

**AMENDED 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 Amendment to the Capital Improvement Agreement (the "Agreement") is made on the ____ day of April 2016, 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, in February 2015, the City and AT Holding-Trotter, LLC ("AT Holding") entered into a Capital Improvement Agreement wherein AT Holding agreed to reimburse the City for the costs to install a twelve inch waterline that will be used to serve their proposed development (more particularly defined as the "Extension Project" in the Agreement); and

WHEREAS, part of the City Extension Project was to serve a new Wal-Mart that is being developed on land adjoining that owned by AT-Holding; and

WHEREAS, the Wal-Mart project was delayed; and

WHEREAS, in the interim Wal-Mart purchased additional land from AT Holding thereby decreasing AT Holding's frontage requiring water service; and

WHEREAS, the City has awarded the contract for the Extension Project and can now determine the actual cost of construction on the AT Holding property.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Capital Improvement Agreement between the City of Seguin, Texas and AT Holding-Trotter, LLC is amended solely 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 Extension Project design was placed for bid and a contract has been awarded to Rockin Q Construction, LLC (the "Project Contractor"). The City's Utility Engineer has reviewed the Project Contractor's bid documents and based on the unit costs in the bid documents the actual cost of the Extension Project along the AT Holding property has been determined to be \$68,292.56 (Sixty-Eight Thousand Two Hundred Ninety-Two and 56/100 Dollars); however, AT Holding has elected not to require installation of the two water fire hydrants that were originally contemplated in the Extension Project, thereby reducing the actual cost by \$12,000, for a net sum of the actual cost of the Extension Project along the AT Holding property to be \$56,292.56 (Fifty-Six Thousand Two Hundred Ninety-Two and 56/100 Dollars).

B. All references to the two water fire hydrants in the description of the Extension Project are hereby deleted in their entirety and of no force or effect.

C. The City entered into a contract with the Project Contractor (the "Construction Contract") that (a) requires the Project Contractor to substantially complete the Expansion Project along the AT Holding property in accordance with the Approved Plans no later than October 31, 2016, and to pay the City liquidated damages in a daily amount standard in the industry for delay in substantial completion of the AT Holding section of the project after October 31, 2016, other than

delay caused by force majeure. The City shall ensure that the Project Contractor diligently pursues construction of the Expansion Project in accordance with the Approved Plans by the allotted time of October 31, 2016, and in accordance with the terms of the Construction Contract. Substantial Completion shall mean the construction of the line 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 \$56,292.56 (Fifty-Six Thousand Two Hundred Ninety Two and 56/100 Dollars) for the extension of the line.

B. Within 60 days of the execution of this Agreement, AT Holding shall provide easements and a right of entry for construction of the waterline.

3. All other paragraphs, sections, and parts of sections of the Original Agreement not set out immediately above, remain in full force and effect.

Executed and effective on April ____, 2016

City of Seguin, Texas:

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

By: _____
Douglas G. Faseler, City Manager

By: _____
Trina Eastwood, Manager