

ORDINANCE NO. 21-E

AN ORDINANCE OF THE CITY OF ALVIN, TEXAS, GRANTING CONSENT TO THE CREATION OF BRAZORIA COUNTY MUNICIPAL UTILITY DISTRICT NO. 70; CONTAINING VARIOUS PROVISIONS RELATED TO THE FOREGOING SUBJECT; AND MAKING CERTAIN FINDINGS RELATED THERETO.

WHEREAS, through passage of House Bill 1963 (Chapter 76, Section 1, codified as Chapter 7964 of the Texas Special District Local Laws Code, hereinafter referred to as the “Act”) in its Regular Session, the 85th Texas Legislature created Brazoria County Municipal Utility District No. 70 (the “District”) over 2,273.1 acres of land, which land is described by metes and bounds in Exhibit A attached to the Petition for Consent to Creation of the District (hereinafter defined) (the “Property”); and

WHEREAS, Section 7964.004 of the Act requires that each municipality in whose corporate limits or extraterritorial jurisdiction the District is located consent to the creation of the District prior to holding of an election to confirm the creation of and elect directors for the District; and

WHEREAS, the District is located in the extraterritorial jurisdiction of the City of Alvin, Texas (the “City”); and

WHEREAS, Southeast Properties, Ltd., being the holder of title to all and, therefore, a majority in value of the Property, has submitted a Petition for Consent to Creation of a Municipal Utility District dated December 16, 2020, seeking the consent of the City to the creation of the District, a copy of which Petition and all exhibits thereto are incorporated herein as Exhibit A (the “Petition”); and

WHEREAS, the costs of certain water, sewer, drainage, road and recreational facilities (the “Infrastructure”), including, without limitation, levees and other facilities for the reclamation of land, will be advanced by the developer of property under contracts awarded by the District or the developer on behalf of the District and reimbursed to the developer through the issuance of bonds, notes, or other obligations by the District; and

WHEREAS, it is hereby found that it is in the best interest of the City to require certain conditions to ensure (i) the approval of the City of all plans and specifications for the construction of certain water, sewer and drainage infrastructure facilities, (ii) the sale of bonds, and (iii) the coordination of projects; and

WHEREAS, the City Council of the City desires to create Ordinance No. 21-E as set forth herein for the purpose of consenting to the creation of the District;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALVIN, TEXAS:

Section 1. The findings contained in the preamble of this Ordinance are declared to be true and correct and are hereby adopted as part of this Ordinance.

Section 2. The City Council of Alvin, Texas, hereby gives its written consent to the creation of Brazoria County Municipal Utility District No. 70 on 2,273.1 acres of land, more or less, as described in Exhibit A to the Petition, and such consent is granted upon the written Consent Conditions set forth in Exhibit B attached hereto and made a part hereof for all purposes.

Section 3. The Petition shall pay any and all actual or imputed costs of the City including (i) any reasonable fees or expenses of legal counsel, engineering consultants, or financial consultants, and (ii) any administrative costs incurred in connection with the City's consideration of the Petition and issuance of this Ordinance.

Section 4. In addition to the rights and remedies provide by the laws of the state, in the event the District violates the terms and provisions of the City's written consent, the City shall be entitled to injunctive relief or a writ of mandamus issued by a court of competent jurisdiction restraining, compelling, or requiring the District and its officials to observe and comply with the terms and conditions of this Ordinance.

Section 5. It is hereby found, determined and declared that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings Act, Chapter 551 of the Texas Government Code, and that this meeting has been open to the public as required by law at all times during which this Ordinance and the subject matter hereof has been discussed, considered and formally acted upon. City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

PASSED on this first and final reading on the 15th day of April 2021.

CITY OF ALVIN, TEXAS

ATTEST

By _____
Paul A. Horn, Mayor

By _____
Dixie Roberts, City Secretary

Exhibit B
Consent Conditions

(a) The District may issue notes, bonds, including refunding bonds, or other obligations (collectively referred to herein as “District Obligations”) for any purposes authorized by law, including, but not limited to, purchasing, financing or refinancing, designing and constructing, or otherwise acquiring waterworks systems, sanitary sewer systems, storm sewer systems, drainage facilities, levees and other facilities for the reclamation of land, road facilities, and recreational facilities, or parts of such systems or facilities, and to make any and all necessary purchases, constructions, improvements, extensions, additions, and repairs thereto, and to purchase or acquire all necessary land, right-of-way, easements, sites, equipment, buildings, plants, structures, and facilities therefor (the “System”).

(b) The following conditions shall apply to the sale of the District Obligations:

1. No District Obligations may be issued until all terms of the Ordinance of the City Granting Consent to the Creation of the District have been satisfied.
2. Such District Obligations must provide that the District reserves the right to redeem said District Obligations on a date on or before the 15th anniversary of the date of issuance without premium.
3. None of such District Obligations, other than refunding bonds, will be sold for less than 95 percent of par.
4. The net effective interest rate on District Obligations so sold, taking into account any discount or premium as well as the interest rate borne by such District Obligations, will not exceed two percent above the highest average interest rate reported by the Daily Bond Buyer in its weekly “20 Bond Index” during the one-month period next preceding the date of the sale of such District Obligations.
5. The District Obligations, except Bond Anticipation Notes which may be secured in any manner authorized by Section 49.154 of the Texas Water Code, shall be payable from and secured by an ad valorem tax levied, without limit as to rate or amount, by the District upon all taxable property located within the District, revenues of the District other than ad valorem taxes, contract payments described by Section 7964.153 of the Texas Special District Local Laws Code, or such other sources as may be now or hereafter authorized by Chapter 7964 of the Texas Special District Local Laws Code.
6. The District Obligations shall not constitute a debt of the City or a pledge of the faith and credit of the City, and all District Obligations shall contain on the face thereof a statement to the effect that the City shall not be obligated to pay the same or the interest thereon and that neither the faith and credit nor the taxing power of the City or any political corporation, subdivision, or agency thereof other than the District is pledged to the payment of the principal of the interest on such District Obligations.

7. Subject to the City's subsequent adoption of any ordinance setting forth additional procedures and standards for the refunding of indebtedness by conservation and reclamation districts located in the municipal boundaries or extraterritorial jurisdiction of the City, the District may issue refunding bonds to refund any District Obligation if:
 - a. The refunding transaction provides both gross debt savings and net present value savings;
 - b. The net present value savings, as certified by the District's Financial Advisor, is three (3) percent or more of the principal amount of the refunded bonds; and
 - c. The date of the latest scheduled maturity of the refunding bonds is not later than the date of the latest scheduled maturity of the bonds to be refunded.

(c) Before commencement of any such construction within the District, the engineer or other representatives of the District or a developer in the District shall submit to the City, or to its designated representative, all plans and specifications for the construction of water, sanitary sewer and drainage facilities to serve the District and obtain approval of such plans and specifications. All water wells, water meters, flushing valves, valves, pipes, water service lines and sewer service lines, lift stations, and appurtenances thereto, installed or used within the District will comply with the City's standard plans and specifications as amended from time to time. The construction of the District's water, sanitary sewer, and drainage facilities will be in accordance with the approved plans and specifications and with applicable standards and specifications of the City; and during the progress of the construction and installation of such facilities, the City may make periodic on-the-ground inspections.

(d) In the event the District operates a sewage treatment facility, representatives of the City may supervise the continued operation of the sewage treatment facility by making periodic inspections thereof.

(e) The District will not permit the construction of water and sewer facilities to serve any development within the District that will result in a wastewater flow to the serving treatment facility which exceeds that facility's legally permitted average daily flow limitation or the District's allocated capacity therein.

(f) Prior to the sale of any lot or parcel of land within the District, the owner or developer of the land shall obtain the approval of the Planning Commission of the City of a plat which will be duly recorded in the Official Records of Brazoria County, Texas, and otherwise comply with the applicable rules and regulations of the City.