibit "A" attached hereto and incorporated herein by reference.

Tract 2:

8.488 acre portion of that (called) 10.022 acre tract as described in Deed recorded in Volume 104, Page 824, Official Public Records, Kendall County, Texas; said 8.488 acres being more particularly described by metes and bounds on Exhibit "B" attached hereto and incorporated herein by reference.

EXHIBIT A

STATE OF TEXAS #

COUNTY OF KENDALL #

Field notes of a 1.534 acre tract of land out of the A. Lockmar Survey No. 178, Kendall County, Texas located about 1.1 miles S 48° W of the county seat in Boerne, Texas, being the northern portion of a tract as described in Vol. 104, Page 824, Kendall County Deed Records and being more fully described as follows:

Beginning at an iron pin on the southwestern right-of-way line of Interstate Highway No. 10 for the north corner of this tract, said pin being N 51°07' E 3,501' from the southwest corner of the said Survey No. 178;

Thence, with fence S 0°51' W 225.4' and S 0°58' W 150.0' to a point for the southwest corner of this tract;

Thence, N 75°50' E 368.8' to an iron pin on the aforementioned southwestern right-of-way line of I.H. 10;

Thence, with said southwestern right-of-way line of I.H. 10 N 50°58' W 452.7' to the place of beginning and containing 1.534 acres of land.

I, Edgar Schwarz, Jr., a Registered Professional Civil Engineer, do hereby certify that the above field notes are of a survey made on the ground under my supervision and from records in my office.

This the 2nd day of March, 1974.

Edgar Schwarz, Jr.
Edgar Schwarz, Jr.



THE STATE OF TEXAS

COUNTY OF KENDALL

Before me, the undersigned authority, on this day personally appeared Edgar Schwarz, Jr. known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Witness my hand and seal of office on this the 2nd day of March, 1974.



W. M. Schuchard
Notary Public in and for Kendall
County, Texas

EXHIBIT **B**

STATE OF TEXAS #

COUNTY OF KENDALL #

Field notes of a 8.488 acre tract of land out of the A. Lockmar Survey No. 178, Kendall County, Texas located about 1.1 miles S 48° W of the county seat in Boerne, Texas, being the southern portion of a tract as described in Vol. 104, Page 824, Kendall County Deed Records and being more fully described as follows:

Beginning at the point of intersection of the center of Fredericks Creek and the southwestern right-of-way line of Interstate Highway No. 10 for the southeast corner of this tract, said point being N 66°02' E 3,774' from the southwest corner of the said Survey No. 178;

Thence, with said southwestern right-of-way line of I.H. 10 N 50°28' W 128.4' and N 42°26' W 404.1' to an iron pin for the northeast corner of this tract;

Thence, S 75°50' W 368.8' to a point for corner;

Thence, with fence S 0°58' W 377.3', S 0°12' W 151.6' and S 0°38' E 84.3' to the center of Fredericks Creek for the southwest corner of this tract;

Thence, with said center of Creek S 85°27' E 134.4', N 81°23' E 265.0', N 58°48' E 163.5' and N 43°40' E 291.7' to the place of beginning and containing 8.488 acres of land.

I, Edgar Schwarz, Jr., a Registered Professional Civil Engineer, do hereby certify that the above field notes are of a survey made on the ground under my supervision and from records in my office.

This the 2nd day of March, 1974.

Edgar Schwarz, Jr.
Edgar Schwarz, Jr.

