

**COST SHARING AGREEMENT FOR WATER PLANT IMPROVEMENTS
BY AND AMONG
THE CITY OF TEXAS CITY, TEXAS;
GALVESTON COUNTY MUNICIPAL UTILITY DISTRICT NO. 53; AND
LAKESIDE BAYOU, LLC**

THE STATE OF TEXAS

COUNTY OF GALVESTON

THIS COST SHARING AGREEMENT FOR WATER PLANT IMPROVEMENTS (the “*Agreement*”) is entered into as of _____, 2024, by and among **THE CITY OF TEXAS CITY, TEXAS** (the “*City*”), a home rule municipality located in Galveston County, Texas, **GALVESTON COUNTY MUNICIPAL UTILITY DISTRICT NO. 53** (the “*District*”), a conservation and reclamation district, a body politic and corporate and political subdivision of the State of Texas, created under Article XVI, Section 59 of the Texas Constitution and Chapters 49 and 54, Texas Water Code, as amended, and **LAKESIDE BAYOU, LLC** (the “*Developer*”), a Texas limited liability company.

RECITALS:

WHEREAS, the City and 418 Southlake, Ltd. (“*418*”) entered into that certain Development Agreement dated August 18, 2021 (the “*DA*”), and the City, 418 and the District entered into that certain Utility Services Agreement dated August 18, 2021 (the “*USA*”), related to and concerning the development of and provision of water and wastewater utility services to an approximately 423.68-acre tract of land (the “*Property*”) comprising the District and within the corporate boundaries of the City (the DA and the USA referred to collectively herein as the “*2021 Agreements*”); and

WHEREAS, the Developer assumed all of 418’s rights, duties and obligations under the 2021 Agreements by that certain Assignment and Assumption of Development Agreement dated December 21, 2022, and that certain Assignment and Assumption of Utility Services Agreement dated December 21, 2022; and

WHEREAS, the 2021 Agreements commit to and reserve for the Property water capacity and wastewater capacity sufficient to serve 1,200 equivalent single-family connections (“*ESFCs*”), subject to the terms thereof; and

WHEREAS, the 2021 Agreements require certain water system improvements to be constructed at the existing City water plant, and provide that the Developer or the District may fund and construct said improvements pursuant to plans and specification approved by the City in accordance with Consent Conditions; and

WHEREAS, based upon the growth anticipated within the service area of the water plant, the City desires certain components of the water system improvement, being

specifically the water well and the ground storage tank, to be designed to provide for additional regional capacity in excess of the capacity required to serve the Property; and

WHEREAS, the scope and cost of the water system improvements with the water well and ground storage water tank designed to provide additional regional capacity (“the Project) exceeds the cost of the water system improvements necessary to meet the capacity reserved for the Property in the 2021 Agreement, and

WHEREAS, to provide for this additional regional capacity the City has agreed to share in the construction cost of the Project on a pro-rata basis, up to the amount of \$1,500,000, upon the terms and conditions outlined in this Agreement; and

WHEREAS, the City, the District and the Developer have agreed to a phasing plan for construction of the Project, and desire to proceed with its design and construction through the District; and

WHEREAS, the Developer will fund the District’s share of the Project pursuant to that certain Amended and Restated Facilities and Operating Costs Reimbursement Agreement by and between the Developer and the District dated September 26, 2023; and

WHEREAS, the Parties hereto have determined that it is in their mutual best interests to proceed with the Project, and wish to enter into this Agreement to provide for the allocation of costs associated therewith, as estimated on **Exhibit A** attached hereto.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the City, the District and the Developer agree as follows:

ARTICLE I

DEFINITIONS

“*Project Costs*” shall mean the actual costs directly related to the Project, including but not limited to:

- a. construction contract amounts, including approved change orders;
- b. engineering fees charged by the Engineer (hereinafter defined) attributable to the design and construction of the Project including approved design change orders also known as Additional Service Requests (‘ASR’s); and
- c. all soil tests, topographic studies and other tests, studies or services necessary to design and construct the Project.

A preliminary construction budget (excluding design) was prepared in approximately December of 2022 for the Project is attached hereto for reference as Exhibit A.

“**Engineer**” shall mean ARKK Engineers, LLC, 7322 Southwest Freeway, Houston, Texas 77074.

“**Governmental Requirements**” shall mean all applicable federal, state and municipal laws, ordinances, rules and regulations, and all requirements of any and all governmental entities with jurisdiction over or relating to the performance of the Project.

ARTICLE II

CONSTRUCTION OF THE PROJECT

Section 2.01. Engagement of Engineer. The City shall engage the Engineer to design the Project on behalf of the City, the District and the Developer.

Section 2.02. Project Phasing. The Parties have agreed to phase design and construction of the Project as detailed in **Exhibit B** attached hereto. As delineated in the 2021 Agreements, the capacity funded by the Developer in each phase of the Project shall be reserved by the City for the benefit of the Developer and the Property, and in no event shall the City or the District allocate such reserved capacity to any other developer or landowner, or for the benefit of land other than the Property, unless expressly agreed upon by the Developer in writing. The Parties further agree that any third party seeking capacity in the Project will be required to bear its pro-rata share of the Project construction costs, based upon the capacity allocated and agreed to by all parties by written amendment, to this Agreement.

Section 2.03. Design. The Engineer will prepare the plans and specifications for the construction of each phase of the Project. The Engineer will secure approvals from all regulatory bodies having jurisdiction over the Project, all in accordance with all Governmental Requirements. During Engineer’s design of each phase, the Engineer shall conduct bi-weekly meetings with the City, the District and the Developer. Upon completion, the City, the District and the Developer will review the plans for each phase of the Project and provide comments. The City shall approve the design for construction in accordance with the USA.

Section 2.04. Bid Award and Contracts. The District shall advertise for bids, award, construct and convey each applicable phase of the Project in accordance with Section 2.1 of the USA. The District will send written notice to the City and the Developer of its recommendation of award for each phase of the Project within seven (7) business days of the bid opening for concurrence. The Board of Directors of the District (the “**Board**”) shall award a contract to the lowest responsive responsible bidder (each a “**Contract**”).

Section 2.05. Allocation of Project Costs. The Parties hereby agree to pay for the Project Costs in the following proportions:

- a. Design Costs:
 - i. **The City** - **60.0%**
 - ii. **The Developer/District** - **40.0%**

- b. Construction Costs:
 - iii. **The City** - **48.0% (not to exceed \$1.5 million)**
 - iv. **The Developer/District** - **52.0%**

Section 2.06. Payment of Project Costs.

- a. Design Costs. The City shall provide to the District and the Developer a copy of each invoice from the Engineer immediately upon receipt, but in no event later than five (5) business days after the City's receipt of same. The District, or the Developer on behalf of the District, shall review and approve or provide comments/questions about the invoice no later than five (5) business days after receipt. Upon concurrence by the District or Developer on behalf of the District, the City shall pay the invoice in full and then invoice the District or Developer on behalf of the District for its pro-rata share of each such invoice to ARKK. The District or Developer on behalf of the District shall pay the City's invoice within thirty (30) days of receipt from the City.

- b. Construction Costs. The Engineer shall provide to the City, the District and the Developer a copy of each Contract pay application received. The City shall pay its pro-rata share of each such pay application to the District within thirty (30) days. The Board of the District, upon recommendation of the Engineer, shall remit payment of each pay application to the contractor. Notwithstanding the foregoing, the City, the District and the Developer acknowledge and agree that the City's pro-rata share of the construction costs shall not exceed \$1,500,000 (the "**City Cap**"). To the extent the construction costs exceed the City Cap, the District, or the Developer on behalf of the District, as applicable, shall be solely responsible for such excess costs.

Section 2.07. Ownership and Maintenance of the Project. The Project shall be owned, operated, and maintained by the City pursuant to the terms of the 2021 Agreements.

Section 2.08. Insurance and Indemnification. In addition to all applicable insurance and indemnification requirements within each Contract, it is an express condition to this Agreement and each such Contract that (i) the City, the District, the Developer and the

Engineer shall be named as an additional insured by the contractor; (ii) the contractor waive subrogation in favor of the City, the District, the Developer and the Engineer; (iii) the contractor provide a Certificate of Insurance, as described in the Contract, to each of the City, the District, the Developer and the Engineer; and (iv) each of the City, the District, the Developer and the Engineer, as well as their officers, consultants, employees, agents and representatives, be named as indemnified parties in each and every instance for which the Contract provides for indemnification or other limitation of liability.

ARTICLE III

GENERAL PROVISIONS

Section 3.01. Credit of Impact Fees. As described in Section 2.8 of the USA, the Developer and/or the District, as appropriate, shall be entitled to a dollar for dollar credit against City water or wastewater impact fees to the extent of the funds advanced by the Developer or the District for the Project. Further, To the extent allowed by law and the Impact Fee Schedule, any City water or wastewater impact fee *in excess of \$1,500,000.00* generated from *the Project by* development in the City outside of the Property and within the service area served by *the Project* financed by the Developer or the District, may be used to reimburse the Developer or the District for funds advanced for the Project to the extent that the Developer or District advanced funds in excess of the total amount of City water or wastewater impact fees owed for the Property, promptly as such funds are available to the City.

Section 3.02. Representations and Warranties by the City and the District. The City and the District represent, warrants and covenant that:

- a. This Agreement, the transactions contemplated herein, and the execution and delivery of this Agreement have been duly authorized by their respective entities, boards and/or councils;
- b. This Agreement, and the representations and covenants contained herein, and the consummation of the transaction contemplated herein, will not violate or constitute a breach of any contract or other agreement to which the City or the District is a party;
- c. The Project is included in the current CIP and the City Commission of the City has approved funds related to the payment of its pro-rata share for the Project, up to the City Cap;
- d. The City represents and covenants that it has the legal authority to enter into this Agreement by the Constitution and laws of the State of Texas; and
- e. The District represents and covenants that it has the legal authority to enter into this Agreement by the Constitution and laws of the State of Texas; and

Section 3.03. Representations and Warranties by the Developer. The Developer represents, warrants and covenants that:

- a. This Agreement, the transactions contemplated herein, and the execution and delivery of this Agreement have been duly authorized as provided in its Company Agreement;
- b. This Agreement, and the representations and covenants contained herein, and the consummation of the transaction contemplated herein, will not violate or constitute a breach of any contract or other agreement to which the Developer is a party;
- c. The appropriate officers of the Developer have approved the Project, and the Developer has funds on hand sufficient to pay the District's pro-rata share of the Project Costs as contemplated herein; and
- d. The Developer has the legal authority to enter into this Agreement.

Section 3.04. Survival of Representations. All representations and warranties of the City, the District and the Developer shall survive completion of the Project.

Section 3.05. Remedies. In the event of default under this Agreement by the City, the District or the Developer, which default is not cured within thirty (30) days after receipt of written notice by such defaulting party, the non-defaulting party(ies) shall have the option to: (a) pursue all remedies provided by law; and (2) to proceed with the construction of the Project. Any non-defaulting party hereto may employ attorneys to pursue its legal rights hereunder, and the defaulting party shall be obligated to pay all damages, costs and expenses in connection therewith incurred by the non-defaulting parties, including reasonable attorneys' fees.

Section 3.06. Expiration of Agreement. Notwithstanding any other provision in this Agreement, if construction of the Project does not commence within three (3) years from the date of this Agreement, this Agreement shall expire unless extended in writing by the parties.

ARTICLE IV

MISCELLANEOUS

Section 4.01. Recitals Incorporated. The recitals of this Agreement are hereby found and declared to be true and correct and are hereby incorporated into the body of this Agreement as if copied in their entirety, and shall be considered part of the mutual covenants, consideration and promises that bind the City, the District and the Developer.

Section 4.02. Addresses and Notices. Unless otherwise provided in this Agreement, any notice herein provided or permitted to be given, made, or accepted by any party must be in writing. Any notice shall be either (a) personally delivered to the address set forth below, in which case it shall be deemed delivered on the date of delivery to the addressee; or (b) sent by registered or certified mail/return receipt requested, in which case it shall be deemed delivered the date upon which it is deposited in the U.S. Mail; or (c) sent by a nationally recognized overnight courier, in which case it shall be deemed delivered one (1) business day after deposit with such courier for next day delivery. For the purposes of notice, the addresses of the parties shall, until changed as hereinafter provided, be shown below. The parties shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify as to its address any other address by at least fifteen (15) days' written notice to the other parties.

If to the City, to:

City of Texas City, Texas
Attn: Mayor
1801 9th Avenue N
Texas City, Texas 77590
If to the District, to:

Galveston County Municipal Utility District No. 53
Sanford Kuhl Hagan Kugle Parker Kahn LLP
Attn: Joshua J. Kahn
1980 Post Oak Boulevard, Suite 1380
Houston, Texas 77056
Phone: 713-850-9000
Email: kahn@sklaw.us

If to the Developer, to:

Lakeside Bayou, LLC
Attn: Becky Collins
2201 W. Royal Lane, Suite 240
Irving, Texas 75063
Email: bcollins@star-plex.com

Section 4.02. Modification. This Agreement shall be subject to change or modification only with the mutual written consent of the parties hereto.

Section 4.03. Term. Except as otherwise provided herein, this Agreement shall be in force and effect from the date hereof until the Project is constructed, accepted and the one-year maintenance period has ended.

Section 4.04. Assignability.

This Agreement is not assignable without prior written consent by the City, which consent may be withheld, delayed or conditioned in the sole and absolute discretion of the City.

Section 4.05. Construction and Interpretation. This Agreement shall be construed in accordance with and governed by the laws of the State of Texas. The titles assigned to the various Sections and Articles of this Agreement are for convenience of reference only and shall not be restrictive of the subject matter of any such Section or Article or otherwise affect the meaning, construction, or effect of any part hereof.

Section 4.06. Severability. If any provision or application of this Agreement shall be held illegal, invalid, or unenforceable by any court, the invalidity of such provision or application shall not affect or impair any of the remaining provisions and applications hereof.

Section 4.07. Parties in Interest. This Agreement shall be for the sole and exclusive benefit of the parties hereto and shall never be construed for any benefit for any other party.

Section 4.08. Authorization.

- a. The City Commission of the City authorized this Agreement at an open meeting, properly posted and held, as reflected in the meeting minutes thereto. The City further authorized the execution of this Agreement on its behalf.
- b. The Board of Directors of the District authorized this Agreement at an open meeting, properly posted and held, as reflected in the meeting minutes thereto. The District further authorized the president of the Board of Directors to execute this Agreement on its behalf.

Section 4.09. Counterparts. This Agreement may be executed in counterparts, and all such executed counterparts shall constitute the same agreement. It shall be necessary to account for only one such counterpart from and executed by each party hereto in proving this Agreement.

Section 4.10. Further Documents. Each Party shall, upon request of the other Party, execute and deliver such further documents and perform such further acts as may reasonably be requested to effectuate the terms of this Agreement and achieve the intent of the Parties.

Section 4.11. Conflicts. This Agreement is intended to be a stand-alone agreement which is separate from and supplemental to the 2021 Agreements; and, intended to be interpreted and applied consistently with the 2021 Agreements existing at the time of its execution for the purpose of accomplishing the Project. To the extent of any unintended

and otherwise irreconcilable conflict between this Agreement and the 2021 Agreements, this Agreement shall control.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Cost Sharing Agreement as of the date and year first written herein.

THE CITY:

CITY OF TEXAS CITY, TEXAS

By: _____
Dedrick D. Johnson, Sr, Mayor

ATTEST:

By: _____
Rhomari Leigh, City Secretary

THE DISTRICT:

GALVESTON COUNTY MUNICIPAL UTILITY
DISTRICT NO. 53

By: _____
President, Board of Directors

ATTEST:

Secretary, Board of Directors

(SEAL)

THE DEVELOPER:

LAKESIDE BAYOU, LLC,
a Texas limited liability company

By: United Development Funding, L.P.,
a Delaware limited partnership
Its: Managing Member

By: United Development Funding, Inc.,
a Delaware Corporation
Its: General Partner

By: _____
Name: _____
Title: _____

EXHIBIT "A"
ESTIMATED PROJECT COSTS

ITEM NO FROM ARKK COST ESTIMATE	ITEM DESCRIPTION	Lakeside Bayou Capacity Calculations	City of Texas City (Balance of Capacity)	UNIT	QUAN.	EST. UNIT PRICE	TOTAL AMOUNT
PHASE 2A (Well + Appurtenances)							
2	700 GPM Water Well			LS	1	\$2,000,000	\$2,000,000
3	Chlorine & Ammonia Chemical Injection			LS	1	\$35,000	\$35,000
4	Phase 2 Yard Piping	52.00%	48.00%	LS	1	\$25,000	\$25,000
8	Aux Generator for Water Well			LS	1	\$150,000	\$150,000
	Total Cost						\$2,210,000
PHASE 2A (Tank)							
5	20,000 Gallon Hydropneumatic Tank	52.00%	48.00%	LS	1	\$200,000	\$200,000
	Total Cost						\$200,000
1	Mobilization, including Performance Bond, Payment Bond, and One Year Maintenance Bond	52.00%	48.00%	LS	1	\$74,300	\$74,300
9	Misc. Project Items	52.00%	48.00%	LS	1	\$34,350	\$34,350
	Total Cost						\$108,650
	Phase 2A Engineering	40.00%	60.00%				\$426,184
	Allocation	\$ 170,474	\$ 255,710				
	Total Hard Cost Phase 2A Incl. Contingency (15%)	52.00%	48.00%				\$2,896,448
	Allocation	\$ 1,506,153	\$ 1,390,295				
	Total 2A Hard Cost						\$2,896,448
	Total 2A Engineering Allocation (not incl. in Cap)	\$ 170,474	\$ 255,710				
	Total 2A Hard Cost Allocation	\$ 1,506,153	\$ 1,390,295				
	Total 2A Cost Allocation after CAP	\$ 1,676,626	\$ 1,646,005				
PHASE 2B (Ground Storage Tank & Booster Pump)							
6	350,000 Gallon Ground Storage Tank	52.00%	48.00%	LS	1	\$875,000	\$875,000
7	Improvements to Booster Pump Station	52.00%	48.00%	LS	1	\$150,000	\$150,000
	Total Cost						\$1,025,000
1	Mobilization, including Performance Bond, Payment Bond, and One Year Maintenance Bond (3% of Construction Costs)	52.00%	48.00%	LS	1	\$30,900	\$30,900
9	Misc. Project Items	52.00%	48.00%	LS	1	\$34,350	\$34,350
	Total Cost						\$65,250
	Phase 2B Engineering	40.00%	60.00%				\$187,110
	Allocation	\$ 74,844	\$ 112,266				
	Total Hard Cost Phase 2B Incl. Contingency (15%)						\$1,253,788
	Total Allocation	\$ 651,970	\$ 601,818				
	Total 2B Hard Cost						\$1,253,788
	Total Engineering Allocation (not incl. in Cap)	\$ 74,844	\$ 112,266				
	Total 2A Hard Cost Allocation	\$ 1,144,082	\$ 109,705				
	Total 2ACost Allocation after CAP	\$ 1,218,926	\$ 221,971				
	Total Project Hard Cost Allocation	\$ 2,650,235	\$ 1,500,000				\$4,150,235
	Total Engineering Fee Allocation	\$ 245,318	\$ 367,976				\$ 613,294
	Total Project Allocation	\$ 2,895,553	\$ 1,867,976				\$4,763,529

EXHIBIT “B”
PROJECT PHASES – FM 517 WATER PLANT

Phase 1 is the existing water plant which consists of the following:

- A surface water meter station which supports full buildout of the service area. This installation is fully complete
- A ground storage tank that is 67,500 gallons which supports 337 total connections.
- A 5,000 gallon hydropneumatics tank that supports approximately 250 connections
- A booster pump station that supports 418 total connections.

Phase 1 is completely constructed and operational. It is owned and operated by the City of Texas City, TX.

Phase 1 is not included in the Project which is the subject of this Agreement.

Phase 2 - The Project which is the subject of this Agreement consists of Phase 2A and 2B as follows:

Phase 2A includes the following :

- Well and appurtenances: rated 700 gpm well with chlorine & ammonia chemical injection, piping, auxiliary generator – this water well will provide backup water supply at a rate of 0.35gpm to 2,000 connections.
- Tank: 20,000 gal Hydropneumatic pressurized water tank – this tank will provide for 1,000 total water connections. This tank may replace the existing 5,000 gal or operate in conjunction with the existing tank, at the option of the City.
- Miscellaneous costs: Mobilization, performance & payment bonds, one year maintenance bonds

Phase 2B includes the following:

- 350,000gal Ground Storage Water Tank – this tank in conjunction with the existing tank would provide storage for a total of 2,087 connections.
- Expansion of Booster Station – addition of two booster pumps at 500 gpm each – in conjunction with the existing pumps would provide capacity for 1046 connections.
- Miscellaneous costs: Mobilization, performance & payment bonds, one year maintenance bonds

Phase 2A and 2B shall be designed together as a cohesive expansion of the existing water plant, but may be issued for bids and/or constructed either separately or together as decided by the City, the Developer and the District.

Phase 3 – A future Phase 3 will be necessary to build out the water plant to provide for the ultimate projected buildout of 1,986 total connections in its service area. Phase 3 for ultimate buildout would include at least one additional 20,000 gal hydropneumatic pressurized water tank and an upgrade to the booster station. Phase 3 is not included in the Project which is the subject of this Agreement.