### CAPITAL IMPROVEMENT AGREEMENT FOR SANITARY SEWER SERVICE

This Capital	Improvement Agreement for Sanitary Sewer Service (this "Agreement")	is
made as of	, 2022, between the City of Seguin, Texas, a home-rule city (th	ıe
"City"), and CSRP	, Inc., a Texas corporation ("Developer") (Developer and the City als	ю
referred to individua	lly as "Party" and collectively as the "Parties").	

#### **RECITALS**

- 1. Developer has contracted to acquire an approximately 52.118-acre tract of land in Guadalupe County, Texas (the "Developer Property"), more particularly described on the attached **Exhibit 1**, upon which Developer intends to operate an RV resort and other residential and commercial uses that would require access to sanitary sewer.
- 2. City owns a Wastewater Utility that is capable of serving the development and operation of approximately 273 RV pads on the Developer Property as well as additional residential and commercial units in the surrounding area. To meet the rapidly increasing demand on the City's system in the area of Developer's Property, the City has a planned capital improvement project (the "Capital Improvement Project") of approximately 40 million dollars that includes the Offsite Project (defined below) covered by this Agreement.
- 3. The City and Developer desire to provide a mechanism to ensure that city sanitary sewer services are timely made available to the Developer Property and to property in the surrounding area.
- 4. The "Offsite Project" contemplated by this Agreement shall consist of sanitary sewer lines and infrastructure running approximately along the alignment shown on the attached **Exhibit 2**, and being further described as:
  - (i) an 8-inch sanitary sewer line extending from Hwy 123 to the newly proposed 1.2 MGD lift station;
  - (ii) stub-out bore under Tor Drive to "commercial C";
  - (iii) the newly proposed 1.2 MGD lift station; and
  - (iv) a new 8-inch force main along Tor Drive to a 12-inch sanitary sewer providing connection to and terminating at Pecan Orchard Lift Station.
- 5. The construction and funding of the Offsite Project serves a public purpose and the provisions of this Agreement contain terms and conditions to ensure that such public purpose will be accomplished.
- 6. Developer will be reimbursed by the City for the actual incurred cost for the Offsite Project.

- 7. At time of this Agreement, the preliminary cost estimate for the Offsite Project is \$3,602,786.00 and is shown on the attached **Exhibit 3**.
- 8. Concurrently with or prior to the City Council's approval of this Agreement, the City has approved a refunding resolution that will allow the Offsite Project to be funded by utility revenue bonds (the "Bonds") that will be issued during the next fiscal year.

### **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, subject to the reimbursements as set forth herein, pay for all third-party engineering services needed for construction of the Offsite Project including, without limitation, the preliminary design, final design, bidding, the surveying, construction administration, and warranty inspection phases for the Offsite Project. The engineer engaged by Developer (the "Project Engineer") must be a professional engineer registered in the State of Texas.

## 2. Oversizing.

- A. The City has directed that the size of an 8-inch sanitary sewer line, 70,500 GPD lift station, 4-inch force main and a 8-inch sanitary sewer line proposed for the Offsite Project be increased to an 8-inch sanitary sewer line, 1.2 MGD lift station, 8-inch force main and 12-inch sanitary 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).
- B. This cost will be validated at design completion prior to construction and again at project completion with acceptance.
- C. The cost of reimbursement will be determined based on the actual accrued construction and design costs of the Offsite Project.
- **3. Engineer's Services**. Developer will ensure that all construction work on the Offsite 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 Offsite 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 easement purchase(s).

- C. The Project Engineer will prepare plans and specifications for the Offsite 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 Offsite Project from authorities having jurisdiction over the work.
- D. The Project Engineer will perform periodic inspections of work on the Offsite 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 ensuring compliance with all required testing and inspections pursuant to the Texas Commission on Environmental Quality design criteria as amended.
- E. The City's Engineer, along with a third-party inspection service to determine TCEQ compliance, will conduct inspections to determine the dates of substantial completion and final completion for the Offsite Project and make a written recommendation to the City regarding the acceptance of the Offsite Project.

## 4. Plans and Plan Approval.

- A. Upon completion of the plans for the Offsite Project, prior to seeking a construction contractor, Developer shall provide the City Engineer of a copy of the plans for the Offsite Project.
- B. The City Engineer shall review the initial plans for the Offsite Project and submit 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.
- 5. Construction. Developer will ensure that the construction of the Offsite Project is performed in accordance with the following:
  - A. For all parts of the Offsite Project, Developer will obtain bids through a sealed bid procedure in compliance with Chapter 252, Subchapter B of the Texas Local Government Code. Developer shall indicate the bid selected, along with reasons therefore, to the City Engineer for approval of the contractor. Bid terms, such as escalation clauses, are subject to review and approval of the City prior to selection.
  - 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 required by the laws of the State of Texas.
- D. Developer will cause all necessary licenses and permits for the Offsite 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 Offsite 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. The Offsite Project shall not be constructed in phases.
- F. Developer will ensure that City receives documentation of TCEQ approval; pursuant to 30 TAC 217 Subchapter C, contractor submits a TCEQ certificate of completion sealed by a Professional Engineer and all documentation related to TCEQ required testing of the wastewater infrastructure.

# 6. Offsite Project Costs.

- A. Developer will be responsible for the costs of the Offsite Project, including engineering costs, construction costs, and costs for the acquisition of permanent and temporary sanitary sewer line easements.
- B. As the City has requested the Offsite Project, the City will pay to Developer the cost of the Offsite Project, including without limitation engineering fees directly associated therewith. The City will make this payment to Developer in cash within thirty (30) days after the later of the following: (i) Offsite Acceptance Date (defined below) and (ii) the Project Engineer has submitted to the City an itemization of the costs, including as previously approved through valid change orders, due to the Offsite Project.
- C. If payment is not timely made by the City to Developer as required under this Agreement, interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.

# 7. City Inspections and Acceptance. The City agrees, at no cost to Developer, to:

- A. Inspect the construction of the Offsite Project as construction progresses.
- B. Inspect the Offsite Project promptly upon completion of construction.
- C. Review outside agency approvals.

D. Issue a certificate of acceptance of the Offsite Project to Developer after 1) all required inspections for the Offsite Project are passed, 2) Developer or contractor submits a two-year warranty against defects in materials and workmanship in the Offsite Project executed by the contractor, 3) 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 4) the Project Engineer submits as-built drawings for the Offsite Project to the City. The date that the City issues a certificate of acceptance for the Offsite Project will be the "Offsite Acceptance Date".

# 8. Reservation of Wastewater Capacity.

- A. The City will reserve sanitary sewer capacity for the Developer Property as provided below. The City will issue to the Developer on the Offsite Acceptance Date 167 Living Unit Equivalents (LUE) (the "Reserved Capacity"). The Reserved Capacity will be reduced for each LUE used with respect to the Developer Property (but not with respect to sanitary sewer service units from any other facilities or project), and the resulting Reserved Capacity will be deemed the "Adjusted Reserved Capacity."
- Β. The City agrees to allow the owner of the Developer Property (including, without limitation, Developer following Developer's acquisition of the Developer Property) and any successor-in-interest to the Developer Property or any portion thereof to connect sanitary sewer lines to the Offsite 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 or any portion thereof and their respective portions of the Reserved Capacity in the Offsite Project, the City agrees to verify that sufficient capacity remains in the Offsite Project, after deducting the total Reserved Capacity for the Developer Property, to serve a request to connect to the Offsite Project by the owner of any other property, or by the owners of the Developer Property or any portion thereof, before approving the request. To the extent that any such request exceeds the remaining capacity in the Offsite Project, the City agrees to deny the request. The City may provide alternative means for sanitary sewer 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.

#### 9. Easements.

- A. Developer, on the City's behalf, will acquire all easements needed for the design, construction, and future maintenance of the Offsite Project. The City will assist, when the need is in the interest of the public, in the acquisition of all easements needed for the completion of the Offsite Project.
- B. Developer shall follow all the rules for land acquisition that are required for municipal acquisition in Texas Property Code including provision of appraised value, landowner bill of rights, and timing of notices.
- C. When necessary, the City will exercise its eminent domain authority to acquire easements needed for the Offsite Project.
- 10. Dedication to Seguin. On the Offsite Acceptance Date, Developer agrees to dedicate, grant, and convey to the City all rights, title and interest of Developer in the offsite 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 the offsite utility infrastructure by the City, the infrastructure shall be owned, operated, and maintained by the City.
- 11. Reimbursement of Cost of Project. Developer shall be reimbursed by the City for the Offsite Project costs and expenses from funds derived through the issuance of the Bonds.
- 12. 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 Offsite Project. This fee shall not be waived by the City.
- 13. Contingencies. The Developer Property intended to be served by the Reserved Capacity in the Offsite Project is subject to subdivision platting 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 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 Offsite Project or (ii) Developer does not acquire the Developer Property or (iii) Developer has not yet executed the construction contracts for the Offsite Project or (iv) the City fails or refuses to issue the utility revenue bonds for the Capital Improvement Project of which the Offsite Project is a part, Developer may terminate this Agreement by giving written notice to the City (which termination right with respect to the foregoing clause (iv) is in addition to all other rights Developer may have for the City's failure or refusal to issue the utility revenue bonds for the Capital Improvement Project of which the Offsite Project is a part). The termination of this Agreement will take effect ten (10) days after the date Developer delivers the notice to the City.
- 14. Applicable Laws; Impact Fees. This Agreement and the provision of wastewater service through the Offsite Project are subject to all valid and applicable ordinances, fees

(including City wastewater impact fees as specified in Paragraph 12), rules, regulations, and laws of all governmental agencies having lawful jurisdiction over them.

- 15. Entire Agreement; Assignment. This Agreement constitutes the entire agreement between the Parties hereto with respect to the Offsite 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 Offsite 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.
- 16. 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. The City represents and warrants to the Developer that this Agreement and the City's obligations under this Agreement are within the scope of its authority and the provisions of its charter and that it is duly authorized and empowered to enter into this Agreement.
- 17. 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

To the Developer:

CSRP, Inc.

Attention: Ryan Waikem

1300 Post Oak Blvd, Suite 1650

Houston, Texas 77056

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.

- 18. 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.
- 19. 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.

- **20.** 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.
- 21. 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. In enforcing the performance of the provisions of this Agreement both Parties shall have the right to the exercise of all procedures available under the law including, but without limiting the generality thereof, Developer's right to obtain a writ of mandamus to command performance of any of the City's obligations, including particularly the City's obligation to issue utility revenue bonds for the Capital Improvement Project of which the Offsite Project is a part. No waiver of any breach or default of any provision of this Agreement shall be deemed a waiver of any subsequent waiver or default.
- 22. 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 be 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.
- **23.** Recitals. The recitals set forth above are incorporated herein by this reference, form a basis for this Agreement and shall be considered prima facie evidence of the facts and documents referred to therein.
- **24.** Governmental Immunity. The City acknowledges that this Agreement is for the providing of goods and services which is subject to the provisions of Chapter 271 of the Texas Local Government Code. In accordance with Sections 271.151, 271.152 and 271.153 of the Texas Local Government Code, to the extent limited, however, by the provisions thereof, the City hereby waives any constitutional, statutory or common law right to sovereign or governmental immunity from liability or suit and expressly consents to be sued and liable to the extent necessary for the Developer to enforce this Agreement, but only as to the Developer, its permitted successors or assigns, and this Agreement.
- **25.** Effective Date. This Agreement shall be effective, and the Parties' respective obligations herein shall become binding, upon the date the City receives the funds derived through the issuance of the Bonds.

[Signatures on following page]

EXECUTED by the Parties as of the date first set for	orth above.
City of Seguin, Texas:	
By:Steve Parker, City Manager	Date:
Developer:	
CSRP, Inc.	
By: Name: John B. Cutter Title: Vice president	Date: 11/28/22

# Exhibit 1 Developer Property

52.10 acres out of the Elijio Gortari Survey No. 16, Abstract 23, City of Seguin, Guadalupe County, Texas, being that 52.118-acre tract of land described in deed of record in Volume 2643 at page 797 of the Official Public Records of Guadalupe County, Texas and being more particularly described by metes and bounds, as surveyed, as follows:

Beginning at an ½" iron bar found set in the ground in the south right-of-way line of Tor Drive, the north corner of a 52.118-acre tract of land described in deed of record in Volume 2643 at page 797 of the Official Public Records of Guadalupe County, Texas and the east corner of a 10.010-acre tract of land described in deed of record in Volume 2306 at page 319 of the Official Public Records of Guadalupe County, Texas, for the north corner of this tract;

Thence S 69°19'28" E (called S 67°28'00" E) with the south right-of-way line of Tor Drive and the north boundary line of said 52.118-acre tract a distance of 947.11 feet (called 946.94 feet) to an 1½" iron pipe found set in the ground, a corner of said 52.118-acre tract, for a corner of this tract;

Thence S 21°26′26″ E (called S 19°35′27″ E) with the southwest right-of-way line of Tor Drive and the northeast boundary line of said 52.118-acre tract a distance of 67.25 feet (called 67.63 feet) to an 1" iron pipe found set in the ground at the point of intersection of the southwest right-of-way of Tor Drive and the northwest right-of-way line of State Highway 123, the east corner of said 52.118-acre tract, for the east corner of this tract, whence a Type 2 TXDOT brass disk found set in a concrete monument, bears N 26°37′52″ E a distance of 835.89 feet;

Thence S 26°37'52" W (field) (called from TXDOT Map S 26°37'46" W) with the northwest right-of-way line of State Highway 123 and the southeast boundary line of said 52.118-acre tract at 465.10 feet a Type 2 TXDOT brass disk monument found set in a concrete monument and continuing on the same course by the same count with the northwest right-of-way line of State Highway 123 an overall distance of 1582.42 feet (field) (Deed called 1,582.65 feet) to an ½" iron bar with an orange cap marked "SLS RPLS 5142" set in the ground, a south corner of said 52.118-acre tract and the east corner of a 1.84-acre tract of land described in deed of record in Volume 552 at page 909 of the Official Public Records of Guadalupe County, Texas, for the south corner of this tract, whence a TXDOT brass disk monument found set in a concrete monument, bears S 26°37'52" W a distance of 395.09 feet;

Thence N 63°23'27" W (called N 61°28'30" W) with a southwest boundary line of said 52.118-acre tract and the northeast boundary line of said 1.84-acre tract a distance of 270.07 feet (called 270.02 feet) to an ½" iron bar with an orange cap marked "SLS RPLS 5142" set in the ground, a reentrant corner of said 52.118-acre tract and the north corner of said 1.84-acre tract, for a reentrant corner of this tract;

Thence S 26°35'38" W (called S 28°28'38" W) with a southeast boundary line of said 52.118-acre tract and the northwest boundary line of said 1.84-acre tract a distance of 368.00 feet (called 368.25 feet) to a 1" iron pipe found set in the ground in the north right-of-way line of Wagon

Trail, a south corner of said 52.118-acre tract and the southwest corner of said 1.84-acre tract, for a south corner of this tract;

Thence S 88°48'10" W (called N 89°17'39" W) with the north right-of-way line of said Wagon Trail and the south boundary line of said 52.118-acre tract a distance of 291.55 feet (called 291.52 feet) to an ½" iron pipe found set in the ground in the arc of a curve to the right having a radius of 678.30 feet, a corner of said 52.118-acre tract, for a corner of this tract;

Thence curve right along the arc of said curve having a radius of 678.30 feet with the northeast right-of-way line of Wagon Trail and a southwest boundary line of said 52.118-acre tract, through a central angle of 35°35'22", a chord bearing and distance of N 73°23'07" W- 414.59 feet, a distance of 421.33 feet to a 1" iron pipe found set in the ground in the arc of a curve to the left having a radius of 757.00 feet, a corner of said 52.118-acre tract, for a corner of this tract;

Thence curve to the left along the arc of said curve having a radius of 757.00 feet with the northeast right-of-way line of Wagon Trail and the southwest boundary line of said 52.118-acre tract, through a central angle of 19°00'35", a chord bearing and distance of N 65°25'53" W-250.01 feet, a distance of 251.16 feet to an ½" iron bar found set in the ground, the west corner of said 52.118-acre tract, the north corner of a 1.17-acre tract of land described in deed of record in Volume 2178 at page 651 of the Official Public Records of Guadalupe County, Texas and a corner of a 98.59-acre tract of land described in deed of record in Volume 703 at page 722 of the Official Public Records of Guadalupe County, Texas, for the west corner of this tract;

Thence N 14°06'22" E (called N 15°58'42" E) with the west boundary line of said 52.118-acre tract and a east boundary line of said 98.59-acre tract a distance of 1,077.13 feet (called 1,077.42 feet) to an ½" iron bar found set in the ground, a north corner of said 52.118-acre tract, a corner of said 98.59-acre tract and the west corner of said 10.010-acre tract, for a north corner of this tract;

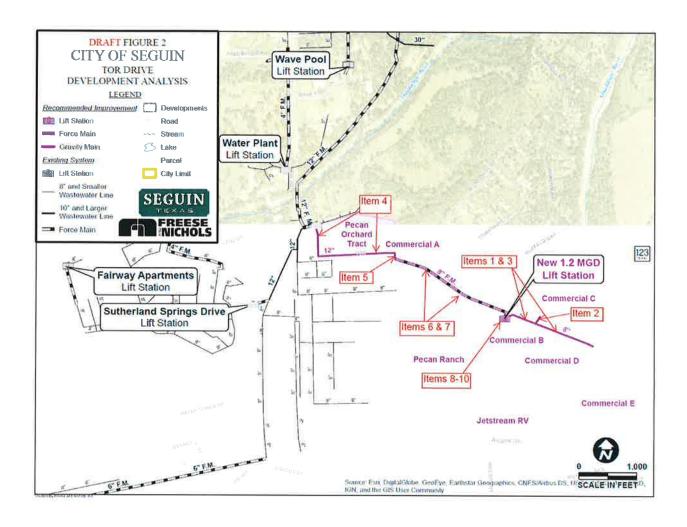
Thence S 62°51'33" E (called S 60°59'16" E) with a northeast boundary line of said 52.118-acre tract and the southwest boundary line of said 10.010-acre tract a distance of 418.05 feet (called 418.10 feet) to an ½" iron bar found set in the ground, a reentrant corner of said 52.118-acre tract and the south corner of said 10.010-acre tract, for a reentrant corner of this tract;

Thence N 27°07'53" E (called N 29°00'18" E) with the northwest boundary line of said 52.118-acre tract and southeast boundary line of said 10.010-acre tract a distance of 1066.66 feet (called 1066.79 feet) to the point of beginning.

Containing 52.10 acres of land, more or less.

The bearings for this survey are based on the Texas State Plane Coordinate System Grid, South Central Zone (4204), North American Datum 1983.

# Exhibit 2 Offsite Project



# Exhibit 3

185,573
1,124 883 112,468 1,237 152
CITY UPGRADES  MADE GENERAL STIL  NY 255 SEASTARY SENSIFICAL ECHIMATSICAL 194 923 MICELLANEOUS
194,933
125,000
37 700
11.406
20 833
0/1/200
10,000
50,000
120 600 4
2000
1681 198100
59 430 60
66 813 1,481
32 000 N/A
5 000 N/A
21 500 N/A
ESTIMATED ESTIMATED TOTAL COST QUANTITY
- Constitution

Preliminary Engineers Estimate of Construction Costs
Wastewater Improvements - Tor Road
JetStream Seguin