

Office of Neighborhood Services

City of Richland Hills, Texas

## Memorandum

To: Honorable Mayor Bill Agan and members of the Richland Hills City Council

From: Scott Mitchell, Director of Neighborhood Services

Date: January 19, 2016

Subject: Consider approval of resolution supporting a Municipal Setting Designation application to TCEQ for property located at 711 West Hurst Boulevard, Hurst, Texas.

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### **Council Action Requested:**

Approve resolution supporting a Municipal Setting Designation application to the Texas Commission on Environmental Quality (TCEQ) for property located at 711 West Hurst Blvd., Hurst, Texas.

### **Background Information:**

In 2003, the 78<sup>th</sup> Texas Legislature passed a Municipal Setting Designations (MSDs) law, effective September 1, 2003, that relates to the potability of groundwater and the requirements for removing contaminants from groundwater. The law authorized the TCEQ to receive, process, and certify MSD applications for properties, with contaminated groundwater, located in cities or their ETJ. TCEQ can certify an application only if there is local support. The city has the choice to either support, or not support an MSD application. Because of the need for city support, city officials can expect to be contacted by persons who wish to pursue state certification of an MSD. Cities can also pursue MSDs for their own use.

A representative for Hurst Partners One, a Colorado General Partnership, filed an application with the City of Hurst seeking support for the property located at 711 West Hurst Blvd. The City of Hurst approved their resolution (Resolution 1619) on March 24, 2015.

The TCEQ process for the issuance of an MSD also requires a resolution of support from any governmental entities operating water wells within a five mile radius of the location of the property requesting the MSD certification. The City of Richland Hills operates water wells within the designated area. Representatives of Hurst Partners One requested a resolution supporting the MSD application from the City of Richland Hills.

The City of Hurst also asked that we support a MSD resolution. Public Works staff reviewed the technical aspects of the application and determined the application acceptable for a MSD.

**Board/Citizen Input:** N/A

**Financial Impact:** N/A

### **Staff Contacts**

Scott Mitchell  
Director of Neighborhood Services  
[smitchell@richlandhills.com](mailto:smitchell@richlandhills.com)

### **Attachments:**

Exhibit A – Site map

Exhibit B - Resolution

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION IN SUPPORT OF THE APPLICATION OF HURST PARTNERS ONE, A COLORADO GENERAL PARTNERSHIP, TO THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY FOR A MUNICIPAL SETTING DESIGNATION FOR THE PROPERTY AT 711 WEST HURST BOULEVARD, HURST, TEXAS

**WHEREAS**, Hurst Partners One, a Colorado General Partnership (Applicant) is pursuing a municipal setting designation with the City of Hurst and the Texas Commission on Environmental Quality (TCEQ) for the Property at 711 West Hurst Boulevard, Hurst, Texas and map of same being attached hereto (Site Map); and

**WHEREAS**, the City of Hurst has already passed Resolution 1619 in favor of supporting Applicant's application for municipal setting designation on this property in their city; and

**WHEREAS**, Applicant intends to file an application with the TCEQ for certification of a municipal setting designation for the site pursuant to Texas Health and Safety Code, Chapter 361, subchapter W and have notified the City of Richland Hills, Texas of the same; and

**WHEREAS**, Texas Health and Safety Code, 361.8065 provides that an application to the TCEQ for a municipal setting designation will not be certified unless the application is supported by a resolution adopted by certain entities, including the city council of each municipality that owns or operates a groundwater supply well located not more than five miles from the property for which the designation is sought; and

**WHEREAS**, the boundary of said site is within five miles of certain groundwater supply wells owned or operated by the City of Richland Hills; and

**WHEREAS**, Applicant has continuing obligations to satisfy applicable statutory and regulatory provisions concerning groundwater contamination investigation and response actions at the site; and

**WHEREAS**, the certification of a municipal setting designation for the site is in the best interests of the community.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RICHLAND HILLS, TEXAS:**

That the City of Richland Hills supports Applicant's application to the Texas Commission on Environmental Quality for a municipal setting designation of the Site.

Passed and Approved on this 19th day of January, 2016.

APPROVED:

\_\_\_\_\_  
Bill Agan - Mayor

ATTEST:

\_\_\_\_\_  
Cathy Bourg - City Secretary



## **Attachment to Resolution Restrictive Covenant Prohibiting Potable Use of Groundwater**

This Restrictive Covenant is filed to provide information concerning certain environmental and use limitations pursuant to the Texas Solid Waste Disposal Act (TSWDA), Chapter 361, Subchapter W, and affects the real property whose address is 711- 721 W. Hurst Blvd., Hurst, TX containing approximately 6,4082 acres of land in the City of Hurst, Tarrant County Texas 76053 and more fully described in Exhibit A attached hereto and incorporated herein by reference (the "MSD Property").

Shallow groundwater (less than 50 feet below the ground surface) underlying the MSD Property (the "Designated Groundwater") contains chemicals of concern at concentrations above applicable Tier 1 groundwater ingestion protective concentration levels established under the Texas Risk Reduction Program, 30 Texas Administrative Code Chapter 350.

This Restrictive Covenant is required as a precondition for certification by TCEQ of a Municipal Setting Designation covering the Property pursuant to TSWDA Chapter 361, Subchapter W.

As of the date of this Restrictive Covenant, the record owner of fee title to the Property is Anadite Texas Restoration Trust, a Texas Trust, with an address of 711 W Hurst Blvd, Hurst TX 76053 attention Clay R. Rumbaoa.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner does hereby place the following restrictions on the MSD Property in favor of the City of Hurst, the Texas Commission on Environmental Quality ("TCEQ"), and the State of Texas, to wit:

1. The drilling of wells within the MSD Property and the use of the Designated Groundwater for any purpose, including but not limited to any potable purpose is prohibited, excepting only (a) the installation of monitor wells used for the collection of groundwater samples for chemical or biological laboratory analysis, and (b) the installation of wells used for the purpose of remediation of soil or groundwater contamination.
2. These restrictions shall run with the land and be binding on and enforceable as to any and all subsequent owners of the MSD Property.

This Restrictive Covenant shall be enforceable by the City of Hurst and may be amended or rendered of no further force and effect only by a release executed by the City of Hurst, after at least 30 days prior to written notice to TCEQ of any pending amendment or termination, and filed in the Real Property Records as those in which this Restrictive Covenant is filed.

Executed this 20<sup>th</sup> day of November, 2015.

Anadite Texas Restoration Trust

By: [Signature]  
Clay R. Rumbaoa  
its Trustee

STATE OF Hawaii

COUNTY OF Honolulu

This instrument was acknowledged before me on this 20<sup>th</sup> day of November, 2015 by Clay R. Rumbaoa, to me personally known, who, being by me duly sworn, did say that he/she/they/it/are the Trustee of Anadite Texas Restoration Trust, and Clay R. Rumbaoa acknowledged the execution of said instrument to be the voluntary act and deed of the said Trust by it voluntarily executed.



[Signature]  
Notary Public EVELYN B. STARKEY

My commission expires: 12/29/2018

11/20/15      2

Attachment to Resolution  
Restrictive Covenant Prohibiting Potpourri use of  
[Signature] 11/20/2015 Honolulu

