

PROJECT COST SHARING AGREEMENT FOR ELEVATED STORAGE TANK

THIS PROJECT COST SHARING AGREEMENT FOR ELEVATED STORAGE TANK (the "Cost Agreement") is made and entered into as of the \_\_\_\_ day of February, 2022, by and between the CITY OF TOMBALL, TEXAS (the "City"), a municipal corporation and home-rule city located in Harris County, Texas, and LIT INTERCHANGE 249 BUSINESS PARK, LLC (the "Owner")

WITNESSETH:

WHEREAS, the City and the Owner entered into that certain Utility Agreement (the "Utility Agreement") dated December 6, 2021, to provide for, among other things, the funding of the design, construction, testing, inspection, and other necessary equipment costs for an elevated storage tank (not to exceed storage of 1.0-million gallons) and an 16-inch water line, all as shown on the attached **Exhibit A** (the "Project"), within the boundaries of the Owner's property, in a mutually agreed upon location; and

WHEREAS, the City will manage the Project and expects to enter into an engineering design and a construction contract for the Project;

WHEREAS, as provided for in the Utility Agreement, the Owner has agreed to fund fifty-percent (50%) of the Project and its associated expenses (the "Project Cost") including: materials, construction, installation engineering design, geotechnical testing, third party and special inspections, materials testing, and other necessary equipment items associated with the completion of the Project.

NOW, THEREFORE, THE CITY AND OWNER CONTRACT AND AGREE AS FOLLOWS:

Section 1. Project Manager.

The parties hereby agree that the City shall enter into the contract(s) for the construction, installation, engineering design, geotechnical testing, special inspections, and materials testing for the Project. In consideration for the same, the Owner hereby agrees to pay to the City fifty-percent (50%) of the actual Project Costs of such contracts, as provided for below.

Section 2. Project Site Dedication.

Owner agrees to convey to City a tract of property of similar size and location, with sufficient ingress and egress to the site as reasonably agreed to between the parties for the City, as shown on the attached **Exhibit B**, (the "Project Site") to construct, operate, and maintain the Project. The conveyance shall provide that, in the event that the City does not commence the Project within twenty-four (24) months of the effective date of this Agreement, all property rights in the Project Site shall immediately and without further required action revert to Owner or Owner's successors, as may be applicable.

### Section 3. Project Engineering Design.

The City will or has entered into a contract for engineering design of the Project. The City agrees that the engineering design will include reasonable and adequate fencing around all ground-mounted equipment to preserve the aesthetics of the surrounding development. The City will send to the Owner each approved engineering invoice, together with any reasonable backup documentation, submitted by the Engineer to the City. Invoices are due to the Owner on the 25th day of each month, and payment is due and payable thirty (30) calendar days thereafter. The Owner agrees to deposit with the City an amount equal to fifty-percent (50%) of each approved invoice presented by the City in accord with such schedule.

### Section 4. Project Construction Contracts.

Upon approval by all agencies with jurisdiction of the plans and specifications for the Project, the City shall proceed with due diligence to advertise and take bids for construction of the Project. Not later than ten (10) business days the receipt of construction Project bids, the City shall provide written notice to the Owner, including a tabulation of all bid results, and specifying the identified contractor and the contract price. The City shall award a contract for the Project in accord with all laws applicable to the City; provided, however, that if the bid results in a potential contract price of greater than 125% of the original cost estimate shown in **Exhibit C**, the City agrees to reject all bids, re-advertise and take additional bids for construction of the Project.

### Section 5. Other Related Contracts and Expenses

The City may also enter contracts or expend funds for additional goods and services to complete the Project, provided that the total Project Costs do not exceed 125% of the estimated Project Costs shown in Exhibit C. Not later than ten (10) business days the receipt of Project bids or quotes, the City shall provide written notice to the Owner, including a tabulation of all bid results or quotes, and specifying the identified contractor or vendor and the contract, service, or commodity price.

### Section 6. Project Pay Applications, Change Orders, Quantity Increases, Final Cost.

Each pay application, change order or quantity increase shall be presented to the Owner simultaneous to the City for review and approval. The Owner shall have ten (10) business days to review and approve/object to such pay application, change order or quantity increase. After such ten (10) business day period, any pay application, change order or quantity increase shall be deemed approved if no objection is received. The City agrees to negotiate in good faith based on sound engineering principals in regard to any Owner objections to a pay application, change order or quantity increase. Pay applications are due to the Owner on the twenty-fifth (25<sup>th</sup>) day of

each month, and payment is due and payable thirty (30) calendar days thereafter. The Owner agrees to deposit with the City an amount equal to fifty-percent (50%) of each approved pay application in accord with such schedule.

In the event that there is a change order(s) approved by the City and the Owner in accordance with the construction that results in a net increase in the total Costs, each of the Owner and the City shall be responsible for fifty-percent (50%) of the amount of the net increase to the Project Cost.

In the event that there is a change order(s) or quantity changes approved by the City and the Owner that results in a net decrease in the Project Cost, the City shall, within sixty (60) days of final acceptance of the Project, reimburse to the Owner any funds in excess of fifty-percent (50%) of the final Project Cost that have been previously paid by the Owner to the City.

For all additional Project Costs related to additional services or goods to complete the Project, the City will provide the Owner invoices for costs no later than thirty (30) days after the expenditure is made. The Owner shall have thirty (30) days from the 25<sup>th</sup> date of each month that an invoice is presented to provide the City payment in the amount equal to fifty percent (50%) of the cost of the invoice.

#### Section 7. Project Reimbursement.

The parties acknowledge and agree that the Owner's share of funding of the Costs will be an eligible "Project Cost" subject to future reimbursement from proceeds of the City of Tomball – Tax Increment Reinvestment Zone No. 3 – Tax Increment Revenue Fund (the "Fund"), as will be more fully provided for by separate agreement instrument and in the Development Agreement recorded in Harris County Clerk's File No. RP-2022-52099.

#### Section 8. Project Ownership and Maintenance.

The parties shall each benefit from the construction and installation of the Project; provided, however, that as between the parties, it is expressly agreed that the City shall be the owner and operator of the Project and shall retain legal title thereto. Moreover, the City shall be responsible at its sole cost and expense for all maintenance, repair, and rehabilitation associated with the Project subsequent to completion and acceptance of the same under this Agreement.

#### Section 9. Project Modifications.

Unless specifically modified or amended hereunder, the terms and conditions of Utility Agreement shall remain in full force and effect.

#### Section 10. Project Conflict.

To the extent there is any conflict between this agreement and the terms and conditions of the Utility Agreement or any amendments thereto, the terms and conditions of this agreement shall control and supersede.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of equal dignity, on this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

**OWNER:**

**LIT INTERCHANGE 249 BUSINESS PARK, LLC**, a Delaware limited liability company

By: Interchange 249 Business Park, LP,  
a Texas limited partnership, its operating member

By: Interchange 249 Business Park GP, LLC, a  
Texas limited liability company, its general  
partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CITY:**

**THE CITY OF TOMBALL, TEXAS**

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Mayor  
Gretchen Fagan

ATTEST/SEAL:

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City Secretary  
Doris Speer

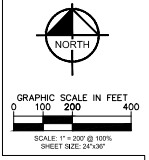
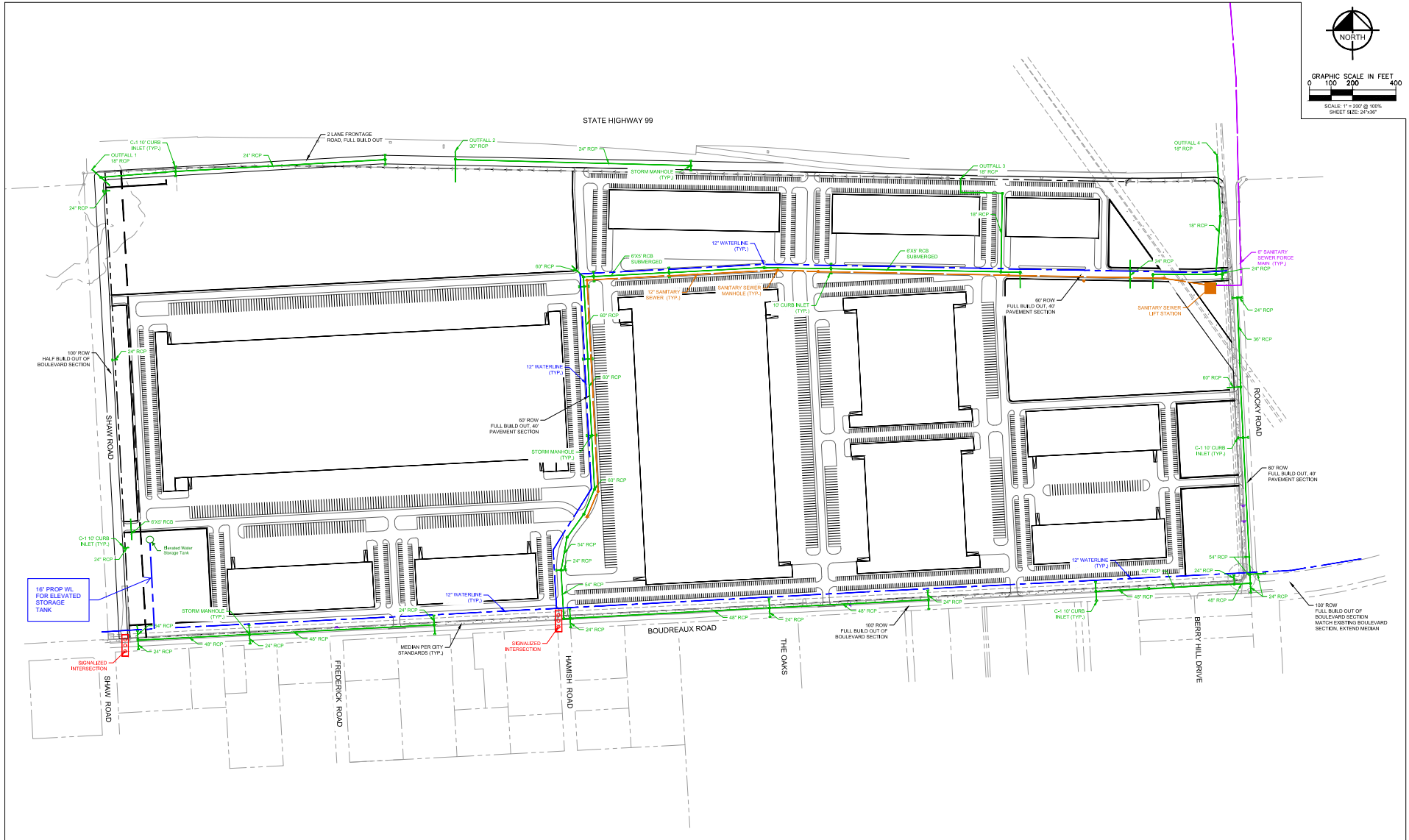
Exhibits:

Exhibit A- Project Description

Exhibit B- Approximate Project Site

Exhibit C- Project Cost Estimate

# EXHIBIT A



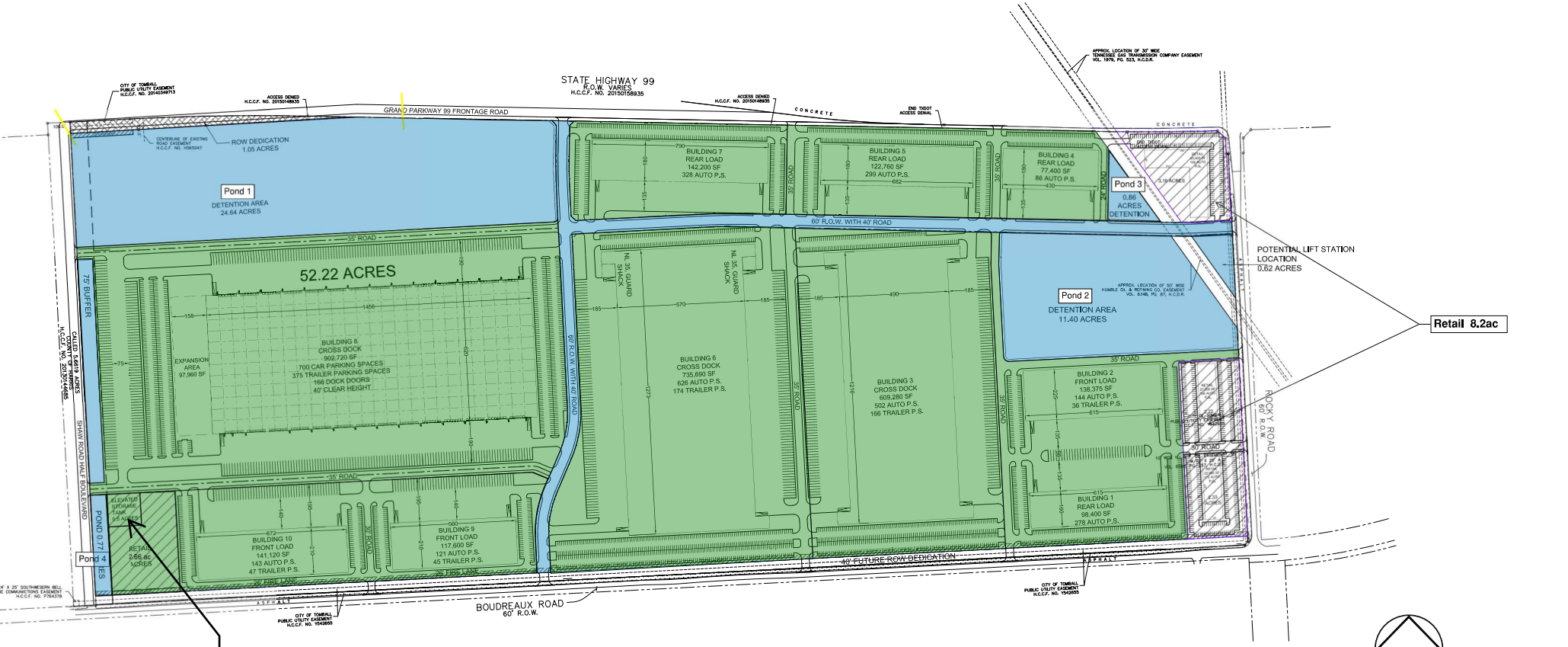
LOVETT TOMBALL INDUSTRIAL UTILITY EXHIBIT  
09/13/2021



**EXHIBIT B**

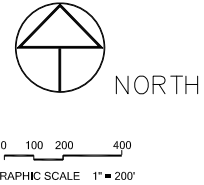
**249\_GP LOGISTICS PARK PROJECT**

- Light Industrial 188ac
- Retail 8.2ac
- Road, detention, public facilities 43ac
- Total 240 ac**



**APPROXIMATE LOCATION OF ELEVATED STORAGE TANK PROPERTY**

**TOTAL BUILDING AREA : 3,176,105 SF**  
**TOTAL INDUSTRIAL BUILDING AREA : 3,085,545 SF**  
**TOTAL RETAIL BUILDING AREA : 90,560 SF**



# City of Tomball



Opinion of Probable Construction Cost\*

September 3, 2021

*\*Planning Level Cost in 2021 Dollars*

**Project Name:** 1.0 MG Elevated Storage Tank and 16-Inch Water Line

**Project Description:**

This project includes the construction of a new 1.0 MG elevated storage tank and 16-inch water line between the Lovett Development and the existing 12-inch water line.

**Project Drivers:**

The elevated storage tank and 16-inch line are sized to help meet fire flow demands at the Lovett Industrial Development.

**Opinion of Probable Construction Cost**

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
1	1.0 MG Elevated Storage Tank	1	LS	\$ 4,250,000	\$ 4,250,000
2	16" WL & Appurtenances	500	LF	\$ 200	\$ 100,000
<b>SUBTOTAL:</b>					<b>\$ 4,350,000</b>
CONTINGENCY				30%	\$ 1,305,000
<b>SUBTOTAL:</b>					<b>\$ 5,655,000</b>
ENG/SURVEY				20%	\$ 1,131,000
<b>SUBTOTAL:</b>					<b>\$ 6,786,000</b>
<b>Estimated Project Total:</b>					<b>\$ 6,786,000</b>