

A Trip to the MUD SPA:

Limitations and Additions to MUD Funding Sources
Under Strategic Partnership Agreements

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Compared to cities, MUD powers are relatively constrained:

Sec. 54.201. POWERS. (a) A district shall have the functions, powers, authority, rights, and duties which will permit accomplishment of the purposes for which it was created.

(b) A district is authorized to purchase, construct, acquire, own, operate, maintain, repair, improve, or extend inside and outside its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary to accomplish the purposes of the district authorized by the constitution, this code, or other law, including all works, improvements, facilities, plants, equipment, and appliances incident, helpful, or necessary to:

- (1) supply water for municipal uses, domestic uses, power, and commercial purposes and all other beneficial uses or controls;
- (2) collect, transport, process, dispose of, and control all domestic, industrial, or communal wastes whether in fluid, solid, or composite state;
- (3) gather, conduct, divert, and control local storm water or other local harmful excesses of water in a district;
- (4) irrigate the land in a district;
- (5) alter land elevation in a district where it is needed;
- (6) navigate coastal and inland waters of the district; and
- (7) provide parks and recreational facilities for the inhabitants in the district, subject to the provisions of Chapter 49.



Funding sources are correspondingly small:

- Bonds issued under 54.501, et seq. must be secured by levying “...a continuing direct annual ad valorem tax for each year while all or part of the bonds are outstanding on all taxable property within the district in sufficient amount to pay the interest on the bonds ... and to pay the expenses of assessing and collecting the taxes.” Water Code § 54.601.
 - Ad valorem taxes can include amounts for M&O, *if authorized*:
 - (b) In determining the actual rate to be levied in each year, the board shall consider among other things:
 - (1) the amount which should be levied for maintenance and operation purposes, if a maintenance tax has been authorized;
 - (2) the amount which should be levied for the payment of principal, interest, and redemption price of each series of bonds or notes payable in whole or in part from taxes;
 - (3) the amount which should be levied for the purpose of paying all other contractual obligations of the district payable in whole or in part from taxes; and
 - (4) the percentage of anticipated tax collections and the cost of collecting the taxes.
- Water Code § 54.602.



MUDs don't receive sales tax revenue, because, historically, they have not had any commercial activity on which to collect sales taxes.

... until they entered the SPA(s).



- S.B. 1396: Act of May 29, 1995, 74th Leg., R.S., ch 787 (codified at Local Gov't Code § 43.0751):

“...relating to altering the annexation status and the regulation of development of certain areas in certain municipalities and their extraterritorial jurisdiction.”



Apparently, the 1980's were problematic:

“In the 1980s, consent agreements required municipal utility districts (MUD) to be annexed into the city at their creation. This subjected the residents to dual taxation by both the city and the MUD, which can cause the lots and homes in the district to lose their economic competitiveness.”

Senate Comm. on Natural Resources, Bill Analysis, Tex. S.B. 1396, 74th Leg., R.S. (1995).



Sec. 43.0751. STRATEGIC PARTNERSHIPS FOR CONTINUATION OF CERTAIN DISTRICTS.

- (b) The governing bodies of a municipality and a district may negotiate and enter into a written strategic partnership agreement for the district by mutual consent. The governing body of a municipality, on written request from a district included in the municipality's annexation plan under Section 43.052, shall negotiate and enter into a written strategic partnership agreement with the district...



43.0751(f) provides great flexibility to cities and MUDS to negotiate terms SPAs:



- (f) A strategic partnership agreement may provide for the following:
- (1) limited-purpose annexation of the district on terms acceptable to the municipality and the district provided that the district shall continue in existence during the period of limited-purpose annexation;
 - (2) limited-purpose annexation of a district located in a county with a population of more than 3.3 million:
 - (A) only if the municipality does not require services, permits, or inspections or impose fees for services, permits, or inspections within the district; and
 - (B) provided that this subsection does not prevent the municipality from providing services within the district if:
 - (i) the provision of services is specified and agreed to in the agreement;
 - (ii) the provision of services is not solely the result of a regulatory plan adopted by the municipality in connection with the limited-purpose annexation of the district; and
 - (iii) the district has obtained the authorization of the governmental entity currently providing the service;
 - (3) payments by the municipality to the district for services provided by the district;
 - (4) annexation of any commercial property in a district for full purposes by the municipality, notwithstanding any other provision of this code or the Water Code, except for the obligation of the municipality to provide, directly or through agreement with other units of government, full provision of municipal services to annexed territory, in lieu of any annexation of residential property or payment of any fee on residential property in lieu of annexation of residential property in the district authorized by this subsection;
 - (5) a full-purpose annexation provision on terms acceptable to the municipality and the district;
 - (6) conversion of the district to a limited district including some or all of the land included within the boundaries of the district, which conversion shall be effective on the full-purpose annexation conversion date established under Subdivision (5);
 - (7) agreements existing between districts and governmental bodies and private providers of municipal services in existence on the date a municipality evidences its intention by adopting a resolution to negotiate for a strategic partnership agreement with the district shall be continued and provision made for modifications to such existing agreements; and
 - (8) such other lawful terms that the parties consider appropriate.



Provides protection for the annexing city (if the MUD agrees to it):

(i) A strategic partnership agreement may provide that the district shall not incur additional debt, liabilities, or obligations, to construct additional utility facilities, or sell or otherwise transfer property without prior approval of the municipality.



However, to the extent that the MUD does not delegate away its authority under subsection (i), they (arguably) retain their authority to issue bonds, even after full purpose annexation:

(j) Except as limited by this section or the terms of a strategic partnership agreement, a district that has been annexed for limited purposes by a municipality ***and a limited district*** shall have and may exercise all functions, powers, and authority otherwise vested in a district.



Section 3.04 Transfer of Assets and Employment and Services Contractual Obligations of the District.

Except for the construction of trails in accordance with Section 3.02(a)(iii) of this Agreement, or as otherwise may be authorized by the Water and Wastewater Agreement or by prior written agreement of the City Manager, the District may not do the following:

- (1) transfer any of its assets to a third party without reasonable consideration; or
- (2) acquire additional assets, other than those required for the normal and customary operations of the District provided that such required assets do not increase the City's costs or responsibilities after the Full-Purpose Annexation Date; or
- (3) enter into any contracts for employment or services that will result in the creation or continuation of a contractual obligation or fees and charges for the City after the Full-Purpose Annexation Date.



If the MUD enjoys new sales tax revenue through the SPA, they can (arguably) spend it for any lawful purpose:

(k) A municipality that has annexed all or part of a district for limited purposes under this section may impose a sales and use tax within the boundaries of the part of the district that is annexed for limited purposes. Except to the extent it is inconsistent with this section, Chapter [321](#), Tax Code, governs the imposition, computation, administration, governance, and abolition of the sales and use tax.



4.02 Payment of Sales and Use Tax. In return for the benefits received by the City pursuant to this Agreement, the City shall pay to the District an amount equal to 50% of the Sales and Use Tax Revenues collected during the first nineteen (19) years of the Limited Purpose Annexation Period and paid to the City as reflected in sales tax reports provided by the Comptroller to the City. Further, during the nineteenth (19th) year of the Limited Purpose Annexation Period, the City shall retain 50% of the payment otherwise due to the District, up to a maximum of \$300,000. The City shall use such funds in accordance with Section 4.04 of this Agreement. Such payment shall be retained by the City in addition to the City's 50% share of the Sales and Use Tax Revenues. Thereafter, the City shall pay to the District an amount equal to 25% of the Sales and Use Tax Revenues collected commencing on the first day of the twentieth (20th) year of the Limited Purpose Annexation Period, and paid to the City as reflected in the sales tax reports provided by the Comptroller to the City. All amounts payable to the District pursuant to this Section 4.02 are hereafter referred to as the "District Share". The City shall pay

the District Share quarterly after the City receives the sales tax report reflecting such revenues from the Comptroller. Any payment of the District Share not made within such 30-day period shall bear interest calculated in accordance with Section 2251.025 of the Government Code. The City shall retain all Sales and Use Tax Revenues that do not constitute the District Share (the "City Share"). 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 with the boundaries of the District. Revenues resulting from such amended and supplemental reports will be divided and paid as provided above. The District agrees that should any overpayment of Sales and Use Tax be reported by the Comptroller to the City as a sales tax reduction, such sales tax reduction shall be proportionally shared by the District in accordance with the percentages provided above.



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