

ORDINANCE NO. 68-2003

**ORDINANCE OF THE CITY OF ORCHARD, TEXAS,
APPROVING AN EXTRATERRITORIAL JURISDICTION BOUNDARY AGREEMENT
BETWEEN THE CITY OF ORCHARD, TEXAS, AND
THE CITY OF ROSENBERG, TEXAS**

WHEREAS, the City of Orchard, Texas ("Orchard") and the City of Rosenberg, Texas ("Rosenberg") are involved in litigation styled Cause No. 02-CV-126414; *City of Orchard, Texas vs. City of Rosenberg, Texas*; In the 240th Judicial Court of Fort Bend County, Texas (the "Lawsuit") regarding whether certain tracts of land are within the extraterritorial jurisdiction ("ETJ") of Orchard or Rosenberg, as further described in the Lawsuit (the "Disputed Area"); and

WHEREAS, after participating in mediation, Orchard and Rosenberg have agreed which portion of the Disputed Area will remain in the ETJ of Orchard, which portion of the Disputed Area will remain in the ETJ of Rosenberg, which portion of the Disputed Area will become part of the ETJ of Rosenberg and which part of the Disputed Area will become part of the ETJ of Orchard; and

WHEREAS, the City Commission of Orchard has determined that it is in the best interest of Orchard to enter into the Extraterritorial Jurisdiction Boundary Agreement (the "Boundary Agreement") with Rosenberg attached hereto as **Exhibit "A"** and incorporated herein for all purposes, which Boundary Agreement reduces, to some extent, the ETJ of Orchard previously established by ordinances adopted by Orchard pursuant to petitions submitted to Orchard by landowners; and

WHEREAS, pursuant to Section 42.023 of the Texas Local Government Code, the ETJ of a municipality may not be reduced unless the governing body of the municipality gives its written consent by ordinance or resolution. **Now, Therefore,**

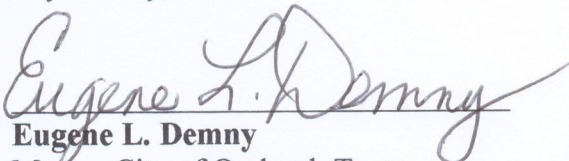
BE IT ORDAINED BY THE CITY OF ORCHARD, TEXAS:

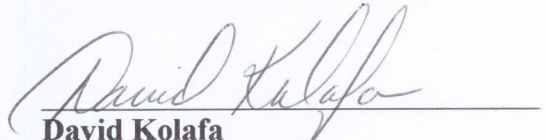
Section 1. The facts and recitals set forth in the preamble of this Ordinance are hereby found and determined to be true and correct.

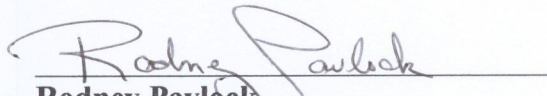
Section 2. The Boundary Agreement attached hereto as **Exhibit "A"** is hereby approved by the City Commission of Orchard and the Mayor and City Secretary of Orchard are hereby authorized to execute said Boundary Agreement on behalf of the City.

Section 3. The City Secretary will note the date of passage of this Ordinance in the minutes of the meeting at which this Ordinance is adopted. This Ordinance shall become effective immediately upon the date of its passage and adoption.

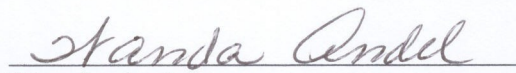
PASSED AND APPROVED this 9th day of May, 2003.


Eugene L. Demny
Mayor, City of Orchard, Texas

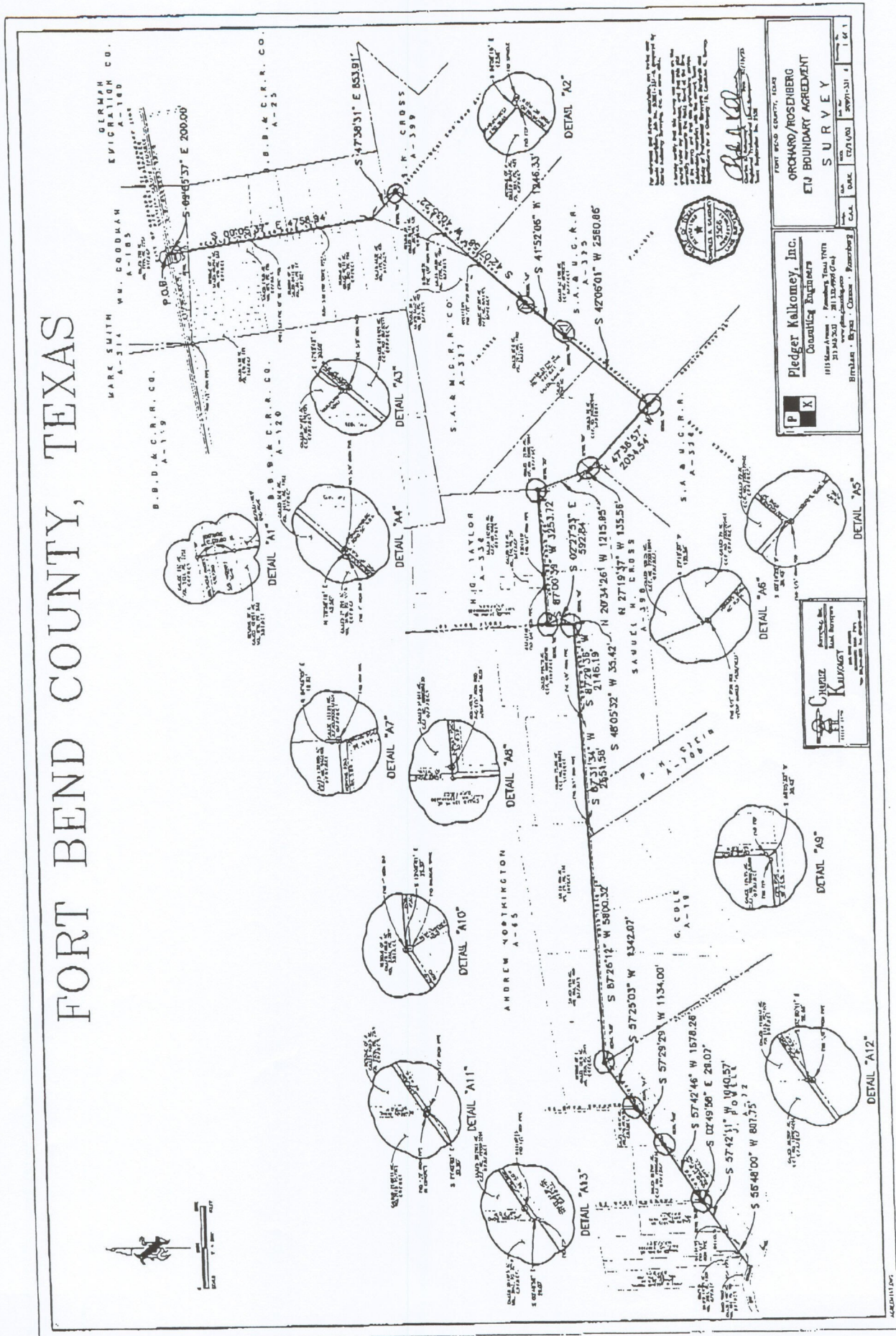

David Kolafa
Commissioner, City of Orchard, Texas


Rodney Pavlock
Commissioner, City of Orchard, Texas

ATTEST:


Wanda Andel
City Secretary, City of Orchard, Texas

FORT BEND COUNTY, TEXAS



CHARLIE KALKOMEY SURVEYING, INC.

1815 MONS AVENUE
ROSENBERG, TEXAS 77471
281 342-2033

CHARLIE KALKOMEY
REGISTERED PROFESSIONAL LAND SURVEYOR

CHARLES A. KALKOMEY
REGISTERED PROFESSIONAL LAND SURVEYOR

ROSENBERG/ORCHARD EXTRATERRITORIAL JURISDICTION AGREEMENT LINE

FIELD NOTES FOR A LINE REPRESENTING THE EXTRATERRITORIAL JURISDICTION AGREEMENT LINE BETWEEN THE CITY OF ROSENBERG, TEXAS, AND THE CITY OF ORCHARD, TEXAS, FORT BEND COUNTY, TEXAS, AND BEING FURTHER DESCRIBED BY METES AND BOUNDS AS FOLLOWS, WITH ALL BEARINGS BEING BASED ON THAT PORTION OF THE CENTERLINE OF DRACHENBERG ROAD, BEING THE COMMON LINE OF THE S. A. & M. G. RAILROAD COMPANY SURVEY, ABSTRACT 325, THE S. A. & M. G. RAILROAD COMPANY SURVEY, ABSTRACT 327, AS BEING SOUTH 42 DEGREES 06 MINUTES 01 SECOND WEST.

BEGINNING at a point in the north right-of-way line of the Southern Pacific Railroad right-of-way, being the point of intersection of said line with the northerly extension of the west right-of-way line of Beasley-West End Road (60-foot right-of-way) for the **Place of Beginning** of the herein described line, said point being in the south line of that certain called 280 acre tract described in deed recorded in Volume 2729, Page 2232, Official Records, Fort Bend County, Texas, said point being in the William Goodman Survey, Abstract 185, Fort Bend County, Texas, said point also being in the existing City of Orchard Extraterritorial Jurisdiction line as established by ordinance dated May, 1997;

THENCE South 09 degrees 05 minutes 37 seconds East along the northerly extension of the west right-of-way line of Beasley-West End Road, crossing the Southern Pacific Railroad right-of-way and the U.S. Highway 90A right-of-way, 200.00 feet to the point of intersection of the south right-of-line of U.S. Highway 90A with the west right-of-way line of Beasley-West End Road, said point also being in the north line of a residue of that certain called 48.894 acre tract described in deed recorded in Volume 678, Page 533, Deed Records, Fort Bend County, Texas, from said point a ½ inch iron pipe found at the northwest corner of a certain called 6.80 acre tract described in deed recorded in Volume 678, Page 539, Deed Records, Fort Bend County, Texas, bears South 81 degrees 11 minutes 04 seconds West, 2,221.76 feet;

THENCE South 09 degrees 05 minutes 37 seconds East continuing along the west right-of-way line of Beasley-West End Road, at 1,865.51 feet pass a 12 inch square concrete post found in the common line of the said called 48.894 acre tract and the residue of a certain called 84.12 acre tract described in deed recorded in Volume 881, Page 67, Deed Records, Fort Bend County, Texas, said point also being the southeast corner of a certain called 7.935 acre tract described in deed recorded in Volume 678, Page 550, Deed Records, Fort Bend County, Texas, at 3,515.88 feet pass a fence post found in the common line of the said residue of a called 84.12 acre tract and the residue of a certain called 42.71 acre tract described in deed recorded in Volume 242, Page 154, Deed Records, Fort Bend County, Texas, and continuing for a total distance of 4,758.94 feet to a point being an angle point in the west right-of-way line of Beasley-West End Road;

THENCE South 47 degrees 38 minutes 31 seconds East along the southwest right-of-way line of Beasley-West End Road, 853.91 feet to a fence corner post found at the point of intersection of said line with the northwest right-of-way line of Drachenberg Road for corner, from said point a spindle found in the centerline intersection of Beasley-West End Road and Drachenberg Road (50-foot right-of-way) bears North 86 degrees 58 minutes 18 seconds East, 42.56 feet;

THENCE South 42 degrees 07 minutes 58 seconds West along the northwest right-of-way line of Drachenberg Road, at 1,546.31 feet pass a ½ inch iron pipe found on said line, being in the southeast line of a certain called 46.00 acre tract described in deed recorded in Volume 2200, Page 1354, Official Records, Fort Bend County, Texas, at 2,612.89 feet pass a ½ inch iron rod found on said line, being in the common line of the residue of that certain called 84.42 acre tract described in deed recorded in Volume 257, Page 425, Deed Records, Fort Bend County, Texas, and that certain called 47.987 acre tract described in deed recorded in County Clerk's File No. 9761125, Official Public Records, Fort Bend County, Texas, and continuing for a total distance of 4,035.22 feet to the point of intersection of said line with the southeasterly extension of the centerline of FM Highway 1875, from said point a 5/8 inch iron rod found at the point of intersection of the southeasterly extension of the centerline of FM Highway 1875 with the centerline of Drachenberg Road, same being in the common line of the S. A. & M. G. Railroad Company Survey, Abstract 327, and the S. A. & M. G. Railroad Company Survey, Abstract 325, bears South 47 degrees 43 minutes 42 seconds East, 30.00 feet;

THENCE South 41 degrees 52 minutes 06 seconds West, 1,246.33 feet to a 1 inch iron bar found at the south corner of a certain called 60 acre tract described in deed recorded in Volume 2617, Page 1762, Official Records, Fort Bend County, Texas, said point also being in the southeast line of a certain called 21.796 acre tract described in deed recorded in Volume 2439, Page 1116, Official Records, Fort Bend County, Texas, from said point a 5/8 inch iron rod found at the point of intersection of the centerline of Drachenberg Road, same being the common line of the S. A. & M. G. Railroad Company Survey, Abstract 327, and the S. A. & M. G. Railroad Company Survey, Abstract 325, with the northwesterly projection of the centerline of FM Highway 1875 bears North 78 degrees 59 minutes 18 seconds East, 40.50 feet;

THENCE South 42 degrees 06 minutes 01 second West continuing along the northwest right-of-way line of Drachenberg Road, 2,560.86 feet to the point of intersection of said line with the northeast right-of-way line of Hopkins Road (60-foot right-of-way) for corner, from said point a 5/8 inch iron rod found at the point of intersection of the centerline of Drachenberg Road with the centerline of Hopkins Road, same being the northeast line of the S. A. & M. G. Railroad Company Survey, Abstract 326, said point also being the west corner of the S. A. & M. G. Railroad Company Survey, Abstract 325, bears South 00 degrees 14 minutes 25 seconds West, 36.43 feet;

THENCE North 47 degrees 36 minutes 57 seconds West along the northeast right-of-way line of Hopkins Road, 2,054.54 feet to 5/8 inch iron rod with cap marked "1535/4035" found at an angle point in said line, said point being in the common line of that certain called 70 acre tract described in deed recorded in County Clerk's File No. 2002020403, Official Public Records, Fort Bend County, Texas, and that certain called 129.25 acre tract described in deed recorded in County Clerk's File No. 2000012804, Official Public Records, Fort Bend County, Texas;

THENCE North 27 degrees 19 minutes 37 seconds West continuing along the northeast right-of-way line of Hopkins Road, 135.56 feet to an angle point in said line;

THENCE North 20 degrees 34 minutes 26 seconds West continuing along the northeast right-of-way line of Hopkins Road, 1,215.95 feet to a point in a turn in Hopkins Road to the left, from said point, a 60-d nail found at the southeast corner of that certain called 132.985 acre tract described in deed recorded in County Clerk's File No. 9468100, Official Public Records, Fort Bend County, Texas, bears North 84 degrees 43 minutes 15 seconds East, 19.83 feet;

THENCE South 87 degrees 00 minutes 39 seconds West along the north right-of-way line of Hopkins Road, same being the south line of the said called 132.985 acre tract, at 2,037.51 feet pass a ¼ inch iron pipe found at the southwest corner of said called 132.985 acre tract, same being the southeast corner of that certain called 5.0 acre tract described in deed recorded in Volume 574, Page 259, Deed Records, Fort Bend County, Texas, at 2,337.68 feet pass a ¼ inch iron pipe found at the southwest corner of said called 5.0 acre tract, same being in the east line of that certain called 54.683 acre tract described in deed recorded in County Clerk's File No. 1999086930, Official Public Records, Fort Bend County, Texas, at 3,195.74 feet pass a 5/8 inch iron rod with cap marked "4035" found at the point of intersection of the said line with east right-of-way line of Engle Road (60-foot right-of-way), and continuing for a total distance of 3,253.72 feet to a point in the west right-of-way line of Engle Road for corner;

THENCE South 02 degrees 27 minutes 53 seconds East along the west right-of-way line of Engle Road, 592.84 feet to a fence corner post at an angle point in said line;

THENCE South 48 degrees 05 minutes 32 seconds West, 35.42 feet to a fence corner post found at the point of intersection of said line with the north right-of-way line of Koym Road (60-foot right-of-way);

THENCE South 87 degrees 29 minutes 36 seconds West along the north right-of-way line of Koym Road, 2,146.19 feet to a ½ inch iron pipe found in the common line of a certain called 126.70 acre tract described in deed recorded in County Clerk's File No. 1999103698, Official Public Records, Fort Bend County, Texas, that certain called 75.387 acre tract described in deed recorded in County Clerk's File No. 9620872, Official Public Records, Fort Bend County, Texas;

THENCE South 87 degrees 31 minutes 34 seconds West continuing along the north right-of-way line of Koym Road, 2,551.58 feet to a ¾ inch iron pipe found in the common line of the aforementioned called 75.387 acre tract and that certain called 104 acre tract described in deed recorded in Volume 371, Page 134, Deed Records, Fort Bend County, Texas;

THENCE South 87 degrees 26 minutes 12 seconds West continuing along the north right-of-way line of Koym Road, 5,800.32 feet to a 1 inch iron bar found at an angle point in said line, from said point a railroad spike found at the intersection of the centerline of Koym Road with the centerline of West-Tavener Road, said point being the northwest corner of the G. Cole Survey, Abstract 19, and the north corner of the J. Powell Survey, Abstract 72, bears South 13 degrees 00 minutes 41 seconds East, 25.37 feet;

THENCE South 57 degrees 25 minutes 03 seconds West continuing along the northwest right-of-way line of Koym Road, 1,342.07 feet to a ½ inch iron pipe found set in concrete at the point of intersection of said line with the west right-of-way line of Behrens Road (60-foot right-of-way), from said point a ½ inch iron pipe found at the point of intersection of the centerline of Behrens Road with the centerline of Koym Road, same being in the common line of the Andrew Northington League, Abstract 65, and the J. Powell Survey, Abstract 72, said point also being the southeast corner of that certain called 19.8617 acre tract described in deed recorded in Volume 2110, Page 1078, Official Records, Fort Bend County, Texas, bears South 71 degrees 42 minutes 02 seconds East, 32.30 feet;

THENCE South 57 degrees 29 minutes 29 seconds West continuing along the northwest right-of-way line of Koym Road, 1,134.00 feet to a point in the common line of said called 19.8617 acre tract, and a certain called 38.2901 acre tract described in deed recorded in County Clerk's File No. 1999045594, Official Public Records, Fort Bend County, Texas, from said point, a ½ inch iron pipe found at the southwest corner of said called 19.8617 acre tract, same being the southeast corner of the said called 38.2901 acre tract, as located in the centerline of Koym Road, same being in the common line of the Andrew Northington League, Abstract 65, and the J. Powell Survey, Abstract 72, bears South 03 degrees 00 minutes 11 seconds East, 28.66 feet;

THENCE South 57 degrees 42 minutes 46 seconds West continuing along the northwest right-of-way line of Koym Road, at 1,607.73 feet pass a ½ inch iron pipe found at the point of intersection of said line with the east right-of-way line of Jackson Road (60-foot right-of-way) and continuing for a total distance of 1,678.26 feet to a point in the west right-of-way line of Jackson Road for corner, said point also being in the east line of a certain called 29.1915 acre tract described in deed recorded in Volume 2442, Page 2214, Official Records, Fort Bend County, Texas;

THENCE South 02 degrees 49 minutes 58 seconds East along the west right-of-way line of Jackson Road, same being the east line of said called 29.1915 acre tract, 29.07 feet to a fence corner post found in the common line of the Andrew Northington League, Abstract 65, and the J. Powell Survey, Abstract 72 for corner, said point being the southeast corner of the said called 29.1915 acre tract;

THENCE South 57 degrees 42 minutes 11 seconds West along the common line of the Andrew Northington League, Abstract 65, and the J. Powell Survey, Abstract 72, same being the common line of the said called 29.1915 acre tract and an adjoining called 51.32 acre tract described in deed recorded in Volume 2663, Page 1181, Official Records, Fort Bend County, Texas, at 854.96 feet pass a ½ inch iron pipe found at the southwest corner of said called 29.1915 acre tract, same being the southeast corner of a certain called 40.606 acre tract described in deed recorded in County Clerk's File No. 9707154, Official Public Records, Fort Bend County, Texas, and continuing for a total distance of 1,040.57 feet to an angle point in said line;

THENCE South 56 degrees 48 minutes 00 seconds West continuing along the common line of the Andrew Northington League, Abstract 65, and the J. Powell Survey, Abstract 72, at 482.75 feet pass the southwest corner of said called 40.606 acre tract, same being the upper southeast corner of that certain called 4.0379 acre tract described in deed recorded in Volume 2051, Page 1209, Official Records, Fort Bend County, Texas, at 512.75 feet pass the lower southeast corner of said called 4.0379 acre tract, same being the east corner of that certain called 2.907 acre tract (Third Tract) described in deed recorded in Volume 896, Page 706, Deed Records, Fort Bend County, Texas, and continuing for a total distance of 807.75 feet to a point at the water's edge along the northeast bank of the San Bernard River for the **Point of Termination** of the herein described line.

For reference and further description see Survey Plat No. 50901-331 II prepared by the undersigned on same date.

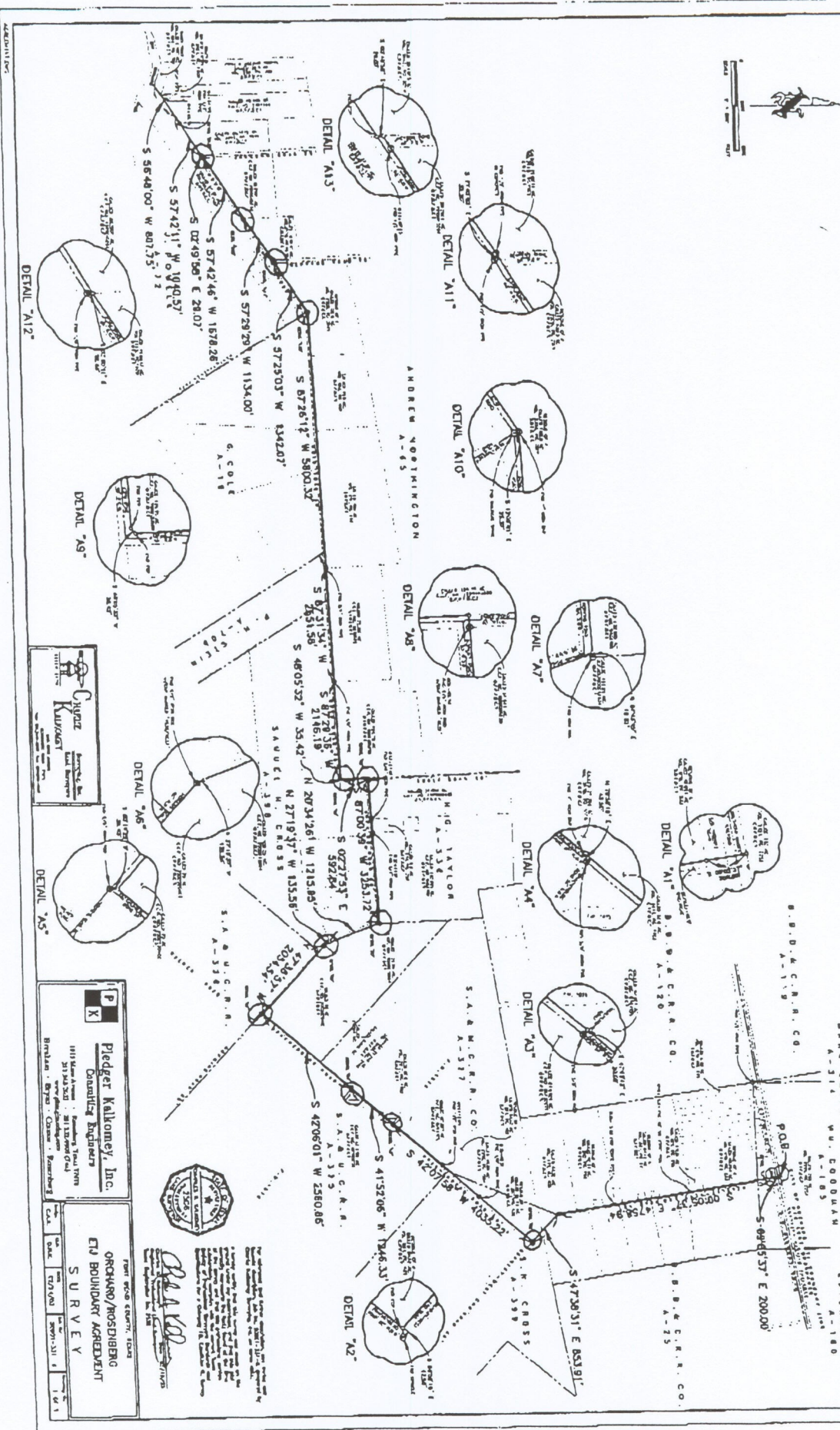


A handwritten signature in dark ink, appearing to read "Charles A. Kalkomey", with a horizontal line drawn underneath the name.

Charles A. Kalkomey, R.P.L.S.
Texas Registration Number 2506
March 19, 2003

Job Number 50901-331 II

FORT BEND COUNTY, TEXAS



Uiguz
Kalkomey

P
X
Piedler Kalkomey, Inc.
Geomatics Engineers
1111 West 17th Street
Houston, Texas 77058
713.594.3333
www.piedlerkalkomey.com

ORCHARD/ROSDIBERG
ETU BOUNDARY AGREEMENT
S U R V E Y



Handwritten signature and notes.

**EXTRATERRITORIAL JURISDICTION BOUNDARY AGREEMENT
BETWEEN
THE CITY OF ORCHARD, TEXAS,
AND
THE CITY OF ROSENBERG, TEXAS**

WHEREAS, the City of Orchard, Texas (Orchard), a general law municipality and the City of Rosenberg, Texas (Rosenberg), a home rule municipality are body politics and are cities organized and existing under the laws of the State of Texas and are collectively referred to herein as Parties; and

WHEREAS, the Parties each have jurisdiction of their corporate and extraterritorial jurisdictional (ETJ) boundaries and the real property located therein to the extent that municipalities have jurisdiction over property within their corporate or ETJ limits; and

WHEREAS, the Parties acknowledge and confess that there has arisen a question, dispute and/or uncertainty as to the size, configuration or area of real property within their respective EJT boundaries as set out in the pleadings filed in Cause No. 02-CV-126414; *City of Orchard, Texas vs. City of Rosenberg, Texas*; In the 240th Judicial District Court of Fort Bend County, Texas (Lawsuit); and

WHEREAS, the Parties hereto acknowledge that they are entering into this Extraterritorial Jurisdiction Boundary Agreement (Agreement) in connection with the settlement of the Lawsuit and that by signing and executing this Agreement, they do mutually represent to each other that their respective city councils have met in properly called session and have determined that this Agreement is in the best interest of their respective cities and that there are no legal impediments or reasons why the Parties cannot enter into this Agreement; and

WHEREAS, Orchard and Rosenberg have agreed, by the consideration and passage of ordinances or resolutions as provided for in Texas Local Govt. Code 42.023 authorizing the signing of this Agreement, to forever respect the extraterritorial jurisdictional boundaries of each other established pursuant to this Agreement.

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is acknowledged and confessed by the Parties, the Parties mutually covenant and agree as follows:

1. The City of Orchard, Texas (hereinafter referred to as "Orchard"), and the City of Rosenberg, Texas (hereinafter referred to as "Rosenberg"), mutually covenant and agree that the extraterritorial jurisdictional ("ETJ") boundaries of their respective cities shall be made and adjusted in accordance with this Extraterritorial Jurisdiction Boundary Agreement (hereinafter referred to as this "Agreement") and any pleading, document, letter or allegation in relation thereto previously issued or promulgated by either Party shall have no force and affect what so ever to the extent that the provisions thereof conflict with this Agreement.
2. Orchard acknowledges that part of the consideration for Rosenberg's execution of this Agreement is Orchard's agreement that it will not contest Rosenberg's claim that it has a two-mile ETJ boundary.
3. Both Orchard and Rosenberg adopt the findings of fact and conclusions as set out in this Agreement as the findings of fact and conclusions of their respective cities as if repeated verbatim in a separate document or any ordinance authorizing signing of this Agreement adopted by their respective city councils.
4. Orchard and Rosenberg do irrevocably agree that the ETJ boundaries of their respective cities shall be adjusted and aligned as provided in this Agreement and that this Agreement shall control over any prior or conflicting boundary agreements or over any ordinances of annexation, ordinances purportedly extending extraterritorial jurisdiction, or boundary adjustment to the extent that they may be in conflict with the provisions of this Agreement.
5. Orchard and Rosenberg do hereby irrevocably agree and declare that the ETJ boundary line between their respective areas and territory shall be as set out in **Exhibit "A"**, which is attached hereto and incorporated herein for all purposes and is comprised of field notes entitled "Rosenberg/Orchard Extraterritorial Jurisdiction Agreement Line" and an attached survey plat (hereinafter collectively referred to as the "Exhibit A Field Notes and Plat") and agree that the territory described in the Exhibit A Field Notes and Plat is contiguous to other areas and territory of each city. Rosenberg also irrevocably agrees and declares that its ETJ boundaries will never cross to the northerly or westerly side of the boundaries established in the Exhibit A Field Notes and Plat. Orchard also irrevocably agrees and declares that its ETJ boundaries will never cross to the southerly or easterly side of the boundaries established in the Exhibit A Field Notes and Plat.

6. From and after the date of this Agreement, Rosenberg waives and extinguishes any right it may have or may have had prior to the date of this Agreement to claim that any of the area apportioned to Orchard in the Exhibit A Field Notes and Plat is within the ETJ of Rosenberg. From and after the date of this Agreement, Orchard waives and extinguishes any right it may have or may have had prior to the date of this Agreement to claim that any of the area apportioned to Rosenberg in the attached Exhibit A Field Notes and Plat is within the ETJ of Orchard.
7. The City Secretaries of the Cities of Orchard and Rosenberg shall maintain in their offices, available for public inspection, maps delineating the ETJ boundaries of the Cities of Orchard and Rosenberg as a result of this Agreement.

IN TESTIMONY WHEREOF, the Cities of Orchard and Rosenberg have authorized the execution of this Agreement by their respective Mayors and City Secretaries by appropriate action.

Signed and executed by the Mayor and the City Secretary of the City of Orchard, Texas, under the authority granted in Ordinance Number 68-2003 finally passed and approved on 9th day of May, 2003, a certified copy of which is attached hereto as Exhibit "B".

CITY OF ORCHARD, TEXAS

By: Eugene L. Demny

Eugene Demny, Mayor

ATTEST:

By: Wanda Andel

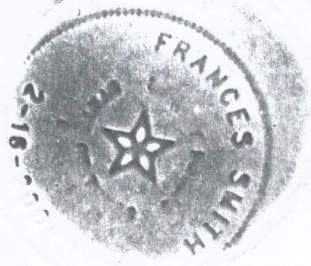
Wanda Andel, City Secretary

ACKNOWLEDGEMENT

Before me the undersigned authority, a notary public, on this day appeared the Mayor and City Secretary of the City of Orchard, Texas, who each on oath acknowledged to me that they executed the foregoing Extraterritorial Jurisdiction Boundary Agreement pursuant to the authority granted to them by the City of Orchard, Texas, for the purposes stated therein.

Dated this the 9th day of May, 2003.

(NOTARY SEAL)



Frances Smith
Notary Public, State of Texas

Signed and executed by the Mayor and the City Secretary of the City of Rosenberg, Texas under the authority granted in Ordinance Number _____ finally passed and approved on _____ day of _____, 2003, a certified copy of which is attached hereto as Exhibit "C".

CITY OF ROSENBERG, TEXAS

By: _____
Its Mayor

ATTEST:

By: _____
Its City Secretary

ACKNOWLEDGEMENT

Before me the undersigned authority, a notary public, on this day appeared the Mayor and City Secretary of the City of Rosenberg, Texas, who each on oath acknowledged to me that they executed the foregoing Extraterritorial Jurisdiction Boundary Agreement pursuant to the authority granted to them by the City of Rosenberg, Texas, and the ordinance duly adopted in connection therewith, for the purposes stated therein.

Dated this the _____ day of _____, 2003.

(NOTARY SEAL)

Notary Public, State of Texas