EF/mb
4/10/14
Item No. 26

A ORDINANCE 2014-04-10-0237

AUTHORIZING THE CITY MANAGER TO EXECUTE AN EXTRATERRITORIAL JURISDICTION (ETJ) AGREEMENT WITH THE CITY OF ELMENDORF FOR THE RELEASE OF APPROXIMATELY 7.93 ACRES FROM THE CITY OF SAN ANTONIO TO ELMENDORF WITH CERTAIN CONDITIONS.

* * * * *

WHEREAS, the City of Elmendorf has requested the release of approximately 7.93 acres from the extraterritorial jurisdiction (ETJ) of the City of San Antonio; and

WHEREAS, it is the desire of Elmendorf to gain this area of ETJ; 7.93 acres along State Highway 181, Kilowatt Road and Atkins Elmendorf Road, as more particularly described in the field notes and shown on Exhibits A and B found in **Attachment I** – "City of San Antonio – City of Elmendorf Memorandum of Agreement"; and

WHEREAS, annexation by the City of San Antonio is not a viable option in the near future based on the location of subject area and the difficulty to provide municipal services; and

WHEREAS, the City of Elmendorf has requested the City of San Antonio enter into an Extraterritorial Jurisdiction Agreement with conditions set therein (see Attachment I) and the City of Somerset will extend its Off Premise Signs Ordinance and subdivision regulations to the subject area; and

WHEREAS, if subject area is placed in Elmendorf's ETJ, the City of Elmendorf would provide a voluntary annexation option as well as future municipal services to the area incorporated into the City of Elmendorf; and

WHEREAS, the proposed ETJ agreement includes a 25 percent revenue sharing provision of Elmendorf's property and sales taxes, beginning the date of the annexation and continuing for a period of five (5) years; and

WHEREAS, the City of San Antonio and the City of Elmendorf each have all requisite municipal corporate power and authority to enter into an Agreement for performance of all of their relative obligations under such Agreement; and

WHEREAS, the Planning Commission of the City of San Antonio has considered the proposed release of the property from the San Antonio ETJ and has recommended approval; and

WHEREAS, the San Antonio City Council has considered the request from the City of Elmendorf to release approximately 7.93 acres from the San Antonio ETJ; **NOW THEREFORE;**

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

SECTION 1. The property containing approximately 7.93 acres, as more particularly in Attachment I (field notes) and depicted on Exhibit B (exhibit), and the associated ETJ agreement **(Attachment I)** with the City of Elmendorf attached hereto and incorporated herein for all purposes, is hereby released from the Extraterritorial Jurisdiction of the City of San Antonio upon fulfillment of the conditions stated in this Ordinance.

SECTION 2. The City Manager or designee is herby authorized to enter into and execute an Extraterritorial Jurisdiction Agreement with the City of Elmendorf for the release of 7.93 acres to the City of Elmendorf. The Extraterritorial Jurisdiction Agreement is attached hereto and incorporated as Attachment I.

SECTION 3. The proposed ETJ agreement shall include a 25 percent revenue sharing provision for Elmendorf's ad valorem and sales taxes beginning the date of the annexation and continuing for a period of five (5) years.

SECTION 4. This Ordinance shall be effective immediately upon its final passage.

PASSED AND APPROVED on this 10th day of April, 2014.

M A Y O R
for Julián Castro

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

for Robert F. Greenblum, City Attorney

Agenda Item:	**26 (in consent vote: 4, 5, 6, 7, 8, 9, 12, 15, 16, 18, 19, 20, 21, 22, 23, 24, 26, 27)**
Date:	04/10/2014
Time:	09:31:12 AM
Vote Type:	Motion to Approve
Description:	An Ordinance approving an Extraterritorial Jurisdiction Agreement with the City of Elmendorf for the release of approximately 7.93 acres of land from the City of San Antonio's extraterritorial jurisdiction to the City of Elmendorf with certain conditions. [Peter Zanoni, Deputy City Manager; John Dugan, Director, Planning & Community Development]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor	x					
Diego Bernal	District 1		x			x	
Ivy R. Taylor	District 2		x				
Rebecca Viagran	District 3		x				x
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

ATTACHMENT I

CITY OF SAN ANTONIO -- CITY OF ELMENDORF

DRAFT MEMORANDUM OF AGREEMENT

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation, acting by and through its City Manager pursuant to Ordinance No.__, and the City of Elmendorf, a Texas Municipal Corporation, acting by and through its Mayor pursuant to Ordinance No. _____, Witnesseth:

WHEREAS, the City of Elmendorf has requested that San Antonio release from its extraterritorial jurisdiction an area of approximately 7.931 acres so that it may incorporate the area into the extraterritorial jurisdiction of the City of Elmendorf; and

WHEREAS, the City of San Antonio and the City of Elmendorf each have all requisite municipal corporate power and authority to enter into an Agreement for performance of all of their relative obligations under such Agreement; and

WHEREAS, the execution and performance by City of this Agreement has been duly authorized by City Resolution, and except for the additional approval of the Owners, no consent or approval of any other person is required, including, without limitation, any governmental authority; and

WHEREAS, incorporation of this area would allow the City of Elmendorf to exercise jurisdiction over the tract of land; and

WHEREAS, both municipalities are desirous of entering into an agreement to permit this situation;

THE PARTIES AGREE AS FOLLOWS:

1. General Terms and Conditions

   A. City of San Antonio agrees to release from its extraterritorial jurisdiction and to relinquish control over an area containing approximately 7.93 acres of land generally located along State Highway 181 near Kilowatt Road and Adkins-Elmendorf Road, in southeast Bexar County and more particularly described by metes and bounds and map attached hereto as Exhibits A and B, and incorporated herein for all purposes.

   B. City of Elmendorf agrees to incorporate into its extraterritorial jurisdiction the area described in Section A above.

   C. City of Elmendorf agrees to the following:

      1. Prohibit new billboards based on the City of Elmendorf's Off Premise Signs Ordinance;

2. Extend subdivision regulations in accordance with the City of Elmendorf Subdivision Rules;
3. Provide voluntary annexation opportunity to the Subject Property described on Exhibit B;
4. Provide services and regulations to the Transferred Property as required by Chapter 43 of the Texas Local Government Code; and
5. Contribute 25% of property and sales tax revenue collected in the subject area to San Antonio beginning the date of the annexation and continuing for a period of five (5) years.

   City of Elmendorf will calculate the city portion of property and sales taxes and pay such amounts to the City of San Antonio within 60 days of receipt by the City of Elmendorf. Such payments shall be accompanied by all original information received by the City of Elmendorf with the collection of the taxes and a calculation of how the city's portion was split and shall be submitted to the San Antonio Finance Department with a copy to the Director of the Department of Planning and Community Development. The City of San Antonio shall have the right to audit or to cause its outside auditors to audit, at the City of San Antonio's expense, the books and records of the City of Elmendorf to determine the City of Elmendorf's taxes from the Annexed Area.

D. City of Elmendorf agrees to file for record a copy of this agreement for 14863 Adkins Elmendorf Road, more particularly described as CB 4008B BLK 7 LOT 1 (RSBR KILOWATT SUBD) and depicted on Attachment C (exhibit) in the Real Property Records of Bexar County, Texas.

E. The Subject Property shall revert back to San Antonio's extraterritorial jurisdiction automatically, if the City of Elmendorf fails to take action to annex 14863 Adkins Elmendorf Road, more particularly described as CB 4008B BLK 7 LOT 1 (RSBR KILOWATT SUBD) and depicted on Attachment C (exhibit) into its city limits within one year of the effective date of this Agreement.

F. This Agreement is effective immediately after the later of the Ordinance of the City of San Antonio and the Resolution of the City of Elmendorf authorizing this Agreement, in each case as indicated by the date following the signature of the City Manager or Authorized Representative below.

2. <u>Severability</u>

If for any reason, any one or more paragraphs of this agreement is held invalid, such judgment shall not affect, impair or invalidate the remaining paragraphs of the agreement but shall be confined in its operation to the specific sections sentences clauses or parts of this agreement held invalid and invalidity of any section, sentence, clause or parts shall not affect, impair or prejudice in any way the validity of this agreement in any instances.

3. Applicable Law

This agreement shall be construed in accordance with the laws of the State of Texas.

4. Notices

Any notice, request, demand, report, certificate or other instrument which may be required or permitted to be furnished to or served upon the parties shall be deemed sufficiently given or furnished or served if in writing and deposited in the United States mail, registered or certified, return receipt required, addressed to such party at the address set forth below or such other address as may be hereafter designated by either party by written notice to the other party.

IF TO THE CITY OF SAN ANTONIO:

City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966
Attn: _____
City Clerk

IF TO THE CITY OF ELMENDORF:

City of Elmendorf
P.O. Box 24
Elmendorf, Texas 78112
Attn: _____
City Secretary

ACKNOWLEDGEMENTS

In witness of which this agreement has been executed in duplicate.

CITY OF ELMENDORF

By: _____

Attest: _____

Title: City Administrator

Title: _____

Date: _____

STATE OF TEXAS

COUNTY OF BEXAR

This instrument was acknowledged before me on _____ by _____, City Manager of the City of Elmendorf, a Texas Municipal Corporation, on behalf of said corporation.

_____
Notary Public, State of Texas

My Commission expires: _____

CITY OF SAN ANTONIO

By: _____ Attest: _____

Title: _____ Title: _____

Date: _____

STATE OF TEXAS

COUNTY OF BEXAR

This instrument was acknowledged before me on _____ by _____, City Manager of the City of San Antonio, a Texas Municipal Corporation, on behalf of said corporation.

_____
Notary Public, State of Texas

My Commission expires: _____

EXHIBIT A

Subject Property

Field Notes for the Transfer of ETJ from the City of San Antonio to the City of Elmendorf in Bexar County

Northstar Land Surveying, Inc.
9033 Aero Street, Suite 105
San Antonio, Texas 78217
(210) 826-6228

FIELD NOTES FOR
ETJ RELEASE

A 7.931 ACRE TRACT OF LAND, BEING LOT 1, BLOCK 7, COUNTY BLOCK 4008, RSBR KILOWATT SUBDIVISION, BEXAR COUNTY, TEXAS, AS RECORDED IN VOLUME 9642, PAGE 63, DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS; A 3.133 ACRE TRACT OF LAND AS RECORDED IN VOLUME 8002, PAGE 1760, OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF BEXAR COUNTY, TEXAS; A PORTION OF A TRACT OF LAND AS RECORDED IN VOLUME 1561, PAGE 407, DEED RECORDS OF BEXAR COUNTY, TEXAS; A 0.16 ACRE TRACT OF LAND AS RECORDED IN VOLUME 1808, PAGE 880, OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF BEXAR COUNTY, TEXAS; A 0.562 ACRE TRACT OF LAND AS RECORDED IN VOLUME 7449, PAGE 1829, OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF BEXAR COUNTY, TEXAS; AND BEING A PORTION OF THE ATKINS-ELMENDORF ROAD; BEING ALSO OUT OF THE JOSE DE LA GARZA SURVEY NUMBER 6, ABSTRACT NUMBER 4, COUNTY BLOCK 4008, BEXAR COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING: At a found TXDOT Type I right-of-way monument on the southwest right-of-way line of U.S. Highway 181 at the east cut-back corner joining the southwest right-of-way line of U.S. Highway 181 and the southeast right-of-way line of Kilowatt Road, the north corner of the above referenced Lot 1, Block 7, County Block 4008, RSBR Kilowatt Subdivision, the north corner of the herein described tract;

THENCE: South 61 degrees 52 minutes 03 seconds East (Bearings are based on the Texas State Plane Coordinate System Grid) coincident with southwest right-of-way line of U.S. Highway 181, the northeast line of Lot 1, Block 7, County Block 4008, RSBR Kilowatt Subdivision, at 97.04 feet, pass a found TXDOT Type I right-of-way monument, and continuing a total distance of 156.79 feet to the north corner of the cut-back right-of-way line joining the southwest right-of-way line of U.S. Highway 181 and the northwest right-of-way line of Adkins-Elmendorf Road, the northeast corner of Lot 1, Block 7, County Block 4008, RSBR Kilowatt Subdivision, an angle point of the herein described tract;

Continued . . . .

THENCE: South 62 degrees 33 minutes 04 seconds East, 232.25 feet, coincident with the southwest right-of-way line of U.S. Highway 181, to a set ½ inch iron rod, the north corner of the cemetery and a portion of the above referenced tract recorded in Volume 1561, Page 407, Deed Records of Bexar County, Texas, an angle point of the herein described tract;

THENCE: South 62 degrees 30 minutes 46 seconds East, 161.87 feet, coincident with the southwest right-of-way line of U.S. Highway 181, the northeast line of the cemetery and a portion of the tract recorded in Volume 1561, Page 407, Deed Records of Bexar County, Texas, , at 15.93 feet pass a found TXDOT Type I right-of-way monument, and continuing a total distance of 161.87 feet to a found TXDOT Type I right-of-way monument, the east corner of the cemetery and a portion of the tract recorded in Volume 1561, Page 407, Deed Records of Bexar County, Texas, the north corner of Lot 14, Calaveras Acres Subdivision as recorded in Volume 9519, Page 50, Deed and Plat Records of Bexar County, Texas, the east corner of the herein described tract;

THENCE: South 65 degrees 21 minutes 04 seconds West, 532.42 feet, coincident with northwest line of the above referenced Lot 14, Calaveras Acres Subdivision, to a set 1/ inch iron rod on the southeast right-of-way line of Adkins-Elmendorf Road, the northwest corner of Lot 14, Calaveras Acres Subdivision, an angle point of the herein described tract;

THENCE: South 37 degrees 00 minutes 58 seconds West, 101.54 feet, coincident with the southeast right-of-way line of Adkins-Elmendorf Road, the northwest line of Lots 14 and 13, Calaveras Acres Subdivision, to a set ½ inch iron rod, the west corner of Lot 13, the north corner of Lot 12, Calaveras Acres Subdivision, an angle point of the herein described tract;

THENCE: South 65 degrees 57 minutes 30 seconds West, 500.55 feet coincident with the southeast right-of-way line of Adkins-Elmendorf Road, the northwest lines of Lots 12, 11, 10, 9, 8, 7 and 6, Calaveras Acres Subdivision, to a set ½ inch iron rod, an angle point of the herein described tract;

THENCE: South 54 degrees 57 minutes 42 seconds West, 254.29 feet, coincident with the southeast right-of-way line of Adkins-Elmendorf Road, the northwest lines of Lots 6, 5, 4, 3 and 2, Calaveras Acres Subdivision to a set ½ inch iron rod on the southeast right-of-way line of Kilowatt Road, the north corner of Lot 2, Calaveras Acres Subdivision, the southwest corner of the herein described tract;

THENCE: North 33 degrees 31 minutes 39 seconds East, 320.85 feet, coincident with southeast right-of-way line of Kilowatt Road, to a found TXDOT Type I right-of-way monument, the west corner of the above referenced 3.133 acre tract, an angle point of the herein described tract;

Continued . . . .

THENCE: North 33 degrees 45 minutes 10 seconds East, 725.34 feet, coincident with the southeast right-of-way line of Kilowatt Road, the northwest line of the 3.133 acre tract, to a found TXDOT Type I right-of-way monument at the west corner of the cut-back right-of-way line joining the southeast right-of-way line of Kilowatt Road and the southwest right-of-way line of U.S. Highway 181, the northwest corner of the 3.133 acre tract, the northwest corner of the herein described tract;

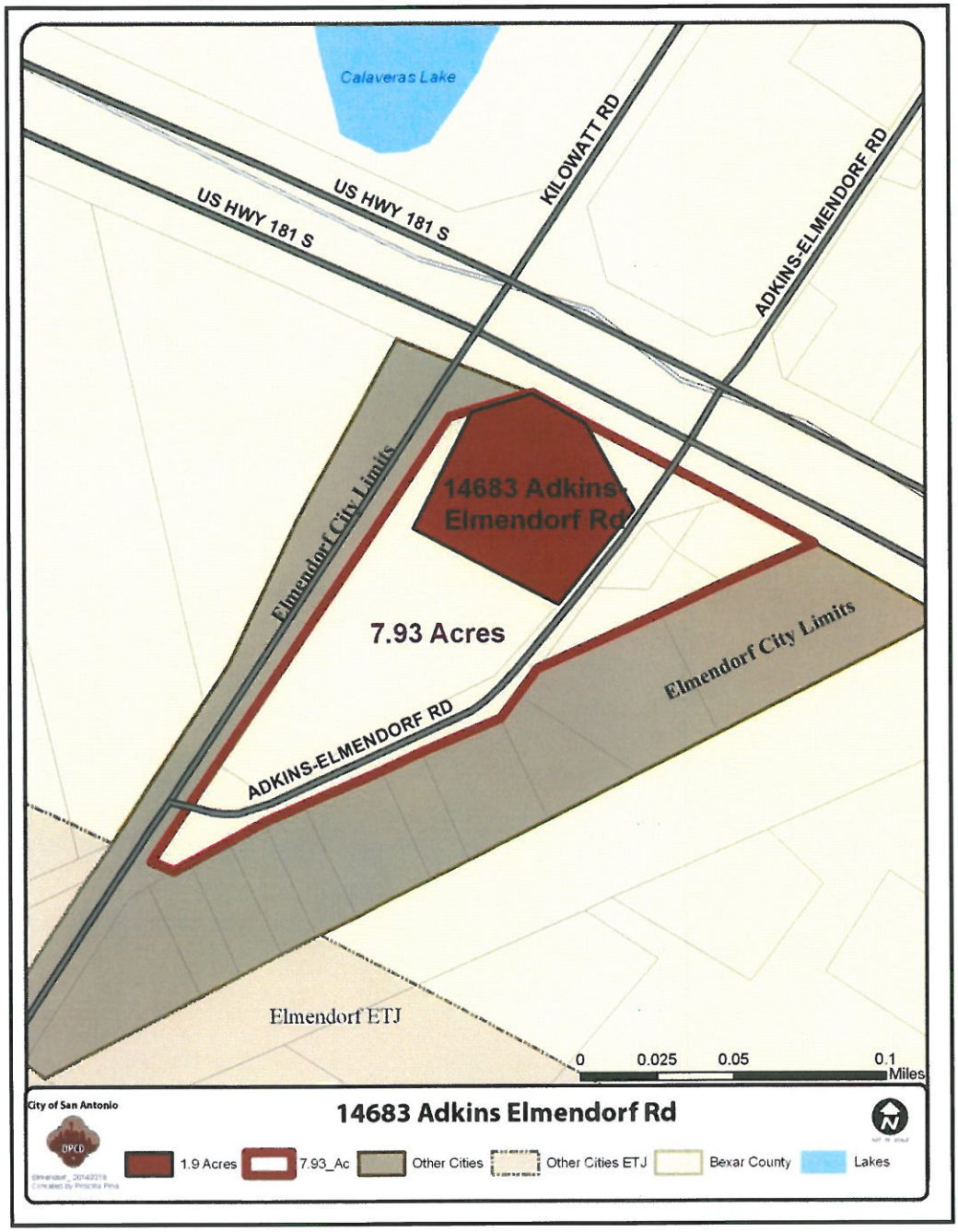
THENCE: North 75 degrees 12 minutes 14 seconds East, 42.53 feet coincident with said cut-back right-of-way line joining the southeast right-of-way line of Kilowatt Road and the southwest right-of-way line of U.S. Highway 181, the north line of the 3.133 acre tract, to a found ½ inch iron rod, the north corner of the 3.133 acre tract, the northwest corner of Lot 1, Block 7, County Block 4008, RSBR Kilowatt Subdivision, an angle point of the herein described tract;

THENCE: North 74 degrees 52 minutes 00 seconds East, 104.70 feet, coincident with said cut-back right-of-way line joining the southeast right-of-way line of Kilowatt Road and the southwest right-of-way line of U.S. Highway 181, the north line of Lot 1, Block 7, County Block 4008, RSBR Kilowatt Subdivision, to the **POINT OF BEGINNING**, containing 7.931 acres.

These Field Notes are based on a survey made on the ground by employees of Northstar Land Surveying, Inc. who were working under my supervision.

Thomas C. Haberer
Registered Professional Land Surveyor #4350
April 11, 2013
Job No. 3-13-0013 (ETJ Release)

STATE OF TEXAS
REGISTERED
THOMAS C. HABERER
4350
PROFESSIONAL
LAND SURVEYOR

Exhibit B

Transferred Property: Provide voluntary annexation opportunity to the property owners of the subject property (7.93 acres) particularly the property addressed 14863 Adkins Elmendorf Road, Legal description CB 4008B BLK 7 LOT 1 (RSBR KILOWATT SUBD) as shown in the map below, after the release of the subject property from the San Antonio ETJ and incorporated into the Elmendorf ETJ.