

AN ORDINANCE 2010-12-09-1047

APPROVING FIVE-YEAR INDUSTRIAL DISTRICT NON-ANNEXATION AND BASIC FIRE SERVICES AGREEMENTS WITH CITICORP DATA SYSTEMS INCORPORATED.

* * * * *

WHEREAS, in 2004, the City and Citicorp Data Systems Incorporated (“Citicorp”) entered into a renewal of Industrial District Non-Annexation and Basic Fire Services Agreements (the “Agreements”) for Citicorp’s property located in a designated Industrial District pursuant to §42.044 of the Texas Local Government Code; and

WHEREAS, by the terms of the Agreements, the City agreed to refrain from annexing the real property where Citicorp is located for a period of six years and to provide fire protection services to Citicorp for an annual fee during that time period; and

WHEREAS, the former Agreements are due to expire and Citicorp desires to enter into new Agreements for an additional five (5) year period, to expire on December 31, 2015; and

WHEREAS, the real property where Citicorp is located has not been included in the City’s proposed annexation plans and the City has no plans to do so within the next five years; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. City Council approves the Industrial District Non-Annexation and Basic Fire Services Agreements with Citicorp Data Systems Incorporated, copies of which are attached hereto in substantially final form as Attachment I.

SECTION 2. The City Manager or her designee is authorized to execute the Agreements approved in Section 1.

SECTION 3. Funds generated by this Ordinance will be deposited into Fund 11001000 per the table below.

Amount	General Ledger	Internal Order
\$1,500.00	4401290	216000000000
\$175,000.00	4404141	220000000011
Total Amount: \$176,500.00		

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Chief Financial Officer (CFO), City of San Antonio. The CFO may, subject to concurrence by the City Manager or the City Manager’s designee, correct allocations to specific Cost Centers, WBS

Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

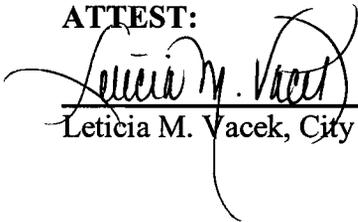
SECTION 5. This Ordinance shall be effective immediately upon receiving at least eight (8) affirmative votes; in the event that less than eight (8) affirmative votes are received, then this Ordinance shall be effective on the tenth (10th) day after passage.

PASSED AND APPROVED this 9th day of December, 2010.



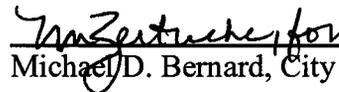
M A Y O R
Julián Castro

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Michael D. Bernard, City Attorney



Request for
**COUNCIL
ACTION**

City of San Antonio



Agenda Voting Results - 39C

Name:	6, 7, 8, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23A, 23B, 25, 27A, 27B, 29, 30, 31, 34, 35, 36, 37, 38A, 38B, 39A, 39B, 39C, 40A, 40B, 41, 42						
Date:	12/09/2010						
Time:	10:12:31 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance approving a five-year Industrial District Non-Annexation and Basic Fire Services Agreement with Citicorp Data Systems Incorporated.						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x				
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6	x					
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				x
Elisa Chan	District 9		x				
John G. Clamp	District 10		x			x	

ATTACHMENT I

STATE OF TEXAS

COUNTY OF BEXAR

INDUSTRIAL DISTRICT NON-ANNEXATION AGREEMENT

This Industrial District Non-Annexation Agreement (hereinafter referred to as "Agreement") is made and entered into by and between the City of San Antonio (hereinafter referred to as "CITY"), a Texas Municipal Corporation, acting by and through its City Manager or designee, pursuant to Ordinance No. _____ dated _____, 2010, and Citicorp Data Systems Incorporated (hereinafter referred to as "CITICORP"), a company incorporated under the laws of the State of Delaware, acting by and through its duly authorized representatives; (collectively, the "Parties").

WHEREAS, CITICORP is the current owner of a 60 acre tract of land situated in Bexar and Medina Counties, Texas, which is more particularly described in Attachment I hereto, hereinafter referred to as the "Property") and which is located within the extraterritorial jurisdiction of the City of San Antonio, as that term is defined in Section 42.021 Extent of Extraterritorial Jurisdiction, Local Government Code, V.A.T.C.S., and was previously designated the CITICORP Industrial District (hereinafter referred to as "Industrial District"); and

WHEREAS, the Industrial District contract will expire on December 29, 2010, and CITICORP desires to continue its Industrial District designation and enter into this Agreement with CITY pursuant to Section 42.044 (d) and 42.044 (e) of the Local Government Code V.A.T.C.S., as amended; and

WHEREAS, it is to the mutual benefit of CITICORP and CITY that the Property not be annexed by CITY prior to the term specified in Section 1 herein; and

WHEREAS, the City Council of CITY finds that it is in the best interests of the CITY to enter into this Agreement with CITICORP; NOW THEREFORE,

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described:

SECTION 1. Term. CITY, subject to the conditions set out in this Agreement, guarantees the continuation of the extraterritorial status of the Property and its immunity from annexation by CITY for a conditioned period of time beginning with the execution of this Agreement and ending on December 31, 2015, unless terminated earlier pursuant to the provisions contained herein.

SECTION 2. CITICORP agrees to execute a "Petition for Annexation" upon execution of this Agreement, a copy of which is attached hereto and incorporated herein for all purposes as Attachment II.

SECTION 3. CITICORP agrees to maintain a minimum of 750 permanent full-time jobs within the Industrial District at its State Hwy. 211 financial services facility during the Term of this Agreement subject to *Section 19*. For purposes of this section, “jobs” shall mean a full-time position within CITICORP’s business activities at the Property site filled by an individual qualified for such position.

SECTION 4. CITICORP agrees that persons designated by CITY shall be provided reasonable access to and permitted to inspect all structures situated within the Industrial District to assure compliance with all applicable City Codes and ordinances, including regulations pertaining to the regulations enforced by the Texas Commission on Environmental Quality (the “TCEQ”).

SECTION 5. No waiver by CITY of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of CITY to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option.

SECTION 6. CITICORP agrees that the Property shall be for the exclusive use of a qualified targeted industry consistent with the City of San Antonio Tax Abatement Guidelines and Criteria and the City of San Antonio Unified Development Code.

SECTION 7. No act or omission of CITY shall in any manner impair or prejudice any right, power, privilege or remedy available to CITY hereunder or by law or in equity, such rights powers, privileges or remedies to be always specifically preserved hereby.

SECTION 8. If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws including, but not limited to, the City Charter, City Code or ordinances of the City of San Antonio, Texas then, and in that event, it is the intention of the Parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein.

SECTION 9. CITICORP and CITY shall enter into a Basic Fire Services Agreement which is authorized by Ordinance No. _____ passed by the City Council of the City of San Antonio, Texas on the ___ day of _____, 2010 (hereinafter referred to as the “Basic Fire Services Agreement”, attached hereto and incorporated herein for all purposes as Attachment III). The Basic Fire Services Agreement shall be subordinate to this Agreement; however, this Agreement and the Basic Fire Services Agreement shall begin and end on concurrent dates.

SECTION 10. CITICORP agrees that all land use and construction in the Industrial District shall comply with all applicable City Codes and regulation including TCEQ regulations. Prior to

commencement of construction of any structure in the Industrial District, CITICORP agrees to deliver plans certified by all engineers employed for such construction including, but not limited to, structural, mechanical and electrical engineers to CITY's Director of Building Inspections. Said certified plans shall indicate that the plans and specifications for the components of work for each engineer comply with all applicable provisions of City Codes and ordinances. Upon completion of each structure in the Industrial District, CITICORP shall deliver certificates to said Director from the architect, engineer(s), and/or construction manager duly licensed in the State of Texas, certifying that there has been such compliance in the construction of the completed structures. CITICORP shall pay CITY, in advance, a non-refundable processing and inspection fee for any new construction in an amount equal to the then-prevailing City building permit fee. Said fee shall be tendered to CITY along with the required completed engineer(s) certifications.

SECTION 11. CITICORP agrees to inform all project(s) managers, architects, engineers, prime contractors and subcontractors, in writing, that all site development plans and applicable permits will be obtained and all inspections applied for and approved as if the construction project was within the city limits of San Antonio, Texas.

SECTION 12. CITICORP will strongly encourage prime contractors and subcontractors to utilize qualified local labor and business including small, minority-, and women-owned business enterprises where feasible. The City's Small Business Office of the International and Economic Development Department shall provide assistance to prime contractors and subcontractors in identifying qualified small, minority-, and women-owned businesses.

SECTION 13. CITICORP agrees to provide CITY sixty (60) days written notice to CITY's Director of the International and Economic Development Department ("IEDD") of any pending sale or transfer of title to the Property that has been declared an Industrial District pursuant to this Agreement.

SECTION 14. CITICORP further agrees to include the following special provision in any deed or lease of the Property hereunder executed between CITICORP and any subsequent purchaser, successor and/or assigns:

"This conveyance (or where applicable, lease) is made and accepted and subject to the following special provisions:

_____ hereby assumes and promises to keep and perform the terms and conditions of that certain Industrial District Non-Annexation Agreement ("Agreement") and Basic Fire Services Agreement created amendatory thereof executed by the City of San Antonio and CITICORP Data Systems Incorporated which Industrial District Non-Annexation Agreement and Basic Fire Services Agreement are of record in the Real Property Records of Bexar County, Texas as to the parcels conveyed (or if applicable, leased) hereby. The CITY shall have, upon the expiration of the non-annexation time period, the right to exercise any or all of the following:

A. The right to refuse or to discontinue any municipal services to the parcel or parcels; and/or

B. the right to de-designate as a part of the Industrial District the parcels or parcels subject to these special provisions: “Any delay on the part of the City of San Antonio to exercise such rights shall not constitute a waiver of such rights. The remedies set out in the Industrial District Non-Annexation Agreement executed between the City of San Antonio and CITICORP Data Systems Incorporated are applicable to these special provisions. The above restriction shall be a covenant running with the land for the period of the above referenced Industrial District Non-Annexation Agreement.”

SECTION 15. This Section intentionally left blank.

SECTION 16. CITICORP agrees to follow all federal, state and local statutes, codes, ordinances and regulations pertaining to effluent discharges into a publicly-owned sanitary sewage collection system. CITICORP specifically agrees to comply with San Antonio Ordinance No. 57214 (Industrial Waste Ordinance) and San Antonio Ordinance No. 61422 (Schedule of Fees) or as said Ordinances may be amended.

SECTION 17. CITICORP further agrees to follow the requirements of the Federal Water Pollution Control Act of 1972 (PL92-500), as amended by the Clean Water Act of 1977 (PL95-217) or future amendments, which are applicable to users of a sewage collection system.

SECTION 18. CITICORP agrees to submit an annual report to the IEDD Director detailing new job creation within the Industrial District and new job creation at CITICORP’s other locations pursuant to this Agreement. This report shall be submitted not later than December 15th of each year of this Agreement.

SECTION 19. During the Term, CITY may declare a default if CITICORP fails to perform any term, condition or covenant contained in this Agreement. Should CITY determine that CITICORP is in default, CITY will notify CITICORP in writing at the address listed below in Section 22. If said default is not cured within sixty (60) calendar days from the date in such notice (hereinafter the “Cure Period”), then City Council shall have the right to:

- a. terminate this Agreement and the Basic Fire Service Agreement between CITICORP and CITY; and/or
- b. De-designate as part of the Industrial District the parcel or parcels of the Property to which CITICORP has failed to perform (the “De-Designated Parcels”). Such loss of designation shall render the De-Designated Parcels ineligible to receive fire fighting and fire protection services under the Basic Fire Services Agreement. Such loss of designation shall further render the De-Designated Parcels eligible for annexation.

However, CITY may extend the Cure Period if CITICORP commences to cure such default within the Cure Period and CITICORP is acting in “reasonable good faith” to diligently pursue such cure. CITY’s determination as to whether CITICORP is acting in “reasonable good faith” to diligently pursue such cure, in relation to employment and/or use of industry terms of this Agreement, will take into account the following considerations:

- 1) Unavoidable changes in market conditions resulting in lower employment levels;
- 2) Acts of God; and
- 3) Availability of qualified employees.

After the expiration of the above sixty (60) day cure period, City may make quarterly visits to the CITICORP's Property to determine if CITICORP is acting in "reasonable good faith" to remedy the employment and/or industry use non-compliance. If City determines that CITICORP is not acting in "reasonable good faith" based on the above considerations, then City shall have the right to terminate this Non-Annexation Agreement and the Basic Fire Services Agreement and annex the Property.

SECTION 20. In the event of loss of designation pursuant to Section 19(b) of this Agreement, and provided CITICORP has cured the failure to perform which caused de-designation and the parcel or parcels affected have not been annexed by CITY, then CITICORP may apply for re-designation of said parcel or parcels of the Industrial District subject to the same expiration date and Term regarding the "Petition for Annexation" as applicable in this Agreement.

SECTION 21. Should CITICORP's Tax Phase-In Agreement with Bexar County regarding this Property be terminated prior to its expiration date, CITICORP shall have the option to terminate this Agreement. If CITICORP exercises said option, City shall have the right to immediately annex the Property.

SECTION 22. For purposes of this Agreement, all official communications and notices among the Parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY:
Director
International and Economic Development Department
P.O. Box 839966
San Antonio, Texas 78283-3966

CITICORP:
Citicorp Data Systems Incorporated
100 Citibank Drive
San Antonio, Texas 78245-3214

With a copy to:

Citigroup Inc.
One Court Square, 45th Floor
Long Island City, NY 11120
Attn: General Counsel of Real Estate

SECTION 23. CITY agrees to file a copy of this Agreement, its attachments and authorizing Ordinance, within ten (10) days of Agreement execution, in the Real Property Records of Bexar

County, at CITICORP's own expense, and remit a copy of the certificate of this filing to CITICORP within ten (10) days of such filing.

SECTION 24. This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise expressly provided for herein.

SECTION 25. It is understood by the Parties to this Agreement that if CITY terminates this Agreement pursuant to the above provisions, said termination shall not require approval by the City Council but shall instead require only administrative written notification by CITY to CITICORP giving notice of such termination and the effective date thereof.

SECTION 26. THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

SECTION 27. All attachments to this Agreement are incorporated herein for all purposes.

EXECUTED in triplicate, each of which shall constitute an original, this ___ day of _____, 2010.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

CITY OF SAN ANTONIO

CITICORP DATA SYSTEMS INCORPORATED

A.J. Rodriguez
Deputy City Manager

Name: _____
Title: _____

ATTEST:

ATTEST:

Leticia Vacek
City Clerk

Name: _____

APPROVED AS TO FORM:

Leslie O. Haby
Assistant City Attorney

ATTACHMENT I
(Property Legal Description)

VICKREY & ASSOCIATES, Inc.
CONSULTING ENGINEERS

ATTACHMENT I

Chicorp
60.00 Acre Tract

METES & BOUNDS DESCRIPTION

FOR

60.00 acre (2,613,658 square feet) of land being out of a 5443.094 acre tract as recorded in Volume 3388, Page 655 of the Real Property Records of Bexar County, Texas and being out of the Elizabeth Davis Original Survey No. 6, Abstract 1001, County Block 4348 and the Johann Pfeiffer Original Survey No. 7, Abstract 1018, County Block 4349 and out of the Precilla Tarlington Original Survey No. 5, Abstract 1029, County Block 4347, Bexar County, Texas, said 60.00 acres of land being more particularly described as follows, to wit:

Beginning: at an iron pin set in the east line of said 5443.094 acre tract, said point being S 32° 51' 09" E, 1687.76 feet from a point in the south right-of-way line of the 120' wide right-of-way of Potranco Road (FM 1957) the most northeasterly corner of a remaining portion of said 5443.094 acre tract after right-of-way dedication on Potranco Road;

Thence: with the east line of said 5443.094 acre tract and the east line of the herein described tract as follows:

S 32° 51' 09" E, 732.01 feet to an iron pin found for an angle point;

S 33° 04' 00" E, 586.07 feet to an iron pin found for an angle point;

S 32° 58' 14" E, 334.19 feet to an iron pin set for the southeast corner of the herein described tract;

Thence: S 75° 52' 37" W, 1834.52 feet to a highway monument found in a cutback line in the easterly right-of-way line of State Highway 211 for the southwest corner of the herein described tract;

Thence: with the east right-of-way line of State Highway 211 and the west line of the herein described tract as follows:

N 81° 23' 11" W, 171.27 feet to a highway monument found for an angle point;

N 13° 42' 18" W, 785.00 feet to a highway monument found for an angle point;

N 15° 19' 37" W, 617.69 feet to an iron pin set for the northwest corner of the herein described tract;

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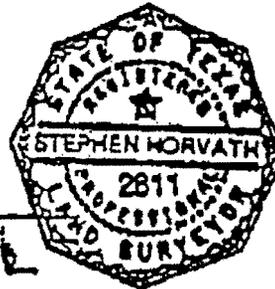
Citicorp
60.00 Acre Tract
Page 2 of 2

Thence: N 74° 28' 33" E, 1434.65 feet to the POINT OF BEGINNING, and containing 60.00 acres (2,613,658 square feet) if land, more or less.

Job No. 0923-01-22-77
RVH/r/M&B
August 6, 1991

Certified this 7th day of August 1991.


Registered Professional Land Surveyor
Texas Registration No. 2811



Book D Volm 07926 Page 01572



ATTACHMENT I

Chicorp
60.00 Acre Tract

**METES & BOUNDS DESCRIPTION
FOR**

60.00 acre (2,613,558 square feet) of land being out of a 5443.094 acre tract as recorded in Volume 33811, Page 655 of the Real Property Records of Bexar County, Texas and being out of the Elizabeth Davis Original Survey No. 6, Abstract 1001, County Block 4348 and the Johann Pfeiffer Original Survey No. 7, Abstract 1018, County Block 4349 and out of the Precilla Warrington Original Survey No. 5, Abstract 1029, County Block 4347, Bexar County, Texas, said 60.00 acres of land being more particularly described as follows, to wit:

- Beginning:** at an iron pin set in the east line of said 5443.094 acre tract, said point being S 32° 51' 09" E, 1687.76 feet from a point in the south right-of-way line of the 120' wide right-of-way of Potranco Road (FM 1957) the most northeasterly corner of a remaining portion of said 5443.094 acre tract after right-of-way dedication on Potranco Road;
- Thence:** with the east line of said 5443.094 acre tract and the east line of the herein described tract as follows:
- S 32° 51' 09" E, 732.01 feet to an iron pin found for an angle point;
 - S 33° 04' 00" E, 586.07 feet to an iron pin found for an angle point;
 - S 32° 58' 14" E, 334.19 feet to an iron pin set for the southeast corner of the herein described tract;
- Thence:** S 75° 52' 37" W, 1834.52 feet to a highway monument found in a cutback line in the easterly right-of-way line of State Highway 211 for the southwest corner of the herein described tract;
- Thence:** with the east right-of-way line of State Highway 211 and the west line of the herein described tract as follows:
- N 81° 23' 11" W, 171.27 feet to a highway monument found for an angle point;
 - N 13° 42' 18" W, 785.00 feet to a highway monument found for an angle point;
 - N 15° 19' 37" W, 617.69 feet to an iron pin set for the northwest corner of the herein described tract;

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Citicorp
60.00 Acre Tract
Page 2 of 2

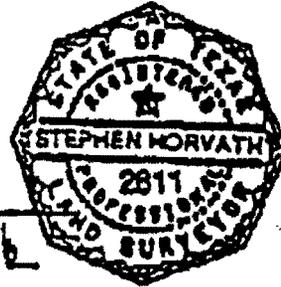
Thence: N 74° 28' 33" E, 1434.65 feet to the POINT OF BEGINNING, and
containing 60.00 acres (2,613,658 square feet) of land, more or less.

Job No. 0923-01-22-77
RVH/r/M&B
August 6, 1991

Certified this 7th day of August 1991.

Stephen Horvath

Registered Professional Land Surveyor
Texas Registration No. 2811



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ATTACHMENT II

**REQUEST TO MAYOR AND CITY
BY CITICORP
FOR ANNEXATION OF SAID PROPERTY**

STATE OF TEXAS

COUNTY OF BEXAR

The undersigned Owner(s) of the hereinafter described tract of land hereby request that the City Council take action to extend the present City limits so as to include as a part of the City of San Antonio, Texas the following described territory, to wit:

(See Attachment I affixed hereto).

We certify that this petition is signed and sworn to by each and every person or officer authorized to act for any corporation having an interest in said land, as shown by instruments of record in the Deed Records of Bexar County, to wit, those recorded in Vol. _____, Page _____.

We further fully understand that the existence of this petition in no way binds the City of San Antonio, Texas to annex the property affected by this petition.

CITICORP DATA SYSTEMS INCORPORATED

By: _____
Name: _____
Title: _____

STATE OF _____

COUNTY OF _____

BEFORE ME, the undersigned authority on this day personally appeared known to me to be the person whose name is _____, subscribed to the foregoing instrument and acknowledged that he executed the same for the purpose and consideration therein expressed. Given under my hand and seal of office on this _____ day of _____, 2010.

NOTARY PUBLIC, _____ County, _____

STATE OF TEXAS

COUNTY OF BEXAR

BEFORE ME, the undersigned authority, on this ____ day of _____, 2010 personally appeared _____, _____ (Title) of CITICORP DATA SYSTEMS INCORPORATED, a Delaware Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed as the act and deed of said corporation and in the capacity therein stated.

Notary Public, State of Texas

STATE OF TEXAS

COUNTY OF BEXAR

BEFORE ME, the undersigned authority, on this ____ day of _____, 2010 personally appeared A.J. Rodriguez, Deputy City Manager of the City of San Antonio, a Texas Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed as the act and deed of said corporation and in the capacity therein stated.

Notary Public, State of Texas

ATTACHMENT III
(Basic Fire Services Agreement)

STATE OF TEXAS

COUNTY OF BEXAR

BASIC FIRE SERVICES AGREEMENT

This Basic Fire Services Agreement (hereinafter referred to as "Fire Services Agreement") is made and entered into by and between the City of San Antonio (hereinafter referred to as "CITY"), a Texas municipal corporation, acting by and through its City Manager or designee, pursuant to Ordinance No. _____ dated _____, 2010 and Citicorp Data Systems Incorporated (hereinafter referred to as "CITICORP"), a company incorporated under the laws of the State of Delaware, acting by and through its duly authorized representative; (collectively, the "Parties").

WHEREAS, CITICORP is the current owner of a 60 acre tract of land situated in Bexar County, Texas, which is more particularly described in Attachment I hereto (hereinafter referred to as the "Property"), and which is located within the extraterritorial jurisdiction of the City of San Antonio, as that term is defined in Section 42.021, Extent of Extra-territorial Jurisdiction, Local Government Code V.A.T.C.S., and has been designated the CITICORP Industrial District by CITY ordinance; and

WHEREAS, CITICORP's Industrial District contract is due to expire on December 29, 2010 and CITICORP desires to continue its Industrial District designation and renew its Industrial District Non-Annexation Agreement and Fire Services Agreement with CITY, pursuant to Section 42.044(d) and 42.044(e) of the Local Government Code V.A.T.C.S., as amended; and

WHEREAS, CITY and CITICORP desire to enter into a Fire Services Agreement that will run concurrently and be subject to the Industrial District Non-Annexation Agreement to be entered into between CITY and CITICORP and which is authorized by Ordinance No. _____ passed by the City Council of the City of San Antonio, Texas on the ___th day of _____, 2010; (hereinafter referred to as the "Industrial District Agreement"); **NOW THEREFORE:**

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and the performance and accomplishment of the tasks hereinafter described:

SECTION 1. CITY agrees to provide fire protection and fire fighting services to the Property in the same manner and to the same extent as if said Property were located within the CITY limits of San Antonio, except as limited by the provisions of this Fire Services Agreement. CITY shall provide said services beginning on the date of execution of this Fire Services Agreement and ending December 31, 2015 unless terminated earlier pursuant to the Industrial District Agreement or pursuant to the provisions of this Fire Services Agreement (hereinafter referred to as the "Term of the Fire Services Agreement"). CITICORP understands and agrees that the CITY does not provide emergency medical services ("EMS") to unincorporated areas of Bexar

County. Therefore, CITY will not be providing "First Responder" services to the CITICORP Industrial District.

SECTION 2. For and in consideration of CITICORP receiving fire protection and fire fighting services from CITY, CITICORP shall pay CITY a basic fire service fee of thirty-five thousand dollars (\$35,000.00) annually. CITICORP shall pay CITY said \$35,000.00 within ten (10) business days of execution of this Fire Services Agreement and thereafter CITICORP shall pay CITY \$35,000.00 no later than the anniversary date of the execution of this Agreement every year of the Term of the Fire Services Agreement. Such basic service fee shall not include the response fee(s) required for hazardous materials (HAZMAT) incidents as such fee(s) are established in City Ordinance No. 72267, and as amended.

SECTION 3. CITICORP agrees that as a condition to receiving fire protection and fire fighting services under the terms of this Fire Services Agreement that:

- A. All site development in the Industrial District shall comply with all applicable City Subdivision, Building, Fire and electrical codes and ordinances including, but not limited to, the Texas Commission on Environmental Quality ("TCEQ") regulations as if the Property were within the city limits of San Antonio.
- B. CITICORP shall observe front, side and rear yard setback requirements as provided for in the City Code of CITY as if the property were within the city limits of San Antonio. Exceptions to these requirements may be waived solely by the Board of Adjustment;
- C. Two copies of the plans and specifications for structures on the Property to be provided fire protection and fire fighting services will be submitted by CITICORP to the Director of Building Inspections for certification of compliance with applicable CITY building, fire, plumbing and electrical codes and ordinances; and
- D. Persons designated by CITY shall be provided reasonable access and permitted to inspect, at reasonable times, structures to be provided fire protection and fire fighting services to assure that the construction on the Property is in compliance with all applicable CITY building, fire, plumbing and electrical codes, regulations and ordinances.

SECTION 4.

- A. CITICORP is aware that the CITY's response time to a fire alarm is excessive and agrees that the risk is acceptable.
- B. It is further agreed by CITICORP that when any building or structure of the Property is on fire or may be deemed to be hazardous and likely to take fire or communicate the fire to other buildings, the CITY, through its Fire Chief or designated representative, may do whatever may be deemed necessary by him for the safety and protection of property and citizens when controlling a fire.

C. CITICORP agrees to fully indemnify, defend and hold harmless CITY and the elected officials, agents, and employees, officers, directors and representatives of CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature including, but not limited to, personal injury or death and property damage, made upon CITY directly arising out of, resulting from or related to CITICORP's negligence pursuant to this Fire Services Agreement, including any acts or omissions of CITICORP, any agent, officer, director, representative, employee, consultant of CITICORP, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Fire Services Agreement, all without, however, waiving any governmental immunity available to the CITY under Texas law and without waiving any defenses of the Parties under Texas law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS CONTRACT. The provisions of this INDEMNITY are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CITICORP shall promptly advise CITY in writing within 24 hours of any claim or demand against CITY or CITICORP known to CITICORP related to or arising out of CITICORP's activities under this Fire Services Agreement and shall see to the investigation of and defense of such claim or demand at CITICORP's cost. CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CITICORP of any of its obligations under this paragraph.

It is the EXPRESS INTENT of the Parties to this Agreement that the INDEMNITY provided for in this section is an INDEMNITY extended by CITICORP to INDEMNIFY, PROTECT and HOLD HARMLESS the CITY from the consequences of the CITY'S OWN NEGLIGENCE provided, however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the CITY is a CONTRIBUTORY CAUSE of the resultant injury, death or damage and shall have no application when the negligent act of the CITY is the sole cause of the resultant injury, death or damage. CITICORP further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death or damage for which this INDEMNITY shall apply, as set forth above. In addition, it is agreed by CITICORP that CITY shall not be responsible for, nor will it be required to, replace or repair any such damage sustained by any building and its contents as the result of fire fighting operations.

D. CITY will use due diligence in providing fire protection and fire fighting services to the Property. CITY, however, does not in any way assume to act as an insurer of the Property

covered under this Fire Services Agreement or to pay for any damage that may occur as a result of fire, water or explosion. Nor does CITY assume any obligation under the terms of this Fire Services Agreement to construct additional fire stations, purchase additional fire fighting equipment, or hire additional manpower for the protection of the Property. Rather, CITICORP understands that it is not entitled to any greater protection than residents located within the CITY receive and that CITY will not be held liable for any additional time required to respond to a fire alarm because said premises and structures are located outside the corporate limits of CITY.

E. CITICORP shall provide the City Fire Chief an engineer's site plan, approved by the City Fire Chief, showing the location of any new building or buildings to be provided fire protection prior to the date of CITICORP's construction of any new buildings at its financial services facility on State Hwy. 211.

SECTION 5. CITICORP agrees that the Property will be for the exclusive use of industry consistent with CITY's Tax Abatement Guidelines and Criteria and Unified Development Code.

SECTION 6. The Fire Services Agreement may be terminated by CITY for CITICORP's non-payment of the fire protection fees to CITY if the non-payment of fire protection fees continues uncured for a period of thirty (30) days from the date CITICORP receives written notice from the CITY Finance Department of its failure to pay the required fees. The Finance Department shall send a copy of written notice to the International and Economic Development Department Director. The foregoing notice of cancellation or intention to cancel or terminate this Fire Services Agreement shall specifically state: (1) the sums then due and owing, (2) that CITICORP's failure to make the required payment within thirty (30) days of the date CITICORP receives written notice shall result in cancellation or termination of the Fire Services Agreement, and (3) the date by which the payment must be received by CITY to avoid cancellation of the Fire Services Agreement. CITICORP may terminate this Fire Services Agreement on January 1 of any year of the Term of this Fire Services Agreement by giving not less than thirty (30) days prior written notice of termination to CITY.

SECTION 7. It is understood by the Parties hereto that if the Industrial District Agreement is terminated for any reason by either Party to this Fire Services Agreement prior to December 31, 2015, then this Fire Services Agreement will automatically terminate. The Parties further agree that upon annexation of the Property by CITY, this Fire Services Agreement will automatically terminate. It is further agreed by CITICORP that should any parcel or parcels located within the Industrial District become annexed by CITY or de-designated (hereinafter referred to as "De-Designated Parcels") as part of the Industrial District in the manner set out in the Industrial District Agreement, such De-Designated parcel or parcels shall no longer be eligible for fire protection/fire fighting services and CITY may, without notice, immediately cease providing said services upon the effective date of annexation by CITY or de-designation as part of the Industrial District.

SECTION 8. CITICORP understands and agrees that its rights to fire protection and fire fighting services pursuant to this Fire Services Agreement are not transferable or assignable by CITICORP without the prior written consent of CITY.

SECTION 9. If any clause or provision of this Fire Services Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws including, but not limited to, the City Charter, City Code, or ordinances of the City of San Antonio, Texas then, and in that event, it is the intention of the Parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Fire Services Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein.

SECTION 10. For purposes of this Fire Services Agreement, all official communications and notices among the Parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY

Director
International and Economic Development Department
P.O. Box 839966
San Antonio, Texas 78283-3966

CITICORP

Citicorp Data Systems Incorporated
100 Citibank Dr.
San Antonio, Texas 78245-3214

With a copy to:

Citigroup Inc.
One Court Square, 45th Floor
Long Island City, NY 11120
Attn: General Counsel of Real Estate

SECTION 11. Except for Section 7 of this Fire Services Agreement, if CITICORP fails to perform any term, condition or covenant contained in this Fire Services Agreement, and such failure continues for a period of thirty (30) days after CITICORP's receipt of written notice from CITY of such failure, then CITY shall have the right to terminate this Fire Services Agreement.

SECTION 12. This Fire Services Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise expressly provided for herein.

SECTION 13. THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

EXECUTED this _____ day of _____, 2010.

CITICORP DATA SYSTEMS INCORPORATED

CITY OF SAN ANTONIO

Name: _____
Title: _____

A.J. Rodriguez
Deputy City Manager

ATTEST:

ATTEST:

Name: _____

Leticia Vacek
City Clerk

APPROVED AS TO FORM:

Leslie O. Haby
Assistant City Attorney

STATE OF TEXAS

COUNTY OF BEXAR

BEFORE ME, the undersigned authority, on this ____ day of _____, 2010, personally appeared _____, _____ (Title) of Citicorp Data Systems Incorporated, a Delaware corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed as the act and deed of said corporation and in the capacity therein stated.

NOTARY PUBLIC
State of Texas

STATE OF TEXAS

COUNTY OF BEXAR

BEFORE ME, the undersigned authority, on this ____ day of _____, 2010, personally appeared A.J. Rodriguez, Deputy City Manager of the City of San Antonio, a Texas municipal corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed as the act and deed of said corporation and in the capacity therein stated.

NOTARY PUBLIC
State of Texas