

STRATEGIC PARTNERSHIP AGREEMENT

BETWEEN

THE CITY OF SUGAR LAND, TEXAS

AND

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 113

**STRATEGIC PARTNERSHIP AGREEMENT
BETWEEN THE CITY OF SUGAR LAND, TEXAS,
AND FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 113**

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

This Strategic Partnership Agreement (the "Agreement") is made and entered into as of the Effective Date by and between the CITY OF SUGAR LAND, TEXAS (the "City"), a home-rule municipal corporation, acting by and through its governing body, the City Council of Sugar Land, Texas, and FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 113, a conservation and reclamation district created pursuant to Article XIV, Section 59, Texas Constitution and operating pursuant to Chapters 49 and 54, Texas Water Code (the "District").

RECITALS

The District is comprised of approximately 559.713 acres, all of which is located in the extra-territorial jurisdiction of the City of Sugar Land in Fort Bend County, Texas.

The City is a home-rule city with all powers except those specifically limited by the Constitution and laws of the State of Texas.

The City and the District agree that the best interests of the residents of the City and the District are served by establishing certain restrictions and commitments to provide certainty to the District and the City concerning annexation and disposition of the District's funds upon annexation.

The City finds that certain characteristics of the District justify the annexation of the District at this time.

Chapter 43, Texas Local Government Code, authorizes the City and the District to enter into a strategic partnership agreement that may provide for such lawful terms that the parties consider appropriate to provide for the provision of services to the District and the annexation of the land within the District into the City.

NOW, THEREFORE, for and in consideration of the mutual agreements, covenants, and conditions contained herein, and other good and valuable consideration, the City and the District agree as follows:

**ARTICLE 1
DEFINITIONS AND FINDINGS**

Section 1.01 Terms Defined in this Agreement

Unless the context requires otherwise, and in addition to the terms defined above, the following terms and phrases used in this Agreement shall have the meanings set out below:

"City" means the City of Sugar Land, Texas, a home-rule municipal corporation, acting by and through its governing body, the City Council of Sugar Land, Texas.

"City Council" means the City Council of the City of Sugar Land or any successor governing body.

"City Manager" means the City Manager of the City of Sugar Land, Texas.

"District" means Fort Bend County Municipal Utility District No. 113.

"Effective Date" means July 5, 2005.

"ETJ" means the extraterritorial jurisdiction of the City.

"TCEQ" means the Texas Commission on Environmental Quality and its successors.

Section 1.02 Findings and Conclusions

The City and the District hereby find and declare:

A. Section 43.0751, Texas Local Government Code authorizes the City and the District to enter into this Agreement to define the terms and conditions under which services to the District will be provided and funded by the parties and to define the terms and conditions under which the District will be annexed by the City at a future date by mutual consent as an alternative to annexation without the consent of the District.

B. In accordance with § 43.075(p) this Agreement (i) does not require the District to provide revenue to the City solely for the purpose of an agreement with the City to forego annexation of the District and (ii) provides benefits to each party, including revenue, services, and benefits which are reasonable and equitable with regard to the benefits provided to the other Party.

C. All the terms and conditions contained in this Agreement are lawful and appropriate to provide for the provision of municipal services and annexation.

D. The District is not obligated to make payments to the City for services except as otherwise provided herein.

E. This Agreement has been duly adopted by the City and the District after conducting two public hearings at which members of the public who wanted to present testimony or evidence regarding the Agreement were given the opportunity to do so. Notice of each hearing was published in the format required by Section 43.123(b), Texas Local Government Code and was published at least once on or after the 20th day before each public hearing.

ARTICLE 2 ANNEXATION OF THE DISTRICT

Section 2.01 Annexation

A. Conditions Precedent to Annexation. The primary purpose of this Agreement is to provide for a definitive time when the City will annex the land within the District, dissolve the District and succeed to the assets and liabilities of the District. The District and the City agree that the City will annex the District prior to January 1, 2006 and dissolve the District within ninety (90) days after annexation, provided that the District complies with the following terms and conditions prior to the City annexing the District:

1. The District shall levy a tax for the year 2005 at a rate not less than the lower of (a) the City's 2005 tax rate or (b) the maximum amount the District can levy without being required to hold public hearings under current tax laws.
2. The District shall have available \$2,207,662, taking into consideration the revenues to be received from the District's 2005 tax levy, to pay the debt service on all outstanding District bonds for the years 2006 and 2007.
3. The District shall have available \$245,000 at the time of annexation of the District to be transferred to the City for the City to use to fulfill its obligations under Section 2.01.B.
4. The District shall retain an auditor and pay all costs to have the District's books audited for the period from the commencement of the District's 2005-2006 fiscal year through annexation and dissolution of the District. Such costs are estimated to be \$14,300 (\$7400 for FYE 9/30/05 and \$6900 for the period from 10/1/05 through dissolution).
5. The District shall retain and pay all costs of the District's tax assessor/collector to collect the District's outstanding taxes as of the date of annexation through February 28, 2006 and to turn such receipts over to the City. The City will assume the responsibility for collecting District taxes as of March 1, 2006. Such costs are estimated to be \$21,000.

6. The District shall retain the same firm as the City uses to serve as the delinquent tax attorney to collect its 2005 delinquent taxes. Upon annexation and dissolution of the District, such delinquent tax attorney will come to a mutually acceptable agreement with any other delinquent tax attorney firms that were engaged to collect taxes prior to the 2005 tax year as to the responsibility for the collection of such prior year taxes.
7. The District shall retain and pay all costs of the necessary consultants to perform all work necessary to comply with all arbitrage laws and to prepare any interim reports through the date of dissolution of the District needed to apprise the City of the District's current status of compliance with such arbitrage laws and the District's potential liabilities. Such costs are estimated to be \$6750.
8. The District shall assure that all District construction and repair contracts are completed and all amounts owing are paid in full as of the date of the dissolution of the District.
9. The District shall assure that all outstanding District obligations as of the date of the dissolution of the district, except debt service of District bonds that has not become due, are paid in full or otherwise settled prior to the dissolution of the District.
10. The District shall assure that its contracts with the two homeowners' associations in the District for streetlight reimbursement and water cost sharing shall continue until September 30, 2006, with payments to be made pursuant to the applicable City policies. The District shall provide that such contracts shall terminate on September 30, 2006. Upon termination, the homeowners' associations must contract individually with the City for such reimbursements and cost sharing arrangements if they desire to participate in the City's programs.
11. The District shall provide evidence of its fulfillment of these conditions by October 1, 2005.

The District acknowledges that if the annexation of the District is not completed by January 1, 2006, the City will not consider annexation of the District again until 2007.

B. Prepayment of Fees by the District. The parties acknowledge and agree that there will be an extended period between the annexation of the District and the City's first receipt of taxes from the land in the District to cover the payment of the costs for the City to provide fire protection, streetlight reimbursements and water cost sharing within the District. Therefore, the parties agree that the City shall use the \$245,000 transferred from the District to the City upon annexation as follows. The City will use \$168,000.00 of the District's funds to cover the costs of those City services prior to the receipt of tax revenues levied on property in the District. The City agrees to provide police services during this period without any prepayment of fees by the District. In

addition, the parties agree that the City shall, after annexation of the District, use \$77,000 to make the those repairs listed on Exhibit A attached hereto within 120 days of dissolution of the District.

c. City Obligations.

1. The City will install, at the City's sole cost, stop signs at Elkins Road and Kings Pass no later than ninety (90) days after annexing the District. In addition, the City shall undertake its standard analysis procedure between September 26-30, 2005, or October 10-14, 2005, to determine if the following intersections should become four way stops: Elkins Road at Avalon Place, Commonwealth Boulevard at Kings Pass, and Commonwealth Boulevard at Monarch Drive. The City agrees that if the analysis indicates that four-way stops are warranted at any of these intersections, the City will install stop signs at the warranted intersections no later than ninety (90) days after annexing the District at the City's sole cost. The City agrees to enforce the posted speed limits at these intersections upon annexation of the District.
2. The District has requested that the City agree to install a traffic signal at the intersection of Elkins Road and University Boulevard when University Boulevard is extended to Elkins Road. The City agrees that during the design of the extension of University Boulevard, the City will undertake its standard analysis procedure to determine if a traffic signal is warranted and recommended. The City agrees that if the signal is warranted and recommended, the City will install the traffic signal at the City's cost. The District acknowledges that based on the best information currently available, the City anticipates that it will be at least four (4) years before the University Boulevard extension will be constructed, but nothing herein shall be construed as a guarantee that the extension will be constructed within this time frame.
3. The District has requested that the City move forward with the extension of Lexington Boulevard to University Boulevard as soon as practicable as this extension will relieve the heavy usage of Commonwealth Boulevard in the District by other areas within First Colony. The City represents that it has the plans for this extension in its current thoroughfare plan and CIP and that the City will follow its standard procedure for determination of the necessity for construction of this extension.

d. Prior to Annexation and Dissolution. Prior to annexation and dissolution of the District, the District will continue to own and operate its facilities, and the City will provide City services to the District's residents for which the District and City have contracted.

E. Dissolution of District. Within ninety (90) days after annexation, the City will dissolve the District. Upon annexation and dissolution of the District, the City will assume all rights, assets, liabilities and obligations of the District. Upon annexation, the residents of the former District shall be treated as residents of the City for all purposes.

F. Binding on Present and Future Owners of Property in the District. The District, on behalf of itself and on behalf of all present and future owners of land within its boundaries hereby grants consent to the City to annex the territory within the boundaries of the District in accordance with this Agreement; it being the intent of the parties that the consent granted hereby shall bind the District and each owner and future owner of land within the District.

G. Other Rules Applicable to Annexation. Annexation shall otherwise be in accordance with existing law. It is the intention of the parties herein that this Agreement qualifies as a Strategic Partnership Agreement as that term is defined under Sect. 43.0751 Texas Local Government Code, and as such any annexation by City of all or a part of the District is exempt from the requirements set forth in Subchapter C of Chapter 43 of the Texas Local Government Code pertaining to annexation procedures for areas annexed under a municipal annexation plan and, the City is not required to include the District in an annexation plan pursuant to TEX. LOCAL GOV'T CODE, §43.052(h)(3)(B). Furthermore, the District and the City agree to take all actions reasonably necessary to ensure that this Agreement continue as a Strategic Partnership Agreement throughout its term.

H. No Payment Required. Both parties to this Agreement understand and agree that the purpose of the terms and conditions in this Agreement does not include requiring the District to provide revenue to the municipality solely for the purpose of obtaining an agreement with the City to forgo annexation of the District, but rather for the reasons and purposes set forth herein.

Section 2.02 Restrictions on the Powers and Functions of the District

Prior to annexation, the District shall not incur additional debts, liabilities, or obligations, construct additional utility facilities, or sell or otherwise transfer property without prior written approval of the City Manager, which approval shall not be unreasonably withheld. Any action taken by the District in violation of this Section 2.02 shall be void. The District further covenants and agrees that it will not enter into any contract or agreement for non-capital expenditures that is not terminable upon 30 days written notice without the prior written approval of the City Manager, which approval shall not be unreasonably delayed or withheld.

Section 2.03 Attempted Incorporation in the District

Notwithstanding any provision herein to the contrary, in the event of a bona fide effort to incorporate a municipality that includes any portion of the District, the City shall be entitled to annex that portion of the District attempting to incorporate.

ARTICLE 3

MATERIAL BREACH, NOTICE AND REMEDIES

Section 3.01 Material Breach of Agreement

A. It is the intention of the parties to this Agreement that the District be regulated and annexed in accordance with the terms of this Agreement. The parties acknowledge and agree that any substantial deviation by the District from the material terms of this Agreement would frustrate the intent of this Agreement, and therefore, would be a material breach of this Agreement. A material breach of this Agreement by the District shall be deemed to have occurred upon failure of the District to approve or consent to any annexation of territory within the District by the City authorized by this Agreement.

B. The parties acknowledge and agree that any substantial deviation by the City from the material terms of this Agreement would frustrate the intent of this Agreement and, therefore, would be a material breach of this Agreement. A material breach of this Agreement by the City shall be deemed to have occurred in the following instances upon an attempt by the City to annex, in whole or in part, the District prior to the occurrence of the conditions set forth in this Agreement.

C. In the event that a party to this Agreement believes that another party has, by act or omission, committed a material breach of this Agreement, the provisions of this Article 3 shall provide the remedies for such default.

Section 3.02 Notice of District's Default

A. The City Manager shall notify the District in writing of an alleged failure by the District to comply with a provision of this Agreement, which notice shall specify the alleged failure with reasonable particularity. The District shall, within thirty (30) days after receipt of such notice or such longer period of time as the City Manager may specify in such notice, either cure such alleged failure or, in a written response to the City Manager, either present facts and arguments in refutation or excuse of such alleged failure or state that such alleged failure will be cured and set forth the method and time schedule for accomplishing such cure.

B. The City Manager shall determine (i) whether a failure to comply with a provision has occurred; (ii) whether such failure is excusable; and (iii) whether such failure has been cured or will be cured by the District. The District shall make available to the City Manager, if requested, any records, documents or other information necessary to make the determination.

C. In the event that the City Manager determines that such failure has not occurred, or that such failure either has been or will be cured in a manner and in accordance with a schedule reasonably satisfactory to the City Manager, or that such failure is excusable, such determination shall conclude the investigation.

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B. The parties acknowledge and agree that any substantial deviation by the City from the material terms of this Agreement would frustrate the intent of this Agreement and, therefore, would be a material breach of this Agreement. A material breach of this Agreement by the City shall be deemed to have occurred in the following instances upon an attempt by the City to annex, in whole or in part, the District prior to the occurrence of the conditions set forth in this Agreement.

C. In the event that a party to this Agreement believes that another party has, by act or omission, committed a material breach of this Agreement, the provisions of this Article 3 shall provide the remedies for such default.

Section 3.02 Notice of District's Default

A. The City Manager shall notify the District in writing of an alleged failure by the District to comply with a provision of this Agreement, which notice shall specify the alleged failure with reasonable particularity. The District shall, within thirty (30) days after receipt of such notice or such longer period of time as the City Manager may specify in such notice, either cure such alleged failure or, in a written response to the City Manager, either present facts and arguments in refutation or excuse of such alleged failure or state that such alleged failure will be cured and set forth the method and time schedule for accomplishing such cure.

B. The City Manager shall determine (i) whether a failure to comply with a provision has occurred; (ii) whether such failure is excusable; and (iii) whether such failure has been cured or will be cured by the District. The District shall make available to the City Manager, if requested, any records, documents or other information necessary to make the determination.

C. In the event that the City Manager determines that such failure has not occurred, or that such failure either has been or will be cured in a manner and in accordance with a schedule reasonably satisfactory to the City Manager, or that such failure is excusable, such determination shall conclude the investigation.

D. If the City Manager determines that a failure to comply with a provision has occurred and that such failure is not excusable and has not been or will not be cured by the District in a manner and in accordance with a schedule reasonably satisfactory to the City Manager, then the City Manager shall so notify the City Council in a written report which may recommend action to be taken by the City Council. The City Manager shall provide notice and a copy of such report to the District. After receipt of such report from the City Manager, or at any time upon its own motion, the City Council may proceed to mediation under Section 3.04, or arbitration under Section 3.05, or exercise the applicable remedy under Section 3.06 hereof, provided that if the City Council acts on its own motion, it shall follow the notice and procedural provisions of Section 3.02 hereof.

Section 3.03 Notice of City's Default

A. The District shall notify the City Manager in writing of an alleged failure by the City to comply with a provision of this Agreement, which notice shall specify the alleged failure with reasonable particularity. The City Manager shall, within thirty (30) days after receipt of such notice or such longer period of time as the District may specify in such notice, either cure such alleged failure or, in a written response to the District, either present facts and arguments in refutation or excuse of such alleged failure or state that such alleged failure will be cured and set forth the method and time schedule for accomplishing such cure.

B. The District shall determine (i) whether a failure to comply with a provision has occurred; (ii) whether such failure is excusable; and (iii) whether such failure has been cured or will be cured by the City. The City Manager shall make available to the District, if requested, any records, documents or other information necessary to make the determination.

C. In the event that the District determines that such failure has not occurred, or that such failure either has been or will be cured in a manner and in accordance with a schedule reasonably satisfactory to the District, or that such failure is excusable, such determination shall conclude the investigation.

D. If the District determines that a failure to comply with a provision has occurred and that such failure is not excusable and has not been or will not be cured by the City in a manner and in accordance with a schedule reasonably satisfactory to the District, then the District shall so notify the City Council in a written report which may request action to be taken by the City Council. The District shall provide notice and a copy of such report to the City Manager. If requested in the District's report, the City Manager agrees to add the matter to the agenda of the City Council for consideration and action by City Council.

Section 3.04 Arbitration

In the event the parties to this Agreement cannot, within a reasonable time, resolve their dispute pursuant to the procedures described in Sections 3.02 or 3.03, the parties agree to submit the disputed to mandatory and binding arbitration to be administered pursuant to the Texas General Arbitration Act and the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). Arbitration

proceedings hereunder shall be conducted in Fort Bend County, Texas, unless otherwise agreed to by the parties. The parties shall participate in good faith, and each party shall bear its own costs of the arbitration.

Section 3.05 Remedies

- A. The exclusive remedies for a default by any party include the following:
1. Monetary damages for actual losses incurred by the non-defaulting party if such recovery of monetary damages would otherwise be available under existing law and the defaulting party is not otherwise immune from paying such damages;
 2. Removal, repair, or replacement of any facility, building, or structure constructed in breach of this Agreement;
 3. Injunctive relief specifying the actions to be taken by the defaulting party and permitted to be taken by the non-defaulting party to remedy the default, including, specifically, the action provided for in paragraph B of this Section. Such injunctive relief shall be directed solely to the default and shall not address or include any activity or actions not directly related to the default.
 4. In the event of a determination by the City that the District has committed a material breach of this Agreement, the City may file suit in a court of competent jurisdiction in Fort Bend County, Texas, and seek any relief available at law or in equity, including, but not limited to, an action under the Uniform Declaratory Judgment Act and termination of this Agreement as to the District.
 5. In the event of a determination by the District that the City has committed a material breach of this Agreement, the District may file suit in a court of competent jurisdiction in Fort Bend County, Texas, and seek any relief available, at law or in equity, including, but not limited to, an action under the Uniform Declaratory Judgment Act.

ARTICLE 4

BINDING AGREEMENT, TERM, AMENDMENT, AND ASSIGNMENT

Section 4.01 Beneficiaries

This Agreement shall bind and inure to the benefit of the parties, their successors and assigns. This Agreement shall be recorded with the County Clerk in Official Records of Fort Bend County, Texas and shall bind each owner and each future owner of land included within the District's boundaries in accordance with Section 43.0751(c), Texas Local Government Code.

Section 4.02 Term and Termination

This Agreement shall commence and bind the parties on the Effective Date. Unless terminated on an earlier date pursuant to other provisions of this Agreement or by express written agreement executed by the City and the District, this Agreement terminate on January 1, 2006 if the City has not completed the annexation of the District by such date, If the annexation has been completed before January 1, 2006, this Agreement shall continue in effect until the District is dissolved. The obligations of the City following annexation and dissolution of the District shall survive termination of this Agreement. The terms of this Agreement shall constitute covenants running with the land comprising the District and shall be binding on all future owners of property within the District. A copy of this Agreement shall be recorded in the County Clerk Official Records of Fort Bend County, Texas.

ARTICLE 5

MISCELLANEOUS PROVISIONS

Section 5.01 Notice

The parties contemplate that they will engage in informal communications with respect to the subject matter of this Agreement. However, any formal notices or other communications ("Notice") required to be given by one party to another by this Agreement shall be given in writing addressed to the party to be notified at the address set forth below for such party, (i) by delivering the same in person, or (ii) by depositing the same in the United States Mail, certified or registered, return receipt requested, postage prepaid, addressed to the party to be notified, or (iii) by depositing the same with Federal Express or another nationally recognized courier service guaranteeing "next day delivery," addressed to the party to be notified, or (iv) by sending the same by telefax with confirming copy sent by mail. Notice deposited in the United States mail in the manner hereinabove described shall be deemed effective from and after the date of such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties, until changed as provided below, shall be as follows:

City: City of Sugar Land
2700 Town Center Boulevard North
Sugar Land, Texas 77479
Attn: City Manager (physical address)

City of Sugar Land
P. O. Box 110
Sugar Land, Texas 77487 (mailing address)

District: Fort Bend County Municipal Utility District No. 113
c/o Allen Boone Humphries Robinson
3200 Southwest Freeway
Suite 2600
Houston, Texas 77027
Attn: Lynne B. Humphries

The parties shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America by giving at least five (5) days written notice to the other Parties. If any date or any period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating the notice shall be extended to the first business day following such Saturday, Sunday or legal holiday.

Section 5.02 Annexation/Deannexation by District

This Agreement applies to all land located within the District. In the event land is annexed or dennexed by the District, the terms and conditions set forth in this Agreement shall continue to apply to the District as it may be newly configured.

Section 5.03 Time

Time is of the essence in all things pertaining to the performance of this Agreement.

Section 5.04 Severability

If any provision of this Agreement is held to be illegal, invalid, or unenforceable then, and in that event, it is the intention of the Parties hereto that the remainder of this Agreement shall not be affected.

Section 5.05 Waiver

Any failure by a Party hereto to insist upon strict performance by the other party of any material provision of this Agreement shall not be deemed a waiver thereof or of any other provision hereof, and such party shall have the right at any time thereafter to insist upon strict performance of any and all of the provisions of this Agreement.

Section 5.06 Applicable Law and Venue

The construction and validity of this Agreement shall be governed by the laws of the State of Texas without regard to conflicts of law principles. Venue shall be in Fort Bend County, Texas.

Section 5.07 Reservation of Rights

To the extent not inconsistent with this Agreement, each party reserves all rights, privileges, and immunities under applicable laws.

Section 5.08 Further Documents

The parties agree that at any time after execution of this Agreement, they will, upon request of another party, execute and deliver such further documents and do such further acts and things as the other party may reasonably request in order to effectuate the terms of this Agreement.

Section 5.09 Incorporation of Exhibits and Other Documents by Reference

All Exhibits and other documents attached to or referred to in this Agreement are incorporated herein by reference for the purposes set forth in this Agreement.

Section 5.10 Effect of State and Federal Laws

Notwithstanding any other provision of this Agreement, the District shall comply with all applicable statutes or regulations of the United States and the State of Texas, as well as any City Ordinances or rules implementing such statutes or regulations, and such City Ordinances or rules shall not be deemed a breach or default under this Agreement.

Section 5.11 Authority for Execution

The City hereby certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with the City Charter and City Ordinances. The District hereby certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted by the Board of Directors of the District.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement this ____ day of _____, 2005.

CITY OF SUGAR LAND, TEXAS

By: _____
Mayor

ATTEST:

City Secretary

FORT BEND COUNTY MUNICIPAL UTILITY
DISTRICT NO. 113

By: David L. Shaw
President, Board of Directors

ATTEST:

Steph Morris
Secretary, Board of Directors