

ADDENDUM
TO A
CHAPTER 43 TEXAS LOCAL GOVERNMENT CODE
DEVELOPMENT AGREEMENT
BETWEEN R. E. DUFF AND THE CITY OF BASTROP, TEXAS

This First Addendum to a previously executed Development Agreement ("Addendum") is entered into pursuant to Section 43.035 and Section 212.172 of the Texas Local Government Code, by and between the City of Bastrop, Texas (the "City") and Robert E. Duff, the undersigned property owner(s) (the "Owner"). The term "Owner" includes all owners of the Property, and Owner's heirs, assigns and successors in interest, as noted herein. The Owner and the City are referred to jointly herein as the "Parties."

WHEREAS, the Owner and the City have previously executed and entered into a Development Agreement ("Agreement") related to a ±54.126 acre parcel of real property (the "Property") located in Bastrop County, Texas, which is more particularly described on Exhibit "A" to the Agreement; and

WHEREAS, the Owner and the City mutually desire to enter into this Addendum, for the purpose of modifying the Agreement, as set forth herein below, to reflect a subsequently agreed upon provision, and

WHEREAS, the Owner and the City acknowledge that this Addendum is binding upon the Owner and the City and their respective successors and assigns for the term of the Agreement; and

WHEREAS, upon execution by all Parties, this Addendum is to be appended to the Agreement, which is to be recorded by the City of Bastrop, Texas, in the Real Property Records of Bastrop County, Texas.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, THE PARTIES HERETO AGREE AS FOLLOWS:

Part 1. The following provision shall be added to Section 1 of the Agreement:


"The City agrees that if a portion of the Property is sold or otherwise conveyed and/or annexed, the balance of this Property shall remain subject to this Development Agreement. Further, such partial sale or conveyance and/or resulting annexation shall not trigger the annexation of the entire remaining Property, but will trigger only annexation of the portion sold and/or conveyed by Owner."

Part 2. All other provision of the Agreement shall remain as stated in the Agreement, and are not otherwise modified, altered, or superseded by this Addendum. In the event of a conflict, the Agreement shall control.

Part 3. This Addendum may be separately executed in individual counterparts and, upon execution, shall constitute one and same instrument.

Part 4. This Addendum shall survive in the same manner as the Agreement, as set forth therein.

Entered into this 18TH day of October, 2011.


Robert E. Duff, Owner and
Authorized Representative of all Owner(s) in Interest

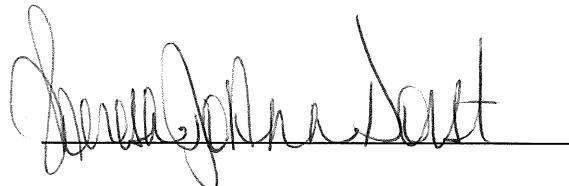
Printed Name: Robert E. Duff

THE STATE OF TEXAS §

COUNTY OF BASTROP §

This instrument was acknowledged before me on the 18 day of October, 2011, by Robert E. Duff, Owner.






Notary Public, State of Texas

My Commission Expires On: May 31, 2015

CITY OF BASTROP, TEXAS:



By: Michael H. Talbot
City Manager, City of Bastrop, Texas

10-25, 2011
Date

Witnessed and Attested:



Teresa Valdez, City Secretary

THE STATE OF TEXAS
COUNTY OF BASTROP

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CHAPTER 43 TEXAS LOCAL GOVERNMENT CODE
DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is entered into pursuant to Sections 43.035 and 212.172 of the Texas Local Government Code, by and between the City of Bastrop, Texas (the "City") and Robert E. Duff, the undersigned property owner(s) (the "Owner"). The term "Owner" includes all owners of the Property, and Owner's heirs, assigns and successors in interest, as noted herein.

WHEREAS, the Owner owns a ±54.126 acre parcel of real property (the "Property") in Bastrop 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 two (2) public hearings related to this annexation on September 13, 2011 and September 27, 2011; 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 of this Agreement, as defined below; and

WHEREAS, upon execution by all parties, this Agreement is to be recorded by the City of Bastrop, Texas, in the Real Property Records of Bastrop County, Texas.

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, or any portion thereof, for any use other than for agriculture, wildlife management, and/or timber land consistent with Chapter 23 of the Texas Tax Code, except for continued residential use of the now existing single-family structures, if any, on 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, or any portion thereof, with Bastrop 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's municipal limits, until the Property has been annexed into, and zoned by, the City. The Owner also covenants and agrees that the City's AO-Agricultural Open Space District zoning requirements apply to the Property, and that the Property shall be used only for AO-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, if constructed in compliance with all applicable City Ordinances, Regulations 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, or any portion thereof, 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 to such annexation as though a petition for such annexation had been tendered to the City 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)(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 Owner's 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 a Chapter 212 development agreement.

Section 5. The term of this Agreement (the "Term") is forty-five (45) years from the date that the City Manager's signature to this Agreement is acknowledged by a public notary, which shall occur after the Agreement is fully executed by all Owners of the Property.

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 Owner hereby waives any vested rights it/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 AO-Agricultural Open pursuant to the City's Code of Ordinances, of similar designation if AO zoning is no longer a City designation at the time of annexation of the Property, 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, wildlife or timber exemption status of the Property. A copy of either notice required by this section shall be forwarded to the Parties at the following address(es):

Owner:

Mr. Robert E. Duff, et al
11111 Wilcrest Green
Houston Tx 77042

City of Bastrop

Attn: Michael H. Talbot, City Manager
PO Box 427
Bastrop, Texas 78602

With Copy To: JC Brown, City Attorney
Law Offices of JC Brown, PC
1411 West Ave., Suite 100
Austin, TX 78701

Section 8. This Agreement shall run with the Property and be recorded in the real property records of Bastrop County, Texas. Any heirs, successors in interest or assigns are contractually bound by the terms of this Agreement.

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.

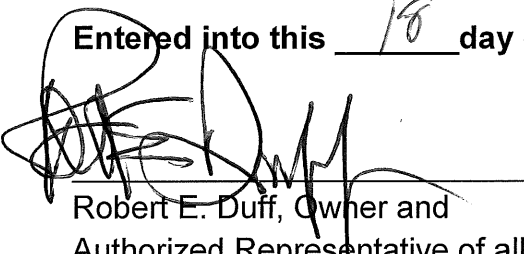
Section 11. No subsequent change in the law regarding annexation shall affect the enforceability of this Agreement or the City's ability to annex the properties covered herein pursuant to the terms of this Agreement.

Section 12. Venue for this Agreement shall be in Bastrop 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, 5, 6, 7, and 8 herein.

Entered into this 18 day of October, 2011.


Robert E. Duff, Owner and
Authorized Representative of all Owner(s) in Interest

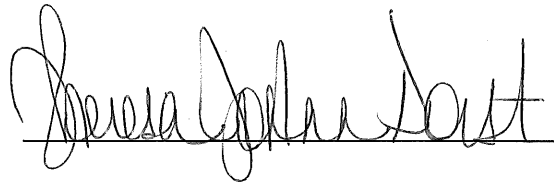
Printed Name: Robert E. Duff

THE STATE OF TEXAS §

COUNTY OF BASTROP §

This instrument was acknowledged before me on the 18th day of October, 2011, by Robert E. Duff, Owner.






Notary Public, State of Texas

My Commission Expires On: May 31, 2015

CITY OF BASTROP, TEXAS:



By: Michael H. Talbot
City Manager, City of Bastrop, Texas

10-25-, 2011
Date

Witnessed and Attested:



Teresa Valdez, City Secretary

0 285 570 1,140 Feet

- Legend
- ☐ ETR
 - ☐ Bastrop Voluntary ETR
 - ☐ Existing City Limits
 - ☒ Tract to be Annex

FM 969

BLAKEV LANE

R23100
54.126 ac

DUFF DR

W SH 71 SVC RD

W SH 71

W SH 71

CITY OF BASTROP ~ PROPOSED 2011 ANNEXATION

TRACT 5

EXHIBIT A - Tract 5