

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, TEXAS REGARDING A MUNICIPAL SERVICES AGREEMENT, PURSUANT TO TEX. LOC. GOV. CODE SEC. 43.0672, BETWEEN THE CITY OF DENTON AND IR2 HOLDINGS LLC FOR THE PROVISION OF CITY SERVICES TO APPROXIMATELY 18.60 ACRES OF LAND, GENERALLY LOCATED APPROXIMATELY 500 FEET NORTH OF US 380 (UNIVERSITY DRIVE) AND EAST OF THOMAS J. EGAN ROAD; APPROVING A SCHEDULE OF ANNEXATION; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE. (A22-0001)

WHEREAS, the applicant Justin Toon, on behalf of the property owner, IR2 Holdings LLC (hereafter referred to as “Owner”), has submitted a petition for voluntary annexation of approximately 18.60 acres of land in Denton County, Texas as described in **Exhibit A** attached hereto and incorporated herein (“Property”); and

WHEREAS, the City of Denton must first negotiate a written Municipal Services Agreement with the Owner of the real property subject to a petition for voluntary annexation, pursuant to Tex. Loc. Govt. Code Sec. 43.0672, that contains (1) the services that the City of Denton will provide on the effective date of the annexation and (2) a schedule that includes the period within which the City of Denton will provide each service that is not provided on the effective date of the annexation; and

WHEREAS, the City of Denton and the Owner have come to an agreement about the provision of full services to the Property following the annexation of the Property; and

WHEREAS, the City Council of the City of Denton finds it to be in the best interest of the citizens of Denton to enter into a Municipal Services Agreement with the Owner; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings and recitations contained in the preamble of this ordinance are incorporated herein by reference.

SECTION 2. The Municipal Services Agreement (“Agreement”), made in accordance with applicable provisions of state law pertaining to annexation, is approved and attached hereto as **Exhibit B** and is made a part hereof for all intents and purposes.

SECTION 3. The City Manager, or designee, is hereby authorized to execute the Agreement and to carry out the duties and responsibilities of the City of Denton under the Agreement.

SECTION 4. The schedule of annexation attached hereto as **Exhibit C** is approved and adopted for this annexation.

SECTION 5. Should any paragraph, section, sentence, phrase, clause or word of this Ordinance be declared unconstitutional or invalid for any reason, the remainder of this Ordinance shall not be affected thereby.

SECTION 6. This Ordinance shall be effective immediately upon its passage and approval.

The motion to approve this ordinance was made by _____ and seconded by _____, the ordinance was passed and approved by the following vote [___ - ___]:

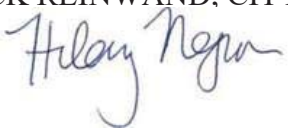
	Aye	Nay	Abstain	Absent
Gerard Hudspeth, Mayor:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Jesse Davis, District 3:	_____	_____	_____	_____
Alison Maguire, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Chris Watts, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this, the _____ day of _____, 2022.

GERARD HUDSPETH, MAYOR

ATTEST:
ROSA RIOS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY
 Hilary Negron
2022.11.08 16:36:24
-06'00'

BY: _____

**EXHIBIT A
LEGAL DESCRIPTION**

BEING an approximate 18.60 acre tract of land out of the Seferino Huizar Survey, Abstract Number 514, situated in Denton County, Texas, being a portion of a called 28.16 acre tract of land conveyed to IR2 Holdings LLC, by deed of record in Document Number 2022-10867 of the Official Records of Denton County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2" iron rod found at or near the centerline of Thomas J. Egan Road, being the Northwest corner of said 28.16 acre tract, and being the Southwest corner of a tract of land conveyed to Vickie Murdock by deed of record in Document Number 2004-80900 of said Official Records, from which a PK nail found at the Northwest corner of said Murdock tract bears N00°11'40"E, a distance of 1090.63 feet;

THENCE, S89°48'36"E, leaving Thomas J. Egan Road, along the North line of said 28.16 acre tract, being the common South line of said Murdock tract, a distance of 996.87 feet to a 1/2" iron rod with green plastic cap stamped "EAGLE SURVEYING" set at the Northeast corner of said 28.16 acre tract, being the Northwest corner of a tract of land conveyed to Preston M. East, II by deed of record in Document Number 2011-122107 of said Official Records;

THENCE, S00°23'47"W, leaving the South line of said Murdock tract, along the East line of said 28.16 acre tract, being the common West line of said Preston M. East, II tract, a distance of 838.75 feet;

THENCE, leaving the West line of said Preston M. East, II tract, over and across said 28.16 acre tract, the following three (3) courses and distances:

1. N87°52'00"W, a distance of 24.70 feet;
2. N87°07'44"W, a distance of 668.84 feet;
3. N85°00'02"W, a distance of 302.18 feet to a point at or near the centerline of Thomas J. Egan Road, being the common West line of said 28.16 acre tract;

THENCE, N00°11'40"E, along or near the centerline of Thomas J. Egan Road and the common West line of said 28.16 acre tract, passing at a distance of 256.44 feet a PK nail found and continuing a total distance of 781.29 feet to the **POINT OF BEGINNING**, and containing an area of 18.60 acres (810,372 square feet) of land, more or less.

Bearings are based on GPS observations utilizing the AllTerra RTK Network. North American Datum of 1983 (Adjustment Realization 2011).

This document was prepared under 22 Texas Administrative Code §138.95, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

EXHIBIT B
MUNICIPAL SERVICES AGREEMENT

MUNICIPAL SERVICES AGREEMENT

This Municipal Service Agreement ("Agreement") is entered into this 15th day of November 2022, by and between and the City of Denton, a Texas home-rule municipality ("City"), and the property owner, IR2 Holdings LLC (hereafter collectively referred to as "IR2 Holdings LLC" or "Owner").

RECITALS:

WHEREAS, Section 43.0671 of the TLGC permits the City to annex an area if each owner of land in an area requests the annexation;

WHEREAS, where the City elects to annex such an area, the City is required to enter into a written agreement with the property owner(s) that sets forth the City services to be provided for the Property on or after the effective date of annexation;

WHEREAS, the Owner owns three (3) tracts of land, totaling approximately 28.16 acres of land (the "Full Project Area"), of which approximately 18.60 acres are located in the City's extraterritorial jurisdiction, as described in Exhibit A and depicted in Exhibit B, incorporated herein by reference ("the Property"); and

WHEREAS, the Owner has filed a written petition with the City for voluntary annexation of the Property, identified as Annexation Case No. A22-0001 ("Annexation Case"); and

WHEREAS, the City and Owner desire to set out the City services to be provided for the Property on or after the effective date of annexation; and

WHEREAS, the Annexation Case and execution of this Agreement are subject to approval by the Denton City Council.

NOW THEREFORE, in consideration of the mutual covenants, conditions, and promises contained herein, City and Owner agree as follows:

- 1. PROPERTY.** This Agreement is only applicable to the Property, which is the subject of the Annexation Case.
- 2. INTENT.** It is the intent of the City that this Agreement provide for the delivery of full, available municipal services to the Property in accordance with state law, which may be accomplished through any means permitted by law.
- 3. MUNICIPAL SERVICES.** Commencing on the effective date of annexation, City will provide the municipal services set forth below. As used in this Agreement, "providing services" includes having services available by any method or means by which the City makes such municipal services available to any other area of the City, including per the

City's infrastructure extension policies, ordinances, and developer or property owner participation in accordance with applicable city ordinances, rules, regulations, and policies.

A. Police

Police protection from City's Police Department shall be provided to the area annexed at a level consistent with current methods and procedures presently provided to areas with similar topography, land use, and population density, on the effective date of the ordinance. Some of these services include:

1. Normal patrols and responses;
2. Handling of complaints and incident reports;
3. Special units, such as traffic enforcement, investigations and special weapons; and
4. Coordination with other public safety support agencies.

As development commences in these areas, sufficient police protection, including personnel and equipment will be provided to furnish these areas with the level of police services consistent with other areas in the City having similar characteristics of topography, land use, and population density.

Upon ultimate development, police protection will be provided at a level consistent with other areas within the city limits having similar characteristics of topography, land use, and population density.

B. Fire Protection

The Denton Fire Department (DFD) will provide emergency and fire prevention services to the annexation area. These services include:

1. Fire suppression and rescue;
2. Pre-hospital medical services including triage, treatment and transport by Advanced Life Support (ALS) fire engines, trucks and ambulances;
3. Hazardous materials response and mitigation;
4. Emergency prevention and public education efforts;
5. Technical rescue response; and
6. Construction Plan Review and required inspections.

Fire protection from the City of Denton shall be provided to the areas annexed at a level consistent with current methods and procedures presently provided to areas of the City of Denton having similar characteristics of topography, land use, and population density, on the effective date of the ordinance.

As development commences in these areas, sufficient fire protection, including personnel and equipment will be provided to furnish these areas with the level of services consistent with other areas having similar characteristics of topography, land use, and population

density. It is anticipated that fire stations planned to serve areas currently within the City of Denton will be sufficient to serve areas now being considered for annexation.

Upon ultimate development, fire protection will be provided at a level consistent with other areas within the city limits having similar characteristics of topography, land use, and population density.

C. Emergency Medical Service

The Denton Fire Department (DFD) will provide the following emergency and safety services to the annexation area. These services include:

1. Emergency medical dispatch and pre-arrival First Aid instructions;
2. Pre-hospital emergency Advanced Life Support (ALS) response; and transport;
3. Medical rescue services.

Emergency Medical Services (EMS) from the City of Denton shall be provided to the areas annexed at a level consistent with current methods and procedures presently provided to areas of the City of Denton having similar characteristics of topography, land use, and population density, on the effective date of the ordinance.

As development commences in these areas, sufficient EMS, including personnel and equipment will be provided to furnish these areas with the level of services consistent with other areas of the City having similar characteristics of topography, land use, and population density.

Upon ultimate development, EMS will be provided at a level consistent with other within the city limits having similar characteristics of topography, land use, and population density.

D. Solid Waste

The City of Denton is the sole provider of solid waste and recycling collection services to all residents, and sole provider for trash collection service to commercial entities in the City. Recycling collection services for commercial entities are managed on the open market, and the City of Denton is one option for service provision. Solid waste and recycling collection services will be provided to the newly annexed property immediately upon the effective date of the annexation at a level consistent with current methods and procedures presently provided to areas within the city having similar characteristics of topography, land use, and population density. Customers receiving their existing services from private solid waste collection service providers operating in the affected area immediately prior to annexation may continue to utilize their existing service for up to 2 years in accordance with Texas Local Government Code. Should that private service end prior to the expiration of the two (2) year term, the customer must initiate solid waste and recycling services with the City of Denton, pursuant to Chapter 24 of the Code of Ordinances.

E. Wastewater Facilities

The proposed annexation area is located within the City of Denton Sewer Service Area as defined by Certificate of Convenience and Necessity (CCN) Number 20072, as issued by the Public Utility Commission (PUC).

As development commences in these areas, sanitary sewer mains will be extended in accordance with the provisions of the Denton Development Code, Water/Wastewater Criteria Manual, ordinances and regulations. If required, City participation in the costs of these extensions shall be in accordance with applicable City ordinances and regulations. Capacity shall be provided consistent with other areas having similar characteristics of topography, land use, and population density. The sanitary sewer infrastructure shall be compatible and consistent with the City's wastewater master plan.

Upon annexation, sanitary sewer mains and lift stations which are located within dedicated utility easements, public rights-of-way, or any other acceptable locations approved by the Director of Water Utilities, shall be maintained by the City on the effective date of this ordinance, if installed or improved to City standards within the annexed areas.

Operation and maintenance of wastewater facilities and infrastructure lying within the service area of another water utility will be the responsibility of that utility. Similarly, operation and maintenance of private wastewater facilities will be maintained to City standards at the expense of the private property owner.

F. Water Facilities

The annexation area is located within the City of Denton Water Service Area as defined by Certificate of Convenience and Necessity (CCN) Number 10195 as issued by the Public Utility Commission (PUC)..

Connections to existing City of Denton water distribution mains for water service will be provided in accordance with the Denton Development Code, associated Water/Waste Water Criteria Manual, and existing City ordinances and policies. Upon connection to existing distribution mains, water service will be provided at rates established by city ordinance.

As new development occurs within these areas, extensions of water distribution mains if required, cost participation shall be in accordance with the Denton Development Code, Water/Wastewater Criteria Manual, and with existing City ordinances and policies. Water service capacity shall be provided consistent with service to areas of the City having similar characteristics of topography, land use and population density. The water infrastructure shall be compatible and consistent with the City's water master plan.

Operation and maintenance of water facilities and infrastructure that lie within the service area of another water utility will be the responsibility of that utility.

Existing developments, businesses or homes that are on individual water wells or private water systems will be allowed to remain on those systems until a request for water service

is made to the City. These requests for service will be handled in accordance with the applicable utility service line extension and connection policies currently in place at the time the request for service is received.

G. Roads and Streets

Emergency street maintenance, defined as repairs necessary to prevent imminent damage or injury to the health or safety of the public or any person, as determined by the Director of Public Works, shall be provided within the annexation area upon the effective date of the annexation ordinance. Routine maintenance will be provided within the annexation areas and will be scheduled as part of the City's annual program, in accordance with the current policies and procedures defined by ordinance, or otherwise established by the City Council.

Any construction or reconstruction will be considered within the annexation area on a Citywide basis and within the context of the City's Capital Improvement Plan and/or yearly fiscal budgetary allotments by the City Council.

Roadway signage and associated posts will be replaced in priority of importance starting with regulatory signs, then warning signs, then informational signs, in conformance with fiscal allotments by the City Council. If an existing sign remains, it will be reviewed and placed on the City's inventory listing for routine replacement, based upon an engineering study. New signs will be installed when necessary, based upon an engineering study.

Routine maintenance of road/street markings will be evaluated and scheduled within the yearly budgetary allotments by the City Council.

H. Drainage

Connections to existing City of Denton drainage facilities will be provided in accordance with the Denton Development Code, associated Stormwater Criteria Manual, and with existing City ordinances and policies, but only to the extent existing on-site drainage facilities are not compliant with the Denton Development Code. Drainage fees will be assessed at the rates established by city ordinance and will be charged on the utility bill after annexation. All runoff, whether directly tied into the system or not, impacts the system and will be charged.

As new development occurs within these areas, drainage facilities will be extended or improved by the developer as required to remain compliant with the Denton Development Code. Any cost participation shall be in accordance with the Denton Development Code, Stormwater Criteria Manual, and with existing City ordinances and policies. Drainage facilities extended by the City will have to be a Capital Improvement Project (CIP) project and bonds will need to be sold. Drainage capacity shall be provided consistent with other areas of the City having similar characteristics of topography, land use and population density.

Existing developments, businesses or homes that are on existing drainage systems will be allowed to continue to remain on these systems until a request for drainage facilities is

made to the City. Any requests for City improvements to existing drainage facilities will be handled in accordance with the applicable extension and connection policies currently in place at the time the request for improved drainage facilities is received by the City. These will be ranked in the CIP project matrix, in accordance with the City Drainage Plan.

I. Electric

The proposed annexation area will be served with electricity distribution service in the most cost-effective manner; provided, however, that before Developer and/or the District may enter into a contract with an electricity distribution service provider, (i) Developer and/or the District shall provide the City with any and all bona fide offers that Developer and/or the District have received from electricity distribution service providers that can legally serve the District and (ii) the City shall have 30 business days to provide to Developer and/or the District Denton Municipal Electric's ("DME") offer to provide distribution electricity service to the District; and provided further, that if DME's offer is substantially similar to the most cost-effective offer from another distribution electricity service provider that can legally serve the District, then Developer and/or the District will obtain electricity distribution service from DME. The term "substantially similar" means that the terms of the offers provide the approximately the same level of service at approximately the same start-up cost to Developer. Electric rates applicable to customers within the District will be pursuant to the then applicable DME rates as approved by the Denton City Council.

Such electricity service offers will be based upon the following terms:

1. The electricity distribution service provider will extend electric distribution facilities as necessary to serve full development of the Land. The electricity distribution service provider will evaluate the cost associated with service extension through the undeveloped area to determine if Aid-in-Construction is required. The electricity distribution service provider is responsible for installation of all primary-voltage electrical cables, transformers, switchgear, streetlight poles and LED streetlight fixtures, streetlight cables, single-family residential services, and other necessary electric distribution and transmission system equipment in compliance with Electric Service Standards and Line Extension Policies currently in place at the time of development, whether onsite or offsite as necessary to provide adequate and reliable electric service to the Land.
2. Developer will provide all on-site public utility easements to the electricity distribution provider that are necessary to protect, install, safely operate and maintain the electric infrastructure, at no cost to the City. PUEs will be 8 feet in width adjacent to street rights-of-way in single family residential areas, and 15 feet in width adjacent to Primary and Secondary Arterial rights-of-way (20 feet where duct banks are required). Easements will be conveyed through the platting process unless the electricity distribution service provider requests an easement be transferred by separate instrument. The provider agrees to joint trench installation of other franchised utilities

such as telephone, cable tv, fiber optic cables, or other non-gas utilities within the designated public utility easements as long as those utilities are on an edge shelf of the trench and not placed directly above the electric facilities.

3. Existing overhead electric distribution lines, which are located in the public rights-of-way, will be relocated by the electricity distribution service provider at no cost to the Developer when development adjacent to the existing electric line requires the line to be relocated in order to accommodate the adjacent development as long as the relocation is also to an overhead position. If Developer requests the relocation be placed underground, then Developer shall be responsible for the difference in cost between the overhead relocation and the underground relocation as reasonably determined and demonstrated by the electricity distribution service provider. Existing overhead electric distribution lines not owned by the electricity distribution service provider will be relocated underground by the owner of the lines if so required to comply with the Denton Development Code.
4. Developer will comply with those City approved policies within the DME Electric Service Standards (ESS), as amended, that are available on the City website and uniformly applied within the City, including the specifications for street lighting.
5. All new distribution electric service within the Land shall be placed underground except for necessary above ground appurtenances such as streetlights, switchgear and transformers. The City shall have the right to inspect the electric facilities prior to placing such facilities into use.

J. Parks, Playgrounds, Swimming Pools

Residents of the annexed area may utilize all existing park and recreation facilities as of the effective date of this ordinance. Fees for such usage shall be in accordance with current fees established by ordinance.

As development commences in this area, additional park and recreation facilities shall be constructed based on park policies defined in the Parks, Recreation and Trails System Master Plan and other existing City ordinances and policies.

K. Publicly Owned Facilities. Any publicly owned facility, building, or service located within the annexed area, and not otherwise owned or maintained by another governmental entity, shall be maintained by the City of Denton on the effective date of the annexation ordinance.

L. Permitting and Inspections. Permitting and Inspections shall be obtained through the City of Denton, as outlined in the Code of Ordinances.

M. **Other Services.** Other services that may be provided by the City of Denton, such as municipal and general administration, will be made available as of the effective date of the annexation. The City of Denton shall provide a level of services, infrastructure, and infrastructure maintenance that is comparable to the level of services, infrastructure, and infrastructure maintenance available in other parts of the City of Denton having similar topography, land use, and population density similar to those reasonably contemplated or projected in the area.

4. **UNIFORM LEVEL OF SERVICES IS NOT REQUIRED**

Nothing in this Agreement shall require City to provide a uniform level of full municipal services to each area of the City, including the annexed area, if different characteristics of topography, land use, and population density justify different levels of service.

5. **AUTHORITY**

City and Owner represent that they have full power, authority and legal right to execute, deliver and perform their obligations pursuant to this Agreement. Owner acknowledges that approval of the Annexation Case is within the sole jurisdiction of the City Council. Nothing in this Agreement guarantees favorable decisions by the City Council.

6. **EFFECTIVE DATE; TERM**

The effective date of this Agreement is the date of the annexation of the Property. This Agreement shall be valid for a term of ten (10) years from the Effective Date.

7. **VENUE AND GOVERNING LAW**

Venue shall be in the state courts located in Denton County, Texas or the United States District Court for the Eastern District of Texas. This Agreement shall be governed and construed in accordance with the laws and court decisions of the State of Texas.

8. **GOVERNMENTAL POWERS.** It is understood that by execution of this Agreement, City does not waive or surrender any of its governmental powers or immunities.

9. **SEVERABILITY**

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

10. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

11. **CAPTIONS**

The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.

12. SUCCESSORS AND ASSIGNS

The terms and conditions of this Agreement are binding upon the successors and assigns of the Parties to this Agreement and stand as obligations running with the land until satisfied in full, regardless of how the Property is developed.

13. ENTIRE AGREEMENT; AMENDMENT.

This Agreement constitutes the complete agreement of the parties to this Agreement and supersedes all prior written agreements between the parties. This Agreement shall not be amended unless executed in writing by both parties. The Parties stipulate that this Agreement does not constitute a permit for development under Chapter 245 of the Texas Local Government Code.

The parties have executed this Agreement on the date first above written.

OWNER

CITY OF DENTON, TEXAS

By: John Clint Riley, Member of IR2 Holdings
LLC

By: _____
City Manager, Deputy City Manager, or
Assistant City Manager

THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED

as to financial and operational
obligations and business terms.

Signature

Title

Department

Date Signed: _____

APPROVED AS TO LEGAL FORM:

Mack Reinwand, City Attorney

By:  Hilary Negron
2022.11.09
14:15:58 -06'00'

**EXHIBIT A
LEGAL DESCRIPTION**

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1. N87°52'00"W, a distance of 24.70 feet;
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**EXHIBIT B
LOCATION MAP**



EXHIBIT C

A22-0001 | 380 AND THOMAS J EGAN VOLUNTARY ANNEXATION ANNEXATION SCHEDULE

Upcoming City Council Meetings are:

November 2022 - 11/1 (Regular) and 11/15 (Regular)
December 2022 - 12/6 (Regular)
January 2023 - 1/10 (Regular) and 1/24 (Regular)

Annexation

4/12/2022 Petition for Annexation submitted

10/26/2022 Deadline to submit noticed to Denton Record Chronicle and City Website for publication before the 10th day before the public hearing on November 15, 2022 (*published on Saturday, October 29, 2022*)

11/10/2022 Deadline to submit backup for posting of City Council Agenda for Regular Meeting on November 15, 2022.

11/15/2022 Annexation **Municipal Service Agreement** – IC (*Required prior to annexation per 43.0672*),

Annexation **Public Hearing** – PH (*Only one public hearing is required per 43.0673*),
AND

First Reading of annexation ordinance – IC (*per City Charter*)

11/20/2022 Publish Ordinance in the paper. (*Charter Sec. 1.03; cannot be acted on for 30 days*).

1/10/2023 CC by 4/5ths vote takes final action – IC
Second Reading of annexation ordinance, AND

Adoption of annexation ordinance (*30 days+ post publication per Charter Sec. 1.03*)