

THIS IS A DRAFT AND WILL BE REPLACED BY THE FINAL AGREEMENT ADOPTED BY CITY COUNCIL.

STATE OF TEXAS § Contract for Provision of Services
§ in Lieu of Annexation
COUNTY OF BEXAR § Texas Local Government Code § 43.0563

DEVELOPMENT AGREEMENT

THIS AGREEMENT is made and effective this ____ day of _____, 2013, by and between the City of San Antonio, Texas, a home rule municipal corporation of the State of Texas located within Bexar County, Texas (hereinafter referred to as “CITY”) and Southwest Independent School District hereinafter called "the DISTRICT ", acting by and through Lloyd Verstuyft, Ed.D, Superintendent of Schools hereinafter called “Superintendent”, collectively “the PARTIES” and is as follows:

WHEREAS, the DISTRICT’S property, an area approximately 204.203 acres located near Fischer Road and Somerset Road, more specifically described within **Exhibit A**, hereinafter called "the PROPERTY", is located within the extraterritorial jurisdiction of the City and is subject to municipal annexation; and

WHEREAS, the PROPERTY is owned by the DISTRICT and is the site for two future schools currently in the planning stage of development; and

WHEREAS, the Texas Local Government Code § 43.0563 provides that the CITY may enter into a development agreement with the DISTRICT; and

WHEREAS, the CITY has notified the DISTRICT of its intent to annex the PROPERTY and has offered to enter into an agreement guaranteeing the continued extraterritorial status of the PROPERTY upon the terms and conditions hereinafter provided; and

WHEREAS, the CITY desires that any development of the PROPERTY be in conformance with the CITY’S Comprehensive Plan; and

WHEREAS, the DISTRICT desires to enter into this AGREEMENT to secure the continued extraterritorial status of the PROPERTY:

NOW THEREFORE, in exchange for the mutual covenants, conditions and promises contained herein, CITY and DISTRICT agree as follows:

I. CONSIDERATION

As consideration for CITY'S consent not to annex the PROPERTY for the term of this AGREEMENT, the DISTRICT agrees to voluntarily comply with the CITY'S Comprehensive Plan and certain regulations and restrictive covenants that limit and restrict the manner in which the PROPERTY will be used and developed and consent to voluntary annexation of the PROPERTY, in accordance with the terms set forth in this AGREEMENT.

II. TERM

This AGREEMENT shall terminate three years after its effective date or upon annexation of the PROPERTY in conformance with this AGREEMENT and Section 43.052(h) of the Texas Local Government Code, whichever comes first. Upon termination, the DISTRICT and the CITY may extend the AGREEMENT upon written mutual consent or the CITY may annex the PROPERTY, either in whole or in part or for full or limited purposes, and such annexation shall be deemed to be with the consent of the DISTRICT.

III. DISTRICT'S CONSENT TO ANNEXATION

The DISTRICT hereby agrees that this AGREEMENT constitutes a voluntary petition to the CITY. The CITY in its sole discretion may annex the PROPERTY for full purposes under the provisions of Section 43.052(h) of the Texas Local Government Code on or after November 30, 2016. The CITY is not obligated to annex the PROPERTY for full purposes on November 30, 2016 or at any other time. To accomplish such annexation, the CITY will not need to take the following actions, all of which are waived by the DISTRICT:

- a) adopt or amend an annexation plan to include the PROPERTY;
- b) give notice to any service providers in the area of the PROPERTY;
- c) compile an inventory of services provided to the area by both public and private entities prior to the CITY'S annexation or make such inventory available for public inspection;
- d) complete a service plan that provides for the extension of full municipal services to the PROPERTY, other than the Service Plan;
- e) hold any public hearings; and
- f) undertake any negotiations for provision of services to the PROPERTY.

The DISTRICT confirms and agrees that as the sole owner of the PROPERTY as of the effective date, such voluntary petition may not be revoked by the DISTRICT, except as provided by this AGREEMENT, and is intended to be and shall be binding upon the DISTRICT and its successors in interest in ownership of any right, title or interest in and to the PROPERTY or any part thereof.

IV. CONTINUATION OF EXTRATERRITORIAL STATUS.

The PROPERTY shall not be annexed and shall remain in the extraterritorial jurisdiction of the CITY as long as this AGREEMENT is effective, the PROPERTY is not subdivided, the PROPERTY continues to be used solely for educational purposes, and the DISTRICT is not in violation of this AGREEMENT. This provision does not prohibit annexation with the consent of the DISTRICT as provided in this contract.

V. ANNEXATION UPON SUBDIVISION OR CHANGE OF USE.

This AGREEMENT is void if the PROPERTY ceases to be used solely for educational purposes. The CITY may then annex either in whole or in part, and such annexation shall be deemed to be with the consent of the DISTRICT.

VI. INSPECTION PROCESS

Bexar County shall be the building authority for this project, with the City performing inspections as stated below. CITY shall inspect projects in accordance with the 2009 International Building, Mechanical, and Plumbing Codes and National Electrical Code as adopted by Bexar County, Texas. The fee for services shall be \$50.00 for each inspection. The DISTRICT shall provide copies of any and all County-approved construction documents for CITY retention. CITY shall inspect at the following stages of construction:

- a) Rough-in/Framing inspections for the building, mechanical, electrical and plumbing trades; and
- b) Final inspection for the building, mechanical, electrical and plumbing trades; and
- c) Final Report of Special Inspections shall be submitted to the CITY from the Registered Design Professional in Responsible Charge, (RDPiRC). The final report written by the RDPiRC documenting all of the required special inspections, the special inspectors, and the corrective action taken for any discrepancies noted in the inspections shall be included in the report.

VII. AGREEMENT TO PROVIDE TRAFFIC CONTROL DEVICES

DISTRICT agrees to fully fund traffic control devices, including signs, signals, flashing beacons and pavement markings, when warranted. This provision supersedes any provision to the contrary in the Interlocal Agreement between CITY and DISTRICT dated January 12, 2010.

VIII. AGREEMENT IS A COVENANT RUNNING WITH THE LAND

This AGREEMENT shall be recorded in the Real Property Records of the applicable county and shall be a covenant running with the land binding upon all parties having any right, title or interest in the PROPERTY or any part thereof, including their heirs, successors and assigns, and shall inure to the benefit of the owners of the PROPERTY and to the CITY. This AGREEMENT may not be revised or amended without the written consent of both parties.

IX. NOTICE OF SALE OF THE PROPERTY.

Prior to the sale or conveyance of any portion of the PROPERTY, the DISTRICT shall give written notice and a copy of this AGREEMENT to the prospective purchaser or grantee and shall provide a copy of such disclosure to the CITY.

X. FORM AND DELIVERY OF NOTICE

Any notice required or permitted under this AGREEMENT shall be in writing and shall be delivered by certified US mail. Notice to the DISTRICT may be addressed to Superintendent of Schools and to the CITY at the address indicated below. If more than one entity is named in this AGREEMENT, service of any notice on any one of the entities shall be deemed service on all entities.

CITY:

John Dugan, Planning Director
City of San Antonio
PO Box 839966
San Antonio, Texas 78283-3966
Facsimile Number: 210-207-5480

DISTRICT:

Lloyd Verstuyft, Ed.D
Superintendent of Schools
Southwest Independent School District
11914 Dragon Lane
San Antonio, Texas 78252-2647
Facsimile Number: 210-622-4331

XI. AUTHORIZATION

DISTRICT is duly and legally authorized to enter into this AGREEMENT and has complied with all laws, rules, regulations, charter provision and bylaws relating to their corporate existence, and authority to act, and the undersigned representative is authorized to act on behalf of and bind DISTRICT to the terms of this AGREEMENT. DISTRICT has provided to CITY, on or prior to the Effective Date, a certified copy of a resolution of their respective Board of Directors, partners or governing body, if required by law, authorizing DISTRICT'S execution of this AGREEMENT through their representatives, together with documents evidencing DISTRICT'S good standing and authority to transact business in the State of Texas. DISTRICT has all requisite power to perform all of their obligations under this AGREEMENT. The execution of this AGREEMENT by DISTRICT does not require any consent or approval that has not been obtained, including without limitation, the consent or approval of any Governmental Authority.

XII. ENFORCEMENT

This AGREEMENT may be enforced by DISTRICT or CITY by any proceeding at law or in equity. Failure to do so shall not be deemed a waiver to enforce the AGREEMENT thereafter.

XIII. PROVISIONS SEVERABLE

If any provision contained in this AGREEMENT is held unconstitutional, invalid or unenforceable, then the remaining provisions shall be deemed severable and shall remain in full force and effect.

XIV. GOVERNMENTAL POWERS

It is understood that by execution of this AGREEMENT, that neither the CITY nor the District waives or surrenders any of its governmental powers.

XV. CAPTIONS

Captions and headings used in this AGREEMENT are for reference purposes only and shall not be deemed a part of this AGREEMENT.

XVI. MODIFICATION OF AGREEMENT

This AGREEMENT cannot be modified or amended without the written consent of all the parties hereto and attached and made a part of this AGREEMENT.

XVII. GOVERNING LAW AND VENUE

Venue shall be in the state courts located in Bexar County, Texas and construed in conformity with the laws of the State of Texas.

IN WITNESS WHEREOF, the PARTIES have signed and executed this AGREEMENT effective as of the date first set forth above.

[SIGNATURE AND ACKNOWLEDGEMENTS ON FOLLOWING PAGE]

CITY OF SAN ANTONIO

By: _____

Name: John Dugan

Title: Planning Director

The DISTRICT(s)

By: _____

Print Name(s): Lloyd Verstuyft, Ed.D

Title(s): Superintendent of Schools

**State of Texas
County of Bexar**

This instrument was acknowledged before me on the ____ day of _____, 2013, by John Dugan, Planning Director of the City of San Antonio, a Texas municipal corporation, on behalf of said corporation.

**State of Texas
County of Bexar**

This instrument was acknowledged before me on the ____ day of _____, 2013, by Lloyd Verstuyft, Ed.D, Superintendent of Schools, Southwest Independent School District.

Notary Public, State of Texas
(Personalized Seal)

Notary Public, State of Texas
(Personalized Seal)

(Print Name of Notary Public here)

(Print Name of Notary Public here)

My commission expires: _____

My commission expires: _____

After Recording Return to:
Nina Nixon-Méndez, Planning Manager
City of San Antonio
Department of Planning and Community Development
PO Box 839966
San Antonio, TX 78283-3966