

CAPITAL IMPROVEMENT AGREEMENT FOR SANITARY SEWER SERVICE

This Capital Improvement Agreement for Sanitary Sewer Service (this “Agreement”) is made effective as of April 3, 2018, between the City of Seguin (the “City”), and Scrappy Development, LLC, a Texas limited liability company (“Developer”) (Developer and the City also referred to individually as “Party” and collectively as the “Parties”).

RECITALS

1. Developer has contracted to acquired an approximate 81 acre tract of land in Guadalupe County, Texas (the “Developer Property”), more particularly described on the attached **Exhibit 1**, upon which Developer intends to build single family residential structures and other facilities that would require access to sanitary sewer.
2. City owns a Wastewater Utility that is capable of serving the residential development of approximately 250 homes on the Developer Property as well as the surrounding area.
3. The City and Developer desire to provide a mechanism to insure that city sanitary sewer services are made available to the Developer Property and to property in the surrounding area.
4. The “Project” contemplated by this Agreement shall consist of a sanitary sewer line running approximately along the line shown on the attached **Exhibit 2**. Said line shall terminate at a manhole that shall be located at the City’s existing manhole located at Rudeloff Road.

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 size of the 10 inch sanitary sewer line proposed for the Project be increased to an 18 inch sewer line for the purpose of facilitating the City’s provision of services in the sewer shed area (and not for the purpose of providing additional capacity to Developer). After determining the costs based on Developer’s needs, Developer shall direct the Project Engineer to prepare a preliminary cost estimate for the oversizing for City approval.

3. Depth and Slope. In order to facilitate service to surrounding areas, City may require that parts of sewer line, as oversized, be installed at a certain depth and slope. Such extra cost caused by the extra depth and slope required by the City will be paid by the City.

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's Utility 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 Utility Engineer of a copy of the plans for the Project.
- B. The City Utility 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 Utility Engineer's comments and submit the revised plans to the City Utility Engineer for final approval.
- D. The City Utility 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 obtain bids from at least three contractors and then submit the winning bid to the City Utility Engineer for approval of the contractor;
- B. Developer will required the contractor to obtain a performance bond and a payment bond in the full amount of the construction contract from the contractor, naming Developer and the City as obligees.
- C. Developer will require the contractor to maintain commercial general liability insurance coverage for all of its operations and those of its subcontractors, and all persons engaged in work on the site must be covered by workers' compensation insurance as set forth in the attached **Exhibit 3**.
- D. 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.
- E. 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 Utility Engineer.

7. Project Costs.

- A. Developer will be responsible for the costs of the Project, including engineering costs, construction costs, and costs for the acquisition of permanent and temporary sewer line easements (subject to payment by the City of oversizing costs under Paragraph 6.B, and subject to reimbursement by the City from impact fees under Paragraph 10), and Developer will not request nor require the issuance of bonds or any other form of public indebtedness in financing the Project.
- B. As the City has requested oversizing of the Project under Paragraph 2, the City will pay to Developer the increase in the cost of the Project associated with the oversizing, consisting of the increase in the construction cost and any additional engineering fees directly associated with the oversizing. The City will make this payment to Developer in cash within thirty (30) days after the later of the following: (i) Acceptance Date (defined below) and (ii) the Project Engineer has submitted to the City an itemization of the increase in costs due to the oversizing.

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. Issue a certificate of acceptance of the Project to Developer after 1) all required inspections for the Project are passed, 2) Developer or contractor submits a one-year warranty against defects in materials and workmanship in the Project executed by the contractor; contractor submits a one-year bond in the amount of 15% of the costs for the project as required by the Seguin Unified Development Code Section 2.9.10.G.2; and 3) the Project Engineer submits as-built drawings for the Project to the City. The date that the City issues a certificate of acceptance will be the “Acceptance Date”.

9. Reservation of Wastewater Capacity.

- A. The City will reserve, for a period of ten (10) years after the Acceptance Date (the “Reservation Period”) sewer capacity for the Developer Property as provided below. The City will issue to the Developer on the Acceptance Date a certain number of Living Unit Equivalents (LUE) as determined by the approved Preliminary Plat (the “Reserved Capacity”). 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 project), and the resulting Reserved Capacity will be deemed the “Adjusted Reserved Capacity.”
- B. 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.

10. Easements.

- A. The City will assist in the acquisition of all easements needed for the completion of the Project, but, except with respect to oversizing of the Project, Developer will reimburse the City for such costs to obtain such easements.
- B. When necessary the City will exercise its eminent domain authority to acquire easements 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.
- C. Developer agrees to pay to the City the amount of \$25,000.00 as a deposit towards the easement costs for the City's acquisition of such easements related to the Project. The City agrees to use the funds provided by Developer under this paragraph only for the described easement costs. The City will provide a monthly report to Developer of funds expended from this deposit. The City will refund to Developer any of the deposit amount which remains after the completion of the easement acquisition. If additional 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.

11. **Dedication to Seguin.** Developer agrees to dedicate, grant and convey to the City all rights, title and interest of Developer in both the off-site and on-site 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. **Reimbursement of Cost of Project.** Developer shall be reimbursed for all Project expenses through impact fee credits and payment of impact fee collected by other users of the Project on Developer Property. Developer understands and agrees that impact fee credits may not fully compensate Developer for the costs of the Project. Impact fee credits will be based upon Section 102-364 of the City's Ordinance and the impact fee assessed at the time a final plat is recorded. The City shall, semi-annually, pay said collected fees to Developer until full reimbursement per this Agreement has occurred.

13. **Connection Fee.** The City has established a connection fee, separate from the wastewater impact fee, for connections to all of the City sanitary sewers, including the Project. This fee shall not be waived by the City.

14. **Annexation.** The Developer Property has been annexed by the City.

15. **Contingencies.** The Developer Property intended to be served by the Reserved Capacity in the Project is subject to subdivision platting and zoning approvals by the City that will affect the use of the Developer Property and the need for utility facilities. Developer shall

file all required applications for such approvals, and shall pursue the approval of the applications. The City agrees to process these applications in accordance with applicable laws and ordinances and to render decisions on the applications in a timely manner. In the event that a (i) platting or zoning approval requested by Developer or a subsequent owner of the Developer Property is not approved or is finally denied prior to the completion of the Project, or (ii) Developer does not acquire the Developer Property and Developer has not yet executed the construction contract for the Project, Developer or the then owner of the Developer Property may terminate this Agreement by giving written notice to the City. The termination of this Agreement will take effect ten (10) days after the date Developer delivers the notice to the City.

16. **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.

17. **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 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.

18. **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.

19. **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) _____

To: Developer: Scrappy Development, LLC
1202 W. Bitters, Building 1, Suite 1200,
San Antonio, TX 78216
Fax: (210) 493-7828

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.

20. **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.

21. **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.

22. **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.

23. **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.

24. **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.

[Signatures on following page]

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

City of Seguin:

By: _____
Douglas G. Faseler, City Manager

Date: _____

Developer:

Scrappy Development, LLC,
a Texas limited liability company

By: _____
Name: Gordon V. Hartman
Title: President
Date: _____