



# City Council Agenda Item Request Form

This form is required to be completed by the applicable deadline for placement of an item on the City Council Agenda.

Date: 10/2/2024

Department Making Request: 35 - Community Development

Person Making Request: Dinh Ho

Item Type: Agreement

Budgeted? N/A (no cost)

Cost:

If budgeted, identify account:

Short Description:

Agreement to cost share Phase One Northwest WWTP - 0.75 MGD WWTP. The parties to the cost share includes City of Iowa Colony, BCMUD 31, BCMUD 87 and BCMUD 38

Explanation/Justification Details:

Multi-party agreement to design and construct the first phase of the Northwest WWTP to be located at the existing WWTP (formerly BCMUD 31 site).

Cost Share percentage are as follow:

- BCMUD 87 (DR Horton) - 44.26%
- BCMUD 31 (Sterling Lakes) - 32%
- BCMUD 38 (Lacovia Lakes) - 13.67%
- City of Iowa Colony - 9.07%

Total budget of \$15,862,500 includes engineering and construction of the plant.

Requestor Signature:

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This section to be completed by City Secretary, City Attorney, and City Manager's Office only:

Legal Review is complete, legal documents are prepared:

City Attorney

Item is approved for placement on Council Agenda:

City Manager

Item is scheduled for placement on the

Council Agenda.

City Secretary

**COST SHARING AGREEMENT FOR  
NORTHWEST REGIONAL WASTEWATER TREATMENT PLANT**

This Cost Sharing Agreement (this “Agreement”), effective as of \_\_\_\_\_, 2024 (the “Effective Date”), is entered into by and between the **CITY OF IOWA COLONY, TEXAS**, a municipal corporation and home rule city of the State of Texas (the “City”); **Brazoria County Municipal Utility District No. 31**, a conservation and reclamation district created pursuant to the authority of Article XVI, Section 59, of the Constitution of Texas, and operating under the provisions of Chapters 49 and 54, Texas Water Code, as amended (“**MUD 31**”); **Brazoria County Municipal Utility District No. 87**, a conservation and reclamation district created pursuant to the authority of Article XVI, Section 59, of the Constitution of Texas, and operating under the provisions of Chapters 49 and 54, Texas Water Code, as amended (“**MUD 87**”); and **Brazoria County Municipal Utility District No. 38**, a conservation and reclamation district created pursuant to the authority of Article XVI, Section 59, of the Constitution of Texas, and operating under the provisions of Chapters 49 and 54, Texas Water Code, as amended (“**MUD 38**”). The City, MUD 31, MUD 87, and MUD 38 are sometimes individually referred to herein as a “Party” and are collectively referred to as “Parties.”

**BACKGROUND**

The Parties all have the authority to provide collection and treatment services to residential and commercial property owners within their respective boundaries or service areas.

The City is planning to design, permit, and construct a permanent concrete wastewater treatment plant located at [REDACTED] with an initial phase of 0.75 million gallons per day of wastewater treatment capacity (the “Project”).

In order to carry out the Districts’ respective purposes, the Districts have determined it is in their best interests participate with the City in the joint funding of Project.

The Parties desire to enter into this Agreement to set forth the terms and conditions pursuant to which the Project is to proceed and to establish the respective rights and responsibilities regarding same.

The Parties have each determined that: (i) the provisions of this Agreement, the goods and services to be provided by each party hereunder substantially advance the legitimate interests and public purposes of the Parties, and (ii) they each are independently authorized to enter into this Agreement pursuant to the Constitution and laws of the State of Texas.

**AGREEMENT**

NOW THEREFORE, in consideration of the mutual promises, obligations, and benefits herein set forth, the receipt and sufficiency of which the Parties hereby acknowledge and confess, the Parties contract and agree as follows:



Section 2.02. Initial Estimate of Project Costs. The initial estimated Project Costs as prepared by the Project Engineer are shown on **Exhibit A** attached hereto.

Section 2.03. Pro Rata Shares of Project Costs/Reserved Capacity. The Parties agree to the Pro Rata Shares of the Project Costs as shown in the below table. The Parties shall have reserved capacity in the Project to serve development within their respective boundaries in the amounts shown below.

<b>Party</b>	<b>Pro Rata Share of Shared Project Costs</b>	<b>Approximate ESFCs (based on 220 gpd)</b>	<b>Reserved Capacity</b>
MUD 31	32%	1091	0.24 MGD
MUD 87	44%	1509	0.33 MGD
MUD 38	14.7%	500	0.11 MGD
City	9.3%	318	0.07 MGD
<b>Total</b>	<b>100%</b>	<b>3,418</b>	<b>0.75 MGD</b>

### **ARTICLE III.**

#### **ADMINISTRATION, DESIGN, AND CONSTRUCTION OF THE PROJECT**

Section 3.01. Project Administration. The Parties agree that the City shall serve as administrator of the Project (“Project Administrator”). The Parties acknowledge that the City, as Project Administrator, shall have authority to handle all aspects of the design, bidding and construction of the Project and shall not be required to seek approval from any of the other Parties for any action undertaken in the design, bidding and/or construction of the Project. However, the City, as Project Administrator, shall provide Project Administration Reports, as described herein, to the other Parties each month.

Section 3.02. Project Engineer. The Parties hereby agree that ADICO Consulting Engineers, LLC shall serve as Project Engineer. The City, as Project Administrator, shall require the Project Engineer to design the Project in accordance with sound engineering principles and in conformance with all Regulatory Requirements.

Section 3.03. Construction of Project.

(a) The City, as Project Administrator, shall advertise for competitive bids the contract for the construction of the Project in full compliance with all Regulatory Requirements, particularly the competitive bidding requirements for construction projects applicable to the City.

(b) The Parties acknowledge and agree that the construction contract for the Projects shall be in the name of the City, and the City, as Project Administrator, shall be responsible for having the construction of the Project performed in a good and workmanlike manner and in accordance with the approved plans and specifications and all Regulatory Requirements. The City, as Project Administrator, shall administer the construction contract, including review and approval of all appropriate pay applications and change orders, for the Project in accordance with all Regulatory Requirements and based on the recommendations of the Project Engineer. The City, as Project Administrator, shall cause the construction of the Project to be supervised by the Project Engineer.

Section 3.04. Project Schedule. As Project Administrator, the City agrees to proceed expeditiously towards construction, and shall use commercial reasonable efforts to have design and construction of the Project substantially complete within 30 months of the Effective Date of this Agreement.

If, due to the fault of the City, the Project is not substantially complete within 30 months of the Effective Date of this Agreement, City agrees to provide the “pump and haul” service referenced in Section 3.06 below as needed and at their sole cost and expense until such time as the Project is substantially complete.

Section 3.05. Ownership and Operation of the Project. Upon final completion of the Project, the City shall be the sole legal owner of the Project and shall bear all responsibility for the operation and maintenance of the Project, including any necessary repairs or rehabilitation. MUD 31 (for itself and on behalf of Brazoria County Municipal Utility District No. 32 (“MUD 32”)), MUD 87, and MUD 38 shall have beneficial rights to their respective pro-rata shares of the reserved capacity in the Project as provided in this Agreement. The City agrees to operate and maintain the Project in good and workmanlike condition for the benefit of all of the Parties.

Section 3.06. Supplemental Capacity During Construction of Project. The City acknowledges that the Districts are under active development and receiving wastewater treatment capacity from various facilities serving the land inside the Districts. In the event any of the Districts require additional capacity to serve development within its boundaries before the Project is complete and operable, then the Districts shall have the right to provide “pump and haul” service to serve its development, in the manner allowed under applicable law, including applicable regulations of the TCEQ, or to make such other arrangements as are compatible with applicable law and regulations in order to adequately provide and address necessary wastewater treatment services until the Project is operable.

## **ARTICLE IV.**

### **PROJECT FINANCING, ACCOUNTING, AND RECORDS**

Section 4.01. Establishment of Project Account. The City shall establish the Project Account with respect to the deposits and payments to be made by the Parties pursuant to this Agreement. Said account and the funds therein shall be kept separate and apart from all other accounts and funds of the City. All funds of the Parties to pay Project Costs shall be deposited into and paid from the Project Account.

Section 4.02. Initial Deposits into Project Account for Design Costs. The Parties agree to deposit into the Project Account the full amount of each Party’s estimated Pro Rata Share of design portion of the Project Costs in the below amounts under “Engineering Share” within 60 days of the Effective Date:

Entity	ESFCs	GPD	Cost Share%	Engineering Share	CMT	Construction Phase Share	Contingency (10%)	Total
				\$877,500	\$135,000	\$13,500,000		
City of Iowa Colony	309	68000	9.07%	\$79,560	\$12,240	\$1,224,000	\$122,400	\$1,438,200
BCMUD 87	1509	331980	44.26%	\$388,417	\$59,756	\$5,975,640	\$597,564	\$7,021,377
BCMUD 31 & 32	1091	240020	32.00%	\$280,823	\$43,204	\$4,320,360	\$432,036	\$5,076,423
BCMUD 38	500	110000	14.67%	\$128,700	\$19,800	\$1,980,000	\$198,000	\$2,326,500
Total	3,409	750000	100.00%	\$877,500	\$135,000	\$13,500,000	\$1,350,000	\$15,862,500

Section 4.03. Deposits into Project Account for Construction Costs. Promptly upon receipt of bids for a for construction of the Project, the City, as Project Administrator, shall provide written notice to the Parties, including a tabulation of all bid results, and specifying the identified contractor and the contract price. The Parties agree to deposit additional funds for their respective Pro Rata Shares of the contract price with the City within 45 calendar days of receipt of the bid tabulation. The City, as Project Administrator, agrees to deposit such funds into the Project Account.

If any District fails to make its respective deposit for its Pro Rata Shares of the design or contract price in accordance with this Agreement, the City shall have the right to forego the issuance of building permits and/or connections to the utility system inside the boundaries of the defaulting District until paid.

Additionally, if any Party fails to make its respective deposit for its Pro Rata Shares of the design or contract price in accordance with this Agreement (the “Defaulting Party”), the City shall provide notice to all Parties of such non-payment and the remaining Parties (the “Non-Defaulting Parties”) may either (i) elect to fund such Defaulting Party’s Pro Rata Shares of the total design and contract price until paid in full by the Defaulting Party, in which event such amount funded by the Non-Defaulting Parties on behalf of the Defaulting Party shall accrue interest at the lesser of 18% per annum or the highest non-usurious rate permitted under applicable law until paid in full (with accrued interest) by the Defaulting Party, or (ii) elect that the Defaulting Party shall not be allocated any capacity in the Project, in which case the Defaulting Party’s respective proportionate share of the design and contract price shall be allocated on a pro-rata basis among the Non-Defaulting Parties and the Non-Defaulting Parties shall be entitled to exercise any remedies available at law or in equity. If the Non-Defaulting Parties elect that the Defaulting Party shall not be allocated any capacity in the Project as provided for herein, the Defaulting Party shall be automatically removed as a Party to this Agreement and forfeits all amounts previously deposited under this Agreement.

Section 4.04. Administration of Project Account. As Project Administrator, the City shall utilize funds in the Project Account only for the payment of Project Costs. Such funds shall be invested and continuously secured in the manner required by the laws of the State of Texas applicable to the City, as such laws exist now or may be amended. The interest accruing on, and any profits realized or losses incurred from investing funds in the Project Account shall be allocated to each Party based upon its Pro Rata Share.

Section 4.05. Project Account Records. The City shall maintain books of records and accounts in which full, true, and proper entries will be made of all dealings, transactions, business, and any other matters which in any way affect or pertain to the design and construction of the Project and the payment of Project Costs according to each Party’s Pro Rata Share.

Section 4.06. Project Administration Report. The City shall provide, monthly, a written report briefly summarizing Project Costs for the month and general progress on the Project during the month. The Parties shall have the right to request, at any time, more detail about the information contained in the report, and the City agrees to provide the information promptly if such information is readily ascertainable. If such information is not readily ascertainable, the City will so inform the requesting Party(ies) and shall provide the information as soon as it becomes readily ascertainable.

Section 4.07. Final Accounting of Project Account. Within 120 days after final completion of the Project, and provided that the City has determined that all Project Costs have been fully paid, the City, as Project Administrator, shall perform or cause to be performed a final accounting of the Project Account and shall provide all Parties with a copy of such accounting. Any remaining funds, including any interest or investment earnings accumulated on such funds, shall continue to be funds of the Parties, and the City shall promptly refund such remaining funds in excess of each Party's Pro Rata Share of Project Costs. If the total Project Costs exceeds the amount deposited in the Project Account, the City shall promptly invoice the Parties for the Pro Rata Shares of the resulting shortfall, which invoices shall be due within 45 days or receipt. Upon payment of any final amounts due under this section, the City shall close the Project Account. If any Party discovers any inaccuracy in the administration of the Project Account, the necessary adjustment in such administration shall be promptly made; provided that no such adjustment shall be made later than two (2) years after the closing of the Project Account, unless otherwise agreed to in writing by the Parties.

## **ARTICLE V.**

### **REPRESENTATIONS AND WARRANTIES**

Section 5.01. Representations and Warranties. Each Party represents and warrants that:

- (i) It has the full power, authority and legal right to execute and deliver this Agreement and to perform and observe the terms and provisions hereof;
- (ii) The form, execution, delivery and performance of this Agreement has been duly authorized by all necessary action and does not violate or contravene any law or any order of any court or governmental agency or any agreement or other instrument to which such Party is a party or by which it or any of its properties may be bound; and
- (iii) This Agreement is a legal, valid and binding obligation of the Party enforceable against the Party in accordance with its terms except that enforceability may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights in general and is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

## **ARTICLE VI.**

### **MISCELLANEOUS**

Section 6.01. Default. A breach of any material provision of this Agreement after notice and an opportunity to cure, shall constitute a default. The non-breaching Party(ies) shall notify the breaching Party(ies) of an alleged breach, which notice shall specify the alleged breach with reasonable particularity. If the breaching Party(ies) fails to cure the breach within a reasonable time, not sooner

than thirty (30) days after receipt of such notice (or such longer period of time as the non-breaching Party(ies) may specify in such notice), the non-breaching Party(ies) may declare a default hereunder and exercise the remedies provided in this Agreement in the event of default.

Section 6.02. Remedies; No Additional Waiver Implied. In the event of breach or default by a Party hereto of any term, covenant, or condition hereunder (and which breach or default continues for thirty (30) days after receipt of written notice from the non-breaching or non-defaulting Party(ies) the non-breaching or non-defaulting Party(ies) shall have the right, except as specifically limited or conditioned elsewhere in this Agreement, to pursue all legal or equitable remedies, including, but not limited to, the right of specific performance by means of a writ of mandamus issued by a court of competent jurisdiction compelling and requiring the breaching or defaulting Party(ies) to observe and perform the terms, covenants, obligations, conditions or liabilities prescribed in this Agreement or other declaratory relief. No waiver or waivers of any breach or default (or any breaches or defaults) by a Party hereto of any term, covenant, condition, or liability hereunder, or the performance by a Party of any duty or obligation hereunder, shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, under any circumstances.

Section 6.03. Addresses and Notice. Unless otherwise provided in this Agreement, any notice, communication, request, reply or advice (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made or accepted by a Party to the other Party(ies) (except bills), must be in writing and may be given or be served by Federal Express or depositing the same in the United States mail postpaid, certified, and addressed to the Party(ies) to be notified, with return receipt requested, or by delivering the same to such Party(ies), addressed to the Party(ies) to be notified. Notice deposited in the mail in the manner hereinabove described shall be conclusively deemed to be effective, unless otherwise stated in this Agreement, from and after the expiration of three (3) days after it is so deposited. Notice given in any other manner shall be effective when received by the Party(ies) to be notified. For the purpose of notice, addresses of the Parties shall, until changed as hereinafter provided, be as follows:

If to the City, to:

City of Iowa Colony  
3144 Meridiana Pkwy  
Iowa Colony, Texas 77583  
Attn: City Manager Sugar Land, Texas 77478

If to MUD 31, to:

Brazoria County MUD No. 31  
c/o Allen Boone Humphries Robinson LLP  
3200 Southwest Freeway, Suite 2600  
Houston, Texas 77026  
Attn: Jessica Holoubek

If to MUD 87, to:

Brazoria County MUD No. 87  
c/o Coats Rose, P.C.



Attn: Timothy G. Green  
9 Greenway Plaza, Ste. 1000  
Houston, Texas 77046

If to MUD 38, to:

Brazoria County MUD No. 38  
c/o \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

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 any other address by at least fifteen (15) days' written notice to the other Parties.

Section 6.04. Term. This Agreement shall become effective and binding on the Parties as of the Effective Date for a term of thirty (30) years.

Section 6.05. Assignment. None of the Parties may assign this Agreement (nor any rights or obligations arising hereunder) without the prior written consent of the other Parties, which consent may be granted or denied in the sole and absolute discretion of the other Parties.

Section 6.06. Modification. This Agreement shall be subject to change or modification only by written amendment (or supplement) approved and executed by all of the Parties.

Section 6.07. Force Majeure. In the event a Party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, other than the payment of money, then the obligations of such Party, to the extent affected by such force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. As soon as reasonably possible after the occurrence of the force majeure relied upon, the Party whose contractual obligations are affected thereby shall give notice and full particulars of such force majeure to the other Parties. Such cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure", as used herein, shall include without limitation of the generality thereof, acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, drought, arrests, restraint of government and people, civil disturbances, explosions, and any other incapacities of a Party, whether similar to those enumerated or otherwise, which are not within the control of the Party claiming such inability, which such Party could not have avoided by the exercise of due diligence and care. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the Party having the difficulty, and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party when such settlement is unfavorable to it in the reasonable judgment of the Party having the difficulty.

Section 6.08. Compliance with Regulatory Requirements. This Agreement shall be subject to all Regulatory Requirements.

Section 6.09. Parties in Interest. This Agreement shall be for the sole and exclusive benefit of the Parties and their permitted successors and assigns and shall not be construed to confer any rights upon any third party.

Section 6.10. Merger. This Agreement embodies the entire agreement between the Parties relative to the subject matter hereof and no prior agreements whether written or oral are effective.

Section 6.11. Liability for Indebtedness. It is expressly understood and agreed that nothing in this Agreement has the effect of causing a Party to assume, guarantee, or become in any way liable for any bond, warrant, note or other indebtedness or obligation of the other Parties.

Section 6.12. Severability. The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons or circumstances shall not be affected thereby.

Section 6.13. Construction of Agreement. This Agreement shall not be construed in favor of or against any Party on the basis that the Party did or did not authorize this Agreement.

Section 6.14. Applicable Law. This Agreement shall be governed and construed in accordance with the laws of the State of Texas and venue shall exclusively be in Brazoria County, Texas.

Section 6.15. Consultation. The Parties each hereby acknowledge, represent and warrant to each other: (i) each has had the opportunity to consult with legal counsel of their own choice and has been afforded an opportunity to review and negotiate this Agreement with assistance of their legal counsel, (ii) each has reviewed this Agreement, and fully understands the effects hereof and all terms and provisions contained herein, and (iii) each has executed this Agreement of its own free will and volition.

**Exhibits:**

Exhibit A: Estimated Project Costs

[EXECUTION PAGES FOLLOW]

IN WITNESS WHEREOF, the Districts have executed this Agreement in multiple counterparts, each of which shall be deemed to be an original, as of the Effective Date.

**BRAZORIA COUNTY MUNICIPAL UTILITY  
DISTRICT NO. 31**

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President, Board of Directors

**BRAZORIA COUNTY MUNICIPAL UTILITY  
DISTRICT NO. 87**

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President, Board of Directors

**BRAZORIA COUNTY MUNICIPAL UTILITY  
DISTRICT NO. 38**

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President, Board of Directors

**CITY OF IOWA COLONY:**

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor

Date: \_\_\_\_\_

ATTEST

By: \_\_\_\_\_  
\_\_\_\_\_, City Secretary

Exhibit A



**CITY OF IOWA COLONY  
NORTHWEST WASTEWATER TREATMENT PLANT - PHASE ONE 0.75 MGD  
Opinion of Probable Construction Cost**

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL ITEM COST
1.	WWTP Site Work	1	LS	\$50,000	\$50,000
2.	Construction of permanent WWTP, including concrete basin, piping, airlifts, walkways, blowers, valves, plant pad, electrical, painting, concrete slabs, bollards, CL2 solution, eye wash station, etc. for an operational 0.75 MGD waste water treatment plan, complete in place	1	LS	\$12,000,000	\$12,000,000
3.	Onsite Lift Station	1	LS	\$700,000	\$700,000
4.	Natural Gas Generator	1	LS	\$600,000	\$600,000
5.	Site Lighting	1	LS	\$25,000	\$25,000
6.	Reconfiguration of existing yard piping	1	LS	\$100,000	\$100,000
7.	Electrical Services	1	LS	\$15,000	\$15,000
8.	SWPPP	1	LS	\$10,000	\$10,000
<b>Subtotal:</b>					<b>\$13,500,000</b>
<b>Contingency (10%):</b>					<b>\$1,350,000</b>
<b>Engineering (6.5%):</b>					<b>\$877,500</b>
<b>CMT (1%)</b>					<b>\$135,000</b>
<b>Total:</b>					<b>\$15,862,500</b>