

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS TO VOLUNTARILY ANNEX BY REQUEST OF THE PROPERTY OWNER APPROXIMATELY 79.910 ACRES OF LAND LOCATED IN THE OWEN SHANNON SURVEY, A-36, IN MONTGOMERY COUNTY, TEXAS, SAID 79.910 ACRES BEING A PORTION OF A CALL 80.72 ACRE TRACT OF LANDED RECORDED IN THE NAME OF SARAH ANNE PEEL MABRY IN VOLUME 683, PAGE 279 OF THE MONTGOMERY COUNTY DEED RECORDS (M.C.D.R.) INTO THE INCORPORATED MUNICIPAL BOUNDARIES OF THE CITY OF MONTGOMERY, TEXAS INCLUDING THE FOLLOWING: FINDINGS OF FACTS, EFFECTIVE DATE; REPEALER; SEVERABILITY; AND PROPER NOTICE AND MEETING.

WHEREAS, the City of Montgomery, Texas ("City") is a Type-A, General Law municipality located in Montgomery County, Texas with the rights and privileges thereto; and

WHEREAS, Section 43.0671 of the Texas Local Government Code authorizes a Type-A general law municipality to extend the boundaries of the municipality and annex an area adjacent to the municipality by petition of area landowner in accordance with the procedural rules prescribed by Texas Local Government Code Chapter 43; and

WHEREAS, the City received a written petition requesting the voluntary annexation of the area described in Exhibit A, on June 24, 2022; and

WHEREAS, the area identified in Exhibit A, is part of the Owen Shannon Survey, A-36, Montgomery County, Texas, and adjacent and contiguous to the City limits; and

WHEREAS, the City Council of the City of Montgomery, Texas ("City Council") has conducted the required public hearing, held on October 25, 2022, regarding annexation of the area and has provided all required notices within the timeframes established under Chapter 43 of the Texas Local Government Code; and

WHEREAS, the City has entered into a municipal service annexation agreement for the area to be annexed in accordance with Section 43.0672 of the Texas Local Government Code providing for agreed upon municipal services; and

WHEREAS, the City Council deems it to be in the best interest of the citizens of the City to annex said territories into the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS:

Section 1. Findings of Fact. All of the matters and facts set out in the preamble hereof are true and correct and are adopted as findings of the City Council.

Section 2. Annexation of Territory. The property in the area described in Exhibit A, which are attached hereto and incorporated herein for all purposes, is hereby annexed and brought into the municipal boundaries (i.e., corporate limits) of the City of Montgomery, and is made an integral part, hereof. The official map and boundaries of the City of Montgomery are hereby amended and revised so as to include the area annexed, and to reflect the expansion of the City's corporate limits resulting from such annexation. A municipal service agreement was entered into between the City and the property owner with the applicable provisions of state law pertaining to annexation. The owners and inhabitants of the area herein annexed are entitled to all of the rights and privileges of other citizens of the City of Montgomery and are hereby bound by all acts, ordinances and other legal actions now in full force and effect and those that may be hereafter adopted or enacted.

Section 3. Effective Date. This Ordinance is effective and the annexation achieved herein shall be final and complete upon adoption of this Ordinance on the date set forth below.

Section 4. Filing. The City Secretary is hereby instructed to include this Ordinance in the records of the City. The City Secretary is hereby instructed to have prepared maps depicting the new municipal boundaries and extraterritorial jurisdiction. The City Secretary is hereby instructed to file a certified copy of this Ordinance with the Montgomery County Clerk. The City Secretary is hereby instructed to submit by certified mail a certified copy of the annexation ordinance a map of the entire city that shows the change in boundaries, with the annexed portions clearly distinguished, resulting from the annexation to the Texas Comptroller's Office.

Section 5. Proper Notice and Meeting. The City Council officially finds, determines, recites and declares that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings Law, Texas Government Code, Chapter 551 and that this meeting has been open to the public as required by law at all times during which this Ordinance and the subject matter thereof has been discussed, considered and formally acted upon. The City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

Section 6. Severability. It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this Ordinance are severable, and if any phrase, clause sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance, and the remainder of this Ordinance shall be enforced as written.

PASSED AND APPROVED this _____ day of October 2022, by a vote ____ (ayes) to ____ (nays) to _____ (abstentions) of the City Council of the City of Montgomery, Texas.

CITY OF MONTGOMERY:

BYRON SANFORD, Mayor

APPROVED:

ALAN P. PETROV, Attorney

ATTEST:

NICOLA BROWNE, City Secretary

EXHIBIT A

Being a tract containing 79.910 acres of land located in the Owen Shannon Survey, A-36, in Montgomery County, Texas. Said 79.910 acres being a portion of a call 80.72 acre tract of land recorded in the name of Sarah Anne Peel Mabry in Volume 683, Page 279 of the Montgomery County Deed Records (M.C.D.R.). Said 79.910 acres being more particularly described by metes and bounds as follows (bearings are referenced to the Texas Coordinate System of 1983, Central Zone, based on GPS observations):

BEGINNING at a 3/4 inch axle found at the southwest corner of said 80.72 acres, the southeast corner of Terra Vista At Waterstone Section One, a subdivision recorded in Cabinet Z, Sheets 3587-3589 of the Montgomery County Map Records (M.C.M.R.) and being on the north line of a call 155.2494 acre tract of land recorded in the name of Waterstone on Lake Conroe, Inc., under File Number 2008023660 of the Official Public Records of Montgomery County (O.P.R.M.C.);

THENCE, with the west line of said 80.72 acres and the east line of said Terra Vista At Waterstone Section One, North 04 degrees 12 minutes 19 seconds West, a distance of 1,251.43 feet to the beginning of a non-tangent curve to the left on the southeast Right-of-Way (R.O.W.) line of FM 1097, based on a width of 80 feet, as described in Volume 5, Page 120 and Volume 291, Page 280 of the M.C.D.R. from which a found 5/8 inch capped iron rod stamped "Glezman" bears South 05 degrees 57 minutes 51 seconds West, 4.12 feet;

THENCE, with said R.O.W. line, the following four (4) courses:

1.) 116.53 feet along the arc of said curve having a radius of 994.93 feet, a central angle of 06 degrees 42 minutes 39 seconds and a chord which bears North 30 degrees 31 minutes 52 seconds East, 116.47 feet to a point of tangency from which a found 5/8 inch capped iron rod stamped "Glezman" bears North 41 degrees 20 minutes 24 seconds East, 1.08 feet;

2.) North 27 degrees 10 minutes 33 seconds East, a distance of 58.80 feet to a point of curvature to the right from which a found 5/8 inch capped iron rod stamped "Glezman" bears North 89 degrees 48 minutes 55 seconds East, 0.49 feet;

3.) 343.86 feet along the arc of said curve having a radius of 914.93 feet, a central angle of 21 degrees 32 minutes 00 seconds and a chord which bears North 37 degrees 56 minutes 33 seconds East, 341.84 feet to a 5/8 inch capped iron rod found at a point of tangency;

4.) North 48 degrees 42 minutes 33 seconds East, a distance of 234.80 feet to the southwest corner of a call 123.299 acre tract of land recorded in the name of George W. Faulkner and Inez Mary Faulkner under File Number 2000011143 of the O.P.R.M.C. and being on the north line of said 80.72 acres, from which a found 1/2 inch iron rod bears South 87 degrees 59 minutes 38 seconds West, 3.15 feet;

THENCE, with the north line of said 80.72 acres and the south line of said 123.299 acres, North 87 degrees 59 minutes 38 seconds East, a distance of 1,355.98 feet to a 1 inch iron pipe found at the northeast corner of said 80.72 acres and the northwest corner of Grand Harbor Section Fourteen, a subdivision recorded in Cabinet Z, Sheets 499-502 of the M.C.M.R.;

THENCE, with the east line of said 80.72 acres, the west line of said Grand Harbor Section Fourteen and the west line of Grand Harbor Section Ten, a subdivision recorded in Cabinet Z, Sheets 760-761 M.C.M.R., South 03 degrees 47 minutes 30 seconds East, a distance of 2,010.30 feet to a 5/8 inch capped iron rod stamped "Town & Country" found at the southeast corner of said 80.72 acres and being on the north line of aforesaid 155.2494 acres;

THENCE, with the south line of said 80.72 acres (as occupied) and the north line of said 155.2494 acres, the following two (2) courses:

1.) North 89 degrees 19 minutes 09 seconds West, a distance of 793.74 feet to a 5/8 inch capped iron rod (illegible) found;

2.) North 83 degrees 25 minutes 59 seconds West, a distance of 1,082.36 feet to the **POINT OF BEGINNING** and containing 79.901 acres of land, more or less.

**AGREEMENT REGARDING POST-ANNEXATION PROVISION OF SERVICES FOR
PROPERTY TO BE ANNEXED INTO THE CITY OF MONTGOMERY**

This Agreement Regarding Post-Annexation Provision of Services for Property to be Annexed into the City of Montgomery (the "Agreement") is entered into by and between the City of Montgomery, Texas, a municipal corporation ("City"), and the undersigned property owner, Pulte Homes of Texas, L.P., a Texas limited partnership ("Pulte"), both of which may be referred to herein singularly as "Party" or collectively as the "Parties."

RECITALS

WHEREAS, upon the request of Pulte, the City intends to institute annexation proceedings for an area of land described more fully hereinafter in **Exhibit A** and attached hereto (the "Subject Property"); and

WHEREAS, Section 43.0672, Loc. Gov't. Code, requires the Parties to enter into a written agreement identifying a list of public services to be provided to the Subject Property and a schedule for the provision of those services that are not otherwise provided on the effective date of the annexation; and

WHEREAS, this Agreement is being entered into by and between the Parties to comply with Texas Local Government Code, Chapter 43, Sub-Chapter C-3, Section 43.0672, prior to the City's consideration of an ordinance annexing the Subject Property, it being understood, acknowledged and agreed by the Parties that annexation of the Subject Property is a condition precedent to this Agreement becoming effective; and

WHEREAS, this Agreement shall be deemed effective on the effective date of an ordinance approved by the City annexing the Subject Property (the "Effective Date"); and

WHEREAS, the Subject Property is not included in the municipal annexation plan and is exempt from the requirements thereof; and

WHEREAS, infrastructure provided for in the Development Agreement between the City and Pulte Homes of Texas, L.P. (the "Development Agreement"), incorporated herein by reference, is sufficient to service the Subject Property on the same terms and conditions as other similarly situated properties currently within the City limits to offer municipal services on the same terms and conditions as other similarly situated properties within the City; and

WHEREAS, it is found that all statutory requirements have been satisfied and the City is authorized by Chapter 43, Loc. Gov't. Code, to annex the Subject Property into the City;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

The following services and schedule represent the provision of services agreed to between Pulte and the City establishing a program under which the City will provide municipal services to the Subject Property, as required by section 43.0672 of the Texas Local Government Code. The services

detailed herein will be provided at a level consistent with service levels provided to other similarly situated areas within the City.

The following services will be provided for the Subject Property on the Effective Date of annexation:

1) **General Municipal Services.** Pursuant to this Agreement, the following services shall be provided immediately from the Effective Date of the annexation:

A. Police protection as follows:

Routine patrols of areas, radio response to calls for police service and all other police services now being offered to the citizens of the City. Upon annexation, police protection will be provided to the subject property at a level consistent with the service to other areas of the City with similar population density and characteristics. The City's police services include neighborhood patrols, criminal investigations, crime prevention, community services and school programs.

B. Fire protection and Emergency Medical Services as follows:

Fire protection by agreement between the City and the ESD's present personnel and equipment of the ESD fire fighting force and the volunteer fire fighting force with the limitations of water available. Radio response for Emergency Medical Services with the present contract personnel and equipment of the ESD.

C. Solid waste collection services as follows:

Solid waste collection services as now being offered to the citizens of the City. The City provides residential solid waste collection services within the City limits for a fee under a contract between the City and private refuse collection operator. The residential solid waste collection services include garbage collection, recycling, bulky item collection and yard waste collection. Commercial solid waste collection services are also available. This service will be provided for a fee to any person within the Subject Property requesting the service after the Effective Date of annexation, provided that a privately owned solid waste management service provider is unavailable. If the Subject Property is already receiving service, the City may not prohibit solid waste collection by the privately owned solid waste management service provider, nor may the City offer solid waste collection services for a period of two (2) years following the Effective Date of the annexation unless a privately owned solid waste management service provider is or becomes unavailable, as established by Texas Local Government Code section 43.0661. If a landowner uses the services of a privately owned solid waste management service provider or services are available from a privately owned solid waste management service provider during the two (2) years following annexation, the City will not provide solid waste collection services to that landowner.

D. Animal control as follows:

Service by present personnel, equipment and facilities or by contract with a third party, as provided within the City.

- E. Pulte shall design and construct all park and recreational facilities to serve the Subject Property in accordance with the City Code and any applicable Montgomery County standards. Any park and recreational facilities will not be accepted by the City but owned and maintained by Montgomery County Municipal Utility District No. 224 (the "District").
- F. Inspection services in conjunction with building permits and routine City code enforcement services by present personnel, equipment and facilities. Municipal Court and General Administration services will also be available to property owners and residents in the Subject Property on the same basis those facilities are available to current City property owners and residents.
- G. Maintenance of other City facilities, buildings and service.
- H. Land use regulation as follows:

On the Effective Date of annexation, Pulte agrees that the development of the Subject Property shall be in accordance with the City Code except as to lot size: all platted single-family residential lots within the District may be a minimum of 45 feet wide and 120 feet long and 5,400 square feet. This Agreement constitutes the City's acceptance of the described variance from its City Code.

- 2) **Scheduled Municipal Services.** Due to the size and vacancy of the Subject Property, water service and maintenance, wastewater service and maintenance, and maintenance of streets and rights-of-way will be provided in accordance with the salient provisions of the Development Agreement.
- 3) **Capital Improvements.** Construction of the following capital improvements shall be initiated after the Effective Date of the annexation and in accordance with the Development Agreement.
- 4) **Term.** If not previously expired, this Agreement expires at the end of ten (10) years.
- 5) **Property Description.** The legal description of the Subject Property is as set forth in the Annexation Ordinance and exhibits attached to the Annexation Ordinance to which this Agreement is attached.
- 6) **Binding Effect/Authority.** This Agreement binds and inures to the benefit of the Parties and their respective heirs, successors, and permitted assigns. Each Party further warrants that each signatory to this Agreement is legally authorized to bind the respective individual or entity for the purposes established herein.
- 7) **Choice of Law.** This Agreement will be construed under the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. Venue for any dispute shall lie exclusively in Montgomery County, Texas.
- 8) **Counterparts.** This Agreement may be executed in any number of counterparts with the same effect as if all signatory Parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

- 9) **Legal Construction.** If any provision in this Agreement is for any reason found to be unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the Parties, the unenforceability will not affect any other provision hereof, and this Agreement will be construed as if the unenforceable provision had never been a part of the Agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Headings in this Agreement are for reference only and are not intended to restrict or define the text of any section. This Agreement will not be construed more or less favorably between the Parties by reason of authorship or origin of language.
- 10) **Entire Agreement.** This Agreement contains the entire Agreement between the Parties relating to the rights herein granted and the obligations herein assumed and cannot be varied except by written agreement of the Parties. Any oral representation or modification concerning this instrument shall be of no force and effect except for any subsequent modification in writing, signed by the Party to be charged.

[signature pages follow]

EXECUTED and AGREED to by the Parties this the _____ day of October, 2022.

ATTEST:

THE CITY OF MONTGOMERY, TEXAS

Nicola Browe, City Secretary

Byron Sanford, Mayor

PULTE HOMES OF TEXAS, L.P.,
a Texas limited partnership

By: _____

Name: _____

Title: _____

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