STAFF REPORT

DATE: May 3, 2016
TO: Mayor and Council Members
THROUGH: Keith Witcosky, City Manager
FROM: Heather Richards, Community Development Director
SUBJECT: Annexation Agreement – City of Redmond and HT Investment Properties and Affiliates,

Addresses Council Goal:
7. COMPREHENSIVE PLANNING
   Enhance the quality of life in the city through adoption of programs, policies, and standards that balance growth while maintaining its unique character.
   A. Promote quality development.
   B. Support orderly annexation from Urban Growth Boundary.

Report in Brief:

This is the consideration of an Annexation Agreement between the City of Redmond and HT Investment Properties & Affiliates (Han Thygeson) to establish the terms of annexation into the City of Redmond for a portion of a parcel (1.08 acres) located at 1001 SW 35th Street and further described as tax lot 151318003100 and a parcel consisting of 5.7 acres and further described as tax lot 1513180003200. (Attachment A)

Background:

The annexation agreement is a contractual agreement between the property owner who wants to annex their property into the City of Redmond and the City of Redmond. It establishes the terms agreed upon for the annexation to occur.

The annexation agreement occurs prior to the action of annexation.

The attached annexation agreement is for a portion of a parcel (1.08 acres) located at 1001 SW 35th Street and further described as tax lot 151318003100 and a parcel consisting of 5.7 acres and further described as tax lot 1513180003200 located just north of Obsidian Avenue and west of SW 35th Street. These parcels area adjacent to another parcel that is already annexed into the City of Redmond and will be part of a Master Plan Development. See maps below.

Attachments:
Annexation Agreement between the City of Redmond and HT Investment Properties & Affiliates
Discussion:

The terms of the agreement stipulate that the City of Redmond will annex the identified property into the city limits within sixty days after the property owner agrees to the covenants of the annexation agreement and receives a Master Plan approval with proposed Comprehensive Plan / Zone Map amendments. The property owner has twelve months to secure the necessary items for annexation.

The property owner agrees to:

- Waive rights to any claim against the City relative to the annexation and associated land use.
- Legally create a new lot for annexation from tax lot 151318003100 prior to annexation.
- Development must comply with the Area Plan and Master Plan approved for the property.
- Will dedicate the necessary rights-of-way or easements for all planned improvements identified in the City’s Public Facilities Plans without any cost to the City.
- Agrees to donate $300 per single family dwelling unit, and $55.00 per multi-family dwelling unit to the Redmond School District.
- Remove all irrigation water rights from the property.
- Not to remonstrate against the formation of a local improvement district or reimbursement district created for the purpose of funding public improvements that will serve the property.

Fiscal Impact:
There is no anticipated financial impact with this action.

Alternative Courses of Action:
1. Approve the Annexation Agreement.
2. Request more information.
3. Do not approve the Annexation Agreement.
Recommendation/Suggested Motion:
"I move to authorize the City Manager to sign the Annexation Agreement between the City of Redmond and HT Investment Properties & Affiliates to establish the terms of annexation for a portion of a parcel (1.08 acres) located at 1001 SW 35th Street and further described as tax lot 151318003100 and a parcel consisting of 5.7 acres and further described as tax lot 1513180003200."

Heather Richards
Community Development Director

Attachments:
Annexation Agreement between the City of Redmond and HT Investment Properties & Affiliates
ANNEXATION AGREEMENT

This Annexation Agreement is made and entered into this __________ day of _______________, 2002, by and between the City of Redmond, Oregon, an Oregon municipal corporation (hereinafter “City”) and Hans Thygeson, HT Investment Properties & Affiliates (hereinafter “Owner”).

W I T N E S S E T H

WHEREAS, Owner is in contract to buy the property legally described on Exhibit A attached hereto and incorporated herein (hereinafter referred to as the “Property”); and
WHEREAS, the Property is within the City’s urban growth boundary and is proposed to be annexed to the City; and
WHEREAS, Owner desires to have the Property annexed to the City; and
WHEREAS, Owner will submit a petition for annexation and provide the City with all required consents for annexation; and
WHEREAS, the City is willing to annex the Property on the terms and conditions, and subject to the provisions, of this Agreement; and
WHEREAS, the City will initiate ultimate urban zoning upon the successful completion and approval of a Master Plan land use application and Comprehensive Plan/Zone Map Amendment application; and
WHEREAS, the City and Owner desire to enter into this Agreement to regulate the annexation, zoning, use and development of the Property; and
WHEREAS, should a property owner who chooses not to execute the Annexation Agreement, refuses to grant a right-of-way and/or easement across his or her property in accordance with the City's Public Facilities Plans, the City may institute condemnation proceedings to effectuate such right-of-way and/or easement, or modify the Public Facilities Plans to bypass the property, in order to accommodate the orderly construction of the public infrastructure; and
WHEREAS, Council will consider this annexation agreement on May 3, 2016.

NOW, THEREFORE, in consideration of the representations, promises and mutual covenants contained herein, the City and Owner agree as follows:

1. **RECITALS:** The foregoing recitals are incorporated herein as is fully set forth in this Section.
2. **ANNEXATION**

   a. City agrees that it will initiate a resolution annexing the Property into the City once all required consents and a signed Annexation Agreement have been received by the City, and an approved Master Plan with proposed zone amendments has been achieved. This agreement is void if the Property is not annexed to the City of Redmond within twelve months after the effective date of this Agreement and after the City receives all required consents.

   b. Owner may terminate this Agreement by serving written notice to the City no less than 60 days prior to the effective date of the termination. The notice must be received by the City at least 60 days prior to the public hearings for council consideration of the annexation. If the City receives such notice, this Agreement terminates as of the effective date of the notice. After the annexation resolution is adopted by the City, this Agreement may only be terminated or amended by written consent of Owner and City.

3. **COMPREHENSIVE PLAN/ZONING:** Prior to development and annexation of the property, the Owner is required to complete a Master Plan for the property in compliance with the Redmond Comprehensive Plan and Redmond Development Code. The Master Plan will identify Comprehensive Plan and Zoning designations, subject to Redmond City Council review and approval. Upon adoption of the Master Plan, successful annexation, and a Comprehensive Plan Map/Zone Map adoption, the City will apply the Comprehensive Plan and Zoning designations identified in the Master Plan.

4. **DEVELOPMENT:** Owner agrees as follows:

   a. Owner shall waive and shall not assert any claim against the City that may now exist or that may accrue through the date of annexation of the Property that it may claim due to its ownership of the Property. This includes any claim arising out of any land use regulation or under Measure 37 (ORS 197.352), Measure 49, and Measure 56 (ORS 227.186).

   b. Owner agrees that any development of the property will comply with the applicable approved Area Plan and Master Plan for the property and will incorporate and follow the City’s Great Neighborhood Principles as found in the Redmond Comprehensive Plan and Redmond Development Code as applicable. The Community Development Director or Hearings Body shall determine the applicability of the Great Neighborhood Principles to the subject property as necessary. All development must comply with federal, state and city regulations.

   c. Owner agrees that it will, without any cost to the City, dedicate the necessary rights-of-way or easements for all Planned Improvements identified in the City’s Public Facilities Plan. The Public Facilities Plan includes the updated Wastewater and Water Master Plans and Transportation System Plan. The City’s Comprehensive Plan and Transportation System Plan identify the necessary rights-of-way for minor arterial to be 100 feet (50’ each side of center line) and for major collector streets to be 80 feet (40’ each side of center line). Owner agrees to provide right-of-way dedication for SW 35th Street, a major collector.
d. Owner agrees to donate funds to the Redmond School District as specified in Exhibit B. The donation is in addition to any amounts identified by a school district under chapter 829, Oregon Laws 2007.

e. Owner shall remove all Central Oregon Irrigation District (COID) irrigation water rights from Property, unless partial use is otherwise approved by the Redmond City Council and COID. Owner is directed to remove water via sale or transfer to COID. Removal shall occur prior to the platting of the first phase of development.

Owner shall remove all ground water rights from Property, unless partial use is otherwise approved by the Redmond City Council. Owner is directed to remove water via sale or transfer to the City. Removal shall occur prior to the platting of the first phase of development.

f. Owner agrees to not remonstrate against the formation of a local improvement district or reimbursement district created for the purpose of funding public improvements that will serve the Property. This waiver applies to the Property until all utility service and all required infrastructure that will service or benefit the Property is completed and accepted by City. If the property is developed in phases, the waiver may be removed on a phase-by-phase basis provided that all utility service and all required infrastructure that will service or benefit the Property is completed and accepted by City.

g. Owner agrees to gain full legal ownership of the property identified in Exhibit A prior to annexation into the City of Redmond.

5. AMENDMENT: This Agreement and any exhibits attached hereto may be amended only by the mutual written consent of both parties.

6. SEVERABILITY: If any provision, covenant or portion of this Agreement or its application to any person, entity, property or portion of property is held invalid, or if any ordinance or resolution adopted pursuant to this Agreement or its application to any person, entity, property or portion of property is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants or portions of this Agreement or other ordinances or resolutions passed pursuant hereto, and to that end, all provisions, covenants, and portions of this Agreement and of the ordinances and resolutions adopted pursuant hereto are declared to be severable.

7. NO WAIVER OF RIGHT TO ENFORCE AGREEMENT: Failure of any party to this Agreement to insist upon the strict and prompt performance of the terms, covenants, agreements and conditions herein contained, or any of them, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party’s right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

8. ENTIRE AGREEMENT: This Agreement supersedes all prior agreements, negotiations and exhibits and is a full integration of the entire agreement of the parties relating to the subject matter hereof. The parties shall have no obligations other than specifically stated in this Agreement except those of general applicability.
9. **SURVIVAL:** The provisions contained in this Agreement shall survive the annexation of the property and shall not be merged or expunged by the annexation of the property or any part thereof to the City.

10. **SUCCESSORS AND ASSIGNS:** This Agreement shall run with the land described on Exhibit A and inure to the benefit of, and be binding upon, the successors in title of the Owners and their respective successors, grantees, lessees, and assigns, and upon successor corporate authorities of the City and successor municipalities.

11. **TERM OF AGREEMENT:** This Agreement shall be binding upon the parties and their respective successors and assigns for the full statutory term of twenty (20) years, commencing as of the date of this Agreement.

12. **ENFORCEMENT:** Owner agrees that if it fails to perform as required under this Agreement, the City Council may, at the City Council’s option, refuse to process any development application submitted for the Property or include as conditions of approval any requirement of this Agreement. Owner hereby waives any claim regarding such conditions of approval, whether to LUBA or to any state or federal court.

13. **ATTORNEY FEES:** In any proceeding to enforce, apply or interpret this Agreement, each party shall bear its own attorneys’ fees and costs.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the date first above written.

CITY

______________________________
Keith Witcosky City Manager

OWNER

_________________________________
Hans Thygeson,
HT Investment Properties & Affiliates

ATTEST:

______________________________
Kelly Morse, City Recorder
STATE OF OREGON )
County of Deschutes ) ss.

This instrument was acknowledged before me this ____ day of ____________________, by Keith Witcosky, City Manager, on behalf of the City of Redmond, who acknowledged that he had authority to sign on behalf of the City of Redmond and this instrument to be the City’s voluntary act and deed.

_____________________________________
Notary Public for Oregon

STATE OF OREGON )
County of Deschutes ) ss.

This instrument was acknowledged before me this ____ day of ____________________, by ____________________________, who acknowledged this instrument to be his/her voluntary act and deed.

_____________________________________
Notary Public for Oregon
Exhibit “A”

LEGAL DESCRIPTION
HIT-01
Sales Exhibit Parcel 2, Partition Plat 2009-7
April 20, 2016
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All that certain real property situated in the City of Redmond, County of Deschutes, State of Oregon, being described as follows:

A portion the Southeast One-Quarter of Section 18, Township 15 South, Range 13 East, Willamette Meridian, being all of Parcel 2, Partition Plat 2009-7, Deschutes County Survey Records, and a portion of Parcel 1, Partition Plat 1996-40, Deschutes County Survey Records, and being more particularly described as follows:

BEGINNING at the northwest corner of Parcel 2 of said Partition Plat 2009-7; thence along the most Southerly West line of Parcel 1, of said Partition Plat 1996-40, North 03°44'24" West 30.04 feet; thence leaving said most Southerly West line South 89°34'19" East 110.40 feet to a curve to the right; thence along the curve right (Central angle = 22°20'28", Radius = 170.00 feet, Long Chord bears South 78°49'50" East 65.87 feet) 66.29 feet; thence South 67°37'22" East 3.12 feet to a curve to the left; thence along the curve left (Central angle = 22°22'35", Radius = 230.00 feet, Long Chord bears South 78°48'39" East 89.25 feet) 89.82 feet; thence South 89°59'57" East 242.58 feet to a point on the Westerly Right-of-Way of SW 35th Street; thence along said Right-of-Way South 00°18'41" West 170.33 feet to a curve to the right; thence along the curve right (Central angle = 00°03'13", Radius = 2970.00 feet, Long Chord bears South 00°20'22" West 2.78 feet) 2.78 feet; thence North 89°32'22" West 10.00 feet to a nontangent curve to the right; thence along the curve right (Central angle = 06°38'06", Radius = 2960.00 feet, Long Chord bears South 03°40'57" West 342.58 feet) 342.77 feet; thence South 07°00'00" West 106.70 feet to the southeast corner of said Parcel 2; thence leaving said Right-of-Way along the Southerly line of said Parcel 2, North 89°34'57" West 419.60 to the southwest corner of said Parcel 2; thence along the Westerly line of said Parcel 2, North 03°44'24" West 621.19 feet to the POINT OF BEGINNING.

Containing 6.8 Acres more or less.

This description is for financing purposes only. It is not intended to be used in the transfer of real property.
PURPOSE: This contribution shall be used for the purpose of helping the Redmond Oregon School District, acquire by purchase, certain identified real property more particularly described as Parcel (1) of Partition Plat No. 1996-25, being located in the Southwest Quarter (1/4) of the Section Five (5), Township Fifteen (15) South, Range Thirteen (13), East of the Willamette Meridian, Deschutes County Oregon. This purchase shall be identified as a site for the future construction of public school(s) in the Redmond Oregon School District. This contribution is independent of any other funding mechanism available to the School District, including public or private moneys, and shall be considered in addition to any such sources of funding.

AGREEMENT made between the above named School District and the Owner(s) as identified in the City of Redmond Oregon Annexation Agreement to which this is Exhibit 4, whereby the named Owner(s) shall contribute the sum of Three hundred dollars ($300.00) for every unit of residential construction, fifty-five dollars ($55.00) for every apartment unit, and twenty cents ($0.20) per square foot of commercial space, built or constructed by the Owner(s). The payment of this contribution shall be made at the time the City of Redmond Oregon issues a building permit for the said construction.

WHEREAS, the Redmond Oregon School District is a public entity, as thus qualifies as a charitable organization under the Internal Revenue Code; and has as its primary purpose public education, it from time to time solicits and otherwise receives gifts and contributions from private citizens and companies. This donation by the Owner(s) will be made to the School District to help with the cost of land purchase as described above.

NOW, THEREFORE, in consideration of the foregoing, the Owner(s) hereby agrees to give, donate, contribute, transfer and deliver to the Redmond Oregon School District the Total Contribution set forth above, which shall be payable as set forth above, as a charitable gift and contribution (to the extent permitted by the state and federal tax codes) to be used for the purpose as forth above and shall be binding on the Owner(s) successors and assigns.