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July 31, 2023

RQ-0002-AC

Office of the Provisional Attorney General Angela Colmenero
Attention: Opinion Committee
P.O. Box 12548
Austin, TX 78711-2548

FILE# ML-49292-23

I.D.# 49292

Re: Interpretation of Local Government Code § 383

Dear Provisional Attorney General Angela Colmenero,

With this letter, I respectfully ask that you provide a formal written opinion regarding the aforementioned issue.

Background

Hood County Development District #1 ("District") began in 1999 after approval from voters. It was formed under authority of Section 383 of the Texas Local Government Code. In recent years, it has been operating with seven board members. One board member has been a representative of the City of Granbury, pursuant to an agreed judgment in 2012 involving a lawsuit between the District and City. (See Exhibit A.)

The District, after reviewing Local Government Code § 383.041 and 383.048, believed it was not in compliance with Section 383.041 by having seven board members. Section 383.041(a) states the board consists of five members. However, their position is that Section 383.048(d) allows them to appoint one additional member to the board, taking the total number to six. On July 25, 2023, the Hood County Commissioners Court had a split vote on the appointment of a new director to the District, based on proposed new bylaws. (See Exhibit B.)

Question

Resolution of the dispute revolves around the proper interpretation of the first sentence in Section 383.048(d): "The board may appoint another director, the general manager, or an employee as assistant or deputy secretary to assist the secretary." Our office has found no direct authority on the matter. The District's position is that the reference to appointing *another* director allows them to add one member to the board, raising the total from five to six. A majority of the Hood County Commissioners Court has taken the position that the reference to *another* director means another of the existing five, besides the secretary. Their reasoning is

another director means another of the existing five, besides the secretary. Their reasoning is partly based on reading subsection (d) in conjunction with subsections (b) and (c) of Section 383.048, which assign duties to various board members, as well as substitutes for absent members.

Our office is now asking for your office to resolve this question and inform the District whether they are permitted under Texas law to add another member to their board, which would be six total members.

Thank you very much for your time and attention to this matter. Should your office require further information to clarify the nature of this request, please do not hesitate to contact me.

Respectfully,

A handwritten signature in blue ink, appearing to read 'Matthew A. Mills', with a long, sweeping horizontal stroke extending to the right.

Matthew A. Mills
Hood County Attorney

Exhibit A

Cause No. C2011095

HOOD COUNTY DEVELOPMENT
DISTRICT NO. 1,

Plaintiff

vs.

CITY OF GRANBURY, ET AL,

Defendants.

FILED

IN THE DISTRICT COURT

FILED

FEB - 6 2012

Anna Trumble Hill
Tanna Trumble Hill
Clark District Court, Hood County, Texas

OF HOOD COUNTY

355TH JUDICIAL DISTRICT

AGREED JUDGMENT

CAME TO BE HEARD, Hood County Development District No. 1 (the "District"), Plaintiff, and City of Granbury, et al (the "City"), Defendants, (collectively the "parties") appearing by and through their attorneys of record, and announced to the Court that the parties desired to resolve and settle the matters in controversy in order to avoid the trouble, expense, and uncertainty of further litigation. The parties announced that they have reached a final settlement regarding all issues of law and fact. Having heard these announcements and reviewed the evidence and arguments of counsel, the Court is of the opinion that such terms and conditions are well taken and should form the basis of judgment.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the following stipulations are agreed to by the parties and entered by the Court as its judgment.

1. The parties agree and stipulate that bona fide disputes and controversies exist between the parties concerning the relief requested by each party. The parties solely for the purpose of compromising and settling their various claims, each as to the other, enter into these stipulations. Except as set forth below, no other use of these stipulations may be made by the parties hereto as concerns the claim of either party as to the other, whether having arisen in the past, now pending, or to arise in the future.

AGREED JUDGMENT

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2. The District agrees to waive its rights to assert any claim for repayment of past sales taxes for the annexed properties the subject of this litigation that were collected by the City prior to February 1, 2012.

3. From the sales and use taxes collected by the City only in the areas annexed by the following Annexation Ordinances: 03-876; 05-49; 05-87; 06-190; 07-24-2; 08-315; and 08-317, but specifically excluding the area annexed by Annexation Ordinance 08-341, a substitute tax payment equal to a one-half of one percent sales and use tax will be made by the City to the District on a monthly basis, in perpetuity. This substitute tax payment will begin with taxes collected by the City on or after February 1, 2012, and shall be paid within ten (10) days of the City's receipt of tax revenues from the comptroller's office.

4. Additionally, it is agreed that in the event a cumulative total sum of \$200,000 (as adjusted annually to the Consumer Price Index) in substitute tax payments is paid in any fiscal year, that thereafter, the City has no obligation to tender additional sums over the \$200,000 paid.

5. Within ten days of a request by the District, the City shall provide to the District records and/or documents that identify the details of the City's calculation of the substitute tax payment, including the calculation of the collection of sales and use taxes from each taxpayer in the subject areas. District agrees to keep this information confidential, to the extent permissible by law.

6. It is further agreed that (provided the same is statutorily permissible) the District will add as an official voting member to its Board the City's Director of Communication and Marketing, and that the City Manager (or his/her designee) shall serve on the District's Board in a non-voting advisory capacity.

7. Additionally, it is agreed that the District shall present a report to the City Council biannually at one of the March and September meetings, as well as at any other times as either party may deem necessary.

8. Further, it is agreed and understood that as to that property identified under the Annexation Ordinance 05-49, the City Council of the City of Granbury has passed a resolution consenting to the creation of a Public Improvement District ("PID"), however said PID has not yet formally been created. In the event that PID were to become effective, thereby reducing the City's sales and use tax revenues to three-quarter of a one percent, that this would likewise reduce the substitute tax payment paid to the District to one-quarter of one percent for the life of the PID.

9. All costs and attorneys' fees are to be borne by the party incurring them.

10. All costs of Court are taxed against the party incurring the same.

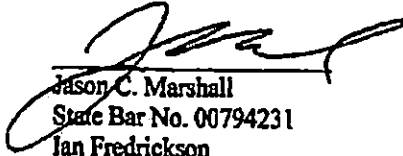
11. All other relief not specifically granted herein is denied. This is a final judgment that disposes of all issues between all parties and is not appealable.

12. All relief not expressly granted herein is hereby denied.

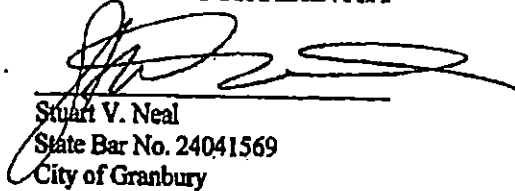
Signed this 6 day of February, 2012.

FILED
 FEB - 6 2012
Janna Sumada Witt
 Tanna Sumada Witt
 Clerk District Court, Hood County, Texas

Oran W. [Signature]
 HONORABLE JUDGE PRESIDING

APPROVED AS TO FORM AND SUBSTANCE:

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ATTORNEYS FOR DEFENDANTS

Exhibit B

**BY-LAWS OF THE
HOOD COUNTY DEVELOPMENT DISTRICT NO. 1
Amended 2023**

ARTICLE I - OFFICES

Section 1.1 The principal office of the District shall be maintained within the District and shall be the headquarters for the transaction of all business. Branch offices may, at the discretion of the Directors, be established at other places.

ARTICLE II - MEETINGS

Section 2.1 Meetings shall be held monthly, no less than 10 (ten) times a year, at the principal office of the District.

Section 2.2 All meetings must be posted at the Hood County Courthouse and at a site within the District, to be determined by the Directors, no less than 72 hours prior to the meeting, as required by the Open Records Act and Texas Government Code, Chapter 551. Notice shall include the place, time, and purpose of the meeting.

Section 2.3 A record of all persons in attendance, all business of the District discussed, and all issues voted on by the Directors shall be kept in the minutes taken for each meeting.

ARTICLE III – DIRECTORS

Section 3.1 **The business and affairs of the District shall be managed by five directors (383.041-a). In accordance with LGC Sec. 383.048-b, “the board may appoint another director, general manager, or an employee as assistant or deputy secretary to assist the secretary.”**

The HCDD1 Board will appoint one alternate board member and one from the City of Granbury per Agreed Judgment dated February 6th, 2012. Both are able to vote in the absence of any of the above mentioned five, and a quorum of four is needed to conduct District Business.

Section 3.2 Directors shall serve staggered terms of four years with three or four terms expiring September 1 of every other year. **Replacement Board Members shall be nominated by the current seated board and approved by the Commissioners Court of Hood County Texas.**

Section 3.3 Directors must be a person at least 21 years of age, a resident citizen of this state, and a qualified voter of the county in which the District is located.

Section 3.4 After appointment to the Board, each Director must obtain a bond in the amount of no less than \$10,000.00, payable to the District **and participate in the Open Meetings Act Training webinar.**

Section 3.5 Four Directors constitutes a quorum and a concurrence of four is sufficient in any matter relating to the business of the District. Each Director has one vote to be cast on any issue.

Section 3.6 The Commissioners Court, after notice and hearing, may remove a Director for misconduct or failure to carry out the Director's duties if petitioned by a majority of the remaining Directors.

Section 3.7 A vacancy on the Board of Directors shall be filled by recommendation of the other Directors and confirmed by the approval of the Hood County Commissioners Court.

Section 3.8 A Director is not entitled to receive compensation for service on the Board. A Director may be reimbursed for expenses incurred for District business.

Section 3.9 Any new Director elected or appointed to the Board shall be a Hood County resident and live or work in the Acton area.

ARTICLE IV – OFFICERS

Section 4.1 The President presides at all board meetings and is the chief executive officer of the District. The President does not vote unless there are equal votes both for and against.

Section 4.2 The Secretary acts as secretary of the board and is responsible for seeing that all records and books of the District are properly kept.

Section 4.3 The Vice President- Treasurer acts as president if the president is absent or disabled. The treasurer shall have custody of all funds of the District and shall maintain the funds in such accounts as determined by the board of directors. The treasurer shall, at all reasonable times, exhibit the books and accounts of the District to the inspection of any Director or individual upon application during office hours at the District office.

Section 4.4 The Board may appoint another Director, general manager, or an employee as assistant or deputy secretary to assist the Secretary and Treasurer. The assistant or deputy secretary may certify the authenticity of any record of the District, including a proceeding relating to a bond, contract, or indebtedness of the District.

ARTICLE V – MANAGEMENT OF THE DISTRICT

Section 5.1 The Board has control over and shall manage the affairs of the District and shall employ any person, firm, partnership, or corporation the Board considers necessary for conducting the affairs of the District, including engineers, attorneys, financial advisors, a general manager, bookkeepers, auditors, and secretaries.

Section 5.2 The Board shall determine the term of office and compensation of any employee and consultant by contract or by resolution of the Board.

Section 5.3 The Board may remove any employee.

Section 5.4 The Board may require an officer or employee to execute a bond payable to the District and conditioned on the faithful performance of the person's duties.

ARTICLE VI – POWERS AND DUTIES

Section 6.1 The District may acquire and dispose of projects and has all of the other powers, authority, rights, and duties that will permit the accomplishment of the purposes for which the District was created.

Section 6.2 The District has the power to provide for general and tourist advertising of the district and its vicinity, and to conduct a marketing program to attract visitors, any of which may be conducted by the District pursuant to contracts for professional services with persons or organizations selected by the District.

ARTICLE VII- EXPENDITURES

Section 7.1 District funds (over five thousand, not to exceed twenty five thousand dollars) may be disbursed by check, draft order, or other instrument that must be signed by three board members.

Section 7.2 The general manager, Treasurer, or another employee of the District, if authorized by approval of the Board, may sign checks, drafts or other instruments on any District operation account, not to exceed five thousand dollars.

Section 7.3 District fund expenditures exceeding twenty five thousand dollars, and not included on the annual Budget, must be brought before the Board in the form of a Resolution and approved by majority vote of the Board.

ARTICLE VIII- DISSOLUTION OF DISTRICT

Section 8.1 The Board may petition the Hood County Commissioners Court to dissolve the District if a majority of the Board finds at any time:

- (a) Before the authorization of bonds or the final lending of its credit, that the proposed undertaking is impracticable or cannot be successfully and beneficially accomplished; or

(b) That all bonds of the District or other debts of the district have been paid and the purposes of the District have been accomplished.

Section 8.2 On dissolution of the District, funds and property of the District, if any, shall be transferred to the Hood County Commissioners Court.

Section 8.3 A district may be dissolved by agreement between the governing body of the municipality and the Board, if all of the territory in the District is located in or is annexed by the municipality. The agreement shall require the municipality to acquire all of the money, property, and other assets of the District and assume all contracts, debts, bonds, and other obligations of the District, and the municipality shall be bound in the same manner and to the same extent that the District was bound with respect to those contracts, debts, bonds, and other obligations.

Section 8.4 On dissolution of the District, the taxes levied by the District are abolished.

ARTICLE IX- AMENDMENTS

Section 9.1 The Board of Directors shall have the power to make, amend, or repeal the bylaws of the District by a vote of a majority of all the Directors at any regular or special meeting, provided notice of intention to make such changes at said meeting shall have been previously given each Director no less than 30 days prior to the meeting.

ARTICLE X- RULES OF ORDER

Section 10.1 Parliamentary procedure at all meetings of the Board of Directors shall be governed by the most recent edition of the "Robert's Rules of Order" **and in accordance with the Open Meetings Act (Government Code, Chapter 551)**