

**AGREEMENT FOR SERVICES
IN LIEU OF ANNEXATION**

AMONG

CITY OF SAN ANTONIO, TEXAS

AND

**Glenn W. W. Gross, M.D., Michael W. Quinn, Raymond Rossman, Judith A. Current, and David A. Manny, AS REPRESENTATIVES OF THE
TIMBERWOOD PARK ANNEXATION AREA, APPOINTED BY THE
BEXAR COUNTY COMMISSIONERS COURT**

DATE: February 1, 2007

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 municipal corporation, Glenn W. W. Gross, M.D., Michael W. Quinn, Raymond Rossman, Judith A. Current, and David A. Manny ("**REPRESENTATIVES**") collectively in their capacity as appointed representatives pursuant to *Section 43.0562(b), Texas Local Government Code*; and

RECITALS

- A. The Timberwood Park Annexation Area consists of approximately 4,345 acres as more particularly described in Exhibit A, which is attached hereto and is incorporated herein for all purposes
- B. By Resolution 2005-23-25, dated May 26, 2005, the 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*, which covers the Land as defined below. Pursuant to such Annexation Plan, 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, City prepared an inventory of services and facilities which the City would be required to provide following annexation of the Land by City. Consistent with the inventory, 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), 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, in accordance with *Section 43.0563, Texas Local Government Code*.

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

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 Agreement.

"Annexation Plan" means as defined in the Recitals.

"City" means City of San Antonio, Texas, a home rule city under Article 11, Section 5, of the Texas Constitution a municipal corporation primarily situated in Bexar County, Texas.

"City Code" means the City Code of San Antonio, Texas, enacted by the City Council, which constitutes the code of civil and criminal ordinances of City.

"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.

"City's Ordinance" means the Ordinance when adopted that approves this Agreement.

"Effective Date of this Agreement" means the date computed in compliance with Section 1.1.

"ETJ" means the extraterritorial jurisdiction of City established pursuant to *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.

“Land” means 4345 acres of land, more or less as described in Exhibit “A”.

“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 City and the Representatives.

“Representatives” means the individuals named on page one of this Agreement, collectively, acting as the representatives appointed by the County’s Commissioners Court.

“State” means the State of Texas.

“Term” means a period of time commencing upon the Effective Date and ending on December 30, 2033.

“Termination Event” means those events described in Section 4.1.1 and Section 4.1.2 of this Agreement which give rise to the automatic or optional termination of this Agreement.

“Unified Development Code” or **“UDC”** means Chapter 35, San Antonio Municipal Code, entitled the “Unified Development Code,” as adopted by City 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 last to occur of:
1.1.1 The Effective Date of the Ordinance in which it is approved;
1.1.2 The day after the date of receipt by the City of San Antonio from the US Justice Department of preclearance under applicable provisions of the federal Voting Rights Act of the proposed disannexation of the Timberwood Park Annexation Area from limited purpose annexation status; or
1.1.3 If, but only if, this Agreement or the proposed disannexation is challenged in a court of competent jurisdiction under state or federal law prior to the occurrence of 1.1.1 or 1.1.2, above, then on the effective date of the final judgment or court order in which this Agreement or the proposed disannexation is/are upheld as valid.

1.2 **Term--termination.** This Agreement shall continue in effect until the earlier to occur of (i) the expiration of the Term or (ii) the termination of the Agreement pursuant to

a Termination Event. In the event this Agreement does not take effect due to termination pursuant to the provisions hereof or 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.

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 Disannexation from Limited Purpose Status. By separate action the City of San Antonio shall consider the disannexation of the Timberwood Park Annexation Area from limited purpose status on terms consistent with this Agreement, said separate action to occur within two weeks following passage of the ordinance approving this agreement.

2.3 Extraterritorial Jurisdiction. The Parties agree that during the Term of this Agreement the Area shall be and remain a portion of the Extraterritorial Jurisdiction of the City of San Antonio pursuant to Texas statute. The City of San Antonio 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. Concurrently with the consideration of an Ordinance considering the disannexation of the Timberwood Park Annexation Area from limited purpose status, the City of San Antonio shall consider an Ordinance or Resolution amending the Annexation Plan to remove the Timberwood Park Annexation Area from the Annexation Plan and it shall not be thereafter added to the Annexation Plan so as to permit the involuntary annexation of the Timberwood Park Annexation Area 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 area if such annexation would be effective after the expiration of the Term or the Termination of this Agreement.

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 Extraterritorial Jurisdiction ("ETJ") of the City of San Antonio. The Land shall be subject to ordinances of the City of San Antonio that are otherwise effective in the City's ETJ during the Term.

3.2 City Code provisions applicable throughout Term. The following Chapters, and any amendments to these Chapters, of the City Code shall apply during the entire Term, to the extent they are effective in the City's ETJ as permitted by state law:

3.2.1 Chapter 34: San Antonio Water and Sewers

3.2.2 Chapter 35, Unified Development Code, save and except Article III, Zoning.

3.3. City Code from and after the first day after the third anniversary of the Effective Date of this Agreement. Effective on and after the third anniversary of the Effective date of this Agreement; the following Chapters, and any amendments to these Chapters, of the City Code shall apply during the remainder of the Term:

3.3.1 Chapter 6, Building and Mechanical Code

3.3.2 Chapter 10, Electricity

3.3.3 Chapter 24, Plumbing

3.3.4 Chapter 11, Fire but only as to construction requirements.

ARTICLE 4. TERMINATION

4.1 Termination Events. City may terminate before the end of the Term of this Agreement if any one or more of the following events occur:

4.1.1 The United States Justice Department refuses to issue its preclearance under the federal Voting Rights Act.

4.1.2 A court of competent jurisdiction enters a final, non-appealable order disallowing the disannexation of the area as contemplated by Article 2.

4.2 City will provide notice of Termination of this Agreement prior to the end of the Term by sending a written notice to property owners of record using the most current certified tax rolls from the county appraisal district and to the Bexar County Commissioner's Court.

4.3 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 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

TIMBERWOOD PARK:

Glenn W.W. Gross
345 W. Oak Estates Dr.
San Antonio, TX 78258

Ray Rossman
611 Midnight Dr.
San Antonio, TX 78258

Mike Quinn
1302 Midnight Dr.
San Antonio, Texas 78258

David A. Manny
1146 Flagstone Dr.
San Antonio, TX 78258

Judith A. Current
25915 Timberline Drive
San Antonio, Texas 78258

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, and

Bexar County Commissioner's Court
100 Dolorosa, Suite 1.20
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 11 day of February, 2007.

[signatures appear on following pages]

CITY OF SAN ANTONIO

Attest:

Attesty. [Signature]
City Clerk



[Signature]
City Manager

Approved as to Form:

[Signature]
City Attorney

Representatives:

[Signature]
Glenn W.W. Gross

[Signature]
RAYMOND A. ROSSMAN

[Signature]
Michael W. Quinn

[Signature]
Judith A. Current

[Signature]
David A. Manny

EXHIBITS:

A: Description of the Land