

AGREEMENT FOR SERVICES IN LIEU OF ANNEXATION

AMONG

CITY OF SAN ANTONIO, TEXAS

AND

**Ryan Clark, Jean Dailey, David Diharce, Michael Soulek and Raymond Wilkinson AS
REPRESENTATIVES OF THE 281 NORTH RESIDENTIAL ANNEXATION AREA,
APPOINTED BY THE BEXAR COUNTY COMMISSIONERS COURT**

DATE: March 2, 2017

AGREEMENT FOR SERVICES IN LIEU OF ANNEXATION

This AGREEMENT FOR SERVICES IN LIEU OF ANNEXATION is made and entered into as of the Effective Date (herein defined), by and between the **CITY OF SAN ANTONIO, TEXAS**, a Texas municipal corporation (the “City”), **Ryan Clark, Jean Dailey, David Diharce, Michael Soulek and Raymond Wilkinson** (“**REPRESENTATIVES**” collectively in their capacity as appointed representatives pursuant to *Section 43.0562(b), Texas Local Government Code*); and

RECITALS

A. The 281 North Residential Annexation Area consists of approximately 7,050 acres as more particularly described in Exhibit A (the “*Land*”), which is attached hereto and is incorporated herein for all purposes.

B. By Ordinance 2016-09-08-0674, dated September 8, 2016, the San Antonio City Council adopted an amendment to its municipal annexation plan (the “*Annexation Plan*”) in accordance with *Section 43.052, et. seq., Texas Local Government Code*, that included the Land. Pursuant to such Annexation Plan, the City issued written notice to each property owner of the Land as shown on the Bexar Appraisal District records, and to all public entities and private entities providing services to the Land.

C. Based in part upon the responses to the written notices provided to the public and private entities providing services to the Land, the City prepared an inventory of services and facilities which the City would be required to provide following annexation of the Land by the City. Consistent with the inventory, the City has prepared and made available to the public the Service Plan for the provision of full municipal services to the Land in accordance with *Section 43.056, Texas Local Government Code*. Further, in accordance with *Section 43.0561, Texas Local Government Code*, City has conducted two public hearings concerning the Service Plan at which persons interested in the Annexation Plan and Service Plan were given an opportunity to be heard.

D. Pursuant to *Section 43.0562(b) and Section 43.0563, Texas Local Government Code*, the Commissioners Court of Bexar County has appointed the Representatives for the purposes of negotiating for the provision of services to the Land upon annexation or for the provision of services to the Land in lieu of annexation.

E. City and Representatives enter into this Agreement to evidence their agreement concerning the provision of services to the Land in lieu of annexation, to establish permissible land uses, to require compliance with certain municipal ordinances in lieu of annexation, and to establish a date for the voluntary annexation of the Land.

NOW, THEREFORE, for and in consideration of the mutual agreements, covenants and conditions contained herein, and other good and valuable consideration, the parties hereto agree as follows:

DEFINITIONS AND INTERPRETATIONS

Unless the context requires otherwise, and in addition to the terms defined above, each of the following terms and phrases used in this Agreement has the meaning set forth below, unless the context in which such term or phrase is used clearly indicates otherwise:

“*Agreement*” means this Agreement for Services in Lieu of Annexation.

“*Annexation Plan*” means the annexation plan as defined in the Recitals.

“*City Code*” means the City Code of the City of San Antonio, Texas.

“*City Council*” means the City Council of City of San Antonio, Texas, or any successor governing body.

“*City Representative*” means the City Manager or her designated representative.

“*Effective Date of this Agreement*” means the Effective Date of the City Ordinance approving this Agreement.

“*ETJ*” means the extraterritorial jurisdiction of City established pursuant to the *Texas Local Government Code*, as amended.

“*Governmental Authority*” means any applicable federal, state, county or city governmental entity, authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof) with jurisdiction over the Land or its inhabitants.

“*Governmental Functions*” means any regulatory, legislative, permitting, zoning, enforcement (including police power), licensing or other functions which City is authorized or required to perform in its capacity as a Governmental Authority.

“*Governmental Rules*” means any statute, law, treaty, rule, code, ordinance, regulation,

permit, official interpretation, certificate or of any Governmental Authority, or any judgment, decision, decree, injunction, writ, order or like action of any court, arbitrator or other Governmental Authority.

“*Official Records*” means the Official Public Records of Real Property of Bexar County, Texas.

“*Party*” or “*Parties*” means a party or the parties to this Agreement, being the City and the Representatives.

“*State*” means the State of Texas.

“*Term*” means a period of time commencing upon the Effective Date and ending on December 31, 2033.

“*Unified Development Code*” or “*UDC*” means Chapter 35 of the City Code of the City of San Antonio, entitled the “Unified Development Code,” as it exists on the Effective Date of this Agreement and any future amendments to the Unified Development Code enacted during the Term of this Agreement.

ARTICLE 1. TERM; PRELIMINARY MATTERS

1.1 **Term-commencement.** This Agreement shall commence on the Effective Date of the Ordinance in which it is approved.

1.2 **Term-termination.** This Agreement shall continue in effect until the expiration of the Term. In the event this Agreement does not take effect due to the failure to commence under Section 1.1, or is terminated by mutual agreement of the Parties or other event, the Parties shall each promptly execute a document confirming the termination or lack of effect, as applicable, of this Agreement.

1.3 **Consideration.** As consideration for City’s consent not to annex the Land for the term of this Agreement, the Owners agree to voluntarily comply with various City ordinances and regulations and restrictive covenants that limit and restrict the manner in which the Land will be used and developed and consent to voluntary annexation of the Land, in accordance with the terms below.

ARTICLE 2. ANNEXATION, DISANNEXATION, ANNEXATION PLAN

2.1 **Deferred Annexation Period.** Subject to the conditions set forth in this Agreement, City agrees to continue the extraterritorial status of the Land and its immunity from annexation by City until this Agreement has terminated.

2.2 **Extraterritorial Jurisdiction.** The Parties agree that during the Term of this Agreement the Area shall be and remain within the Extraterritorial Jurisdiction (“ETJ”) of the City pursuant to Texas statute.

2.3 **Incorporation or Creation of Governmental Entity.** There shall be no attempt to create a governmental entity or incorporate a municipality within the Land during the term of

the agreement without the consent of the City. The City may take any necessary actions to oppose or prohibit the formation of any governmental entity within any part of its ETJ without violating or terminating this Agreement.

2.4 Amendment to the Annexation Plan. Contemporaneous with the approval of this Agreement the City will amend the Annexation Plan to remove the Land from the Annexation Plan and it shall not be thereafter added to the Annexation Plan so as to permit the involuntary annexation of the Land prior to the end of the Term. Nothing herein shall prohibit the City from amending the Annexation Plan during the Term as necessary to allow for the annexation of the Land if such annexation would be effective after the expiration of the Term or the Termination of this Agreement.

2.5 Consent to annexation. Each owner of Land covered by this Agreement by and through the Representatives consent to annexation by the City to occur at the end of the term or upon a termination event. During the term, the City may take all necessary steps to accomplish annexation of the land upon the termination of this Agreement. This Agreement constitutes consent to the City, acting in the City's sole discretion, for annexation of the Land for full purposes under the provisions of Section 43.052(h) of the Texas Local Government Code on or after December 31, 2033. The City is not obligated to annex the Property for full purposes on December 31, 2033 or at any other time. To accomplish such annexation, the City will not need to take the following actions, all of which are waived:

- adopt or amend an annexation plan to include the Land;
- give notice to any service providers in the area of the Land;
- 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;
- complete a service plan that provides for the extension of full municipal services to the Property, other than the Service Plan;
- hold any public hearings; and
- undertake any negotiations for provision of services to the Land.

ARTICLE 3. LAND USE CONTROLS AND ORDINANCES

3.1 Application of City of San Antonio Ordinances. At all times during the Term, the Land shall be a part of the ETJ of the City. The Land shall be subject to ordinances of the City that are otherwise effective in the City's ETJ during the Term.

3.2 City Code provisions applicable throughout Term. The following Chapters, and all subsequent amendments, replacement ordinances, and related technical and illustrative manuals to these ordinances any amendments to these Chapters of the City Code shall apply to the Land during the entire Term:

- Chapter 6, Buildings
- Chapter 10, Building-Related Codes (Accessory uses permitted by Chapter 35, Section 35-370 of less than 500 square feet are exempt from the permit requirements of Chapter 10, Section 10-6)
- Chapter 11, Fire Prevention, Articles II and III including references to Chapter 16, Licenses and Business Regulations pertaining to Hazardous Materials Permits

- Chapter 28, Signs
- Chapter 34, Water and Sewers
- Chapter 35, Unified Development Code

3.3 **Zoning.** Zoning for new non-single family uses is required in accordance with the Unified Development Code. Single family uses are not subject to zoning. Owners shall submit an application for a zoning request for consideration by the Zoning Commission and approval by City Council in accordance with the Unified Development Code. Should the proposed zoning require a plan amendment, an owner shall also submit an application for a plan amendment for consideration by the Planning Commission and approval by City Council. Legally permitted uses that existed at the time of the effective date of this agreement may continue, but may not expand, unless the property is zoned for that use.

3.4 **Prohibited uses over the Edwards Aquifer Recharge Zone.** Those uses not permitted by right in the Edwards Aquifer Recharge Zone as referenced in the UDC Sec. 35-311, Use Regulations, Tables 311-1 and 311-2 shall be prohibited. Legally permitted uses that existed at the time of the effective date of this agreement may continue, but may not expand.

3.5 **Applicability to Developed Single Family Lots.** Section 3.2 of this Agreement shall not apply to structures on a platted lot with a completed single-family residence existing on the lot as of the Effective Date of this Agreement. Section 3.2 of this Agreement shall not apply to any structure legally under construction as of the Effective Date of this Agreement provided that the construction is complete within two (2) years of the Effective Date of this Agreement.

3.6 **Inspections.** As part of the development (plat) review, the City shall conduct inspections for streets and drainage as if the area was within the City limits and City Fire Inspectors shall conduct all reviews for necessary Fire Flow and fire hydrant spacing.

3.7 **Plat Review.** The City shall be the sole plat reviewing entity for Bexar County, in accordance with the Interlocal Agreement between Bexar County and the City.

3.8 **Development Fees.** The Owners shall pay to the City all application, plan review, plat review, and filing fees applicable to the approval of subdivision plats and in the ETJ and all fees (including, without limitation, building permits, impact fees, traffic impact analysis fees, water/wastewater impact fees, water supply fees, general benefit fees and storm water management fees) assessed with respect to development and construction at the times and in the amounts set forth in the UDC.

ARTICLE 4. GOVERNMENTAL FUNCTIONS

No Limitation on City's Governmental Functions. The Parties hereto acknowledge that nothing in this Agreement shall be binding upon, constitute a waiver by or estop City from exercising in good faith any of its rights, powers or duties in its required Governmental Functions within its full purpose city limits, other areas annexed for limited purposes or within its ETJ.

ARTICLE 5. MISCELLANEOUS

5.1 **Beneficiaries.** This Agreement shall bind and inure to the benefit of the Parties and their respective successors and permitted assigns, including (without implied limitation) each owner of property in the Land covered by this Agreement.

5.2 **Headings.** The headings of the various articles, sections and other subdivisions of this Agreement are for convenience of reference only and shall not modify, define or limit any of the terms or provisions of this Agreement.

5.3 **Notices.** The Parties contemplate that they will engage in informal communications with respect to the subject matter of this Agreement. However, any formal notices or other communications required or permitted to be given by one Party to another by this Agreement shall be given in writing addressed to the Party to be notified at the address set forth below for such Party, (a) by delivering the same in person, (b) by depositing the same in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the Party to be notified, or (c) by depositing the same with a nationally recognized courier service guaranteeing "next day delivery," addressed to the Party to be notified, or (d) by sending the same by telefax with confirming copy sent by mail. Notice deposited in the United States mail in the manner hereinabove described shall be deemed effective from and after the date following such deposit. Notice given in any other manner shall be effective only if and when received by the Party to be notified. For the purposes of notice, the addresses of the Parties, until changed as provided below, shall be as follows:

CITY:

City of San Antonio
100 Military Plaza, 1st Floor PO Box 839966
San Antonio, Texas 78283-3966
Attention: Director of Planning and Community Development

281 NORTH RESIDENTIAL REPRESENTATIVES:

Ryan Clark

Jean Dailey

David Diharce

Michael Soulek

Raymond Wilkinson

With copies to:

City Clerk
100 Military Plaza, 2nd Floor
San Antonio, Texas 78205

City Attorney
100 Military Plaza, 3rd Floor
San Antonio, Texas 78205

Bexar County Commissioner's Court
100 Dolorosa, Suite 1.20
San Antonio, Texas 78205

Rob Killen
Kaufman & Killen, Inc.
100 West Houston Street, Suite 1250
San Antonio, Texas 78205

The Parties may, from time to time, change their respective addresses, and each has the right to specify as its address any other address within the United States of America by giving at least five days written notice to the other Parties.

5.4 **Business Days.** If any date or any period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating the notice shall be extended to the first business day following such Saturday, Sunday, or legal holiday.

5.5 **Time.** Time is of the essence in all things pertaining to the performance of this Agreement.

5.6 **Severability.** If any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws such that the legitimate expectations of any Party hereunder is incapable of being realized and cannot be reformed to validly and legally meet such thwarted expectations, then, and only in that event, it is the intention of the Parties hereto that this Agreement shall terminate in all respects. In any other event, it is the intention of the Parties that the remainder of this Agreement will not be affected.

5.7 **Waiver.** Any failure by a Party hereto to insist upon strict performance by the other Party of any material provision of this Agreement shall not be deemed a waiver thereof or of any other provision hereof, and such Party will have the right at any time thereafter to insist upon strict performance of any and all of the provisions of this Agreement.

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

5.9 **Further Documents.** The Parties agree that at any time after execution of this Agreement, they will, upon request of another Party, execute and deliver such further documents and do such further acts and things as any other Party may reasonably request in order to effectuate the terms of this Agreement.

5.10 **Incorporation of Exhibits and Other Documents by Reference.** All Exhibits and other documents attached to or referred to in this Agreement are incorporated herein by reference for

the purposes set forth in this Agreement.

5.11 Governing Law; Venue. THIS AGREEMENT, AND THE ACTIONS OF THE PARTIES HEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS (EXCLUDING PRINCIPLES OF CONFLICTS OF LAW). VENUE SHALL BE IN BEXAR COUNTY, TEXAS.

5.12 No Party Deemed Drafter. Each Party has thoroughly reviewed and revised this Agreement and has had the advice of counsel prior to execution hereof, and the Parties agree that none of them shall be deemed to be the drafter thereof.

5.13 Use of Defined Terms. Any defined term used in the plural shall refer to all members of the relevant class, and any defined term used in the singular shall refer to any number of members of the relevant class. Any reference to this Agreement or any Exhibits hereto and any other instruments, documents and agreements shall include this Agreement, exhibits and other instruments, documents and agreements as originally executed or existed and as the same may from time to time be supplemented, modified or amended.

5.14 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but taken together shall constitute only one document. The Parties agree to circulate for execution all executed such counterparts in order that each Party may obtain a counterpart executed by all Parties.

5.15 Entire Agreement, Amendment, Survival. This Agreement, together with the exhibits hereto and the documents referenced herein, constitute the entire agreement of the Parties hereto with respect to the subject matter hereof and supersedes all prior written and oral agreements and understandings with respect to such subject matter. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by the Party against which the enforcement of the termination, amendment, supplement, waiver or modification shall be sought, and in the case of City, approved by action of City Council. All of the representations and warranties of each Party contained in this Agreement shall survive the execution, delivery and acceptance of this Agreement and any termination hereof. Unless otherwise set forth in this Agreement, all agreements of the Parties contained in this Agreement which must survive to afford each respective Party the anticipated benefits of such agreements shall likewise survive, whether or not identified in this Agreement to so survive.

THEREFORE, IN WITNESS WHEREOF, the Parties have executed this Agreement this ____ day of March, 2017.

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[signatures appear on following pages]