

STRATEGIC PARTNERSHIP AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This **STRATEGIC PARTNERSHIP AGREEMENT** (this “Agreement”) is made and entered into, effective as of _____, by and between the **CITY OF BEE CAVE, TEXAS**, a municipal corporation and home rule city of the State of Texas (the “City”), and **LAZY NINE MUNICIPAL UTILITY DISTRICT NO. 1A**, 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”). This Agreement covers the land within the boundaries of the District, as may be enlarged by annexation or reduced by exclusions from time to time, (the “Land”). The Land within the District as of the effective date of this Agreement is described in Exhibit “A” attached hereto.

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 District is part of the Sweetwater master planned community (the “*Development*”) and is subject to a development agreement (the “*Development Agreement*”) between the City of Bee Cave, the District and WS-COS DEVELOPMENT, LLC, a Delaware limited liability company, and WS-COS INVESTMENTS, LLC, a Delaware limited liability company, (collectively, the “Developer”) and Matthews-Barnes Brothers Investments, a Texas limited partnership (“Covert”).

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.

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 I
DEFINITIONS**

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 nor is the City obligated to make payments to the District.

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 ANNEXATION OF THE DISTRICT

2.01. 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~~ earlier ~~later~~ of -the following conditions have been met, and shall thereafter be authorized, but not required, to annex the District for any purpose:

a. thirty (30) years from the Effective Date of this Agreement; ~~twenty years from the effective date of this Agreement;~~ or

b. (ii) the date when 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 developers of land within the District have been reimbursed by the District for the water, wastewater, drainage, street, and park and recreational facilities in accordance with the rules of the TCEQ~~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; or~~

iii. the District dissolves.

2.02. 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 its Annexation Plan pursuant to Tex. Local Gov't Code, Section 43.032. *et seq.* 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.

2.03. 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. Provided however, the District shall not ~~exercise authority over and will not~~ adopt rules or regulations that conflict with the City's ~~NPS ordinance, building code requirements, plumbing, street, noise, lighting standards, or any other~~ development regulations ~~reserved to the City~~provided in the Development Agreement which ~~standards-regulations~~ may be amended from time to time in accordance with the Development Agreement.

2.04. Abolition of the District following full-purpose annexation. Upon full-purpose annexation of the District under the provisions of **Section 2.01**, above, 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. 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.

2.05. The District is not authorized to annex land that is (i) within the ETJ or city limits of the City as of the date of the designation of such land or (ii) land within the corporate limits of another municipality or within the ETJ of another municipality, unless the District then selects the ETJ of the City such that the entirety of the District is within the ETJ of the City and not within the jurisdiction of any other municipality.~~District to not take action which would prohibit City's ability to annex. Notwithstanding anything herein to the contrary, District agrees that it shall not take any action that would prohibit the City from annexing the District pursuant to Chapter 43 of the Local Government Code.~~

2.06 Any property owner that purchases property within the District shall be given notice that is acknowledged by the landowner that the property being acquired is subject to the annexation rights of the City.

ARTICLE 3 ALLOCATION OF MUNICIPAL SERVICES WITHIN THE DISTRICT

3.01. Fire/EMS services. The District is contained within an emergency services district and the City will have no obligation to provide fire/EMS protection services to the District.

3.02. Water, Wastewater and Drainage Services. The District shall be responsible for the provision of water and wastewater services to all land within the District.

3.03 Other municipal services. The City is not required to provide any municipal services within the District, except as specifically provided herein.

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 "~~N~~notice ~~P~~period")), 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 the following:

a. Each party waives any action for damages against the other except for the recovery of attorney's fees, as per subparagraph b below.

b. If either party defaults, the prevailing party in the dispute will be entitled to recover its reasonable attorney's fees, expenses and court costs from the non-prevailing party.

~~;~~and

c. If such default remains uncured after the expiration of the notice period~~,~~ the non defaulting party may (i) enforce this Agreement by seeking specific performance or a writ of mandamus, as applicable, from a court of proper jurisdiction; (ii) terminate this Agreement by providing written notice of such termination to the other party as to the portion of the land affected by the default; or (iii) ~~–~~pursue injunctive relief to cure the default from a court of proper jurisdiction. If injunctive relief is sought the request shall specify 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 Travis 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.

5.02 Term. This Agreement shall commence and bind the parties on the effective date first written above 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 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.

5.03. 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 Bee Cave
Attn: City Manager
4000 Galleria Parkway
Bee Cave, Texas 78738

With Required
Copy to: Ms. Patty Akers, City Attorney
Akers & Akers, L.L.P.
13809 Research Blvd.
Suite 250
Austin, Texas 78750

District: Lazy Nine Municipal Utility District No. 1A
c/o Allen Boone Humphries Robinson LLP
1108 Lavaca, Suite 510
Austin, Texas 78701
Attn: Trey Lary

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 Travis 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. 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 BEE CAVE, TEXAS

Mayor

ATTEST:

City Secretary

LAZY NINE COUNTY MUNICIPAL UTILITY
DISTRICT NO. 1A

President, Board of Directors

ATTEST:

Secretary, Board of Directors

(SEAL)

THE STATE OF TEXAS §
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This instrument was acknowledged before me on this the ____ day of _____, by _____, Mayor of the City of Bee Cave, Texas, on behalf of said city.

Notary Public, State of Texas

(NOTARY SEAL)

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This instrument was acknowledged before me on this the ____ day of _____, by _____, _____ of the Board of Directors of Lazy Nine Municipal Utility District No. 1A, a political subdivision of the State of Texas, on behalf of said political subdivision.

Notary Public, State of Texas

(NOTARY SEAL)