

ORDINANCE NO. 2022-01

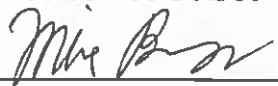
AN ORDINANCE OF THE CITY OF IOWA COLONY, TEXAS, APPROVING A STRATEGIC PARTERNSHIP AGREEMENT WITH BRAZORIA COUNTY MUNICIPAL UTILITY DISTRICT NO. 53; AND PROVIDING A SEVERANCE CLAUSE AND AN EFFECTIVE DATE.

BY IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF IOWA COLONY, TEXAS:

1. The term "Strategic Partnership Agreement" herein means the Strategic Partnership Agreement between the City of Iowa Colony, Texas ("the City") and Brazoria County Municipal Utility District No. 53 ("the District") that is attached hereto and incorporated herein in full.
2. The City Council of the City of Iowa Colony, Texas hereby finds that the following facts and all other facts stated in any part of this ordinance are true:
 - a. The City Council has held two public hearings on approval of the Strategic Partnership Agreement.
 - b. Notice of each of those public hearings was published in The Alvin Sun and otherwise given in compliance with Section 43.0751 of the Texas Local Government Code and all applicable law.
 - c. The District has also held two public hearings concerning approval of this Strategic Partnership Agreement.
 - d. The District gave notice of those hearings in compliance with Section 43.0751 of the Texas Local Government Code and all applicable law.
 - e. All requirements of Section 43.0751 of the Texas Local Government Code and all applicable law have been satisfied concerning the passage of this ordinance and the approval of the Strategic Partnership Agreement.
3. The City hereby approves the attached Amendment to Strategic Partnership Agreement. The Mayor and City Secretary are authorized and directed to execute that Agreement.
4. If any part of this ordinance, of whatever size, is ever declared invalid or unenforceable for any reason, the remainder of this ordinance shall remain in full force and effect.
5. Since the passage of this ordinance required two public hearings following notice in the newspaper, the Home Rule Charter of the City provides for this ordinance to be passed upon one reading. This ordinance shall be effective upon its passage and approval.

PASSED AND APPROVED ON JANUARY 10, 2022.

CITY OF IOWA COLONY, TEXAS

By: 
MICHAEL BYRUM-BRATSEN,
MAYOR

ATTEST:


KAYLEEN ROSSER, CITY SECRETARY



ATTACHMENT:
STRATEGIC PARTNERSHIP AGREEMENT

STRATEGIC PARTNERSHIP AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF BRAZORIA §

This **STRATEGIC PARTNERSHIP AGREEMENT** (this "Agreement") is made and entered into, effective as of January 10, 2022 by and between the **CITY OF IOWA COLONY, TEXAS**, a municipal corporation and general-law city of the State of Texas (the "City"), and **BRAZORIA COUNTY MUNICIPAL UTILITY DISTRICT NO. 53**, 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

1. The District was created for the purpose of providing water, sewer and drainage facilities, roads, recreational facilities, and fire protection facilities to the land within its boundaries. The District is located partly within the extraterritorial jurisdiction ("ETJ") of the City and partly within the boundaries of the City. The District is part of a master planned community of approximately 501 acres (the "Development").

2. The City determined that, because the District is not currently capable of being served with utilities by the City, its development can best proceed pursuant to a strategic partnership agreement with the municipal utility district within the Development.

3. To provide certainty and order with regard to the conduct of the Development and the roles of the City, the District, the City, Brazoria County Municipal Utility District No. 31 and Brazoria County Municipal Utility District No. 32 entered into that certain Amended Utility Agreement, dated 11/1/2019 (the "Utility Agreement"), to provide for certain terms in connection with the Development. In addition, the provisions of Tex. Local Gov't Code, §43.0751 as amended (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 may be dissolved upon annexation or may continue to exist for an extended period after annexation of the land within the District by the City.

4. 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 this Agreement to provide the terms and conditions under which services will be provided by the City and the District

and under which the District will either be annexed and dissolved or continue to exist for an extended period of time after the District is annexed for general purposes.

5. This Agreement is intended to satisfy the requirements of the Utility Agreement and constitutes a "strategic partnership agreement" pursuant to the Act; however, nothing herein shall be construed to imply that the parties are partners or that the Parties have the rights or obligations of general partners.

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," "Developer," "Development," "Development Agreement," "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 Regulations means each of the following ordinances of the City of Iowa Colony as well as all regulations adopted pursuant to the following: Subdivision Ordinance, No. 2018-30, No. 2015-09, 2006-06, 2002-10, and 2002-06, Design Criteria Manual, Ordinance No. 2017-13; Zoning Ordinance, No. 2019-14, No. 2012-07, 2012-06; Unified Development Code, Ordinance No. 2017-25, 2017-22, No. 2017-21 and 2017-18; all city building codes of any type, including but not limited to residential, non-residential, mechanical, HVAC, electrical, plumbing, fuel, gas, energy conservation, fire, and property maintenance, and any other building codes of any nature, whether similar or dissimilar to the foregoing Ordinance No. 2014-20; Major Thoroughfare Plan, Ordinance No. 2017-26; Flood Damage Prevention Ordinance, No. 2016-06; Drainage, Dirt Work, and Fill Dirt Ordinance, No. 2016-07; Right-of-Way Ordinance No. 2016-15; Culvert Ordinance, No. 2012-13; Overweight Vehicle Ordinance No. 2017-24; Pipeline Ordinance, No. 2014-10 and 2011-04; Drilling Ordinance, No. 88-01; Sign Ordinance, No. 2016-19; Ordinance Prohibiting Detention Pumps, No. 2002-08; and Ordinance Adopting Fee Schedules, No. 2017-20. The term "City Regulations" herein shall include not only the above numbered ordinances, but also all other ordinances of the City on the same subjects, by any number, governing the development of the Property.

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.

Effective Date and similar references means the date first written above.

Fee means the monthly fee assessed against residential property defined in Section 5.02, below.

Party or Parties means a party or the parties to this Agreement, being the City and the District.

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

TCEQ means the Texas Commission on Environmental Quality, or its successor.

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 may 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 or in other agreements with the City that the District may enter into.

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, §43.123(b) and was published at least once on or after the 20th day before each public hearing.

ARTICLE 2 ANNEXATION OF THE DISTRICT

2.01. Conditions to annexation. 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 for 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 annex the District for full purposes until one of the following conditions has been satisfied: (i) 90% of the developable acreage in the District has been developed with water, sanitary sewer, drainage and paving, and the Developer has been reimbursed to the maximum extent permitted by the rules of the TCEQ, or the City assumes any obligation for such reimbursement of the District under such rules ("Substantial Completion") or (ii) 20 years from the date of the SPA, whichever comes first. Upon satisfaction of either condition, the City shall be authorized, but not required, to annex the District for full purposes. Prior to annexing the District for full purposes, the City shall make the election either to dissolve the District and assume all the duties and obligations of the District or to continue the District as a limited District for an extended period of time (a "Limited District") for the purposes of completing the District's facilities and reimbursing the Developer and financing facilities. The City will notify the District in writing of its election and will coordinate with the District in taking such action. If the City wishes to complete the District facilities in order to comply with condition (i) 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.

2.02. Annexation of Commercial property. Notwithstanding Section 2.01, the City may annex for limited purposes any Commercial portions of the District at any time after the effective date of this Agreement, as determined by the City (the "Annexed Commercial Property"), solely for the purpose of imposing the City's sales and use tax within the area of limited purpose annexation. 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.

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, 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. 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.

2.06. Continuation of the District as a Limited District following full-purpose annexation. If the City elects to continue the District as a Limited District following full purpose annexation, the boundaries of the Limited District will be the same of those of the District, and the Limited District will continue to be called Brazoria County Municipal Utility District No. 53. The District will continue to exist as a Limited District to allow for the completion of District operations, financing of improvements, 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 abolish the District in accordance with applicable law. The District will continue to as a Limited District for a term of 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 abolition 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 section. The City may abolish Limited District at any time after (i) all of the District's water, wastewater treatment, and drainage facilities have been constructed; and (ii) the Developer, or the Developer's successors or assigns, has been reimbursed by the District to the maximum extent permitted by the rules of the TCEQ (or the City assumes any obligation for such reimbursement of the District under such rules). At such time as the Limited District is abolished, the City will assume all rights, assets, liabilities and obligations of the District and the District will not be continued.

2.07. Consent to annexation. The District consents to annexation of all or any portion of the District, except as herein prohibited, and the District shall record such consent in the real property records of the Brazoria County Clerk, so that it is binding upon the District's successors. The District also agrees to deliver a separate petition for such annexation together with this full executed Agreement. Any other consents within the power of the District to give that may be lawfully required to accomplish the annexation shall also be provided by the District, and to the extent such consents are not within the power of the District to give, the District shall cooperate with the City to obtain and deliver such consents from the persons with power to give them. All such consents shall be recorded with the County Clerk as covenants running with the land. All of said consents to annexation shall be delivered as soon as possible after the execution of this Agreement but shall be conditioned as provided in this Agreement.

2.08. Termination shall not impair consent to annexation. The termination of this Agreement or the District shall not impair any consent to annexation or obligation to provide any consent to annexation.

ARTICLE 3 ALLOCATION OF MUNICIPAL SERVICES WITHIN THE DISTRICT

3.01. City Fire/EMS services. The District will formulate, with the assistance and advice of the City, a "fire plan," as such term is used in Tex. Water Code, §49.351, consistent with the terms of this Section. At the time of this Agreement, emergency medical services are provided to the District by the Manvel Emergency Services District and fire protection services are provided to the District by the Iowa Colony Volunteer Fire Department. If the City in the future undertakes the provision of fire protection services or emergency medical services, the City may, but is not required to, provide all required fire and emergency medical services within the District. Such services will be provided as warranted by the then-current status of development within the District, on the same basis and using the same criteria as are used for the determination of the provision of such services within the City. The District will use its reasonable efforts to receive the required authorization and to thereafter contract with the City (in a form mutually agreeable and consistent with other such contracts entered into by the City relating to fire/EMS services outside the City) for the City to provide fire/EMS protection services to the District. Payment to the City with regard to services provided under this Section shall be described in the fire plan and shall be based upon the actual costs to the City, including reasonable overhead, in providing such services.

3.02. Police protection. The District may provide for the provision of enhanced police protection services within the District by contracting with the City or a third party provider of such services. If provided by the City, such services will be provided as warranted by the then-current status of development within the District, on the same basis and using the same criteria as are used for the determination of the provision of such services within the City. Payment to the City with regard to any police protection provided under this Section shall be based upon the actual costs of the City, including reasonable overhead, in providing such services.

3.03. Solid waste services. The District will provide solid waste collection services to the residential users within the District. The District may, at its option, either (i) enter into a separate contract to provide solid waste collection services to its residents, or (ii) request the City to extend any existing collection contract to cover the District. If the District elects the first option, it shall pay the contractor directly; if the District elects the second option, it shall pay the City for the costs attributable to the contract extension.

3.04. City inspection and regulation services. As a part of the municipal services to be provided within the District by the City, the City shall be authorized to enforce the City Regulations within the District, including the requirements included in such regulations relating to inspection of residential and commercial property and construction. The City reserves the right to charge an inspection fee for inspections conducted outside the City limits equal to the fee for such inspections inside the City. The District shall not be responsible for detecting or enforcing violations of the City Regulations. The District shall not transfer any new water or sewer service from a builder to the initial occupant of any structure requiring a certificate of occupancy without first obtaining from the applicant a certificate of occupancy issued by the City with respect to the structure. This Section shall not be construed to affect the validity or application of any prior vested rights of a landowner within the District. The City acknowledges preliminary plats for Sierra Vista West Section Nos. 1, 2, 3, 4 & 5 (the "Project") were filed with the Brazoria County Engineering Department and that City Regulations specific to minimum lot width and right-of-way width do not apply to the Project.

3.05. Infrastructure inspection fees. The District shall be responsible for the payment of the City's infrastructure construction inspection fees that are applicable to District facilities. The City intends to rely upon the District's inspection reports with periodic inspection by City inspectors, but the City reserves the right to provide for full-time inspection by City personnel or by contract inspection services.

3.06. Fees within Limited District. During the period when the District is a Limited District, residents of the Limited District shall be treated as residents of the City for all purposes, and the District obligations with respect to the payments to the City under Sections 3.01, 3.02, and 3.03, above, shall cease, and the City shall not levy or assess any fees or charges on such residents except as may be otherwise payable by the residents of the City generally.

ARTICLE 4

WATER, WASTEWATER AND DRAINAGE SERVICES

4.01. Generally. The District will provide all water, sewer and drainage services for the Development in the same manner as such services are provided by other similarly situated districts.

ARTICLE 5

SALES AND USE TAX PROVISIONS

5.01. Imposition of sales tax. The City is hereby authorized to impose its sales and use taxes within all or a part of the District that has been annexed for limited purposes by the City as provided in this Article.

5.02. Cooperation. The Parties will cooperate to provide such documentation as the City may reasonably require to satisfy the requirements of the State Comptroller in connection with the collection of sales and use taxes within the District.

ARTICLE 6 DEFAULT, NOTICE AND REMEDIES

6.01. 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 defaulting 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 (which shall not be 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.

6.02. 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. Regardless of any other provision, monetary damages shall not be recoverable by either party to this Agreement for a breach of this Agreement or for any tort relating to this Agreement. The parties stipulate that this Agreement is enforceable by specific performance; 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 7 MISCELLANEOUS

7.01. 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 each county in which the District is located, 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, §43.0751(c). In the event of abolition of the District by the City, the Developer shall be considered a third-party beneficiary of this Agreement.

7.02. Term. This Agreement shall commence and bind the Parties on the Effective Date and continue for 50 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 50 years from its Effective Date, this Agreement

may be extended, at the District's request, with City approval, for successive one-year periods until all land within the District has been annexed by the City.

7.03. Notice. Any notices or other communications (a "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 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 Iowa Colony
12003 Iowa Colony Boulevard (County Road 65)
Iowa Colony, Texas 77583
Attn: Mayor

District: Brazoria County Municipal Utility District No.
53
c/o Allen Boone Humphries Robinson LLP.
3200 Southwest Freeway, Suite 2600
Houston, Texas 77027
Attn: Timothy Austin

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.

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

7.05. 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.

7.06. 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.

7.07. 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 Brazoria County, Texas.

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

7.09. 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.

7.10. 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.

7.11. 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.

7.12. 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.


7.13. Recordation; covenant running with the land. Either party may record this Agreement and/or a memorandum hereof in the Official Records of Brazoria County, Texas, and the obligations of the District herein shall run with the land and bind all successors of the District. No provision of this Agreement may be amended without the advance, written consent of the City, specifically stating that such document is an amendment of this Agreement. Without limiting the generality of the foregoing, neither the owners of the Property herein described, nor any property owner's association shall have the authority to amend this Agreement.

7.14. Authority within City limits. Regardless of any other provision, nothing herein shall impair or restrict any authority, powers or rights of the City within the incorporated limits of the City.

[EXECUTION PAGES FOLLOW

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

CITY OF IOWA COLONY, TEXAS

By: 
Mayor

ATTEST:


City Secretary




BRAZORIA COUNTY MUNICIPAL UTILITY
DISTRICT NO. 53

By: 

President, Board of Directors

ATTEST:

By: 

Secretary