

**CAPITAL IMPROVEMENT AGREEMENT WITH AT HOLDING-TROTTER, LLC
FOR UTILITY IMPROVEMENTS TO LAND BORDERING THE IH-10
ACCESS ROAD WEST OF THE LCRA SUBSTATION**

This Capital Improvement Agreement (the "Agreement") is made on the 11th day of February 2015, between the City of Seguin, Texas, a Texas municipal corporation (the "City"), 205 N. River Street, Seguin, TX 78155, and AT Holding-Trotter, LLC, a Texas limited liability company ("AT Holding"), 1423 E. Walnut Street, Seguin, Texas 78155.

WHEREAS AT Holding owns 11 acres of land situated west of the LCRA Substation and fronting the IH-10 access road; and

WHEREAS, development of the AT Holding property requires the extension of a water line and installation of two water fire hydrants; and

WHEREAS, the City hired the engineering firm Freese and Nichols to design and manage (1) construction of a new waterline that will include an extension to and across the AT Holding property line and (2) installation of two water fire hydrants; (together, the "Extension Project"); and

WHEREAS, AT Holding has requested that the planned eight (8) inch water main be increased in size to a twelve (12) inch water main.

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 AT Holding agree as follows:

1. Award of Design and Construction Contracts:

A. The City has awarded a contract to Freese and Nichols (the "Project Engineer") for design and construction management of the Extension Project. The Project Engineer has estimated the total cost of the Extension Project (for the 1,250 (one thousand two hundred fifty) foot extension to and along the AT Holding property and installation of two water fire hydrants , to be \$120,750.00 (One Hundred Twenty Thousand Seven Hundred Fifty Dollars)(the "Engineer's Estimate").

B. Except for any dedication of easements on AT Holding's property required under the City's ordinances, the location of which shall be contiguous with the property line of the LCRA substation running from Fleming Street to the Interstate 10 access road and twenty (20) feet in width, the City shall be responsible for obtaining all other easements for the Expansion Project.

C. Upon completion of the design plans and specifications for the Expansion Project, the City shall provide a copy thereof to a qualified engineering firm hired by AT Holding, at the expense of AT Holding, to review and approve such plans (the "Approved Plans"). AT Holding shall have ten (10) days to review and approve the plans and such approval shall not be unreasonably withheld. The Plans shall be deemed approved should AT Holding fail to affirmatively do so within the ten (10) day period. The City shall solicit bids for the Expansion

Project as described in the Approved Plans and award a construction contract to the most qualified bidder for construction (the "Contractor") in accordance with all applicable law.

D. The City shall enter into a contract with the Contractor (the "Construction Contract") that (a) requires the Contractor to substantially complete the Expansion Project in accordance with the Approved Plans no later than December 31, 2015, and to pay the City liquidated damages in a daily amount standard in the industry for delay in substantial completion after December 31, 2015 other than delay caused by force majeure. The City shall ensure that the Contractor diligently pursues construction of the Expansion Project in accordance with the Approved Plans by the allotted time of December 31, 2015, and in accordance with the terms of the Construction Contract. Substantial Completion shall mean the construction of the line and installation of two water fire hydrants is complete with the exception of final testing, minor punch list items, and restoration of the easement properties.

2. **Agreements by AT Holding.** AT Holding agrees as follows:

A. AT Holding shall pay the City the lesser of (i) of \$120,750.00 (One Hundred Twenty Thousand Seven Hundred Fifty Dollars) being the Engineer's Estimate and (ii) the actual cost of constructing the 1,250 foot extension set forth by the unit costs and installation of two water fire hydrants included in the Construction Contract.

B. AT Holding shall make its payment at the same time as the execution of the Construction Contract by the City and the Contractor.

C. AT Holding shall not be responsible for any costs overruns or other sums exceeding its payment under Part B above.

3. **Certification by Ms. Eastwood.**

A. By affixing her signature to this Agreement, Trina Eastwood thereby certifies that she is a duly authorized Manager of AT Holding and that her signature fully and legally binds AT Holding to the terms of this Agreement.

4. **General Provisions.**

A. NA.

B. **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, any receivers, administrators, or trustees in bankruptcy.

C. **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.

D. Cooperation. The parties to this Agreement agree to cooperate at all times in good faith to effectuate the purposes and intent of this Agreement.

E. 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.

F. Amendments. Any amendment of this Agreement must be in writing and signed by the authorized representative of each party to this Agreement.

G. 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.


H. 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.

Executed and effective on February ____, 2015

City of Seguin, Texas:

AT Holding-Trotter, LLC, a Texas limited liability company


By: _____
Douglas G. Faseler, City Manager


By: 
Trina Eastwood, Manager

RESIGNATION OF MANAGERS

We, Sydney Miller and Wayne Rotisch, hereby resign as Managers of AT Holding-Trotter, LLC, a Texas limited liability company (the "Company"), effective this date.

Dated: January 28, 2015.




SYDNEY MILLER


WAYNE ROTISCH

APPOINTMENT OF MANAGERS

As provided in the Company Agreement of AT Holding-Trotter, LLC, a Texas limited liability company, I, being the sole Member of the Company, hereby appoint Trina Eastwood, Kenneth Eastwood, and Kevin Bunch, as Managers of the Company, effective this date, to serve as provided in the Company Agreement. I continue to be a Manager of the Company.

Dated: Jan. 30, 2015.





JOHNNY TROTTER

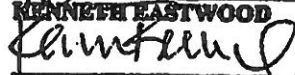
ACCEPTANCE BY MANAGERS

We, Trina Eastwood, Kenneth Eastwood, and Kevin Bunch, hereby accept appointment as Managers of AT Holding-Trotter, LLC, a Texas limited liability company, effective this date, and hereby agree to abide by the terms of the Company Agreement of AT Holding-Trotter, LLC.

Dated: Jan 30, 2015.



TRINA EASTWOOD


KENNETH EASTWOOD


KEVIN BUNCH