

CAPITAL IMPROVEMENT AND WASTEWATER SERVICE AGREEMENT

This Capital Improvement Agreement for Sanitary Sewer Service (this “Agreement”) is made effective as of _____, 2020, between the City of Seguin (the “City”), and NB DEAN 32, LLC., a Texas limited liability company (“Developer”). Developer and the City may be referred to individually as “Party” and collectively as the “Parties”.

RECITALS

- A. Developer has contracted to acquire an approximate 83 acre tract of land in Guadalupe County, Texas more particularly described on the attached **Exhibit 1**, upon which Developer intends to develop as the Jaro North Subdivision (“Jaro North”) that would require access to sanitary sewer.
- B. Due to spatial constraints along Highway 123, and to facilitate the development of Jaro North, Developer has contracted to acquire an additional 20 acres (the “Offsite Property”), more particularly described on **Exhibit 2** (both Jaro North and Offsite Property collectively, the “Developer Property”).
- C. City owns a Wastewater Utility that, with the completion of improvements set out herein, is capable of serving the residential development of approximately 450 homes on the Developer Property as well as the surrounding area.
- D. The City and Developer desire to provide a mechanism to ensure that city sanitary sewer services are made available to the Developer Property and to property in the surrounding area.
- E. The Developer Property is not within the Seguin city limits, but does lie within an area that can be served by the City’s sanitary sewer system. Some of the area to be served lies outside the City’s certificated area for servicing wastewater, but does not lie in the certificated area of any other entity and is therefore subject to inclusion within the City’s Certificate of Convenience and Necessity.
- F. The “Project” contemplated by this Agreement shall consist of a sanitary sewer line, running approximately along the line shown on **Exhibit 1**. Services will be secured by constructing a sewer collection system within Jaro North through the Offsite Property and to the sanitary sewer line within the Lennar Navarro Oaks subdivision. Real property interest, including fixtures identified herein, will be conveyed to the City to facilitate the performance of services and for the City to assume full responsibility for maintenance, repair, and replacement.

AGREEMENT

The Parties, in consideration of the mutual promises, covenants and agreements set forth in this Agreement, agree and contract as follows:

1. **Engagement of Engineer.** Developer agrees to contract for and pay for all third-party engineering services needed for construction of the Project including, without limitation,

the preliminary design, final design, bidding, the surveying, construction administration, and warranty inspection phases for the Project. The engineer engaged by Developer (the "Project Engineer") must be a professional engineer registered in the State of Texas.

2. **Oversizing.** The City has directed that the proposed sanitary sewer line be sized as a 12 inch sanitary sewer line for the purpose of facilitating the City's provision of services in the sewer shed area.
3. **Depth and Slope.** The 12 inch line will be **installed at the minimum depth and slope at Developer's cost.**
4. **Engineer's Services.** Developer will ensure that all construction work on the Project is performed under the supervision and oversight of the Project Engineer, including the following:
 - a. The Project Engineer will coordinate the design and construction of the Project with the City.
 - b. The Project Engineer shall be responsible for a survey of the proposed alignment, along with obtaining a metes and bounds description to be used for the easement purchase.
 - c. The Project Engineer will prepare plans and specifications for the Project in accordance with City design and construction standards and with applicable laws and regulations, and submit them to the City for review. The Project Engineer will assist Developer in obtaining all necessary permits for the Project from authorities having jurisdiction over the work.
 - d. The Project Engineer will perform periodic inspections of work on the Project in progress at least monthly throughout the construction period, and will coordinate the inspections with the City. The Project Engineer shall also be responsible for inspections required by the Texas Commission on Environmental Quality.
 - e. The City Engineer will conduct inspections to determine the dates of substantial completion and final completion for the Project, and make a written recommendation to the City regarding the acceptance of the Project.
5. **Plans and Plan Approval.**
 - a. Upon completion of the plans for the Project, prior to seeking a construction contractor, Developer shall provide the City Engineer of a copy of the plans for the Project.
 - b. The City Engineer shall have fifteen (15) business days to review the initial plans for the Project and submit its comments to the Project Engineer.
 - c. The Project Engineer shall address the City Engineer's comments and submit the revised plans to the City Engineer for final approval.

- d. The City Engineer shall submit any comments, after the initial plan review, within ten (10) business days.
6. **Construction.** Developer will ensure that the construction of the Project is performed in accordance with the following:
 - a. Developer will cause all necessary licenses and permits for the Project to be obtained from authorities having jurisdiction over the work and pay all fees related to such permits.
 - b. Developer will require the contractor to construct the Project in a good and workmanlike manner and in accordance with the plans and specifications for the facilities prepared by the Project Engineer and approved by the City Engineer.
7. **Project Costs.** Developer will be responsible for the costs associated with the Project, including, but not necessarily limited to, engineering costs, construction costs, and costs for the acquisition of land and/or permanent and temporary sewer line easements.
8. **City Inspections and Acceptance. The City agrees, at no cost to Developer, to:**
 - a. Inspect the construction of the Project as construction progresses;
 - b. Inspect the Project promptly upon completion of construction; and
 - c. Inspect all sanitary sewer collection systems up to the clean out located on the property line.
9. **Reservation of Wastewater Capacity.**
 - a. The City will reserve, for a period of ten (10) years after the effective date of this Agreement (the "Reservation Period") sewer capacity for the Developer Property as provided below. The City will issue to the Developer on the effective date, approximately 450 LUE's (the "Reserved Capacity"). Upon the City of New Braunfels approval of the Masterplans for the Developer Property, the total LUE's included in Reserved Capacity shall be adjusted to reflect the actual number of LUEs needed to serve the Developer Property. Notwithstanding the previous sentence, the final Reserve Capacity must include at least 425 LUEs, but shall not exceed 475 LUE's.
 - b. The Reserved Capacity will be reduced for each LUE used with respect to the Developer Property (but not with respect to wastewater service units from any other facilities or projects), and the resulting Reserved Capacity will be deemed the "Adjusted Reserved Capacity." The parties expressly agree and acknowledge that in order for the City to continue to reserve the sewer capacity for the Developer Property, the Developer must comply with Section 9(d) below.

- c. The City agrees to allow Developer or the current owner of the Developer Property to connect sewer lines to the Project to the extent of any Adjusted Reserved Capacity remaining at the time of request. In order to protect the rights of Developer and the subsequent owner(s) of the Developer Property and their respective portions of the Reserved Capacity in the Project, the City agrees to verify that sufficient capacity remains in the Project, after deducting the total Reserved Capacity for the Developer Property, to serve a request to connect to the Project by the owner of any other property, or by the owners of the Developer Property, before approving the request. To the extent that any such request exceeds the remaining capacity in the Project, the City agrees to deny the request. The City may provide alternative means for wastewater service for persons whose service requests are denied under this paragraph, in any manner that does not reduce the amount of the Adjusted Reserve Capacity for the Developer Property. The rights to the Adjusted Reserved Capacity will remain solely with Developer unless Developer records in the Real Property Records of Guadalupe County, Texas an explicit partial assignment of the Adjusted Reserve Capacity for land in the Developer Property conveyed to a third-party. In the event Developer records a plat of single-family lots in the Developer Property, then the Adjusted Reserved Capacity will be automatically assigned to each single-family lot without any additional action on behalf of Developer.
- d. Developer agrees to pay City the Wastewater Impact Fee for the Reserved Capacity in successive groups of LUEs as prescribed in this Section 9.d.
 - i. The amount that Developer shall pay for each group of LUEs shall equal the Wastewater Impact fee in effect as of the date the first group of LUE's is paid as set forth below in iii, multiplied by the number of LUEs in the group that Developer is prepaying at that time.
 - ii. Developer agrees not to suffer, allow, or cause discharges into the Project from any connection unless the Wastewater Impact Fee for that connection has been received by City. The Parties also agree that at no time shall City be required to authorize a Developer wastewater connection to commence discharging waste into the Project or into City's wastewater treatment plant before a Wastewater Impact Fee has been paid for that connection.
 - iii. The first group of LUEs will be paid at any point earlier than (1) December 1, 2022, (2) with a second payment 5 days prior to the City's obligation to inspect the Project under Section 8.a. The first payment shall consist of a minimum of fifty (50) LUEs (the "Initial LUE Payment").
 - iv. Thereafter, Developer will be responsible for the annual payment of fifty (50) LUEs, due to the City one (1) year from the previous payment. Yearly payments in excess of 50 LUEs shall be credited toward the balance due the following year.

- v. Developer shall make yearly payments until all LUEs in the Reserved Capacity have been paid, but in no event shall the final payment described above be paid to the City later than ten (10) years from the date of Developers first payment.
- e. Developer is attempting to acquire additional land contiguous to the Developer Property. Prior to the expiration of this Agreement, Developer may reserve up to 400 additional LUEs for the expansion of the Developer Property (the “Additional LUEs”) by notifying City of their intent to expand and giving the total number of LUEs to be reserved. The City is not required to reserve any Additional LUEs if there is no capacity in the wastewater collection system or treatment plant servicing the Project or Developer has not begun Expansion Payments described below.
 - i. Upon Developer notice of the Additional LUEs, the Developer shall begin paying the then current wastewater impact fee in successive yearly payments (the “Expansion Payments”).
 - ii. The first Expansion Payment shall consist of no less than 50 LUEs and is due within 30 days after notice of Developers intent to expand.
 - iii. All successive Expansion Payments shall consist of no less than 50 LUEs and are payable each year for either 8 years or until all Additional LUEs are paid.

10. Easements.

- a. The City will assist in the acquisition of all necessary easements required for the completion of the Project. Developer will reimburse the City for all such reasonable costs to obtain such easements, including cost of appraisal and land man, provided that such costs are approved in advance by Developer.
- b. When necessary, the City will exercise its eminent domain authority to acquire such easement needed for the Project. Developer will pay for all easement costs associated with these acquisitions, which easements shall be treated as a project cost for the Project and reimbursable to Developer. The City will expedite the process by requesting authorization from the City Council for the purchase of all easements necessary for the project
- c. The Developer agrees to pay the City the amount required for the acquisition of such easements related to the Project. If funds are needed to pay the easement costs, the City will provide one or more itemized invoices to Developer for the costs, and Developer will pay the amount of each such invoice to the City within 30 days, provided the total amount expended on the easement costs is either approved in

advance by Developer, or is the outcome of legal action under eminent domain proceedings.

- d. In the event that the construction and installation of all lines and infrastructure for the sanitary sewer collection and treatment facilities to serve the Project are not fully installed and operational in accordance with the anticipated project timeline for construction and completion of the first homesites for sale on the Developer Property, the City agrees it will temporarily accept through a separate pump and haul agreement the sanitary sewer effluent from the completed houses until completion of the installation and operation of the lines and infrastructure have been completed. The Pump and Haul Agreement shall be with a TCEQ registered carrier who will deliver the non-comingled effluent meeting the City's published standards for acceptance and paid at the then existing rate. Developer shall use all commercially reasonable efforts to complete the entire Project and have operational as soon as possible, but no later than twelve (12) months after the implementation of the Pump and Haul Agreement.
11. **Dedication to Seguin.** Developer agrees to dedicate, grant and convey to the City all rights, title and interest of Developer in the off-site, if any, and on-site, up to the plumbing taps, utility infrastructure that Developer constructs under this Agreement, and to dedicate, grant, and convey to the City easements for such utility infrastructure on the Developer Property, Upon written acceptance of off-Site and on-Site utility infrastructure by the City, the infrastructure shall be owned, operated and maintained by the City.
 12. **Connection/Tap Fee.** The City has established a tap or connection fee, separate from the wastewater impact fee, for connections to all the City owned sanitary sewers, including the Project. This fee shall not be waived by the City and will be assessed before any plumbing connection is made to a residence in the Developer's Project. Failure to submit application and pay the appropriate tap fee shall be subject to the same penalties as are assessed to any residential development within the City limits.
 13. **Annexation.** The Developer Property is not in the Extraterritorial Jurisdiction of the City of Seguin and is therefore not subject to annexation. The Developer Property is, however, within the area that is adjacent to the certificated area of Seguin Sanitary Sewer Certificate of Necessity and Convenience and will be served accordingly.
 14. **Applicable Laws; Impact Fees.** This Agreement and the provision of wastewater service through the Project are subject to all valid and applicable ordinances, fees (including City wastewater impact fees as specified in Paragraph 9), rules, regulations, and laws of all governmental agencies having lawful jurisdiction over them.
 15. **Entire Agreement; Assignment.** This Agreement constitutes the entire agreement between the Parties hereto with respect to the Project and may be amended only by a written document signed by the Parties. This Agreement shall be binding upon the successors and permitted assigns of the Parties. Developer may assign all or part of its rights and/or obligations under this Agreement to a purchaser or owner of all or part of the Developer Property, or to a lender providing financing for all or part of the Project costs, without the consent of the City; however, such an assignment is not valid unless Developer delivers

written notice of the assignment to the City. Any other assignment by a Party of rights or obligations under this Agreement will require the written approval of the other Party.

16. **Authority of Signatories.** Each of the persons executing this Agreement represents that he or she has full power and authority to execute this Agreement on behalf of the Party that person represents.
17. **Notice.** Notices required by this Agreement will be provided by the Parties to one another by certified mail, return receipt requested, or by confirmed facsimile transmission, to the following addresses:

To the City: City Manager
City of Seguin
205 N. River Street
Seguin, TX 78155
Fax: (830) 401-2499

To: Developer: NB DEAN 32, LLC
1286 River Rd
New Braunfels, Texas 78130
Attn: Richard Beach
Email: Richard@Beachtx.net

If a Party changes its address or facsimile number for notice purposes, it will provide written notice of the new address to the other Parties within ten (10) days of the change.

18. **Venue; Governing Law.** This Agreement shall be construed and enforced according to the laws of the State of Texas; and exclusive venue for any legal action arising under this Agreement shall lie in Guadalupe County, Texas.
19. **Third Parties.** It is the express intention of the Parties that the terms and conditions of this Agreement may be enforced by either Party to the Agreement but not by any third party or alleged third-party beneficiary.
20. **Captions.** Captions are included solely for convenience of reference and if there is any conflict between captions and the text of the Agreement, the text shall control.
21. **Litigation Expenses.** The prevailing Party in any legal proceeding brought by a Party to this Agreement against the other Party, for claims under this Agreement, will be entitled to recover court costs and reasonable attorneys' fees from the non-prevailing Party.
22. **Severability.** The provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement or the application thereof to any person or circumstance is ever 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 word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to other persons or circumstances will not be affected thereby and this

Agreement will be construed as if such invalid or unconstitutional portion had never been contained therein.

23. **Timing.** Developer is scheduled to close on the Developer Property no later than June 30th, 2021 (the “Closing Deadline”). If Developer fails to acquire the Developer property by the Closing Deadline, this Agreement may be terminated by Developer and thereafter neither party will have any further rights or obligations under this Agreement.

[Signatures on following page]

EXECUTED by the Parties effective as of the date first set forth above.

City of Seguin:

By: _____

Steve Parker, City Manager

Date: _____

Developer:

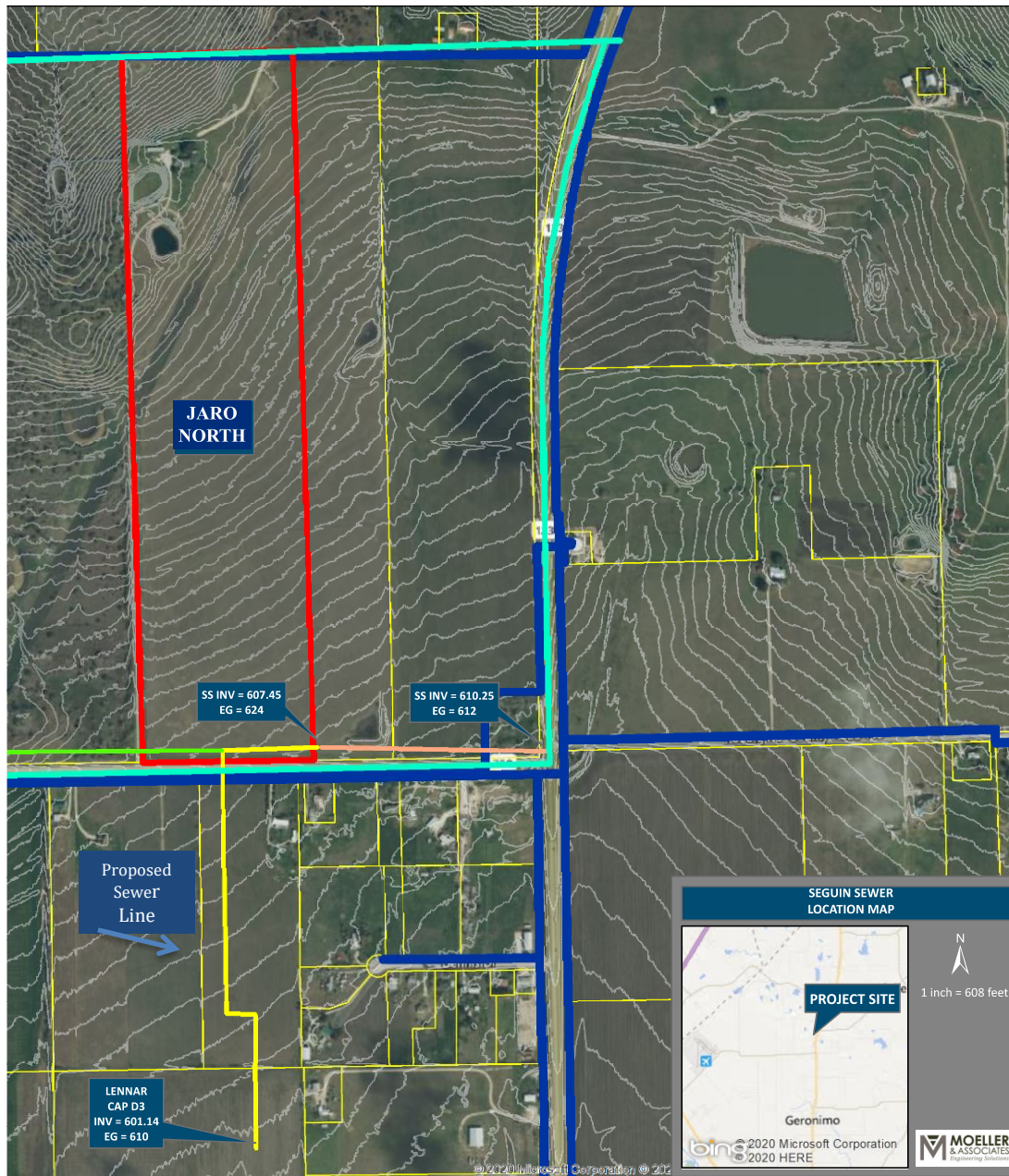
NB DEAN 32, LLC

By: _____

Richard Beach, Manager

Date: _____

Exhibit 1
"Jaro North"



Tract 1:

Property Identification Number: 56313

Geo Identification Number: 2G0020-0000-84100-0-00

Legal Description: ABS: 20 SUR: A M ESNAURIZAR 82.4300 AC.

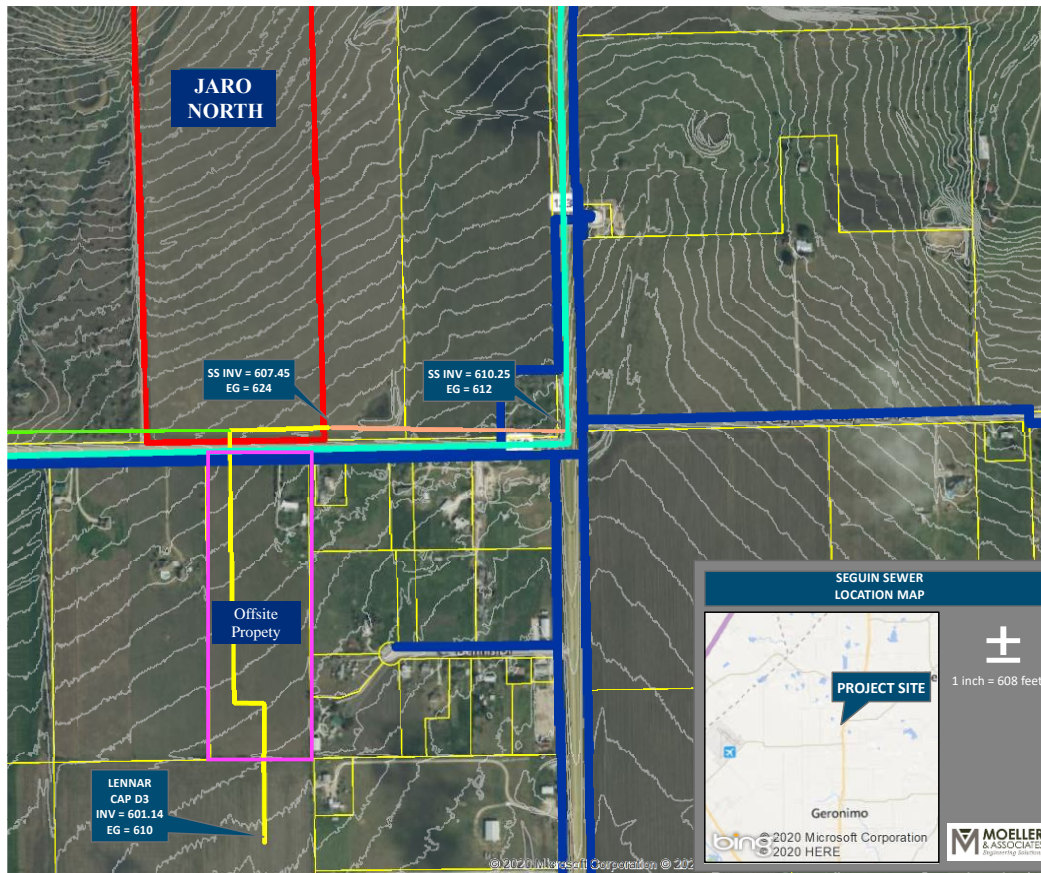
Tract 2:

Property Identification Number: 56314

Geo Identification Number: 2G0020-0000-84110-0-00

Legal Description: ABS: 20 SUR: A M ESNAURIZAR 0.2500AC

Exhibit 2
"Offsite Property"



Tract 1:

Property Identification Number:55547

Geo Identification Number:2G0020-0000-41710-0-00

Legal Description: ABS: 20 SUR: A M ESNAURIZAR 19.0000 AC.

Tract 2:

Property Identification Number:55548

Geo Identification Number:2G0020-0000-41720-0-00

Legal Description: ABS: 20 SUR: ESNAURIZAR A M 1.0000AC