

CHAPTER 212 TEXAS LOCAL GOVERNMENT CODE
NON-ANNEXATION AGREEMENT

This Non-Annexation Agreement (“Agreement”) is entered into pursuant to Sections 43.016 and 212.172 of the Texas Local Government Code by and between the City of Terrell, Texas (“Terrell” or the “City”), and the undersigned property owner(s) (the “Owner”); the term “Owner” meaning all owners of the hereinafter described property in Kaufman County, Texas, collectively referred to as the “Parties.”

WHEREAS, the Owner owns certain real property (the “Property”) in Kaufman County, Texas, which Property is particularly and separately described in the attached *Exhibit “A”*, which Exhibit is attached hereto and incorporated by reference herein; and

WHEREAS, the Property lies wholly within the City’s extraterritorial jurisdiction (“ETJ”); and

WHEREAS, the City has initiated annexation proceedings for the Property in accordance with Texas Local Government Code, Chapter 43; and

WHEREAS, Owner desires that the Property remain in the City’s ETJ for the term of this Agreement; and

WHEREAS, Owner and the City acknowledge that this Agreement between them is binding upon the City and the Owner and their respective successors and assigns for the term of the Agreement; and

WHEREAS, the Kaufman County Appraisal District records show that the Property currently is appraised for ad valorem tax purposes as land for either agriculture use pursuant to the Texas Tax Code Chapter 23, Subchapter C, wildlife management use pursuant to the Texas Tax Code Chapter 23, Subchapter D, or timber land use pursuant to the Texas Tax Code Chapter 23, Subchapter E; and

WHEREAS, Owner represents that it is their intention not to develop the Property during the term of this Agreement; and

WHEREAS, Texas Local Government Code, Section 43.016, authorizes a property owner and a municipality to enter into an agreement pursuant to Texas Local Government Code Section 212.172 for purposes of retaining land in the municipality’s ETJ in exchange for the property owner’s covenant not to develop the property and to authorize the municipality to apply development regulations not inconsistent with agricultural use; and

WHEREAS, the Parties are desirous of entering into an Agreement authorized under Texas Local Government Code Section 43.016; and

WHEREAS, this Agreement is to be recorded in the Real Property Records of Kaufman County, Texas.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties hereto agree as follows:

Section 1. **Continuation of ETJ Status**. The City guarantees the continuation of the extraterritorial status of the Property and agrees not to annex the Property for the Term of this Agreement, as hereinafter defined, subject, however, to the provisions of this Agreement. In the event that the Property should be removed from the City's extraterritorial jurisdiction, the Owner agrees that this Agreement shall act as a request by the Owner to the City to include the Property into the City's extraterritorial jurisdiction under Section 42.022(c) of the Texas Local Government Code (as such law currently provides or as it may be amended), and/or under any other provision of state law (in existence now or that may come into existence later) that allows a property owner to request the inclusion of property into a municipality's extraterritorial jurisdiction.

Section 2. **Development Plan**. The Owner covenants and agrees that use of the Property for the term of this Agreement shall be limited to farm-related and ranch-related uses and customary accessory uses and single-family detached farm or ranch dwellings, provided that no single-family dwelling may be located or constructed on a lot smaller than five (5) acres. The property owner may apply to the City for division of the land subject to this Agreement into parcels each of which is at least five (5) acres in size for the purposes set forth in this section without being in violation of this Agreement. Such uses and activities constitute the development plan for the Property in satisfaction of Texas Local Government Code Section 212.172(b).

Section 3. **Governing Regulations**.

(A) The following City of Terrell regulations shall apply to any development of the Property, as may be amended from time to time, provided that the application of such regulations does not result in interference with the use of the land for agricultural purposes and does not prevent the continuation of a use established prior to the effective date of this Agreement and which remains lawful at the time the Agreement is executed:

- (1) The Terrell Zoning Ordinance, Ordinance No. 2612, as amended; for purposes of evaluating any proposed development of the Property under the Zoning Ordinance.
- (2) The Subdivision Regulations Ordinance No. 2500 as amended, together with Streets and Thoroughfare Standards, and Manual for the Design of Storm Drainage Systems, City of Terrell, Texas, as supplemented by the North Central Texas Council of Governments Standard Specifications for Public Works Construction, North Central Texas, 3rd Ed. 1998 (NCTCOG Manual).

(3) Building Codes Ordinance No. 2533, as may be amended from time to time:

- (a) National Electrical Code, 2020 edition
- (b) International Building Code, 2021 edition
- (c) International Residential Code, 2021 edition
- (d) International Fire Code, 2021 edition
- (e) International Plumbing Code, 2021 edition
- (f) International Mechanical Code, 2021 edition
- (g) International Fuel Gas Code, 2021 edition
- (h) International Energy Conservation Code, 2021 edition
- (i) International Property Maintenance Code, 2021 edition
- (j) International Existing Building Code, 2021 edition
- (k) International Private Sewage Disposal Code, 2021 edition
- (l) International Commercial Kitchen Hood, 2021 edition
- (m) International High-Piled Combustible Storage, 2021 edition
- (n) NFPA 13 – Automatic Sprinkler Systems Code, 2010 edition
- (o) NFPA 58 – Liquefied Petroleum Gas Code, 2008 edition
- (p) NFPA 72 - National Fire Alarm and Signaling Code – 2010 edition
- (q) NFPA 101 – Life Safety Code – 2009 edition
- (r) NFPA – all other NFPA codes shall apply where the ICC or NEC codes are silent on a particular application or as required by the Fire Marshal.

(4) Sign Regulations, Chapter 4 - Section 22, Terrell Code of Ordinances, as may be amended from time to time.

(5) Applicable water and wastewater connection, construction and on-site operation requirements, contained within the City of Terrell Code of Ordinances.

(6) Applicable flood protection, drainage and related standards, contained within the City of Terrell Code of Ordinances and as supplemented by requirements of the Texas Water Code, as amended, Texas Natural Resources Code, as amended, application administrative standards of the Texas Commission on Environmental Quality, and applicable administrative standards of the Federal Emergency Management Administration, as amended.

Section 4. **Development Plan to Remain in Effect.** Following expiration or termination of this Agreement for any reason, the Development Plan set forth in Section 2 shall remain in effect for a period of 180 calendar days thereafter, or until the effective date of the annexation and permanent zoning of the Property, whichever first occurs. The Parties covenant and agree that the City may deny any Development Application or Plan of Development that is submitted to the City for the Property during such period if such Application or Plan is inconsistent with the Development Plan. The Owner expressly

waives any vested rights that might otherwise arise under local or state law, or by common law, from the submittal of such inconsistent Development Application. The Owner further agrees that no use commenced or completed on the Property that is inconsistent with the Development Plan shall be considered established or in existence prior to the expiration of the 180-day period during which the Development Plan is in effect.

Section 5. Agreement Deemed Void in Part; Voluntary Annexation.

(A) If an Owner files any application for or otherwise commences development of any portion of the Property inconsistent with the Development Plan provided in Section 2, Sections 1 and 3 of this Agreement shall become null and void as to that portion of the Property for which the application is filed or for which development has commenced. The remaining portions of the Property, however, shall remain subject to the terms of this Agreement.

(B) Upon expiration, or upon breach or termination of this Agreement for any reason, the City may initiate annexation of the Property pursuant to Texas Local Government Code, Subchapter C-3, or other such other provisions governing annexation of land as they may then exist including, but necessarily limited to, Texas Local Government Code, Subchapters C-4 and C-5. Owner agrees that this Agreement may serve as, and shall constitute, a required signature to an annexation consent petition under Texas Local Government Code Section 43.0681 (as that law now exists or may be amended) and/or Texas Local Government Code Section 43.0691 (as that law now exists or may be amended). Owner expressly and irrevocably consents to annexation of the Property under such circumstances. Owner further agrees that such annexation by the City shall be deemed voluntary. The covenants in this paragraph constitute the Owner's voluntary petition for annexation of the Property upon occurrence of the events herein described under Texas Local Government Code, Subchapters C-3, C-4, and/or C-5, whichever may be deemed applicable to the annexation undertaken by the City. Owner further agrees that this Agreement shall constitute Owner's agreement to accept the City's standard annexation service plan, which is attached hereto as ***Exhibit "B"*** (which Exhibit is attached hereto and incorporated by reference herein), at the time of the annexation as though Owner and the City had negotiated such agreement regarding the provision of services to the Property. In the event that the City utilizes an amended or modified standard annexation service plan at the time of annexation, Owner agrees to accept that amended or modified standard annexation service plan at the time of the annexation as though Owner and the City had negotiated such agreement regarding the provision of services to the Property.

Section 6. Notice of Sale. Any person who sells or conveys any portion of the Property shall, prior to such sale or conveyance, give thirty (30) days written notice of this Agreement to the prospective purchaser or grantee. A copy of the notice shall be forwarded to the City at the following address:

City of Terrell

City Hall
201 East Nash
Terrell, Texas 75160
Attn: City Manager

Section 7. **Recording.** This Agreement is to run with the Property and be recorded in the Real Property Records, Kaufman County, Texas.

Section 8. **Severability.** Invalidation of any provision of this Agreement by judgment or court order shall not invalidate any of the remaining provisions which shall remain in full force and effect.

Section 9. **Remedies.** This Agreement may be enforced by either Owner or the City by any proceeding at law or in equity. Failure to do so shall not be deemed a waiver to enforce the provisions of this Agreement thereafter. Entry into this Agreement by Owner waives no rights as to matters not addressed in this Agreement.

Section 10. **Change in Law.** No subsequent change in the law regarding annexation shall affect the enforceability of this Agreement or the City's ability to annex the properties covered herein pursuant to Section 4.

Section 11. **Venue.** Venue for this Agreement shall be in Kaufman County, Texas.

Section 12. **Execution in Multiple Copies.** This Agreement may be separately executed in individual counterparts and, upon execution, shall constitute one and same instrument.

Section 13. **Term, Effective Date and Extensions.** The initial term of this Agreement (the "**Term**") shall be thirty (30) years from the Effective Date, which shall be the date the Agreement is executed by the City. The duration of this Agreement may be extended for additional years by agreement of the parties. At least three (3) months prior to the end of the initial Term, or an extension of such Term, the City and Owner shall confer to determine whether the initial Term or extended Term shall be extended or further extended. If the parties do not concur on an extension, this Agreement shall terminate at the end of the current Term.

Section 14. **Survival of Covenants.** The covenants in Sections 2, 4, and 5.B shall survive termination of this Agreement, together with any other provisions, as may be necessary for the implementation of those sections.

Section 15. **Required Disclosures and Consents.** Pursuant to the requirements of Texas Local Government Code §43.004 and §212.172(b-1), the City hereby discloses the following information regarding this Agreement, which is an agreement that the City is offering Owner which, among other matters, provides that the Owner consents to annexation:

A. Owner is not required to enter into this Agreement. Should Owner choose to enter into this Agreement with the City, Owner should do so only after carefully reviewing this Agreement and, if desired, consulting with an attorney.

B. Pursuant to the terms of this Agreement, and Texas Local Government Code §43.016 and §212.172, the City may annex Owner's Property upon the expiration, or upon the breach or termination, of this Agreement. The City may initiate annexation of Owner's Property pursuant to Texas Local Government Code, Subchapter C-3, or other such other provisions governing annexation of land as they may then exist including, but necessarily limited to, Texas Local Government Code, Subchapters C-4 and C-5.

C. Owner, by entering into this Agreement with the City, consents that the Agreement shall serve as, and shall constitute, a required signature to an annexation consent petition under Texas Local Government Code §43.0681 (as that law now exists or may be amended) and/or Texas Local Government Code §43.0691 (as that law now exists or may be amended). Through this Agreement, Owner will expressly and irrevocably consent to annexation of Owner's Property pursuant to the terms and conditions set forth in this Agreement. Owner will also agree that such annexation by the City shall be deemed voluntary.

D. The process for the voluntary annexation of Owner's Property shall consist of the following steps, as set forth in Texas Local Government Code, Subchapter C-3, which are generally as follows:

1. If not already addressed in this agreement, the City and the landowner shall enter into a written agreement for the provision of services to the area to be annexed.

2. The City shall post newspaper and internet notice of the annexation hearing for the proposed annexation 11-20 days before the annexation hearing and keep the internet posting up until after the hearing.

3. The City shall provide written notice (dated the same date that the City first posts newspaper and internet notice) to all required school districts (Local Government Code §43.905) and all required public entities (Local Government Code §43.9051).

4. The City shall conduct an annexation public hearing on the proposed annexation.

5. At any time after the annexation hearing is concluded, the City may adopt an annexation ordinance annexing the property after two readings of the ordinance have occurred as required by the Terrell Home Rule Charter.

E. The procedures provided in Section 15(D), above, are premised on the Owner's consent to the annexation per the terms and conditions of this Agreement.

F. By entering into this Agreement with Owner, the City waives immunity from suit for the purpose of adjudicating a claim for breach of the agreement, as set forth in Texas Local Government Code §212.172(i)-(k).

G. Owner expressly acknowledges that Owner has read and understands the provisions of Section 15 of this Agreement, to which provisions Owner expressly consents.

The Parties hereto have executed this Agreement as of this _____ day of _____, 2023.

OWNER

CITY OF TERRELL, TEXAS

By: _____
Mike Sims, City Manager

ATTEST:

Dawn Steil, City Secretary

STATE OF TEXAS

COUNTY OF KAUFMAN

This instrument was acknowledged before me on the _____ day of _____, 2023,
by _____.

Notary Public, State of Texas

STATE OF TEXAS

COUNTY OF KAUFMAN

This instrument was acknowledged before me on the _____ day of _____, 2023 by _____.

Notary Public, State of Texas

STATE OF TEXAS

COUNTY OF KAUFMAN

This instrument was acknowledged before me on the _____ day of _____, 202____, by Mike Sims, City Manager on behalf of the City of Terrell, Texas.

Notary Public, State of Texas

Exhibit “A” to Non-Annexation Agreement
(Legal description of Property)

Exhibit “B” to Non-Annexation Agreement
(Annexation Service Plan)