

**CAPITAL IMPROVEMENT AGREEMENT WITH SA KOSTA BROWNE, LTD  
FOR OVERSIZING SANITARY SEWER CONNECTION AT HIGHWAY 46  
AND CORCOVA ROAD**

This Capital Improvement Agreement (the "Agreement") is made on January \_\_, 2020 between the City of Seguin, Texas, a Texas municipal corporation (the "City"), 205 N. River Street, Seguin, TX 78155, and SA Kosta Browne, Ltd ("Developer") a Texas Limited Partnership.

**WHEREAS** Developer owns a certain 104 acre, more or less, tract of real property (the "Property") located along SH 46, wherein the Developer plans to serve with City sewer service through a connection running under Cordova Road to manhole located near the corner of Cordova Road and Highway 46 (the "Project") and

**WHEREAS**, the City has determined that oversizing the line above the needs of the Developer would allow service to adjoining land north of Cordova Road for use by future development.

**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:**

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 12 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). Developer's Project Engineer has prepared a preliminary cost estimate for Developer's Project and for the oversizing for City's portion which is attached hereto as Exhibit 1. The City's engineer has approved this cost estimate.

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.

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.

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 obtain bids from at least three contractors and then submit the winning bid to the City Engineer for approval of the contractor;

B. Developer will require 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 2.

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 Engineer.

## **2. Agreements by the Parties.**

A. The City shall pay the Developer an amount not to exceed \$ 13,148.00, the amount based on the cost estimates for the Project. Any additional costs must be approved by the City prior to Developer entering into a change order with their contractor.

B. The City shall make monthly progress payments to Developer based on the invoices submitted by Developer. Said invoices shall be paid within 30 days of receipt thereof.

**C. Construction of Improvements.** The Developer agrees to construct the Wastewater Improvements more specifically described in Exhibit 3 attached hereto and incorporated herein approved by the City, and in accordance with the City's construction standards and specifications.

## **3. 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, any receivers, administrators, or trustees in bankruptcy.

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.

Executed and effective on January \_\_\_\_, 2020

City of Seguin, Texas:

S.A. Kosta Browne, LTD:

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

By: \_\_\_\_\_

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