

**CAPITAL IMPROVEMENT AGREEMENT WITH 44.76 SEGUIN, LLC FOR 24 INCH WATER TRANSMISSION MAIN CONSTRUCTION ALONG STATE HIGHWAY 123 BYPASS**

This Capital Improvement Agreement (the “Agreement”) is made on June \_\_, 2024 between the City of Seguin, Texas, a Texas municipal corporation (the “City”), whose mailing address is 205 N. River Street, Seguin, Texas 78155, and 44.76 Seguin, L.L.C., a Texas limited liability company, whose mailing address is 3200 Southwest Freeway, Suite 3000, Houston, Texas 77027 (“Developer”) and ARMZ PRASLA GROUP LLC, a Texas limited liability company, and RODEO SEGUIN TWO LLC, a Texas limited liability company, as TENANTS-IN-COMMON, whose mailing address is 11700 Shoreview Overlook, Austin, Texas 78132 (“Lot 3 Owner”).

WHEREAS, the Developer owns a certain tract of real property (the “Developer Property”) located at 3320 N State Hwy 123, Seguin, Texas 78155, with a legal description of North Seguin Commercial Lot #1, 3.575 acres, and North Seguin Lot #2, 1.258 acres.

WHEREAS, the Lot 3 Owner owns a certain tract of real property (the “Lot 3 Property”, and together with the Developer Property, the “Property”) located at 3320 N State Hwy 123, Seguin, Texas 78155, with a legal description of North Seguin Commercial Lot #3, 2.692 acres.

WHEREAS, The City desires to construct a 24 inch water transmission main (the “Project”) on a portion of the property as described on the Subdivision Plat of North Seguin Commercial Replat as shown in Volume 9, Page 730-791 shown as a 15’ Sanitary Sewer Easement (Doc #201999026777) and a 20’ Public Utility Easement (Volume 9 Page 712) of the Deed Records of Guadalupe County; and

WHEREAS, Developer has offered to construct the Project so that no disruption to their development activities would occur should the City build the Project.

NOW THEREFORE, in consideration of the foregoing premises, the mutual covenants set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Developer agree as follows:

1. Award of Design and Construction Contracts.

- A. The City awarded a contract to TRC Engineering, Inc. (the “Project Engineer”) for design and construction management of the Project. The Project Engineer has provided technical specifications required for the proposed improvements as shown in **EXHIBITS A and B**. The City shall ensure that the Project Engineer undertakes and completes the design of the Project in a timely manner, so as to ensure that all deadlines specified hereunder are met by the City.
- B. The Developer has agreed to enter into a contract with its contractor who will proceed with the Project such that it is completed by December 31, 2024. Construction shall occur Between Stations 96+86.02 and 107+77.26 as shown in **EXHIBIT A**.
- C. If the Project is not completed by this December 31, 2024, then the City shall have a right to notify Developer that it intends to take over construction of the Project, enter the Property, and utilize its own employees and contractors to complete the Project. If the City invokes its right to complete the Project under this Section, the Parties shall execute a Temporary Construction Easement, effective January 1, 2025, substantially in the form of the document attached hereto as **EXHIBIT C**. Whatever reasonable costs the Developer has incurred in furtherance of the Project prior to the City invoking its rights to complete

the Project under this Section shall be paid by the City, pursuant to Section 2, below. Once the City has invoked its rights under this Section, Developer and/or Developer's contractors shall perform no more work in furtherance of the Project.

2. Agreements by the Parties.

- A. The City shall pay Developer the actual costs of the Project in an amount not to exceed \$587,758.95, as set forth in the proposal from Lowden Excavating as attached in **EXHIBIT D**.
- B. The City shall make monthly progress payments to the Developer based on the invoices submitted by the contractor hired by Developer. Said invoices shall be paid within 30 days of receipt thereof.
- C. The Lot 3 Owner shall grant to the Developer a twelve (12) month temporary construction easement over the Lot 3 Property, and the Lot 3 Owner and the Developer will enter into a Temporary Easement Agreement in such form as reasonably agreed to between the Lot 3 Owner and the Developer.

3. Construction of Improvements.

Developer will ensure that the construction of the Project is performed in accordance with the following:

- A. Developer will require the contractor to obtain a performance bond and a payment bond, on a form approved by the City, in the full amount of the construction contract from the contractor, naming Developer and the City as obliges.
- B. 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 E**.
- C. 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.
- D. 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.

4. City Inspections and Acceptance.

The City agrees, at no cost to Developer, through the Project Engineer, 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 issued, 2) Developer submits a one-year warranty against defects in materials and workmanship in the Project executed by the Developer; Developer 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.G2; 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."

5. General Provisions.

- A. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns, including without limitation, and receivers, administrators, or trustees in bankruptcy. Developer may assign its obligations under this Agreement to any purchaser of the Property from Developer without the consent of the City.
- B. Severability. If any word, phrase, clause, sentence, paragraph, section or other portion of this Agreement is held to be invalid for any reason by a court or agency of competent jurisdiction, the remainder of the Agreement shall not be affected by the invalidity and shall be construed as if the invalid portion was not contained in the Agreement. The Provisions of this Agreement are expressly deemed severable for this purpose.
- C. Cooperation. The parties to this Agreement agree to cooperate at all times in good faith to effectuate the purposes and intent of this Agreement.
- D. Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes all prior or contemporaneous understandings or representations, whether oral or written, respecting the subject matter of this Agreement.
- E. Amendments. Any amendment of this Agreement must be in writing and signed by the authorized representative of each party to this Agreement.
- F. No Amendment of Other Agreements. Unless otherwise expressly stipulated in this Agreement, this Agreement is separate from and is not an amendment or modification of any other agreement between the parties.
- G. Applicable Law. This Agreement shall be construed under and in accordance with Texas law. Venue for any action arising hereunder shall be in Guadalupe County, Texas.
- H. Further Assurances. Each party agrees that it will without further consideration execute and deliver such other documents and take such other action, as may be reasonably requested by the other party to consummate more effectively the purposes or subject matter of this Agreement.

Executed and effective on June \_\_\_\_\_, 2024.

CITY OF SEGUIN,  
a Texas municipal corporation

ARMZ PRASLA GROUP LLC, a Texas limited liability  
company, Tenant-In-Common

By: \_\_\_\_\_  
Steve Parker, City Manager

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

RODEO SEGUIN TWO LLC, a Texas limited liability  
company, Tenant-In-Common

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

44.76 SEGUIN, L.L.C., a Texas limited liability company

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