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The Senate of
The State of Texas

PRESIDENT PRO TEM
OF THE TEXAS SENATE
2004 - 2005

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COUNTIES IN
SENATE DISTRICT 25

Bexar (north), Comal, Guadalupe, Hays, Kendall, Travis (south)

December 18, 2008

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DEC 22 2008
OPINION COMMITTEE

FILE # ML-45945-08
I.D. # 45945

RQ-0774-GA

The Honorable Greg Abbott
Office of the Attorney General
Attn: Nancy Fuller
Chair, Opinion Committee
Post Office Box 12548
Austin, TX 78711-2548

Re: Authority of Local Taxing Units or Central Appraisal Districts to Collect Public Improvement District Assessments

Dear General Abbott:

Please accept this letter as a request pursuant to Texas Government Code Section 402.042 ("Request") for an opinion from your office for guidance as to whether a local taxing unit (such as a county) or a central appraisal district may contract to collect assessments imposed by a Public Improvement District ("PID") pursuant to Chapter 372 of the Texas Local Government Code ("PID Act") and as authorized by Texas Tax Code Section 6.24 or any other relevant authority.

The PID Act allows a municipality to establish a public improvement district, levy and collect assessments for the PID, and undertake an improvement project that confers a special benefit on a definable part of the municipality. TEX. LOC. GOV'T CODE ANN. § 372.010, 372.017, 372.003 (Vernon 2007). The PID Act also provides that liens that arise from the date of the ordinance or order levying the assessment until the assessment is paid may be enforced by the governing body (i.e., the entity that created the PID) in the same manner that an *ad valorem* tax lien against real property may be enforced by the governing body. TEX. LOC. GOV'T CODE ANN. § 372.018(b).

The governing body of a taxing unit other than a county may contract as provided by the Interlocal Cooperation Act (TEX. GOV'T CODE ANN. § 791.001 *et. seq; hereafter, the "ICA")* with the governing body of another unit or with the board of directors of an appraisal

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district for the other unit or the district to perform duties relating to the assessment or collection of taxes. TEX. TAX CODE ANN. § 6.24(a). The commissioners court (of a county) with the approval of the county assessor-collector may contract as provided by the ICA with the governing body of another taxing unit in the county or with the board of directors of the appraisal district for the other unit or the district to perform duties relating to the assessment or collection of taxes for the county. TEX. TAX CODE ANN. § 6.24(b).

A "taxing unit" is defined to include (among others) a county, an incorporated city or town (including a home-rule city), a special district or authority (including a junior college district), or any other political unit of the state of Texas, whether created by or pursuant to the constitution or a local, general or special law, that is authorized to impose, and is imposing ad valorem taxes on property even if the governing body of another political unit determines the tax rate for the unit or otherwise governs its affairs. TEX. TAX CODE ANN. § 1.04(12).

The stated purpose of the ICA is to increase the efficiency and effectiveness of local governments by authorizing them to contract, to the greatest extent possible, with one another and with other agencies of the state. TEX. GOV'T CODE ANN. § 791.001. Specifically referenced in the ICA are administrative functions normally associated with the routine operation of government including (among other things) tax assessment and collection. *Id.*, at § 791.003(1), (3), (3)(K). For purposes of the ICA, "local government" is defined to include (among others) a county, municipality, special district, junior college district, or other political subdivision of Texas or another state. *Id.*, at § 791.003(4)(A).

By way of Resolution 2003-15, adopted to be effective June 26, 2003, (the "Resolution") the City of Manor (the "City") authorized the creation of the Rose Hill Public Improvement District (the "District"). (The City is a Type A general law municipal corporation.)Assessments for the District improvements for particular phases are required to be a fixed amount levied against residential lots within the District. The assessments for the creation, administration, and management of the District are to be determined and levied annually based on the actual costs of such services. Resolution, § (1)(e).

Pursuant to the terms of the Rose Hill Public Improvement District Management Agreement ("Management Agreement") entered into effective as of June 25, 2003 between the City and an individual acting in the capacity of the District Manager (the "Manager"), the City has certain obligations with respect to District assessments. Included within those obligations are to: (i) oversee and make recommendations as to Manager's actions (including preparation of assessment notices) that are necessary to levy and collect each year

assessments upon property within the District; (ii) coordinate with Travis County appraisal district to mail the assessment notices that are necessary to levy and collect each year assessments upon property within the District; and (iii) deposit all assessments (including penalty and interest) that are collected by the City into the District Account. Management Agreement, Article III, ¶ C, D and E (respectively). Both the Resolution and Management Agreement are silent as to authority (or lack thereof) of the either the City or the District to contract with other local taxing units to collect assessments authorized to be levied by the PID.

The primary question set out in this Request is whether other local taxing units (such as the county) or the county central appraisal district are authorized to enter into an agreement with the City to collect PID assessments authorized and levied by the City upon property owners in the District. Conversely, are such other local taxing units or county central appraisal districts specifically prohibited from entering into an agreement with the City to collect PID assessments authorized and levied by the City upon property owners in the District?

Pursuant to the authority of TEX. TAX CODE ANN. § 6.24(a), and as noted above, the governing body of a taxing unit other than a county may contract with the governing body of another unit or the board of directors of an appraisal district for the other unit or the district to perform duties relating to the assessment or collection of *taxes* (emphasis added). If the assessment amounts due the District are considered taxes, there would therefore appear to be clear authority for a taxing unit such as the county, or for an appraisal district to collect such amounts.

The issue of whether PID assessments are considered to be taxes has been addressed in another context – that being whether such assessments are treated as taxes in subjecting homesteads to forced sale for nonpayment of such assessments. This issue was the focus of the request and decision in Texas Attorney General Opinion ("AG Opinion") JC-0386. In that Opinion, a distinction was drawn between "ad valorem" taxes (annually collected and based upon an estimation of value of the entire taxable property) and "assessments" (charges usually not based upon a percentage of value of taxable property, but upon the real or supposed benefit resulting from the improvement of the property on which the specific charge is laid). *Id.* at 4.

One of the specific questions presented in AG Opinion JC-0386 was whether a homestead property could be subjected to forced sale for nonpayment of a PID assessment under the "taxes due thereon" clause of Article XVI, section 50 of the Texas Constitution. Citing Texas judicial authority (*City of Wichita Falls v. Williams*, 26 S.W.2d 910,915 (Tex. 1930); *Higgins v. Bordages*, 31 S.W. 52, 55 (1895); *Evans v. Whicker*, 90 S.W.2d 554, 556 (Tex. 1936) that a special assessment is not a "tax" within the meaning of the above-noted constitutional provision, the conclusion reached in AG Opinion JC-0386 was that unpaid PID assessments would not result in homestead foreclosures. In reaching this conclusion, however, it was specifically noted that [PID] "assessments are imposed under the taxing power and are taxes for some purposes..." AG Opinion JC-0386, at p. 3.

In a subsequent AG Opinion, the question was further refined to address whether a lien assessed by a PID against property that was not subject to the constitutional and statutory homestead exemption at the time of the assessment was enforceable by forced sale, even though the property only became a homestead between the date of the assessment and the date of the enforcement action. AG Opinion GA-0237. As was true with respect to AG Opinion JC-0386, one of the focuses was squarely on whether PID assessments could be considered "taxes", and therefore a barrier to foreclosure of homestead rights pursuant to Article XVI, section 50 of the Texas Constitution. In AG Opinion GA-0237 the conclusion was that, even thought the PID levy was an assessment and not a tax (as the latter term is used for Texas constitutional purposes), a PID assessment may be enforced by foreclosure of a homestead provided that the statutory lien created by the relevant Local Government Code provision predated the date the property became a homestead. *Id.* at 5.

Neither of the above indicated AG Opinions, nor any of the case law cited therein (or elsewhere) specifically addressed the issue of whether PID assessments might be considered taxes for purposes of local taxing unit administrative collection functions. The Texas constitutional provisions addressed in the previously cited AG Opinions indicate an apparent concern by framers of Texas constitutional provisions that the ability to overcome homestead protections for individuals be available and utilized only sparingly. Consequently, the definition of "taxes" for purposes of allowing the homestead protection for individuals to be overcome has consistently been applied quite narrowly. The same rationale, however, would not seem to apply when the matter at issue is not the ability to overcome homestead protection, but, rather the efficient administration of revenues pertaining to various taxing units and their related authorized entities such as PIDs.

Specific provisions of the PID Act indicate that PID assessments are to be viewed as similar to taxes for some purposes. Per the PID Act, liens for unpaid assessments may be enforced by the governing body in the same manner that an *ad valorem* tax lien against real property may be enforced by the governing body. Similarly, delinquent installments of the assessment shall incur interest, penalties, and attorney fees in the same manner as delinquent ad valorem taxes. TEX. LOC. GOV'T CODE ANN. § 372.018(b).

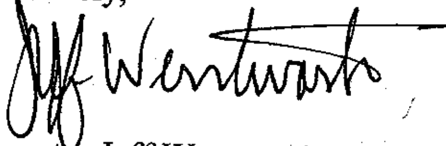
As noted in AG Opinion JC-0386 (at p. 2), any specific provision for enforcing ad valorem tax liens must be consistent with the provisions of Chapter 372 of the PID Act. Ad valorem tax lien provisions are set out at TEX. TAX CODE, Chapter 33. While there was clearly a distinction drawn in AG Opinion JC-0386 between the constitutional restraints in ad valorem tax lien proceedings and those for PID assessments, no such distinction appears evident between purely administrative functions relating to the ability to facilitate collection of PID levies. The statutory language at TEX. TAX CODE § 6.24 authorizing the ability of taxing authorities such as the City to contract with the county or central appraisal district to collect "taxes," by its terms, appears to be in place to facilitate the efficient collection of amounts due to taxing authorities.

Applying a very strict reading to the definition of "taxes" such that there could not be an ability on the part of a City that authorized a PID and an other local taxing authority or central appraisal district that agreed to collect such PID amounts would be inconsistent with efficient collection of revenues that ultimately benefit a significant segment of the public. This appears to be inconsistent with the stated purposes of the ICA.

Based upon that rationale, do the provisions of Tex. Tax Code § 6.24 which authorize the collection of "taxes" to be contractually arranged between local taxing authorities extend to include PID assessments authorized by the City and levied by the PID? Further, is this there any authority which would prohibit a county or the central appraisal district from entering into a contractual agreement consistent with the provisions of the Interlocal Cooperation Act to collect assessments on behalf of the PID and the City? Would such an agreement require the approval of the Texas Comptroller of Public Accounts, or any other public official? Finally, if the contractual agreements between the City on behalf of the PID and other local taxing units or central appraisal districts are not authorized pursuant to TEX. TAX CODE § 6.24(a), are there any other bases that would authorize such a contractual assessment collection arrangement?

Thank you in advance for your consideration of these issues. Please contact me or my committee staff should you have any questions or need any additional information.

Sincerely,



Senator Jeff Wentworth
Chairman, Senate Committee on Jurisprudence

Enclosure

OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

June 5, 2001

The Honorable John Smithee
Chair, Insurance Committee
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Opinion No. JC-0386

Re: Collection of payments assessed by a public improvement district (RQ-0336-JC)

Dear Representative Smithee:

You inquire about the procedures for collecting delinquent special assessments under the Public Improvement District Assessment Act ("the Act"), chapter 372, subchapter A of the Local Government Code, in particular, whether a homestead may be subjected to forced sale for nonpayment of such assessments. Special assessments under Local Government Code chapter 372 may be collected by the governing body from property owners according to the procedures applicable to collecting an ad valorem tax on real property, with the exception of procedures applicable to the forced sale of homestead property to collect ad valorem taxes. Assessments are not "taxes" as that term is used in the Texas Constitution, and a homestead may not be subjected to forced sale for nonpayment of a public improvement district assessment under the "taxes due thereon" clause of article XVI, section 50 of the Texas Constitution. Likewise, a homestead may not be subjected to forced sale for nonpayment of a public improvement district assessment under the "improvement thereon" clause of article XVI, section 50, unless the owner of the homestead property signs a written contract with the supplier of materials and labor for an improvement on his homestead property.

A municipality may exercise the authority granted by chapter 372, subchapter A if it initiates or receives a petition requesting the establishment of a public improvement district. *See* TEX. LOC. GOV'T CODE ANN. § 372.002 (Vernon 1999); *see also id.* § 372.005 (petition requirements). The municipality may then "undertake an improvement project that confers a special benefit on a definable part of the municipality or the municipality's extraterritorial jurisdiction," such as landscaping, building fountains, establishing parks, or acquiring, constructing or improving libraries, pedestrian malls, sidewalks, streets, roadways, or off-street parking facilities. *Id.* § 372.003. The municipality establishes a public improvement district ("district"), providing for payment of at least ten percent of the cost of an improvement by special assessments against property in the district. *See id.* §§ 372.010, .014(a); *see also id.* § 372.014(b) (payment of assessments against exempt public property in the district). The cost of an improvement to be assessed against property in a district must be apportioned on the basis of special benefits accruing to the property because of the improvement. *See id.* § 372.015. The city may also issue short term or long term debt to fund

improvements in the district and may require the assessments to be the source of debt payment. *See id.* §§ 372.023-.026.

If a land owner in the district does not pay the assessment, the following procedures apply to collecting it:

> (b) An assessment or reassessment, with interest, the expense of collection, and reasonable attorney's fees, if incurred, is a first and prior lien against the property assessed, superior to all other liens and claims except liens or claims for state, county, school district, or municipality ad valorem taxes, and is a personal liability of and charge against the owners of the property regardless of whether the owners are named. The lien is effective from the date of the ordinance levying the assessment until the assessment is paid and may be enforced by the governing body in the same manner that an ad valorem tax lien against real property may be enforced by the governing body. . . .

Id. § 372.018(b); *see also id.* § 372.018(a) (interest on unpaid assessment). The property owner is personally liable for the "assessment or reassessment, with interest, the expense of collection, and reasonable attorney's fees, if incurred," and there is a lien against the property assessed for these amounts, enforceable "by the governing body in the same manner that an ad valorem tax lien against real property may be enforced by the governing body." *Id.* § 372.018(b).

You first ask whether the phrase "in the same manner that an ad valorem tax lien against real property" means that an official seeking to collect a delinquent assessment acts properly by using the same form notices, time lines, procedures, and the like, that are used for the collection of delinquent taxes.[1] The quoted phrase refers to enforcing the lien against the assessed property, not against the property owner's personal liability. Thus, we answer your question only in terms of collecting delinquent assessments through enforcing the lien.

"Manner" has been defined as "[t]he way in which something is done or takes place; method of action; mode of procedure." IX OXFORD ENGLISH DICTIONARY 324 (2d ed. 1989). Thus, a governing body may enforce the lien for an assessment "with interest, the expense of collection, and reasonable attorney's fees, if incurred" by using the procedures applicable to enforcement of an ad valorem tax lien against real property. TEX. LOC. GOV'T CODE ANN. § 372.018(b) (Vernon 1999). Because your question is very general, we cannot provide a comprehensive list of the procedures applicable to enforcing the assessment lien. We note that provisions for enforcing an ad valorem tax lien are found in chapter 33 of the Tax Code. *See, e.g.*, TEX. TAX CODE ANN. §§ 33.41 (suit to

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[1]*See* Letter from Honorable John Smithee, Chair, Insurance Committee, Texas House of Representatives, to Honorable John Cornyn, Texas Attorney General, at 2 (Jan. 10, 2001) [hereinafter Request Letter].

foreclose lien); .47 (tax records as evidence) (Vernon Supp. 2001). Any specific provision for enforcing ad valorem tax liens must be examined to determine whether it is consistent with the provisions of chapter 372 of the Local Government Code.

Moreover, as your remaining questions indicate, constitutional considerations apply to enforcing an assessment lien on homestead property. As our answers to your questions on the constitutional homestead exemption will show, procedures for enforcing an ad valorem tax lien against a homestead do not apply to an assessment lien against a homestead.

Section 372.018(b) of the Local Government Code provides that an assessment under chapter 372, with interest, collection expenses, and attorney's fees, "*is a first and prior lien against the property assessed*, superior to all other liens and claims except liens or claims for state, county, school district, or municipality ad valorem taxes." TEX. LOC. GOV'T CODE ANN. § 372.018(b) (Vernon 1999) (emphasis added). Statutes are presumed to be constitutional, and they will be construed to be consistent with the constitution if possible. *See* TEX. GOV'T CODE ANN. § 311.021 (Vernon 1998); *see Brady v Fourteenth Court of Appeals*, 795 S.W.2d 712, 715 (Tex. 1990). We must construe section 372.018(b) consistently with the constitutional provision on homesteads.

Article XVI, section 50 of the Texas Constitution protects a homestead from forced sale for the payment of debts, with certain exceptions. The provision states in part:

> (a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for:
>
> . . . .
>
> (2) the taxes due thereon;
>
> . . . .
>
> (5) work and material used in constructing new improvements thereon, if contracted for in writing, or work and material used to repair or renovate existing improvements thereon . . . .
>
> . . . .

TEX. CONST. art. XVI, § 50. *See also id.* § 51 (defining homestead).

You ask whether a homestead may be subjected to forced sale for nonpayment of a public improvement district assessment under the "taxes due thereon" clause of article XVI, section 50 of the Texas Constitution. *See* Request Letter, *supra* note 1, at 2. Although assessments are imposed under the taxing power and are taxes for some purposes, they are not "taxes" as that term is usually

employed in the Texas Constitution. *See Taylor v. Boyd*, 63 Tex. 533, 542 (1885) (assessments are not subject to the "equal and uniform" requirement in Texas Constitution article VIII, section 1); *see also Evans v. Whicker*, 90 S.W.2d 554, 556 (Tex. 1936) (where no homestead question was involved, liens for paving assessments were enforceable against property that was '"free from all liens and encumbrances, save and except taxes"' (citation omitted)). The words "tax," "taxes," and "taxation" in the Texas Constitution, used without a qualifying word, mean ad valorem tax, taxes, or taxation. *See Taylor*, 63 Tex. at 541. Ad valorem taxes are annually collected for the ordinary purposes of municipal government and are based on an estimation of the value of the entire taxable property in a city, from which an estimate is made of the percent of taxation of this value that will raise the sum necessary to meet the "current annual want." *Id.* at 540. In contrast, assessments are charges imposed for purposes that do not require that they be imposed annually, or with reference to time. *See id.* They are not usually based upon a percentage of the value of the taxable property of a city, but upon the real or supposed benefit resulting from the improvement of the property on which the specific charge is laid. *See id.* at 540-41.

The Texas Supreme Court has determined that a special assessment is not a "tax" within article XVI, section 50 of the Texas Constitution. *See City of Wichita Falls v. Williams*, 26 S.W.2d 910, 915 (Tex. 1930); *Higgins v. Bordages*, 31 S.W. 52, 55 (Tex. 1895); *see also Evans*, 90 S.W.2d at 556. A homestead is not subject to forced sale to collect the assessments against it. *See City of Wichita Falls*, 26 S.W.2d at 915, *see also Evans*, 90 S.W.2d at 556. A homestead may not be subjected to forced sale for nonpayment of a public improvement district assessment under the "taxes due thereon" clause of article XVI, section 50 of the Texas Constitution. *See* TEX. CONST. art. XVI, § 50 (a)(2).

You also ask whether a homestead may be subjected to forced sale for nonpayment of a public improvement district assessment under the "improvement thereon" claims of article XVI, section 50. *See* Request Letter, *supra* note 1, at 2; TEX. CONST. art. XVI, § 50(a)(5). You inquire whether a city's public adoption of the annual district assessment and service plan, combined with a landowner's written acknowledgment of the district when closing on the purchase of land, create a contract in writing for "improvements thereon." *See* Request Letter, *supra* note 1, at 2.

No provision of Local Government Code chapter 372 requires a landowner to make written acknowledgment of the district when closing on the purchase of land, but we will assume that this acknowledgment is made. Procedures for the city's adoption of an assessment and service plan are set out in chapter 372 of the Local Government Code. *See* TEX. LOC. GOV'T CODE ANN. § 372.013(a) (Vernon 1999) (preparation of service plan for review and approval by the municipal governing body); *see also id.* § 372.014(a) (assessment plan). The governing body of the municipality prepares an assessment roll and must conduct a public hearing on it before it may levy assessments on the property. *See id.* §§ 372.015-.017.

Article XVI, section 50 of the Texas Constitution does not prevent the enforcement of a contractors' or mechanics' lien against a homestead. The provision authorizing mechanics' liens on homestead property was amended in 1997 by approval of the ballot proposition that also authorized

home equity loans.[2] *See generally Rooms With A View, Inc. v. Private Nat'l Mortgage Ass'n, Inc.*, 7 S.W.3d 840 (Tex. App.–Austin 1999, pet. denied), *cert. denied by, Nat'l Ass'n of Remodeling Indus. Inc. v. Rooms With A View, Inc.* 121 S. Ct. 72 (2000) (upholding constitutionality of amendment to provisions of article XVI, section 50 on contractor's and mechanics' liens). Debts for "work and material used in constructing new improvements thereon, if contracted for in writing" are excepted from the prohibition against the forced sale of a homestead. *See* TEX. CONST. art. XVI, § 50(a)(5). This language applies to new improvements on the homestead, while more stringent requirements set out in subsections (a)(5)(A) through (D) of the constitutional provision apply to the creation of a mechanics' lien for debts for "work and material used to repair or renovate existing improvements thereon." TEX. CONST. art. XVI, § 50(a)(5); *see Spradlin v. Jim Walter Homes, Inc.*, 34 S.W.3d 578, 580-81 (Tex. 2000).

A mechanics' lien may be created on a homestead only for debts for "work and material used in constructing new improvements *thereon*." TEX. CONST. art. XVI, § 50(a)(5) (emphasis added). Many of the public improvement projects expressly authorized by Local Government Code chapter 372 are unlikely to be improvements on the homestead property. This statute expressly identifies a number of public improvement projects, such as establishing and improving parks, constructing fountains, distinctive lighting and signs, acquiring and installing of pieces of art, acquiring, constructing or improving libraries, pedestrian malls, sidewalks, streets, roadways and off-street parking facilities, and acquiring, constructing, improving, or rerouting mass transportation facilities. *See* TEX. LOC. GOV'T CODE ANN. § 372.003 (Vernon 1999). A homestead cannot possibly be liable under the "improvements thereon" language of article XVI, section 50, for an assessment used to improve property other than the homestead.

There are public improvements, in particular, paving sidewalks and streets, that are made upon homestead property. *See Tex. Bitulithic Co. v. Warwick*, 293 S.W. 160, 162-64 (Tex. Comm'n App. 1927, judgm't adopted). The common-law rule assumes that a conveyance of land on a public roadway conveys the fee to the center of the road, absent express language showing a contrary intention. *See id.* In addressing your question, we will assume that some of the projects authorized by Local Government Code chapter 372 include "work and material used in constructing new improvements" on homestead property. *See* TEX. CONST. art. XVI, § 50(a)(5).

A construction or improvement lien on a homestead will be valid only if it is created in the manner provided in article XVI, section 50 of the Texas Constitution. *See Moray Corp. v. Griggs*, 713 S.W.2d 753, 754 (Tex. App.–Houston [1st Dist.] 1986, writ ref'd). The construction or improvement lien attaches to a homestead for a debt for "work and material used in constructing new improvements thereon, *if contracted for in writing*." TEX. CONST. art. XVI, § 50(a)(5) (emphasis added); *see also id.* art. XVI, § 37 (liens of mechanics, artisans, and material men on buildings for value of labor done thereon or material furnished therefor). A mechanics' lien attaches to property when the mechanic performs labor upon the building "under direct contract with the owner."

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[2]*See* Tex. H.J. Res. 31, 75th Leg., R.S., 1997 Tex. Gen. Laws 6739; *see also* Votes on Proposed Amendments to the Texas Constitution, 1875-November, 1997, 1999 Tex. Gen. Laws 25 (Election Result Table).

Warner Mem'l Univ. v. Ritenour, 56 S.W.2d 236 (Tex. Civ. App.–Eastland 1933, writ ref'd) (discussing article XVI, section 37 of the Texas Constitution); *see also Inman v. Orndorff*, 596 S.W.2d 236, 238 (Tex. Civ. App.–Houston [1st Dist.] 1980, no writ) (a stranger to the title cannot create a valid lien on land) (discussing article XVI, section 37 of the Texas Constitution). An assessment lien against homestead property cannot be created against a homestead by a statutory process, but one may be created by contract signed by the homestead owner. *See Glenn v. Panhandle Constr. Co.*, 110 S.W.2d 1217, 1218 (Tex. Civ. App.–Amarillo, 1937 no writ); *White v Dozier Constr. Co.*, 70 S.W.2d 240, 241 (Tex. Civ. App.–Austin 1934, no writ); *see also Tex. Bitulithic Co*, 293 S.W. at 161-62 (contract between property owner and paving company created lien for paving and improving the street in front of property). Thus, a written contract between the property owner and the suppliers is essential for a lien for labor or materials used in constructing a new improvement on the homestead to attach to the homestead.

The governing body of the municipality, not the individual property owner, contracts for improvements in a public improvement district established under Local Government Code chapter 372. If a district is established, the powers granted by subchapter A of chapter 372 "may be exercised by a municipality." TEX. LOC. GOV'T CODE ANN. § 372.002 (Vernon 1999). The governing body of a municipality may "undertake an improvement project," and must pay the costs of improvements from the various municipal funds available for that purpose. *See id.* §§ 372.003(a), .021, .023, .026. Accordingly, a homestead cannot be subjected to forced sale for nonpayment of a public improvement district assessment under the "improvement thereon" clause of article XVI, section 50.

To be enforceable, a written contract for improvements on the homestead must also strictly comply with the statute listing the requirements for fixing a lien on a homestead. *See Moray Corp.*, 713 S.W.2d at 754; *see also Collier v. Valley Bldg. & Loan Ass'n*, 62 S.W.2d 82, 84 (Tex. 1933). An encumbrance may be fixed on homestead property for "work and material used in constructing improvements on the property if contracted for in writing as provided by [Property Code] Sections 53.254 (a), (b), and (c)." TEX. PROP. CODE ANN. § 41.001(b)(3) (Vernon 2000). Section 53.254 provides as follows:

> (a) To fix a lien on a homestead, the person who is to furnish material or perform labor and the owner must execute a written contract setting forth the terms of the agreement.
>
> (b) The contract must be executed before the material is furnished or the labor is performed.
>
> (c) If the owner is married, the contract must be signed by both spouses.

Id. § 53.254 (Vernon Supp. 2001).

A city's public adoption of the annual district assessment and service plan, combined with a landowner's written acknowledgment of the district when closing on the purchase of land, does not constitute a written contract as required by article XVI, section 50 of the Texas Constitution or by Property Code section 53.254. Accordingly, the facts you present do not fix a lien for the value of a special assessment on the homestead property benefitted by the assessment.

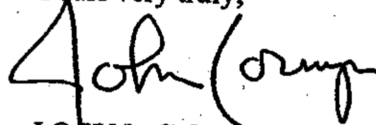
S U M M A R Y

Local Government Code chapter 372 authorizes a city to levy special assessments on real property to aid in funding improvements in public improvement districts. The municipal governing body is authorized by statute to collect these assessments according to the procedures for collecting an ad valorem tax on real property, except for procedures applicable to the forced sale of homestead property to collect ad valorem taxes.

Assessments are not "taxes" as that term is used in the Texas Constitution, and a homestead may not be subjected to forced sale for nonpayment of a public improvement district assessment under the "taxes due thereon" clause of article XVI, section 50 of the Texas Constitution.

A homestead may not be subjected to forced sale for nonpayment of a public improvement district assessment under the "improvement thereon" clause of article XVI, section 50, absent a written, signed contract between the owner of the homestead property and the supplier of materials and labor for an improvement on the homestead property.

Yours very truly,



JOHN CORNYN
Attorney General of Texas

ANDY TAYLOR
First Assistant Attorney General

SUSAN D. GUSKY
Chair, Opinion Committee

Susan L. Garrison
Assistant Attorney General - Opinion Committee

ROSE HILL PUBLIC IMPROVEMENT DISTRICT MANAGEMENT AGREEMENT

This Management Agreement (this "Agreement") is entered into between the City of Manor, Texas, a Type A general law municipal corporation (the "City") and Kevin McCright ("Manager") to be effective June 25, 2003.

RECITALS

WHEREAS, on June 4, 2003, The Parke at Hawk Hollow, L.P. (the "Developer") submitted to the City a petition (the "Petition") requesting the creation of the Rose Hill Public Improvement District (the "District") pursuant to the authority of Chapter 372 of the Texas Local Government Code (the "Act"); and

WHEREAS, on June 25, 2003, the City Council of the City (the "City Council") held a public hearing on the advisability of creating the District and, upon closing of such public hearing, the City Council adopted Resolution No 2003-15 (the "Resolution") authorizing the creation of the District pursuant to the Act; and

WHEREAS, the Petition and the Resolution contemplate that the Developer will advance funds (the "Developer Advances") for the creation and administration of the District and for the design, acquisition, and construction of certain "District Improvements", which improvements are more particularly described in the Petition and Resolution; and

WHEREAS, the Resolution acknowledges that the District Improvements will confer a special benefit on property within the District; and

WHEREAS, the Resolution authorizes the levying and collection of special assessments upon property within the District to reimburse the Developer for the Developer Advances, together with interest (collectively, including interest, the "Reimbursement Amount"); and

WHEREAS, the Resolution contemplates that the City Council will adopt and approve an ordinance and order levying special assessments against property within the District (the "Assessment Order") in an amount that will repay the Reimbursement Amount to the Developer; and

WHEREAS, the City shall appoint a committee (the "Committee") to monitor, oversee and make recommendations regarding the fees, assessments, collections and distributions of District funds pursuant to this Agreement; and

WHEREAS, the Resolution authorizes the City to enter into this Agreement for the management of the District.

NOW THEREFORE, in consideration of the mutual promises of the parties contained in this Agreement, and for other consideration the receipt and adequacy of which are acknowledged, the City and Manager agree as follows:

I. Engagement of Manager

The City hereby engages Manager to manage the District as set forth in this Agreement, and Manager accepts such engagement.

II. Services by Manager

Manager will perform or provide or cause to be performed or provided all services necessary for the District to be administered, for the District Improvements to be designed, acquired, and constructed, and for the Developer to be repaid the Reimbursement Amount, all in accordance with the Act, the Resolution, and the terms and conditions of this Agreement. Such services by Manager will include, but not be limited to, the following:

A. prepare each year an assessment roll that identifies all property within the District that is subject to assessment; and

B. prepare each year (and submit to the City Council for its consideration and approval, as deemed appropriate) a five-year plan of service and budget that are consistent with the Assessment Order and that specifically identify additional revenue, if any, that is needed to pay for the ongoing administration of the District and for the provision of any other District services that, in the judgment of the City Council, confer a special benefit on property within the District; and

C. prepare each year (and submit to the City Council for its consideration and approval, as deemed appropriate) a recommendation as to the amount of special assessments to be levied and collected by the City for such year, which recommended assessments shall be consistent with the Assessment Order and with any other District services (including ongoing administration costs of the District) that may be approved by the City Council as conferring a special benefit upon property within the District; and

D. cause the Developer to maintain and submit reports confirming the status of the design, acquisition, and construction of the District Improvements and deliver such reports to the City; and

E. maintain or cause to be maintained a full and accurate accounting of Developer Advances and the Reimbursement Amount and prepare or cause to be prepared periodic written reports of same for the City (with a final annual accounting report due no later than March 1 of each year); and

F. maintain or cause to be maintained a full and accurate accounting of all costs and expenses used to calculate the Management Fee (hereinafter defined) (with a final annual accounting report due no later than March 1 of each year); and

G. maintain a full and accurate accounting of all special assessments collected by the City within the District (with a final annual accounting report due no later than March 1 of each year); and

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H. after the City approves Manager's final annual accounting reports required by this Agreement ("Manager's Final Reports"), pay to the City no later than April 30th of each year, the actual costs in Manager's Final Reports from the District Account (hereinafter defined) to cover the costs of the City in administering the District and performing the duties and obligations of the City under this Agreement (the "City Costs"); and

I. after the City approves Manager's Final Reports, pay to Manager no later than April 30th of each year, an amount from the District Account equal to total actual costs and expenses paid or incurred by Manager in performing its duties and obligations under this Agreement plus the additional sum of 15% of such total amount (collectively, the "Management Fee"); and

J. after the City approves Manager's Final Reports, pay to the Developer no later than April 30 of each year all sums then remaining in the District Account after payment of the City Costs and the Management Fee and after the reservation of funds, if any, so required by the annual budget approved by the City Council; and

K. based on delinquent property assessment reports prepared by Manager and approved by the Committee, prepare and file liens for such delinquent assessments and take such further action as Manager deems reasonable and prudent to collect such delinquent assessments.

Notwithstanding anything to the contrary contained in this Agreement, however, Manager shall have no responsibility or liability for funding all or any part of the Developer Advances.

III. Obligations of the City

The City shall appoint the Committee consisting of no more than five members, within 30 days after full execution of this Agreement and shall give written notice of each Committee member (including name, mailing address, telephone and fax numbers, and e-mail address) to Manager. The Committee will perform or provide or cause to be performed or provided services necessary to (i) assist Manager in administering the District, (ii) oversee the District Improvements being designed, acquired, and constructed, (iii) monitor and recommend Manager be paid the Management Fee, and (iv) monitor and recommend the Developer be repaid the Reimbursement Amount, all in accordance with the Act, the Resolution, and the terms and conditions of this Agreement. The City Council shall accept reports from the Committee and approve or disapprove such recommendations within 30 days after receipt of such a report by the Committee. City services shall be oversight and recommendation of the actions authorized by Manager and shall include, but are not limited to, the following:

A. Review and make recommendations regarding Manager's Final Reports and provide recommendations and oversight for preparing an annual assessment roll that identifies all property within the District that is subject to assessment; and

B. Review and make recommendations regarding Manager's Final Reports and provide recommendations and oversight for preparing the annual five-year plan of

service and budget for the District and for preparing Manager's recommendations as to the amount of the special assessments to be levied each year; and

C. Oversee and make recommendations as to Manager's actions (including the preparation of assessment notices) that are necessary to levy and collect each year assessments upon property within the District in an amount that is sufficient to fund the obligations of the City pursuant to the Assessment Order and sufficient to fund any other District services (including ongoing administration costs of the District) that are approved by the City Council as conferring a special benefit upon property within the District; and

D. Coordinate with the Travis County appraisal district to mail the assessment notices that are necessary to levy and collect each year assessments upon property within the District in an amount that is sufficient to fund the obligations of the City pursuant to the Assessment Order and sufficient to fund any other District services (including ongoing administration costs of the District) that are approved by the City Council as conferring a special benefit upon property within the District; and

E. Establish a special account that is for the sole benefit of the District (the "District Account"), that does not commingle any other funds of the City, and that gives Manager the authority to manage the District Account, including, but not limited to, the authority to make payments from the District Account in accordance with the terms and conditions of this Agreement; and

F. Deposit all assessments (including penalties and interest) that are collected by the City into the District Account; and

G. Provide Manager with access to all financial records related to funds collected and deposited into the District Account; and

H. Review and approve (or provide written comments to) Manager's Final Reports within 45 days after such reports are provided to the City, which approval shall be deemed given if the City fails to provide written comments within such 45-day period; and

I. Make recommendations to the City to authorize Manager to make payments from the District Account for the City Costs, the Management Fee, for repayment of the Reimbursement Amount, and for any other purposes specifically authorized by the City; and

J. Oversee the preparation of an annual report of delinquent property assessments.

IV. Amendments to Agreement

This Agreement shall not be modified or amended in any respect unless the same is done in writing and is signed by both the City (upon approval by the City Council) and Manager.

V. Term

The term of this Agreement shall begin on the effective date and shall continue until the Reimbursement Amount is paid in full.

VI. Default

No party shall be in default for its failure to perform under this Agreement until notice of the alleged failure to perform has been given (which notice shall set forth in reasonable detail the nature of the alleged failure) and until such party has had a reasonable time to cure the alleged failure (such reasonable time determined based on the nature of the alleged failure, but in no event less than 30 days after written notice of the alleged failure has been given). In addition, no party shall be in default under this Agreement if within the applicable cure period the party to whom notice was given begins performance and thereafter diligently and continuously pursues performance until the alleged failure has been cured. Any notice of any alleged failure to perform under this Agreement shall be in writing and shall be deemed given on the earlier to occur of (a) five business days after deposited in the U.S. Mail, Certified Mail, Return Receipt Requested, (b) when delivered by commercial delivery service (e.g., FedEx or UPS) as evidenced by a signed receipt from such delivery service, or (c) when actually received by the party to whom the notice is sent, including receipt by FAX or E-mail. For purposes of this Agreement, notices shall be sent as follows:

If to the City:

City of Manor, Texas
Attn: Mayor
P.O. Box 387
201 E. Parsons Street
Manor, TX 78653
FAX: (512) 272-8636
E-mail: janice@cityofmanor.com

With a copy to:

Barney L. Knight
223 W. Anderson Lane
Suite A105
Austin, TX 78752
FAX: (512) 323-5773
E-mail: barneylkn@aol.com

If to Manager:

Kevin McCright
3303 Northland Drive
Suite 100
Austin, TX 78731
FAX: (512) 483-6089
E-mail: kevinmccright@pruowens.com

With a copy to:

The Park at Hawk Hollow, L.P.
RAM Tejas Holding, Inc. GP
Attn: Pat Mallet
13409 Tamayo Drive
Austin, TX 78729
FAX: (512) 250-2073
E-mail: pmallett@austin.rr.com

VII. Remedies

In the event of a default by either the City or Manager under this Agreement, Manager, the City or the Developer (which is a third-party beneficiary of this Agreement) shall have

available all remedies at law or in equity, including, but not limited to, specific performance and mandamus relief. In the event Manager shall be in default under this Agreement, in addition to all other remedies, the City shall have the right to terminate this Agreement. Should such a termination occur, however, the City agrees pursuant to the Development Agreement between the Developer and the City (which agreement shall survive termination of this Agreement) to enter into another agreement with another manager, the terms and conditions of which agreement shall be substantially the same as this Agreement. In no event shall a termination of this Agreement relieve or adversely affect the obligation of the City with respect to the ongoing administration of the District including, but not limited to, the obligation of the City to levy and collect assessments consistent with the Assessment Order and the obligation to repay to the Developer the Reimbursement Amount from such assessments.

VIII. Assignment

This Agreement shall be binding upon the parties hereto and their permitted successors and assigns. Manager shall have the right to assign this Agreement or any of its duties, rights, or obligations under this Agreement to any other person or entity with the written consent of the City. The City may not assign any of its duties, rights, or obligations under this Agreement without the prior written consent of Manager, which consent shall not be unreasonably withheld or delayed.

IX. Entire Agreement

This Agreement supersedes any and all other prior or contemporaneous agreements or understandings, whether oral or in writing, between the parties hereto with respect to the subject matter of this Agreement, and none of such prior or contemporaneous agreements or understandings shall be valid or binding upon the parties hereto.

X. Severability

If any provision of this Agreement shall be determined by a court to be invalid or unenforceable for any reason, such invalid or unenforceable provision shall be deleted from this Agreement, and the remaining provisions of this Agreement shall be interpreted and enforced to give effect to the intent of this Agreement as if such invalid or unenforceable provision had never been contained herein.

XI. Books and Records

Each party shall maintain complete and accurate records with respect to its obligations under this Agreement. All such records shall be maintained in the usual, regular and ordinary manner consistent with good accounting practices and shall be clearly identified and readily accessible. Each party shall provide representatives of the other party or its appointees free access to such books and records, at all proper times, in order that they may examine and audit the same and make copies thereof. Each party shall further allow the other party and its representatives to make inspections of all work data, documents, proceedings and activities related to this Agreement.

XII. Texas Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in Travis County, Texas. Venue shall lie exclusively in Travis County, Texas.

EXECUTED this 25th day of June, 2003, to be effective as of June 26, 2003.

THE CITY OF MANOR, TEXAS

By: ______________________
Name: Jeff Turner
Title: Mayor

MANAGER:

____
KEVIN MCCRIGHT

ACKNOWLEDGED AND AGREED:

THE PARKE AT HAWK HOLLOW, L.P.,
a Texas limited partnership

By: RAM Tejas Holding, Inc.,
a Texas corporation,
its general partner

By: ______________________
Name: Pat Mallett
Title: Managing Agent

ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

August 25, 2004

The Honorable Eugene D. Taylor
Williamson County Attorney
Williamson County Courthouse Annex
Second Floor
405 Martin Luther King, Box 7
Georgetown, Texas 78626

Opinion No. GA-0237

Re: Whether liens for public improvement district assessments levied against property that was not a homestead at the time of assessment may be enforced by foreclosure even though the property has become a homestead between the date of assessment and the date of the enforcement action (RQ-0187-GA)

Dear Mr. Taylor:

You ask whether liens assessed by a public improvement district against property that was not a homestead at the time of assessment may be enforced by foreclosure even though the property has become a homestead between the date of assessment and the date of the enforcement action.[1]

I. Legal Background

A. Statutory Lien Created by Chapter 372 of the Local Government Code

Chapter 372 of the Local Government Code, the Public Improvement District Assessment Act, authorizes counties and municipalities to establish public improvement districts ("districts" or "PIDs") to undertake public improvements upon receiving a petition requesting that a district be established. *See* TEX. LOC. GOV'T CODE ANN. §§ 372.001 (Vernon 1999) (short title), 372.002 (Vernon Supp. 2004) (municipal and county powers), 372.005 (Vernon Supp. 2004) (requisites for petition). If the governing body of a municipality or county finds that a proposed improvement project would promote the interests of the municipality or county, "the governing body may undertake an improvement project that confers a special benefit on a definable part of the municipality or county or the municipality's extraterritorial jurisdiction." *Id.* § 372.003(a) (Vernon Supp. 2004). A public improvement project may include such items as landscaping, roadways, pedestrian malls, libraries, parking facilities, mass transportation facilities, water, wastewater, or drainage facilities or improvements, or parks. *See id.* § 372.003(b). A PID may be established and improvements financed only after the governing body provides notice and holds a public hearing on

[1]Letter from Honorable Eugene D. Taylor, Williamson County Attorney, to Honorable Greg Abbott, Texas Attorney General (Feb. 19, 2004) (on file with Opinion Committee, *also available at* http://www.oag.state.tx.us) [hereinafter Request Letter].

the improvement's advisability and a majority of the body votes to approve the district. *See id.* §§ 372.009(a)-(b) (hearing), (c) (notice), 372.010 (majority vote on improvement order).

After a PID has been established, "[t]he governing body of the municipality or county shall apportion the cost of an improvement to be assessed against property in an improvement district. The apportionment shall be made on the basis of special benefits accruing to the property because of the improvement." *Id.* § 372.015(a). After holding a hearing on a proposed assessment, the governing body "by ordinance or order shall levy the assessment as a special assessment on the property." *Id.* § 372.017(b); *see also id.* §§ 372.016 (requiring assessment roll, notice, and hearing), 372.017(a) (requiring governing body to hear objections to proposed assessments). In addition, after notice and a hearing, a governing body may make a supplemental assessment to correct omissions or mistakes in the assessment relating to the total cost of the improvement. *See id.* § 372.019 ("Notice must be given and the hearing held under this section in the same manner as required by Sections 372.016 and 372.017."). And a governing body may make a reassessment or new assessment of a parcel of land if (i) a court of competent jurisdiction sets aside an assessment against the parcel; (ii) the governing body determines that the original assessment is excessive; or (iii) on the written advice of counsel, the governing body determines that the original assessment is invalid. *See id.* § 372.020.

Significantly, section 372.018(b) of the Local Government Code provides that an assessment is a lien against the property assessed:

> An assessment or reassessment, with interest, the expense of collection, and reasonable attorney's fees, if incurred, *is a first and prior lien against the property assessed*, superior to all other liens and claims except liens or claims for state, county, school district, or municipality ad valorem taxes, and is a personal liability of and charge against the owners of the property regardless of whether the owners are named. The lien is effective from the date of the ordinance or order levying the assessment until the assessment is paid and may be enforced by the governing body in the same manner that an ad valorem tax lien against real property may be enforced by the governing body. Delinquent installments of the assessment shall incur interest, penalties, and attorney's fees in the same manner as delinquent ad valorem taxes. The owner of assessed property may pay at any time the entire assessment, with interest that has accrued on the assessment, on any lot or parcel.

Id. § 372.018(b) (emphasis added).[2]

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[2]Section 51.008 of the Property Code generally requires that a statutory lien in favor of a governmental entity must be recorded in county real property records. *See* TEX. PROP. CODE ANN. § 51.008(a) (Vernon Supp. 2004). However, section 51.008 does not apply if "(1) the lien is imposed as a result of failure to pay: (A) ad valorem taxes; or (B) a penalty or interest owed in connection with those taxes; or (2) the law establishing the lien expressly states that

(continued...)

B. Article XVI, section 50 of the Texas Constitution and Attorney General Opinion JC-0386

Article XVI, section 50 of the Texas Constitution protects a homestead from forced sale for the payment of debts, with certain exceptions. It provides in pertinent part:

> (a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for:
>
> (1) the purchase money thereof, or a part of such purchase money; [or]
>
> (2) the taxes due thereon . . . .

TEX. CONST. art. XVI, § 50. In Attorney General Opinion JC-0386 this office concluded that a homestead may not be subject to forced sale for the nonpayment of PID assessments under the "taxes due thereon" clause of article XVI, section 50, because PID assessments are not taxes for purposes of that provision. *See* Tex. Att'y Gen. Op. No. JC-0386 (2001). As the opinion noted,

> The words "tax," "taxes," and "taxation" in the Texas Constitution, used without a qualifying word, mean ad valorem tax, taxes, or taxation. *See* [*Taylor v. Boyd*, 63 Tex. 533, 541 (1885).] Ad valorem taxes are annually collected for the ordinary purposes of municipal government and are based on an estimation of the value of the entire taxable property in a city, from which an estimate is made of the percent of taxation of this value that will raise the sum necessary to meet the "current annual want." *Id.* at 540. In contrast, assessments are charges imposed for purposes that do not require that they be imposed annually, or with reference to time. *See id.* They are not usually based upon a percentage of the value of the taxable property of a city, but upon the real or supposed benefit resulting from the improvement of the property on which the specific charge is laid.

Id. at 4. Relying on Supreme Court of Texas cases holding that a special assessment is not a "tax" within article XVI, section 50 of the Texas Constitution, *City of Wichita Falls v. Williams*, 26 S.W.2d 910, 915 (Tex. 1930), and *Higgins v. Bordages*, 31 S.W. 52, 55 (Tex. 1895), the opinion concluded:

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[2](...continued)
recording the lien is not required." *Id.* § 51.008(a)(1)-(2). In addition, it does not apply to "(1) a lien created under Section 89.083, Natural Resources Code; (2) a state tax lien under Chapter 113, Tax Code; or (3) a lien established under Chapter 61 or 213, Labor Code." *Id.* § 51.008(c). You have not asked or briefed whether a statutory lien created by section 372.018(b) of the Local Government Code is subject to section 51.008 of the Property Code's recording requirement, and we do not address the issue here.

> A homestead is not subject to forced sale to collect the assessments against it. A homestead may not be subjected to forced sale for nonpayment of a public improvement district assessment under the "taxes due thereon" clause of article XVI, section 50 of the Texas Constitution.

Tex. Att'y Gen. Op. No. JC-0386 (2001) at 4 (citations omitted).

II. Analysis

As background to your request, you note that the legislature in 2001 amended chapter 372 of the Local Government Code to authorize counties to establish PIDs. *See* Request Letter, *supra* note 1, at 1. In researching chapter 372 for your county, you reviewed Attorney General Opinion JC-0386. You note that while that opinion concluded that a homestead may not be subject to forced sale for the nonpayment of PID assessments under the "taxes due thereon" clause of article XVI, section 50, the opinion does not address "the enforceability of a PID assessment lien ordered *before* a homestead exemption is established, as distinct from [a PID lien on] property that is already a homestead at the time of assessment." *Id.*

As you point out, in some cases a district will be created and assessments levied before property is developed as a subdivision and sold as multiple lots owned as homesteads: "The district and the developer who owns the unimproved land are already contractually obligated to pay the lenders the full amount of the assessment before any homesteads are created in the district. That debt is secured by the statutory assessment lien against all the property in the district." *Id.* at 2. You posit a situation in which, "[a]t the time the homeowners establish their homestead, the liens guaranteeing repayment are already in place and the owners expressly acquire title *subject to the liens*." *Id.* at 2. Given this possible scenario, you ask us to address the following question:

> Are liens assessed by a public improvement district against property that was *not* subject to the constitutional and statutory homestead exemption at the time of the assessment enforceable by forced sale, even though the property may have become a homestead between the date of the assessment and the date of the enforcement action?

Id. at 1.

In *Inwood North Homeowners' Association, Inc. v. Harris*, 736 S.W.2d 632 (Tex. 1987), the Supreme Court of Texas addressed whether the homestead laws of Texas protect the homeowners against foreclosure for their failure to pay neighborhood assessments imposed by the developer. Several homeowners had purchased lots in a subdivision subject to a declaration providing that all lots within the subdivision "were impressed with certain covenants and restrictions" that would "run with the land and be binding upon all parties acquiring rights to any of the property." *Id.* at 633. The declaration included the covenant that lot owners agreed to pay annual assessments. *Id.*

After concluding that the covenants created contractual liens, the court then considered the extent to which constitutional homestead protection applied. *Id.* at 634. The court noted that as a general rule, article XVI, section 50 protects homesteads against all debts except those specifically listed. *Id.* Importantly, however, the court also observed that homestead rights

> may not be construed so as to avoid or destroy pre-existing rights. *Minnehoma Financial Co. v. Ditto*, 566 S.W.2d 354, 357 (Tex. Civ. App.–Fort Worth 1978, writ ref'd n.r.e.). It has long been held that an encumbrance existing against property cannot be affected by the subsequent impression of the homestead exception on the land. *Farmer v. Simpson*, 6 Tex. 303, 310 (1851). As said by this court many years ago, "[A] previously acquired lien, whether general or special, voluntary or involuntary, cannot be subsequently defeated by the voluntary act of a debtor in attempting to make property his homestead." *Gage v. Neblett*, 57 Tex. 374, 378 (1882).

Id. at 635. The court "reaffirm[ed] that when the property has not become a homestead at the execution of the mortgage, deed of trust or other lien, the homestead protections have no application even if the property later becomes a homestead." *Id.* For this reason, the homeowners' rights depended on when the lien attached to the property:

> If it occurred simultaneously to or after the homeowners took title, there is authority which would deem the homestead right superior. *See Freiberg v. Walzem*, 85 Tex. 264, 20 S.W. 60, 61 (1892). On the other hand, if the lien attached prior to the claimed homestead right and the lien is an obligation that would run with the land, there would be a right to foreclose.

Id. The court noted that in Texas, "a covenant runs with the land when it touches and concerns the land; relates to a thing in existence or specifically binds the parties and their assigns; is intended by the original parties to run with the land; and when the successor to the burden has notice." *Id.* (citations omitted).

The court found that the covenants to pay assessments satisfied each of these criteria, and the homeowners' deeds made specific reference to the assessments. *Id.* "Because the restrictions were placed on the land before it became the homestead of the parties, and because the restrictions contain valid contractual liens which run with the land," the court concluded that "the homeowners were subject to the liens in question and an order of foreclosure would have been proper." *Id.* at 635-36.

Importantly, the *Inwood* court also held that a second theory supported its holding – the idea that "[a] homestead right in real property cannot rise any higher than the right, title or interest acquired by the homestead claimant." *Id.* at 636. The court articulated the rule that although a homestead may attach to an interest less than an unqualified fee simple title, the homestead "will not operate to circumvent an inherent characteristic of the property acquired." *Id.*

Finally, we note that the court recently held that foreclosure is not an appropriate remedy to enforce homeowners' association late fees that were not included in the deed restrictions. *See Brooks v. Northglen Ass'n*, 47 Tex. Sup. Ct. J. 719, 2004 WL 1439643, *11 (June 25, 2004) ("[T]he restrictions did not provide any notice that a late fee would be imposed in addition to the interest charge. As a result, the property owners did not have notice of the late charge. Therefore, in light of *Inwood's* notice requirement, foreclosure is not an appropriate remedy for a failure to pay the late charge.") (citing Tex. Att'y Gen. LO-97-019 with approval). Thus, when enforcing a lien that predates a homestead, foreclosure is available only for amounts that are within the lien's scope. *See id.*; *see also* Tex. Att'y Gen. LO-97-019, at 4 ("Whether a property owners' association may foreclose on a homestead to collect the costs . . . will depend upon whether the lien for those costs (i) attached to the property prior to the homestead right and (ii) is the result of a restriction that runs with the land. . . . . [T]he determination whether a lien for costs incurred by a property owners' association relating to violations of the subdivision's restrictions or the property owners' association's bylaws and rules preexisted a homestead right will depend upon the terms of the applicable restrictions and whether the assessment of these costs is contemplated by an existing lien under the restrictions or creates a new lien.").

Your question involves a statutory lien created by section 372.018 of the Local Government Code as opposed to a developer's contractual lien. Section 372.018 provides that "[a]n assessment or reassessment, with interest, the expense of collection, and reasonable attorney's fees, if incurred, *is a first and prior lien against the property assessed*, superior to all other liens and claims except liens or claims for state, county, school district, or municipality ad valorem taxes." TEX. LOC. GOV'T CODE ANN. § 372.018(b) (Vernon Supp. 2004) (emphasis added). The lien "may be enforced by the governing body in the same manner that an ad valorem tax lien against real property may be enforced by the governing body." *Id.*

Your specific question is whether "liens assessed by a public improvement district against property that was *not* . . . [a] homestead . . . at the time of the assessment [may be enforced by foreclosure even though the property has become a homestead] between the date of the assessment and the date of the enforcement action." Request Letter, *supra* note 1, at 1. A municipality or county may enforce a section 372.018 lien against a homestead by foreclosure if the lien attached to the property before it became a homestead and was therefore "an inherent characteristic of the property acquired." *Inwood*, 736 S.W.2d at 636. Because a lien created by section 372.018 "is effective from the date of the ordinance or order levying the assessment," TEX. LOC. GOV'T CODE ANN. § 372.018(b) (Vernon Supp. 2004), the date of the ordinance or order must predate the homestead's creation. The amounts to be collected must fall within the lien's scope. *See Brooks*, 2004 WL 1439643, *11; Tex. Att'y Gen. LO-97-019, at 4. Whether an assessment on a particular homestead may be enforced by foreclosure will ultimately depend upon the facts of the particular case and would be beyond the purview of an attorney general opinion. *See* Tex. Att'y Gen. LO-97-019, at 4 (determinations whether "a lien for those costs (i) attached to the property prior to the homestead right and (ii) is the result of a restriction that runs with the land . . . will ultimately depend upon the facts of the particular case and are beyond the purview of an attorney general opinion"); *see also* Tex. Att'y Gen. Op. Nos. GA-0128 (2003) at 5 (question requiring resolution of

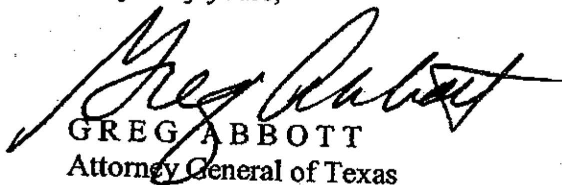
particular facts is "not one in which this office ordinarily engages in the opinion process"); GA-0106 (2003) at 7 ("This office cannot find facts or resolve fact questions in an attorney general opinion.").

Attorney General Opinion JC-0386 did not address foreclosure of a homestead to enforce a contractual or statutory lien for assessments predating a homestead and is not inconsistent with this opinion. Moreover, nothing in this opinion affects the conclusion in Attorney General Opinion JC-0386 that chapter 372 assessments are not taxes for purposes of article XVI, section 50(a)(2) of the Texas Constitution.

SUMMARY

A public improvement district assessment may be enforced by foreclosure of a homestead provided that the statutory lien created by section 372.018(b) of the Local Government Code predates the date the property became a homestead and the amounts to be collected fall within the lien's scope.

Very truly yours,



GREG ABBOTT
Attorney General of Texas

BARRY R. MCBEE
First Assistant Attorney General

DON R. WILLETT
Deputy Attorney General for Legal Counsel

NANCY S. FULLER
Chair, Opinion Committee

Mary R. Crouter
Assistant Attorney General, Opinion Committee

ORDINANCE NO. 227

AN ORDINANCE OF THE CITY OF MANOR CLOSING THE PUBLIC HEARING AND LEVYING ASSESSMENTS FOR THE COST OF CERTAIN SERVICES AND IMPROVEMENTS TO BE PROVIDED IN THE ROSE HILL PUBLIC IMPROVEMENT DISTRICT; FIXING CHARGES AND LIENS AGAINST THE PROPERTY IN THE DISTRICT AND AGAINST THE OWNERS THEREOF; PROVIDING FOR THE COLLECTION OF THE ASSESSMENTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Manor, Texas (the "City") is authorized under Chapter 372 of the Texas Local Government Code (the "Act") to create a public improvement district within its corporate limits and within its extraterritorial jurisdiction;

WHEREAS, on June 4, 2003, The Parke at Hawk Hollow, L.P. ("Applicant") submitted and filed with the City Secretary (the "City Secretary") of the City a petition (the "Petition") requesting the establishment of a public improvement district to include the Property (hereinafter defined) owned by Applicant and to be known as the Rose Hill Public Improvement District (the "District");

WHEREAS, the District includes approximately 197 acres owned by Applicant and located within the extraterritorial jurisdiction of the City, being composed of tracts recorded in Volume 12602, Page 1514, Travis County Deed Records and more particularly described by the metes and bounds description on Exhibit A attached hereto and made a part hereof (the "Property");

WHEREAS, after providing notices required by Section 372.009 of the Act, the City Council of the City (the "City Council") on June 25, 2003, conducted a public hearing on the advisability of the improvements and services and the advisability of creating the District;

WHEREAS, on June 25, 2003, the City Council passed Resolution No. 2003-15, which authorized the District in accordance with the City Council's findings as to the advisability of the services and improvements and the creation of the District, designated Kevin McCright ("Manager") as the person responsible for the development and recommendation of a Service Plan (the "Service Plan") for the District, which Service Plan is attached as Exhibit B to Resolution No. 2003-15, and for the management of the District, approved the Service Plan for the District, authorized a contract between the City and Manager for the management of the District and collection of assessments;

WHEREAS, the authorization of the District became effective on June 26, 2003 when the Resolution was published in the Austin American-Statesman, a newspaper of general circulation in Travis County, which is the county in which the District is located;

WHEREAS, no written protests have been received by the City Secretary within the 20-day period after the date of the authorization of the District;

WHEREAS, on July 2, 2003, the City Council passed Ordinance No. 226 apportioning the cost of the services and improvements to be assessed against the Property and establishing reasonable classifications and formulas for the apportionment of the cost of special benefits for the services and improvements of the Property, approving, adopting and filing with the City Secretary the assessment roll, and requiring notice of a public hearing on July 16, 2003 be given to consider the levy of the proposed assessments on the Property;

WHEREAS, after notice was provided as required by the Act, the City Council, on July 16, 2003 held a public hearing to consider the levy of the proposed assessments on the Property;

WHEREAS, at the July 16, 2003 public hearing, information was provided to the City Council regarding the value of the improvements and the special benefit to be received by the Property from such improvements; and

WHEREAS, at the July 16, 2003 public hearing, the City Council heard and passed on any objections to the proposed assessment and closing the public hearing;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY:

SECTION 1. That the action of the City Council closing the public hearing in these proceedings is hereby ratified and confirmed.

SECTION 2. That the City Council finds that the assessments (i) should be made and levied against each final platted residential lot within the District and against the owners thereof, (ii) are substantially in proportion to the benefits to each final platted residential lot within the District because of the services and improvements within the District for which such assessments are levied, and. (iii) establish substantial justice and equality and uniformity between the respective owners of the final platted residential lots and between all parties concerned considering the benefits received and the burdens imposed; and further finds that in each case the lots assessed are specially benefited by means of the said services and improvements within the District; and further finds that the apportionment of the cost of the services and improvements is in accordance with the law in force in this City and the State of Texas and the proceedings of the City heretofore had with reference to the formation of the District and that the imposition of the assessments for said services and improvements are in all respects valid and regular.

SECTION 3. That there is levied and assessed against each final platted residential lot within the District and against the real and true owners thereof (whether such owners be correctly named or not) an assessment in the amount of $8,880.00 (excluding interest) (the "Lot Assessment"). This Lot Assessment, although levied and assessed by this Ordinance and effective as of the date of this Ordinance, shall not be applied to each final platted residential lot until the first January 1st to occur after (i) all water, sewer, drainage, and roadway improvements for the subdivision containing the residential lot have been completed and accepted by the appropriate governmental authority and (ii) the final plat for the subdivision containing the lot has been recorded in the deed records of Travis County, Texas (the date the Lot Assessment is applied is hereinafter called the "Assessment Date").

SECTION 4. That the owner of each final platted residential lot within the District may pay in full and at any time the Lot Assessment (or remaining unpaid balance thereof), together with all accrued and unpaid interest due thereon. After the fee is paid in full, no further fees, including Administrative Assessments or interest, shall be assessed against the property.

SECTION 5. That there is levied and assessed against each final platted residential lot within the District and against the real and true owners thereof (whether such owners be correctly named or not) a series of annual assessments (the "Annual Assessments"), in an annual amount that will fully pay the Lot Assessment, together with interest at 5% amortized over 30 years. The Annual Assessments shall continue each year until the Lot Assessment, including interest as described, is paid in full, and no further action is required by any future City Council with respect to the Annual Assessments. The amount of the Annual Assessments is as follows:

(i) If the final platted residential lot contains a completed home as of the Assessment Date, the amount of each Annual Assessment shall be $573.00 until the Lot Assessment, together with interest as described above, is paid in full.

(ii) If the final platted residential lot does not contain a completed home as of the Assessment Date, the amount of each Annual Assessment shall be $150.00 until such time as a completed home has been constructed on the lot; and beginning on the next January 1st to occur after such completed home has been constructed on the lot, the amount of each Annual Assessment shall be $573.00 until the Lot Assessment, together with interest as described above, is paid in full.

SECTION 6. That there is levied and assessed against each final platted residential lot within the District and against the real and true owners thereof (whether such owners be correctly named or not) having not paid the assessments in full, additional annual assessments (the "Administrative Assessments") for the costs and expenses to create and administer the District (including, but not limited to, the costs and expenses incurred by the City). The amount of the Administrative Assessments shall be determined annually by the City Council following the City Council's annual review of the Service Plan for the District.

SECTION 7. That where more than one person, firm or corporation owns an interest in any final platted residential lot, each said person, firm or corporation shall be personally liable only for its, his or her pro rata share of the total assessment against the lot in proportion as its, his or her respective interest bears to the total ownership of the lot, and its, his or her respective interest in the lot may be released from the assessment lien upon payment of such proportionate sum.

SECTION 8. That the Lot Assessment, Annual Assessments, and Administrative Assessments levied and assessed against each final platted residential lot, together with reasonable attorney's fees and costs of collection, if incurred, are hereby declared to be and are made a lien upon each final platted residential lot against which the same are levied and assessed, and a personal liability and charge against the real and true owners of such lot, including the successors and assigns, whether such owners be named herein or not, and said liens

shall be and constitute the first enforceable lien and claim against the lot on which such assessments are levied, and shall be a first and paramount lien thereon, superior to all other liens and claims except state, county, school district and City ad valorem taxes.

SECTION 9. That if an owner of a final platted residential lot defaults in the payment of any of the assessments levied and assessed by this Ordinance against such lot, the amount of such unpaid assessments, including interest and the costs of collection, may be enforced by suit in any court having jurisdiction or by lien foreclosure, or both.

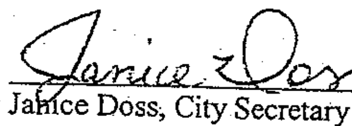
SECTION 10. That all assessments levied and assessed by this Ordinance are a personal liability and charge against the real and true owners of the lots, including the successors and assigns, notwithstanding such owners may not be named or may be incorrectly named.

SECTION 11. That the assessments herein levied and assessed are made and levied under and by virtue of the terms, powers and provisions of the Act.

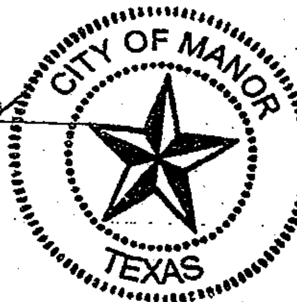
SECTION 12. That this Ordinance shall take effect immediately from and after its passage.

PASSED AND APPROVED on this 16th day of July, 2003.

ATTEST:



Janice Doss, City Secretary



THE CITY OF MANOR, TEXAS

Jeff Turner, Mayor

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EXHIBIT A

PROPERTY

FIELD NOTES FOR 196.236 ACRES OUT OF THE GREENBURY GATES SURVEY NO. 63, TRAVIS COUNTY, TEXAS, BEING COMPOSED OF TRACTS CALLED 164.70 ACRES AND 30 ACRES RECORDED IN VOLUME 12602, PAGE 1514, TRAVIS COUNTY DEED RECORDS, SAID 196.236 ACRES BEING DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 60D nail found on top of a wood fence post, at the northeast corner of said 30 acres, in the fenced south line of a 157.109 acre tract recorded in Document No. 1999156308, Travis County Deed Records, for the northeast corner hereof;

THENCE S30°08'W 2861.03 feet along the west line of a 184.013 acre tract recorded in Volume 11862, Page 268, Travis County Deed Records, to a 1/2" steel pin set in the north line of Tower Road, a county road approximately 30 feet wide, for the southeast corner hereof;

THENCE N60°04'30"W 1959.94 feet along said north line of Tower Road to a 1/2" steel pin set at the southeast corner of a 1.095 acre tract recorded in Document No. 1999001598, Travis County Deed Records, for the southwest corner hereof;

THENCE N29°08'12"E 2362.85 feet generally following a fence along the west line of said 164.70 acres to a 16D nail found at the base of a wood fence corner post, at the northeast corner of a 31.004 acre tract recorded in Volume 9682, Page 858, Travis County Deed Records, for an inside corner hereof;

THENCE N59°44'29"W 963.08 feet generally following a fence along the northeast line of said 31.004 acres and of a 5.50 acre cemetery tract, to a 1/2" steel pin set at an inside corner of said 31.004 acres, for an easterly corner hereof;

THENCE N30°06'43"E 885.19 feet generally following a fence along the northerly east line of said 31.004 acres, passing at 245.63 feet a 1/2" steel pin found at its northeast corner, to a 1/2" steel pin set at the northeast corner of a 8.59 acre tract recorded in Volume 10063, Page 83, Travis County Deed Records, in the south line of Johnson Road, a county road approximately 40 feet wide, for corner hereof;

THENCE along the east and south line of said Johnson Road the following 4 courses, maintaining an approximate distance of 10 feet from the edge of pavement which is 20 feet wide:

1) S60°00'E 34.11 feet to 1/2" steel pin set for corner,
2) N29°48'E 769.75 feet along a fence to a 1/2" steel pin set at the start of a curve to the right,
3) along said curve with chord of N75°36'41"E 114.73 feet and radius of 80 feet, to a 1/2" steel pin set at the end of curve,
4) S58°34'47"E 1874.59 feet to a 1/2" steel pin with orange cap found at the base of a lone wood fence post, 8.7 feet west of a fence, for the northeast corner hereof;

THENCE S30°02'06"W 1191.98 feet generally following said fence, along the west line of a 157.109 acre tract recorded in Document No. 1999156308, Travis County Deed Records, to a 1/2" steel pin with orange cap found at the fenced southwest corner of said 157.109 acres, for an inside corner hereof;

THENCE S60°00'E 976.85 feet generally following a fence, along the south line of said 157.109 acres to the POINT OF BEGINNING, containing 196.236 acres of land.

Bearing basis is the last course above, from deed of this tract (12602/1514).

Surveyed July 10, 2000, by Stuart Watson, RPLS 4550.

ORDINANCE NO. 226

AN ORDINANCE ESTABLISHING CLASSIFICATIONS FOR THE APPORTIONMENT OF COSTS AND THE METHODS OF ASSESSING SPECIAL BENEFITS FOR THE SERVICES AND IMPROVEMENTS TO PROPERTY IN THE ROSE HILL PUBLIC IMPROVEMENT DISTRICT; APPROVING, ADOPTING AND FILING WITH THE CITY SECRETARY THE ASSESSMENT ROLL; REQUIRING NOTICE OF THE PUBLIC HEARING ON JULY 16, 2003 TO CONSIDER THE LEVY OF THE PROPOSED ASSESSMENTS ON PROPERTY WITHIN THE DISTRICT; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Manor, Texas (the "City") is authorized under Chapter 372 of the Texas Local Government Code (the "Act") to create a public improvement district within its corporate limits and within its extraterritorial jurisdiction;

WHEREAS, on June 4, 2003, The Park at Hawke Hollow, L.P. ("Applicant") submitted and filed with the City Secretary (the "City Secretary") of the City a petition (the "Petition") requesting the establishment of a public improvement district to include the Property (hereinafter defined) owned by The Park at Hawke Hollow, L.P. and to be known as the Rose Hill Public Improvement District (the "District");

WHEREAS, the District includes approximately 197 acres owned by The Parke at Hawk Hollow, L.P. and located outside the corporate limits of the City, being composed of tracts recorded in Volume 12602, Page 1514, Travis County Deed Records and more particularly described by the metes and bounds description on Exhibit A attached hereto and made a part hereof (the "Property"). The Property is located north of Highway 290 a distance of approximately one mile to Tower Road and east of FM 973. The southern boundary of the Property is located along Tower Road approximately 1,000 feet east of FM 973 and continuing eastward for a distance of approximately 2,000 feet to its southeastern most point. The northern boundary of the Property is located alongside the southern right-of-way of Johnson Road, beginning approximately 1,000 feet east of FM 973, extending northward along Johnson Road for approximately 800 feet, then turning eastwardly along Johnson Road for approximately 2,000 feet to its northeastern most point;

WHEREAS, after providing notices required by Section 372.009 of the Act, the City Council of the City (the "City Council") on June 25, 2003, conducted a public hearing on the advisability of the improvements and services;

WHEREAS, on June 25, 2003, the City Council passed Resolution No. 2003-15 which authorized the District in accordance with the City Council's findings as to the advisability of the services and improvements, designated Kevin McCright ("Manager") as the entity responsible for the development and recommendation of a Service Plan (the "Service Plan") for the District, which Service Plan is attached hereto as Exhibit B and made a part hereof, and for the

management of the District, approved the Service Plan for the District, authorized a contract between the City and Manager for the management of the District and collection of assessments;

WHEREAS, the authorization of the District occurred on June 26, 2003 when the Resolution was published in the Austin American-Statesman, a newspaper of general circulation in Travis County, which is the county in which the District is located; and

WHEREAS, the City Council desires to apportion the cost of the services and improvements to be assessed against the Property in the District and establish reasonable classifications and formulas for the apportionment of the cost of special benefits for the services and improvements of the Property, approve, adopt and file with the City Secretary the assessment roll, and require the City Secretary to provide notice of a public hearing on July 16, 2003, to consider the levy of the proposed assessments on the Property;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL:

SECTION 1. That the City Council hereby approves the assessment plan described in this Ordinance and provides that the costs of the services and improvements are to be paid by special assessments against the Property. The Service Plan covers a period of six years and defines the annual indebtedness and the projected costs for improvements. The entire cost of the services and improvements for the District as described in the Service Plan for calendar year 2004 is $3,665,000 and is to be paid for by advances by Applicant, which advances will be reimbursed to Applicant by use of District assessments. Costs for subsequent calendar years set forth in the Service Plan shall be reviewed and updated annually. There is no apportionment of the cost between the City and the District area to be assessed; the District pays all the costs of the services and improvements.

SECTION 2. That the City Council hereby establishes the method of assessing the special benefits for various classes of services and improvements that are set forth in the Service Plan. The Property will be developed in phases, with each phase represented by one or more separate subdivisions. The assessments shall be levied against residential lots within the District only after all services and improvements for the subdivision containing such lots have been completed and accepted by the appropriate governmental authority and a final plat of the completed subdivision has been recorded in the deed records of Travis County, Texas. On the first January 1st to occur after the recordation of each final plat for a completed subdivision (the "Assessment Date") within the District, each residential lot within the recorded subdivision plat will be deemed to have been specially benefited, in an amount not to exceed $8,880 (excluding interest), by the portion of the services and improvements designed, acquired, and constructed within the completed subdivision as of the Assessment Date. The amount of the annual assessment for each residential lot within the recorded subdivision plat will depend on whether the lot contains a completed home as of the Assessment Date. For lots on which a completed home is constructed as of the Assessment Date, the annual assessment (including interest at 5%) is estimated to be $573 (or $48/month) until the amount of the assessment, including interest, is paid in full. For lots that do not have a completed home as of the Assessment Date, the annual assessment (including interest) is estimated to be $150 (or $12.50/month) until a completed home has been constructed on the lot; and beginning on the next January 1st after such completed home has

been constructed on the lot, the annual assessment is estimated to be $573 (or $48/month) until the amount of the assessment, including interest, is paid in full. The annual assessment (including interest) against each final platted residential lot will be the same regardless of the appraised value of the home constructed on the lot, and annual assessments on each lot will continue until the amount of the assessment, including interest, is paid in full (not to exceed 30 years after completion of each home). The owner of a final platted residential lot may pay at any time the entire assessment, with any interest that has accrued on the assessment, or shall make annual or monthly payments. Special assessments levied against the final platted residential lots will be used to reimburse Applicant for the total costs and expenses (a) to create and administer the District (including, but not limited to, the costs and expenses incurred by the City), and (b) to design, acquire, and construct the improvements for the District. The amount of the assessment for each property owner may be adjusted following the annual review of the Service Plan.

SECTION 3. That based on the total cost of the services and improvements for the District for 2004 of $3,665,000, the City Council hereby approves, adopts and files with the City Secretary the assessment roll on Exhibit C attached hereto and made a part hereof (the "Assessment Roll"). The Assessment Roll shall be updated on the first January 1st to occur after the recordation of each final plat for a completed subdivision within the District to state the assessment against each final platted residential lot in the District, as determined by the method of assessment set forth in the Service Plan and this Ordinance. The City Secretary shall file the Assessment Roll and any updates to the Assessment Roll in the official City records. The Assessment Roll and any updates to the Assessment Roll shall be subject to public inspection.

SECTION 4. That notice of the City Council's intention to consider the proposed assessments at a public hearing to be held on July 16, 2003 at 7:00 p.m. in the Council Chambers, 201 E. Parsons, Manor, Travis County, Texas 78653 shall be published in the official newspaper of Travis County before the 10th day before the date of the hearing. The notice must state: (a) the date, time and place of the hearing; (b) the general nature of the improvements; (c) the cost of the improvements; (d) the boundaries of the assessment district; and (e) that written or oral objections will be considered at the hearing.

SECTION 5. That a notice shall be mailed to the owners of property liable for assessment a notice of the hearing to the last known address of each property owner as reflected in the Travis County tax records. The notice must contain the information required by Section 4 of this Ordinance. The failure of a property owner to receive notice does not invalidate the proceeding.

SECTION 6. That if any provision of this Ordinance or the application of any provision is held invalid, the invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are deemed to be severable.

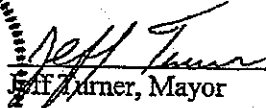
SECTION 7. That this ordinance shall take effect immediately from and after its passage.

PASSED AND APPROVED on this 2nd day of July, 2003.

ATTEST:

Janice Doss, City Secretary

THE CITY OF MANOR, TEXAS



Jeff Turner, Mayor

EXHIBIT A

METES AND BOUNDS DESCRIPTION OF THE PROPERTY

FIELD NOTES FOR 196.236 ACRES OUT OF THE GREENBURY GATES SURVEY NO. 63, TRAVIS COUNTY, TEXAS, BEING COMPOSED OF TRACTS CALLED 164.70 ACRES AND 30 ACRES RECORDED IN VOLUME 12602, PAGE 1514, TRAVIS COUNTY DEED RECORDS, SAID 196.236 ACRES BEING DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 60D nail found on top of a wood fence post, at the northeast corner of said 30 acres, in the fenced south line of a 157.109 acre tract recorded in Document No. 1999156308, Travis County Deed Records, for the northeast corner hereof;

THENCE S30°08'W 2861.03 feet along the west line of a 184.013 acre tract recorded in Volume 11862, Page 268, Travis County Deed Records, to a 1/2" steel pin set in the north line of Tower Road, a county road approximately 30 feet wide, for the southeast corner hereof;

THENCE N60°04'30"W 1959.94 feet along said north line of Tower Road to a 1/2" steel pin set at the southeast corner of a 1.095 acre tract recorded in Document No. 1999001598, Travis County Deed Records, for the southwest corner hereof;

THENCE N29°08'12"E 2362.85 feet generally following a fence along the west line of said 164.70 acres to a 16D nail found at the base of a wood fence corner post, at the northeast corner of a 31.004 acre tract recorded in Volume 9682, Page 858, Travis County Deed Records, for an inside corner hereof;

THENCE N59°44'29"W 963.08 feet generally following a fence along the northeast line of said 31.004 acres and of a 5.50 acre cemetery tract, to a 1/2" steel pin set at an inside corner of said 31.004 acres, for an easterly corner hereof;

THENCE N30°06'43"E 885.19 feet generally following a fence along the northerly east line of said 31.004 acres, passing at 245.63 feet a 1/2" steel pin found at its northeast corner, to a 1/2" steel pin set at the northeast corner of a 8.59 acre tract recorded in Volume 10063, Page 83, Travis County Deed Records, in the south line of Johnson Road, a county road approximately 40 feet wide, for corner hereof;

THENCE along the east and south line of said Johnson Road the following 4 courses, maintaining an approximate distance of 10 feet from the edge of pavement which is 20 feet wide:

1) S60°00'E 34.11 feet to 1/2" steel pin set for corner,
2) N29°48'E 769.75 feet along a fence to a 1/2" steel pin set at the start of a curve to the right,
3) along said curve with chord of N75°36'41"E 114.73 feet and radius of 80 feet, to a 1/2" steel pin set at the end of curve,
4) S58°34'47"E 1874.59 feet to a 1/2" steel pin with orange cap found at the base of a lone wood fence post, 8.7 feet west of a fence, for the northeast corner hereof;

THENCE S30°02'06"W 1191.98 feet generally following said fence, along the west line of a 157.109 acre tract recorded in Document No. 1999156308, Travis County Deed Records, to a 1/2" steel pin with orange cap found at the fenced southwest corner of said 157.109 acres, for an inside corner hereof;

THENCE S60°00'E 976.85 feet generally following a fence, along the south line of said 157.109 acres to the POINT OF BEGINNING, containing 196.236 acres of land.

Bearing basis is the last course above, from deed of this tract (12602/1514).

Surveyed July 10, 2000, by Stuart Watson, RPLS 4550.

EXHIBIT B

SERVICE PLAN

ROSE HILL PUBLIC IMPROVEMENT DISTRICT

SERVICE PLAN

For the period January 2004 Through December 2009

REVENUE PROJECTIONS	1/1/04 thru 12/31/04	1/1/05 thru 12/31/05	1/1/06 thru 12/31/06	1/1/07 thru 12/31/07	1/1/08 thru 12/31/08	1/1-09 Thru 12/31/09
Assessment Revenues	$59,000	$132,750	$206,500	$280,250	$354,000	$427,750
TOTAL REVENUES	$59,000	$132,750	$206,500	$280,250	$354,000	$427,750
EXPENSE PROJECTIONS						
Projected Administrative Costs						
Creation Costs - City and Applicant	$40,000	$1,000	$0	$0	$0	$0
Administration Costs - City	2,500	2,500	2,500	2,500	2,500	2,500
Management Services	7,500	7,500	7,500	7,500	7,500	7,500
Subtotal of Projected Administrative Costs*	$50,000	$10,000	$10,000	$10,000	$10,000	$10,000
Projected Costs of District Improvements						
Wastewater collection improvements	$1,300,000	$200,000	$200,000	$200,000	$200,000	200,000
Water distribution improvements	755,000	510,000	510,000	510,000	510,000	510,000
Public roadways and related appurtenances (including street lighting and storm water control improvements)	700,000	500,000	500,000	500,000	500,000	500,000
Drainage improvements	230,000	180,000	180,000	180,000	180,000	180,000
Common area fencing and landscaping	40,000	30,000	30,000	30,000	30,000	30,000
Other utilities	230,000	155,000	155,000	155,000	155,000	155,000
Contingency	360,000	170,000	170,000	170,000	170,000	170,000
Subtotal of Projected Costs of District Improvements*	$3,615,000	$1,745,000	$1,745,000	$1,745,000	$1,745,000	$1,745,000
TOTAL EXPENSES (to be advanced by Applicant)	$3,665,000	$1,755,000	$1,755,000	$1,755,000	$1,755,000	$1,755,000

* The annual indebtedness of the District will be the sum of projected administrative costs and projected costs of district improvements, which sum equals Total Expenses.

EXHIBIT C

ASSESSMENT ROLL

The Parke at Hawk Hollow, L.P. owns the Property as of the date hereof. On the first January 1st to occur after the recordation of each final plat for a completed subdivision within the District, Manager shall update the Assessment Roll to reflect the following information for each lot within each subdivision:

Subdivision	Block	Lot	Owner	Address