

RESOLUTION NO. 24-R-73

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING THE APPROVAL OF DEVELOPMENT AGREEMENTS WITH PENSORN CATTLE CO. LLC AND KAY PENSORN VINCENT, FOR APPROXIMATELY 233 ACRES OF LAND IN RELATION TO ANNEXATION, EXTRATERRITORIAL JURISDICTION STATUS AND OTHER MATTERS IN CONNECTION THEREWITH.

WHEREAS, the City staff of the City of Schertz (the “City”) has been approached by Penshorn Cattle Co., LLC and Kay Penshorn Vincent (“Owner(s)”) to enter into Development Agreements in relation to annexation, extraterritorial jurisdiction status in relation to approximately 233 acres; and

WHEREAS, Texas Local Government Code Section 212 allows the City to enter into an agreement with an owner of land that is located in the extraterritorial jurisdiction of the municipality; and

WHEREAS, the exhibit A is attached illustrating the approximately 233 acres that identified within this resolution; and

WHEREAS, the City staff has recommended that the development agreement in relation to annexation, extraterritorial jurisdiction status, and other matters in connection as outlined within the Development Agreement.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS THAT:

Section 1. The City Council hereby authorizes the City Manager to execute and deliver the Development Agreements with Penshorn Cattle Co. LLC, and Kay Penshorn Vincent (Owner(s)) generally per the attached Exhibit B, subject to changes approved by the City Manager and City Attorney.

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 3. All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be

valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

PASSED AND ADOPTED, this ____ day of _____, 2024.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Sheila Edmondson, City Secretary



Exhibit "A"
The Subject Properties



City of Schertz

Last Update: April 11, 2024

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

-  Annexation Parcels
-  Schertz Municipal Boundary






Exhibit A



City of Schertz

Last Update: April 11, 2024

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.



-  Annexation Parcels
-  Schertz Municipal Boundary



Exhibit "B"
Development Agreement

DEVELOPMENT AGREEMENT

BY AND AMONG

CITY OF SCHERTZ, TEXAS

AND

PENSHORN CATTLE CO., LLC

This Development Agreement (“Agreement”) is entered into by and among the City of Schertz, Texas (as further defined herein, the “City”) and Peshorn Cattle Co., LLC , a Texas limited liability company, and Mark Ace Peshorn and Catherine Kopper Peshorn (collectively, “Owner”) (collectively, the “Parties”) and is effective as of the Effective Date for the duration of the Term.

RECITALS

WHEREAS, the Owner owns approximately 190.7 acres of real property, as more particularly described by metes and bounds and location map attached hereto as Exhibit “A” (the “Property”); and

WHEREAS, the Property is located in Bexar County, Texas, wholly outside the City’s corporate limits but wholly within the City’s extraterritorial jurisdiction (the “ETJ”); and

WHEREAS, the Property is not located in any other municipality’s corporate limits or extraterritorial jurisdiction; and

WHEREAS, Owner currently uses a portion of the Property for single-family residential purposes (“Residential Tract”) and a portion of the Property for agricultural purposes (“Agricultural Tract”); and

WHEREAS, the Residential Tract is approximately 1.122 acres, and the Agricultural Tract is approximately 189.56 acres;

WHEREAS, the Parties agree that the Agricultural Tract may be annexed into the City, and that the Residential Tract shall remain within the City’s extraterritorial jurisdiction; and

WHEREAS, the City agrees that upon annexation of the Agricultural Tract, Agricultural Use (as defined herein) may continue on the Agricultural Tract regardless of zoning or other City regulations; and

WHEREAS, the Parties agree that the City may exercise its right to annex the Agricultural Tract at any time during the Term of this Agreement; and

WHEREAS, the Parties acknowledge that State annexation law may change, and the Parties intend that this Agreement shall continue in full force and effect regardless of changes to State law, specifically Chapters 42, 43 and 212 of the Texas Local Government Code; and

WHEREAS, upon full purpose annexation of the Agricultural Tract, necessary police, public safety, and other municipal utility services will be provided to the Agricultural Tract as herein described and in compliance with the relevant provisions of Chapter 43 of the Texas Local Government Code; and

WHEREAS, Parties acknowledge that this Agreement serves as a written agreement regarding services in accordance with Section 43.0672 of the Texas Local Government Code; and

WHEREAS, this Agreement is a development agreement of the type described by Subchapter G of Chapter 212; and

WHEREAS, Peshorn Cattle Co., LLC is a successor in interest Mark and Catherine Peshorn (“Previous Owner”) for the Agricultural Property; and

WHEREAS, the City entered into a development agreement with the Previous Owner on August 9, 2011 (“2011 Development Agreement”), and entered into an extension to the 2011 Development Agreement on March 23, 2021 (“Extension”); and

WHEREAS, upon the approval of this Agreement, the Parties agree to the termination of both the 2011 Development Agreement and the Extension, including any surviving provisions, and waiver of any associated claims and rights associated with either the 2011 Development Agreement and/or the Extension; and

WHEREAS, the City has provided the Owner with a written disclosure that includes: (1) a statement that the Owner is not required to enter into the Agreement; (2) the authority under which the City may annex the Property with references to relevant law; (3) a plain-language description of the annexation procedures applicable to the Property; (4) whether the procedures require the Owner’s consent; and (5) a statement regarding the City’s waiver of immunity to suit; and

NOW, THEREFORE, for and in consideration of the above stated recitals, which are made a part of this Agreement for all purposes, the benefits described below, and the mutual promises expressed herein, the sufficiency of which is hereby acknowledged by the Parties, the Parties hereby contract, covenant, and agree as follows:

ARTICLE 1 DEFINED TERMS

1.01 Construction of Terms. All terms and phrases defined herein shall have the meanings and definitions ascribed thereto. Terms that have well known technical, municipal, or construction or development industry meanings are used in accordance with such recognized meanings, unless otherwise defined herein or unless the context clearly indicates a different meaning. If appropriate in the context of this Agreement, words of the singular shall be considered

to include the plural, words of the plural shall be considered to include the singular, and words of the masculine, feminine, or neuter gender shall be considered to include the other genders.

1.02 Definition of Certain Terms. In addition to capitalized terms defined throughout this Agreement, the following terms used in this Agreement have the meaning ascribed thereto:

“Agricultural Tract” means the approximately 189.56 acre portion of the Property used for agricultural purposes as further described on the attached Exhibit “B”.

“Agricultural Use” shall have the same meaning as “Agricultural Operation”, as defined by Texas Agricultural Code Chapter 251 as of the Effective Date.

“Authorizing Ordinance” means Ordinance No. _____ adopted by the City Council on July 2, 2024, which ordinance authorizes the City’s entering into this Agreement and other matters necessary or incidental to the foregoing, all in accordance with Subchapter G of Chapter 212.

“Chapter 42” means Chapter 42, as amended, Texas Local Government Code.

“Chapter 43” means Chapter 43, as amended, Texas Local Government Code.

“Chapter 212” means Chapter 212, as amended, Texas Local Government Code.

“Chapter 245” means Chapter 245, as amended, Texas Local Government Code.

“City” means the City of Schertz, Texas, a Texas Home Rule Municipality, located in Guadalupe County.

“City Council” means the City Council of the City, as its governing body.

“City ETJ” means the City’s Extraterritorial Jurisdiction, as determined under Chapter 42, the unincorporated area that is contiguous to the corporate boundaries of the City (plus those contiguous areas that are included in the City ETJ by request of the owners thereof).

“City Representative” means the City Manager or another official or representative of the City, as the City representative designated by the City Council to undertake certain duties and obligations hereunder on the City’s behalf.

“Code” means the City Code of Ordinances, including the City’s Unified Development Code, as from time to time amended by the City Council.

“Effective Date” means _____, being the date of this Agreement’s effectiveness.

“Fee Ordinance” means the City’s ordinance establishing the comprehensive fee schedule for City services, adopted annually and being uniformly applicable to all residents and development within the corporate limits of the City.

“Party” or “Parties” means the City and the Owner, collectively or (as applicable and in context) singularly.

“Residential Tract” means the approximately 1.122 acre portion of the Property used for single-family residential purposes as further described on the attached Exhibit “C”.

“State” shall mean the State of Texas.

“Term” means the period of time beginning on the Effective Date and ending on the Termination Date.

“Termination Date” means the date that is the forty-fifth (45th) anniversary of the Effective Date.

“UDC” shall mean the City’s Unified Development Code as of the Effective Date.

ARTICLE 2 AUTHORITY, TERM, AND LIABILITY

2.01 Authority.

(a) The City enters into this Agreement pursuant to the authority granted thereto under the Constitution and general laws of the State of Texas, including (particularly) Article III, Section 52-a of the Texas Constitution, Subchapter G of Chapter 212, and the Authorizing Ordinance.

(b) Regarding Agricultural Use of the Agricultural Tract herein described, this Agreement is determined to be a plan under which general uses and development of the Property are authorized pursuant to and in accordance with Section 212.172(b)(2), as amended, Texas Local Government Code.

(c) The Owner acknowledges and agrees that the City may zone the Agricultural Tract in a manner consistent with the uses hereunder contemplated, but this Agreement does not constitute a contract for specific zoning.

2.02 Term. This Agreement shall become effective and enforceable on the Effective Date and shall continue through the Termination Date.

ARTICLE 3 DEVELOPMENT

3.01 Development.

(a) Agricultural Tract. As a result of full-purpose annexation of the Agricultural Tract in accordance with Article 5, the Parties intend that the City shall have and exercise exclusive

jurisdiction over the review and approval of preliminary and final plats relative to the Agricultural Tract. The Agricultural Use of the Agricultural Tract may continue subsequent to annexation by the City. City building permits related to the Agricultural Use shall be required, but only if required by Code and not excepted by State law or UDC Section 21.7.11, as adopted by the City on June 18, 2024. Any other use of the Agricultural Tract shall require all necessary City approvals in effect as of the date of such change in use.

(b) Residential Tract. The Residential Tract shall remain in the ETJ, and provided that this tract is used for single-family residential purposes or Agricultural Use, and is not subdivided, it shall not be subject to City regulations, including platting and permitting requirements.

(c) Governing Regulations. Except as specifically provided in this Agreement, all Property development shall be governed solely by this Agreement. The Agricultural Tract shall also be subject to the provisions of Code, with the Agreement controlling in the event of conflict. This Agreement, and Code as applicable to the Agricultural Tract, are exclusive, and no other ordinances, rules, regulations, standards, policies, orders, guidelines, or other City-adopted or City-enforced requirements of any kind (including but not limited to any development moratorium adopted by the City after the Effective Date) apply to the development of the Property. For purposes of clarity, UDC Section 21.7.11, which is anticipated to be adopted after the Effective Date, shall apply to the Agricultural Property.

(d) Chapter 245. Notwithstanding the foregoing, and to the extent not inconsistent with the provisions of this Agreement, the Owner may exercise rights under Chapter 245. The Parties hereby agree that the Effective Date shall be the date for establishment of the Owner's rights under Chapter 245, pursuant to Section 245.002(a-1) of such Chapter. The Owner may not take advantage of any changes to laws, rules, regulations, or ordinances of the City or other regulatory agency occurring after the Effective Date that are inconsistent with the terms of this Agreement without prior receipt of the City's consent (such consent not to be unreasonably withheld), which shall be reflected in the form of an amendment to this Agreement made in accordance with Section 11.05 hereof. For the avoidance of doubt, the foregoing restriction shall not prohibit the Owner from taking advantage of prospective changes in laws, rules, regulations, or City ordinances that do not otherwise conflict with the provisions of this Agreement.

(e) Conflict. Except as otherwise provided by the foregoing, if there is a conflict between this Agreement and the application of any other ordinance, rule, regulation, standard, policy, order, guideline or other City-adopted or City-enforced requirement, whether existing on the Effective Date or hereafter adopted (including the Code), then this Agreement shall control. If there is a conflict between any Approved Plat and any of the other Governing Regulations, the Approved Plat shall control. The Governing Regulations shall be read in concert, with all reasonable effort made by the Parties to reconcile their respective terms and provisions. In the event of direct conflict, the provisions of this Agreement shall supersede and control over competing or contradictory provisions of the Code.

ARTICLE 4 MUNICIPAL SERVICES

4.01 Police Services. The City shall, upon annexation of the Agricultural Tract (and not before), provide police service to the Agricultural Tract. The City shall, upon annexation of the Residential Tract (and not before), provide police service to the Residential Tract.

4.02 Fire and Emergency Response Services. The City shall, upon annexation of the Agricultural Tract (and not before), provide fire and emergency response service to the Agricultural Tract. The City shall, upon annexation of the Residential Tract (and not before), provide fire and emergency response service to the Residential Tract.

4.03 Trash Service. The City shall, following annexation of the Agricultural Tract (and not before), and at the written request of the Owner, provide trash service to the Agricultural Tract. The City shall, upon annexation of the Residential Tract (and not before), provide trash service to the Residential Tract.

4.04 Water/Sewer Service. The City shall make available, upon annexation of the Agricultural Tract (and not before), water and sewer service to the Agricultural Tract. Unless the Agricultural Use of the Agricultural Tract is terminated, and the Agricultural Tract is being subdivided, Owner shall have no obligation to use City water or sewer, nor to extend infrastructure to the Property. Private water wells are permitted on the Property and shall not be regulated by the City.

ARTICLE 5 ANNEXATION & ZONING

5.01 Petition for Annexation into City. The Owner hereby agrees to the voluntary, full-purpose annexation of the Agricultural Tract and hereby submits, as Exhibit “D” hereto, a petition requesting the annexation of the Agricultural Tract (the “Annexation Petition”). The Annexation Petition is deemed filed by the Owner as of the Effective Date and the City agrees to pursue and process full annexation as quickly as reasonably possible. The Parties agree that the Residential Tract shall remain in the City’s ETJ during the Term of this Agreement unless the Owner or Owner’s successor in interest submits a petition for annexation of the Residential Tract to the City.

5.02 City Council Action. City action initiating annexation shall occur as soon as practicable after the Effective Date and after the City’s receipt of the completed Annexation Petition, which shall include the steps required under Chapter 43 for the full-purpose annexation of the Agricultural Tract. Notwithstanding its full-purpose annexation of the Agricultural Tract, provision of City services, including extension of Public Infrastructure, to the Property shall be made subject to this Agreement and no other agreement, regulation, or law.

5.03 Permanent Zoning. City agrees that the Agricultural Tract shall be permanently zoned simultaneously with annexation of the Property. The City cannot contractually agree to the zoning designation the Agricultural Tract shall receive; however, the City recognizes the Owner’s

rights under Chapter 245 and Section 43.002 of the Texas Local Government Code. In the event the Agricultural Tract is rezoned to another zoning classification, or when the Residential Tract is annexed and zoned, City rezoning and plan amendment fees shall not apply.

ARTICLE 6 DEFAULT AND NOTICE

6.01 Notice and Opportunity to Cure. If either Party defaults in its obligations under this Agreement, the other Party must, prior to exercising a remedy available to that Party due to the default, give written notice to the defaulting Party, specifying the nature of the alleged default and the manner in which it can be satisfactorily cured, and extend to the defaulting Party at least thirty (30) calendar days from receipt of the notice to cure the default. If the nature of the default is such that it cannot reasonably be cured within the thirty (30) calendar day period, the commencement of the cure within the thirty (30) calendar day period and the diligent prosecution of the cure to completion will be deemed a cure within the cure period.

6.02 Enforcement. The Parties may enforce this Agreement by any proceeding at law or equity. Failure of either Party to enforce this Agreement shall not be deemed a waiver to enforce the provisions of this Agreement thereafter. The Parties agree that monetary damages are not a sufficient remedy for a default of this Agreement. As a remedy for default, the non-defaulting party shall be entitled to equitable relief, including specific performance of this Agreement, but not monetary damages. In addition to the foregoing, a remedy to each Party for the other's default hereunder shall be termination of this Agreement.

6.03 Notices. Any notice required or permitted to be delivered hereunder shall be in writing and shall be deemed received on the earlier of (i) actual receipt by mail, Federal Express or other delivery service, fax, email or hand delivery; or (ii) three (3) business days after being sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to City or the Developer, as the case may be, at the address stated below.

Any notice mailed to the City shall be addressed:

City of Schertz
Attn: Planning Department
1400 Schertz Parkway
Schertz, Texas 78154

with a copy to: Denton Navarro Rodriguez Bernal Santee & Zech, P.C.
Attn.: Daniel Santee
2517 North Main Avenue

San Antonio, Texas 78212
tdsantee@rampagelaw.com

Any notice mailed to the Owner shall be addressed:

Penshorn Cattle Co., LLC
8320 Trainer Hale Road
Schertz, TX 78154

Mark & Catherine Penshorn
8320 Trainer Hale Road
Schertz, TX 78154

with a copy to: Ashley Farrimond
Killen, Griffin & Farrimond
10101 Reunion Place, Suite 250
San Antonio, Texas 78216
ashley@kgftx.com

Any Party may change the address for notice to it by giving notice of such change in accordance with the provisions of this paragraph.

ARTICLE 7 MISCELLANEOUS

7.01 Multiple Originals. The Parties may execute this Agreement in one or more duplicate originals, each of equal dignity.

7.02 Entire Agreement; Parties in Interest. This Agreement, together with any exhibits attached hereto, constitutes the entire agreement between Parties with respect to its subject matter, and may not be amended except by a writing signed by all Parties with authority to sign and dated subsequent to the date hereof. There are no other agreements, oral or written, except as expressly set forth herein. No person, other than a Party, shall acquire or have any right hereunder or by virtue hereof. This Agreement shall run with the land and be applicable to any successors and/or assigns of the Owner.

7.03 Recordation. A copy of this Agreement will be recorded in the Official Public Records of Bexar County by the City.

7.04 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State. This Agreement is performable in Bexar and Guadalupe County. Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in a court of competent jurisdiction located in

Guadalupe County. Notwithstanding the foregoing, the parties hereto agree that any dispute that may arise under this Agreement shall first be submitted to non-binding mediation, or to alternative dispute resolution proceedings, before litigation is filed in court.

7.05 Termination or Amendment by Agreement. This Agreement may only be terminated prior to the Termination Date, or its terms amended by mutual written consent of the Parties.

7.06 No Oral or Implied Waiver. The Parties may waive any of their respective rights or conditions contained herein or any of the obligations of the other Party hereunder, but unless this Agreement expressly provides that a condition, right, or obligation is deemed waived, any such waiver will be effective only if in writing and signed by the party waiving such condition, right, or obligation. The failure of either party to insist at any time upon the strict performance of any covenant or agreement in this Agreement or to exercise any right, power, or remedy contained in this Agreement will not be construed as a waiver or a relinquishment thereof for the future.

7.07 No Third-Party Beneficiary. This Agreement is not intended, nor will it be construed, to create any third-party beneficiary rights in any person or entity who is not a Party, unless expressly otherwise provided herein.

7.08 No Personal Liability. None of the members of the City Council, nor any officer, agent, or employee of the City, shall be charged personally by the Owner with any liability, or be held liable to the Owner under any term or provision of this Agreement, or because of execution or attempted execution, or because of any breach or attempted or alleged breach, of this Agreement.

7.09 Severability. If any provision of this Agreement shall be held or deemed to be or shall, in fact, be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions because it conflicts with any provision of any Constitution, statute, rule of public policy, or any other reason, such circumstances shall not have the effect of rendering the provision in question invalid, inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions of this Agreement invalid, inoperative or unenforceable to any extent whatever.

7.10 Section Headings. Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provisions of this Agreement.

* * *

Owner:

Penshorn Cattle Co., LLC

By: _____
Name: _____
Title: _____
Date: _____

THE STATE OF TEXAS

COUNTY OF _____

§
§
§

This instrument was acknowledged before me on _____, 2024, by
_____, _____ of Penshorn Cattle Co., Inc.

Notary Public in and for the State of Texas

Owner:

Mark Ace Peshorn

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on _____, 2024, by Mark Ace Peshorn.

Notary Public in and for the State of Texas

Owner:

Catherine Kopper Peshorn

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on _____, 2024, by Catherine Kopper Peshorn.

Notary Public in and for the State of Texas

CITY OF SCHERTZ, TEXAS

By: _____
_____, Mayor

Date: _____

THE STATE OF TEXAS §
 §
COUNTY OF GUADALUPE §

This instrument was acknowledged before me on _____, 2024, by
_____, Mayor of City of Schertz, a Texas Home Rule Municipality.

Notary Public in and for the State of Texas

DRAFT

EXHIBIT A
The Property

DRAFT

EXHIBIT B
Agricultural Property

DRAFT

EXHIBIT C
Residential Property

DRAFT

EXHIBIT D
Annexation Petition

PETITION FOR ANNEXATION OF LAND INTO THE CITY OF SCHERTZ

TO THE HONORABLE CITY COUNCIL, CITY OF SCHERTZ, TEXAS:

I or we, _____, owner(s) of the land described below by metes and bounds and, being contiguous and adjacent land and territory to the present corporate limits of the City of Schertz, Texas, hereby request annexation of the described land into the City of Schertz. I (we) understand that the request does not necessarily mean that the land will be annexed, but that the City will consider the request based upon requests received from other landowners and an evaluation of services to be provided.

Name: _____

Address: _____

City/State/Zip: _____

{INSERT LEGAL DESCRIPTION AND/OR ATTACH PLAT & METES AND BOUNDS DESCRIPTION}

Wherefore, petitioners respectfully request that the hereinabove described land be forthwith incorporated into and become a part of the territory of the municipal corporation of the City of Schertz.

Respectfully Submitted,

[NAME OF LANDOWNER]

By: _____
[NAME, TITLE]

STATE OF TEXAS
COUNTY OF _____

BEFORE ME, the undersigned authority, on this day personally appeared _____ as _____ of petitioner _____, who having knowledge of the facts contained herein acknowledged to me that he executed the same for the purposes and consideration therein expressed, on this _____ day of _____, 2024.

Notary Public

DEVELOPMENT AGREEMENT

BY AND AMONG

CITY OF SCHERTZ, TEXAS

AND

KAY PENSORN VINCENT

This Development Agreement ("Agreement") is entered into by and among the City of Schertz, Texas (as further defined herein, the "City") and Kay Pensorn Vincent ("Owner") (collectively, the "Parties") and is effective as of the Effective Date for the duration of the Term.

RECITALS

WHEREAS, the Owner owns approximately 42.021 acres of real property, as more particularly described by metes and bounds and location map attached hereto as Exhibit "A" (the "Property"); and

WHEREAS, the Property is located in Bexar County, Texas, wholly outside the City's corporate limits but wholly within the City's extraterritorial jurisdiction (the "ETJ"); and

WHEREAS, the Property is not located in any other municipality's corporate limits or extraterritorial jurisdiction; and

WHEREAS, Owner currently uses a portion of the Property for single-family residential purposes ("Residential Tract") and a portion of the Property for agricultural purposes ("Agricultural Tract"); and

WHEREAS, the Residential Tract is approximately 1.751 acres, and the Agricultural Tract is approximately 40.27 acres;

WHEREAS, the Parties agree that the Agricultural Tract may be annexed into the City, and that the Residential Tract shall remain within the City's extraterritorial jurisdiction; and

WHEREAS, the City agrees that upon annexation of the Agricultural Tract, Agricultural Use (as defined herein) may continue on the Agricultural Tract regardless of zoning or other City regulations; and

WHEREAS, the Parties agree that the City may exercise its right to annex the Agricultural Tract at any time during the Term of this Agreement; and

WHEREAS, the Parties acknowledge that State annexation law may change, and the Parties intend that this Agreement shall continue in full force and effect regardless of changes to State law, specifically Chapters 42, 43 and 212 of the Texas Local Government Code; and

WHEREAS, upon full purpose annexation of the Agricultural Tract, necessary police, public safety, and other municipal utility services will be provided to the Agricultural Tract as herein described and in compliance with the relevant provisions of Chapter 43 of the Texas Local Government Code; and

WHEREAS, Parties acknowledge that this Agreement serves as a written agreement regarding services in accordance with Section 43.0672 of the Texas Local Government Code; and

WHEREAS, this Agreement is a development agreement of the type described by Subchapter G of Chapter 212; and

WHEREAS, the City entered into a development agreement with the Previous Owner on August 9, 2011 (“2011 Development Agreement”), and entered into an extension to the 2011 Development Agreement on March 24, 2021 (“Extension”); and

WHEREAS, upon the approval of this Agreement, the Parties agree to the termination of both the 2011 Development Agreement and the Extension, including any surviving provisions, and waiver of any associated claims and rights associated with either the 2011 Development Agreement and/or the Extension; and

WHEREAS, the City has provided the Owner with a written disclosure that includes: (1) a statement that the Owner is not required to enter into the Agreement; (2) the authority under which the City may annex the Property with references to relevant law; (3) a plain-language description of the annexation procedures applicable to the Property; (4) whether the procedures require the Owner’s consent; and (5) a statement regarding the City’s waiver of immunity to suit; and

NOW, THEREFORE, for and in consideration of the above stated recitals, which are made a part of this Agreement for all purposes, the benefits described below, and the mutual promises expressed herein, the sufficiency of which is hereby acknowledged by the Parties, the Parties hereby contract, covenant, and agree as follows:

**ARTICLE 1
DEFINED TERMS**

1.01 Construction of Terms. All terms and phrases defined herein shall have the meanings and definitions ascribed thereto. Terms that have well known technical, municipal, or construction or development industry meanings are used in accordance with such recognized meanings, unless otherwise defined herein or unless the context clearly indicates a different meaning. If appropriate in the context of this Agreement, words of the singular shall be considered to include the plural, words of the plural shall be considered to include the singular, and words of the masculine, feminine, or neuter gender shall be considered to include the other genders.

1.02 Definition of Certain Terms. In addition to capitalized terms defined throughout this Agreement, the following terms used in this Agreement have the meaning ascribed thereto:

“Agricultural Tract” means the approximately 40.27 acre portion of the Property used for agricultural purposes as further described on the attached Exhibit “B”.

“Agricultural Use” shall have the same meaning as “Agricultural Operation”, as defined by Texas Agricultural Code Chapter 251 as of the Effective Date.

“Authorizing Ordinance” means Ordinance No. _____ adopted by the City Council on July 2, 2024, which ordinance authorizes the City’s entering into this Agreement and other matters necessary or incidental to the foregoing, all in accordance with Subchapter G of Chapter 212.

“Chapter 42” means Chapter 42, as amended, Texas Local Government Code.

“Chapter 43” means Chapter 43, as amended, Texas Local Government Code.

“Chapter 212” means Chapter 212, as amended, Texas Local Government Code.

“Chapter 245” means Chapter 245, as amended, Texas Local Government Code.

“City” means the City of Schertz, Texas, a Texas Home Rule Municipality, located in Guadalupe County.

“City Council” means the City Council of the City, as its governing body.

“City ETJ” means the City’s Extraterritorial Jurisdiction, as determined under Chapter 42, the unincorporated area that is contiguous to the corporate boundaries of the City (plus those contiguous areas that are included in the City ETJ by request of the owners thereof).

“City Representative” means the City Manager or another official or representative of the City, as the City representative designated by the City Council to undertake certain duties and obligations hereunder on the City’s behalf.

“Code” means the City Code of Ordinances, including the City’s Unified Development Code, as from time to time amended by the City Council.

“Effective Date” means _____, being the date of this Agreement’s effectiveness.

“Fee Ordinance” means the City’s ordinance establishing the comprehensive fee schedule for City services, adopted annually and being uniformly applicable to all residents and development within the corporate limits of the City.

“Party” or “Parties” means the City and the Owner, collectively or (as applicable and in context) singularly.

“Residential Tract” means the approximately 1.751 acre portion of the Property used for single-family residential purposes as further described on the attached Exhibit “C”.

“State” shall mean the State of Texas.

“Term” means the period of time beginning on the Effective Date and ending on the Termination Date.

“Termination Date” means the date that is the forty-fifth (45th) anniversary of the Effective Date.

“UDC” shall mean the City’s Unified Development Code as of the Effective Date.

ARTICLE 2 AUTHORITY, TERM, AND LIABILITY

2.01 Authority.

(a) The City enters into this Agreement pursuant to the authority granted thereto under the Constitution and general laws of the State of Texas, including (particularly) Article III, Section 52-a of the Texas Constitution, Subchapter G of Chapter 212, and the Authorizing Ordinance.

(b) Regarding Agricultural Use of the Agricultural Tract herein described, this Agreement is determined to be a plan under which general uses and development of the Property are authorized pursuant to and in accordance with Section 212.172(b)(2), as amended, Texas Local Government Code.

(c) The Owner acknowledges and agrees that the City may zone the Agricultural Tract in a manner consistent with the uses hereunder contemplated, but this Agreement does not constitute a contract for specific zoning.

2.02 Term. This Agreement shall become effective and enforceable on the Effective Date and shall continue through the Termination Date.

ARTICLE 3 DEVELOPMENT

3.01 Development.

(a) Agricultural Tract. As a result of full-purpose annexation of the Agricultural Tract in accordance with Article 5, the Parties intend that the City shall have and exercise exclusive jurisdiction over the review and approval of preliminary and final plats relative to the Agricultural Tract. The Agricultural Use of the Agricultural Tract may continue subsequent to annexation by the City. City building permits related to the Agricultural Use shall be required, but only if required by Code and not excepted by State law or UDC Section 21.7.11, as adopted by the City on June 18, 2024. Any other use of the Agricultural Tract shall require all necessary City approvals in effect as of the date of such change in use.

(b) Residential Tract. The Residential Tract shall remain in the ETJ, and provided that this tract is used for single-family residential purposes or Agricultural Use, and is not subdivided, it shall not be subject to City regulations, including platting and permitting requirements.

(c) Governing Regulations. Except as specifically provided in this Agreement, all Property development shall be governed solely by this Agreement. The Agricultural Tract shall also be subject to the provisions of Code, with the Agreement controlling in the event of conflict. This Agreement, and Code as applicable to the Agricultural Tract, are exclusive, and no other ordinances, rules, regulations, standards, policies, orders, guidelines, or other City-adopted or City-enforced requirements of any kind (including but not limited to any development moratorium adopted by the City after the Effective Date) apply to the development of the Property. For purposes of clarity, UDC Section 21.7.11, which is anticipated to be adopted after the Effective Date, shall apply to the Agricultural Property.

(d) Chapter 245. Notwithstanding the foregoing, and to the extent not inconsistent with the provisions of this Agreement, the Owner may exercise rights under Chapter 245. The Parties hereby agree that the Effective Date shall be the date for establishment of the Owner's rights under Chapter 245, pursuant to Section 245.002(a-1) of such Chapter. The Owner may not take advantage of any changes to laws, rules, regulations, or ordinances of the City or other regulatory agency occurring after the Effective Date that are inconsistent with the terms of this Agreement without prior receipt of the City's consent (such consent not to be unreasonably withheld), which shall be reflected in the form of an amendment to this Agreement made in accordance with Section 11.05 hereof. For the avoidance of doubt, the foregoing restriction shall not prohibit the Owner from taking advantage of prospective changes in laws, rules, regulations, or City ordinances that do not otherwise conflict with the provisions of this Agreement.

(e) Conflict. Except as otherwise provided by the foregoing, if there is a conflict between this Agreement and the application of any other ordinance, rule, regulation, standard, policy, order, guideline or other City-adopted or City-enforced requirement, whether existing on the Effective Date or hereafter adopted (including the Code), then this Agreement shall control. If there is a conflict between any Approved Plat and any of the other Governing Regulations, the Approved Plat shall control. The Governing Regulations shall be read in concert, with all reasonable effort made by the Parties to reconcile their respective terms and provisions. In the event of direct conflict, the provisions of this Agreement shall supersede and control over competing or contradictory provisions of the Code.

ARTICLE 4 MUNICIPAL SERVICES

4.01 Police Services. The City shall, upon annexation of the Agricultural Tract (and not before), provide police service to the Agricultural Tract. The City shall, upon annexation of the Residential Tract (and not before), provide police service to the Residential Tract.

4.02 Fire and Emergency Response Services. The City shall, upon annexation of the Agricultural Tract (and not before), provide fire and emergency response service to the

Agricultural Tract. The City shall, upon annexation of the Residential Tract (and not before), provide fire and emergency response service to the Residential Tract.

4.03 Trash Service. The City shall, following annexation of the Agricultural Tract (and not before), and at the written request of the Owner, provide trash service to the Agricultural Tract. The City shall, upon annexation of the Residential Tract (and not before), provide trash service to the Residential Tract.

4.04 Water/Sewer Service. The City shall make available, upon annexation of the Agricultural Tract (and not before), water and sewer service to the Agricultural Tract. Unless the Agricultural Use of the Agricultural Tract is terminated, and the Agricultural Tract is being subdivided, Owner shall have no obligation to use City water or sewer, nor to extend infrastructure to the Property. Private water wells are permitted on the Property and shall not be regulated by the City.

ARTICLE 5 ANNEXATION & ZONING

5.01 Petition for Annexation into City. The Owner hereby agrees to the voluntary, full-purpose annexation of the Agricultural Tract and hereby submits, as Exhibit “D” hereto, a petition requesting the annexation of the Agricultural Tract (the “Annexation Petition”). The Annexation Petition is deemed filed by the Owner as of the Effective Date and the City agrees to pursue and process full annexation as quickly as reasonably possible. The Parties agree that the Residential Tract shall remain in the City’s ETJ during the Term of this Agreement unless the Owner or Owner’s successor in interest submits a petition for annexation of the Residential Tract to the City.

5.02 City Council Action. City action initiating annexation shall occur as soon as practicable after the Effective Date and after the City’s receipt of the completed Annexation Petition, which shall include the steps required under Chapter 43 for the full-purpose annexation of the Agricultural Tract. Notwithstanding its full-purpose annexation of the Agricultural Tract, provision of City services, including extension of Public Infrastructure, to the Property shall be made subject to this Agreement and no other agreement, regulation, or law.

5.03 Permanent Zoning. City agrees that the Agricultural Tract shall be permanently zoned simultaneously with annexation of the Property. The City cannot contractually agree to the zoning designation the Agricultural Tract shall receive; however, the City recognizes the Owner’s rights under Chapter 245 and Section 43.002 of the Texas Local Government Code. In the event the Agricultural Tract is rezoned to another zoning classification, or when the Residential Tract is annexed and zoned, City rezoning and plan amendment fees shall not apply.

**ARTICLE 6
DEFAULT AND NOTICE**

6.01 Notice and Opportunity to Cure. If either Party defaults in its obligations under this Agreement, the other Party must, prior to exercising a remedy available to that Party due to the default, give written notice to the defaulting Party, specifying the nature of the alleged default and the manner in which it can be satisfactorily cured, and extend to the defaulting Party at least thirty (30) calendar days from receipt of the notice to cure the default. If the nature of the default is such that it cannot reasonably be cured within the thirty (30) calendar day period, the commencement of the cure within the thirty (30) calendar day period and the diligent prosecution of the cure to completion will be deemed a cure within the cure period.

6.02 Enforcement. The Parties may enforce this Agreement by any proceeding at law or equity. Failure of either Party to enforce this Agreement shall not be deemed a waiver to enforce the provisions of this Agreement thereafter. The Parties agree that monetary damages are not a sufficient remedy for a default of this Agreement. As a remedy for default, the non-defaulting party shall be entitled to equitable relief, including specific performance of this Agreement, but not monetary damages. In addition to the foregoing, a remedy to each Party for the other's default hereunder shall be termination of this Agreement.

6.03 Notices. Any notice required or permitted to be delivered hereunder shall be in writing and shall be deemed received on the earlier of (i) actual receipt by mail, Federal Express or other delivery service, fax, email or hand delivery; or (ii) three (3) business days after being sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to City or the Developer, as the case may be, at the address stated below.

Any notice mailed to the City shall be addressed:

City of Schertz
Attn: Planning Department
1400 Schertz Parkway
Schertz, Texas 78154

with a copy to:

Denton Navarro Rodriguez Bernal Santee & Zech, P.C.
Attn.: Daniel Santee
2517 North Main Avenue
San Antonio, Texas 78212
tdsantee@rampagelaw.com

Any notice mailed to the Owner shall be addressed:

Kay Penshorn Vincent
9139 Olathe Street
Houston, TX 77055

with a copy to: Ashley Farrimond
Killen, Griffin & Farrimond
10101 Reunion Place, Suite 250
San Antonio, Texas 78216
ashley@kgftx.com

Any Party may change the address for notice to it by giving notice of such change in accordance with the provisions of this paragraph.

ARTICLE 7 MISCELLANEOUS

7.01 Multiple Originals. The Parties may execute this Agreement in one or more duplicate originals, each of equal dignity.

7.02 Entire Agreement; Parties in Interest. This Agreement, together with any exhibits attached hereto, constitutes the entire agreement between Parties with respect to its subject matter, and may not be amended except by a writing signed by all Parties with authority to sign and dated subsequent to the date hereof. There are no other agreements, oral or written, except as expressly set forth herein. No person, other than a Party, shall acquire or have any right hereunder or by virtue hereof. This Agreement shall run with the land and be applicable to any successors and/or assigns of the Owner.

7.03 Recordation. A copy of this Agreement will be recorded in the Official Public Records of Bexar County by the City.

7.04 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State. This Agreement is performable in Bexar and Guadalupe County. Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in a court of competent jurisdiction located in Guadalupe County. Notwithstanding the foregoing, the parties hereto agree that any dispute that may arise under this Agreement shall first be submitted to non-binding mediation, or to alternative dispute resolution proceedings, before litigation is filed in court.

7.05 Termination or Amendment by Agreement. This Agreement may only be terminated prior to the Termination Date, or its terms amended by mutual written consent of the Parties.

7.06 No Oral or Implied Waiver. The Parties may waive any of their respective rights or conditions contained herein or any of the obligations of the other Party hereunder, but unless this Agreement expressly provides that a condition, right, or obligation is deemed waived, any such waiver will be effective only if in writing and signed by the party waiving such condition, right, or obligation. The failure of either party to insist at any time upon the strict performance of any covenant or agreement in this Agreement or to exercise any right, power, or remedy contained in this Agreement will not be construed as a waiver or a relinquishment thereof for the future.

7.07 No Third-Party Beneficiary. This Agreement is not intended, nor will it be construed, to create any third-party beneficiary rights in any person or entity who is not a Party, unless expressly otherwise provided herein.

7.08 No Personal Liability. None of the members of the City Council, nor any officer, agent, or employee of the City, shall be charged personally by the Owner with any liability, or be held liable to the Owner under any term or provision of this Agreement, or because of execution or attempted execution, or because of any breach or attempted or alleged breach, of this Agreement.

7.09 Severability. If any provision of this Agreement shall be held or deemed to be or shall, in fact, be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions because it conflicts with any provision of any Constitution, statute, rule of public policy, or any other reason, such circumstances shall not have the effect of rendering the provision in question invalid, inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions of this Agreement invalid, inoperative or unenforceable to any extent whatever.

7.10 Section Headings. Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provisions of this Agreement.

* * *

Owner:

Kay Peshorn Vincent

By: _____
Name: _____
Title: _____
Date: _____

THE STATE OF TEXAS §

COUNTY OF _____ §

This instrument was acknowledged before me on _____, 2024, by Kay Peshorn Vincent.

Notary Public in and for the State of Texas

CITY OF SCHERTZ, TEXAS

By: _____
_____, Mayor

Date: _____

THE STATE OF TEXAS §
 §
COUNTY OF GUADALUPE §

This instrument was acknowledged before me on _____, 2024, by
_____, Mayor of City of Schertz, a Texas Home Rule Municipality.

Notary Public in and for the State of Texas

DRAFT

EXHIBIT A
The Property

DRAFT

EXHIBIT B
Agricultural Property

DRAFT

EXHIBIT C
Residential Property

DRAFT

EXHIBIT D
Annexation Petition

PETITION FOR ANNEXATION OF LAND INTO THE CITY OF SCHERTZ

TO THE HONORABLE CITY COUNCIL, CITY OF SCHERTZ, TEXAS:

I or we, _____, owner(s) of the land described below by metes and bounds and, being contiguous and adjacent land and territory to the present corporate limits of the City of Schertz, Texas, hereby request annexation of the described land into the City of Schertz. I (we) understand that the request does not necessarily mean that the land will be annexed, but that the City will consider the request based upon requests received from other landowners and an evaluation of services to be provided.

Name: _____

Address: _____

City/State/Zip: _____

{INSERT LEGAL DESCRIPTION AND/OR ATTACH PLAT & METES AND BOUNDS DESCRIPTION}

Wherefore, petitioners respectfully request that the hereinabove described land be forthwith incorporated into and become a part of the territory of the municipal corporation of the City of Schertz.

Respectfully Submitted,

[NAME OF LANDOWNER]

By: _____
[NAME, TITLE]

STATE OF TEXAS
COUNTY OF _____

BEFORE ME, the undersigned authority, on this day personally appeared _____ as _____ of petitioner _____, who having knowledge of the facts contained herein acknowledged to me that he executed the same for the purposes and consideration therein expressed, on this _____ day of _____, 2024.

Notary Public