

ORDINANCE NO. 20141106-032

AN ORDINANCE ADOPTING AN ANNEXATION AND DEVELOPMENT AGREEMENT FOR THE LEE ANNEXATION AND DEVELOPMENT AGREEMENT AREA CONSISTING OF APPROXIMATELY 88 ACRES OF LAND IN TRAVIS COUNTY, TEXAS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. The Council finds that:

- (A) The owner of the area referred to as the Lee Annexation and Development Agreement Area has requested that the City enter into an Annexation and Development Agreement, and has agreed to the terms of the attached Agreement.
- (B) The Annexation and Development Agreement attached to this ordinance as Exhibit 1, serves the public health, safety, and welfare, and the interests of the current and future residents of the City of Austin.

PART 2. The Annexation and Development Agreement attached to this ordinance as Exhibit 1, is approved for the Lee Annexation and Development Agreement Area, and the City Manager is authorized to execute the Agreement in substantially the form as attached.

PART 3. This ordinance takes effect on November 17, 2014.

PASSED AND APPROVED

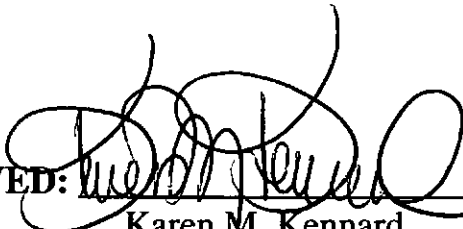
_____, November 6, 2014

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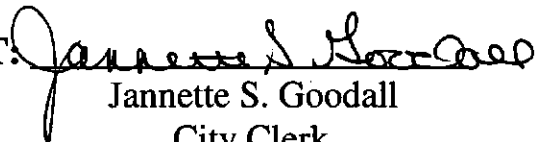
Lee Leffingwell
Mayor

APPROVED:



Karen M. Kennard
City Attorney

ATTEST:



Jannette S. Goodall
City Clerk

EXHIBIT 1

LEE ANNEXATION AND DEVELOPMENT DRAFT AGREEMENT

THE STATE OF TEXAS

§

COUNTY OF TRAVIS

§

§

This Lee Annexation and Development Agreement (the "**Agreement**") is made and entered into by and among the **CITY OF AUSTIN, TEXAS**, a municipal corporation acting by and through its duly authorized City Manager (the "**City**"), and **JOU LEE**, as Owner of the Property, including without limitation her successors, assigns, agents, and affiliated entities ("**Owner**"). By the signatures below, Owner warrants and represents that there are no other owners of any portion of the Property and no other third-parties holding an interest therein.

RECITALS

- A. Owner owns, or represents the owners of, a total of approximately 88.2 acres of land located entirely in Travis County, Texas described in the attached Exhibit "A" ("**Property**"). Subject property is located in the City's extraterritorial jurisdiction ("**ETJ**"), but not within its corporate limits.
- B. The City has begun the process to institute annexation proceedings for the Property.
- C. The Owner desires to have the Property remain in the City's ETJ, in consideration for which the Owner agrees to enter into this Agreement.
- D. 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.
- E. The Owner and the City acknowledge that this Agreement runs with the land and is binding upon the City and the Owner and her respective successors and assigns for the term of this Agreement, as defined below.
- F. This Development Agreement is to be recorded in the Real Property Records of Travis County.

NOW, THEREFORE, for and in consideration of the mutual agreements, covenants, and conditions contained in this Agreement, and other good and valuable consideration, the City and Owner agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01 Terms Defined in this Agreement. In this Agreement, each of the following terms shall have the meanings indicated:

"City Code" means the City Code of Austin, together with all its related administrative rules and technical criteria manuals.

"City Council" means the City Council of the City or any other successor governing body.

"Development documents" mean any application or request made in connection with the proposed development of land, including but not limited to: (1) subdivision of the property by plat, including a preliminary plan for a subdivision; (2) building permit; (3) site plan permit; and (4) application for zoning, including an application for a Planned Unit Development (PUD).

"Effective Date" and similar references mean November 17, 2014.

"ETJ" means all land located within the City's extraterritorial jurisdiction under Chapter 42 of the Texas Local Government Code, as reflected in the recitals of this Agreement.

"Land Development Code" shall mean the Land Development Code of the City, codified as Title 25 and Title 30 of the City Code.

"Notice" shall have the meaning set forth in Section 8.04.

"Ordinances" shall mean the ordinances of the City.

"Property" shall have the meaning set forth in the recitals to this Agreement.

"Term" and similar references shall mean the period of time commencing on the Effective Date and continuing for fifteen (15) years from the Effective Date.

Section 1.02 Other Definitions. All capitalized terms used but not defined in this Agreement shall have the meaning given to them in the City Code.

ARTICLE II

LAND USE

Section 2.01 Uses.

- A. The Owner covenants and agrees not to use the Property for any use other than for agriculture, wildlife management, and/or timber management, and related incidental activities consistent with Chapter 23 of the Texas Tax Code without prior written consent of the City.
- B. The Owner covenants and agrees that the City's agricultural (AG) zoning requirements apply to the Property.
- C. The Owner covenants and agrees that the Owner will not file any type of subdivision plat or related development document for Property with Travis County or the City that is inconsistent with the City's agricultural (AG) zoning requirements and the provisions of this Agreement.
- D. 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 that is inconsistent with the City's agricultural (AG) zoning requirements.

ARTICLE III

APPLICABLE ORDINANCES

Section 3.01 Applicable Requirements.

- A. All of the City's laws, ordinances, manuals, and administrative rules, including but not limited to the Land Development Code, regarding land development, as amended from time to time, shall apply to subdivisions within the Property except as otherwise specified in this Agreement. Prior to full purpose annexation, subdivisions are subject to applicable regulations in Title 30 of the Land Development Code, and after full purpose annexation, subdivisions are subject to applicable regulations in Title 25 of Land Development Code. Property shall be developed in accordance with plats and other permit applications submitted to, and approved by, the City and Travis County through their Single Office for subdivision regulation, and as finally approved by the appropriate approval bodies.
- B. Owner hereby waives any and all claims 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 Article II of this Agreement.

- C. Pursuant to Section 43.035(b)(1)(B) of the Texas Local Government Code, the City is authorized to enforce city regulations and planning authority that does not materially interfere with the use of the Property for agriculture, wildlife management, and/or timber management, in the same manner the regulations are enforced within the City's boundaries. The City 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.

ARTICLE IV

ANNEXATION

Section 4.01 Annexation.

- A. The parties intend that this Agreement guarantee the continuation of the extraterritorial status as herein set forth. The City guarantees the continuation of the extraterritorial status of the 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 involuntarily annex the Property for the term of this Agreement.
- B. The Owner acknowledges that if (i) any plat or related development document is filed in violation of this Agreement, or (ii) 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, if either condition B(i) or B(ii) is met, such annexation shall be voluntary and Owner hereby consents to such annexation as though a petition for such annexation had been tendered by Owner.
- C. Owner and City agree that the City shall have the option, but not the obligation, to annex for full purposes pursuant to the terms of this Agreement. 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. Property voluntarily annexed pursuant to this Agreement may require infrastructure improvements to facilitate development, including but not limited to, streets and roads, street and road drainage, land drainage, and water, wastewater, and other utility systems. Owner hereby acknowledges the provision of infrastructure improvements necessitated by proposed future development shall be the sole responsibility of the Owner.
- D. After full purpose annexation, all city ordinances, regulations and requirements applicable in the City's full purpose jurisdiction, including city taxation, shall apply to the area annexed. From the date of annexation until the Property is zoned,

Property is designated in accordance with the zoning district provided for under City Code Section 25-2-222. During the term of this Agreement, the City shall not annex any part of the Property except as provided in this Article IV.

ARTICLE V

LEGISLATIVE DISCRETION; REPRESENTATIONS AND WARRANTIES

Section 5.01 Legislative Discretion. This Agreement is not intended to bind, and the parties agree in fact and law that the Agreement does not bind, the legislative discretion of the City Council to approve or disapprove any proposed annexation ordinance for the Property, subject to and in accordance with the provisions hereof.

Section 5.02 Representations and Warranties of Owner.

- A. **Organization and Good Standing.** Owner has full power and authority to conduct business as it is now being conducted, to own or use the properties and assets that she purports to own or use, and to perform all her obligations under this Agreement.
- B. **Authority; No Conflict.** This Agreement constitutes a legal, valid and binding obligation of Owner, enforceable against Owner in accordance with its terms. Owner has the absolute and unrestricted right, power, authority, and capacity to execute and deliver this Agreement and to perform her obligations under this Agreement.

Section 5.03 Representations and Warranties of the City.

- A. **Organization and Good Standing.** The City is a duly organized and validly existing municipal corporation in good standing under the laws of the State of Texas, with full power and authority to conduct its business as it is now being conducted, to own or use the properties and assets that it purports to own or use, and to perform all its obligations under this Agreement.
- B. **Authority; No Conflict.** This Agreement constitutes a legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms. The City has the absolute and unrestricted right, power, authority, and capacity to execute and deliver this Agreement and to perform its obligations under this Agreement.

ARTICLE VI

FRUSTRATION OF PURPOSE

Section 6.01 Frustration of Purpose. If any word, phrase, clause, sentence, paragraph, section or other part of this Agreement is affected in whole or in part as a result of amendments to the underlying statutory authority for this Agreement, or a final judicial decree for which all appeals have expired or been exhausted, or if the Texas Legislature amends state law in a manner having the effect of limiting or curtailing any right or obligation of the parties under this Agreement, then the parties agree and understand that the purpose of this Agreement may be frustrated. In such case, the parties agree to work in good faith to amend this Agreement so that the purpose of this Agreement may be fully realized, including full purpose annexation if necessary. Owner agrees not to protest annexation of the Property in accordance with this Agreement, and further agrees not to sponsor or support legislation that would hinder the City's ability to annex any portion of the Property in accordance with the provisions hereof.

ARTICLE VII

DEFAULT AND REMEDIES FOR DEFAULT

Section 7.01 Default. It shall be a default under this Agreement by a party, if such party shall fail to perform any of its obligations under this Agreement and such failure shall remain uncured following the expiration of ten (10) business days after written notice of such failure. However, in the event the default is of a nature that cannot be cured within such ten (10) day period, the defaulting party shall have a longer period of time as may be reasonably necessary to cure the default in question, but in no event more than forty-five (45) days.

Section 7.02 Remedies between the City and Owner. Should any default between Owner and the City remain uncured after Notice to the other as provided in Section 8.04, the non-defaulting party, whether Owner or City, may pursue any remedy that is available at law or in equity at the time of breach.

Section 7.03 Mediation. In order to avoid unnecessary litigation, in the event either party fails to cure an alleged default within the cure period set out in Section 7.01 above, then if requested by either party, prior to seeking any form of relief from a court of law or agency of competent jurisdiction, each party agrees to enter into mediation concerning the alleged default for a period of not more than thirty (30) days prior to filing of any court action. Nothing in this Agreement shall be construed to limit the parties from mediating a default after any court or agency action may have been filed.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

Section 8.01 Amendments to Agreement. This Agreement may be amended only by a written agreement signed by the City and Owner.

Section 8.02 Termination. This Agreement may be terminated as to all of the Property only by express written agreement executed by the City and Owner. In the event this Agreement is terminated by mutual agreement of the parties or by its terms, the parties shall promptly execute and file of record in the Official Public Records of Travis County, Texas, a document confirming the termination of this Agreement, and such other documents as may be appropriate to reflect the basis upon which such termination occurs.

Section 8.03 Agreement Binds Successors and Runs with the Land. This Agreement shall bind and inure to the benefit of the parties, their successors and assigns. The terms of this Agreement shall constitute covenants running with the land comprising the Property and shall be binding on Owner. After the Effective Date hereof, this Agreement, at the City's cost, shall be recorded in the Official Public Records of Travis County, Texas.

Section 8.04 Notice. Any person who sells or conveys any portion of the Property shall, prior to such sale or conveyances, 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 Austin
Attn: Planning and Development Review
PO Box 1088
Austin, TX 78767

Section 8.05 Severability. If any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws, then, and in that event, it is the intention of the parties that the remainder of this Agreement shall not be affected.

Section 8.06 Waiver. Any failure by a party to insist upon strict performance by the other party of any material provision of this Agreement shall not be deemed a waiver of such provision or of any other provision of this Agreement, and such party shall have the right at any time(s) thereafter to insist upon strict performance of any and all of the provisions of this Agreement.

Section 8.07 Applicable Law and Venue. The construction and validity of this Agreement shall be governed by the laws of the State of Texas (without regard to

conflicts of law principles). Venue for any dispute arising from or related to this Agreement shall be in Texas state district court and shall be in accordance with the Texas Civil Practice and Remedies Code.

Section 8.08 **Reservation of Rights.** To the extent not inconsistent with this Agreement, each party reserves all rights, privileges and immunities under applicable laws.

Section 8.09 **Counterparts.** This Agreement may be executed in multiple counterparts which shall be construed together as a single original instrument as though all parties had signed one instrument, and, when executed, each counterpart shall be binding upon and inure to the benefit of each of the parties executing the instrument whether or not all other parties have executed same.

Section 8.10 **Survival.** This Agreement shall survive its termination to the extent necessary for the implementation of the provisions of Articles II, III, and IV herein.

Section 8.11 **Exhibits.**

Exhibit "A" Description of Property

EXECUTED in multiple counterparts, each of which shall constitute an original, to be effective as of the Effective Date.

CITY: **CITY OF AUSTIN,**
A home rule city and Texas municipal corporation

By:

Sue Edwards, Assistant City Manager

Date: _____

Acknowledgement

THE STATE OF TEXAS
COUNTY OF TRAVIS

THIS INSTRUMENT was acknowledged before me on the _____ day of _____, 2014, by _____

[SEAL]

Notary Public, State of Texas

OWNER:

JOU LEE

By:

JOU LEE, Owner

Date:

10/14/2014

Acknowledgement

Taiwan
City of Taipei
American Institute in
Taiwan, Taipei Office

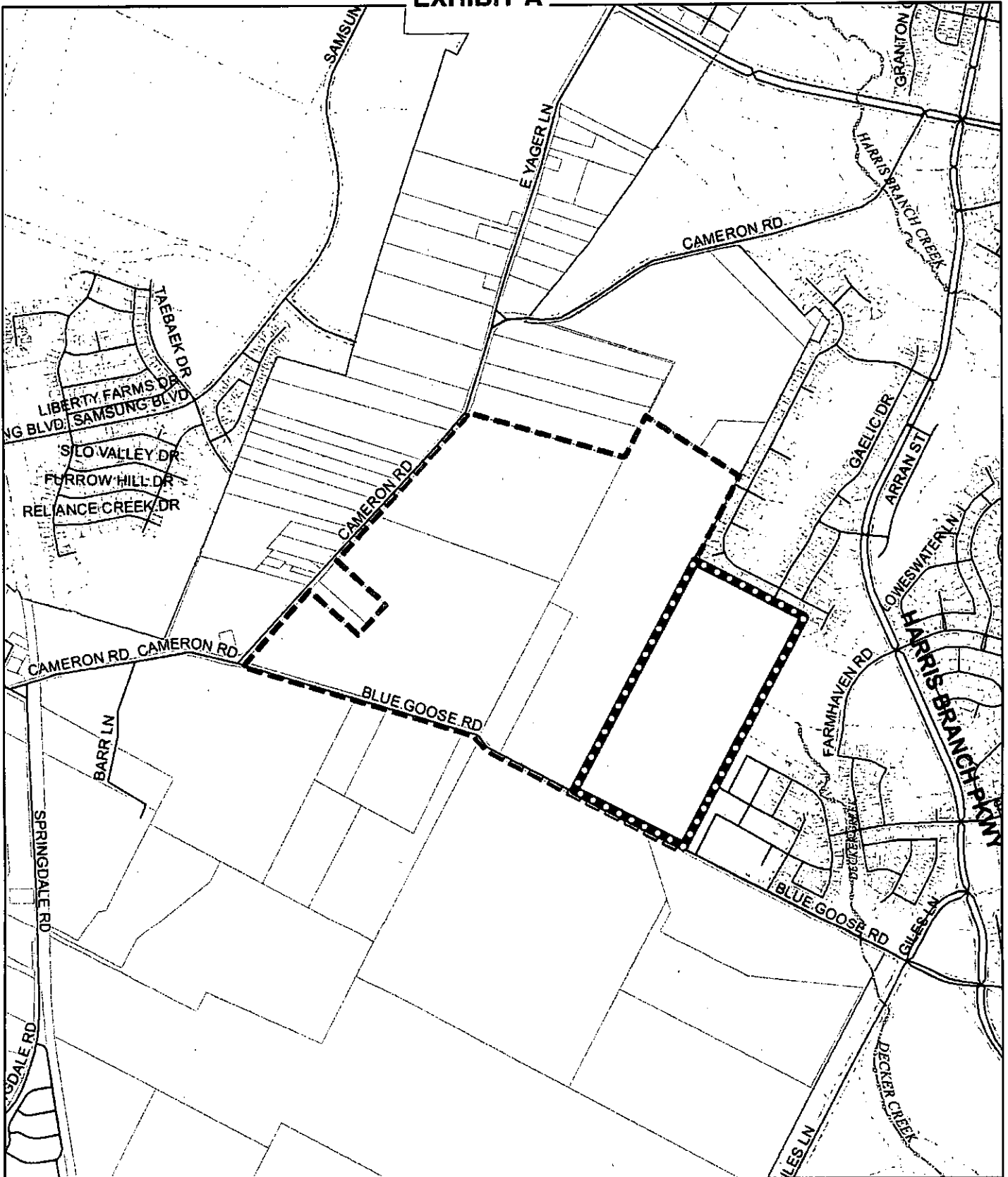
THIS INSTRUMENT was acknowledged before me on the 14 OCT 2014
_____, 2014, by LEE, JOU day of

[SEAL]

Notary Public Signature

Karina A. Veras
Special Notary (PL96-8)
Duly appointed and qualified
My commission expires: August 6, 2017

EXHIBIT A



Lee Annexation and Development Agreement Area

0 500 1,000 Feet

LEGEND

- Annexation & Development Agmt
- Proposed Annexation Area
- Street
- Railroad (CAPCOG)
- Major Creek

Jurisdiction

- Austin Full Purpose
- Austin Limited Purpose
- Austin ETJ
- Other City or ETJ

1 in = 1,431.3 feet



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.

This product has been produced by the Planning and Development Review for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness. All data by City of Austin except where otherwise indicated.



City of Austin
FORD
October 1, 2014

Lee Annexation and Development
Agreement

(Approximately 88.1683 acres of
land out of the Lucas Munos
Survey No. 55, Abstract No. 513
in Travis County, Texas)

LEGAL DESCRIPTION

**LEGAL DESCRIPTION FOR A TRACT OF LAND CONTAINING
APPROXIMATELY 88.1683 ACRES OF LAND OUT OF THE
LUCAS MUNOS SURVEY NO. 55, ABSTRACT NO. 513 IN
TRAVIS COUNTY, TEXAS. SAID APPROXIMATELY
88.1683 ACRES BEING MORE PARTICULARLY DESCRIBED
AS FOLLOWS:**

BEING all of that called 88.1683 acre tract of land conveyed to Jou
Lee by General Warranty Deed recorded in Document No. 2011141507 of
the Official Public Records of Travis County, Texas.

"This document was prepared under 22 TAC 663.21, does not reflect
the results of an on the ground survey, and is not to be used to
convey or establish interests in real property except those rights
and interests implied or established by the creation or
reconfiguration of the boundary of the political subdivision for
which it was prepared".

LEGAL DESCRIPTION: Mary P. Hawkins
10-08-2014

Mary P. Hawkins 10/9/14

APPROVED: Mary P. Hawkins, RPLS No. 4433
Quality Management Division
Department of Public Works
City of Austin

REFERENCES

Austin Grid P-29 & Q-29
TCAD MAPS 2-3431 & 2-3441