



Legislation Details (With Text)

File #: 19-0419 **Version:** 1 **Name:** MUD #2 SPA - 2nd Hearing
Type: Agreement **Status:** Agenda Ready
File created: 8/3/2019 **In control:** City Council Regular
On agenda: 8/22/2019 **Final action:**
Title: Public Hearing, presentation, discussion, and possible action regarding approval of a Strategic Partnership Agreement between the City and Brazos County Municipal Utility District No.2.
Sponsors: Jennifer Prochazka
Indexes:
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Attachments: [MUD 2 SPA - Final](#)

Date	Ver.	Action By	Action	Result
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Public Hearing, presentation, discussion, and possible action regarding approval of a Strategic Partnership Agreement between the City and Brazos County Municipal Utility District No.2.

Relationship to Strategic Goals:

- Financially Sustainable City
- Core Services and Infrastructure
- Diverse Growing Economy

Recommendation: Staff recommends approval of the Strategic Partnership Agreement.

Summary: The Strategic Partnership Agreement (SPA) outlines conditions for annexation of the District and limited purpose annexation of commercial land. This is the second of two public hearings required before approving the SPA with Brazos County MUD No. 2. The first Public hearing is was held during the July 25, 2019 City Council Meeting.

Budget & Financial Summary: N/A

Legal Review: Yes

Attachments:

1. Strategic Partnership Agreement

STRATEGIC PARTNERSHIP AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

This **STRATEGIC PARTNERSHIP AGREEMENT** (this “*Agreement*”) is made and entered into, effective as of _____, 201__, by and between the **CITY OF COLLEGE STATION, TEXAS**, a municipal corporation and home rule city of the State of Texas (the “*City*”), and **BRAZOS COUNTY MUNICIPAL UTILITY DISTRICT NO. 2**, 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 was created with the consent of the City for the purpose of providing water, sewer, drainage, and road facilities to the land within its boundaries. The District is located entirely within the extraterritorial jurisdiction (“*ETJ*”) of the City.

The provisions of TEX. LOCAL GOV’T CODE, Section 43.0751 (the “*Act*”) state that the City and the District may enter into a strategic partnership agreement that provides for the terms and conditions under which services will be provided and funded by the City and the District and under which the District will continue to exist for an extended period after annexation of all or a portion of the land within the District by the City.

The City and the District, after the provision of required notices, held public hearings in compliance with the Act. Based upon public input received at such hearings, the City and the District wish to enter into a strategic partnership agreement to provide the terms and conditions under which services will be provided and funded by the City and the District and under which the District will continue to exist for an extended period of time after the District is annexed for general purposes.

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**

1.01. Definitions. The terms *Act*, *City*, *District* and *ETJ* shall have the meanings provided for them in the recitals, above. Except as may be otherwise defined, or the context clearly requires otherwise, capitalized terms and phrases used in this Agreement shall have the meanings as follows:

City Consent means the most recent resolution of the City consenting to the creation of the District, and the terms and conditions to such consent described therein.

Commercial means all nonresidential development, except for developments owned by a tax-exempt entity, a non-profit entity or a homeowner or property owner association.

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

Developer means the entity or entities advancing funds to the District for the design and construction of District facilities and for other legal purposes which advances are subject to reimbursement by the District pursuant to the rules of the Commission.

Person means any individual, partnership, association, firm, trust, estate, public or private corporation, or any other entity whatsoever.

1.02. Findings and conclusions. The City and the District hereby find and declare:

a. The Act 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 as agreed hereunder as an alternative to annexation without the consent of the District.

b. In compliance with Subsection (p) of the Act, 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 forgo annexation of the District, and (ii) provides benefits to each party, including revenue, services, and regulatory 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 TEX. LOCAL GOV'T CODE, Section 43.123(b) and was published at least once on or after the 20th day before each public hearing of the City.

ARTICLE 2 ANNEXATION OF THE DISTRICT

2.01. Conditions to annexation.

a. The parties agree that the District and its residents should be allowed to develop and function with certainty regarding the conditions under which annexation will be authorized by the City. As a result, the City and the District agree that, without regard

to the City's right and power under existing or subsequently enacted law and subject to Section 2.02, the City will not fully annex the District until both the following conditions have been satisfied, and shall thereafter be authorized, but not required, to fully annex the District for any purpose:

1. 90% of the initial installation of the water, sanitary sewer, drainage and paving facilities for which District bonds were authorized in the City's written consent has been completed ("Substantial Completion").

2. The Developer has been reimbursed to the maximum extent permitted by the rules of the Commission or the City assumes any obligation for such reimbursement of the District under such rules.

b. If the City wishes to complete the District facilities in order to comply with subsection a, item 1, above, the District will cooperate with the City to provide access to the District's facilities and allow such connection or supplement thereto as may be reasonably necessary upon written notice of its intent to so complete from the City to the District; provided that any such construction by or on behalf of the City shall be sufficient to provide water supply and distribution, wastewater collection and treatment, and drainage facilities to the entire unserved portion of the District.

c. Prior to annexing the District for full purposes, the City shall make the election either to dissolve the District and assume all rights, assets, liabilities and obligations of the District or to continue the District as a limited district for an extended period of time (the "Limited District") as further provided for in Section 2.05. The City will notify the District in writing of its election prior to full purpose annexation.

2.02. Annexation of Commercial property. Notwithstanding Section 2.01, the City may annex for limited purposes any Commercial property of the District at any time after the effective date of this Agreement, as determined by the City (the "Annexed Commercial Property"). In such event, the District shall remain in existence, with full powers, and any Annexed Commercial Property shall also remain in the boundaries of the District, subject to the full power and authority of the District with respect to water, wastewater and drainage facilities and services. This annexation provision is in lieu of any annexation of residential property prior to the annexation of the entire District as provided in this Article.

In accordance with TEX. LOCAL GOV'T CODE, Section 43.0751(r)(2), the District consents to noncontiguous annexation of the Annexed Commercial Property.

2.03 Annexation procedures. Because the District is, pursuant to this Agreement, an area that is the subject of a strategic partnership agreement, the City is not required to include the District in an annexation plan pursuant to TEX. LOCAL GOV'T CODE, Section 43.052(h)(3)(B).

2.04. Operations prior to full annexation. Prior to annexation of the entire District for full purposes, except as may be specifically provided in this Agreement or in the City Consent, the District is authorized to exercise all powers and functions of a municipal utility district provided by law, including, without limiting the foregoing, the power to incur additional debts, liabilities, or obligations, to construct additional utility facilities, or to contract with others for the provision and operation thereof, or sell or otherwise transfer property without prior approval of the City, and the exercise of such powers is hereby approved by the City.

2.05. Continuation of the District following full annexation. Upon full purpose annexation of the entire District under the provisions of Section 2.01 above, the District will continue to exist for an extended period to allow for the completion of District operations and the integration of the District's utility system into the City's utility system, following which period the City shall act to dissolve the District in accordance with applicable law. If the City has not elected for the District to continue as a Limited District and has not dissolved the District within 120 days after annexation, then the District shall be automatically dissolved on the 121st day after such annexation. At such time, the City will assume all rights, assets, liabilities and obligations of the District (including all obligations to reimburse the developers within the District) and the District will not be continued or converted for limited purposes.

If the City elects to continue the District as a Limited District following full purpose annexation as provided in Section 2.01, the boundaries of the Limited District will be the same of those of the District, and the Limited District will continue to be called Brazos County Municipal Utility District No. 2. The District will continue to exist as a Limited District to allow for the completion of District operations and the integration of the District's system into the City's system and the retirement of District bonded indebtedness, following which period the City shall act to dissolve the District in accordance with applicable law. The District will continue as a Limited District for an initial term of up to ten years, and the City may extend this term for additional ten year periods prior to the expiration of the initial term or any renewal term. Until the dissolution of the Limited District, the Limited District will retain all District rights, assets, liabilities and obligations and shall operate in all respects in the same manner as prior to its conversion to Limited District, subject to the terms of this Agreement. The City may dissolve the Limited District at any time. At such time as the Limited District is dissolved, the City will assume all rights, assets, liabilities and obligations of the District.

Upon full purpose annexation, fees and charges imposed on residents of the former District for services provided by the City shall be equal to those fees and charges imposed on all other residents of the City.

2.06. Limitation on incurring additional debt after annexation. After full purpose annexation of the District by the City, and without regard to whether the City has elected for the District to continue as a Limited District, the District or Limited District shall not incur additional debt, liabilities, or obligations which are not fully payable from currently budgeted funds and shall not sell or otherwise transfer property without approval of the City.

2.07. Attempted incorporation. Notwithstanding any provision herein to the contrary, in the event that an election is called pursuant to applicable law in connection with a bona fide petition

for incorporation of a municipality that includes a substantial portion of the District, the City shall be entitled to annex that portion the District attempting to incorporate.

ARTICLE 3
LIMITED PURPOSE ANNEXATION OF LAND

3.01. Imposition of the City's Sales and Use Tax.

In the event the City elects to annex Commercial property for limited purposes as provided in Section 2.02 of this Agreement, the City shall impose its sales and use tax upon the Annexed Commercial Property pursuant to Subsection (k) of the Act. The sales and use tax shall be imposed on the receipts from the sale and use at retail of taxable items at the rate of one and one-half percent (1 ½ %) or the rate specified under future amendments to Chapter 321 of the Tax Code. The sales and use tax shall take effect on the date described in Tax Code §321.102.

ARTICLE 4
DEFAULT, NOTICE AND REMEDIES

4.01. Default; notice. A breach of any material provision of this Agreement after notice and an opportunity to cure shall constitute a default. The non-breaching party shall notify the breaching party of an alleged breach, which notice shall specify the alleged breach with reasonable particularity. If the breaching party fails to cure the breach within a reasonable time not sooner than 30 days after receipt of such notice (or such longer period of time as the non-breaching party may specify in such notice), the non-breaching party may declare a default hereunder and exercise the remedies provided in this Agreement in the event of default.

4.02. Remedies. In the event of a default hereunder, the remedies of the non-defaulting party shall be limited to either or both of the following:

a. 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; and

b. Injunctive relief specifying the actions to be taken by the defaulting party to cure the default or otherwise comply with its obligations hereunder. 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.

ARTICLE 5
MISCELLANEOUS

5.01. 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 the Official Records of Brazos County, and shall bind and benefit each owner and each future owner of land included within the District's boundaries in accordance with Tex. Local Gov't Code, Section 43.0751(c). In the event of annexation of the District by the City, the Developer shall be considered a third-party beneficiary of this Agreement.

5.02 Term. This Agreement shall commence and bind the parties on the effective date first written above and continue for thirty (30) years thereafter, unless terminated on an earlier date pursuant to other provisions or by express written agreement executed by the City and the District. Upon the expiration of the initial term, this Agreement may be extended, upon the mutual consent of the parties, for successive one-year periods until all land within the District has been annexed into the City.

5.03. Notice. Any 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, (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 electronic mail (“email”) with confirming copy sent by regular 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 College Station
P. O. Box 9960
1101 Texas Ave.
College Station, TX 77842
Attn: City Manager
Email: _____

With a copy to: City of College Station
P. O. Box 9960
1101 Texas Ave.
College Station, TX 77842
Attn: City Attorney
Email: _____

District: Brazos County Municipal Utility District No. 2
c/o Allen Boone Humphries Robinson
3300 Southwest Freeway, Suite 2600
Houston, Texas 77027
Attn: Jessica Holoubek
Email: Jessica.holoubek@gmail.com

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 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.

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

5.05. 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.

5.06. 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.

5.07. 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 Brazos County, Texas.

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

5.09. 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 carry out the terms of this Agreement.

5.10. 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.

5.11. Effect of state and federal laws. Notwithstanding any other provision of this Agreement, the District and the City 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.

5.12. 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 PAGES FOLLOW

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement effective as of the date first written above.

CITY OF COLLEGE STATION, TEXAS

By: _____
Mayor

ATTEST:

By: _____
City Secretary

THE STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

This instrument was acknowledged before me on this the ____ day of _____, _____, by _____, City Manager of the City of College Station, Texas, on behalf of said city.

Notary Public, State of Texas

(NOTARY SEAL)

BRAZOS COUNTY MUNICIPAL
UTILITY DISTRICT NO. 2

By: _____
President, Board of Directors

ATTEST:

By: _____
Secretary

THE STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

This instrument was acknowledged before me on this the ____ day of _____,
____, by _____, _____ of the Board of
Directors of Brazos County Municipal Utility District No. 2, a political subdivision of the State of
Texas, on behalf of said political subdivision.

Notary Public, State of Texas

(NOTARY SEAL)