

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE NO. 20-2072 PROVIDING FOR ACCEPTANCE OF ADDITIONAL ELIGIBLE NON-ANNEXATION AGREEMENTS FOR AGRICULTURAL, WILDLIFE MANAGEMENT OR TIMBERLAND USE PROPERTIES WITHIN AN AREA OF LAND ADJACENT TO AND ABUTTING THE EXISTING CITY LIMITS OF THE CITY OF DENTON, TEXAS, GENERALLY IDENTIFIED AS DH-2 OF APPROXIMATELY 258 ACRES LOCATED ON THE SOUTH SIDE OF UNIVERSITY DRIVE, WEST AND EAST SIDES OF THOMAS J. EGAN ROAD, NORTH OF JIM CHRISTAL ROAD, AND WEST OF MASCH BRANCH ROAD; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE. (24-2206, Love)

WHEREAS, Ordinance No. 20-2072 was adopted by City Council on October 20, 2020, which ordinance accepted twenty (20) year extensions for eligible non-annexation agreements for agricultural, wildlife management or timberland use properties within an area of land adjacent to and abutting the existing city limits of the City of Denton, Texas, generally identified as DH-2; and

WHEREAS, since the adoption of Ordinance No. 20-2072, Annette Sue Love, an owner of 7.535 acres of land within the DH-2, is still eligible for a non-annexation agreement with the City; and

WHEREAS, Annette Sue Love has executed the non-annexation agreement attached hereto and incorporated herein as Exhibit "A;" and

WHEREAS, the Denton City Council deems it to be in the best interests of the citizens of the City of Denton to enter into such a non-annexation agreement with the eligible property owners; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings and recitations contained in the preamble of this ordinance are incorporated herein by reference.

SECTION 2. The City Council hereby approves and accepts the attached properly executed non-annexation agreement(s), which is labeled as Exhibit "A".

SECTION 3. The City Council additionally amends Ordinance No. 20-2072 to include said non-annexation agreement(s) in Exhibit "C".

SECTION 4. The City Manager is authorized and directed, as a ministerial act, to sign the non-annexation agreement attached as Exhibit "A", for and on behalf of the City of Denton. The City Manager shall further arrange forthwith for the recordation of the non-annexation agreement in the real property records of Denton County, Texas. The effective date of the non-annexation agreement shall be the effective date of this Ordinance.

SECTION 5. All other provisions of Ordinance No. 20-2072 not specifically amended herein shall continue in force and effect; however, the provisions of this ordinance shall govern and control over any conflicting provisions of Ordinance No. 20-2072, to the extent of any such conflict.

SECTION 6. This Ordinance shall take effect immediately on its passage and approval.

The motion to approve this ordinance was made by _____ and seconded by _____, the ordinance was passed and approved by the following vote [___ - ___]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2024.

GERARD HUDSPETH, MAYOR

ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY:  _____

EXHIBIT “A”

**CHAPTERS 43 AND 212 TEXAS LOCAL GOVERNMENT CODE
2024 NON-ANNEXATION AGREEMENT**

This AGREEMENT, entered into on the Effective Date, is by and between the CITY OF DENTON, TEXAS (the "City") and LOVE, ANNETTE SUE ("Owners"), the property owners of the hereinafter described property (the "Property") in Denton County, Texas:

Being 25.447 acres of land, more or less, situated in the S. Huizar Survey, Abstract No. 514 and the G. Barb Survey, Abstract No. 208, described in that Deed of Gift dated December 22, 1994, from James W. Wetzel and Freda J. Wetzel to Lisa K. Fergason and James Fergason, filed for record on December 27, 1994 and recorded in Instrument Number 94-R0093960 of the Real Property Records of Denton County, Texas;

SAVE AND EXCEPT that portion of the 25.447 acre tract lying within the existing city limits, commonly known as DCAD Property ID 75052;

And further SAVE AND EXCEPT that portion of the 25.447 acre tract of land previously conveyed to the State of Texas for Highway 380 right of way;

Leaving 7.535 acres, more or less, commonly known as DCAD Property ID 60782 and DCAD Property ID 36633.

RECITALS

WHEREAS, this Agreement is entered into pursuant to Sections 43.016 and 212.172 of the Tex. Loc. Gov't Code, in order to address the desires of Owner and the procedures of the City; and

WHEREAS, pursuant to Ch. 43 of the Tex. Loc. Gov't Code, the City had previously given notice of its intent to institute annexation proceedings in 2010, 2015, and again in 2016 for an "Annexation Area" that includes the above-described Property which was and is subject to the provisions of Sec. 43.016 of Tex. Loc. Gov't Code; and

WHEREAS, in accordance with State law, the City offered, and Owners accepted, a non-annexation development agreement ("NAA"), as then contemplated by former Section 43.035 (as previously codified) and current Section 212.172 of Tex. Loc. Gov't Code, in lieu of the City's annexation in 2010, as well as extensions of said NAA in lieu of the City's annexation in 2015 and 2016 (collectively, "Extended NAAs"), of the Property in the Annexation Area not otherwise excluded by operation of State law; and

WHEREAS, Sec. 43.016 of the Tex. Loc. Gov't Code authorizes a property owner and a municipality to enter into an agreement pursuant to Sec. 212.172 of the Tex. Loc. Gov't Code for purposes of retaining land in the municipality's extraterritorial jurisdiction (ETJ) in exchange for the property owner's covenant not to develop the property and to authorize the municipality to apply regulations and development authority not inconsistent with agricultural use; and

WHEREAS, the Denton County Appraisal District records show that the Property currently is appraised for ad valorem tax purposes as land for agricultural or wildlife management use, or timber land pursuant to Ch. 23 of the Tex. Tax Code, Subchapters C, D, or E; and

WHEREAS, based upon Owners' representations and City's investigation, it appears that the Property still meets the eligibility criteria of Sec. 43.016 of Tex. Loc. Gov't Code, and the Ch. 23 of Tex. Tax Code; and

WHEREAS, the most recent Extended NAA executed by the City and Owners expired on August 1, 2020; and

WHEREAS, the City desires to allow the Property to remain in the City's ETJ for the term of this 2024 non-annexation agreement (hereinafter, the "2024 NAA" or "Agreement"), which amends and extends the term of the NAA and Extended NAA previously executed by the Parties for all purposes, until such time as stated herein; and

WHEREAS, Owners hereby accept this offer and agree to the terms of this 2024 NAA, as set forth herein, and Owners represent that it is their intention not to develop the Property during the term of this Agreement; and

WHEREAS, upon expiration of the 2024 NAA, Owners shall be deemed to have filed a petition for voluntary annexation, pursuant to Subch. C-3 of Ch. 43 of the Tex. Loc. Gov't Code, incorporating the agreed terms and schedule of the Written Agreement for Services, attached hereto as Exhibit "A"; and

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

WHEREAS, this Agreement is to be recorded in the Real Property Records of Denton County, Texas; and

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

Section 1. Continuation of ETJ Status. The City guarantees the continuation of the extraterritorial status of the Property and agrees not to annex the Property for the term of this Agreement, as hereinafter defined, and any subsequent renewals as may be agreed upon by the Parties, subject, however, to the provisions of this Agreement.

Section 2. Development Plan. The Owners covenant and agree that use of the Property for the term of this Agreement, as hereinafter defined, and any extensions agreed to by the Parties shall be limited to farm-related and ranch-related uses and customary accessory uses, and single-family detached farm or ranch dwellings, provided that no single-family dwelling may be located or constructed on a lot smaller than five (5) acres unless the lot was created prior to the date of this Agreement. The property owner may apply to the City for division of the land subject to this

Agreement into parcels, each of which is at least five (5) acres in size, for the purposes set forth in this section without being in violation of this Agreement. Such uses and activities constitute the development plan for the Property (the "Development Plan") in satisfaction of Sec. 212.172(b) of the Tex. Loc. Gov't Code.

Section 3. Governing Regulations. The City regulations, including but not limited to the following, shall apply to any development of the Property, as such regulations may hereafter be amended from time to time during the term of this Agreement, as hereinafter defined, provided that the application of such regulations does not result in interference with the use of the land for agricultural, wildlife management or forestry purposes and does not prevent the continuation of a use established prior to the effective date of this Agreement and which remains lawful at the time the Agreement is executed:

- (1) Zoning standards contained in the Denton Development Code, as amended pursuant to the Denton Plan 2040, as amended, including but not limited to the Residential Rural (RR) Zoning District regulations, and standards incorporated therein;
- (2) The subdivision and development regulations contained within the Denton Development Code, as amended, together with applicable Design Criteria Manuals, Denton Mobility Plan, and other approved Master Plans of the City of Denton, Texas, as amended and the most recent North Central Texas Council of Governments Standard Specifications for Public Works Construction, as amended or replaced;
- (3) Denton building codes, as adopted by the City and currently contained within Chapters 17, 28, and 29 of the Denton Code of Ordinances and Subchapter 7 in the Denton Development Code, as amended, along with local amendments, as amended, and more particularly set forth as follows:
 - a. International Building Code, 2021 Edition with local amendments;
 - b. International Residential Code, 2021 Edition with Appendix G and local amendments;
 - c. The International Fire Code, 2021 Edition with local amendments;
 - d. International Plumbing Code, 2021 Edition with local amendments;
 - e. International Fuel Gas Code, 2021 Edition with local amendments;
 - f. International Mechanical Code, 2021 Edition with local amendments
 - g. Code of Ordinances of Chapter 17, Property Maintenance Code, as amended;
 - h. International Energy Conservation Code, 2021 Edition with regional amendments;
 - i. National Electric Code, 2020 Edition with local amendments;
 - j. National Electric Safety Code, 2021 Edition, with regional amendments;
 - k. Minimum housing and building standards, Code of Ordinances, Sections 17-141 – 196, as amended and as applicable; and
 - l. Irrigation Systems, Code of Ordinances, Sections 28-441 – 457;
- (4) Sign regulations, as contained within Subchapter 33 of the Code of Ordinances, as amended;

- (5) Applicable water and wastewater connection, construction and on-site operation requirements, contained within Chapter 26 of the Denton Code of Ordinances, as amended, and Subchapters 7 and 8 of the Denton Development Code, as amended, the Denton Water and Wastewater Criteria Manual, as amended, and as supplemented by the Texas Water Code, as amended, Texas Natural Resources Code, as amended, Texas Utilities Code, as amended, and applicable administrative standards of the Texas Commission on Environmental Quality, as amended;
- (6) Applicable Flood Protection, Drainage and related standards, as contained within Chapter 30 of the Denton Code, as amended, subchapters 7 and 8 of the Denton Development Code, as amended, the Denton Stormwater Criteria Manual, as amended, and as supplemented by requirements of the Texas Water Code, as amended, Texas Natural Resources Code, as amended, applicable administrative standards of the Texas Commission on Environmental Quality, as amended, and applicable administrative standards of the Federal Emergency Management Administration, as amended; and
- (7) Gas Well platting, drilling and production standards, as contained within Subchapters 2 and 6 of the Denton Development Code, as amended and as applicable, and as supplemented by requirements of the Texas Utilities Code, the Texas Natural Resources Code, the Texas Water Code, and applicable administrative standards of the Texas Railroad Commission and Texas Commission on Environmental Quality, as amended; and
- (8) The City states and specifically reserves its authority pursuant to Chapter 251 of the Tex. Loc. Gov't Code to exercise eminent domain on the Property.

Section 4. Development Plan to Remain in Effect. Following expiration or termination of this Agreement for any reason, the Development Plan set forth in Section 2 shall remain in effect for a period of 180 calendar days thereafter, or until the effective date of the annexation and permanent zoning of the Property, whichever first occurs. The Parties covenant and agree that the City may deny any development application or plan of development that is submitted to the City for the Property during such period if such application or plan is inconsistent with the Development Plan. The Owners expressly waive any vested rights that might arise under Sec. 43.002(a)(2) and Chapter 245 of the Tex. Loc. Gov't Code, local or state law, or by common law, from the submittal of such inconsistent development application. The Owners further agree that no use commenced or completed on the Property that is inconsistent with the Development Plan shall be considered established or in existence prior to the expiration of the 180-day period during which the Development Plan is in effect.

Section 5. Agreement Deemed Void in Part; Petition for Voluntary Annexation; Service Plan.

(A) If an Owner files any application or plan of development for or otherwise commences development of any portion of the Property inconsistent with the Development Plan provided in Section 2, then Sections 1 and 3 of this Agreement shall become null and void and remedy provisions of Section 5(B) of this Agreement will apply.

(B) UPON EXPIRATION, OR UPON BREACH OR TERMINATION OF THIS AGREEMENT FOR ANY REASON, OR AT ANY POINT THEREAFTER, THEN IN ADDITION TO THE CITY'S OTHER REMEDIES, SUCH ACT WILL CONSTITUTE A PETITION FOR VOLUNTARY ANNEXATION BY THE OWNER, PURSUANT TO SUBCH. C-3 OF CH. 43 OF THE TEX. LOC. GOV'T CODE AND THE PROPERTY WILL BE SUBJECT TO ANNEXATION AT THE DISCRETION OF THE CITY COUNCIL. OWNER AGREES THAT SUCH ANNEXATION IS VOLUNTARILY MADE AND HEREBY CONSENTS TO ANNEXATION PURSUANT TO SEC. 212.172(B)(7) OF THE TEX. LOC. GOV'T. CODE. OWNER HEREBY AGREES TO THE CITY'S LIST AND SCHEDULE OF MUNICIPAL SERVICES SET FORTH IN EXHIBIT "A" BY SIGNING THIS AGREEMENT AND OWNER AGREES THAT THE 2024 NAA SERVES AS THE WRITTEN AGREEMENT REGARDING SERVICES, PURSUANT TO SEC. 43.0672 OF THE TEX. LOC. GOV'T CODE. IN THE EVENT THAT THE WRITTEN AGREEMENT REGARDING SERVICES ARE NO LONGER REQUIRED BY CH. 43 ON THE DATE OF ANNEXATION, THEN THE MUNICIPAL SERVICES TO BE PROVIDED TO THE PROPERTY WILL BE IN ACCORDANCE WITH EXISTING CITY POLICY ON THE DATE OF ANNEXATION, AND AS AMENDED THEREAFTER. No subsequent change in the law regarding annexation shall affect the enforceability of this written Agreement or of the City's ability to annex the Property, pursuant to the terms of this Agreement. This section shall survive any termination of this Agreement.

Section 6. Notice of Sale or Exemption Status Change. Any person who sells or conveys any portion of the Property shall, prior to such sale or conveyance, give 30 days' written notice of this Agreement to the prospective purchaser or grantee. A copy of the notice shall be provided to the City 30 days prior to such sale or conveyance, and notice of the change in the exemption status of the Property shall be provided to the City within 14 days of any change at the following address:

City of Denton, Texas
ATTN: City Manager
215 E. McKinney St.
Denton, TX 76201

Section 7. Recording. This Agreement is to run with the Property and be recorded in the real property records, Denton County, Texas.

Section 8. Severability. Invalidation of any provision of this Agreement by judgment, court order, legislation, or otherwise shall not invalidate any of the remaining provisions which shall remain in full force and effect.

Section 9. Remedies. This Agreement may be enforced by either 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. Entry into this Agreement by Owner waives no rights as to matters not addressed in this Agreement.

Section 10. Change in Law. 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 11. Venue. Venue for this Agreement shall be in Denton County, Texas.

Section 12. Execution in Multiple Copies. This Agreement may be separately executed in individual counterparts and, upon execution, shall constitute one and same instrument.

Section 13. Effective Date; Term and Extension. The Effective Date of the Agreement shall be the date the Agreement is executed by the City. This Agreement shall terminate on August 1, 2040 ("Term"). The Term may be extended upon mutual agreement of the Parties. Owners and the City agree that this Agreement is binding upon both the City and Owners, and Owners' heirs, successors, and assigns for the term of the Agreement. Owners, and all of 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. Owner agrees that such annexation shall be voluntary and consents to the annexation pursuant to Sec. 212.172(b)(7) of Tex. Loc. Gov't Code and Ch. 43, Subch. C-3 of the Tex. Loc. Gov't Code.

Section 14. Survival of Covenants. The covenants in Sections 2, 4, and 5 shall survive termination of this Agreement, together with any other provisions, as may be necessary for the implementation of those sections.

Section 15. **OWNERS REPRESENT AND ACKNOWLEDGE THAT EACH AND EVERY OWNER OF THE PROPERTY HAS SIGNED THIS AGREEMENT, AND OWNERS COVENANT AND AGREE, JOINTLY AND SEVERALLY, TO INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY AGAINST ANY AND ALL LEGAL CLAIMS, BY ANY PERSON CLAIMING AN OWNERSHIP INTEREST IN THE PROPERTY WHO HAS NOT SIGNED THE AGREEMENT, ARISING IN ANY WAY FROM THE CITY'S RELIANCE ON THIS AGREEMENT.**

Entered into this 1st day of May, 2024

OWNERS

Annita S. Love

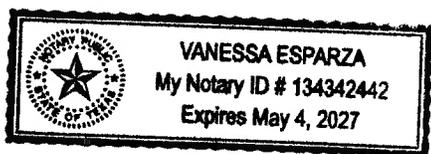
THE CITY OF DENTON, TEXAS

By: _____
Its: City Manager, Deputy City Manager, or
Assistant City Manager

THE STATE OF TEXAS }

COUNTY OF DENTON }

This instrument was acknowledged before me on the 1st day of May,
2024, by Vanessa Esparza.



Vanessa Esparza
Notary Public, State of Texas

THE STATE OF TEXAS }

COUNTY OF DENTON }

This instrument was acknowledged before me on the ____ day of _____,
20__, by _____.

Notary Public, State of Texas

THE STATE OF TEXAS }

COUNTY OF DENTON }

This instrument was acknowledged before me on the ____ day of _____,
20__, by _____.

Notary Public, State of Texas

THE STATE OF TEXAS }

COUNTY OF DENTON }

This instrument was acknowledged before me on the ____ day of _____,
20__, by _____.

Notary Public, State of Texas

THE STATE OF TEXAS }

COUNTY OF DENTON }

This instrument was acknowledged before me on the ____ day of _____, 20__,
by _____, City Manager/Deputy City
Manager/Assistant City Manager, on behalf of the City of Denton, Texas.

Notary Public, State of Texas

APPROVED AS TO LEGAL FORM:
MACK REINWAND. CITY ATTORNEY



BY: _____

After recording return to:

**City of Denton
Attn.: City Secretary
215 E. McKinney St.
Denton, TX 76201**

EXHIBIT "A"

**LIST AND SCHEDULE OF MUNICIPAL SERVICES
(PURSUANT TO TEX. LOC. GOVT. CODE SEC. 43.0672(b))**

I. MUNICIPAL SERVICES. Commencing on the effective date of annexation, City will provide the municipal services set forth below. As used in this Agreement, "providing services" includes having services available by any method or means by which the City makes such municipal services available to any other area of the City, including per the City's infrastructure extension policies, ordinances, and developer or property owner participation in accordance with applicable city ordinances, rules, regulations, and policies.

A. Police

Police protection from City's Police Department shall be provided to the area annexed at a level consistent with current methods and procedures presently provided to areas with similar topography, land use, and population density, on the effective date of the ordinance. Some of these services include:

1. Normal patrols and responses;
2. Handling of complaints and incident reports;
3. Special units, such as traffic enforcement, investigations and special weapons; and
4. Coordination with other public safety support agencies.

As development commences in these areas, sufficient police protection, including personnel and equipment will be provided to furnish these areas with the level of police services consistent with other areas in the City having similar characteristics of topography, land use, and population density.

Upon ultimate development, police protection will be provided at a level consistent with other areas within the city limits having similar characteristics of topography, land use, and population density.

B. Fire Protection

The Denton Fire Department (DFD) will provide emergency and fire prevention services to the annexation area. These services include:

1. Fire suppression and rescue;
2. Pre-hospital medical services including triage, treatment and transport by Advanced Life Support (ALS) fire engines, trucks and ambulances;
3. Hazardous materials response and mitigation;
4. Emergency prevention and public education efforts;
5. Technical rescue response; and
6. Construction Plan Review and required inspections.