

**NOTICE OF SPECIAL CITY COUNCIL MEETING
CITY OF TOMBALL, TEXAS**



WEDNESDAY, MAY 6, 2015

5:30 P.M.

Notice is hereby given of a meeting of the Tomball City Council, to be held on Wednesday, May 6, 2015 at 5:30 P.M., City Hall, 401 Market Street, Tomball, Texas 77375, for the purpose of considering the following agenda items. All agenda items are subject to action. The Tomball City Council reserves the right to meet in a closed session for consultation with attorney on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

- 1.0 Call to Order
- 2.0 Public Comments and Receipt of Petitions *[At this time, anyone will be allowed to speak on any matter other than personnel matters or matters under litigation, for length of time not to exceed three minutes. No Council/Board discussion or action may take place on a matter until such matter has been placed on an agenda and posted in accordance with law.]*
- 3.0 New Business:
 - 3.1 Conduct Public Hearing Regarding a Proposed STRATEGIC PARTNERSHIP AGREEMENT between the City of Tomball, Texas and Harris County Municipal Utility District No. 273.
 - 3.2 Approve a Strategic Partnership Agreement between Harris County

Municipal Utility District No. 273 and the City of Tomball for Property
Consisting of 153.0194 Acres at the Southwest Corner of State Highway 249
and the Grand Parkway

4.0 Adjournment

CERTIFICATION

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall, City of Tomball, Texas, a place readily accessible to the general public at all times, on the 30th day of April 2015 by 5:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Doris Speer
Doris Speer
City Secretary, TRMC

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please feel free to contact the City Secretary's office at (281) 290-1002 or FAX (281) 351-6256 for further information.

AGENDAS MAY ALSO BE VIEWED ONLINE AT www.ci.tomball.tx.us.

Special City Council

Agenda Item

Data Sheet

Meeting Date: May 6, 2015

Topic:

Conduct Public Hearing Regarding a Proposed STRATEGIC PARTNERSHIP AGREEMENT between the City of Tomball, Texas and Harris County Municipal Utility District No. 273.

Background:

Harris County Municipal Utility District No. 273 has requested that the City consider a Strategic Partnership Agreement, under the provisions of Texas Local Government Code, Section 43.0751. The District is located within the extraterritorial jurisdiction of Tomball but is not within the corporate city limits. Two public hearings are required before passage of the designation ordinance. This is the second public hearing.

As required, the notice of the public hearings was published in the Tomball-Magnolia Tribune.

The Strategic Partnership Agreement provides for initial annexation of the limited-purpose tract by the City for limited purposes, provision of potable water service, imposition of the City's 2 percent sales and use tax, and possible full-purpose annexation of the territory. The Development Agreement between A-K Venture, HC MUD 273, and the City regarding this tract of land was approved on November 4, 2014.

Origination:

City Secretary

Recommendation:

N/A

Funding:

Party(ies) responsible for placing this item on agenda:

City Secretary

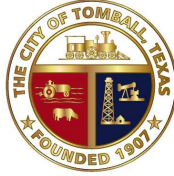
ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

Notice of Public Hearings

NOTICE OF PUBLIC HEARINGS

ON STRATEGIC PARTNERSHIP AGREEMENT BETWEEN THE CITY OF TOMBALL, TEXAS AND HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 273



**MONDAY, MAY 4, 2015
6:00 P.M.
AND
WEDNESDAY, MAY 6, 2015
5:30 P.M.**

Notice is hereby given that two **PUBLIC HEARINGS** will be held by the Tomball City Council, as the Governing Body of the City of Tomball, Texas. The first public hearing will be held at a Regularly Scheduled Council Meeting on Monday, May 4, 2015 **at 6:00 p.m.**, and the second public hearing will be held at a Special Meeting of City Council on Wednesday, May 6, 2015 at 5:30 p.m., in the Council Chambers, City Hall, 401 Market Street, Tomball, Texas, to Consider the Following:

A proposed **STRATEGIC PARTNERSHIP AGREEMENT** between the City of Tomball, Texas and Harris County Municipal Utility District No. 273.

All persons desiring to address Council regarding the proposed Strategic Partnership Agreement will be given an opportunity to be heard.

The City Council will, in addition, receive written comments if filed with the City Secretary prior to commencement of each public hearing. A copy of the Strategic Partnership Agreement is available for inspection at the office of the City Secretary, 401 Market Street, Tomball, Texas.

CERTIFICATION

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall, City of Tomball, Texas, a place readily accessible to the general public at all times, on the 22nd day of April 2015 by 6:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Doris Speer
Doris Speer
City Secretary, TRMC, CMC

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please feel free to contact the City Secretary's office at (281) 290-1002 or FAX (281) 351-6256 for further information.

AGENDAS MAY ALSO BE VIEWED ONLINE AT www.ci.tomball.tx.us

Special City Council

Agenda Item

Data Sheet

Meeting Date: May 6, 2015

Topic:

Approve a Strategic Partnership Agreement between Harris County Municipal Utility District No. 273 and the City of Tomball for Property Consisting of 153.0194 Acres at the Southwest Corner of State Highway 249 and the Grand Parkway

Background:

Harris County Municipal Utility District No. 273 executed the proposed Strategic Partnership Agreement, following two public hearings regarding the 153.0194-acre tract located at the southwest corner of State Highway 249 and the Grand Parkway.

Local Government Code Section 43.0751 states the municipality and district shall each conduct two public hearings at which members of the public who wish to present testimony or evidence regarding the proposed agreement shall be given the opportunity to do so. Notice of those two public hearings must be published in a newspaper of general circulation in the municipality, in the form and fashion prescribed by Section 43.123 (b), stating the purpose of the hearing, the date, time, and place of the hearing and the location where copies of the proposed agreement may be obtained prior to the hearing.

The notice of public hearings was published and posted as prescribed and the public hearings have been conducted.

Harris County MUD 273 is requesting that the City of Tomball approve and execute the Strategic Partnership Agreement prior to the May 9, 2015 County election. The Development Agreement between A-K Venture, HC MUD 273, and the City regarding this tract of land was approved on November 4, 2014.

Origination:

Harris County Municipal Utility District No. 273

Recommendation:

N/A

Funding:

Party(ies) responsible for placing this item on agenda:

City Secretary

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

Strategic Partnership Agreement

STRATEGIC PARTNERSHIP AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This **STRATEGIC PARTNERSHIP AGREEMENT** (this "Agreement") is made and entered into, effective as of _____, by and between the **CITY OF TOMBALL, TEXAS**, a home rule municipality of the State of Texas (the "City"), and **HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 273**, 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 for the purpose of providing water, sewer and drainage facilities to the land within its boundaries. The District is located within the extraterritorial jurisdiction ("ETJ") of the City, but is not within its corporate limits.

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.

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 to the District by the City and provide for the limited purpose annexation of certain land by 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 **FINDINGS**

1.01. 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.

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 other than for the provision of potable water.

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.

ARTICLE 2

LIMITED PURPOSE ANNEXATION OF COMMERCIAL TRACT

2.01. Annexation of the Limited-Purpose Tract by the City. As soon as practicable following the approval of this Agreement by the City, the City shall annex for limited purposes certain commercial areas of the District, described in Exhibit A attached hereto (the "Tract"). Because the Tract 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 Texas Local Government Code, §43.052(h)(3)(B).

2.02. Property Taxes and District Liability for Debts of the City. During the term of this Agreement: (i) the District shall not be liable for any present or future debts of the City, and (ii) current and future ad valorem taxes levied by the City will not be levied on taxable property within the District.

2.04. Annexation of Additional Territory by the District. Territory annexed to the District with the consent of the City after the Effective Date of this Agreement shall be subject to this Agreement and may at the City's discretion be annexed for limited purposes by the City.

ARTICLE 3

SALES AND USE TAX

3.01. Imposition of the City's Sales and Use Tax. The City and its component units shall impose their 2% sales and use tax (the "Sales and Use Tax"), which includes

a sales and use tax of 0.5% for property tax reduction, within the Tract upon the limited-purpose annexation of the Tract. The Sales and Use Tax shall be imposed on the receipts from the sale and use at retail of taxable items at the rate provided within the City. The Sales and Use Tax shall take effect on the date described in Texas Tax Code, §321.102.

3.02. Payment of Sales and Use Tax to the District.

a. The City shall retain revenues from the 0.5% property tax reduction component of the Sales and Use Tax generated within the boundaries of the Tract and received by the City from the Texas Comptroller of Public Accounts (the "Comptroller") after the date of the limited-purpose annexation of the Tract.

b. The City shall pay to the District a portion of the remaining 1.5% Sales and Use Tax revenues generated within the boundaries of the Tract and received by the City from the Comptroller after the date of the limited-purpose annexation of the Tract on the following schedule:

Beginning of Period	End of Period	Portion of revenue from 1.5% Sales and Use Tax paid to District
Date of limited-purpose annexation of the Tract	December 31 of the year in which the first major anchor store opens on the Tract (the "Initial Period End Date")	100%
January 1 following the Initial Period End Date	5 th anniversary of the Initial Period End Date	100%
January 1 following the 5 th anniversary of the Initial Period End Date	10 th anniversary of the Initial Period End Date	75%
January 1 following the 10 th anniversary of the Initial Period End Date	30 th anniversary of the Initial Period End Date	50%

The District shall have the right to pledge such Sales and Use Tax revenues through the 30th anniversary of the Initial Period End Date. Notwithstanding anything to the contrary in this Agreement, the City's obligation to make payment of the Sales and Use Tax revenues to the District or to honor pledges of such revenues by the District shall survive full-purpose annexation of territory within the District, abolition of the District, and termination of this Agreement.

c. The City shall deliver the District's portion of the Sales and Use Tax revenues to the District on a quarterly basis. Texas Government Code, Chapter 2251 shall govern and provide the penalty if the City fails to deliver the District's portion in a timely manner. For the purposes of determining the applicable overdue date under Chapter 2251, the City shall be deemed to have received an invoice from the District on March 31, June 30, September 30, and December 31 of each year without further action from the District.

d. Subject to confidentiality requirements for sales and use tax data under applicable State law, at the same time it delivers the District's portion of the Sales and Use Tax revenues to the District under paragraph c., the City shall deliver to the District a condensed version of the monthly sales tax reports provided by the Comptroller, containing only the contents of the sales tax report relating to retail sales and retailers in the Tract. If the parties are not able to receive useful information from the Comptroller to determine the exact amount of the District's payments hereunder, the parties agree to cooperate to reasonably estimate such payments, which estimates shall be conclusive if approved by both parties.

3.03. Notification of Comptroller. The City shall send notice of this Agreement and the annexation of the Tract to the Comptroller in the manner provided by Texas Tax Code, Section 321.102 within three days of the date the applicable annexation ordinance is passed by the City Council pursuant to Article 2. The City shall send to the District a copy of any notice from the Comptroller delaying the effectiveness of the Sales and Use Tax in the Tract.

3.04. District Review Rights. The District may review data related to the Sales and Use Tax collections by the City solely to determine whether the Sales and Use Tax revenue payments provided by Section 3.02 have been made to the District in accordance with this Agreement. Any review shall be made at the District's sole cost and expense and may be performed at any time during the City's regular business hours by a consultant hired by the District upon 30 days written notice to the City. For the purpose of any review by the District, the City shall maintain and make available to the District or its representatives all books, records, documents and other evidence of accounting procedures or practices in whatever form sufficiently maintained to reflect the collection of all Sales and Use Tax revenues that are subject to this Agreement; provided, however, that the City shall have no obligation to produce Sales and Use Tax data that is subject to confidentiality requirements under applicable State law.

ARTICLE 4

ALLOCATION OF MUNICIPAL SERVICES WITHIN THE DISTRICT

4.01. Water, Wastewater and Drainage Services. As set forth in that certain Development Agreement among the District, the City, and A-K Texas Venture Capital,

LC, (i) the City shall provide potable water service to the District for the development of all land within the District, including the Tract and any land which the City later consents to annexation by the District; (ii) the District shall develop, own, operate, and maintain an internal water distribution system to serve all land within its boundaries; and (iii) the District shall be responsible for provision of wastewater services within the District and may obtain such services from any third-party provider at its sole discretion.

4.02. City Services. The City may provide such services and regulatory authority within the Tract as the City and the District may agree in writing; no services or regulations shall be provided hereunder until such time.

ARTICLE 5 ANNEXATION OF THE DISTRICT

5.01. Conditions to full-purpose 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, the City will not annex the District for full purposes until the earlier of the following conditions have been met, and shall thereafter be authorized, but not required, to annex the District for any purpose:

- a. thirty years from the effective date of this Agreement; or
- b. the date when:
 - i. water, wastewater, drainage, street, and park and recreational facilities have been completed to serve at least 90% of the developable acreage within the land within the District; and
 - ii. the developer or developers in the District, or their successors or assigns, have been reimbursed by the District to the maximum extent permitted by the rules of the Texas Commission on Environmental Quality or the City assumes any obligation of the District for such reimbursement to the developers under such rules and pursuant to the terms of any reimbursement agreements between the District and such developers.

5.02. Annexation procedures. Subject to Section 3.02(b), upon the full-purpose annexation of territory within the District by the City pursuant to the provisions of this Agreement, such territory shall no longer be subject to the terms and provisions of this Agreement but shall instead be governed by the rules, regulations, codes, and ordinances then and thereafter effective within the City. Annexation shall otherwise be in accordance with existing law.

5.03. Operations prior to full-purpose annexation. Prior to full-purpose annexation, 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.

5.04. Abolition of the District following full-purpose annexation. Upon full-purpose annexation of the District under the provisions of this Article, the City shall act to abolish the District in accordance with applicable law; provided that, if the City has not abolished the District within 90 days after annexation, the District shall be automatically abolished on the 91st day. 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. The City shall not continue the District after full-purpose annexation as a "limited district" as that term is defined in Section 43.0751(a)(2), Texas Local Government Code. Upon 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. The City's obligations under Section 3.02(b) shall survive full-purpose annexation of territory within the District and abolition of 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 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.

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. 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 7 MISCELLANEOUS

7.01. Beneficiaries. This Agreement shall bind and inure to the benefit of the parties, their successors and assigns, including but not limited to Harris County Improvement District No. 22 ("HCID 22") upon the District's assignment of its interest under this Agreement to HCID 22. This Agreement shall be recorded with the County Clerk in Official Records of Harris 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 a dissolution of the District by the City, the developers of land within the District 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 first written above and continue until the 30th anniversary of the Initial Period End Date, 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, 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:

<u>City:</u>	City of Tomball Attn: City Manager 401 Market Street Tomball, Texas 77375
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With Required

Copy to:

Olson & Olson, LLP
Attn: Mr. Loren Smith
2727 Allen Parkway, Suite 600
Houston, Texas 77019

District:

Harris County Municipal Utility District No. 273
c/o Allen Boone Humphries Robinson LLP
3200 Southwest Freeway, Suite 2600
Houston, Texas 77027
Attn: Stephen M. Robinson

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 Harris 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. 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.

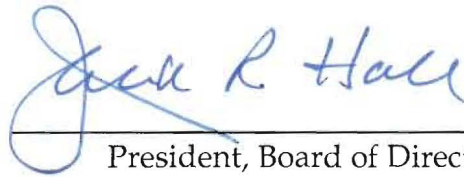
CITY OF TOMBALL, TEXAS

Mayor

ATTEST:

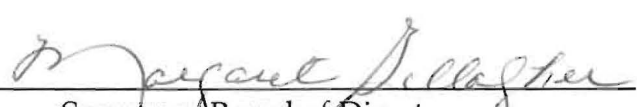
City Secretary

HARRIS COUNTY MUNICIPAL UTILITY
DISTRICT NO. 273



President, Board of Directors

ATTEST:



Secretary, Board of Directors



THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

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

Notary Public, State of Texas

(NOTARY SEAL)

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on this the 9th day of April, 2015, by Jack R. Hall, President of the Board of Directors of Harris County Municipal Utility District No. 273, a political subdivision of the State of Texas, on behalf of said political subdivision.



Notary Public, State of Texas

(NOTARY SEAL)

