

April 29, 2024

Ms. Laurie Gharis, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
Austin, Texas 78711-3087

Via e-File

Re: City of Buda's Reply to Petitioners' Response to Hearing
Requests for the Creation of Persimmon Municipal Utility District:
Bailey Land Investments, LP, and Armbruster Land Investments, LP
TCEQ Docket No. 2023-1665-DIS

Dear Ms. Gharis:

Enclosed please find the City of Buda's ("City's") Reply ("Reply") to: the April 15, 2024 Response to the Hearing Request of Bailey Land Investments, L.P, and of Armbruster Land Investments, LP (collectively, "Developers"); the April 15, 2024 Response to Requests for Hearing of the Texas Commission on Environmental Quality ("TCEQ") Office of Public Interest Counsel; and, the April 15, 2024 TCEQ Executive Director's Response to Hearing Requests the City has prepared pursuant to 30 TAC § 55.251 *et seq.* The City submits this Reply to the invitation TCEQ extended in its April 3, 2024 letter concerning the above-captioned Petition, the notice ("Notice") of which TCEQ published on August 24, 2023, in the *San Marcos Daily Record*.

For the reasons stated in the enclosed Reply, the City contests Persimmon's assertion that the City and other parties do not constitute Affected Persons, and instead confirms that as Affected Persons, they are authorized to make the enclosed Request pursuant to 30 TAC § 55.256(c)(6). In addition, the City concurs with the determinations of the Office of Public Interest Counsel and TCEQ Executive Director that the City and other parties who replied to TCEQ's August 4, 2023 Notice constitute "Affected Persons" pursuant to 30 TAC § 55.256(b).

Thank you for your attention to this matter.

Respectfully,



Alan Bojorquez

City Attorney
City of Buda, Texas
Attorney for Requestor

Page 2

Ms. Laurie Gharis, Chief Clerk

Texas Commission on Environmental Quality

Enclosures – City of Buda’s Response to Petitioners’ Response to Hearing Request

cc: Honorable Lee Urbanovsky, Mayor of Buda, TX (w/enclosures)

Mr. Micah Grau, City Manager, Buda, TX (w/enclosure

TCEQ DOCKET NO. 2023-1665-DIS

**CITY OF BUDA, TEXAS, REQUEST § BEFORE THE TEXAS COMMISSION
FOR CONTESTED CASE HEARING: §
BAILEY LAND INVESTMENTS, LP, § ON ENVIRONMENTAL QUALITY
AND ARMBRUSTER LAND §
INVESTMENTS, LP §**

**CITY OF BUDA’S RESPONSE TO PETITIONERS’ RESPONSE TO HEARING
REQUESTS**

I. Introduction

On April 3, 2024, the Texas Commission on Environmental Quality (“TCEQ”) issued notice (“Notice”) that on May 10, 2024, TCEQ’s Commissioners (“Commissioners”) will hold in person and virtually a meeting concerning the petition (“Petition”) Bailey Land Investment and Armbruster Land Investment (collectively, “Petitioners”) submitted for the creation of the Persimmon Municipal Utility District (“MUD”). The MUD would consist of a total of 459 acres, 178.6 acres of which are subject to the City of Buda’s (“City’s” or “Buda’s”) Certificate of Convenience and Necessity (“CCN”) for water service.

Petitioners had submitted the Petition to create the MUD to TCEQ on or about June 7, 2023; on June 16, 2023, TCEQ received the Petition, and on the same date it determined that the Petition was administratively complete. In response to the Notice the City of Buda, Texas (“City” or “Buda”) submitted to TCEQ a Request for Contested Case Hearing (“Request”) pursuant to 30 TAC § 55.251 on September 22, 2023. Numerous residents of Buda similarly and timely submitted their own Requests for Contested Case Hearing.

The Notice is attached herein as Exhibit “A” and the City’s Request is attached as Exhibit “B.” These two Exhibits are incorporated by reference herein as if set out word-for-word. A substantial and compelling concern common to the City’s and residents’ Requests relates to

concerns about groundwater quality and abundance, land subsidence potentially caused by uncontrolled groundwater extraction, natural runoff rates, and surface water quality.

In its Notice, TCEQ invited its Executive Director (“ED”), its Public Interest Counsel (“Counsel”), and Petitioners to file written responses (“Responses”) to the respective Requests by April 15, 2024. In addition, TCEQ offered the City and the other parties who had filed timely Requests the opportunity to file by April 29, 2024, a reply (“Reply”) to the ED's, Counsel's, and Petitioners' respective Responses.

The City hereby respectfully submits its Reply to Petitioners' “Response to Hearing Requests,” which is attached as Exhibit C, the ED's “Response to Hearing Requests,” which is attached as Exhibit D, and the Counsel's “Response to Requests for Hearing,” which is attached as Exhibit E. Those three Exhibits are incorporated by reference herein as if set out word-for-word.

II. City's Release of Persimmon from ETJ

According to the Petition, the proposed MUD would contain approximately 459 acres of land (“Persimmon”). Of significance is the fact that of that acreage, 178.6 acres (“Property”) are subject to Buda's Certificate of Convenience and Necessity for water service (“Water CCN”), although Buda does not yet provide such service. On or about September 1, 2023, Petitioner submitted to the City the “Corrected and Restated Request and Petition for Release of Property from the Extraterritorial Jurisdiction of the City of Buda” (“ETJ Release Request”) in which it petitioned the City for the mandatory release of Persimmon from its ETJ. The ETJ Release Request is attached hereto as Exhibit F. In accordance with recent legislation, Senate Bill 2038 (“Senate Bill”) (Texas Legislature, 88th Regular Session, codified as Texas Local Government

Code Sections 42.101-105), on October 11, 2023, by Resolution No. 2023-R-34, Buda's City Council released Persimmon from the City's ETJ.

Although the Senate Bill effectively required Buda to release the 459 acres that make up Persimmon, Buda retains the CCN that encompasses 178.6 acres of Persimmon. The Counsel acknowledged that the Senate Bill mandated the City's release of Persimmon from its ETJ, while at the same time recognizing Buda's concerns about groundwater, subsidence, natural runoff rates, and water quality. Furthermore, Counsel noted that a relevant factor for determining whether governmental entities qualify as "affected persons" is their statutory authority over, or interest in, the issues relevant to the application. Buda is required to exercise its authority to protect public health and safety within the service area of its water CCN irrespective of the divestiture of Persimmon from its ETJ. Therefore, as Counsel noted at Section III. B. of its Response to Requests for Hearing, Buda qualifies as an "affected person in this matter."

In respect of the acreage its CCN encompasses in particular, Buda continues to question whether the MUD and the subsequent development within the MUD will have a negative impact on the following considerations: the potential alteration of potable groundwater elevations within the region; the potential for ground surface subsidence in the vicinity of where greater volumes of groundwater may be extracted; the impacts to the recharge capability of groundwater source or sources; the impact the development of Persimmon may have on natural run-off rates and drainage pathways; potential negative impacts to surface water quality due to increased surface runoff caused by earthmoving activities during the construction of Persimmon; and, from the installation of permanent impervious surfaces such as parking areas, sidewalks, and roadways that would be installed at the latter phase of construction.

III. Concurrence of Counsel and TCEQ that the City Is an Affected Person

Irrespective of the fact that Persimmon no longer is within Buda's ETJ, at Section III. B. of its Response to Requests for Hearing, the Counsel noted that Buda is a local government with statutory authority over and interests in the issues related to the Petition. As such, it correctly concluded that Buda constitutes an "affected person" pursuant to Section 55.256 of Title 30 of the Texas Administrative Code.

Similarly, in Section V. A. of its "Response to Hearing Requests," the ED noted the City's contention that the District will interfere with both Buda's obligations as a CCN holder and with the quality of the drinking water it could provide. The ED then contrasted the City's concerns with the MUD's assertions that it will create effective infrastructure to supply water and wastewater services. Based on those conflicting assertions, the ED noted that "availability of comparable service is one of the factors TCEQ is to examine under [Texas Water Code] § 54.016."

Therefore, because the health and safety concerns the City raised in its request "are both material and relevant to the creation of the proposed District," the ED concluded it was appropriate to recommend that TCEQ find the City to be an "affected person."

IV. Conclusion

Buda is an "affected person" pursuant to TCEQ's rules to request a Contested Case Hearing, and therefore has standing to assert its Request.

V. Request for Relief

For the reasons set forth above, the City of Buda respectfully requests that the Commission deny Petitioner’s claims that the City lacks “affected person” status.

Respectfully submitted,

City of Buda, Texas



by: _____
Alan Bojorquez
City Attorney
City of Buda, Texas

State Bar No. 00796224
alan@texasmunicipallawyers.com
Bojorquez Law Firm, P.C.
11675 Jollyville Road, Suite 300
Austin, TX 78759
Telephone: (512) 250-0411
Facsimile: (512) 250-0749

ATTORNEY FOR REQUESTOR

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing instrument has been served upon all known parties by the method identified below pursuant to the Texas Rules of Civil Procedure on the 29th day of April, 2024.



Alan Bojorquez

Jeffrey S. Howard
McLean & Howard, LLP
4301 Bull Creek Road, Ste. 150
Austin, Texas 78731

via CMRRR# 9589 0710 5270 1232 7294 90

Garrett S. Martin
Bailey Land Investments, LP
2100 Northland Drive
Austin, Texas 78756

via CMRRR# 9589 0710 5270 1232 7295 06

Garrett S. Martin
Armbruster Land Investments, LP
2100 Northland Drive
Austin, Texas 78756

via CMRRR# 9589 0710 5270 1232 7295 13

Shani Armbruster
MileStone Community Builders
2100 Northland Drive
Austin, Texas 78756

via CMRRR# 9589 0710 5270 1232 7295 20

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

NOTICE OF DISTRICT PETITION
TCEQ INTERNAL CONTROL NO. D-06162023-032

PETITION. Bailey Land Investments, LP, a Texas limited partnership and Armbruster Land Investments, LP, a Texas limited partnership, (Petitioners) filed a petition for creation of Persimmon Municipal Utility District (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ.

The petition states that: (1) the Petitioners hold title to a majority in value of the land to be included in the proposed District; (2) there are two Henholders, International Bank of Commerce and Labenski Branch, LP, a Texas limited partnership, on the property to be included in the proposed District and information provided indicates that the henholders consent to the creation of the proposed District; (3) the proposed District will contain approximately 459 acres located within Hays County, Texas; and (4) the land within the proposed District is within the extraterritorial jurisdiction of the City of Buda.

The territory to be included in the proposed District is depicted in the vicinity map designated as Exhibit "A", which is attached to this document.

In accordance with Local Government Code §42.042 and Texas Water Code §54.016, the Petitioners submitted a petition to the City of Buda, requesting the City's consent to the creation of the District. After more than 90 days passed without receiving consent, the Petitioners submitted a petition to the City to provide water and sewer services to the proposed District. The 120-day period for reaching a mutually agreeable contract as established by the Texas Water Code §54.016(c) expired and the information provided indicates that the Petitioners and the City have not executed a mutually agreeable contract for service. Pursuant to Texas Water Code §54.016(d), failure to execute such an agreement constitutes authorization for the Petitioners to initiate proceedings to include the land within the proposed District.

The petition further states that the proposed District will purchase, construct, acquire, repair, extend and improve land, easements, works, improvements, facilities, plants, equipment, and appliances necessary to: (1) provide a water supply for municipal uses and commercial purposes; (2) collect, transport, process, dispose of and control all domestic, industrial, or communal wastes whether in fluid, solid, or composite state; (3) gather, conduct, divert, and control local stormwater or other local harmful excesses of water in the proposed District and the payment of organization expenses, operational expenses during construction and interest during construction; (4) design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads, or improvements in aid of those roads; and (5) provide such other facilities, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created.

According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately \$110,840,000 (\$91,320,000 for water, wastewater, and drainage plus \$19,520,000 for roads).

CONTESTED CASE HEARING. The TCEQ may grant a contested case hearing on this petition if a written hearing request is filed within 30 days after the newspaper publication of this notice.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioners and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

INFORMATION. Written hearing requests should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC-103, at the same address. General information regarding TCEQ can be found at our web site <http://www.tceq.texas.gov/>.

Issued: August 7, 2023

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

NOTICE OF DISTRICT PETITION
TCEQ INTERNAL CONTROL NO. D-06282023-060

PETITION. Hays Commons Land Investments, LP, a Texas limited partnership, (Petitioner) filed a petition for creation of Hays Commons Municipal Utility District (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ.

The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there is one lienholder, Horizon Bank, SSB, on the property to be included in the proposed District and the henholder consents to the creation of the proposed District; (3) the proposed District will contain approximately 290.388 acres located within Hays County, Texas; and (4) the land within the proposed District is within the extraterritorial jurisdiction of the City of Hays.

The territory to be included in the proposed District is depicted in the vicinity map designated as Exhibit "A", which is attached to this document.

The petition further states that the proposed District will: (1) purchase, construct, acquire, repair, extend and improve land, easements, works, improvements, facilities, plants, equipment, and appliances necessary to provide a water supply for municipal uses, domestic uses, and commercial purposes; (2) purchase, construct, acquire, repair, extend and improve land, easements, works, improvements, facilities, plants, equipment, and appliances necessary to collect, transport, process, dispose of and control all domestic, industrial, or communal wastes whether in fluid, solid, or composite state; (3) purchase, construct, acquire, repair, extend and improve land, easements, works, improvements, facilities, plants, equipment, and appliances necessary to gather, conduct, divert and control local storm water or other local harmful excesses of water in the proposed District and the payment of organization expenses, operational expenses during construction and interest during construction; (4) purchase, construct, acquire, repair, extend and improve land, easements, works, improvements, facilities, plants, equipment, and appliances necessary to design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads, or improvements in aid of those roads; and (5) purchase, construct, acquire, repair, extend and improve land, easements, works, improvements, facilities, plants, equipment, and appliances necessary to provide such other facilities, systems, plants and enterprises as shall be consonant with all of the purposes for which the proposed District is created.

According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately \$30,000,000 (\$24,500,000 for water, wastewater, and drainage and \$5,500,000 for roads).

The Property depicted in Exhibit "A" is located within the extraterritorial jurisdiction of the City of Hays, Hays County, Texas (the "City"). In accordance with Local Government Code §42.042 and Texas Water Code §54.016, the Petitioner submitted a petition to the City, requesting the City's consent to the creation of the District. After more than 90 days passed without receiving consent, the Petitioner submitted a petition to the City to provide water and sewer services to the proposed District. The 120-day period for reaching a mutually agreeable contract as established by the Texas Water Code §54.016(c) expired and the information provided indicates that the Petitioner and the City have not executed a mutually agreeable contract for service. Pursuant to Texas Water Code §54.016(d), failure to execute such an agreement constitutes authorization for the Petitioner to initiate proceedings to include the land within the proposed District.

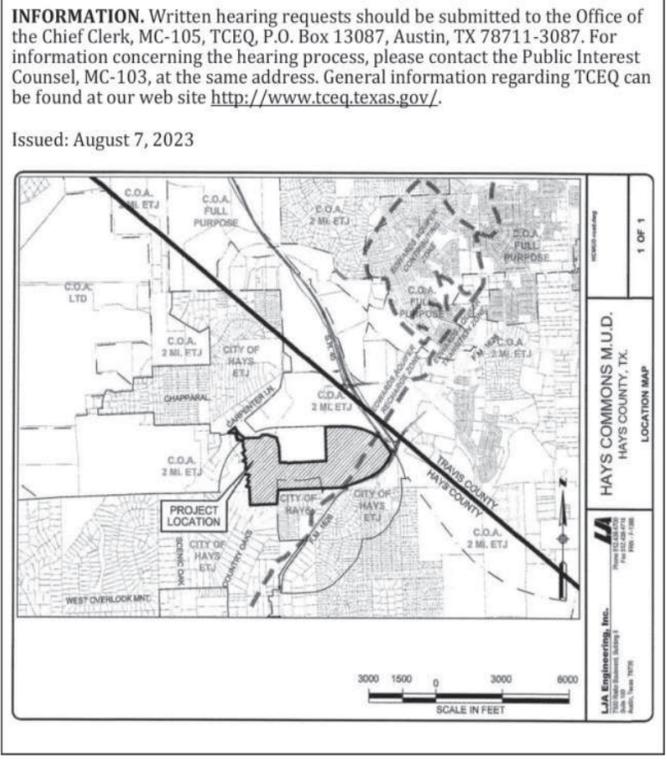
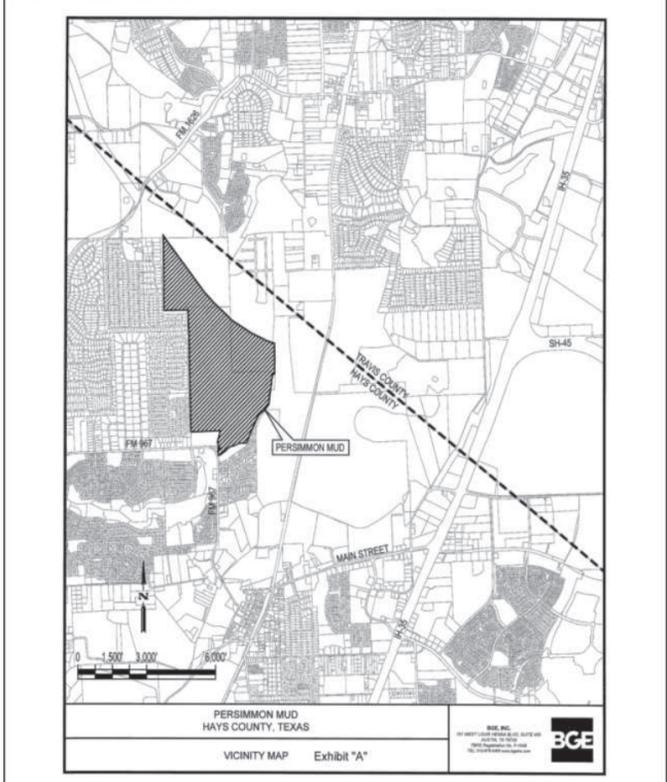
CONTESTED CASE HEARING. The TCEQ may grant a contested case hearing on this petition if a written hearing request is filed within 30 days after the newspaper publication of this notice.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioners and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

INFORMATION. Written hearing requests should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC-103, at the same address. General information regarding TCEQ can be found at our web site <http://www.tceq.texas.gov/>.

Issued: August 7, 2023



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Exhibit "B"

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Fax: (512) 250-0749
TexasMunicipalLawyers.com

September 22, 2023

Laurie Gharis, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
Austin, Texas 78711-3087
Via Hand Delivery

Re: Request for Contested Case Hearing: Petition for
Creation of Persimmon Municipal Utility District
Bailey Land Investments, LP, and Armbruster Land
Investments, LP
TCEQ Internal Control No. D-06162023-032

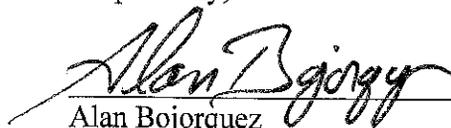
Laurie Gharis:

Enclosed please find the City of Buda's Request for Contested Case Hearing ("Request") pursuant to 30 TAC § 55.251. This is in response to the above-captioned Petition that was published on August 24, 2023, in the San Marcos Daily Record.

For the reasons stated in the enclosed Request, the City is an "Affected Person" pursuant to 30 TAC § 55.256(b), and as such is authorized to make the enclosed Request pursuant to 30 TAC § 55.256(c)(6).

Thank you for your attention to this matter.

Respectfully,



Alan Bojorquez
City Attorney
City of Buda, Texas
Attorney for Requestor

Enclosures

- City of Buda's Request for Contested Case Hearing
- Notice of District Petition
- City of Buda Resolution No. 2023-R-32

TCEQ 000

22SEP '23 14:00

Exhibit "B"

cc: Honorable Lee Urbanovsky, Mayor of Buda, TX (w/enclosure)
Mr. Micah Grau, City Manager, Buda, TX (w/enclosure)

Exhibit "B"

TCEQ INTERNAL CONTROL NO. D-06162023-032

CITY OF BUDA, TEXAS, REQUEST	§	BEFORE THE TEXAS COMMISSION
FOR CONTESTED CASE HEARING:	§	
BAILEY LAND INVESTMENTS, LP,	§	ON ENVIRONMENTAL QUALITY
AND ARMBRUSTER LAND	§	
INVESTMENTS, LP	§	

CITY OF BUDA'S REQUEST FOR CONTESTED CASE HEARING

I. Introduction

On June 5, 2023, the City of Buda, Texas, ("Buda") received a Petition ("Petition") for Creation of Municipal Utility District (the "MUD") that was submitted on or about June 7, 2023, to the Texas Commission on Environmental Quality ("TCEQ") by Bailey Land Investments, LP, a Texas limited partnership, and by Armbruster Land Investments, LP, a Texas limited partnership (collectively, "Petitioner"). According to the Petition, the proposed MUD would contain approximately 459 acres of land ("Persimmon"). Of that acreage, 178.6 acres ("Property") are subject to Buda's Certificate of Convenience and Necessity for water service ("Water CCN") alone, but Buda does not yet provide such service. Currently, there is no Certificate of Convenience and Necessity for wastewater service ("Wastewater CCN") that includes the Property.

On August 7, 2023, the TCEQ issued the "Notice of District Petition of Bailey Land Investments, LP, and Armbruster Land Investments, LP" ("Notice"). On August 24, 2023, the Notice was published by the *San Marcos Daily Record*. In response to the Petition, Buda respectfully submits this Request for Contested Case Hearing ("Request"). Buda, as a local government with statutory authority over and interests in the issues related to the Petition, is an affected person pursuant to Section 55.256 of Title 30 of the Texas Administrative Code.

Exhibit "B"

II. Background

Buda is a home rule city with a population of approximately 16,086 residents. Buda owns and operates its own water and wastewater treatment facilities that have limited capacity to provide water and wastewater services to potential utility consumers outside of the Buda city limits. Buda's main source of drinking water is groundwater with a limited supply of surface water from the Guadalupe Blanco River Authority.

Buda has been actively engaged for more than two years with Milestone Community Builders ("Developer") on, among other things, the provision of water and wastewater services to Persimmon. The Developer acts on behalf of the Petitioner with respect to a planned 775-acre mixed-use development project ("Project") that includes Persimmon and the Property. The Project is located partially in the Buda city limits, partially in Buda's Extraterritorial Jurisdiction ("ETJ"), and partially in an unincorporated area of Hays County.

Buda has cooperated in good faith with the Developer in an effort to negotiate a Development Agreement ("Agreement") as authorized by Texas Local Government Code Chapter 212. The goals the parties hoped to achieve include the possible formation of a Public Improvement District ("PID") and other means of addressing shared public infrastructure. Buda had hoped to come to a meeting of the minds with respect to many legitimate public interests. Those interests include limitations on population density, availability and variety of housing stock, land use, conservation of surface water and groundwater resources, preservation of water and air quality, economic development, creation of parks and recreation centers, transportation, tree and native habitat preservation, wildlife conservation, dark skies, and the provision of reliable public utility services.

Exhibit "B"

Notwithstanding Buda's continuing good faith efforts to come to a mutual accommodation of the Developer's requests for services, Buda has not been able to reach an acceptable agreement with the Developer. The impasse is in part attributable to the Developer's failure to comply with Buda's reasonable requests for the Developer to revise or supplement inadequate or incomplete submissions in connection with the Developer's various applications and petitions associated with the Project and the creation of the MUD.

The inadequacy of the Developer's responses to Buda's requests for additional information has prevented Buda from determining if the MUD project is feasible and practicable. Thus, Buda continues to question whether the MUD and the subsequent development within the MUD will have a negative impact on the following considerations: the potential alteration of potable groundwater elevations within the region; the potential for ground surface subsidence in the vicinity of where greater volumes of groundwater may be extracted; the impacts to the recharge capability of groundwater source or sources; the effect the Project may have on natural run-off rates and drainage pathways; and, potential negative impacts to surface water quality due to increased surface runoff caused by earthmoving activities during the construction of the Project, and from the installation of permanent impervious surfaces such as parking areas, sidewalks and roadways that would be installed at the latter phase of construction.

III. The City of Buda is an Affected Person

The City of Buda is an "affected person" pursuant to Section 55.256 of Title 30 of the Texas Administrative Code ("TAC"), and as such is authorized to submit this Request. 30 TAC § 55.256(c)(6) states that local governments with authority under state law over issues raised by an application may be considered "affected persons."

Exhibit "B"

A. Six Factors

To determine whether Buda is an "affected person" authorized to challenge Petitioner's Petition, one must consider the six factors set out at 30 TAC § 55.256(c)(1) – (6). Those factors are:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health, safety, and use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

B. Application of the six factors to Buda as an affected person.

- (1) Buda's interests, as further discussed in this Request, are protected by the law under which the Petition will be considered.

Texas Local Government Code Section 42.042 and Texas Water Code 54.016 state unequivocally that a political subdivision such as a MUD may not be created within the corporate limits and/or ETJ of a municipality without the municipality's written consent by ordinance or resolution, or by operation of law in accordance with those statutes. Buda has not given its consent, either by written consent, by ordinance or resolution, or by operation of law in accordance with those statutes cited above.

Exhibit "B"

- (2) The proposed area to be included in the MUD is partially located within Buda's ETJ and also includes area within Buda's Water CCN.

The proposed Persimmon MUD and related development Project include approximately 459 acres of land located within Buda's ETJ, including 178.6 acres that are with Buda's Water CCN. As stated above, Buda's consent to creation of the MUD in its ETJ has not been given. In addition, Buda has legal interests in the Property within its Water CCN.

- (3) A reasonable relationship exists between Buda's interests and the proposed MUD creation.

As further detailed in the Request below, the Petitioner has claimed that it is entitled to water and wastewater services from Buda, which would serve the Developer's interests in constructing the Project. However, while the Petitioner alleges entitlement to the services requested, Buda simply lacks the capacity to provide water and wastewater services to Persimmon. Therefore, while Buda regulates the provision of those services pursuant to the Texas Water Code and Texas Local Government Code, at this time, Buda cannot accommodate Developer's interests as requested, pursuant to those statutes.

- (4) Buda has valid concerns about the likely adverse impacts of the proposed MUD creation on the health, safety, and use of property in the proposed Project, the City's ETJ, and city limits.

The Texas Water Code and Texas Local Government Code regulate the provision of water and wastewater treatment services. Buda's inability to provide those services due to lack of capacity, and its consequential denial of those services, protect the quality of drinking water and the waters into which effluent would be discharged. As detailed in the Request below, Buda has sincere concerns about the adequacy of safeguards for the public interests related to the

Exhibit "B"

potential adverse effect of the MUD creation on groundwater levels and quality within the region, recharge capability of groundwater sources, natural run-off rates and drainage, and water quality.

- (5) Buda has valid concerns about the likely adverse impacts of the proposed MUD creation on the shared natural resources in the area.

Buda has valid concerns that the increase in demand for Buda's limited groundwater resources to serve Persimmon's needs would strain already taxed groundwater resources. Groundwater is an important natural resource that sustains the lives of biota, which includes humans and plant life. In the same vein, the proper treatment of wastewater produces clean water that sustains life within the affected watershed. Therefore, inadequately treated wastewater would have a direct negative impact on those natural resources.

- (6) Buda is a governmental entity with statutory authority over and interests in the issues relevant to the Petition.

The statutory bases under which Buda makes this Request for a Contested Case Hearing are the Texas Local Government Code and Texas Water Code. Buda's interests in the issues relevant to the Petition are further detailed in this Request.

For the reasons asserted above, Buda has standing to oppose the Petition.

IV. The Petition Should Be Denied

- A. In addition to the regulatory analysis set out above, the Developer's service requests would unduly burden Buda's diminishing drinking water sources and wastewater treatment capacity.**

On January 28, 2022, the Developer submitted to Buda a Service Extension Request ("Extension Request") on behalf of Persimmon. The Extension Request was for Buda to extend

Exhibit "B"

water and *wastewater* service to approximately 305 acres within Buda's ETJ. However, a portion of the Property that is located between Goldilocks Lane and FM 967 is subject to Buda's Water CCN. That Water CCN does not include *wastewater* service, and Buda is not obligated to provide such service. Were Buda to grant Persimmon's Extension Request, Buda's wastewater treatment capacity would be unduly burdened. The inclusion of water service would also impose excessive pressures on Buda's diminishing groundwater supply. Thus, Buda has concluded that approval of the Extension Request would be to the detriment of its citizens who currently reside within the city limits, and therefore it did not grant the request.

Buda does not deny that it may provide *water* services within the Water CCN area, but only when it is reasonably requested and reasonably able. However, Buda is not obligated to provide *wastewater* service to the portion of the Property that is within Buda's *Water* CCN. *See* Texas Water Code § 13.250(a). As Buda has indicated previously, it is committed to satisfying its legal obligations, and those commitments may be memorialized in voluntarily negotiated agreements as contemplated by Texas Local Government Code Sections 212.172 and 552.001(c). However, because Buda currently *lacks the capacity to provide service* to the single-family or multi-family units and associated infrastructure proposed for the Project as requested by the Developer, Buda cannot enter into such voluntarily negotiated agreements. Consequently, such limited capacity is an impediment *to the construction* of those types of residences. In fact, the density of service consumers who reside in multi-family housing units would substantially increase the number of utility service consumers per square foot of Persimmon's footprint.

Simply put, Buda anticipates that it cannot serve its current and reasonably anticipated future residents and the reasonably anticipated future water and wastewater treatment needs of single-family and dense multi-family housing units that may be located within the ETJ. Thus, it

Exhibit "B"

is in Buda's interest to preserve within its city limits its diminishing drinking water and sewage treatment resources for its current and reasonably anticipated future residents. Therefore, at this time, Buda and its residents are not able to agree to provide the Property with the water and wastewater services the Developer has requested.

B. The proposed MUD is inconsistent with the State policy of regionalization when the City of Austin is a reasonably available alternative for water and wastewater services.

In addition to practical impediments for Buda to acquiesce to the Developer's requests for utility service to the Property, the Texas Legislature has articulated a policy of regionalization of wastewater treatment and disposal services. To that end, the City of Austin ("Austin") may have more than adequate surface water and sewage treatment capacity to satisfy the Project's, including Persimmon and the Property, future needs, which will rapidly increase for both municipalities. Although Buda currently has adequate capacity to serve the citizens who reside within its city limits, Austin might have the capacity to serve the present and future residents who reside on the land currently lying within Buda's ETJ.

The Petitioner's proposal to create a MUD is inconsistent with State policy to regionalize wastewater treatment services and would rapidly deplete Buda's diminishing groundwater resources. Texas Water Code Section 49.230, Area-wide Wastewater Treatment, provides:

The powers and duties conferred on the district are granted subject to the policy of the state to encourage the development and use of integrated area-wide wastewater collection, treatment, and disposal systems to serve the wastewater disposal needs of the citizens of the state whenever economically feasible and competitive to do so, *it being an objective of the policy to avoid the economic burden to the people and the impact on the*

Exhibit "B"

quality of the water in the state that result from the construction and operation of numerous small wastewater collection, treatment, and disposal facilities to serve an area when an integrated area-wide wastewater collection, treatment, and disposal system for the area can be reasonably provided. [Emphasis added.]

By letter dated August 19, 2021, Developer submitted to Austin a Service Extension Request ("SER") for the Property. In the SER, Developer requested a waiver pursuant to Section 25-9-3 of Austin's Land Development Code to allow Austin to provide water, wastewater, and reclaimed water service outside of its service area and to the Property. Also in its SER application, Developer affirmed the statement set out in the application form:

Due to the proximity of centralized wastewater service and/or the density of this development, decentralized wastewater options were not determined to be feasible.

Thus, in its SER application form, Developer has acknowledged that decentralized water and wastewater service for the Property was not feasible. Consequently, it applied to Austin to avail itself of Austin's existing water and wastewater infrastructure.

As stated above, the State of Texas has established a statutory policy for regionalization of wastewater services. That policy directly applies to the situation at hand, where Buda lacks capacity to provide wastewater treatment service in addition to water service to the Project, let alone to the Property, and where Austin may be a reasonably available alternative. Were Petitioner to request and receive wastewater and water services from Austin, the Developer would only need to develop one pipeline corridor and associated infrastructure to transport Persimmon's wastewater and water to the entirety of the Project.

Exhibit "B"

The public benefits that an arrangement with Austin for water and wastewater services would bestow would be substantial. Among other attributes, such an arrangement would reduce the economic burden on residents and the impact on the quality of water that may result from the construction and operation of numerous smaller wastewater collection, treatment, and disposal facilities, assist conservation of groundwater resources, preserve water and air quality, encourage economic development, place a lesser footprint that would provide more land for the development of public parks and recreation centers, enhance tree and native habitat preservation, and conserve wildlife.

C. The proposed MUD outside the city limits and ETJ lacks adequate safeguards for the public interests.

On June 20, 2023, the Petitioner submitted a Petition for the Release of Property from the Extraterritorial Jurisdiction of the City of Buda to Buda seeking mandatory release of 459 acres of the Project from the City's ETJ in accordance with recent legislation, Senate Bill 2038 (Texas Legislature, 88th Regular Session, codified as Texas Local Government Code Sections 42.101-105). A Restated and Corrected Petition for the Release of Property from the Extraterritorial Jurisdiction of the City of Buda was filed on September 1, 2023, correcting and superseding the prior petition. The release from Buda's ETJ necessitated by this new law (which went into effect September 1, 2023) will make Buda's Code of Ordinances inapplicable to the varied construction, development, transportation, and utility matters for Persimmon's activities. Thus, Buda has sincere and legitimate public concerns about the creation of the MUD in such close proximity to the city limits without application of Buda's reasonable regulations and standards to safeguard the public interests.

Exhibit "B"

V. Conclusion

Buda is an "affected person" pursuant to TCEQ's rules to request a contested case hearing, and therefore has standing to assert this Request.

The Texas Legislature has articulated a policy of regionalization of wastewater treatment and disposal services. Buda is reliant on diminishing groundwater resources as its water source. Therefore, as recently as August 2021, the Developer submitted to Austin an SER in which it requested inclusion within Austin's utility service area. It did so because it recognized that decentralized water and wastewater service for the Property was not feasible and because Austin may have more than adequate capacity from the relatively more abundant Colorado River to provide its current service base and the Developer's proposed Project with drinking water. Austin also possesses sufficient treatment capacity for the provision of wastewater services. Buda has limited wastewater capacity, and its drinking water source is diminishing and will experience significant strain were the Developer not to enter into an agreement with an alternate provider. Austin, which already has the capacity to provide both the Property and the Project as a whole with both water and wastewater services, could serve as such an alternative.

In closing, on behalf of its citizens and property owners, Buda continues to be concerned that the proposed MUD will have an unreasonable and adverse effect on: groundwater levels and quality within the region; recharge capability of groundwater sources; natural run-off rates and drainage; and, water quality. With the MUD being created outside the city limits and ETJ, there are few development regulations that will apply to safeguard the public interest.

Exhibit "B"

VI. Request for Relief

For the reasons set forth above, the City of Buda respectfully requests that the Commission grant a Contested Case Hearing and thereafter deny Petitioner's Petition.

Respectfully submitted,

City of Buda, Texas

by: 

Alan Bojorquez
City Attorney
City of Buda, Texas

State Bar No. 00796224
alan@texasmunicipallawyers.com
Bojorquez Law Firm, P.C.
11675 Jollyville Road, Suite 300
Austin, TX 78759
Telephone: (512) 250-0411
Facsimile: (512) 250-0749

ATTORNEY FOR REQUESTOR

Exhibit "B"

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing instrument has been served upon all known parties by the method identified below pursuant to the Texas Rules of Civil Procedure on the 22nd day of September, 2023.


Alan Bojorquez

Jeffrey S. Howard
McLean & Howard, LLP
4301 Bull Creek Road, Ste. 150
Austin, Texas 78731

via CMRRR# 9589 0710 5270 0138 1675 28

Garrett S. Martin
Bailey Land Investments, LP
2100 Northland Drive
Austin, Texas 78756

via CMRRR# 7020 1810 0000 2802 6692

Garrett S. Martin
Armbruster Land Investments, LP
2100 Northland Drive
Austin, Texas 78756

via CMRRR# 7020 1810 0000 2802 6685

Shani Armbruster
MileStone Community Builders
2100 Northland Drive
Austin, Texas 78756

via CMRRR# 7020 1810 0000 2802 6708

Exhibit "B"

San Marcos Daily Record

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Public Notice	Autos								
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NOTICE OF DISTRICT PETITION

TCEQ INTERNAL CONTROL NO. D-06162023-052

PETITION. Valley Land Investments, LP, a Texas limited partnership and Architectural Land Investments, LP, a Texas limited partnership, (Petitioners) filed a petition for creation of Permanent Aesthetic Quality District (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas, Chapters 49 and 54 of the Texas Water Code, 30 Texas Administrative Code Chapter 299, and the procedural rules of the TCEQ.

The petition states that (1) the Petitioners hold title to a majority in value of the land to be included in the proposed District; (2) there are no landholders, leaseholders, or other persons with an interest in the proposed District; (3) the proposed District will contain approximately 450 acres located within Hays County, Texas; and (4) the land within the proposed District is within the nonterritorial jurisdiction of the City of Buena Vista.

The territory to be included in the proposed District is depicted in the vicinity map designated as Exhibit "A", which is attached to this document.

In accordance with Local Government Code §42.042 and Texas Water Code §54.016, the Petitioners submitted a petition to the City of Buena Vista, requesting the City's consent to the creation of the District. After a 120-day period for receiving comments, the Petitioners submitted a petition to the City to provide water and sewer services to the proposed District. The 120-day period for reaching a mutually agreeable contract as established by the Texas Water Code §54.016(c) expired and the information provided indicates that the Petitioners and the City have not executed a mutually agreeable contract for service. Pursuant to Texas Water Code §54.016(f), failure to execute such an agreement constitutes authorization for the Petitioners to initiate proceedings to include the land within the proposed District.

The petition further states that the proposed District will purchase, construct, acquire, repair, extend and improve land, easements, rights, improvements, facilities, plants, equipment, and appliances necessary to (1) provide a water supply for municipal uses and commercial purposes; (2) collect, transport, process, dispose of and control all domestic, industrial, or commercial wastes whether in fluid, solid, or composite state; (3) gather, conduct, divert, and control local stormwater or other local harmful excesses of water in the proposed District and the prevention of organizational expenses, operational expenses during construction and later during construction; (4) design, acquire, construct, furnish, improve, operate, and maintain maintained, graded, or paved roads, or improvements in all of these roads; and (5) provide such other facilities, systems, plants, and equipment as shall be consistent with all of the purposes for which the proposed District is created.

According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately \$11,840,000 (\$9,320,000 for water, wastewater, and drainage plus \$2,520,000 for roads).

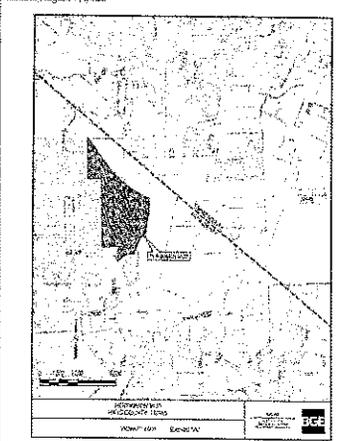
CONTESTED CASE HEARING. The TCEQ may grant a contested case hearing on this petition if a written hearing request is filed within 30 days after the newspaper publication of this notice.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioners and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

INFORMATION. Written hearing requests should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC-103, at the same address. General information regarding TCEQ can be found at our web site <http://www.tceq.texas.gov/>.

Issued: August 7, 2023



NOTICE OF DISTRICT PETITION

TCEQ INTERNAL CONTROL NO. D-06202023-060

PETITION. Hays Commons Land Investments, LP, a Texas limited partnership, (Petitioner) filed a petition for creation of Hays Commons Municipal Utility District (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas, Chapters 49 and 54 of the Texas Water Code, 30 Texas Administrative Code Chapter 299, and the procedural rules of the TCEQ.

The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there is one landholder, Harrison Batts SSI, on the property to be included in the proposed District and the landholder consents to the creation of the proposed District; (3) the proposed District will contain approximately 270.389 acres located within Hays County, Texas; and (4) the land within the proposed District is within the nonterritorial jurisdiction of the City of Buena Vista.

The territory to be included in the proposed District is depicted in the vicinity map designated as Exhibit "A", which is attached to this document.

The petition further states that the proposed District will: (1) purchase, construct, acquire, repair, extend and improve land, easements, rights, improvements, facilities, plants, equipment, and appliances necessary to provide a water supply for municipal uses, domestic uses, and commercial purposes; (2) purchase, construct, acquire, repair, extend and improve land, easements, rights, improvements, facilities, plants, equipment, and appliances necessary to collect, transport, process, dispose of and control all domestic, industrial, or commercial wastes whether in fluid, solid, or composite state; (3) gather, conduct, divert, and control local stormwater or other local harmful excesses of water in the proposed District and the prevention of organizational expenses, operational expenses during construction and later during construction; (4) purchase, construct, acquire, repair, extend and improve land, easements, rights, improvements, facilities, plants, equipment, and appliances necessary to design, acquire, construct, furnish, improve, operate, and maintain maintained, graded, or paved roads, or improvements in all of these roads; and (5) purchase, construct, acquire, repair, extend and improve land, easements, rights, improvements, facilities, plants, equipment, and appliances necessary to provide such other facilities, systems, plants and equipment as shall be consistent with all of the purposes for which the proposed District is created.

According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately \$30,000,000 (\$25,500,000 for water, wastewater, and drainage and \$4,500,000 for roads).

The property depicted in Exhibit "A" is located within the extrajurisdictional jurisdiction of the City of Hays, Hays County, Texas (the "City"). In accordance with Local Government Code §42.042 and Texas Water Code §54.016, the Petitioner submitted a petition to the City, requesting the City's consent to the creation of the District. After a 120-day period without receiving the City's consent, the Petitioner submitted a petition to the City to provide water and sewer services to the proposed District. The 120-day period for reaching a mutually agreeable contract as established by the Texas Water Code §54.016(c) expired and the information provided indicates that the Petitioner and the City have not executed a mutually agreeable contract for service. Pursuant to Texas Water Code §54.016(f), failure to execute such an agreement constitutes authorization for the Petitioner to initiate proceedings to include the land within the proposed District.

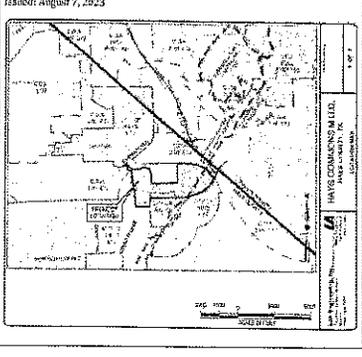
CONTESTED CASE HEARING. The TCEQ may grant a contested case hearing on this petition if a written hearing request is filed within 30 days after the newspaper publication of this notice.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioners and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

INFORMATION. Written hearing requests should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC-103, at the same address. General information regarding TCEQ can be found at our web site <http://www.tceq.texas.gov/>.

Issued: August 7, 2023



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Exhibit "B"

CITY OF BUDA, TX

RESOLUTION NO. 2023-R-32

PERSIMMON MUNICIPAL UTILITY DISTRICT

A RESOLUTION OF THE CITY OF BUDA, TEXAS, TAKING A POSITION IN OPPOSITION TO THE CREATION OF THE PERSIMMON MUNICIPAL UTILITY DISTRICT AND REQUESTING A CONTESTED CASE HEARING BEFORE TCEQ; AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO SUBMIT NECESSARY DOCUMENTS TO TCEQ RELATED TO SUCH REQUEST; AND PROVIDING FOR REPEALER, SEVERABILITY, AN EFFECTIVE DATE, AND PROPER NOTICE AND MEETING.

WHEREAS, the City of Buda, Texas ("City"), is entrusted by its citizens to protect the public health, safety, welfare and the environment through a system of comprehensive land use planning, transportation planning, development regulations, economic development, and the provisions of certain utilities; and

WHEREAS, the City has engaged in a holistic approach to managing growth and development in its City Limits and Extraterritorial Jurisdiction, balancing incentives for certain mutually beneficial projects, reliable public utility services, capital improvements and infrastructure construction, tree preservation, the protection of open space, creation of recreational space, and the regulation of construction; and

WHEREAS, the City is committed to responsible, orderly growth and development that facilitates new construction and the reasonable utilization of land while safeguarding shared natural resources, the safety and quality of life of neighboring citizens, and the investments of adjoining property owners; and

WHEREAS, the City has been actively engaged for more than two years with Milestone Community Builders ("Developer") on behalf of the owners of a 775-acre mixed-use development project commonly known as Persimmon ("Project") located partially in the City Limits, partially in the City's Extraterritorial Jurisdiction ("ETJ"), and partially in an unincorporated area of Hays County; and

WHEREAS, the City has in good faith diligently cooperated with the Developer in an effort to negotiate a Development Agreement as authorized under Texas Local Government Code Chapter 212, which included the possible formation of a Public Improvement District, and addressing many legitimate public interests including density, housing stock, land use, conservation of surface water and groundwater resources, preservation of water and air quality, economic development, parks and recreation, transportation, tree and native habitat preservation, wildlife conservation, dark skies, and the provision of reliable public utility services; and

Exhibit "B"

- WHEREAS,** the City has been generally receptive to the prospect of the creation of a Municipal Utility District ("MUD") for the Project, but only in conjunction with the mutual approval by the City and the Developer of a Development Agreement addressing the many public concerns about the impact of the Project on the community as a whole, the adjoining neighborhoods, and the region; and
- WHEREAS,** on August 10, 2022, Bailey Land Investments, LP, and Armbruster Land Investments, LP ("Petitioners") filed with the City of Buda a Petition for Consent to Creation of Municipal Utility District ("Consent Petition") pursuant to Texas Water Code Chapter 54 and Texas Local Government Code Chapter 42, to be named the "Hays County Municipal Utility District No. 8 or some other name as required or permitted by law" ("District"); and
- WHEREAS,** on June 5, 2023, the Petitioners filed with the Texas Commission on Environmental Quality ("TCEQ") a petition ("Petition") for the creation of the proposed "Persimmon Municipal Utility District" covering 459 acres of the Project located within the City's ETJ; and
- WHEREAS,** on June 20, 2023, the Developer submitted to the City on behalf of the Petitioners a Petition for Release of Property from the Extraterritorial Jurisdiction of the City of Buda seeking mandatory release of 459 acres of the Project from the City's ETJ in accordance with recent legislation, Senate Bill 2038 (Texas Legislature, 88th Regular Session, codified as Texas Local Government Code §§42.101-105); and
- WHEREAS,** on September 1, 2023, the Developer submitted to the City on behalf of the Petitioners a superseding Corrected and Restated Petition for Release of Property from the Extraterritorial Jurisdiction of the City of Buda seeking mandatory release of 459 acres of the Project from the City's ETJ in accordance with recently enacted recent legislation, Senate Bill 2038 (Texas Legislature, 88th Regular Session, codified as Texas Local Government Code §§42.101-105); and
- WHEREAS,** the City is now uncertain the extent to which the Developer is currently engaged in negotiations with the City on a Development Agreement or any other transactions that would protect the public health, safety and welfare or provide for orderly growth and development for the Project; and
- WHEREAS,** as an adjoining local government, the City has sincere concerns about the anticipated adverse effects and negative externalities the proposed District will have on the City, its residents and neighbors, thus making the City an *Affected Person* under the law with *justiciable interests* affected by the Petition; and
- WHEREAS,** the City has legitimate public interests in the availability of sufficient groundwater resources to serve the residents within the City Limits and other reasonably-

Exhibit "B"

anticipated development projects near the City and the proposed MUD, and whether economically feasible and practical alternatives involving reasonably available surface water have been properly vetted; and

WHEREAS, the City may state its opposition to the creation of the District in accordance with Texas Water Code Chapters 49 and 54, and the Texas Administrative Code (30 TAC 293, and 30 TAC 55.251); and

WHEREAS, the City Council finds this Resolution to be reasonable, necessary, and proper, and in the best interests of the citizens of the City of Buda.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Buda, Texas:

Section 1. Findings of Fact: The foregoing recitals are incorporated into this resolution ("Resolution") by reference as findings of fact as if expressly set forth word-for-word herein.

Section 2. Opposition: The City Council hereby approves the filing of a request for a contested case hearing with TCEQ in opposition to the Petitioners' Petition for the creation of the District. In so doing, the City Council authorizes the Mayor and Council Members to speak in opposition to the creation of the District. The City Council further authorizes the City Manager and City Attorney to represent the City and submit to the TCEQ any documentation necessary to the position taken by this Resolution, including but not limited to a written Request for a Contested Case Hearing to be approved by the City Attorney, substantially in the form attached as Exhibit "A".

Section 3. Filing: The City Secretary is hereby directed to file a certified copy of this Resolution and an updated map of the City's ETJ boundary with the County Clerk of Hays County, Texas.

Section 4. Repealer: To the extent reasonably possible, resolutions are to be read together in harmony. However, all resolutions, or parts thereof, that are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters regulated.

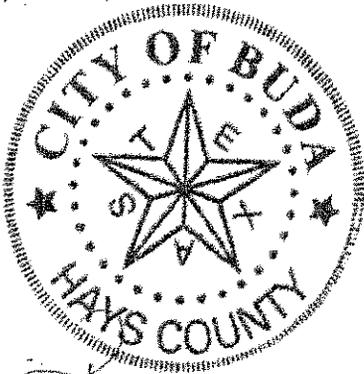
Section 5. Severability: Should any of the clauses, sentences, paragraphs, sections, or parts of this Resolution be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Resolution.

Exhibit "B"

Section 6. Effective Date: This Resolution shall take effect upon the date of final passage noted below.

Section 7. Proper Notice & Meeting: It is hereby officially found and determined that the meeting at which this Resolution was passed was open to the public, and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

PASSED & APPROVED on First Reading by the City Council of the City of Buda, on this, the 19th day of September, 2023.



The City of Buda



Lee Urbanovsky, Mayor

ATTEST:



Alicia Ramirez, City Clerk

APPROVED AS TO FORM:



Alan Bojorquez, City Attorney

Exhibit "B"

Exhibit "A"

Request for Contested Case Hearing Regarding the Proposed Persimmon MUD

Exhibit "C"

TCEQ DOCKET NO. 2023-1665-DIS

APPLICATION FOR THE	§	BEFORE THE TEXAS
CREATION OF PERSIMMON	§	
MUNICIPAL UTILITY DISTRICT	§	COMMISSION ON
	§	
	§	ENVIRONMENTAL QUALITY
	§	

BAILEY LAND INVESTMENTS, LP'S
AND
ARMBRUSTER LAND INVESTMENTS, LP'S
RESPONSE TO HEARING REQUESTS

Bailey Land Investments, LP and Armbruster Land Investments, LP (“Petitioners”) respectfully submit this Response to Hearing Requests in the above-referenced matter.

I. INTRODUCTION AND PROCEDURAL HISTORY

The proposed Persimmon Municipal Utility District (“District”) contains approximately 459 acres located within Hays County, Texas.

It is critical to note that the land within the proposed District is no longer within the extraterritorial jurisdiction of the City of Buda. A copy of Resolution No. 2023-R-34 Extraterritorial Jurisdiction Release from the City of Buda is attached hereto as Exhibit 1.

The proposed district will be located approximately 750 feet north of the Haleys Way Drive and FM 967 intersection. The proposed District will purchase, construct, acquire, repair, extend and improve land, easements, works, improvements, facilities, plants, equipment, and appliances necessary to: (1) provide a water supply for municipal uses and commercial purposes; (2) collect, transport, process, dispose of and control all domestic, industrial, or communal wastes whether in fluid, solid, or composite state; (3) gather, conduct, divert, and control local stormwater or other local harmful excesses of water in the proposed District and the payment of organization expenses, operational expenses during construction and interest during construction; (4) design, acquire,

Exhibit "C"

construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads, or improvements in aid of those roads; and (5) provide such other facilities, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created.

II. APPLICABLE LAW

A municipal utility district (“MUD” or “district”) may be created under and subject to the authority, of Article XVI, Section 59, of the Texas Constitution and Chapters 49 and 54 of the Texas Water Code, and the Commission’s administrative. A district may be created for the following purposes:

- (1) the control, storage, preservation, and distribution of its storm water and floodwater, the water of its rivers and streams for irrigation, power, and all other useful purposes;
- (2) the reclamation and irrigation of its arid, semiarid, and other land needing irrigation;
- (3) the reclamation and drainage of its overflowed land and other land needing drainage;
- (4) the conservation and development of its forests, water, and hydroelectric power;
- (5) the navigation of its inland and coastal water;
- (6) the control, abatement, and change of any shortage or harmful excess of water;
- (7) the protection, preservation, and restoration of the purity and sanitary condition of water within the state; and
- (8) the preservation of all natural resources of the state.

TEX. WATER CODE § 54.012.

To create a MUD, a petition requesting creation shall be filed with the Commission. *See* TEX. WATER CODE § 54.014. The petition shall be signed by a majority in value of the holders of title of the land within the proposed district, as indicated by the tax rolls of the central appraisal district. *See id.* The petition shall: (1) describe the boundaries of the proposed district by metes and bounds or by lot and block number; (2) state the general nature of the work proposed to be done, the necessity for the work, and the cost of the project as then estimated by those filing the

Exhibit "C"

petition; and (3) include a name of the district which shall be generally descriptive of the locale of the district. See TEX. WATER CODE § 54.015, 30 TEX. ADMIN. CODE § 293.11(a) and (d).

The Commission shall grant the petition if it conforms to the requirements of section 54.015 of the Water Code and the project is feasible, practicable, necessary, and further, would be a benefit to the land to be included in the district. See TEX. WATER CODE § 54.021(a). In determining if the project is feasible, practicable, necessary, and beneficial to the land included in the district, the Commission shall consider:

- (1) the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;
- (2) the reasonableness of projected construction costs, tax rates, and water and sewer rates; and
- (3) whether or not the district and its system and subsequent development within the district will have an unreasonable effect on the following:
 - (A) land elevation;
 - (B) subsidence;
 - (C) groundwater level within the region;
 - (D) recharge capability of a groundwater source;
 - (E) natural run-off rates and drainage;
 - (F) water quality; and
 - (G) total tax assessments on all land located within a district.

TEX. WATER CODE § 54.021(b).

A hearing requestor must make the request in writing within the time period specified in the notice and identify the requestor's personal justiciable interest affected by the application, specifically explaining the "requestor's location and distance relative to the activity that is the subject of the application and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public." 30 TEX. ADMIN. CODE § 55.251(b)—(d).

Exhibit "C"

An affected person is “one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest.” 30 TEX. ADMIN. CODE § 55.256(a). Governmental entities with authority under state law over issues contemplated by the application may be considered affected persons. See 30 TEX. ADMIN. CODE § 55.256(b). Relevant factors to be considered in determining whether a person is affected include, but are not limited to:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health, safety, and use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TEX. ADMIN. CODE § 55.256(c).

III. ANALYSIS OF HEARING REQUESTS

A. Governmental Entity Request

1. The City of Buda

The City of Buda requested a contested case hearing and asserts it is an affected person.

It is critical to note that the land within the proposed District is no longer within the extraterritorial jurisdiction of the City of Buda. A copy of Resolution No. 2023-R-34

Extraterritorial Jurisdiction Release from the City of Buda is attached hereto as Exhibit 1. The

Exhibit "C"

District was removed from the City of Buda's ETJ on October 11, 2023. Therefore, as of that date, any arguments that the City has standing as an affected person is no longer valid.

Both the ED and OPIC's primary argument that the City of Buda has standing based on the ETJ status is without basis. The City has no statutory authority over or interest in the issues relevant to the application. It is simply incorrect that the District is within the City of Buda's ETJ.

Because the proposed District does not lie within the ETJ of the City of Buda, no consent from the City is necessary to its creation. Because the proposed District is not within the ETJ of the City of Buda and because the proposed District does not need consent from the City of Buda, the bases the ED and OPIC (and the City) set forth for concluding the City of Buda is an affected person do not exist. The City of Buda is not an affected person.

The City asserts that because a portion of the District is within the City of Buda's CCN for water service, it has an interest in this proceeding. Specifically, it states that "Buda has legal interests in the Property within its Water CCN."¹ Notwithstanding, by its own admission, the City has stated that "Buda simply lacks the capacity to provide water and wastewater services to Persimmon."² Therefore, whether a portion of the District is within the City's CCN is irrelevant.

Nothing in this hearing request shows that the City of Buda has a personal justiciable interest. 30 TEX. ADMIN. CODE § 55.256(a).

B. Individual Public Requests

1. Shawna-Lee Huskey, Brett Koger, Jesus Mares, Kody Schouten, and Kerri Webb.

¹ City of Buda Request at 5.

² City of Buda Request at 5.

Exhibit "C"

In their requests, these individuals raised issues regarding the District's alleged impact on their homes and property. Their concerns primarily were the District's alleged drainage impacts and impacts on water quality and groundwater.

Other than by its mere existence, these requesters fail to identify how the District's activities will cause a likely impact of the regulated activity on the health, safety, and use of property of the person or how it will likely impact the use of the impacted natural resource by the person. They expressed interests only common to members of the general public. Their hearing request, therefore, does not qualify as a personal justiciable interest." 30 Tex Admin. Code § 55.256(a).

2. Susan Hernandez and Doug Walker

The Applicant adopts and incorporates by reference the Executive Director's Response to Hearing requests for Susan Hernandez and Doug Walker.

Pursuant to 30 TAC § 55.251(d), hearing requests must be filed with the chief clerk within the time period specified in the notice. The notice of creation was last published on August 24, 2023, and the comment period closed September 25, 2023. According to the Commissioner's Integrated Database, Ms. Hernandez submitted her hearing request on October 11, 2023, and Mr. Walker submitted his request on September 27, 2023. Therefore, both of the individuals failed to file a timely hearing request, and the Commission should deny their hearing requests.

3. Art Arizpe, Michael Baran, Darren Bien, Debra Dulski, Connie Faber, David Fletcher, James Flores, Carol Gee, Gail Hall, Gerald Haschke, Bryan Huddleston, Virginia Jurika, Jeffrey C. Kaufmann, Stephen Kent Kinslow, JP Kirksey, Marta E. Knight, Aimee Lakey, Phillip Lakey, Robert Lambert, Elena Mares-Coyote, Sharon Neukam, Connie Nicholson, Cynthia C Pasadeos, Robin Perry, Scott Perry, Janet Pierce, Blythe Powell, Roxanne Rios, Kathy Sellstrom, Nathan Sewell, Sara Shannon, Natalie Gilmer, Martha Terrel, Sandra Tidwell, and James Van Eyk.

Exhibit "C"

The Applicant adopts and incorporates by reference the Executive Director's Response to Hearing requests for the above referenced requesters.

Each of these requestors failed to comply with 30 TAC § 55.251 because they did not identify a justiciable interest or explain how the requestor will be uniquely affected by the district in a manner not common to members of the general public. The requests express generalized concerns about the proposed district's practicability rather than identifying something specific regarding the creation that affects them and that is within the Commission's jurisdiction to consider.

While the requests did identify issues, the requestors failed to specifically articulate how they would uniquely be affected. Impacts to groundwater and traffic were the dominant issues in the requests, but these specific hearing requests expressed general concerns about the practicability of the district without tying those concerns to a unique justiciable interest. Many claimed that their source of water is the Edwards Aquifer and were concerned about the impact to the aquifer, but such an interest is too attenuated to be considered unique, especially when such water is sourced through a communal well or city utility. The requestors also expressed concerns with the district's logistical impact as they believe the existing road infrastructure is inadequate to accommodate future residents.

While the issue of groundwater impact is material and relevant to the creation review process, the requestors did not tie the MUD's activities or impacts to an interest that was unique to them, such as private well. Regarding road impacts, it is not within the statutory framework for the Commission to consider as part of the creation process.

Exhibit "C"

Therefore, having failed to identify a personal justiciable interest that would be affected in a manner not common to members of the general public and that is within the Commission's jurisdiction, the Commission should deny these hearing requests.

4. Rep. Erin Zwiener.

The Applicant adopts and incorporates by reference the Executive Director's Response to Hearing requests for Representative Erin Zwiener.

Rep. Zwiener did not identify any personal justiciable interests of her own that she believes could be uniquely affected by the proposed district. Because Rep. Zwiener's hearing request did not identify any personal justiciable interest unique to her, the Commission should deny her hearing request.

IV. CONCLUSION

None of the requests for contested case hearing identify any personal justiciable interest as required under the Texas Administrative Code. Specifically, the requests have not shown that any person would be affected by the proposed District in a manner not common to members of the general public or have statutory authority over or an interest in the issues relevant to the applications. Therefore, the requests do not meet the definition of an "affected person" and the hearing requests should be denied.

WHEREFORE, Petitioner requests that the hearing requests be denied and that the Petition be granted.

Exhibit "C"

Respectfully submitted,

THE AL LAW GROUP PLLC

/s/ David Tuckfield

David J. Tuckfield

State Bar Number: 00795996

12400 West Hwy 71, Suite 350-150

Austin, TX 78738

Telephone: (512) 576-2481

Facsimile: (512) 366-9949

david@allawgp.com

ATTORNEYS FOR PETITIONER

Exhibit "C"

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on the following parties as shown below on this 15th day of April 2024 as follows

By email:

TCEQ Executive Director

Harrison "Cole" Malley, Staff Attorney
TCEQ
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087
harrison.malley@tceq.texas.gov

The City of Buda

Alan Bojorquez
Bojorquez Law Firm Pc
11675 Jollyville Rd, Ste 300
Austin Tx 78759-3939
alan@texasmunicipallawyers.com

TCEQ Office of Public Interest Counsel

Jessica M. Anderson
Assistant Public Interest Counsel
State Bar No. 24131226
P.O. Box 13087, MC 103
Austin, Texas 78711-3087
Jessica.Anderson@tceq.texas.gov

TCEQ External Relations

Ryan Vise, Deputy Director
TCEQ External Relations Division
MC-108
P.O. Box 13087
Austin, Texas 78711-3087
ryan.vise@tceq.texas.gov

TCEQ Alternative Dispute Resolution

Kyle Lucas, Attorney
Texas Commission on Environmental
Quality
Alternative Dispute Resolution MC-222
P.O. Box 13087
Austin, Texas 78711-3087
kyle.lucas@tceq.texas.gov

Exhibit "C"

I further hereby certify that a true and correct copy of the foregoing document was served on the following parties as shown below on this 16th day of April 2024 as follows

By first class mail:

Arizpe, Art
129 Clover Leaf Cv
Buda Tx 78610-2878

Baran, Michael
103 Nopal Ln
Buda Tx 78610-3260

Bien, Darren
1002 Magnolia Cv
Buda Tx 78610-2876

Alan Bojorquez
Bojorquez Law Firm PC
11675 Jollyville Rd, Ste 300
Austin Tx 78759-3939

Dulski, Debra
261 Kates Cv
Buda Tx 78610-3238

Faber, Connie
212 Longspur Dr
Buda Tx 78610-2652

Fletcher, David
PO Box 332
Manchaca Tx 78652-0332

Flores, James
121 Pilot Grove Ct
Buda Tx 78610-2773

Gee, Carol
123 Nopal Ln
Buda Tx 78610-3260

Hall, Gail
300 Treetop Way
Buda Tx 78610-2851

Hall, Thomas L
300 Treetop Way
Buda Tx 78610-2851

Haschke, Gerald
308 Fox Holw
Buda Tx 78610-2827

Hernandez, Susan
165 Amandas Way
Buda Tx 78610-2925

Huddleston, Bryan
12703 Sagebrush Cir
Buda Tx 78610-2806

Huskey, Shawna-Lee
210 Treetop Way
Buda Tx 78610-2840

Jurika, Virginia
161 Serene Hollow Ln
Buda Tx 78610-2791

Kaufmann, Jeffrey C
407 Leisurewoods Dr
Buda Tx 78610-2613

Kinslow, Stephen Kent
12610 Shady Acres Dr
Buda Tx 78610-2522

Kirksey, J P
12503 Scissortail Dr
Manchaca Tx 78652-3723

Knight, Marta E
305 Ranger Dr
Buda Tx 78610-2539

Koger, Brett
12507 Shady Acres Dr
Buda Tx 78610-2517

Lakey, Aimee & Phillip
1165 Clark Brothers Dr
Buda Tx 78610-5127

Exhibit "C"

Lambert, Robert
298 Kates Cv
Buda Tx 78610-3235

Mares, Jesus
907 Magnolia Cv
Buda Tx 78610-2889

Mares-Coyote, Elena
907 Magnolia Cv
Buda Tx 78610-2889

Neukam, Sharon
1001 Laurel Cv
Buda Tx 78610-2872

Nicholson, Connie
119 Saguaro Dr
Buda Tx 78610-3262

Pasadeos, Cynthia C
2592 Garlic Creek Dr
Buda Tx 78610-5187

Perry, Robin & Scott
307 Lakewood Dr
Buda Tx 78610-2507

Pierce, Janet
13100 Onion Creek Dr
Manchaca Tx 78652-5620

Powell, Blythe
230 Treetop Way
Buda Tx 78610-2840

Rios, Roxanne
1129 Haleys Way Dr
Buda Tx 78610-3206

Schouten, Kody
804 Laurel Cv
Buda Tx 78610-2874

Sellstrom, Kathy
301 Buttercup Trl
Buda Tx 78610-2832

Sewell, Nathan
12701 Pheasant Run
Buda Tx 78610-2531

Shannon, Sara
307 Raccoon Run
Buda Tx 78610-2834

Shebel, Natalie Gilmer
12615 Eagle Nest Dr
Buda Tx 78610-2447

Terrel, Martha
905 Magnolia Cv
Buda Tx 78610-2889

Twidwell, Sandra
100 Devons Cv
Buda Tx 78610-2893

Van Eyk, James
301 Treetop Way
Buda Tx 78610-2853

Walker, Doug
1366 Heep Run
Buda Tx 78610-5093

Webb, Kerri
213 Amandas Way
Buda Tx 78610-2926

The Hon. Rep. Erin Zwiener
Texas House of Representatives
District 45
PO Box 2910
Austin Tx 78768-2910

/s/ David Tuckfield

David J. Tuckfield

Exhibit "C"

EXHIBIT 1

Exhibit "C"

RESOLUTION NO. 2023-R-34

EXTRATERRITORIAL JURISDICTION RELEASE

A RESOLUTION OF THE CITY OF BUDA, TEXAS FOR THE RELEASE OF LAND FROM THE CITY'S EXTRATERRITORIAL JURISDICTION (ETJ) UPON REQUEST AND PROVIDING FOR FINDINGS OF FACT, REPEALER, SEVERABILITY, EFFECTIVE DATE, PROPER NOTICE, AND MEETING

- WHEREAS,** pursuant to Texas Local Government Code Section 51.001, the City of Buda ("City") has general authority to adopt an ordinance, resolution, or police regulation that is for the good government, peace, or order of the City and is necessary or proper for carrying out a power granted by law to the City; and
- WHEREAS,** pursuant to Texas Senate Bill 2038 passed by the Texas State Legislature in the 88th Legislative Session, Texas Local Government Code Chapter 42 allows for the release of an area from the City's extraterritorial jurisdiction ("ETJ") by petition of landowners or by election; and
- WHEREAS,** pursuant to Texas Local Government Code Section 42.102, a resident of an area or the owners of the majority in value of an area in the City's ETJ may file a petition with the City Secretary for the area to be released from the ETJ; and
- WHEREAS,** pursuant to Texas Local Government Code Section 42.152, a resident of an area in the City's ETJ may request the City to hold an election to vote on the question of whether to release the area from the City's ETJ by filing a petition with the City Secretary; and
- WHEREAS,** the City Council has received a petition for the release of a certain tract of land more commonly known as Persimmon ("Property"), which Property is more accurately described in Exhibit A, which is attached hereto and incorporated herein; and,
- WHEREAS,** having received verification from the City Clerk, the City Council finds the attached ETJ Release Petition for the Property ("Petition"), which is attached here as Exhibit A and incorporated herein, is valid and this Resolution is necessary and proper for the good government, peace, or order of the City to release the Property from the City's ETJ.

Exhibit "C"

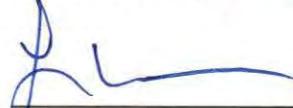
NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Buda, Texas:

- Section 1. Findings of Fact:** The foregoing recitals are incorporated into this resolution ("Resolution") by reference as findings of fact as if expressly set forth word-for-word herein.
- Section 2. Release:** The Petition is hereby considered verified; therefore, the Property as described in the Petition is hereby released from the City's ETJ.
- Section 3. Filing:** The City Secretary is hereby directed to file a certified copy of this Resolution and an updated map of the City's ETJ boundary with the County Clerk of Hays County, Texas.
- Section 4. Repealer:** To the extent reasonably possible, resolutions are to be read together in harmony. However, all resolutions, or parts thereof, that are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters regulated.
- Section 5. Severability:** Should any of the clauses, sentences, paragraphs, sections, or parts of this Resolution be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Resolution.
- Section 6. Effective Date:** This Resolution shall take effect upon the date of final passage noted below, or when all applicable publication requirements, if any, are satisfied in accordance with the City's Charter, its Code of Ordinances, and the laws of the State of Texas.
- Section 7. Proper Notice & Meeting:** It is hereby officially found and determined that the meeting at which this Resolution was passed was open to the public, and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

Exhibit "C"

PASSED & ADOPTED by the City Council of the City of Buda, on this, the 11th day of October, 2023.

CITY OF BUDA, TEXAS

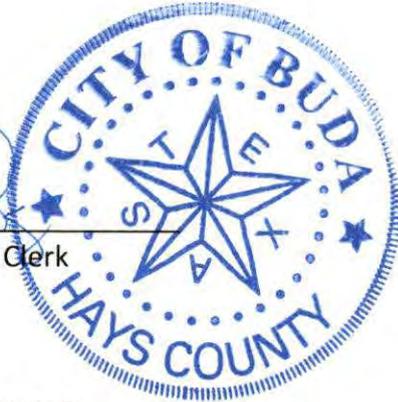


Lee Urbanovsky, Mayor

ATTEST:



Alicia Ramirez, City Clerk



APPROVED AS TO FORM:

Alan Bojorquez, City Attorney

Exhibit "C"

Exhibit "A"

ETJ Release Petition



Exhibit "C"



4301 Bull Creek Rd Ste 150
Austin, Texas 78731
phone 512.328.2008
fax 512.328.2409
www.mcleanhowardlaw.com

September 1, 2023

City of Buda
Attn: Alicia Ramirez, City Clerk
405 E. Loop Street, Building 100
Buda, Texas 78610

Via Hand Delivery

RE: Request and Petition for Release of Property from the Extraterritorial Jurisdiction
of the City of Buda

Dear Ms. Ramirez:

On behalf of Bailey Land Investments, LP and Armbruster Land Investments, LP (collectively, "Petitioners"), the owners of property located within the extraterritorial jurisdiction of the City of Buda, enclosed please find a Corrected and Restated Petition for Release of Property from the Extraterritorial Jurisdiction of the City of Buda (the "Petition"). This Corrected and Restated Request and Petition for Release of Property from the Extraterritorial Jurisdiction corrects and supersedes the original Request and Petition for Release of Property from the Extraterritorial Jurisdiction filed with the City on June 20, 2023.

In accordance with Sections 42.101-105 of the Texas Local Government Code, the Petitioner requests the release of lands owned by the Petitioner from the City's extraterritorial jurisdiction, as more particularly described in the Petition. We appreciate the City's action regarding this Petition.

Please file stamp and return the enclosed extra copy of the Petition.

Sincerely,

A handwritten signature in black ink that reads 'Jeffrey S. Howard'.

Jeffrey S. Howard

RECEIVED
SEP 01 2023
CITY OF BUDA

Exhibit "C"

**CORRECTED AND RESTATED
REQUEST AND PETITION FOR RELEASE OF PROPERTY FROM THE
EXTRATERRITORIAL JURISDICTION OF THE CITY OF BUDA
(459 ACRES)**

TO THE MAYOR OF THE GOVERNING BODY OF THE CITY OF BUDA, TEXAS:

The undersigned ("Petitioners"), acting pursuant to the provisions of Sections 42.101-105 of the Texas Local Government Code, respectfully petitions the City of Buda (the "City") to release the land described by metes and bounds on Exhibit "A" and depicted on Exhibit "A-1" (the "Land"; Bailey Land Investments, LP and Armbruster Land Investments, LP owning the portions of the Land as identified Exhibit "A-1") from the extraterritorial jurisdiction ("ETJ") of the City. In support of this petition, Petitioners would show the following:

I.

This Corrected and Restated Request and Petition for Release of Property from the Extraterritorial Jurisdiction of the City of Buda corrects and supersedes the original Request and Petition for Release of Property from the Extraterritorial Jurisdiction of the City of Buda filed with the City on June 20, 2023.

II.

Petitioners are the owners of all of the Land, comprised of approximately 459.0 acres currently situated within the extraterritorial boundaries of the City in Hays County, Texas, and is fully described by metes and bounds on Exhibit "A", attached hereto and incorporated herein by reference. Petitioners certify that the description of the Land attached as Exhibit "A" is true and correct. A map of the Land to be released is attached hereto as Exhibit "B".

III.

Pursuant to Section 43.102(b) of the Texas Local Government Code, Petitioners certify that they are the owners of one hundred percent (100%) in value of the holders of title of the Land pursuant to the tax rolls of the Hays County Appraisal District as evidenced by Exhibit "C" and are, therefore, authorized to file this Petition.

IV.

To the extent required by applicable law, this Petition has satisfied the signature requirements described in Sections 42.103 and 42.104(a) of the Texas Local Government Code and Chapter 277 of the Texas Election Code, not later than the 180th day after the date the first signature for the Petition is obtained.

V.

The individual who executed this Petition on behalf of the Petitioners is fully authorized to sign this Petition as evidenced by Exhibit "D". The signatures are hereby sufficient to effectuate the immediate release of the Land from the City's ETJ. If the City fails to take action to release the Land by the later of the 45th day after the date the City receives this Petition or the next meeting of the City's governing body that occurs after the 30th day after the date the City receives this Petition, the Land is released by operation of law.

Exhibit "C"

VI.

Petitioners pray that (i) this Petition be verified by the City Secretary or other person at the City responsible for verifying signatures, (ii) the Petitioner be notified of the results, and (iii) this Petition be granted, immediately releasing the Land from the City's ETJ. This petition for release from the City's ETJ is not, nor should it be constructed as, a voluntary request or consent for the Land to be included in or added to the ETJ or corporate boundaries of any other municipality.

Executed to be effective as of the 1st day of September, 2023.

* * *

Exhibit "C"

**SIGNATURE PAGE TO
CORRECTED AND RESTATED
REQUEST AND PETITION FOR RELEASE OF PROPERTY FROM THE
EXTRATERRITORIAL JURISDICTION OF THE CITY OF BUDA
(459 ACRES)**

PETITIONERS:

BAILEY LAND INVESTMENTS, LP
a Texas limited partnership

By: Bailey Land Investments GP, LLC,
a Texas limited liability company,
its General Partner

By: *Terry LaGrone*
Terry LaGrone, Authorized Signatory

Date: 8/30/2023

DOB or VRN of Signer: 7/19/1969

Residence Address of Signer:
21305 Bison Tr
 Lago Vista TX 78645

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this 30th day of August, 2023 by Terry LaGrone, Authorized Signatory of Bailey Land Investments GP, LLC, a Texas limited liability company, General Partner of Bailey Land Investments, LP, a Texas limited partnership, on behalf of said limited partnership and limited liability company.

Breanna Venecia
Notary Public, State of Texas

(SEAL)

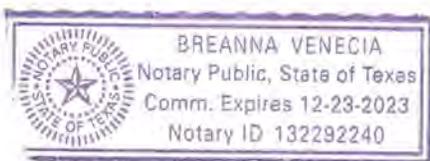


Exhibit "C"

SIGNATURE PAGE TO

**CORRECTED AND RESTATED
REQUEST AND PETITION FOR RELEASE OF PROPERTY FROM THE
EXTRATERRITORIAL JURISDICTION OF THE CITY OF BUDA
(459 ACRES)**

ARMBRUSTER LAND INVESTMENTS, LP,
a Texas limited partnership

By: Armbruster Land Investments GP, LLC,
a Texas limited liability company,
its General Partner

By: *Terry LaGrone*
Terry LaGrone, Authorized Signatory

Date: 7/30/2023

DOB or VRN of Signer: 7/19/1969

Residence Address of Signer:
21305 Bison Tr
Lago Vista TX 78645

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this 30th day of August, 2023 by Terry LaGrone, Authorized Signatory of Armbruster Land Investments GP, LLC, a Texas limited liability company, General Partner of Armbruster Land Investments, LP, a Texas limited partnership, on behalf of said limited partnership and limited liability company.

(SEAL)

Breanna Venecia
Notary Public, State of Texas

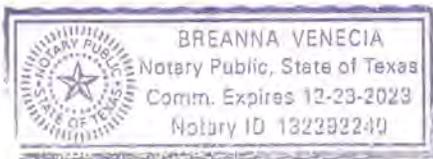


Exhibit "C"

EXHIBIT "A"
THE LAND

Exhibit A

Exhibit "C"



**Professional Land Surveying, Inc.
Surveying and Mapping**

Exhibit "A"

Office: 512-443-1724
Fax: 512-389-0943

3500 McCall Lane
Austin, Texas 78744

**459.0 ACRES
S.V.R. EGGLESTON SURVEY NO. 3, ABS. NO. 5,
HAYS COUNTY, TEXAS**

A DESCRIPTION OF APPROXIMATELY 459.0 ACRES OF LAND, MORE OR LESS, OUT OF THE S.V.R. EGGLESTON SURVEY NUMBER 3, ABSTRACT NUMBER 5 OF HAYS COUNTY, TEXAS, BEING A PORTION OF A 79.00 ACRE TRACT CONVEYED TO ARMBRUSTER LAND INVESTMENTS, LP., IN DOCUMENT NO. 21071113 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, BEING A PORTION OF A 217.066 ACRE TRACT, SAVE AND EXCEPT 79.000 ACRES, CONVEYED TO ARMBRUSTER LAND INVESTMENTS, LP., IN DOCUMENT NO. 202184020 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS AND DOCUMENT NO(S). 21071107 AND 21071108 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY TEXAS AND ALSO BEING A PORTION OF A 208.892 ACRE TRACT CONVEYED TO ARMBRUSTER LAND INVESTMENTS, LP., IN DOCUMENT NO(S). 2021280420, 2021280421, 2021280422, 2021280423, 2021280424, 2021280425 AND 2021280426, ALL OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS AND DOCUMENT NO(S). 21071107, 21071109, 21071110, 21071111, 21071112, 21071114 AND 21071115, ALL OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, ALSO BEING A PORTION OF A 348.277 ACRE TRACT AND A PORTION OF LOT 1, BLOCK T, THE WOODS OF BEAR CREEK, A SUBDIVISION OF RECORD IN VOLUME 3, PAGE 347 OF THE PLAT RECORDS OF HAYS COUNTY, TEXAS, BOTH CONVEYED TO BAILEY LAND INVESTMENT, LP, IN A SPECIAL WARRANTY DEED WITH VENDOR'S LIEN DATED JUNE 3, 2021 AND RECORDED IN DOCUMENT NO. 21030465 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS; SAID 459.0 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a 3/8" rebar found in the north right-of-way line of F.M. 967 (right-of-way width varies), being the southwest corner of said 79.000 acre tract, being also the southwest corner of said 217.066 acre tract, also being the south termination of the agreed boundary line described in Volume 222, Page 163 of the Deed Records of Hays County, Texas and also being the southwest corner of Lot 1, Cimarron Professional Park Section One, a subdivision of record in Volume 7, Page 306 of the Plat Records of Hays County, Texas;

THENCE North 01°35'28" West, with said agreed boundary line, being the west line of the 79.000 acre tract, same being the east lines of Lots 1 and 2, said Cimarron Professional Park, Section One, a distance of 454.21 feet to a calculated point for the **POINT OF BEGINNING** hereof;

Exhibit "C"

Exhibit "A"

Page 2

THENCE North $01^{\circ}35'28''$ West, continuing, with said agreed boundary line, being the west line of the 79.000 acre tract, the west line of the 217.066 acre tract, with the east line of said Lot 2, also with the east right-of-way line of Dove Drive (right-of-way width varies), described in Volume 4, Page 126, Volume 3, Page 99 and Volume 4, Page 363, all of the Plat Records of Hays County, Texas, also with the east lines of Coves of Cimmaron, a subdivision of record in Volume 3, Page 99, corrected in Volume 4, Page 363, both of the Plat Records of Hays County, Texas, with the east line of Cimmaron Park Section III, Phase III, a subdivision of record in Volume 3, Page 37 of the Plat Records of Hays County, Texas, distance of 5009.08 feet to a 1/2" iron pipe found for the northwest corner of the 217.066 acre tract, being the northeast corner of Lot 42, Block F, said Cimarron Park Section III, Phase III and also being in the south line of said 208.892 acre tract;

THENCE South $89^{\circ}18'45''$ West, with the south line of the 208.892 acre tract, same being the north line of Cimarron Park Section III, Phase III, a distance of 1050.80 feet to a 1/2" rebar with "Chaparral" cap set for the southwest corner of the 208.892 acre tract, being the northwest corner of Lot 14, Block E and also being in the east line of Lot 7, Block E, both of Cimarron Park Section III, Phase III;

THENCE North $01^{\circ}36'39''$ West, with the west line of the 208.892 acre tract, same being the west line of Cimarron Park Section III, Phase III, the east line of Cimarron Park Section Three Phase Two, a subdivision of record in Volume 2, Page 321 of the Plat Records of Hays County, Texas, the east line of a 0.629 acre tract described in Document No. 18022446 of the Official Public Records, the east line of a 0.83 acre tract described in Volume 962, Page 90 of the Deed Records, the east line of a 0.852 acre tract described in Volume 525, Page 85 of the Deed Records, the east line of a 0.346 acre tract described in Volume 988, Page 579 of the Deed Records, the east line of a 1.00 acre tract described in Volume 2656, Page 108 of the Deed Records, the east line of a 1.00 acre tract described in Volume 388, Page 516 of the Deed Records, the east line of a 1.00 acre tract described in Document No. 20056742 of the Official Public Records, the east line of a 1.00 acre tract described in Volume 742, Page 640 of the Deed Records, the east line of a 1.00 acre tract described in Volume 1100, Page 212 of the Deed Records and the east line of a 1.46 acre tract described in Volume 796, Page 317 of the Deed Records, all of Hays County, Texas, a distance of 3092.05 feet to a calculated point in the approximate northeast line of the City of Buda E.T.J. (extraterritorial jurisdiction) line, same being the approximate southwest line of the City of Austin E.T.J. line;

THENCE crossing the 208.892 acre tract and the 217.066 acre tract, with said approximate E.T.J. line, the following four (4) courses and distances:

1. South $37^{\circ}11'33''$ East, a distance of 2952.81 feet to a calculated point;
2. South $43^{\circ}40'39''$ East, a distance of 1026.83 feet to a calculated point;

759-022-MUD

3. South 50°36'22" East, a distance of 482.65 feet to a calculated point;
4. South 67°28'52" East, a distance of 197.26 feet to a calculated point in the east line of the 217.066 acre tract, same being the west line of said 348.277 acre tract;

THENCE crossing the 348.277 acre tract, continuing with the approximate E.T.J. line, the following five (5) courses and distances:

1. South 54°27'08" East, a distance of 84.54 feet to a calculated point;
2. South 57°40'22" East, a distance of 887.17 feet to a calculated point;
3. South 65°19'16" East, a distance of 381.65 feet to a calculated point;
4. South 64°10'31" East, a distance of 395.95 feet to a calculated point;
5. South 72°26'48" East, a distance of 347.68 feet to a calculated point in the east line of the 348.277 acre tract, same being the west line of a 97.36 acre tract described in Volume 153, Page 490 of the Deed Records of Hays County, Texas;

THENCE with the east line of the 348.277 acre tract, same being the west line of said 97.36 acre tract, the following four (4) courses and distances:

1. South 01°18'09" East, a distance of 400.41 feet to a calculated point;
2. South 01°46'48" East, a distance of 310.90 feet to a calculated point;
3. South 01°45'49" West, a distance of 241.89 feet to a calculated point;
4. South 01°50'33" East, a distance of 288.45 feet to a calculated point for the northwest corner of a 98.01 acre tract described in Volume 203, Page 527 of the Deed Records of Hays County, Texas;

THENCE continuing with the east line of the 348.277 acre tract, same being the west line of said 98.01 acre tract, the following six (6) courses and distances:

1. South 55°03'49" West, a distance of 24.59 feet to a calculated point;
2. South 56°08'39" West, a distance of 85.68 feet to a calculated point;
3. South 14°07'00" West, a distance of 239.07 feet to a calculated point;
4. South 15°54'31" East, a distance of 63.94 feet to a calculated point;

Exhibit "C"

Exhibit "A"

Page 4

5. South 08°18'35" West, a distance of 463.00 feet to a calculated point;
6. South 07°22'38" West, a distance of 455.90 feet to a calculated point for the north corner of a graveyard referenced in Volume 203, Page 527 of the Deed Records of Hays County, Texas;

THENCE continuing with the east line of the 348.277 acre tract, same being the west line of said graveyard, the following two (2) courses and distances:

1. South 25°57'19" West, a distance of 31.27 feet to a calculated point;
2. South 39°05'02" West, a distance of 272.60 feet to a calculated point for the southwest corner of the graveyard, being the northwest corner of an 81.67 acre tract described in Volume 1001, Page 24 of the Deed Records of Hays County, Texas;

THENCE with the east line of the 348.277 acre tract, being the west line of said 81.67 acre tract, the following two (2) courses and distances:

1. South 51°26'41" West, a distance of 333.89 feet to a calculated point;
2. South 25°00'46" West, a distance of 238.99 feet to a calculated point for the northernmost west corner of the 81.67 acre tract, being the north corner of Creekside Park Section Two, P.U.D. Final Plat, a subdivision of record in Volume 8, Page 283 of the Plat Records of Hays County, Texas;

THENCE continuing with the east line of the 348.277 acre tract, same being the west line of said Creekside Park Section Two, the following two (2) courses and distances:

1. South 24°36'19" West, a distance of 35.08 feet to a calculated point;
2. South 24°16'53" West, a distance of 999.38 feet to a calculated point for the southeast corner of the 348.277 acre tract;

THENCE with the south line of the 348.277 acre tract, in part with the north line of Creekside Park Section Two and the north line of Lot 28, Block A, Creekside Park Section One, P.U.D. Final Plat, a subdivision of record in Volume 8, Page 103 of the Plat Records of Hays County, Texas, the following two (2) courses and distances:

1. South 89°30'14" West, a distance of 191.49 feet to a calculated point;
2. South 85°18'14" West, a distance of 140.04 feet to a calculated point in the south line of said Lot 1;

THENCE continuing with the south line of the 348.277 acre tract, same being the south

Exhibit "C"

Exhibit "A"

Page 5

line of Lot 1 and also being the north line of said Creekside Park Section One, the following seven (7) courses and distances:

1. South 62°49'33" West, a distance of 229.00 feet to a calculated point;
2. South 88°24'33" West, a distance of 97.00 feet to a calculated point;
3. South 60°06'42" West, a distance of 262.00 feet to a calculated point;
4. South 21°49'52" West, a distance of 64.00 feet to a calculated point;
5. South 56°52'57" West, a distance of 208.35 feet to a calculated point;
6. South 48°06'33" West, a distance of 92.00 feet to a calculated point;
7. South 62°01'33" West, a distance of 88.26 feet to a calculated point in the east right-of-way line of F.M. 967, being the southernmost southwest corner of the 348.277 acre tract and also being the south corner of a 0.062 acre tract, described in Document No. 21059955 of the Official Public Records of Hays County, Texas;

THENCE North 00°22'18" East, with the east right-of-way line of F.M. 967, same being the east line of said 0.062 acre tract, also being a west line of the 348.277 acre tract and crossing Lot 1, a distance of 263.17 feet to a calculated point for the southernmost northeast corner of the 348.277 acre tract, being the northwest corner of the 0.062 acre tract, also being in the south line of a 0.1337 acre tract described in Volume 5102, Page 282 of the Official Public Records of Hays County, Texas;

THENCE with the common lines of the 348.277 and said 0.1337 acre tract, crossing Lot 1, the following three (3) courses and distances:

1. South 89°37'52" East, a distance of 85.03 feet to a calculated point;
2. North 00°22'18" East, a distance of 65.00 feet to a calculated point;
3. North 89°37'42" West, a distance of 71.90 feet to a calculated point in the east right-of-way line of F.M. 967, same being the east line of a 0.499 acre tract described in Document No. 21059955 of the Official Public Records of Hays County, Texas and also being in a west line of the 348.277 acre tract;

THENCE with the east right-of-way line of F.M. 967, same being the east line of said 0.499 acre tract, also being a west line of the 348.277 acre tract, in part continuing across Lot 1, the following five (5) courses and distances:

1. With a curve to the left, having a radius of 127.00 feet, a delta angle of 80°05'43",

Exhibit "C"

Exhibit "A"

Page 6

an arc length of 177.54 feet, and a chord which bears North 21°02'27" East, a distance of 163.43 feet to a calculated point;

2. With a curve to the right, having a radius of 168.00 feet, a delta angle of 27°35'13", an arc length of 80.89 feet, and a chord which bears North 05°12'47" West, a distance of 80.11 feet to a calculated point;
3. South 88°30'13" West, a distance of 16.72 feet to a calculated point;
4. With a curve to the right, having a radius of 184.33 feet, a delta angle of 09°34'54", an arc length of 30.83 feet, and a chord which bears North 12°22'05" East, a distance of 30.79 feet to a calculated point;
5. North 74°07'17" West, in part with the north line of a 0.032 acre tract described in Document No. 21059958 of the Official Public Records of Hays County, Texas, a distance of 93.30 feet to a 1/2" rebar with "BGE" cap found for an angle point in the north right-of-way line of F.M. 967, being the northwest corner of said 0.032 acre tract, also being the southwest corner of the 348.277 acre tract, being in the east line of the 217.066 acre tract, same being the east line of the 79.000 acre tract;

THENCE with the east line of the 217.066 acre tract, and the east line of the 79.000 acre tract, same being the north right-of-way line of F.M. 967, the following two (2) courses and distances:

1. South 14°59'24" West, a distance of 53.72 feet to a 1/2" iron pipe found;
2. South 12°21'43" West, a distance of 6.44 feet to a 1/2" rebar with "BGE" cap found for the southeast corner of 217.066 acre tract, being the southeast corner of the 79.000 acre tract;

THENCE South 88°34'15" West, with the north right-of-way line of F.M. 967, same being the south line of the 217.066 acre tract and the south line of the 79.000 acre tract, a distance of 84.09 feet to a calculated point;

THENCE crossing the 217.066 acre tract and the 79.000 acre tract, the following two (2) courses and distances:

1. North 14°47'42" East, a distance of 499.03 feet to a calculated point;

Exhibit "C"

Exhibit "A"

Page 7

2. South $87^{\circ}51'02''$ West, a distance of 1207.60 feet to the **POINT OF BEGINNING**, containing 459.0 acres of land, more or less.

Surveyed on the ground on November 12, 2021. Bearing Basis: The Texas Coordinate System of 1983 (NAD83), South Central Zone, based on GPS solutions from The National Geodetic Survey (RTN) on-line positioning user service (OPUS) for Chaparral control point "3". Attachments: Survey Drawing No. 759-022-MUD.

Paul J. Flugel

5-11-2023

Paul J. Flugel Date
Registered Professional Land Surveyor
State of Texas No. 5096
TBPLS Firm No. 10124500



Exhibit "C"

EXHIBIT "A-1"

Exhibit A-1

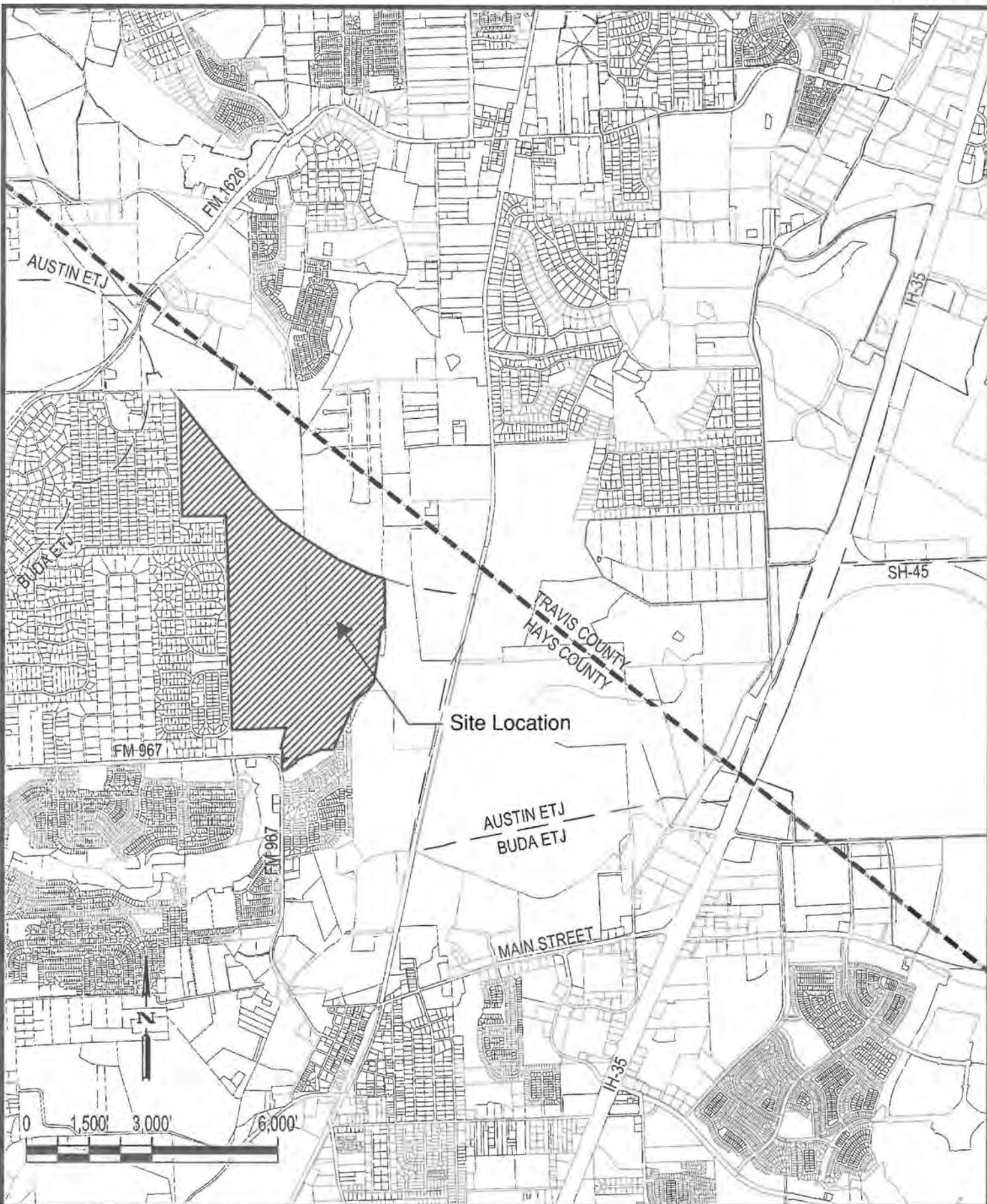
Exhibit "C"

EXHIBIT "B"
MAP

Exhibit B

Exhibit "C"

Exhibit B



HAYS COUNTY, TEXAS

VICINITY MAP

BGE, INC.
101 WEST LOUIS HENNA BLVD, SUITE 400
AUSTIN, TX 78728
TBPE Registration No. F-1046
TEL: 512-875-0400 www.bgeinc.com



Exhibit "C"

EXHIBIT "C" CERTIFICATE OF OWNERSHIP

Exhibit C

Exhibit "C"

Exhibit "C"

**Hays
Central
Appraisal
District**



512-268-2522 ■ Lex Word Building ■ 21001 IH 35 ■ Kyle, Texas 78640 ■ info@hayscad.com

CERTIFICATE OF OWNERSHIP

STATE OF TEXAS §

COUNTY OF HAYS §

Pursuant to the authority granted by Section 49.184(f) Texas Water Code, I, Laura Raven, Chief Appraiser of the Hays Central Appraisal District of Hays County, hereby certify that I have examined the appraisal records of Hays Central Appraisal District and find that Armbruster Land investments LP and Bailey Land Investments LP are the only owners of lands within the real property encompassing approximately 459 acres of real property being more particularly described in Exhibit "A" attached hereto and proposed to be included within Persimmon Municipal Utility District (or some other name as permitted or required by law) and that such tract of real property is located within Hays County.

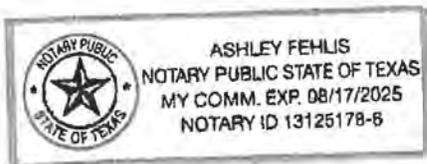
Laura Raven

Laura Raven, Chief Appraiser

STATE OF TEXAS §

COUNTY OF HAYS §

This instrument was acknowledged before me on the 19th day of May 2023, by Laura Raven, Chief Appraiser of the Hays Central Appraisal District.



Ashley Fehlis

Notary Public in and for the State of Texas

Exhibit "C"

EXHIBIT "D"
SIGNATURE AUTHORIZATION

Exhibit D

Exhibit "C"

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Exhibit "D"

UNANIMOUS WRITTEN CONSENT OF PARTNERS OF BAILEY LAND INVESTMENTS, LP

May 5, 2023

The undersigned, being the partners of Bailey Land Investments, LP, a Texas limited partnership (the "Partnership"), pursuant to that certain Agreement of Limited Partnership of Bailey Land Investments, LP, dated effective as of March 19, 2020 (as amended, the "Partnership Agreement"), consent to, adopt, ratify and approve the following resolutions and each and every action effected thereby.

WHEREAS, the Partnership owns certain real property certain real property located in Buda, Hays and Travis Counties, Texas (the "Property"); and

WHEREAS, in connection with the Partnership's ownership of the Property, the Partnership may be required to execute and deliver certain agreements, easements, contracts, documents, certifications, and instruments necessary or convenient in connection with the investment in, management, maintenance, and operation of the Property (collectively, the "Property Documents").

NOW THEREFORE, IT IS HEREBY RESOLVED, the Partners believe that it is in the best interest of the Partnership to confirm that Bailey Land Investments GP, LLC, a Texas limited liability company ("General Partner"), has the authority to execute any and all Property Documents.

BE IT FURTHER RESOLVED, that the General Partner, in the General Partner's capacity as the general partner of the Partnership, is authorized to execute and deliver any and all Property Documents and take such other actions on behalf of the Partnership in connection with the ownership of the Property as the General Partner deems necessary or appropriate.

This Written Consent may be executed by electronic signatures and by one or more of the parties to this consent on any number of separate counterparts and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

[Signature Page Follows]

Exhibit "C"

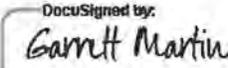
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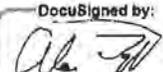
Exhibit "D"

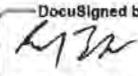
IN WITNESS WHEREOF, this Written Consent is executed to be effective as of the date first written above.

GENERAL PARTNER:

BAILEY LAND INVESTMENTS GP, LLC, a
Texas limited liability company

By:  _____
Garrett S. Martin, Manager

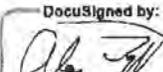
By:  _____
Alan Topfer, Manager

By:  _____
Richard Topfer, Manager

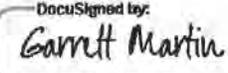
LIMITED PARTNERS:

CASTLETOP CAPITAL EQUITIES, L. P.,
a Texas limited partnership

By: Castletop Management, Inc.,
a Texas corporation,
its general partner

By:  _____
Alan Topfer, Managing Director

G&J HOLDINGS, LLC

By:  _____
Garrett S. Martin, Member

 _____
GARRETT S. MARTIN

Exhibit "C"

Exhibit "D"

UNANIMOUS WRITTEN CONSENT OF MEMBERS OF BAILEY LAND INVESTMENTS GP, LLC

May 5, 2023

The undersigned, being the members of Bailey Land Investments GP, LLC, a Texas limited liability company (the "Company"), pursuant to that certain Company Agreement of Bailey Land Investments GP, LLC, dated effective as of March 19, 2020 (as amended, the "Company Agreement"), consent to, adopt, ratify and approve the following resolutions and each and every action effected thereby.

WHEREAS, the Company is the general partner of Bailey Land Investments, LP, a Texas limited liability company ("Partnership");

WHEREAS, the Partnership owns certain real property certain real property located in Buda, Hays and Travis Counties, Texas (the "Property"); and

WHEREAS, in connection with the Partnership's ownership of the Property, the Partnership may be required to execute and deliver certain agreements, easements, contracts, documents, certifications, and instruments necessary or convenient in connection with the investment in, management, maintenance, and operation of the Property (collectively, the "Property Documents").

NOW THEREFORE, IT IS HEREBY RESOLVED, the Members believe that it is in the best interest of the Company and the Partnership to confirm that the Company has the authority to execute any and all Property Documents.

BE IT FURTHER RESOLVED, that Terry LaGrone shall be an "Authorized Signatory" of the Company for purposes of the Property Documents.

FURTHER RESOLVED, that any Manager or Authorized Signatory of the Company, in the Company's capacity as the general partner of the Partnership, is hereby authorized to execute and deliver any and all Property Documents and take such other actions on behalf of the Partnership in connection with the ownership of the Property as such Manager or Authorized Signatory deems necessary or appropriate.

This Written Consent may be executed by electronic signatures and by one or more of the parties to this consent on any number of separate counterparts and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

[Signature Page Follows]

Exhibit "C"

DocuSign Envelope ID: A98FD7D7-4AB0-48D3-AA2B-CF0116C581C8

Exhibit "D"

IN WITNESS WHEREOF, this Written Consent is executed to be effective as of the date first written above.

MEMBERS:

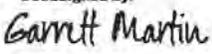
CASTLETOP CAPITAL EQUITIES, L. P.,
a Texas limited partnership

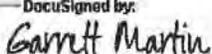
By: Castletop Management, Inc.,
a Texas corporation,
its general partner

DocuSigned by:

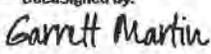
By: _____
DC6289885504F4...
Alan Topfer, Managing Director

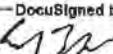
G&J HOLDINGS, LLC,
a Texas limited liability company

DocuSigned by:

By: _____
FD7810F1C47E409...
Garrett S. Martin, Member

DocuSigned by:

By: _____
FD7810F1C47E409...
GARRETT S. MARTIN

MANAGERS:

DocuSigned by:

By: _____
FD7810F1C47E409...
GARRETT S. MARTIN, Manager

DocuSigned by:

By: _____
77D577E5FC17462...
RICHARD H. TOPFER, Manager

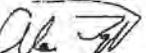
DocuSigned by:

By: _____
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ALAN TOPFER, Manager

Exhibit "C"

Exhibit "D"

UNANIMOUS WRITTEN CONSENT OF PARTNERS OF ARMBRUSTER LAND INVESTMENTS, LP

May 5, 2023

The undersigned, being the partners of Armbruster Land Investments, LP, a Texas limited partnership (the "Partnership"), pursuant to that certain Agreement of Limited Partnership of Armbruster Land Investments, LP, dated effective as of November 12, 2021 (as amended, the "Partnership Agreement"), consent to, adopt, ratify and approve the following resolutions and each and every action effected thereby.

WHEREAS, the Partnership owns certain real property located in Hays and Travis Counties, Texas (the "Property"); and

WHEREAS, in connection with the Partnership's ownership of the Property, the Partnership may be required to execute and deliver certain agreements, easements, contracts, documents, certifications, and instruments necessary or convenient in connection with the investment in, management, maintenance, and operation of the Property (collectively, the "Property Documents").

NOW THEREFORE, IT IS HEREBY RESOLVED, the Partners believe that it is in the best interest of the Partnership to confirm that Armbruster Land Investments GP, LLC, a Texas limited liability company ("General Partner"), has the authority to execute any and all Property Documents.

BE IT FURTHER RESOLVED, that the General Partner, in the General Partner's capacity as the general partner of the Partnership, is authorized to execute and deliver any and all Property Documents and take such other actions on behalf of the Partnership in connection with the ownership of the Property as the General Partner deems necessary or appropriate.

This Written Consent may be executed by electronic signatures and by one or more of the parties to this consent on any number of separate counterparts and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

[Signature Page Follows]

Exhibit "C"

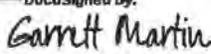
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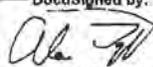
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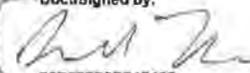
IN WITNESS WHEREOF, this Written Consent is executed to be effective as of the date first written above.

GENERAL PARTNER:

ARMBRUSTER LAND INVESTMENTS GP,
LLC, a Texas limited liability company

DocuSigned by:

By: _____
FD78187C428409...
Garrett S. Martin, Manager

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By: _____
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Alan Topfer, Manager

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By: _____
77D577E5FC17462...
Richard Topfer, Manager

[Signatures Continue]

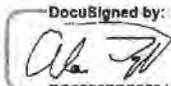
Exhibit "C"

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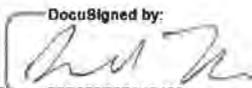
Exhibit "D"

LIMITED PARTNERS:

ADT INVESTMENT TRUST

By:  DocuSigned by:
DC6289BB95504F4...
Alan Topfer, Trustee

RICHARD H. TOPFER INVESTMENT TRUST

By:  DocuSigned by:
77D577E5FC17462...
Richard H. Topfer, Trustee

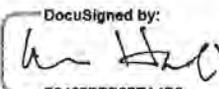
GSM TRUST OF 2016

By:  DocuSigned by:
FD7018F1G47E405...
Garrett Martin, Trustee

ARMBRUSTER HOLT LTD.

A Texas limited partnership

By: Holt Armbruster, LLC,
its General Partner

By:  DocuSigned by:
E3437BBB07FA4B8...
Alan L. Holt, President

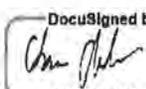
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CHANCE ARMBRUSTER

Exhibit "C"

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Exhibit "D"

UNANIMOUS WRITTEN CONSENT OF MEMBERS OF ARMBRUSTER LAND INVESTMENTS GP, LLC

May 5, 2023

The undersigned, being the members of Armbruster Land Investments GP, LLC, a Texas limited liability company (the "Company"), pursuant to that certain Company Agreement of Armbruster Land Investments GP, LLC, dated effective as of November 12, 2021 (as amended, the "Company Agreement"), consent to, adopt, ratify and approve the following resolutions and each and every action effected thereby.

WHEREAS, the Company is the general partner of Armbruster Land Investments, LP, a Texas limited liability company ("Partnership");

WHEREAS, the Partnership owns certain real property certain real property located in Hays and Travis Counties, Texas (the "Property"); and

WHEREAS, in connection with the Partnership's ownership of the Property, the Partnership may be required to execute and deliver certain agreements, easements, contracts, documents, certifications, and instruments necessary or convenient in connection with the investment in, management, maintenance, and operation of the Property (collectively, the "Property Documents").

NOW THEREFORE, IT IS HEREBY RESOLVED, the Members believe that it is in the best interest of the Company and the Partnership to confirm that the Company has the authority to execute any and all Property Documents.

BE IT FURTHER RESOLVED, that Terry LaGrone shall be an "Authorized Signatory" of the Company for purposes of the Property Documents.

FURTHER RESOLVED, that any Manager or Authorized Signatory of the Company, in the Company's capacity as the general partner of the Partnership, is hereby authorized to execute and deliver any and all Property Documents and take such other actions on behalf of the Partnership in connection with the ownership of the Property as such Manager or Authorized Signatory deems necessary or appropriate.

This Written Consent may be executed by electronic signatures and by one or more of the parties to this consent on any number of separate counterparts and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

[Signature Page Follows]

Exhibit "C"

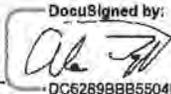
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Exhibit "D"

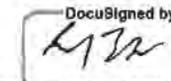
IN WITNESS WHEREOF, this Written Consent is executed to be effective as of the date first written above.

MEMBERS:

ADT INVESTMENT TRUST

By:  DocuSigned by:
DC6289BBB5504F4...
Alan Topfer, Trustee

RICHARD H. TOPFER INVESTMENT TRUST

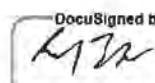
By:  DocuSigned by:
77D577E5FC17462...
Richard H. Topfer, Trustee

GSM TRUST OF 2016

By:  DocuSigned by:
FD7818F1C47E408...
Garrett Martin, Trustee

MANAGERS:

 DocuSigned by:
FD7818F1C47E408...
GARRETT S. MARTIN, Manager

 DocuSigned by:
77D577E5FC17462...
RICHARD H. TOPFER, Manager

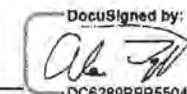
 DocuSigned by:
DC6289BBB5504F4...
ALAN TOPFER, Manager

Exhibit "D"

TCEQ DOCKET NO. 2023-1665-DIS

APPLICATION FOR CREATION OF	§	BEFORE THE TEXAS
PERSIMMON MUNICIPAL UTILITY	§	COMMISSION ON
DISTRICT	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR’S RESPONSE TO HEARING REQUESTS

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to the Hearing Requests (Response) on the Petition by Bailey Land Investments, LP and Armbruster Land Investments (Petitioners) for the creation of Persimmon Municipal Utility District (District). The Office of the Chief Clerk received hearing requests from Art Arizpe, Michael Baran, Darren Bien, The City of Buda, Debra Dulski, Connie Faber, David Fletcher, James Flores, Carol Gee, Gail Hall, Gerald Haschke, Susan Hernandez, Bryan Huddleston, Shawna-Lee Huskey, Virginia Jurika, Shawna-Lee Huskey, Brett Koger, Jeffrey C. Kaufmann, Stephen Kent Kinslow, JP Kirksey, Marta E Knight, Aimee Lakey, Phillip Lakey, Robert Lambert, Elena Mares-Coyote, Jesus Mares, Sharon Neukam, Connie Nicholson, Cynthia C. Pasadeos, Robin Perry, Scott Perry, Janet Pierce, Blythe Powell, Roxanne Rios, Kathy Sellstrom, Nathan Sewell, Kody Schouten, Sara Shannon, Natalie Gilmer, Martha Terrel, Sandra Tidwell, James Van Eyk, Doug Walker, Kerrie Webb, and Rep. Erin Zwiener.

Attached for Commission consideration are the following:

Attachment A—Executive Director’s Satellite Map.

The ED recommends that the Commission find City of Buda, Shawna-Lee Huskey, Brett Koger, Jesus Mares, Kody Schouten, and Kerri Webb are Affected Persons and grant their Hearing Requests.

The ED recommends denying the hearing requests of Art Arizpe, Michael Baran, Darren Bien, Debra Dulski, Connie Faber, David Fletcher, James Flores, Carol Gee, Gail Hall, Gerald Haschke, Susan Hernandez, Bryan Huddleston, Virginia Jurika, Jeffrey C Kaufmann, Stephen Kent Kinslow, JP Kirksey, Marta E. Knight, Aimee Lakey, Phillip Lakey, Robert Lambert, Elena Mares-Coyote, Sharon Neukam, Connie Nicholson, Cynthia C Pasadeos, Robin Perry, Scott Perry, Janet Pierce, Blythe Powell, Roxanne Rios, Kathy Sellstrom, Nathan Sewell, Sara Shannon, Natalie Gilmer, Martha Terrel, Sandra Tidwell, James Van Eyk, Doug Walker, and Rep. Erin Zwiener.

I. DESCRIPTION OF DISTRICT

The Petitioners filed a petition for creation of the District with TCEQ. The petition was filed pursuant to Article XVI, § 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of TCEQ.

The petition states that: the Petitioners hold title to a majority in value of the land to be included in the proposed District; there are two lienholders, International Bank of Commerce and Labenski Branch, LP, a Texas limited partnership, on the property to be included in the proposed District and information provided indicates

Exhibit "D"

that the lienholders consent to the creation of the proposed District; the proposed District will contain approximately 459 acres located within Hays County, Texas; and the land within the proposed District is within the extraterritorial jurisdiction of the City of Buda. The proposed district will be located approximately 750 feet north of the Haleys Way Drive and FM 967 intersection.

The petition further states that the proposed District will purchase, construct, acquire, repair, extend and improve land, easements, works, improvements, facilities, plants, equipment, and appliances necessary to: (1) provide a water supply for municipal uses and commercial purposes; (2) collect, transport, process, dispose of and control all domestic, industrial, or communal wastes whether in fluid, solid, or composite state; (3) gather, conduct, divert, and control local stormwater or other local harmful excesses of water in the proposed District and the payment of organization expenses, operational expenses during construction and interest during construction; (4) design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads, or improvements in aid of those roads; and (5) provide such other facilities, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created.

II. PROCEDURAL HISTORY

TCEQ received the petition on June 16, 2023. The Application was declared administratively complete on June 16, 2023.

Proper notice of the application was published on August 17 and August 24, 2023, in the *San Marcos Daily Record*, a newspaper regularly published or circulated in Hays County, the county in which the district is proposed to be located. Proper notice of the application was posted on August 29, 2023, in the Hays County Courthouse, the place where legal notices in Hays County are posted. Accordingly, the notice requirements of 30 TAC § 293.12(b) have been satisfied. The opportunity for the public to request a contested case hearing (comment period) expired September 25, 2023.

In accordance with Local Government Code § 42.042 and Texas Water Code § 54.016, the Petitioners submitted a petition to the City of Buda, requesting the City's consent to the creation of the District. After more than 90 days passed without receiving consent, the Petitioners submitted a petition to the City to provide water and sewer services to the proposed District. The 120-day period for reaching a mutually agreeable contract as established by the Texas Water Code § 54.016(c) expired and the information provided indicates that the Petitioners and the City have not executed a mutually agreeable contract for service. Pursuant to Texas Water Code § 54.016(d), failure to execute such an agreement constitutes authorization for the Petitioners to initiate proceedings to include the land within the proposed District.

III. CREATION OF MUNICIPAL UTILITY DISTRICTS

A municipal utility district (MUD) may be created under and subject to the authority, conditions, and restrictions of Article XVI, Section 59, of the Texas Constitution. TEX WATER CODE § 54.001. The District in this case is proposed to be created and organized according to the terms and provisions of Article XVI, Section 59, of the Texas Constitution, and Chapters 49 and 54 of the Texas Water Code.

Exhibit "D"

A MUD may be created for the following purposes:

- (1) the control, storage, preservation, and distribution of its storm water and floodwater, the water of its rivers and streams for irrigation, power, and all other useful purposes;
- (2) the reclamation and irrigation of its arid, semiarid, and other land needing irrigation;
- (3) the reclamation and drainage of its overflowed land and other land needing drainage;
- (4) the conservation and development of its forests, water, and hydroelectric power;
- (5) the navigation of its inland and coastal water;
- (6) the control, abatement, and change of any shortage or harmful excess of water;
- (7) the protection, preservation, and restoration of the purity and sanitary condition of water within the state; and
- (8) the preservation of all natural resources of the state. § 54.012. the commission has jurisdiction to hear this case and create the district.¹

The Commission must grant or deny a MUD creation application in accordance with Section 54.021 of the Texas Water Code. In order to grant an application, the Commission must find that organization of the district as requested is feasible and practicable and is necessary and would be a benefit to the land to be included in the district.² If the commission fails to make these findings, it shall refuse to grant the petition.³

In determining if the project is feasible and practicable and if it is necessary and would be a benefit to the land included in the district, the commission shall consider:

- (1) the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;
- (2) the reasonableness of projected construction costs, tax rates, and water and sewer rates; and
- (3) whether or not the district and its system and subsequent development within the district will have an unreasonable effect on the following:
 - (A) land elevation;
 - (B) subsidence;
 - (C) groundwater level within the region;
 - (D) recharge capability of a groundwater source;
 - (E) natural run-off rates and drainage;
 - (F) water quality; and
 - (G) total tax assessments on all land located within a district.⁴

The Commission, however, must exclude the areas that it finds would not be benefited by the creation of the district and must redefine the boundaries of the proposed district according to its findings.⁵

¹ Tex. Water Code § 54.014.

² Tex. Water Code § 54.021(a); 30 Tex. Admin. Code § 293.13(b)(1).

³ Tex. Water Code § 54.021(d); 30 Tex. Admin. Code § 293.13(a).

⁴ Tex. Water Code § 54.021(b).

⁵ 30 Tex. Admin. Code § 293.13(b)(2); Tex. Water Code § 54.021(c).

Exhibit "D"

IV. THE EVALUATION PROCESS FOR HEARING REQUESTS

As the application was declared administratively complete after September 1, 1999, it is subject to the requirements of Title 30, Chapter 55, Subchapter G, Sections 55.250-55.256 of the Texas Administrative Code. The Commission, the Executive Director, the applicant, or affected persons may request a contested case hearing on this application.⁶ The Commission must evaluate the hearing requests and may take on of the following actions:

- (1) determine that the hearing requests do not meet the rule requirements and act on the application;
- (2) determine that the hearing requests do not meet the rule requirements and refer the application to a public meeting to develop public comment before acting on the application;
- (3) determine that the hearing requests meet the rule requirements and refer the application to the State Office of Administrative Hearings ("SOAH") for a hearing; or
- (4) refer the hearing request to SOAH for a hearing on whether the hearing requests meet the rule requirements.⁷

The regulations provide that a hearing request made by an affected person must be in writing and must be filed with the Office of the Chief Clerk within the time provided in the Notice of District Petition.⁸ These two requirements are mandatory. The affected person's hearing request must also substantially comply with the following:

- (1) give the name, address, and daytime telephone number of the person who files the request.
- (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the activity that is the subject of the application and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public;
- (3) request a contested case hearing; and
- (4) provide any other information specified in the public notice of application.⁹

An affected person's personal justiciable interest must be related to a legal right, duty, privilege, power, or economic interest affected by the application belonging to the requestor and not an interest common to members of the general public.¹⁰ The regulations give the Commission flexibility to determine affected person status by considering any relevant factor, including the following:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;

⁶ 30 Tex. Admin. Code § 55.251(a).

⁷ 30 Tex. Admin. Code § 55.255(a).

⁸ 30 Tex. Admin. Code § 55.251(b) and (d).

⁹ 30 Tex. Admin. Code § 55.251(c).

¹⁰ 30 Tex. Admin. Code § 55.256(a).

Exhibit "D"

- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.¹¹

Government entities, including local governments, may be affected persons if they have authority under state law over issues contemplated by the application.¹²

V. THE HEARING REQUESTS

A. Analysis of Affected Persons

- The City of Buda

The City of Buda submitted a timely request through its attorney which contained a name, address, and phone number pursuant to 30 TAC § 55.251(c)(1). The City requested a contested case hearing pursuant to 30 TAC § 55.251(c)(3). The City also provided the internal control number for the MUD as required in the notice and pursuant to 30 TAC § 55.251(c)(4). Furthermore, the City identified its statutory authority and interests in the issues relevant to the application pursuant to 30 TAC § 55.256(c)(6). Specifically, the City stated that it has not given consent to the creation of the district as required under TWC § 54.016.

It is undisputed that the proposed district is partially within the extraterritorial jurisdiction of the City Buda. The Executive Director therefore recommends finding that the City is an affected person. The issue of city consent is an interest that is protected by the law under which the application will be considered, and a reasonable relationship exists between the interest claimed and the activity regulated as a result of a portion of the proposed district being within the City ETJ. 30 TAC § 55.256(a)(1) and (3).

The petitioner indicated in the materials they provided to Executive Director staff that no mutually agreeable contract exists. If, as it appears, the City failed to enter a mutually agreeable contract during the 120-day time period, then the landowners would have authorization “to initiate proceedings to include the land within the district as otherwise provided by this Act.” TWC § 54.016(c).

As part of their argument for affectedness, the City also stated that portions of the district are located within its Water CCN. According to the Executive Director staff memo, the City does have a CCN which covers some area in the district. The City contends that the District will interfere with the City’s obligations as a CCN holder. The ED concluded from the application materials that the District will create infrastructure to supply water and wastewater services. Availability of comparable services is one of the factors TCEQ is to examine under TWC § 54.016.

¹¹ 30 Tex. Admin. Code § 55.256(c).

¹² 30 Tex. Admin. Code § 55.256(b).

Exhibit "D"

The issues identified in the City's request are both material and relevant to the creation of the proposed District. Therefore, the ED recommends that the Commission find the City of Buda an affected person.

- Shawna-Lee Huskey, Brett Koger, Jesus Mares, Kody Schouten, and Kerri Webb.

Each of these requestors submitted a timely request which contained their name, address, and phone number pursuant to 30 TAC § 55.251(c)(1). According to the addresses they provided, the properties identified in the requests are located less than ½ mile from the boundary of the proposed District. Specifically, the properties they identified are located respectively 0.18, 0.05, 0.10, 0.07, and 0.32 miles from the district.

These individuals requested contested case hearings on the MUD creation pursuant to 30 TAC § 55.251(c)(3), and they also provided the internal control number as required in the notice and pursuant to 30 TAC § 55.251(c)(4).

In their requests, these individuals raised specific issues regarding the district's impact on their homes and property. Their concerns primarily were the district's drainage impacts and impacts on water quality, with particular emphasis on groundwater. The property interests identified in their requests are all in close proximity to the district boundary. These include the district's impacts to nearby private wells and the possibility of impact to the natural run-off rates and drainage.

Pursuant to TWC § 54.021, the Commission shall consider whether the district and its system and subsequent development within the district will have an unreasonable effect on several issues including groundwater levels, recharge capability of a groundwater source, water quality, natural run-off rates and drainage. In their requests, the requestors raised concerns about the district's impact on the issues specifically listed under TWC § 54.021.

Having tied unique justiciable interests to factors the commission is statutorily required to consider as part of the creation approval process, the ED recommends that Brett Koger, Shawna-Lee Huskey, Jesus Mares, Kody Schouten, and Kerri Webb are affected persons and grant their hearing requests.

B. Analysis of Non-Affected Persons

- Susan Hernandez and Doug Walker.

Ms. Hernandez and Mr. Walker each submitted a request which contained their name, address, and phone number pursuant to 30 TAC § 55.251(c)(1). According to the addresses they provided, the properties identified in the requests are located less than 1 mile from the boundary of the proposed District. These individuals also requested contested case hearings on the MUD creation pursuant to 30 TAC § 55.251(c)(3), and they also provided the internal control number as required in the notice and pursuant to 30 TAC § 55.251(c)(4). Both of them also identified ways that they believe they will be uniquely impacted as a result of the creation.

However, pursuant to 30 TAC § 55.251(d), hearing requests must be filed with the chief clerk within the time period specified in the notice. The notice of creation was last published on August 24, 2023, and the comment period closed

Exhibit "D"

September 25, 2023. According to the Commissioner's Integrated Database, Ms. Hernandez submitted her hearing request on October 11, 2023, and Mr. Walker submitted his request on September 27, 2023. Therefore, both of the individuals failed to file a timely hearing request, and the ED recommends that the Commission deny their hearing requests.

- Art Arizpe, Michael Baran, Darren Bien, Debra Dulski, Connie Faber, David Fletcher, James Flores, Carol Gee, Gail Hall, Gerald Haschke, Bryan Huddleston, Virginia Jurika, Jeffrey C. Kaufmann, Stephen Kent Kinslow, JP Kirksey, Marta E. Knight, Aimee Lakey, Phillip Lakey, Robert Lambert, Elena Mares-Coyote, Sharon Neukam, Connie Nicholson, Cynthia C Pasadeos, Robin Perry, Scott Perry, Janet Pierce, Blythe Powell, Roxanne Rios, Kathy Sellstrom, Nathan Sewell, Sara Shannon, Natalie Gilmer, Martha Terrel, Sandra Tidwell, and James Van Eyk.

Each of these requestors individually submitted a timely request which contained their name, address, and phone number pursuant to 30 TAC § 55.251(c)(1). According to the addresses they provided, the properties identified in the requests are located in close proximity to the boundary of the proposed District. These individuals also requested contested case hearings on the MUD creation pursuant to 30 TAC § 55.251(c)(3), and they also provided the internal control number as required in the notice and pursuant to 30 TAC § 55.251(c)(4).

However, each of these requestors failed to comply with 30 TAC § 55.251 because they did not identify a justiciable interest or explain how the requestor will be uniquely affected by the district in a manner not common to members of the general public. The requests express generalized concerns about the proposed district's practicability rather than identifying something specific regarding the creation that affects them and that is within the Commission's jurisdiction to consider.

While the requests did identify issues, the requestors failed to specifically articulate how they would uniquely be affected. Impacts to groundwater and traffic were the dominant issues in the requests, but these specific hearing requests expressed general concerns about the practicability of the district without tying those concerns to a unique justiciable interest. Many claimed that their source of water is the Edwards Aquifer and were concerned about the impact to the aquifer, but such an interest is too attenuated to be considered unique, especially when such water is sourced through a communal well or city utility. The requestors also expressed concerns with the district's logistical impact as they believe the existing road infrastructure is inadequate to accommodate future residents.

While the issue of groundwater impact is material and relevant to the creation review process, the requestors did not tie the MUD's activities or impacts to an interest that was unique to them, such as private well. Regarding road impacts, it is not within the statutory framework for the Commission to consider as part of the creation process.

Therefore, having failed to identify a personal justiciable interest that would be affected in a manner not common to members of the general public and that is within the Commission's jurisdiction, the ED recommends that the Commission deny these hearing requests.

Exhibit "D"

- Rep. Erin Zwiener.

Representative Zwiener filed a timely hearing request which contained her name, address, and phone number pursuant to 30 TAC § 55.251(c)(1). She further requested a hearing on behalf of her constituents pursuant to 30 TAC § 55.251(c)(3), and she provided the internal control number as required in the notice and pursuant to 30 TAC § 55.251(c)(4). Representative Zwiener articulated several issues and concerns she and her constituents have regarding the proposed district's impacts on the local community. These issues included impacts to groundwater, water quality, traffic, and property values. According to the address of the proposed district, many of Rep. Zwiener's constituents are located in close proximity to the boundaries of the proposed district.

However, Rep. Zwiener did not identify any personal justiciable interests of her own that she believes could be uniquely affected by the proposed district.

Because Rep. Zwiener's hearing request did not identify any personal justiciable interest unique to her, the ED recommends that the Commission deny her hearing request.

VI. RECOMMENDATION

The ED recommends that the Commission grant the hearing requests of the City of Buda, Shawna-Lee Huskey, Brett Koger, Jesus Mares, Kody Schouten, and Kerri Webb. The ED recommends the Commission deny all other hearing requests.

If the Commission chooses to deny the above hearing requests, then the Executive Director recommends that the creation petition be granted.

Exhibit "D"

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel, Executive Director

Charmaine Backens, Deputy Director
Environmental Law Division



Harrison Cole Malley, Staff Attorney
Environmental Law Division
State Bar No. 24116710
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
Phone: (512) 239-1439
Fax: (512) 239-0626

Exhibit "D"

CERTIFICATE OF SERVICE

I certify that on April 15, 2023, the "Executive Director's Response to Hearing Requests" for the was filed with the TCEQ's Office of the Chief Clerk, and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.



Harrison Cole Malley Staff Attorney
Environmental Law Division

Exhibit "D"

MAILING LIST

Persimmon Municipal Utility District

TCEQ Docket No. 2023-1665-DIS; Internal Control No. D-06162023-032

FOR THE APPLICANT

via electronic mail:

Anthony S. Corbett
McLean & Howard, LLP
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Joseph A. Yaklin BGE, Inc.
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FOR THE EXECUTIVE DIRECTOR

via electronic mail:

Harrison "Cole" Malley, Staff Attorney
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James Walker, Technical Staff
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Ryan Vise, Deputy Director
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FOR PUBLIC INTEREST COUNSEL

via electronic mail:

Garrett T. Arthur, Public Interest Counsel
Texas Commission on Environmental
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FOR ALTERNATIVE DISPUTE RESOLUTION

via electronic mail:

Kyle Lucas
Texas Commission on Environmental
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Austin, Texas 78711

FOR THE CHIEF CLERK:

Docket Clerk
Texas Commission on Environmental
Quality
Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711

<https://www.tceq.texas.gov/goto/efilings>

REQUESTER(S)/INTERESTED PERSON(S):

See attached list.

Exhibit "D"

REQUESTER(S)

Arizpe, Art
129 Clover Leaf Cv
Buda Tx 78610-2878

Baran, Michael
103 Nopal Ln
Buda Tx 78610-3260

Bien, Darren
1002 Magnolia Cv
Buda Tx 78610-2876

Bojorquez, Alan
Bojorquez Law Firm Pc
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11675 Jollyville Rd
Austin Tx 78759-3939

Dulski, Debra
261 Kates Cv
Buda Tx 78610-3238

Faber, Connie
212 Longspur Dr
Buda Tx 78610-2652

Fletcher, David
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Manchaca Tx 78652-0332

Flores, James
121 Pilot Grove Ct
Buda Tx 78610-2773

Gee, Carol
123 Nopal Ln
Buda Tx 78610-3260

Hall, Gail
300 Treetop Way
Buda Tx 78610-2851

Hall, Thomas L
300 Treetop Way
Buda Tx 78610-2851

Haschke, Gerald
308 Fox Holw
Buda Tx 78610-2827

Hernandez, Susan
165 Amandas Way
Buda Tx 78610-2925

Huddleston, Bryan
12703 Sagebrush Cir
Buda Tx 78610-2806

Huskey, Shawna-Lee
210 Treetop Way
Buda Tx 78610-2840

Jurika, Virginia
161 Serene Hollow Ln
Buda Tx 78610-2791

Kaufmann, Jeffrey C
407 Leisurewoods Dr
Buda Tx 78610-2613

Kinslow, Stephen Kent
12610 Shady Acres Dr
Buda Tx 78610-2522

Kirksey, J P
12503 Scissortail Dr
Manchaca Tx 78652-3723

Knight, Marta E
305 Ranger Dr
Buda Tx 78610-2539

Koger, Brett
12507 Shady Acres Dr
Buda Tx 78610-2517

Lakey, Aimee & Phillip
1165 Clark Brothers Dr
Buda Tx 78610-5127

Lambert, Robert
298 Kates Cv
Buda Tx 78610-3235

Mares, Jesus
907 Magnolia Cv
Buda Tx 78610-2889

Mares-Coyote, Elena
907 Magnolia Cv
Buda Tx 78610-2889

Neukam, Sharon
1001 Laurel Cv
Buda Tx 78610-2872

Nicholson, Connie
119 Saguaro Dr
Buda Tx 78610-3262

Exhibit "D"

Pasadeos, Cynthia C
2592 Garlic Creek Dr
Buda Tx 78610-5187

Perry, Robin & Scott
307 Lakewood Dr
Buda Tx 78610-2507

Pierce, Janet
13100 Onion Creek Dr
Manchaca Tx 78652-5620

Powell, Blythe
230 Treetop Way
Buda Tx 78610-2840

Rios, Roxanne
1129 Haleys Way Dr
Buda Tx 78610-3206

Schouten, Kody
804 Laurel Cv
Buda Tx 78610-2874

Sellstrom, Kathy
301 Buttercup Trl
Buda Tx 78610-2832

Sewell, Nathan
12701 Pheasant Run
Buda Tx 78610-2531

Shannon, Sara
307 Raccoon Run
Buda Tx 78610-2834

Shebel, Natalie Gilmer
12615 Eagle Nest Dr
Buda Tx 78610-2447

Terrel, Martha
905 Magnolia Cv
Buda Tx 78610-2889

Twidwell, Sandra
100 Devons Cv
Buda Tx 78610-2893

Van Eyk, James
301 Treetop Way
Buda Tx 78610-2853

Walker, Doug
1366 Heep Run
Buda Tx 78610-5093

Webb, Kerri
213 Amandas Way
Buda Tx 78610-2926

Zwiener, Erin
The Honorable State Representative
Texas House Of Representatives
District 45
PO Box 2910
Austin Tx 78768-2910

INTERESTED PERSON(S)

Cavendish, Bob
401 Treetop Way
Buda Tx 78610-2856

Chida, Judy
305 Prickley Pear Pass
Buda Tx 78610-3290

Meyer, Joyce
114 Clover Leaf Cv
Buda Tx 78610-2878

Meyer, Michael
114 Clover Leaf Cv
Buda Tx 78610-2878

Moreland, Cheryl Ann
1011 Magnolia Cv
Buda Tx 78610-2875

Patterson, David
16220 Remuda Trl
Buda Tx 78610-9349

Richardson, Diana
411 Treetop Way
Buda Tx 78610-2856

Roberts, Travis
168 Calline Mayes Run
Buda Tx 78610-5132

Schobey, Deanna
2096 Cornelia Trimble
Buda Tx 78610-5154

Sullivan, Mary Ann
159 Madisons Cv
Buda Tx 78610-3218

Exhibit "D"

Attachment A

Exhibit "D"

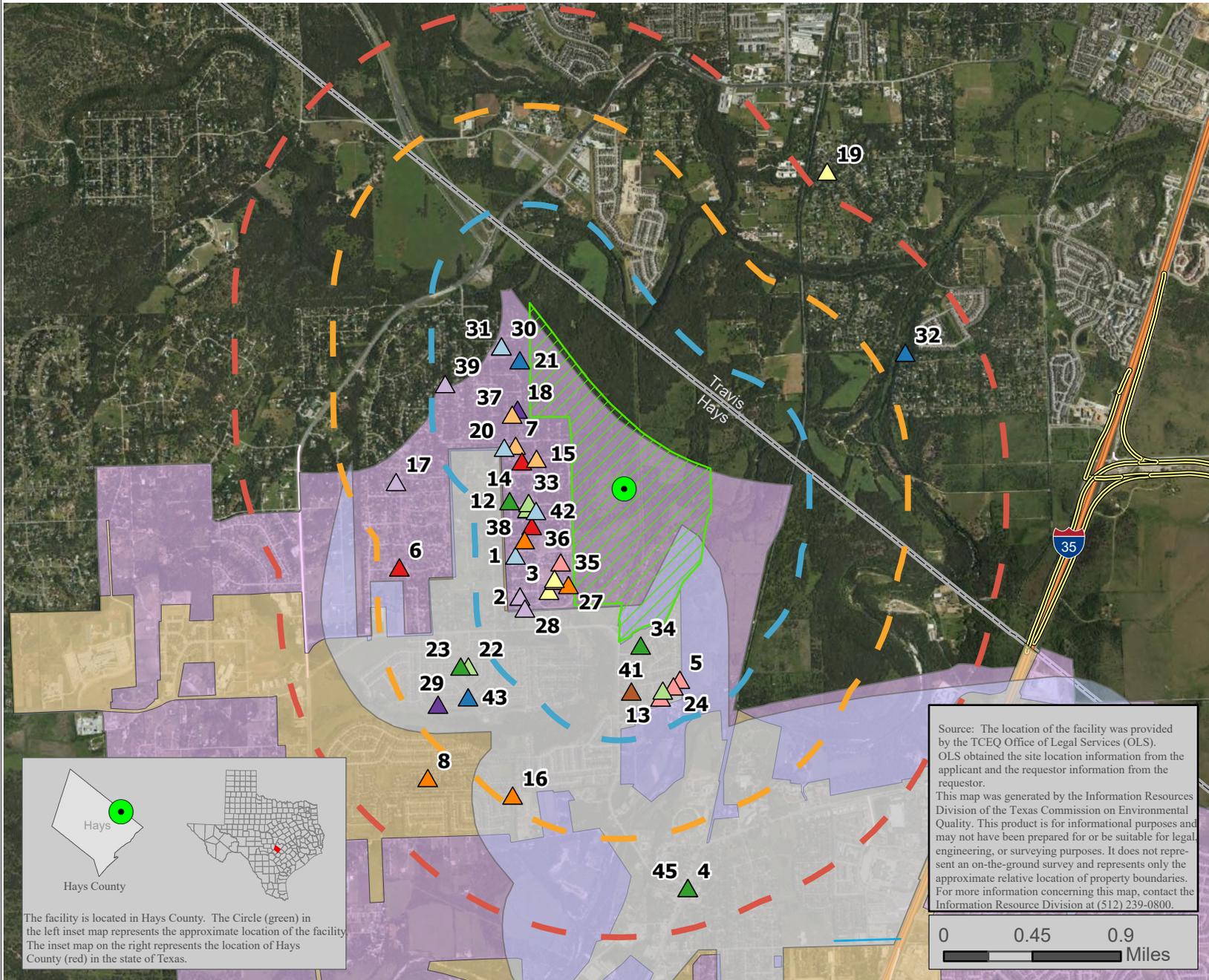
Petition for Creation of Persimmon Municipal Utility District

Map Requested by TCEQ Office of Legal Services
for Commissioners' Agenda



Protecting Texas by
Reducing and
Preventing Pollution

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 12/12/2023
CRF 0096167
Cartographer: AlOrtiz



- Approximate Center of District
 - Water CCN Facility Lines
 - 0.5-Mile Radius of MUD Boundary
 - 1.0-Mile Radius of MUD Boundary
 - 1.5-Mile Radius of MUD Boundary
 - Persimmon Municipal Utility District Boundary
 - City of Buda Water CCN Service Area
 - City of Buda Boundary
 - City of Buda ETJ
 - County Boundary
- | | |
|---------------------------------|-----------------------------------|
| 1) Arizpe, A. | 24) Lambert, R. |
| 2) Baran, M. | 25) Mares, J. |
| 3) Bien, D. | 26) Mares- Coyote E. |
| 4) Bojorquez, A. (City of Buda) | 27) Neukam, S. |
| 5) Dulski, D. | 28) Nicholson, C. |
| 6) Faber, C. | 29) Pasadeos, C.C. |
| 7) Fletcher, D. | 30) Perry, R. |
| 8) Flores, J. | 31) Perry, S. |
| 9) Gee, C. | 32) Pierce, J. |
| 10) Hall, G. | 33) Powell, B. |
| 11) Hall, T.L. | 34) Rios, R. |
| 12) Haschke, G. | 35) Schouten, K. |
| 13) Hernandez, S. | 36) Sellstrom, K. |
| 14) Huddleston, B. | 37) Sewell, N. |
| 15) Huskey, S.L. | 38) Shannon, S. |
| 16) Jurika, V. | 39) Shebel, N.G. |
| 17) Kaufmann, J.C. | 40) Terrel, M. |
| 18) Kinslow, S.K. | 41) Twidwell, S. |
| 19) Kirksey, J.P. | 42) Van Eyk, J. |
| 20) Knight, M.E. | 43) Walker, D. |
| 21) Koger, B. | 44) Webb, K. |
| 22) Lakey, A. | 45) Representative
Zwiener, E. |
| 23) Lakey, P. | |

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requester information from the requestor.
This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.



The facility is located in Hays County. The Circle (green) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Hays County (red) in the state of Texas.

Distances provided in Appendix A

Exhibit "D"

Appendix A Petition for Creation of Persimmon Municipal Utility District

Id	Name	Address	City	State	Zip	Latitude	Longitude	Distance From Requestor to Proposed MUD in Miles
1	Art Arizpe	129 Clover Leaf Cv	Buda	TX	78610	30.1064	-97.85699	0.30
2	Michael Baran	103 Nopal Ln	Buda	TX	78610	30.10337	-97.85668	0.28
3	Darren Bien	1002 Magnolia Cv	Buda	TX	78610	30.10376	-97.8542	0.13
4	Alan Bojorquez (City Of Buda)		Buda	TX		30.0817	-97.8429	1.29
5	Debra Dulski	261 Kates Cv	Buda	TX	78610	30.09703	-97.84323	0.30
6	Connie Faber	212 Longspur Dr	Buda	TX	78610	30.10569	-97.86688	0.89
7	David Fletcher	221 Ranger Dr	Buda	TX	78610	30.11448	-97.8568	0.16
8	James Flores	121 Pilot Grove Ct	Buda	TX	78610	30.09016	-97.86481	1.15
9	Carol Gee	123 Nopal Ln	Buda	TX	78610	30.10338	-97.85668	0.28
10	Gail Hall	300 Treetop Way	Buda	TX	78610	30.10978	-97.85589	0.23
11	Thomas L Hall	300 Treetop Way	Buda	TX	78610	30.10982	-97.85589	0.23
12	Gerald Haschke	308 Fox Holw	Buda	TX	78610	30.11041	-97.8574	0.32
13	Susan Hernandez	165 Amandas Way	Buda	TX	78610	30.09575	-97.844891	0.34
14	Bryan Huddleston	12703 Sagebrush Cir	Buda	TX	78610	30.11332	-97.85629	0.22
15	Shawna-Lee Huskey	210 Treetop Way	Buda	TX	78610	30.11349	-97.85505	0.18
16	Virginia Jurika	161 Serene Hollow Ln	Buda	TX	78610	30.08875	-97.85763	0.94
17	Jeffrey C Kaufmann	407 Leisure Woods Dr	Buda	TX	78610	30.11198	-97.86702	0.76
18	Stephen Kent Kinslow	12610 Shady Acres Dr	Buda	TX	78610	30.11713	-97.85658	0.06
19	JP Kirksey	12503 Scissortail Dr	Manchaca	TX	78652	30.1342	-97.82987	1.61

Exhibit "D"

Id	Name	Address	City	State	Zip	Latitude	Longitude	Distance From Requestor to Proposed Mud in Miles
21	Brett Koger	12507 Shady Acres Dr	Buda	TX	78610	30.12076	-97.8563	0.05
22	Aimee Lakey	1165 Clark Brothers Dr	Buda	TX	78610	30.09831	-97.861183	0.62
23	Phillip Lakey	1165 Clark Brothers Dr	Buda	TX	78610	30.09831	-97.86183	0.66
24	Robert Lambert	298 Kates Cv	Buda	TX	78610	30.09655	-97.84379	0.32
25	Jesus Mares	907 Magnolia Cv	Buda	TX	78610	30.1045	-97.85367	0.10
26	Elena Mares- Coyote	907 Magnolia Cv	Buda	TX	78610	30.1045	-97.85367	0.10
27	Sharon Neukam	1001 Laurel Cv	Buda	TX	78610	30.10416	-97.85254	0.03
28	Connie Nicholson	119 Saguardo Dr	Buda	TX	78610	30.10249	-97.85628	0.26
29	Cynthia C Pasadeos	2592 Garlic Creek Dr	Buda	TX	78610	30.09554	-97.86382	0.86
30	Robin Perry	307 Lakewood Dr	Buda	TX	78610	30.12181	-97.85784	0.15
31	Scott Perry	307 Lakewood Dr	Buda	TX	78610	30.12181	-97.85784	0.15
32	Janet Pierce	13100 Onion Creek Dr	Manchaca	TX	78652	30.12076	-97.82353	1.15
33	Blythe Powell	230 Treetop Way	Buda	TX	78610	30.11025	-97.85579	0.22
34	Roxanne Rios	1129 Haleys Way Dr	Buda	TX	78610	30.0996	-97.8465	0.07
35	Kody Schouten	804 Laurel Cv	Buda	TX	78610	30.10583	-97.85316	0.07
36	Kathy Sellstrom	301 Buttercup Trl	Buda	TX	78610	30.10855	-97.85556	0.21
37	Nathan Sewell	12701 Pheasant Run	Buda	TX	78610	30.11677	-97.85704	0.09
38	Sara Shannon	307 Raccoon Run	Buda	TX	78610	30.10752	-97.85619	0.25
39	Natalie Gilmer Shebel	12615 Eagle Nest Dr	Buda	TX	78610	30.11912	-97.86269	0.43
40	Martha Terrel	905 Magnolia Cv	Buda	TX	78610	30.10463	-97.85372	0.10

Exhibit "D"

Id	Name	Address	City	State	Zip	Latitude	Longitude	Distance From Requestor to Proposed Mud in Miles
41	Sandra Twidwell	100 Devons Cv	Buda	TX	78610	30.09623	-97.84737	0.25
42	James Van Eyk	301 Treetop Way	Buda	TX	78610	30.10965	-97.85517	0.19
43	Doug Walker	1366 Heep Run	Buda	TX	78610	30.09604	-97.86125	0.71
44	Kerri Webb	213 Amandas Way	Buda	TX	78610	30.09626	-97.8447	0.32
45	Representative Erin Zwiener		Buda	TX		30.0817	-97.8429	1.29

Exhibit "E"

Jon Niermann, *Chairman*
Bobby Janecka, *Commissioner*
Catarina R. Gonzales, *Commissioner*
Kelly Keel, *Executive Director*



Garrett T. Arthur, *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 15, 2024

Laurie Gharis, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
Austin, Texas 78711-3087

**RE: IN THE MATTER OF THE PETITION FOR CREATION OF
PERSIMMON MUNICIPAL UTILITY DISTRICT
TCEQ DOCKET NO. 2023-1665-DIS**

Dear Ms. Gharis:

Enclosed for filing is the Office of Public Interest Counsel's Response to Requests for Hearing in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script that reads "Jessica M. Anderson".

Jessica M. Anderson, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Exhibit "E"

DOCKET NO. 2023-1665-DIS

PETITION FOR THE CREATION
OF PERSIMMON MUNICIPAL
UTILITY DISTRICT

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE TO REQUESTS FOR HEARING

To the Members of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) at the Texas Commission on Environmental Quality (TCEQ) files this Response to Requests for Hearing on the petition in the above-captioned matter and respectfully submits the following.

I. INTRODUCTION

A. Summary of Position

The Commission received requests for a contested case hearing from concerned members of the public and a governmental entity regarding the application for the creation of Persimmon Municipal Utility District (Persimmon MUD or District). For the reasons discussed herein, OPIC respectfully recommends that the Commission grant the hearing requests of Art Arizpe, Michael Baran, Darren Bien, Debra Dulski, Connie Faber, David Fletcher, Carol Gee, Gerald Haschke, Bryan Huddleston, Shawna-Lee Huskey, Jeffrey C. Kaufman, Stephen Kent Kinslow, Marta E. Knight, Brett Koger, Aimee Lakey, Phillip Lakey, Jesus Mares, Elena Mares-Coyote, Sharon Neukam, Connie Nicholson, Cynthia C. Pasadeos, Robin Perry, Scott Perry, Roxanne Rios, Kody Schouten, Kathy Sellstrom, Nathan Sewell, Sara Shannon, Natalie Gilmer Shebel, Mary Ann

Exhibit "E"

Sullivan, Martha Terrel, Sandra Twidwell, James Van Eyk, Kerri Webb, and the City of Buda. OPIC further recommends that the Commission deny all other hearing requests.

B. Background

Bailey Land Investments, LP, a Texas limited partnership and Armbruster Land Investments, LP, a Texas limited partnership (Petitioners) filed a petition for creation of Persimmon MUD with the TCEQ pursuant to Article XVI, Section 59 of the Texas Constitution; Chapters 49 and 54 of the Texas Water Code (TWC); Title 30 of the Texas Administrative Code (TAC), Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners hold title to a majority in value of the land to be included in the proposed District; (2) there are two lienholders, International Bank of Commerce and Labenski Branch, LP, a Texas limited partnership, on the property to be included in the proposed District, and information provided indicates that the lienholders consent to the creation of the proposed District; (3) the proposed District will contain approximately 459 acres located within Hays County; and (4) the land within the proposed District is within the extraterritorial jurisdiction (ETJ) of the City of Buda.

The petition was declared administratively complete on June 16, 2023, and the Notice of District Petition was published on August 24, 2023. According to the notice, the proposed District will purchase, construct, acquire, repair, extend, and improve land, easements, works, improvements, facilities, plants, equipment, and appliances necessary to: (1) provide a water supply for municipal

Exhibit "E"

uses and commercial purposes; (2) collect, transport, process, dispose of and control all domestic, industrial, or communal wastes whether in fluid, solid, or composite state; (3) gather, conduct, divert, and control local stormwater or other local harmful excesses of water in the proposed District and the payment of organization expenses, operational expenses during construction, and interest during construction; (4) design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads, or improvements in aid of those roads; and (5) provide such other facilities, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created. The comment period ended on September 25, 2023.

II. APPLICABLE LAW

A municipal utility district may be created under and subject to the authority, conditions, and restrictions of Article XVI, Section 59, of the Texas Constitution. Chapters 49 and 54 of the TWC and the Commission's administrative rules found at Title 30, Chapter 293, of the TAC govern petitions to create a MUD. A district shall be created for the following purposes:

- (1) the control, storage, preservation, and distribution of its storm water and floodwater, the water of its rivers and streams for irrigation, power, and all other useful purposes;
- (2) the reclamation and irrigation of its arid, semiarid, and other land needing irrigation;
- (3) the reclamation and drainage of its overflowed land and other land needing drainage;
- (4) the conservation and development of its forests, water, and hydroelectric power;
- (5) the navigation of its inland and coastal water;
- (6) the control, abatement, and change of any shortage or harmful excess of water;
- (7) the protection, preservation, and restoration of the purity and

Exhibit "E"

sanitary condition of water within the state; and
(8) the preservation of all natural resources of the state.

TWC § 54.012.

To create a MUD, a petition requesting creation shall be filed with the Commission. TWC § 54.014. The petition shall be signed by a majority in value of the holders of title of the land within the proposed district, as indicated by the tax rolls of the central appraisal district. *Id.* Among other things, the petition shall: (1) describe the boundaries of the proposed district by metes and bounds or by lot and block number; (2) state the general nature of the work proposed to be done, the necessity for the work, and the cost of the project as then estimated by those filing the petition; and (3) include a name of the district which shall be generally descriptive of the locale of the district. TWC § 54.015. *See also* 30 TAC § 293.11(a) and (d).

If all of the district is proposed to be located outside corporate limits of a municipality, the commissioners court of the county in which the district is to be located may review the petition for creation and other evidence and information relating to the proposed district that the commissioners consider necessary. TWC § 54.0161(a). If the commissioners court votes to make a recommendation to the Commission, the commissioners court shall submit to the Commission, at least 10 days before the date set for the hearing on the petition, a written opinion stating whether or not the county would recommend the creation of the proposed district and stating any findings, conclusions, and other information that the commissioners court thinks would assist the Commission in making a

Exhibit "E"

final determination on the petition. TWC § 54.0161(b). The Commission shall consider the written opinion submitted by the county commissioners. TWC § 54.0161(c).

The Commission shall grant the petition if it conforms to the requirements of § 54.015 and the project is feasible, practicable, necessary, and further, would be a benefit to the land to be included in the district. TWC § 54.021(a). In determining if the project is feasible, practicable, necessary, and beneficial to the land included in the district, the Commission shall consider:

- (1) the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;
- (2) the reasonableness of projected construction costs, tax rates, and water and sewer rates; and
- (3) whether or not the district and its system and subsequent development within the district will have an unreasonable effect on the following:
 - (A) land elevation;
 - (B) subsidence;
 - (C) groundwater level within the region;
 - (D) recharge capability of a groundwater source;
 - (E) natural run-off rates and drainage;
 - (F) water quality; and
 - (G) total tax assessments on all land located within a district.

TWC § 54.021(b).

If the Commission finds that not all of the land proposed to be included in the district will be benefited by the creation of the district, it shall exclude all land not benefited and redefine the proposed district's boundaries accordingly.

TWC § 54.021(c). If the petition does not conform to the requirements of TWC § 54.015 or the project is not feasible, practicable, necessary, or a benefit to the land in the district, the Commission shall deny the petition. TWC § 54.021(d).

Exhibit "E"

The rights, powers, privileges, authority, and functions of a district shall be subject to the continuing right of supervision by the Commission. TWC § 54.024.

The applicant must publish notice of the petition to create a district once a week for two consecutive weeks in a newspaper regularly published or circulated in the county where the district is proposed to be located not later than the 30th day before the date of the Commission's decision on the application. TWC §§ 49.011(b) and 54.018. Additionally, the applicant must post notice of the petition on the bulletin board used for posting legal notices in each county in which all or part of the proposed district is to be located. 30 TAC § 293.12(b)(2). The Commission shall hold a public hearing if requested by the Commission, Executive Director, or an "affected person" under the factors in 30 TAC, Chapter 55. TWC § 49.011(c). *See also* 30 TAC § 55.250 (applying rules governing contested case hearings to applications declared administratively complete after September 1, 1999). Affected persons must file their hearing requests during the 30 days following the final notice publication date. TWC § 49.011(c); 30 TAC § 293.12(c).

A hearing requestor must make the request in writing within the time period specified in the notice and identify the requestor's personal justiciable interest affected by the application, specifically explaining the "requestor's location and distance relative to the activity that is the subject of the application and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public." 30 TAC § 55.251(b)-(d).

Exhibit "E"

An affected person is “one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest.” 30 TAC § 55.256(a). Governmental entities with authority under state law over issues contemplated by the application may be considered affected persons. 30 TAC § 55.256(b). Relevant factors to be considered in determining whether a person is affected include, but are not limited to:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health, safety, and use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.256(c).

The Commission shall grant a request for a contested case hearing if: (1) the request is made by the applicant or the ED; or (2) the request is made by an affected person, complies with the requirements of § 55.251, is timely filed with the chief clerk, and is made pursuant to a right to hearing authorized by law. 30 TAC § 55.255(b).

Exhibit "E"

III. ANALYSIS OF HEARING REQUESTS

A. Affected persons within one mile of the MUD boundary

The following individuals each timely requested a hearing during the public comment period: Art Arizpe, Michael Baran, Darren Bien, Debra Dulski, Connie Faber, David Fletcher, Carol Gee, Gerald Haschke, Bryan Huddleston, Shawna-Lee Huskey, Jeffrey C. Kaufman, Stephen Kent Kinslow, Marta E. Knight, Brett Koger, Aimee Lakey, Phillip Lakey, Jesus Mares, Elena Mares-Coyote, Sharon Neukam, Connie Nicholson, Cynthia C. Pasadeos, Robin Perry, Scott Perry, Roxanne Rios, Kody Schouten, Kathy Sellstrom, Nathan Sewell, Sara Shannon, Natalie Gilmer Shebel, Mary Ann Sullivan, Martha Terrel, Sandra Twidwell, James Van Eyk, and Kerri Webb.

In their requests, these individuals raised concerns regarding the proposed District's potential impacts on water quality, land elevation, subsidence, groundwater levels, groundwater recharge capability, and natural runoff rates. Furthermore, the properties of these individuals are less than one mile from the proposed District boundary.

The concerns expressed by these individuals regarding water quality, land elevation, subsidence, groundwater, and runoff, when combined with their proximities to the proposed District boundary, give each of these requestors a personal justiciable interest in this matter which is not common to the general public. Also, the requestors' concerns are interests protected by the law under which this application will be considered, and a reasonable relationship exists between those interests and the regulation of a municipal utility district. Finally,

Exhibit "E"

the location of the requestors' homes increases the likelihood of impacts to health, safety, and use of their properties. Therefore, OPIC finds that these individuals qualify as affected persons.

B. Affected governmental entity

The Commission received timely hearing requests on behalf of the City of Buda from Alan Bojorquez and Representative Erin Zwiener. Buda's hearing request stated that the proposed District is located partially in Buda's ETJ. Further, the proposed District would contain 178.6 acres that are subject to Buda's Certificate of Convenience and Necessity for water service. Buda raised concerns about groundwater, subsidence, natural runoff rates, and water quality.

Governmental entities with authority under state law over issues contemplated by the application may be considered affected persons. 30 TAC § 55.256(b). Additionally, a relevant factor for determining whether governmental entities qualify as affected persons is their statutory authority over or interest in the issues relevant to the application. 30 TAC § 55.256(c)(6). Further, Buda has statutory authority to protect public health and safety and regulate development within its ETJ. *See* Tex. Loc. Gov't Code §§ 42.001, 212.044. Buda's concerns are relevant to the Commission's final determination on the petition. Based on the City of Buda's identified interests and the proposed District's location partially within its ETJ, OPIC finds that Buda has demonstrated that it qualifies as an affected person in this matter.

Exhibit "E"

C. Unaffected persons within one mile of the MUD boundary

Several requestors with properties less than one mile from the proposed District boundary failed to raise concerns that are interests protected by the law under which this application is considered or failed to do so in a timely manner. In their hearing requests, Gail Hall, Virginia Jurika, and Blythe Powell did not articulate any specific ways in which they would be affected by the proposed District. Thomas L. Hall exclusively raised concerns outside of TCEQ's jurisdiction, including lot sizes, population density, traffic, quality of life, noise and light pollution, and crime. Susan Hernandez and Doug Walker failed to make timely comments and hearing requests. Given these requestors' failure to articulate concerns that would be protected by the law under which this application is considered, or their failure to do so in a timely manner, OPIC recommends that the Commission find that Gail Hall, Thomas L. Hall, Virginia Jurika, Blythe Powell, Susan Hernandez, and Doug Walker do not qualify as affected persons.

D. Unaffected persons further than one mile from the MUD boundary

According to the map prepared by the Executive Director's staff, several requestors listed property addresses 1.15 miles or further from the proposed District boundary. These requestors are James Flores, JP Kirksey, and Janet Pierce. OPIC recognizes that under 30 TAC § 55.256(c)(2), there are no distance restrictions or other limitations imposed by law on affected interests in this matter. However, given the intervening distance between the remaining properties and the location of the proposed District, OPIC finds that there is a

Exhibit "E"

diminished likelihood that the regulated activity will impact health, safety, or use of their properties. *See* 30 TAC § 55.256(c)(4). Further, at distances beyond 1.15 miles, these requestors lack the proximity needed to establish a reasonable relationship between their claimed interests and the regulated activity. *See* 30 TAC § 55.256(c)(3). Accordingly, OPIC must respectfully recommend that none of these requestors qualify as affected persons.

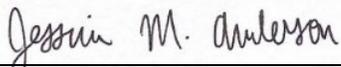
IV. CONCLUSION

For the foregoing reasons, OPIC respectfully recommends the Commission find that Art Arizpe, Michael Baran, Darren Bien, Debra Dulski, Connie Faber, David Fletcher, Carol Gee, Gerald Haschke, Bryan Huddleston, Shawna-Lee Huskey, Jeffrey C. Kaufman, Stephen Kent Kinslow, Marta E. Knight, Brett Koger, Aimee Lakey, Phillip Lakey, Jesus Mares, Elena Mares-Coyote, Sharon Neukam, Connie Nicholson, Cynthia C. Pasadeos, Robin Perry, Scott Perry, Roxanne Rios, Kody Schouten, Kathy Sellstrom, Nathan Sewell, Sara Shannon, Natalie Gilmer Shebel, Mary Ann Sullivan, Martha Terrel, Sandra Twidwell, James Van Eyk, Kerri Webb, and the City of Buda qualify as affected persons, grant their hearing requests, and refer the matter to the State Office of Administrative Hearings for a contested case hearing.

Exhibit "E"

Respectfully submitted,

Garrett T. Arthur
Public Interest Counsel

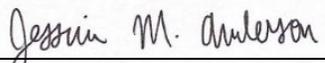
By: 

Jessica M. Anderson
Assistant Public Interest Counsel
State Bar No. 24131226
P.O. Box 13087, MC 103
Austin, Texas 78711-3087
(512) 239-6823

Exhibit "E"

CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2024, the original of the Office of Public Interest Counsel's Response to Request for Hearing was filed with the Chief Clerk of the TCEQ and a copy was served on all persons listed on the attached mailing list via electronic mail, and/or by deposit in the U.S. Mail.



Jessica M. Anderson

Exhibit "E"

MAILING LIST PERSIMMON MUNICIPAL UTILITY DISTRICT TCEQ DOCKET NO. 2023-1665-DIS

FOR THE APPLICANT
via electronic mail:

David J. Tuckfield
The AL Law Group
12400 Highway 71 West, Suite 350-150
Austin, Texas 78738
david@allawgp.com

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Howard & McLean, LLP
4301 Bull Creek Road
Austin, Texas 78731
tcorbett@mcleanhowardlaw.com

Joseph A. Yaklin
BGE, Inc.
101 West Louis Henna Boulevard
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Austin, Texas 78728
jyaklin@bgeinc.com

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

Harrison "Cole" Malley, Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-0600 Fax: 512/239-0606
harrison.malley@tceq.texas.gov

James Walker, Technical Staff
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james.walker@tceq.texas.gov

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pep@tceq.texas.gov

FOR ALTERNATIVE DISPUTE
RESOLUTION

via electronic mail:

Kyle Lucas, Attorney
Texas Commission on Environmental
Quality
Alternative Dispute Resolution MC-222
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Austin, Texas 78711-3087
Tel: 512/239-0687 Fax: 512/239-4015
kyle.lucas@tceq.texas.gov

FOR THE CHIEF CLERK

via eFiling:

Docket Clerk
Texas Commission on Environmental
Quality
Office of Chief Clerk MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-3300 Fax: 512/239-3311
<https://www14.tceq.texas.gov/epic/eFiling/>

REQUESTER(S):

See attached list.

Exhibit "E"

PUBLIC OFFICIALS - REQUESTER(S)

The Honorable Erin Zwiener
State Representative, Texas House Of
Representatives District 45
Po Box 2910
Austin, TX 78768-2910

REQUESTER(S)

Art Arizpe
129 Clover Leaf Cv
Buda, TX 78610-2878

Michael Baran
103 Nopal Ln
Buda, TX 78610-3260

Darren Bien
1002 Magnolia Cv
Buda, TX 78610-2876

Alan Bojorquez
Bojorquez Law Firm Pc
11675 Jollyville Rd
Ste 300
Austin, TX 78759-3939

Debra Dulski
261 Kates Cv
Buda, TX 78610-3238

Ms Connie Faber
212 Longspur Dr
Buda, TX 78610-2652

David Fletcher
Po Box 332
Manchaca, TX 78652-0332

James Flores
121 Pilot Grove Ct
Buda, TX 78610-2773

Carol Gee
123 Nopal Ln
Buda, TX 78610-3260

Gail Hall
300 Treetop Way
Buda, TX 78610-2851

Thomas L Hall
300 Treetop Way
Buda, TX 78610-2851

Mr Gerald Haschke
308 Fox Holw
Buda, TX 78610-2827

Susan Hernandez
165 Amandas Way
Buda, TX 78610-2925

Bryan Huddleston
12703 Sagebrush Cir
Buda, TX 78610-2806

Shawna-Lee Huskey
210 Treetop Way
Buda, TX 78610-2840

Virginia Jurika
Doctors Without Borders
161 Serene Hollow Ln
Buda, TX 78610-2791

Jeffrey C Kaufmann
407 Leisurewoods Dr
Buda, TX 78610-2613

Stephen Kent Kinslow
12610 Shady Acres Dr
Buda, TX 78610-2522

J P Kirksey
12503 Scissortail Dr
Manchaca, TX 78652-3723

Marta E Knight
305 Ranger Dr
Buda, TX 78610-2539

Brett Koger
12507 Shady Acres Dr
Buda, TX 78610-2517

Aimee & Phillip Lakey
1165 Clark Brothers Dr
Buda, TX 78610-5127

Robert Lambert
298 Kates Cv
Buda, TX 78610-3235

Exhibit "E"

Jesus Mares
907 Magnolia Cv
Buda, TX 78610-2889

Elena Mares-Coyote
907 Magnolia Cv
Buda, TX 78610-2889

Sharon Neukam
1001 Laurel Cv
Buda, TX 78610-2872

Connie Nicholson
119 Saguaro Dr
Buda, TX 78610-3262

Cynthia C Pasadeos
2592 Garlic Creek Dr
Buda, TX 78610-5187

Robin & Scott Perry
307 Lakewood Dr
Buda, TX 78610-2507

Mrs Janet Pierce
13100 Onion Creek Dr
Manchaca, TX 78652-5620

Blythe Powell
230 Treetop Way
Buda, TX 78610-2840

Roxanne Rios
1129 Haleys Way Dr
Buda, TX 78610-3206

Mr Kody Schouten
804 Laurel Cv
Buda, TX 78610-2874

Kathy Sellstrom
301 Buttercup Trl
Buda, TX 78610-2832

Nathan Sewell
12701 Pheasant Run
Buda, TX 78610-2531

Sara Shannon
307 Raccoon Run
Buda, TX 78610-2834

Natalie Gilmer Shebel
12615 Eagle Nest Dr
Buda, TX 78610-2447

Mary Ann Sullivan
159 Madisons Cv
Buda, TX 78610-3218

Martha Terrel
905 Magnolia Cv
Buda, TX 78610-2889

Sandra Twidwell
100 Devons Cv
Buda, TX 78610-2893

Dr. James Van Eyk
301 Treetop Way
Buda, TX 78610-2853

Mr Doug Walker
1366 Heep Run
Buda, TX 78610-5093

Kerri Webb
213 Amandas Way
Buda, TX 78610-2926



Exhibit "F"

RECEIVED
JUN 20 2023
CITY OF BUDA

AR 2:06pm

June 20, 2023

Via Hand Delivery

City of Buda
Attn: City Clerk Alicia Ramirez
405 E. Loop Street, Building 100
Buda, Texas 78610

Re: Petition for Release of Property from the Extraterritorial Jurisdiction of the City of Buda

Dear Ms. Ramirez:

On behalf of Bailey Land Investments, LP and Armbruster Land Investments, LP (collectively, "Petitioners"), enclosed please find a Petition for Release of Property from the Extraterritorial Jurisdiction of the City of Buda (the "Petition"). In accordance with Senate Bill No. 2038 as duly enacted by the 88th Texas Legislature which establishes Section 42.101-105 of the Texas Local Government Code, the Petition requests the release of lands from the City's extraterritorial jurisdiction owned by the Petitioners within the City's extraterritorial jurisdiction, as more particularly described in the Petition (the "Property"). The Petition has been executed to be effective as of September 1st, 2023.

Please file stamp and return the enclosed extra copy of the Petition.

We appreciate the City's consideration of the Petition.

Sincerely,

A handwritten signature in black ink, appearing to be "Shani Armbruster", written over a horizontal line.

Shani Armbruster

Exhibit "F"

REQUEST AND PETITION FOR RELEASE OF PROPERTY FROM THE EXTRATERRITORIAL JURISDICTION OF THE CITY OF BUDA (459 ACRES)

TO THE MAYOR OF THE GOVERNING BODY OF THE CITY OF BUDA, TEXAS:

The undersigned ("Petitioners"), acting pursuant to the provisions of Senate Bill No. 2038 as duly enacted by the 88th Texas Legislature which establishes Section 42.101-105 of the Texas Local Government Code, respectfully petitions the City Council of the City of Buda (the "City") for the release of the land described by metes and bounds on Exhibit "A" (the "Land"; Bailey Land Investments, LP, a Texas limited partnership, and Armbruster Land Investments, LP, owning the portions of the Land as identified Exhibits "A-1") from the extraterritorial jurisdiction ("ETJ") of the City. In support of this petition, Petitioners would show the following:

I.

Petitioners are the owners of all of the Land, which is situated in Hays County, Texas, and is fully described by metes and bounds on Exhibit "A", attached hereto and incorporated herein by reference. Petitioners certify that the description of the Land attached as Exhibit "A" is true and correct.

II.

The Land is currently within the extraterritorial boundaries of the City, a home rule municipality.

III.

Petitioners certify that they are the owners of one hundred percent (100%) in value of the holders of title of the Land pursuant to the tax rolls of the Hays County Appraisal District as evidenced by Exhibit "B".

IV.

The Land is vacant and there are no residents or registered voters residing on the Land.

V.

The signatures are hereby sufficient to effectuate the immediate release of the Land from the City's ETJ. If the City fails to take action by the 45th day after the date of this Petition, the Land is released by operation of law.

Executed to be effective as of the 1st day of September, 2023.

* * *

Exhibit "F"

SIGNATURE PAGE TO
REQUEST AND PETITION FOR RELEASE OF PROPERTY FROM THE
EXTRATERRITORIAL JURISDICTION OF THE CITY OF BUDA
(459 ACRES)

PETITIONERS:

BAILEY LAND INVESTMENTS,
a Texas limited partnership

By: Bailey Land Investments GP, LLC,
a Texas limited liability company,
its General Partner

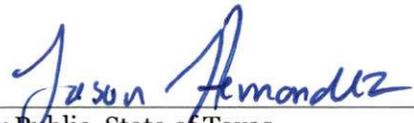
By: 
Terry LaGrone, Authorized Signatory

Date: _____

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this 20th day of June, 2023 by Terry LaGrone, Authorized Signatory of Bailey Land Investments GP, LLC, a Texas limited liability company, General Partner of Bailey Land Investments, LP, a Texas limited partnership, on behalf of said limited partnership and limited liability company.


Notary Public, State of Texas

(SEAL)

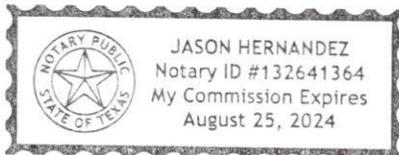


Exhibit "F"

SIGNATURE PAGE TO
REQUEST AND PETITION FOR RELEASE OF PROPERTY FROM THE
EXTRATERRITORIAL JURISDICTION OF THE CITY OF BUDA
(459 ACRES)

ARMBRUSTER LAND INVESTMENTS, LP,
a Texas limited partnership

By: Armbruster Land Investments GP, LLC,
a Texas limited liability company,
its General Partner

By: 
Terry LaGrone, Authorized Signatory

Date: _____

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this 20th day of June, 2023 by Terry LaGrone, Authorized Signatory of Armbruster Land Investments GP, LLC, a Texas limited liability company, General Partner of Armbruster Land Investments, LP, a Texas limited partnership, on behalf of said limited partnership and limited liability company.

(SEAL)


Notary Public, State of Texas

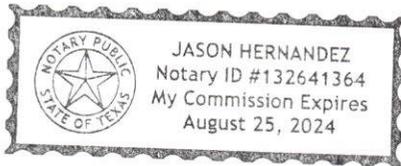


Exhibit "F"

EXHIBIT "A" THE LAND

**Professional Land Surveying, Inc.
Surveying and Mapping**3500 McCall Lane
Austin, Texas 78744**459.0 ACRES
S.V.R. EGGLESTON SURVEY NO. 3, ABS. NO. 5,
HAYS COUNTY, TEXAS**

A DESCRIPTION OF APPROXIMATELY 459.0 ACRES OF LAND, MORE OR LESS, OUT OF THE S.V.R. EGGLESTON SURVEY NUMBER 3, ABSTRACT NUMBER 5 OF HAYS COUNTY, TEXAS, BEING A PORTION OF A 79.00 ACRE TRACT CONVEYED TO ARMBRUSTER LAND INVESTMENTS, LP., IN DOCUMENT NO. 21071113 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, BEING A PORTION OF A 217.066 ACRE TRACT, SAVE AND EXCEPT 79.000 ACRES, CONVEYED TO ARMBRUSTER LAND INVESTMENTS, LP., IN DOCUMENT NO. 202184020 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS AND DOCUMENT NO(S). 21071107 AND 21071108 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY TEXAS AND ALSO BEING A PORTION OF A 208.892 ACRE TRACT CONVEYED TO ARMBRUSTER LAND INVESTMENTS, LP., IN DOCUMENT NO(S). 2021280420, 2021280421, 2021280422, 2021280423, 2021280424, 2021280425 AND 2021280426, ALL OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS AND DOCUMENT NO(S). 21071107, 21071109, 21071110, 21071111, 21071112, 21071114 AND 21071115, ALL OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, ALSO BEING A PORTION OF A 348.277 ACRE TRACT AND A PORTION OF LOT 1, BLOCK T, THE WOODS OF BEAR CREEK, A SUBDIVISION OF RECORD IN VOLUME 3, PAGE 347 OF THE PLAT RECORDS OF HAYS COUNTY, TEXAS, BOTH CONVEYED TO BAILEY LAND INVESTMENT, LP, IN A SPECIAL WARRANTY DEED WITH VENDOR'S LIEN DATED JUNE 3, 2021 AND RECORDED IN DOCUMENT NO. 21030465 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS; SAID 459.0 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a 3/8" rebar found in the north right-of-way line of F.M. 967 (right-of-way width varies), being the southwest corner of said 79.000 acre tract, being also the southwest corner of said 217.066 acre tract, also being the south termination of the agreed boundary line described in Volume 222, Page 163 of the Deed Records of Hays County, Texas and also being the southwest corner of Lot 1, Cimarron Professional Park Section One, a subdivision of record in Volume 7, Page 306 of the Plat Records of Hays County, Texas;

THENCE North 01°35'28" West, with said agreed boundary line, being the west line of the 79.000 acre tract, same being the east lines of Lots 1 and 2, said Cimarron Professional Park, Section One, a distance of 454.21 feet to a calculated point for the **POINT OF BEGINNING** hereof;

Exhibit "F"

Page 2

THENCE North $01^{\circ}35'28''$ West, continuing, with said agreed boundary line, being the west line of the 79.000 acre tract, the west line of the 217.066 acre tract, with the east line of said Lot 2, also with the east right-of-way line of Dove Drive (right-of-way width varies), described in Volume 4, Page 126, Volume 3, Page 99 and Volume 4, Page 363, all of the Plat Records of Hays County, Texas, also with the east lines of Coves of Cimarron, a subdivision of record in Volume 3, Page 99, corrected in Volume 4, Page 363, both of the Plat Records of Hays County, Texas, with the east line of Cimarron Park Section III, Phase III, a subdivision of record in Volume 3, Page 37 of the Plat Records of Hays County, Texas, distance of 5009.08 feet to a 1/2" iron pipe found for the northwest corner of the 217.066 acre tract, being the northeast corner of Lot 42, Block F, said Cimarron Park Section III, Phase III and also being in the south line of said 208.892 acre tract;

THENCE South $89^{\circ}18'45''$ West, with the south line of the 208.892 acre tract, same being the north line of Cimarron Park Section III, Phase III, a distance of 1050.80 feet to a 1/2" rebar with "Chaparral" cap set for the southwest corner of the 208.892 acre tract, being the northwest corner of Lot 14, Block E and also being in the east line of Lot 7, Block E, both of Cimarron Park Section III, Phase III;

THENCE North $01^{\circ}36'39''$ West, with the west line of the 208.892 acre tract, same being the west line of Cimarron Park Section III, Phase III, the east line of Cimarron Park Section Three Phase Two, a subdivision of record in Volume 2, Page 321 of the Plat Records of Hays County, Texas, the east line of a 0.629 acre tract described in Document No. 18022446 of the Official Public Records, the east line of a 0.83 acre tract described in Volume 962, Page 90 of the Deed Records, the east line of a 0.852 acre tract described in Volume 525, Page 85 of the Deed Records, the east line of a 0.346 acre tract described in Volume 988, Page 579 of the Deed Records, the east line of a 1.00 acre tract described in Volume 2656, Page 108 of the Deed Records, the east line of a 1.00 acre tract described in Volume 388, Page 516 of the Deed Records, the east line of a 1.00 acre tract described in Document No. 20056742 of the Official Public Records, the east line of a 1.00 acre tract described in Volume 742, Page 640 of the Deed Records, the east line of a 1.00 acre tract described in Volume 1100, Page 212 of the Deed Records and the east line of a 1.46 acre tract described in Volume 796, Page 317 of the Deed Records, all of Hays County, Texas, a distance of 3092.05 feet to a calculated point in the approximate northeast line of the City of Buda E.T.J. (extraterritorial jurisdiction) line, same being the approximate southwest line of the City of Austin E.T.J. line;

THENCE crossing the 208.892 acre tract and the 217.066 acre tract, with said approximate E.T.J. line, the following four (4) courses and distances:

1. South $37^{\circ}11'33''$ East, a distance of 2952.81 feet to a calculated point;
2. South $43^{\circ}40'39''$ East, a distance of 1026.83 feet to a calculated point;

Exhibit "F"

Page 3

3. South 50°36'22" East, a distance of 482.65 feet to a calculated point;
4. South 67°28'52" East, a distance of 197.26 feet to a calculated point in the east line of the 217.066 acre tract, same being the west line of said 348.277 acre tract;

THENCE crossing the 348.277 acre tract, continuing with the approximate E.T.J. line, the following five (5) courses and distances:

1. South 54°27'08" East, a distance of 84.54 feet to a calculated point;
2. South 57°40'22" East, a distance of 887.17 feet to a calculated point;
3. South 65°19'16" East, a distance of 381.65 feet to a calculated point;
4. South 64°10'31" East, a distance of 395.95 feet to a calculated point;
5. South 72°26'48" East, a distance of 347.68 feet to a calculated point in the east line of the 348.277 acre tract, same being the west line of a 97.36 acre tract described in Volume 153, Page 490 of the Deed Records of Hays County, Texas;

THENCE with the east line of the 348.277 acre tract, same being the west line of said 97.36 acre tract, the following four (4) courses and distances:

1. South 01°18'09" East, a distance of 400.41 feet to a calculated point;
2. South 01°46'48" East, a distance of 310.90 feet to a calculated point;
3. South 01°45'49" West, a distance of 241.89 feet to a calculated point;
4. South 01°50'33" East, a distance of 288.45 feet to a calculated point for the northwest corner of a 98.01 acre tract described in Volume 203, Page 527 of the Deed Records of Hays County, Texas;

THENCE continuing with the east line of the 348.277 acre tract, same being the west line of said 98.01 acre tract, the following six (6) courses and distances:

1. South 55°03'49" West, a distance of 24.59 feet to a calculated point;
2. South 56°08'39" West, a distance of 85.68 feet to a calculated point;
3. South 14°07'00" West, a distance of 239.07 feet to a calculated point;
4. South 15°54'31" East, a distance of 63.94 feet to a calculated point;

Exhibit "F"

Page 4

5. South $08^{\circ}18'35''$ West, a distance of 463.00 feet to a calculated point;
6. South $07^{\circ}22'38''$ West, a distance of 455.90 feet to a calculated point for the north corner of a graveyard referenced in Volume 203, Page 527 of the Deed Records of Hays County, Texas;

THENCE continuing with the east line of the 348.277 acre tract, same being the west line of said graveyard, the following two (2) courses and distances:

1. South $25^{\circ}57'19''$ West, a distance of 31.27 feet to a calculated point;
2. South $39^{\circ}05'02''$ West, a distance of 272.60 feet to a calculated point for the southwest corner of the graveyard, being the northwest corner of an 81.67 acre tract described in Volume 1001, Page 24 of the Deed Records of Hays County, Texas;

THENCE with the east line of the 348.277 acre tract, being the west line of said 81.67 acre tract, the following two (2) courses and distances:

1. South $51^{\circ}26'41''$ West, a distance of 333.89 feet to a calculated point;
2. South $25^{\circ}00'46''$ West, a distance of 238.99 feet to a calculated point for the northernmost west corner of the 81.67 acre tract, being the north corner of Creekside Park Section Two, P.U.D. Final Plat, a subdivision of record in Volume 8, Page 283 of the Plat Records of Hays County, Texas;

THENCE continuing with the east line of the 348.277 acre tract, same being the west line of said Creekside Park Section Two, the following two (2) courses and distances:

1. South $24^{\circ}36'19''$ West, a distance of 35.08 feet to a calculated point;
2. South $24^{\circ}16'53''$ West, a distance of 999.38 feet to a calculated point for the southeast corner of the 348.277 acre tract;

THENCE with the south line of the 348.277 acre tract, in part with the north line of Creekside Park Section Two and the north line of Lot 28, Block A, Creekside Park Section One, P.U.D. Final Plat, a subdivision of record in Volume 8, Page 103 of the Plat Records of Hays County, Texas, the following two (2) courses and distances:

1. South $89^{\circ}30'14''$ West, a distance of 191.49 feet to a calculated point;
2. South $85^{\circ}18'14''$ West, a distance of 140.04 feet to a calculated point in the south line of said Lot 1;

THENCE continuing with the south line of the 348.277 acre tract, same being the south

Exhibit "F"

Page 5

line of Lot 1 and also being the north line of said Creekside Park Section One, the following seven (7) courses and distances:

1. South 62°49'33" West, a distance of 229.00 feet to a calculated point;
2. South 88°24'33" West, a distance of 97.00 feet to a calculated point;
3. South 60°06'42" West, a distance of 262.00 feet to a calculated point;
4. South 21°49'52" West, a distance of 64.00 feet to a calculated point;
5. South 56°52'57" West, a distance of 208.35 feet to a calculated point;
6. South 48°06'33" West, a distance of 92.00 feet to a calculated point;
7. South 62°01'33" West, a distance of 88.26 feet to a calculated point in the east right-of-way line of F.M. 967, being the southernmost southwest corner of the 348.277 acre tract and also being the south corner of a 0.062 acre tract, described in Document No. 21059955 of the Official Public Records of Hays County, Texas;

THENCE North 00°22'18" East, with the east right-of-way line of F.M. 967, same being the east line of said 0.062 acre tract, also being a west line of the 348.277 acre tract and crossing Lot 1, a distance of 263.17 feet to a calculated point for the southernmost northeast corner of the 348.277 acre tract, being the northwest corner of the 0.062 acre tract, also being in the south line of a 0.1337 acre tract described in Volume 5102, Page 282 of the Official Public Records of Hays County, Texas;

THENCE with the common lines of the 348.277 and said 0.1337 acre tract, crossing Lot 1, the following three (3) courses and distances:

1. South 89°37'52" East, a distance of 85.03 feet to a calculated point;
2. North 00°22'18" East, a distance of 65.00 feet to a calculated point;
3. North 89°37'42" West, a distance of 71.90 feet to a calculated point in the east right-of-way line of F.M. 967, same being the east line of a 0.499 acre tract described in Document No. 21059955 of the Official Public Records of Hays County, Texas and also being in a west line of the 348.277 acre tract;

THENCE with the east right-of-way line of F.M. 967, same being the east line of said 0.499 acre tract, also being a west line of the 348.277 acre tract, in part continuing across Lot 1, the following five (5) courses and distances:

1. With a curve to the left, having a radius of 127.00 feet, a delta angle of 80°05'43",

Exhibit "F"

Page 6

an arc length of 177.54 feet, and a chord which bears North 21°02'27" East, a distance of 163.43 feet to a calculated point;

2. With a curve to the right, having a radius of 168.00 feet, a delta angle of 27°35'13", an arc length of 80.89 feet, and a chord which bears North 05°12'47" West, a distance of 80.11 feet to a calculated point;
3. South 88°30'13" West, a distance of 16.72 feet to a calculated point;
4. With a curve to the right, having a radius of 184.33 feet, a delta angle of 09°34'54", an arc length of 30.83 feet, and a chord which bears North 12°22'05" East, a distance of 30.79 feet to a calculated point;
5. North 74°07'17" West, in part with the north line of a 0.032 acre tract described in Document No. 21059958 of the Official Public Records of Hays County, Texas, a distance of 93.30 feet to a 1/2" rebar with "BGE" cap found for an angle point in the north right-of-way line of F.M. 967, being the northwest corner of said 0.032 acre tract, also being the southwest corner of the 348.277 acre tract, being in the east line of the 217.066 acre tract, same being the east line of the 79.000 acre tract;

THENCE with the east line of the 217.066 acre tract, and the east line of the 79.000 acre tract, same being the north right-of-way line of F.M. 967, the following two (2) courses and distances:

1. South 14°59'24" West, a distance of 53.72 feet to a 1/2" iron pipe found;
2. South 12°21'43" West, a distance of 6.44 feet to a 1/2" rebar with "BGE" cap found for the southeast corner of 217.066 acre tract, being the southeast corner of the 79.000 acre tract;

THENCE South 88°34'15" West, with the north right-of-way line of F.M. 967, same being the south line of the 217.066 acre tract and the south line of the 79.000 acre tract, a distance of 84.09 feet to a calculated point;

THENCE crossing the 217.066 acre tract and the 79.000 acre tract, the following two (2) courses and distances:

1. North 14°47'42" East, a distance of 499.03 feet to a calculated point;

Exhibit "F"

Page 7

2. South $87^{\circ}51'02''$ West, a distance of 1207.60 feet to the **POINT OF BEGINNING**, containing 459.0 acres of land, more or less.

Surveyed on the ground on November 12, 2021. Bearing Basis: The Texas Coordinate System of 1983 (NAD83), South Central Zone, based on GPS solutions from The National Geodetic Survey (RTN) on-line positioning user service (OPUS) for Chaparral control point "3". Attachments: Survey Drawing No. 759-022-MUD.

Paul J. Flugel

5-11-2023

Paul J. Flugel Date
Registered Professional Land Surveyor
State of Texas No. 5096
TBPLS Firm No. 10124500



Exhibit "F"

EXHIBIT "A-1"

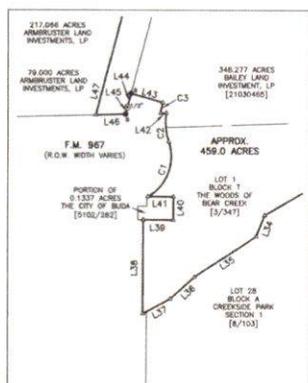
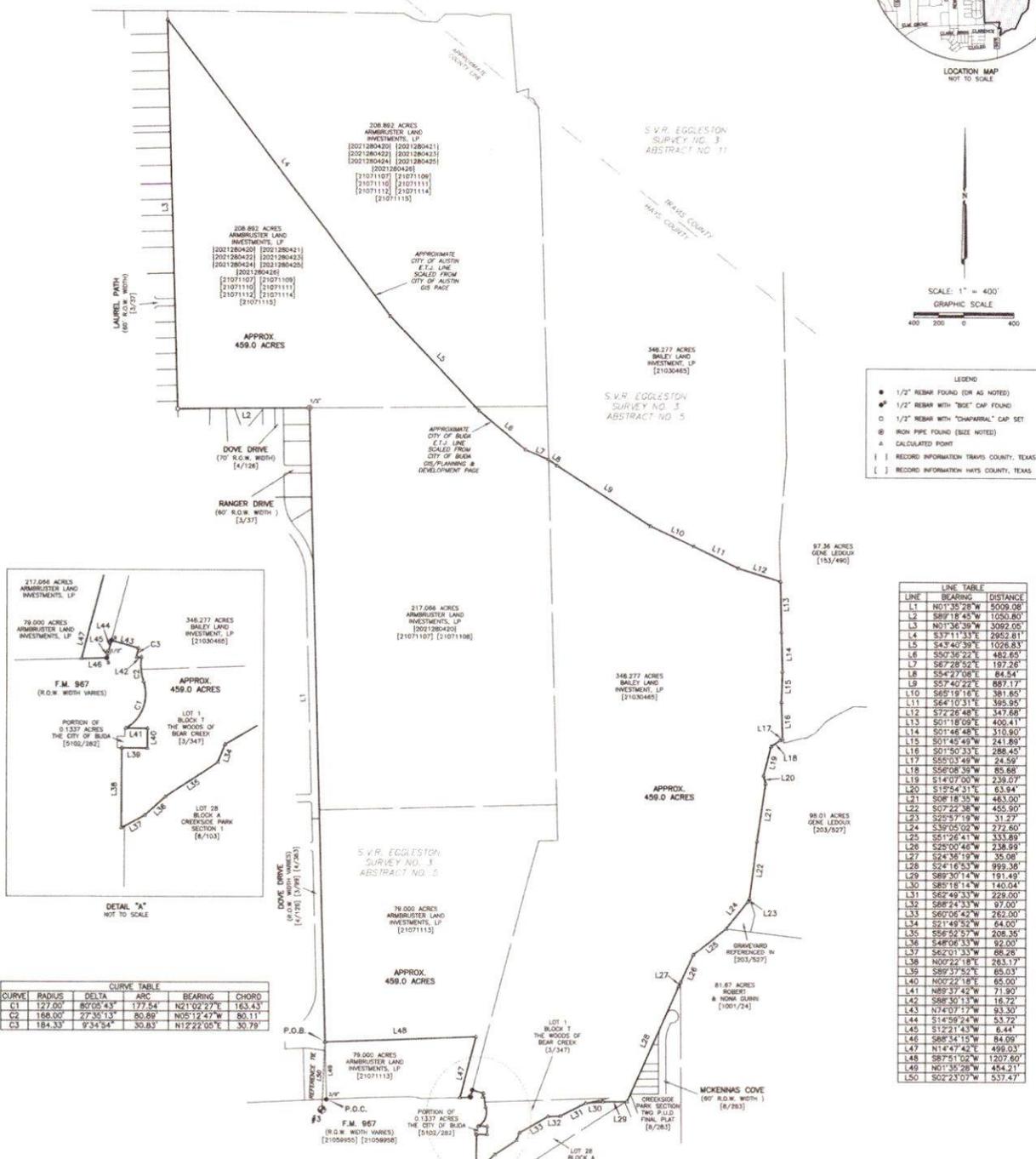
Exhibit A-1

PERSIMMON Exhibit "F"



LEGEND

- 1/2" REBAR FOUND (OR AS NOTED)
- 1/2" REBAR WITH "TIE" CAP FOUND
- 1/2" REBAR WITH "CHAPARRAL" CAP SET
- IRON PIPE FOUND (SEE NOTES)
- ▲ CALCULATED POINT
- [] RECORD INFORMATION TRAVIS COUNTY, TEXAS
- [] RECORD INFORMATION HAYS COUNTY, TEXAS



CURVE TABLE

CURVE	RADIUS	DELTA	ARC	BEARING	CHORD
C1	127.00'	80°05'43"	777.54'	N21°02'27"E	163.43'
C2	168.00'	27°35'13"	80.89'	N05°12'47"W	80.11'
C3	184.33'	9°34'54"	30.83'	N12°22'05"E	30.79'

LINE TABLE

LINE	BEARING	DISTANCE
L1	N01°35'28"W	5009.08'
L2	S89°18'45"W	1050.80'
L3	N01°36'38"W	3052.05'
L4	S37°11'43"E	2852.81'
L5	S43°40'39"E	1026.83'
L6	S50°36'22"E	482.85'
L7	S67°28'52"E	197.28'
L8	S54°27'08"E	84.54'
L9	S57°40'22"E	887.17'
L10	S28°19'18"E	381.85'
L11	S64°10'31"E	395.50'
L12	S72°26'48"E	347.68'
L13	S01°18'09"E	408.41'
L14	S07°46'48"E	319.60'
L15	S01°45'48"W	241.89'
L16	S07°30'33"E	288.45'
L17	S55°03'49"W	24.55'
L18	S58°08'39"W	85.68'
L19	S14°07'00"W	238.07'
L20	S15°54'51"E	63.84'
L21	S08°18'35"W	463.00'
L22	S07°22'38"W	455.90'
L23	S25°57'19"W	31.27'
L24	S30°05'02"W	272.60'
L25	S51°26'41"W	333.89'
L26	S25°00'46"W	238.99'
L27	S24°38'19"W	35.08'
L28	S24°16'53"W	999.38'
L29	S89°30'14"W	191.40'
L30	S89°18'14"W	140.04'
L31	S56°49'33"W	229.00'
L32	S88°24'33"W	97.00'
L33	S80°06'42"W	262.00'
L34	S21°48'52"W	68.28'
L35	S56°52'57"W	208.35'
L36	S48°08'33"W	92.00'
L37	S62°01'33"W	68.28'
L38	N00°22'18"E	263.17'
L39	S89°37'52"E	85.03'
L40	N00°22'18"E	68.00'
L41	N89°37'42"W	71.90'
L42	S88°30'13"W	16.72'
L43	N74°07'17"W	93.30'
L44	S14°59'24"W	53.72'
L45	S12°21'43"W	6.44'
L46	S88°34'15"W	84.09'
L47	N14°47'42"E	498.03'
L48	S87°51'02"W	1207.60'
L49	N01°35'28"W	454.21'
L50	S02°23'07"W	537.47'

We, the undersigned members of the Board of Directors of Persimmon Municipal Utility, do hereby certify that this map is a complete and accurate map showing the boundaries of said District.

By: _____
 Eliot Condes

By: _____
 Donald McElroy

By: _____
 Philip Rowan

By: _____
 Jeffrey Todd Tamms

By: _____
 Brandon Willm

STATE OF TEXAS
 COUNTY OF TRAVIS

Before me, the undersigned, a Notary Public, in and for the State of Texas, on this _____ day of _____, 2023, personally appeared those listed above, known to me to be the persons and officers whose names are subscribed above, and affirmed and acknowledged the statement subscribed to above and that they executed the same in the capacity therein stated.

Given under my hand and seal of office this _____ day of _____, 2023.

Notary Public, State of Texas

Print Notary's Name
 My Commission Expires

THIS IS A SURFACE DRAWING

BEARING BASIS: THE TEXAS COORDINATE SYSTEM OF 1983 (NAD83), SOUTH CENTRAL ZONE - US SURVEY FEET, BASED ON GPS SOLUTIONS FROM THE LOCAL REAL TIME NETWORK (RTN) FOR CHAPARRAL CONTROL POINT "13"

1/2" REBAR WITH "TIEHORN" CAP

SURFACE COORDINATES
 N 1385149.02
 E 1331796.05

TEXAS STATE PLANE COORDINATES
 E 1384860.57
 N 1331495.16

COMBINED SCALE FACTOR = 0.999870017
 (FOR SURFACE TO GND CONVERSION)

INVERSE SCALE FACTOR = 1.000130
 (FOR GND TO SURFACE CONVERSION)

SCALED ABOUT 0.0
 THETA ANGLE: 0°33'45"

SURVEYOR'S CERTIFICATE:

STATE OF TEXAS
 COUNTY OF TRAVIS

KNOW ALL MEN BY THESE PRESENTS:

That I, Steven P. Timberlake, do hereby certify that this map accurately describes the boundaries of Persimmon Municipal Utility District No. 1.

This document was prepared under 22 TAC §663.1. It does not reflect the result of an on the ground survey, and it is not to be used to convey an estate interest in real property except those rights and interests created or established by the creation or reconfiguration of the boundary of the public subdivision for which it was prepared.

Witness my hand and seal this 17th day of May, 2023.

By: Paul J. Flugel
 Notary Public
 Registered Professional
 Land Surveyor No. 5096

Paul J. Flugel
Registered Professional
Land Surveyor No. 5096

Chaparral
Professional Land Surveying, Inc.
Surveying and Mapping

3500 McCall Lane
Austin, Texas 78744
512-443-1724

PROJECT NO.: 759-022
 DRAWING NO.: 759-022-MU02
 PLOT DATE: 05/11/23
 PLOT SCALE: 1" = 400'
 DRAWN BY: ZDB
 SHEET

Exhibit "F"

EXHIBIT "B"
CERTIFICATE OF OWNERSHIP

Exhibit "F"

**Hays
Central
Appraisal
District**



512-268-2522 ■ Lex Word Building ■ 21001 IH 35 ■ Kyle, Texas 78640 ■ info@hayscad.com

CERTIFICATE OF OWNERSHIP

STATE OF TEXAS §

COUNTY OF HAYS §

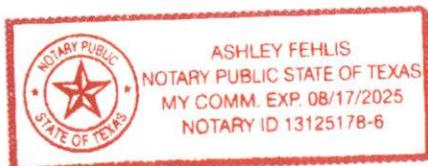
Pursuant to the authority granted by Section 49.184(f) Texas Water Code, I, Laura Raven, Chief Appraiser of the Hays Central Appraisal District of Hays County, hereby certify that I have examined the appraisal records of Hays Central Appraisal District and find that Armbruster Land investments LP and Bailey Land Investments LP are the only owners of lands within the real property encompassing approximately 459 acres of real property being more particularly described in Exhibit "A" attached hereto and proposed to be included within Persimmon Municipal Utility District (or some other name as permitted or required by law) and that such tract of real property is located within Hays County.


Laura Raven, Chief Appraiser

STATE OF TEXAS §

COUNTY OF HAYS §

This instrument was acknowledged before me on the 19th day of May 2023, by Laura Raven, Chief Appraiser of the Hays Central Appraisal District.




Notary Public in and for the State of Texas