

**RESOLUTION NO. 3803**

**A RESOLUTION RESCINDING COUNCIL RESOLUTION NUMBER 3800 AND DIRECTING CITY STAFF TO INITIATE MUNICIPAL ANNEXATION PROCEDURES IN ACCORDANCE WITH TEXAS STATE LAW, FOR APPROXIMATELY 5,500 ACRES OF LAND, MORE OR LESS, GENERALLY LOCATED NORTH OF LEONARD ROAD (FM1688) AND WRAPPING AROUND THE INTERSECTION OF RIVERSIDE PARKWAY (SH47) AND TEXAS STATE HIGHWAY 21, INCLUDING THE TEXAS A&M UNIVERSITY SYSTEM RELLIS CAMPUS, IN BRYAN'S EXTRATERRITORIAL JURISDICTION (ETJ) IN BRAZOS COUNTY, TEXAS, LYING ADJACENT AND CONTIGUOUS TO THE PRESENT CORPORATE LIMITS OF THE CITY OF BRYAN; AUTHORIZING THE OFFER TO ENTER INTO A DEVELOPMENT AGREEMENT TO CERTAIN OWNERS OF QUALIFYING PROPERTIES THAT ARE BEING CONSIDERED FOR ANNEXATION AS REQUIRED BY TEXAS LOCAL GOVERNMENT CODE SECTION 43.016; DIRECTING CITY STAFF TO PREPARE A SERVICE PLAN THAT PROVIDES FOR THE EXTENSION OF FULL MUNICIPAL SERVICES TO THE AREAS TO BE ANNEXED IN ACCORDANCE WITH STATE LAW; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Bryan, Texas is a home-rule municipality authorized by State law and the City Charter to annex territory lying adjacent and contiguous to the corporate limits of the City of Bryan, Texas; and

**WHEREAS**, the City of Bryan's current city limits extend to the westernmost corner of the Texas A&M University System's RELLIS Campus located on approximately 2,000 acres of land on the southwest corner of State Highway 21 and State Highway 47 ("Riverside Parkway"); and

**WHEREAS**, the Texas A&M University System is making a substantial investment in the RELLIS Campus; and

**WHEREAS**, the City Council of the City of Bryan desires to promote the city's orderly growth by facilitating long-range planning for the provision of municipal services and by applying appropriate land use regulations, development standards, fire codes, construction codes and environmental regulations; and

**WHEREAS**, the City Council for the City of Bryan believes that annexation would enable the City to ensure that the environs around a community and regional asset such as the Texas A&M University System RELLIS Campus, especially one situated at a highly visible gateway location or along a key corridor, will be protected over the long term to ensure that only quality development emerges around the asset; and

**WHEREAS**, the City Council of the City of Bryan believes that, in order to achieve the aforementioned objectives, it is in the best interest of the city to annex certain areas in the RELLIS Campus area lying adjacent and contiguous to the present city limits of the City of Bryan in Brazos County, Texas, and located within the city's extraterritorial jurisdiction; and

**WHEREAS**, on November 13, 2007, the City Council of the City of Bryan, Texas, adopted Resolution No. 3128 establishing criteria to provide guidance on the annexation of such territory; and

**WHEREAS**, on October 25, 2016, the City Council of the City of Bryan, Texas, adopted a new Comprehensive Plan ("BluePrint2040"), which recommends annexing key growth areas along roadway corridors with high visibility to help prevent poor quality development; and

**WHEREAS**, Section 43.052 of the Texas Local Government Code authorizes a home-rule municipality to annex certain areas not specifically included in the municipality's annexation plan; and

**WHEREAS**, Section 43.016 of the Texas Local Government Code requires a municipality to offer certain owners of property in areas proposed for annexation a development agreement, which, if accepted, will guarantee the continuation of the extraterritorial status of these property owners' properties, before a municipality may institute annexation proceedings; and

**WHEREAS**, Section 43.063 of the Texas Local Government Code requires that before a municipality may institute annexation proceedings, the governing body must conduct two public hearings at which all persons interested in the annexation of the proposed areas are given the opportunity to be heard; and

**WHEREAS**, Section 43.065 of the Texas Local Government Code requires that before the publication of the notice of the first hearing required under Section 43.063 of the Texas Local Government Code, the governing body of the municipality shall direct its planning department or other appropriate municipal department to prepare a service plan that provides for the extension of full municipal services to the area to be annexed;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRYAN, TEXAS:**

1.

That Council Resolution Number 3800, approved on January 8, 2019, is hereby rescinded.

2.

That the City of Bryan hereby directs city staff to initiate annexation procedures in accordance with Texas Local Government Code Chapter 43 for approximately 5,500 acres of land, more or less, generally located north of Leonard Road (FM1688) and wrapping around the intersection of Riverside Parkway (SH47) and Texas State Highway 21, including the Texas A&M University System RELLIS Campus, in Bryan's extraterritorial jurisdiction (ETJ) in Brazos County, Texas, lying adjacent and contiguous to the present corporate limits of the City of Bryan, said area being generally described and depicted in attached Exhibit "A".

3.

That the City of Bryan hereby finds that the above-described area proposed to be annexed to the city meets the criteria for annexation adopted by the City Council of the City of Bryan, Texas, on November 13, 2007, with Resolution No. 3128, and conforms to the annexation policy recommendations of the City's Comprehensive Plan ("BluePrint2040"), adopted by the City Council of the City of Bryan, Texas, on October 25, 2016, with Ordinance No. 2178.

4.

That the City of Bryan, in accordance with Texas Local Government Code Section 43.016, prior to the beginning of annexation proceedings for the above-described area, will offer certain owners of property in these proposed annexation areas to enter into a development agreement, which, if accepted, will guarantee the continuation of the extraterritorial status of these property owners' properties, a sample of such an agreement is attached as Exhibit "B" to this Resolution.

5.

That the City of Bryan Development Services Department is hereby directed to prepare a service plan that provides for the extension of municipal services to the areas proposed to be annexed to the city, as required by Texas Local Government Code Chapter 43.

6.

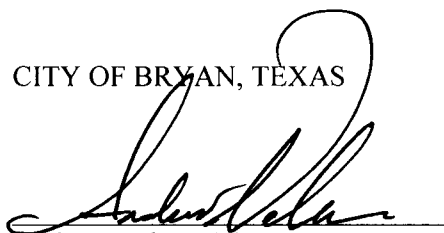
That this Resolution shall be effective immediately upon its passage and approval.

**PASSED AND APPROVED** this the 12<sup>th</sup> day of February, 2019.

ATTEST:

CITY OF BRYAN, TEXAS

  
Mary Lynne Stratta, City Secretary

  
Andrew Nelson, Mayor

APPROVED AS TO FORM:

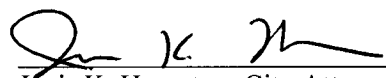
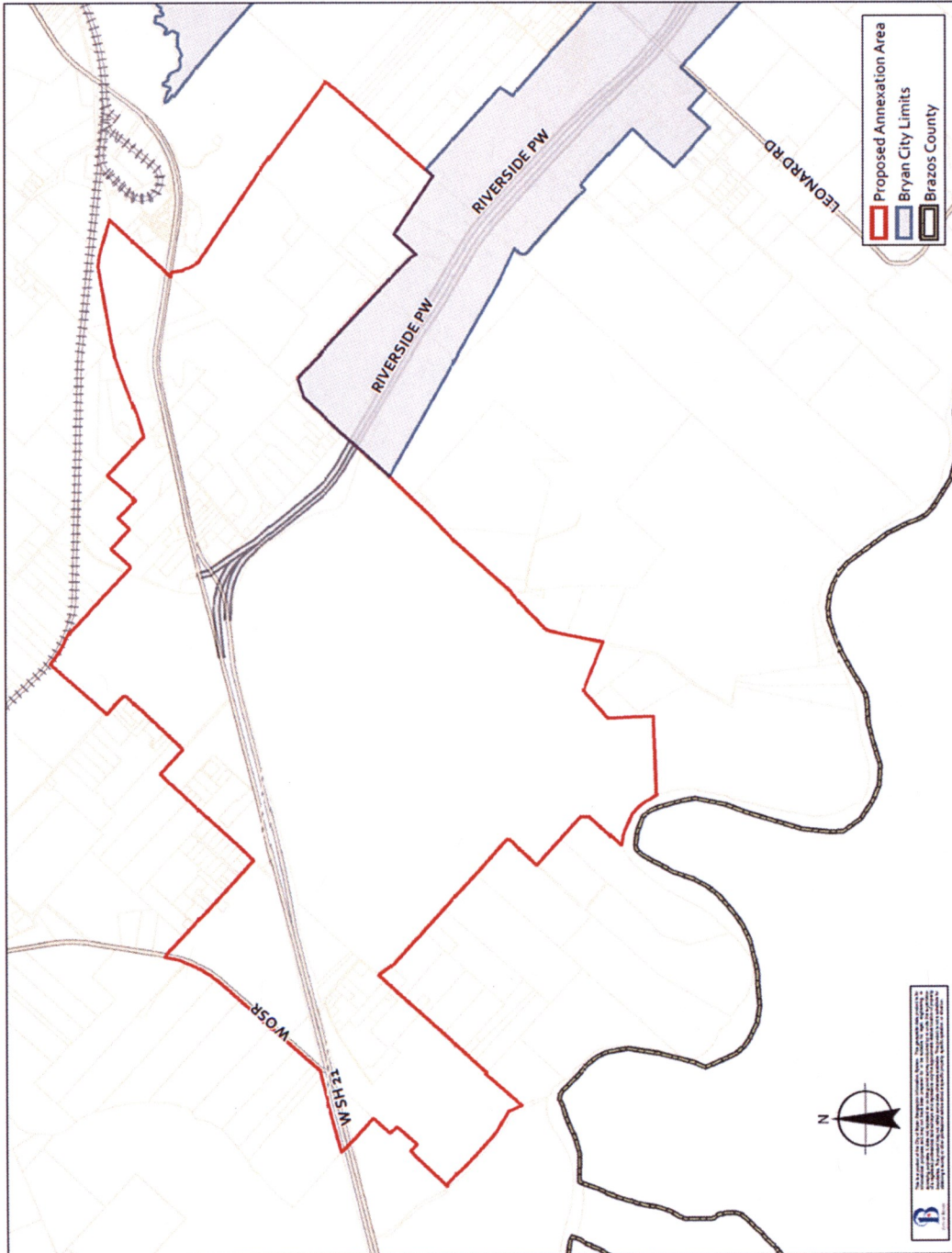
  
Janis K. Hampton, City Attorney

Exhibit "A":

PROPOSED ANNEXATION AREA

Approximately 5,500 acres of land, more or less, generally located north of Leonard Road (FM1688) and wrapping around the intersection of Riverside Parkway (SH47) and Texas State Highway 21, including the Texas A&M University System RELLIS Campus, in Bryan's extraterritorial jurisdiction (ETJ) in Brazos County, Texas.



**Exhibit "B":**

**SAMPLE DEVELOPMENT AGREEMENT, PURSUANT TO  
TEXAS LOCAL GOVERNMENT CODE SECTION 43.016**

STATE OF TEXAS §

COUNTY OF BRAZOS §

**CHAPTER 43 TEXAS LOCAL GOVERNMENT CODE  
DEVELOPMENT AGREEMENT**

This Agreement is entered into pursuant to Sections 43.016 and 212.172 of the Texas Local Government Code by and between the City of Bryan, Texas (the "City") and the undersigned property owner(s) (the "Owner"). The term "Owner" includes all owners of the Property.

**WHEREAS**, the Owner owns a parcel of real property (the "Property") Brazos County, Texas, which is more particularly and separately described in the attached Exhibit "A"; 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 43.016 and 212.172 of the Texas Local Government Code, in order to address the desires of the Owner and the procedures of the City; and

**WHEREAS**, the Owner and the City acknowledge that this Agreement is binding upon the City and the Owner and their respective successors and assigns for the term (defined below) of this Agreement; and

**WHEREAS**, this Development Agreement is to be recorded in the Real Property Records of Brazos County.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

**Section 1.** The City guarantees the continuation of the extraterritorial status of the Owner's Property, its immunity from annexation by the City, and its immunity from City property taxes, for the term of this Agreement, subject to the provisions of this Agreement. Except as provided in this Agreement, the City agrees not to annex the Property, agrees not to involuntarily institute proceedings to annex the Property, and further agrees not to include the Property in a statutory annexation plan for the Term of this Agreement. However, if the Property is annexed pursuant to the terms of this Agreement, then the City shall provide services to the Property pursuant to Chapter 43 of the Texas Local Government Code.

**Section 2.** The Owner covenants and agrees not to use the Property for any use other than for agriculture, wildlife management, and/or timber land consistent with Chapter 23 of the Texas Tax Code, except for existing single-family residential use of the property, without the prior written consent of the City.

The Owner covenants and agrees that the Owner will not file any type of subdivision plat or related development document for the Property with Brazos 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 Agricultural – Open (A-O) District zoning requirements apply to the Property, and that the Property shall be used only for Agricultural – Open (A-O) 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 detached dwelling or an accessory structure for the benefit of agricultural uses in compliance with all applicable City ordinances and codes.

The Owner acknowledges that each and every owner of the Property must sign this Agreement in order for the Agreement to take full effect, and the Owner who signs this Agreement covenants and agrees, jointly and severably, to indemnify, hold harmless, and defend the City against any and all legal claims, by any person claiming an ownership interest in the Property who has not signed the Agreement, arising in any way from the City's reliance on this Agreement.

**Section 3.** The Owner acknowledges that if any plat or related development document is filed in violation of this Agreement, or if the Owner commences development of the Property in violation of this Agreement, then in addition to the City's other remedies, such act will constitute a petition for voluntary annexation by the Owner, and the Property will be subject to annexation at the discretion of the City 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 use of the Property for agriculture, wildlife management, or timber, in the same manner the regulations are enforced within the City's boundaries. The City states and specifically reserves its authority pursuant to Chapter 251 of the Texas Local Government Code to exercise eminent domain over property that is subject to a Chapter 43 and/or Chapter 212 development agreement.

**Section 5.** The term of this Agreement (the "Term") is ten (10) years from the date that the Mayor's signature to this Agreement is acknowledged by a public notary.

The Owner, and all of the Owner's heirs, successors and assigns shall be deemed to have filed a petition for voluntary annexation before the end of the Term, for annexation of the Property to be completed on or after the end of the Term. Prior to the end of the Term, the City may commence the voluntary annexation of the Property. 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 Agricultural – Open (A-O) District 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 Bryan  
Attn: Director of Development Services  
P.O. Box 1000  
Bryan, Texas 77805

**Section 8.** This Agreement shall run with the Property and be recorded in the real property records of Brazos 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 Brazos 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 \_\_\_\_\_, 2019.

OWNER:

\_\_\_\_\_  
Owner's Signature

Printed Name: \_\_\_\_\_

\_\_\_\_\_  
Owner's Signature

Printed Name: \_\_\_\_\_

\_\_\_\_\_  
Owner's Signature

Printed Name: \_\_\_\_\_

CITY OF BRYAN:

ATTEST:

\_\_\_\_\_  
Mary Lynne Stratta, City Secretary

\_\_\_\_\_  
Andrew Nelson, Mayor

DATE: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Janis K. Hampton, City Attorney



STATE OF \_\_\_\_\_ )  
 )  
 COUNTY OF \_\_\_\_\_ )

ACKNOWLEDGMENT

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_  
 \_\_\_\_\_ in his/her capacity as owner of  
 \_\_\_\_\_.

\_\_\_\_\_  
 Notary Public in and for  
 the State of \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 )  
 COUNTY OF \_\_\_\_\_ )

ACKNOWLEDGMENT

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STATE OF \_\_\_\_\_ )  
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 COUNTY OF \_\_\_\_\_ )

ACKNOWLEDGMENT

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 \_\_\_\_\_ in his/her capacity as owner of  
 \_\_\_\_\_.

\_\_\_\_\_  
 Notary Public in and for  
 the State of \_\_\_\_\_

STATE OF TEXAS )  
 )  
 COUNTY OF BRAZOS )

ACKNOWLEDGMENT

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2019, by Andrew Nelson, in the capacity as Mayor of the City of Bryan, a Texas home-rule municipality, on behalf of said municipality.

\_\_\_\_\_  
 Notary Public in and for  
 the State of Texas