



action or proceeding contesting the validity of the Certificates; the authorization of the Certificates; the expenditure of money relating to the Certificates; the provisions made for the payment of the Certificates or of interest thereon; the funds authorized to pay for the Certificates; any matter adjudicated by the Court's judgment in this action; and any matter that could have been raised in these proceedings.

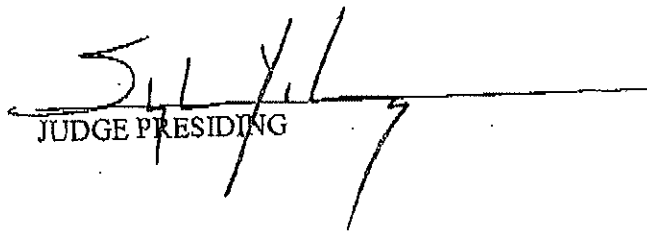
A full description of the lawsuit and the relief sought is contained in the City's Petition, *Ex Parte City of Friendswood*, Cause No. ~~0-160-09-00016~~ filed in the ~~419<sup>th</sup>~~ Judicial District Court of Travis County, Texas.

IT IS HEREBY ORDERED and Notice is hereby given, that any interested party (any of the Interested Parties described above) may become a named party to these proceedings by pleading to the Petition on or before June ~~15~~ 2009, and may appear for hearing and trial in the courtroom of the ~~419<sup>th</sup>~~ Judicial District Court of Travis County, Texas at 10:00 a.m. on Monday, June ~~15~~, 2009, it being the first Monday after the expiration of 20 days from the date this Order is issued. The actual location of the hearing may be in a different location in the Travis County Courthouse, interested parties should contact the court administrator. After said date, Interested Parties may become named parties by intervention on leave of court.

IT IS FURTHER ORDERED, that, at such hearing and trial, any Interested Parties desiring to do so may appear, and the Attorney General of Texas shall appear, and show cause why the prayers of the Petition of Friendswood filed in this action and generally described above should not be granted. Be on further notice that, at such time, place, and date the Court will proceed to full and final hearing on the merits of all matters and prayers within the Petition of Orange.

**SO ORDERED.**

SIGNED this 22 day of May, 2009.

  
JUDGE PRESIDING

NO. D-1-GV-09-000916

EX PARTE

CITY OF FRIENDSWOOD

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IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

419th JUDICIAL DISTRICT

**FIRST AMENDED PETITION**

The City of Friendswood ("Friendswood" or the "City") files this First Amended Petition, seeking an expedited declaratory judgment pursuant to Chapter 1205 of the Texas Government Code ("Expedited Declaratory Judgment Act"). A copy of the Expedited Declaratory Judgment Act is attached as Exhibit A.

**I. INTRODUCTION**

The City brings this expedited declaratory judgment action to validate its Certificates of Obligation, Series 2009 ("Certificates") that it proposes to issue in the initial principal amount of approximately \$11 million for the purposes of (1) making necessary improvements to the City Animal Control Center and the City's Record Retention Center, (2) the construction and rehabilitation of City streets, and (3) purchasing park land pursuant to its home rule authority.<sup>1</sup> As authorized by Section 1205.021 of the Expedited Declaratory Judgment Act, the City seeks a declaration that (1) it has the authority to issue the Certificates; (2) the City's resolution authorizing the publication of a notice of intention to issue the Certificates is legal and valid, in substantially the same form as Exhibit B, attached hereto; (3) the City's ordinance authorizing the Certificates is legal and valid, in substantially the same form as Exhibit C, attached hereto; (4) the proposed expenditures of the money raised by issuance of the Certificates are legal and

<sup>1</sup> A proposal to issue certain municipal bonds was defeated in a recent election. The Certificates at issue here are not intended to replace the defeated bonds, and the funds raised from the issuance of the Certificates will not be used for any of the purposes proposed for which the defeated bonds were intended.

valid, (5) the Certificates themselves are legal and valid, in substantially the same form as contained in Exhibit C, attached hereto; and (6) that the City has authority under Section 271.047(a) of the Certificate of Obligation Act, TEX. LOCAL GOV'T CODE § 271.047(a), to issue the Certificates without holding an election pursuant to § 8.05(f) of the City Charter.

The Expedited Declaratory Judgment Act required the Court, upon receipt of the City's Original Petition, to immediately issue an order setting this matter for trial at 10:00 a.m. on the first Monday after the twentieth day after the date of the order.<sup>2</sup> The trial is set for Monday, June 15, 2009.

## II. PARTIES, JURISDICTION, AND VENUE

### A. The City

The City is a home rule city and municipal corporation. The City is authorized to issue the Certificates under Section 271.047(a) of the Certificate of Obligation Act (the "Certificate of Obligation Act" or the "Act") and is an "issuer" within the meaning of Section 1205.001 of the Expedited Declaratory Judgment Act. The Certificates are "Public Securities" within the meaning of Section 1205.001 of the Expedited Declaratory Judgment Act. The City, as an issuer, proposes to issue the Certificates in the form and substance more fully described below.

### B. Interested Parties and Notice to Interested Parties

Subject to the notice requirements imposed by the Expedited Declaratory Judgment Act and described below, all Interested Parties are effectively made a party to this action, and the Court's jurisdiction extends to each of them as though they were individually named and

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<sup>2</sup> TEX. GOV'T CODE ANN. § 1205.041(a) (Vernon 2005) ("The court in which an action under this chapter is brought shall, on receipt of the petition, immediately issue an order. . . ."); *see also id.* at § 1205.041(b) ("The order must, in general terms and without naming them, advise the persons described by Subsection (a) and the attorney general of their right to: (1) appear for trial at 10:00 a.m. on the first Monday after the 20th day after the date of the order. . . .").

personally served in this action.<sup>3</sup> Any Interested Party may become a named party to this action by filing an answer to this First Amended Petition on or before the time set for hearing and trial, or thereafter by intervention with leave of court.<sup>4</sup>

Section 1205.041 of the Expedited Declaratory Judgment Act required the Court, upon receipt of this petition, to immediately issue an Order, in the form of a notice, directed to all Interested Parties, of their right to appear for trial at 10 o'clock, a.m., on the first Monday after the 20th day after the date of the Court's Order and to show cause why the prayers of this petition should not be granted and why the Certificates and their authorization should not be validated and confirmed. Pursuant to Section 1205.043 of the Expedited Declaratory Judgment Act, the Clerk of the Court is required to publish a "substantial copy of the order" in a "newspaper of general circulation" in Travis County, Harris County, and Galveston County. Such notice shall be published "one in each of two consecutive calendar weeks, with the date of the first publication before the 14th day before the trial date."<sup>5</sup>

### C. The Attorney General of Texas

In accordance with Section 1205.042 of the Expedited Declaratory Judgment Act, the Attorney General of Texas ("Attorney General") must be served with a copy of the Original Petition and the Order before the 20th day before the trial date set in the Order. The Attorney General may be served with citation at the following address:

Attorney General of Texas  
Price Daniel Sr. Building  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711-2548

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<sup>3</sup> See Section 1205.044 of the Expedited Declaratory Judgment Act.

<sup>4</sup> See Section 1205.062 of the Expedited Declaratory Judgment Act.

<sup>5</sup> See Section 1205.043 of the Expedited Declaratory Judgment Act. The Court entered an Order Regarding Publication of Notice and Notice of Proceedings and Order on May 22, 2009.

#### **D. Jurisdiction and Venue**

This Court has jurisdiction over the subject matter of this action, over all Interested Parties, and over the Attorney General of Texas pursuant to the Expedited Declaratory Judgment Act.

Venue is proper in Travis County pursuant to Section 1205.022 of the Expedited Declaratory Judgment Act. TEX. GOV'T CODE ANN. § 1205.022 ("An issuer may bring an action under this chapter in a district court of Travis County . . .").

### **III. ADDITIONAL BACKGROUND AND FACTS**

#### **A. Home Rule City**

The City is a political subdivision of the State of Texas located in Harris County and Galveston County. It was incorporated in 1960 and operates as a home-rule city under the laws of the State of Texas and a charter approved by the voters in 1971. *See* FRIENDSWOOD, TEX. CITY CHARTER § 2.01 (2008).<sup>6</sup> It is authorized by the Act to issue certificates of obligation to provide funds to construct any public work; to purchase materials, supplies, equipment, machinery, buildings, land, and rights-of-way for authorized purposes and needs; to pay for professional services, such as tax appraisal, legal services, and map making; to pay for an interest in and rights to water or sewer treatment capacity; constructing or equipping a jail; constructing, renovating, or improving a county building; constructing bridges; demolition of dangerous structures; and restoration of historic buildings. TEX. LOCAL GOV'T CODE §§ 271.041 *et seq.* (Vernon 2007). Accordingly, the City proposes to issue the Certificates to fund (1) necessary improvements to the City Animal Control Center and the City's Record Retention Center, (2) the construction and rehabilitation of City streets, and (3) the purchase of park land close to its city limits but located in Brazoria County, Texas.

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<sup>6</sup> The relevant sections of the City Charter are attached as Exhibit D.

By way of background, home rule cities are larger cities (more than 5,000 inhabitants) in which citizens adopt a home rule charter to define the structure, power, duties, and authority of their local government. TEX. CONST. ART XI, § 5. They derive their powers not from the legislature, but from the Texas Constitution. See TEX. CONST. ART XI, § 5; *Proctor v. Andrews*, 972 S.W.2d 729, 733 (Tex. 1998). A home rule city has all the powers of the state not inconsistent with the Texas Constitution or the general laws enacted by the legislature. TEX. CONST. ART XI, § 5; *Proctor*, 972 S.W.2d at 733. Accordingly, a home rule city may not adopt or enforce a charter provision or ordinance that is inconsistent with the general laws relating to the same subject matter, but rather in such instances the city must defer to the general laws.

#### **B. The Certificate of Obligation Act Controls**

The Certificate of Obligation Act is a general law that provides a streamlined procedure for financing certain purposes, including the acquisition of land for authorized purposes. In the Act, the Legislature comprehensively addresses a municipality's authority to issue certificates of obligation for such purposes without an election.

In this instance, there is an inconsistency between the City's Home Rule Charter and the Certificate of Obligation Act. The Act expressly authorizes the issuance of certificates of obligation without an election.<sup>7</sup> In fact, the only time an election is required under the Act is when the municipality's secretary receives, before authorization of the issuance of the certificates, a petition signed by at least five percent of the qualified voters of the municipality.<sup>8</sup> In contrast, the City Charter provides that "the Council shall be prohibited from incurring debt not payable from then current revenues unless a proposition therefor has been approved by the

<sup>7</sup> TEX. LOCAL GOV'T CODE ANN. § 271.047(a) (Vernon 2007).

<sup>8</sup> TEX. LOCAL GOV'T CODE ANN. § 271.049(c) (Vernon 2007).

voters at a Special Election held for such purpose.” FRIENDSWOOD, TEX., CITY CHARTER § 8.05(f) (2008).

Because there is an inconsistency, the Act controls. First, the Texas Constitution provides that “. . . no charter or any ordinance passed under said charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State.” TEX. CONST. ART. XI, §5. Accordingly, under the Texas Constitution, the general law enacted by the legislature (i.e., the Act) controls and no election is required.

Second, the unambiguous language of the Act makes clear that it is independent authority for the issuance of certificates of obligation and controls when there is a conflict between the Act and a city charter: “A home rule municipality may use this subchapter regardless of any provision in the municipality’s charter to the contrary.” TEX. LOCAL GOV’T CODE ANN. § 271.044(b) (Vernon 2007).

If a statute is clear and unambiguous, extrinsic aids and rules of statutory construction are inappropriate. *Dallas Morning News Co. v. Bd. of Trustees of Dallas Indep. Schl. Dist.*, 861 S.W.2d 532, 535 (Tex. App. – Dallas 1993, writ denied). Where language in a statute is unambiguous, a court must seek the intent of the legislature as found in the plain and common meaning of the words and terms used. *Monsanto Co. v. Cornerstones Mun. Utility Dist.*, 865 S.W.2d 937, 939 (Tex. 1993). Words in statutes have their ordinary meaning unless the statute defines them or they are connected with and used with reference to a particular trade or subject matter or are a term of art. TEX. GOV’T CODE ANN. § 312.002 (Vernon 2007); *Dallas Morning News Co.*, 861 S.W.2d at 535. In construing a statute, regardless of whether the statute is considered ambiguous on its face, a court may consider the object sought to be attained and the consequences of any particular construction. TEX. GOV’T CODE ANN. § 311.023 (Vernon 2007);

*City of Dallas*, 879 S.W.2d at 270. Furthermore, every word of a statute is presumed to have been used for a purpose, and the cardinal rule of statutory construction requires that each sentence, clause, phrase, and word be given effect if reasonably possible. *Reames v. Police Officers' Pension Bd.*, 928 S.W.2d 628, 632 (Tex. App.- Houston [14th Dist.] 1996, no writ).

A closer look at the plain language of the Act demonstrates that the object sought to be attained by the inclusion of Section 271.049(d) was to create *one specific instance* in which an election is required. This is evidence that the Legislature did not intend for an election to be required unless five percent of the municipality's qualified voters signed a petition protesting the issuance of the certificates. In other words, the legislature clearly contemplated the instances in which they would require elections under the Act, and the legislature made an affirmative decision not to require them absent a petition. Thus, Friendswood is not required to hold an election prior to the issuance of the Certificates.

#### C. The City May Use the Funds to Purchase Park Land

The Expedited Declaratory Judgment Act permits an issuer to seek a declaratory judgment that "each expenditure or proposed expenditure relating to the public securities" is legal and valid. TEX. GOV'T CODE ANN. § 1205.021(3). The City proposes to use a portion of the funds from the Certificates to purchase park land just outside its city limits but in Brazoria County. As a home rule city, the City has the power to purchase this land. A home rule city has all the powers of the state not inconsistent with the Texas Constitution or the general laws enacted by the legislature. TEX. CONST. ART XI, § 5; *Proctor*, 972 S.W.2d at 733. A general law does not limit the power of a home rule city unless the statute makes the legislature's intent to limit that power "unmistakably clear." *Lower Colorado River Auth. v. City of San Marcos*, 523 S.W.2d 641 (Tex. 1975).

Texas Local Government Code Ann. § 331.001 expressly grants counties and cities the right to purchase park land as long as that land is within the county in which the municipality is situated. This express statutory authority is essential for counties and for "general law" cities that must look to specific grants of legislative authority to act. However, home rule cities already possess broader power to acquire park land without regard to the location of the land, and this statute does not limit that power. In *City of College Station v. Turtle Rock Corporation*, 680 S.W.2d 802 (Tex. 1984), the Supreme Court found that this statute did not limit the power of home rule cities to acquire park land.<sup>9</sup> The Court found that the statute "also applies to counties and general law cities, and thus serves as a grant of specific power to these non-home rule entities," but that it does not "unmistakably" limit the power of home rule cities. *Id.* at 807-808. Moreover, Texas Local Government Code Ann. § 51.072 states that powers granted to municipalities in the Local Government Code are in addition to, not in place of, the general powers of home rule cities. *See also* TEX. LOCAL GOV'T CODE ANN. § 315.001 (Vernon 2007) (stating that the powers granted in that title, which encompasses § 331.001, to municipalities to acquire parks outside municipal limits are in addition to powers granted by the municipal charter). Nothing in the City's charter limits the acquisition of land outside the City's limits or outside the counties in which the City is located.

#### **D. Why This Declaratory Judgment Action Is Necessary**

The City anticipates that certain residents of the City intend to file litigation in an effort to forestall the issuance of the Certificates. The proceeds of the Certificates will be used by the City to make necessary improvements to the City Animal Control Center and the City's Record Retention Center; for the construction and rehabilitation of City streets; and for the acquisition of certain park land in Brazoria County, Texas. Such improvements and acquisitions are essential

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<sup>9</sup> At the time, the statute was found at Tex. Rev. Civ. Stat. Ann. art. 6081c.

to public safety and orderly and efficient administration of city business. However, the purchasers of the Certificates will not complete the transaction if litigation threatens the validity of the Certificates. Thus, the mere filing of a lawsuit by any plaintiff whatsoever implicating the validity of the Certificates can result in a practical injunction that stops badly-needed public projects in their tracks - without bond, without hearing, and even without substance.

#### **E. The Expedited Declaratory Judgment Act**

Fortunately, the Texas Legislature enacted the Expedited Declaratory Judgment Act for the very purpose of accelerating the resolution of real or imagined legal questions that might be asserted by any persons. Legal questions regarding the validity of any proposed actions of a city would, even if without merit, instantly stop the sale of public securities by the State's subdivisions, instrumentalities, and public corporations for needed public purposes and infrastructure. Accordingly, the City brings this action under the Expedited Declaratory Judgment Act to prevent any possible disruptions to its plans to prepare for the future in a legal, rational, and business-like manner. By validating the Certificates, pledges, and expenditures, the City will be able to more effectively sell the Certificates to the market and reassure the market that the securities are legal and valid.

#### **IV. ORDERS REQUIRED BY THE EXPEDITED DECLARATORY JUDGMENT ACT**

On May 22, 2009, the Court entered and issued an Order in accordance with Sections 1205.041 and 1205.042 of the Expedited Declaratory Judgment Act, directed to all Interested Parties and the Attorney General of Texas.

The Clerk of this Court has also provided the required notice of this proceeding pursuant to Section 1205.043 of the Expedited Declaratory Judgment Act by arranging publication of a Notice and Order in a newspaper of general circulation in Travis County and in a newspaper of

general circulation in Harris County and Galveston County. This notice is to be published on May 29, 2009 and June 5, 2009, in accordance with Section 1205.043's requirements that said notice be published once in each of two consecutive calendar weeks, with the date of the first publication to be not less than 14 days prior to the date set for the hearing and trial.

The City respectfully prays that this Court follow the procedures set forth in the Expedited Declaratory Judgment Act and further prays that, pursuant to Section 1205.065 of the Expedited Declaratory Judgment Act, the Court "with the least possible delay" grant priority to all proceedings, hearings, and the trial in relation to this First Amended Petition, over all other cases, causes, or matters pending in this Court.

#### **V. PRAYER FOR A DECLARATORY JUDGMENT**

For the reasons expressed above, the City respectfully prays that this Court, upon trial and final hearing, and subject to the notice of intent being published and the petition period running in accordance with the Act, enter a declaratory judgment declaring:

- (a) that the City is authorized by law to issue the Certificates;
- (b) that the City's resolution authorizing the publication of a notice of intention to issue the Certificates is legal and valid, in substantially the same form as Exhibit B, attached hereto;
- (c) that the City's ordinance authorizing the issuance of the Certificates is legal and valid, in substantially the same form as Exhibit C, attached hereto;
- (d) that the proposed expenditures of the money raised by issuance of the Certificates are legal and valid;
- (e) that the Certificates themselves, in substantially the same form as contained in Exhibit C, attached hereto, are legal and valid; and

(f) that the City has authority under the Act to issue the Certificates without holding an election under § 8.05 of the City's Home Rule Charter.

The City also requests an order requiring all costs of the City and of any supporting intervenors in this case be taxed against any opposing Interested Parties or opposing intervenors. All costs not taxed against others, including costs and expenses of the Attorney General of Texas shall be taxed against the City. The City further requests such other and further relief and orders to which the City may show itself justly entitled at law or in equity.

Respectfully submitted,

/s/ Patrick W. Mizell  
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