

**FIRST AMENDMENT TO THE STRATEGIC PARTNERSHIP AGREEMENT
BETWEEN THE CITY OF HOUSTON, TEXAS,
AND HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 61**

THE STATE OF TEXAS '

COUNTY OF HARRIS '

This **FIRST AMENDMENT TO STRATEGIC PARTNERSHIP AGREEMENT** (this "Amendment") is entered into as of the Effective Date between the **CITY OF HOUSTON, TEXAS**, a municipal corporation principally situated in Harris County, Texas, acting through its governing body, the City Council of the City of Houston, Texas (the "City"), and **HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 61** (the "District"), a municipal utility district created or operating under Chapters 49 and 54 of the Texas Water Code.

BACKGROUND

Pursuant to Ordinance No. 2003-0267, the City and the District entered into a Strategic Partnership Agreement, which was approved by City Council on March 26, 2003, and is recorded in the Harris County Real Property Records under Film Code No. 20090436637 (the "Strategic Partnership Agreement").

The parties desire to amend the Agreement to provide for the limited-purpose annexation by the City of an additional tract of land in the District, which is described in Exhibit "A", attached hereto and incorporated herein by reference for all purposes (the "Amendment Tract").

As required by Texas Local Government Code, section 43.0751 (the "Act"), the City held public hearings on November 4, 2009, and November 10, 2009, in City Council Chambers, City Hall, 901 Bagby, Houston, Texas, and the District held public hearings on November 5, 2009, at 1602 Hoyt Lane, Katy, Texas 77449, and November 12, 2009, at 3700 Buffalo Speedway, Suite 830, Houston, Texas 77098 at which members of the public were given the opportunity to present testimony or evidence regarding the proposed Amendment of the Agreement, and the City and the District made copies of the proposed Amendment available and gave notice of the hearings prior to the public hearings in accordance with the terms of the Act.

THE PARTIES AGREE AS FOLLOWS:

**I.
DEFINITIONS**

The Agreement is amended to add the following definition:

“Amendment Tract” means the tract of land located in the boundaries of the District, as described in Exhibit “A” to this Amendment.”

“Fire Code” means the most current section of the International Fire Code banning fireworks, as incorporated and adopted by the City of Houston Fire Code via Ordinance No. 2003-738 and any subsequent Ordinance.

**II.
LIMITED-PURPOSE ANNEXATION**

A. Section 3.01(A) of the Agreement is amended to add the following subsection:

“(i) As soon as practicable following the approval of this Amendment by City Council, as authorized by the Act, the City shall annex the Amendment Tract for limited purposes.

The Parties recognize that at the time of the Agreement, the City's power to zone is restricted by City Charter Article VII-b, Section 13. If the City adopts a zoning ordinance pursuant to City Charter Article VII-b, Section 13, during the period of limited-purpose annexation, the zoning ordinance shall only apply to the Amendment Tract if the exclusion of the Amendment Tract from the zoning ordinance would, as a matter of law, invalidate the City's ability to zone the City as a whole. If the City initiates procedures to adopt a zoning ordinance, the City agrees to use its best efforts to draft an ordinance in a manner that would not require any application of the ordinance to the Amendment Tract. If the City is required to apply any zoning ordinance to the Amendment Tract during the period of limited-purpose annexation, the City agrees to apply a zoning classification to the property inside the Amendment Tract that would not cause any then-current structure or the use of any property inside the Amendment Tract to become noncomplying or nonconforming as a result of the classification.”

B. Section 3.01(C) is deleted and replaced with the following:

“C. Municipal Court’s Jurisdiction

Upon the limited-purpose annexation of the Tract and Amendment Tract, the City’s municipal courts shall have jurisdiction to adjudicate cases filed under the most current section of the Fire Code banning fireworks as adopted by City Council, and under state laws as set out in Article 4.14 of the Texas Code of Criminal Procedure, arising from actions occurring within the Tract and Amendment Tract.”

III. SALES AND USE TAX

A. Section 5.01 of the Agreement is amended to add the following subsection:

“Section 5.01(A) Imposition of the City’s Sales and Use Tax within the Amendment Tract

Pursuant to Subsection (k) of the Act, the City shall impose a Sales and Use Tax within the Amendment Tract upon the limited-purpose annexation of the Amendment 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 of one percent 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.”

B. Section 5.02 of the Agreement is amended to add the following subsection:

“Section 5.02(A) Payment of Sales and Use Tax Generated from the Amendment Tract

The City shall pay to the District an amount equal to 50% of the Sales and Use Tax revenues that are reported on the monthly sales tax report provided by the Comptroller and received by the City from the Comptroller after the date of the limited-purpose annexation of the Amendment Tract. The City shall deliver the District’s portion of the Sales and Use Tax revenues to the District within 30 days of the City’s receipt of the sales report from the Comptroller. 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 is deemed to have received an invoice from the District on the date the City receives the sales tax report from the Comptroller without further action from the District.

The City agrees to make reasonable efforts to obtain amended and supplemental reports from the Comptroller to reflect, to the greatest extent practicable, all Sales and Use Tax revenues generated within the boundaries of the Amendment Tract. Revenues resulting from such amended and supplemental reports will be divided and paid as provided above.

The City shall deliver to the District a condensed version of each monthly sales tax report provided by the Comptroller, containing only the contents of the sales tax report relating to retail sales and retailers in the Amendment Tract within 30 days of the City’s receipt of the sales tax report.

C. Section 5.03 of the Agreement is amended to add the following subsection:

“Section 5.03(A) Notification of Comptroller

The City shall send notice of this Amendment and the limited-purpose annexation of the Amendment Tract to the Comptroller within three days of the Implementation Date in the manner provided by Tax Code §321.102. 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 Amendment Tract.”

D. Section 5.04 of the Agreement is amended to add the following subsection:

“Section 5.04(A) District Use of Sales and Use Tax Revenue Collected From the Amendment Tract”

The District shall use the Sales and Use Tax revenue provided in Section 5.02(A) only for purposes for which the District is lawfully authorized to use its ad valorem tax revenues or other revenues.”

E. Section 5.05 of the Agreement is amended to add the following subsection:

“Section 5.05(A) District Audit Rights

The District may audit the Sales and Use Tax collections by the City solely to determine whether the Sales and Use Tax revenue payments provided by Section 5.02(A) have been made to the District in accordance with the Agreement and this Amendment. Any audit 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 an auditor hired by the District on 30 days written notice to the City. For the purpose of any audits, 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 the Agreement and this Amendment.”

F. Section 5.06 of the Agreement is amended to add the following subsection:

“Section 5.06(A) City Audit Rights

The District is required by law to prepare an annual audit within 120 days after the close of the District's fiscal year. The District shall provide a copy of its annual audit to the City within 30 days after the audit is completed.

The City may audit the District's expenditures made with the Sales and Use Tax revenue paid under Section 5.02(A), solely to determine whether the expenditures have been made by the District in accordance with Section 5.04(A). Any audit shall be made at the City's sole cost and expense and may be performed at any time during regular business hours by the City's internal auditors or an independent auditing firm on 30 days written notice to the District. For the purpose of any audits, the District shall maintain and make available to the City or its representatives all books, records, documents and other evidence of accounting procedures or practices in whatever form maintained sufficient to reflect the expenditure of all Sales and Use Tax revenues that are subject to the Agreement and this Amendment.”

**IV.
SERVICES PROVIDED BY THE CITY**

A. Article VII of the Agreement is amended to read as follows:

“Fire Marshal Services

The City shall apply and enforce within the Tract and Amendment Tract the most current section of the Fire Code banning fireworks as adopted by City Council. During the term of the Agreement, the City shall provide such services at the same level as those services that are provided at the corresponding time within other parts of the City with topography, land use, and population density similar to that of the Tract and Amendment Tract.”

V.

All references to "Tract" in Article I, IV, VI, and VIII of the Agreement are amended to include both "Tract" and "Amendment Tract."

**VI.
NOTICES**

All Notices required to be sent to the District pursuant to the Agreement and the Amendment shall be sent to the following address:

Harris County Municipal Utility District No. 61
3700 Buffalo Speedway, Suite 830
Houston, Texas 77098
Attn: David Marks

VII.

Except as otherwise amended herein, the Agreement shall remain in full force and effect. If there is a conflict between the Agreement and the Amendment, the Amendment controls. All capitalized terms not otherwise defined herein shall have the meaning assigned to such term in the Agreement.

SIGNATURE PAGES FOLLOW

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties have executed this Agreement in multiple copies, each of which shall be an original, as of the date countersigned by the City Controller of the City of Houston.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 61

By: _____
_____, President, Board of Directors

ATTEST:

By: _____
_____, Secretary, Board of Directors

Tax ID No. _____

STATE OF TEXAS

COUNTY OF HARRIS

This instrument was acknowledged before me this _____ day of _____, 2009, by _____, as President, and _____, as Secretary, of _____, a political subdivision of the State of Texas, on behalf of said political subdivision.

Notary Public in and for the State of Texas

(NOTARY SEAL)

CITY OF HOUSTON, TEXAS

By: _____
Mayor

ATTEST:

By: _____
City Secretary

APPROVED:

By: _____
Director, Department of Planning and Development

APPROVED AS TO FORM:

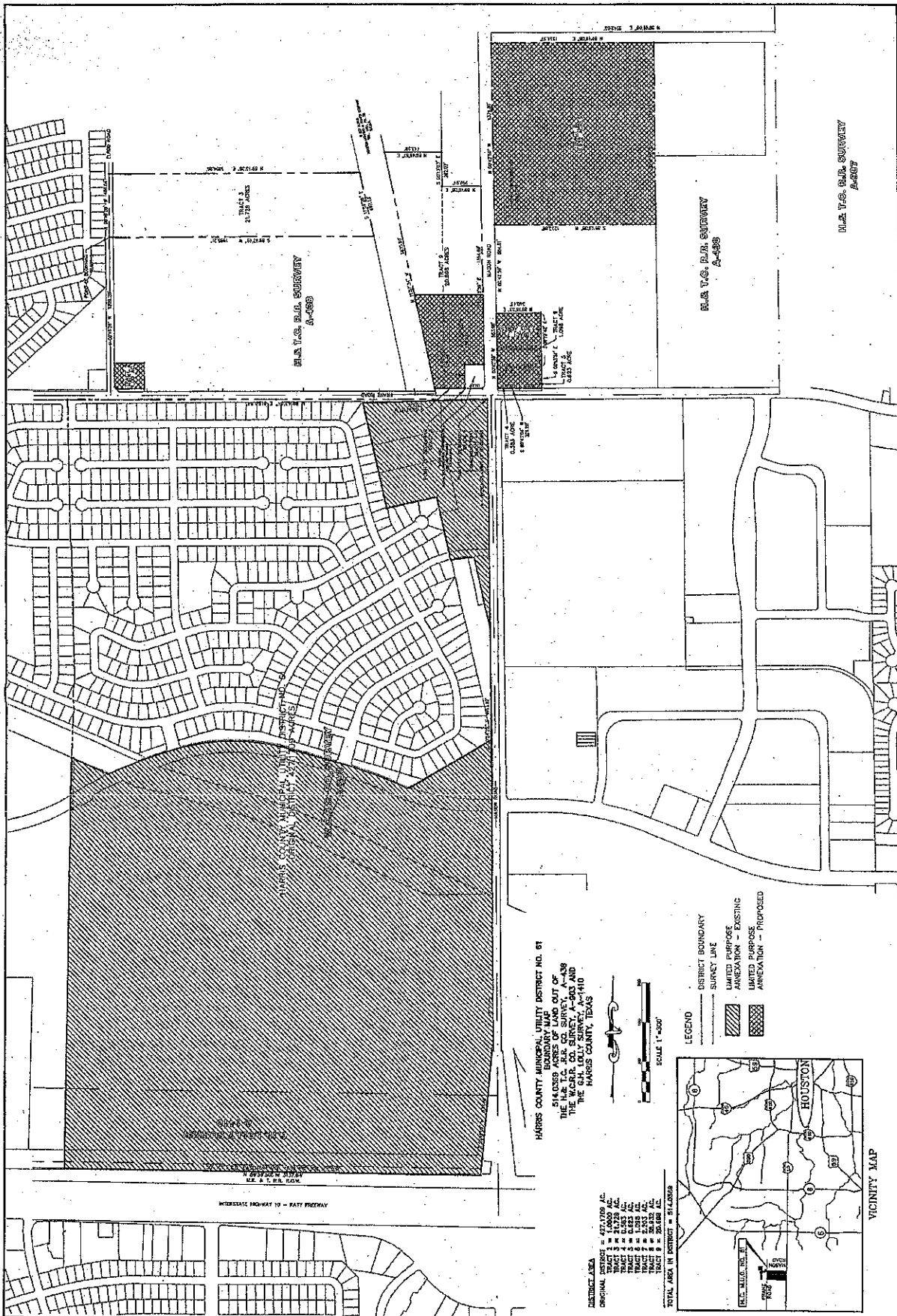
By: _____
Assistant City Attorney
L.D. File No. _____

COUNTERSIGNED:

By: _____
City Controller

DATE COUNTERSIGNED: _____

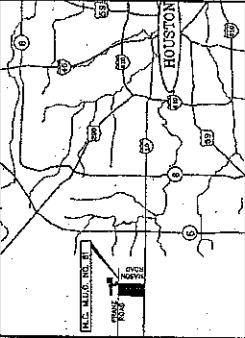
EXHIBIT "A"



HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 61
 SHADOWS ACRES OF LAND OUT OF
 THE H.A. T.C. R.R. SURVEY, A-438
 THE H.A. T.C. R.R. SURVEY, A-439
 THE H.A. T.C. R.R. SURVEY, A-440
 THE CH. LULLY SURVEY, A-1410
 HARRIS COUNTY, TEXAS

DISTRICT AREA
 ORIGINAL DISTRICT = 47,179 AC.
 TRACT # 1 = 1,233 AC.
 TRACT # 2 = 1,233 AC.
 TRACT # 3 = 1,233 AC.
 TRACT # 4 = 1,233 AC.
 TRACT # 5 = 1,233 AC.
 TRACT # 6 = 1,233 AC.
 TRACT # 7 = 1,233 AC.
 TRACT # 8 = 1,233 AC.
 TRACT # 9 = 1,233 AC.
 TRACT # 10 = 1,233 AC.
 TRACT # 11 = 1,233 AC.
 TRACT # 12 = 1,233 AC.
 TRACT # 13 = 1,233 AC.
 TRACT # 14 = 1,233 AC.
 TRACT # 15 = 1,233 AC.
 TRACT # 16 = 1,233 AC.
 TRACT # 17 = 1,233 AC.
 TRACT # 18 = 1,233 AC.
 TRACT # 19 = 1,233 AC.
 TRACT # 20 = 1,233 AC.
 TRACT # 21 = 1,233 AC.
 TRACT # 22 = 1,233 AC.
 TRACT # 23 = 1,233 AC.
 TRACT # 24 = 1,233 AC.
 TRACT # 25 = 1,233 AC.
 TRACT # 26 = 1,233 AC.
 TRACT # 27 = 1,233 AC.
 TRACT # 28 = 1,233 AC.
 TRACT # 29 = 1,233 AC.
 TRACT # 30 = 1,233 AC.
 TRACT # 31 = 1,233 AC.
 TRACT # 32 = 1,233 AC.
 TRACT # 33 = 1,233 AC.
 TRACT # 34 = 1,233 AC.
 TRACT # 35 = 1,233 AC.
 TRACT # 36 = 1,233 AC.
 TRACT # 37 = 1,233 AC.
 TRACT # 38 = 1,233 AC.
 TRACT # 39 = 1,233 AC.
 TRACT # 40 = 1,233 AC.
 TRACT # 41 = 1,233 AC.
 TRACT # 42 = 1,233 AC.
 TRACT # 43 = 1,233 AC.
 TRACT # 44 = 1,233 AC.
 TRACT # 45 = 1,233 AC.
 TRACT # 46 = 1,233 AC.
 TRACT # 47 = 1,233 AC.
 TRACT # 48 = 1,233 AC.
 TRACT # 49 = 1,233 AC.
 TRACT # 50 = 1,233 AC.
 TRACT # 51 = 1,233 AC.
 TRACT # 52 = 1,233 AC.
 TRACT # 53 = 1,233 AC.
 TRACT # 54 = 1,233 AC.
 TRACT # 55 = 1,233 AC.
 TRACT # 56 = 1,233 AC.
 TRACT # 57 = 1,233 AC.
 TRACT # 58 = 1,233 AC.
 TRACT # 59 = 1,233 AC.
 TRACT # 60 = 1,233 AC.
 TRACT # 61 = 1,233 AC.
 TRACT # 62 = 1,233 AC.
 TRACT # 63 = 1,233 AC.
 TRACT # 64 = 1,233 AC.
 TRACT # 65 = 1,233 AC.
 TRACT # 66 = 1,233 AC.
 TRACT # 67 = 1,233 AC.
 TRACT # 68 = 1,233 AC.
 TRACT # 69 = 1,233 AC.
 TRACT # 70 = 1,233 AC.
 TRACT # 71 = 1,233 AC.
 TRACT # 72 = 1,233 AC.
 TRACT # 73 = 1,233 AC.
 TRACT # 74 = 1,233 AC.
 TRACT # 75 = 1,233 AC.
 TRACT # 76 = 1,233 AC.
 TRACT # 77 = 1,233 AC.
 TRACT # 78 = 1,233 AC.
 TRACT # 79 = 1,233 AC.
 TRACT # 80 = 1,233 AC.
 TRACT # 81 = 1,233 AC.
 TRACT # 82 = 1,233 AC.
 TRACT # 83 = 1,233 AC.
 TRACT # 84 = 1,233 AC.
 TRACT # 85 = 1,233 AC.
 TRACT # 86 = 1,233 AC.
 TRACT # 87 = 1,233 AC.
 TRACT # 88 = 1,233 AC.
 TRACT # 89 = 1,233 AC.
 TRACT # 90 = 1,233 AC.
 TRACT # 91 = 1,233 AC.
 TRACT # 92 = 1,233 AC.
 TRACT # 93 = 1,233 AC.
 TRACT # 94 = 1,233 AC.
 TRACT # 95 = 1,233 AC.
 TRACT # 96 = 1,233 AC.
 TRACT # 97 = 1,233 AC.
 TRACT # 98 = 1,233 AC.
 TRACT # 99 = 1,233 AC.
 TRACT # 100 = 1,233 AC.

LEGEND
 DISTRICT BOUNDARY
 SURVEY LINE
 LIMITED PURPOSE ANNEXATION - EXISTING
 LIMITED PURPOSE ANNEXATION - PROPOSED



VICINITY MAP