

CHAPTER 380
ECONOMIC DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF SEGUIN, TEXAS
AND
NAVARRO OAKS 123M, LLC

This Chapter 380 Economic Development Agreement (this “**Agreement**”) is entered into between **Navarro 123M, LLC**, (the “**Developer**”), and the **City of Seguin**, a Texas home-rule municipal corporation (the “**City**”). The City and Developer may be referred to collectively herein as the “**Parties**” and individually as a “**Party**”.

RECITALS

WHEREAS, Article III, Section 52-a of the Texas Constitution gives the Texas Legislature the authority to provide for loans and grants of public money for the development and diversification of the State’s economy and the elimination of unemployment or underemployment; and

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code (“Chapter 380”), the City may establish and provide for the administration of one or more programs for making loans or grants of public money to promote State or local economic development, and to stimulate business and commercial activity in the municipality; and

WHEREAS, pursuant to its economic development program, the City Council of the City has adopted Resolution No. 2019R-_____ attached as Exhibit “A” (the “**Resolution**”), authorizing City to make certain economic development grants to Developer in recognition of the positive economic benefits that will accrue to City through Developer’s efforts to develop approximately 88.28 acres of land known as the Navarro Oaks Subdivision, as depicted on the Approved Preliminary Master Plan attached as Exhibit “B” (the “**Property**”) and the consequent realignment of Martindale Road as shown on Exhibit “B”; and

WHEREAS, the development of the Navarro Oaks Subdivision (the “**Project**”) will add significant new housing to the City’s tax base along with better transportation opportunities for the area surrounding the Project; and

WHEREAS, the City desires to reimburse Developer over a period of time for Developer’s construction of a portion of the Martindale Road realignment, a project existing in the City’s future Capital Improvement Plan applicable to the area where the Project will be constructed.

NOW, THEREFORE, in consideration of the mutual benefits described in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Developer agree as follows:

ARTICLE 1.

Authority

1.1 City's execution of this Agreement is authorized by Chapter 380, and by the Resolution thereby constituting a valid and binding obligation of City subject to the condition precedent that Developer completes the construction of the Martindale Road Realignment (the "Martindale Project") from the Navarro Oaks Subdivision to Highway 123 Bypass.

1.2 Developer's execution and performance of this Agreement constitutes a valid and binding obligation of Developer if Developer proceeds with construction of the Martindale Project in accordance with the terms and provisions of this Agreement.

1.3 City acknowledges that Developer is acting in reliance upon City's performance of its obligations under this Agreement in making its decision to commit site specific tax and fee revenues towards assisting with defined, specific costs of improvements; and Developer acknowledges that City is acting in reliance upon Developer's promise of full and complete performance of its obligations under this Agreement, according to its terms, in making its decision to commit to the reimbursements described herein.

ARTICLE 2.

Definitions

As used in this Agreement, the following words or phrases shall have the following meanings:

2.1 "Act of Default or Default" means failure to comply with the obligations under this Agreement, as more fully addressed in Article 10, below. The City may, in its sole discretion, accept substantial compliance in lieu of full compliance by waiving, in writing, such failure to fully comply.

2.2 "*Ad Valorem Tax Base Line*" means the final approved taxable value of the unimproved Property by the Guadalupe County Appraisal District for the year 2019 (as established January 1, 2019) from which all increases in *ad valorem* taxable value shall be measured.

2.3 "*Ad Valorem Tax Effective Date*" means January 1, 2019.

2.4 "*Ad Valorem Tax Revenues*" means the amount of real and personal property taxes actually received by the City from the levy of such taxes on the Property, including any improvements and personal property located on the Property, but only to the extent that the total of the maintenance and operations portion of such *Ad Valorem Tax Revenues* for any given year during the Term hereof exceed the *Ad Valorem Tax Base Line*, it being the intent of the parties that the *ad valorem* tax incentive payments made hereunder

should be based on the incremental increases in tax value of the Property as it is developed after the base line year.

2.5 “Approved Developer Improvements shall mean public improvements constructed by the Developer that have been deemed by this Agreement, or by subsequent written Agreement of the Parties, to be subject to reimbursement by way of the Chapter 380 Payments set forth herein.

2.6 “Chapter 380 Payment(s)” means an amount(s) paid by the City to the Developer under this Agreement from any source.

2.7 “Developer Improvements” means collectively those activities conducted by Developer to construct the Martindale Project.

2.8 “Effective Date” means the date this Agreement has been executed by both the City and the Developer

2.9 “Force Majeure” means any delay incurred by either party because of matters beyond such party’s reasonable control, such as: labor disputes; acts of God; judicial orders; war; riot; Excessive Rain Event; and civil commotion, fire, or other casualty, and unforeseen subsurface conditions that require delay pursuant to regulation or court order.

2.10 “Maximum Reimbursement Amount” means one hundred percent (100%) of the actual documented costs of design and construction of the Approved Developer Improvements as exhibited by executed contracts and invoices or payment applications noting payment for labor and material of approved Developer Improvements, not to exceed the sum of **One Million Five Hundred Twenty Seven Thousand Eight Hundred and Sixty Four and 95/100 Dollars** (\$1,527,864.95). The approved estimates for the Project are set forth on Exhibit “C.”

2.11 “Roadway Impact Fee” means the capital recovery fee assessed by the City in accordance with Chapter 102, Division IV, of the Seguin Code of Ordinances collected at the time that a building permit is issued.

ARTICLE 3. **Purpose; Term**

3.1 This Agreement will become enforceable upon the Effective Date and will terminate on the tenth (10th) anniversary of the *Ad Valorem* Tax Effective Date provided, however, that in recognition of the fact that Chapter 380 Payments are, by necessity, calculated and paid after the relevant taxes and fees have been levied by and paid to City and, therefore, will always be paid in arrears, the Term of this Agreement will be deemed extended until one year after the above-stated termination date.

ARTICLE 4
Improvements. Developer's Obligations.

4.1 Developer shall construct the Martindale Project during the period of time that Developer constructs Phase Three (3) of the Navarro Oaks Subdivision. Developer will use best efforts to insure that the Martindale Project is completed by the time that the Phase Three (3) public improvements are completed.

4.2 Developer shall construct the Martindale Project as a **Major Collector Roadway** in compliance with the City's existing standards. City shall have the right to inspect the construction to insure, before acceptance, that the Project is constructed in accordance with then existing City standards.

ARTICLE 5.
City's Performance Obligations

5.1 City's Obligation. During the Term of this Agreement, and only to the extent that Developer, its successors, or its tenants, has timely paid all taxes and City has received *Ad Valorem* Tax Revenues from the Project, City is obligated to pay to Developer an amount not to exceed the Maximum Reimbursement Amount from the Reimbursement Fund (as defined below). During the term the City shall also deposit, into the Reimbursement Fund, the Roadway Impact Fees collected with each building permit issued in the Navarro Oaks Subdivision.

5.2 Infrastructure Reimbursement Fund. City will provide for the payment of an amount not to exceed the Maximum Reimbursement Amount to be made pursuant to this Agreement by establishing a separate fund at City, including subaccounts if necessary, or a subaccount of any existing fund or account in City treasury, into which the Ad Valorem Tax Increase Refund made under Section 6.3 shall be deposited (the "Reimbursement Fund") as and when such taxes are received by City from the Guadalupe County Tax Office, during the Term. The Reimbursement Fund shall be maintained and used only for payments to Developer or assigns as provided herein during the Term of this Agreement. During the Term of this Agreement, and based on City's binding obligations hereunder, City shall appropriate the funds from the Reimbursement Fund and authorize payments to Developer hereunder as necessary, including during City's ordinary budget and appropriations approval process. City may maintain or abolish the Reimbursement Fund, in its sole discretion, after the Term of this Agreement has ended and all Chapter 380 Payments due and payable hereunder have been paid by the City.

5.3 Ad Valorem Tax Refund. During the Term, City shall pay to Developer Sixty Percent (60%) of the Maintenance and Operation portion of *Ad Valorem* Tax Revenues two (2) times per year until the earlier of: (a) the term of this Agreement or (b), the Maximum Reimbursement Amount has been paid to Developer in full. Payments shall be made in accordance with the following schedule:

Schedule A: <i>Ad Valorem</i> Tax Increase Refund		
Year(s) of Term	City's Performance Requirements	City's Time of Performance
1-10	The City shall refund to the Developer sixty percent (60%) of the maintenance and operations portion of the <i>Ad Valorem</i> Tax Revenues	On or before February 15 and July 15 of each year

The city has no obligation to pay the reimbursement payments unless the City receives the required Annual Reports as detailed in section 6.1.9. If any Annual Report is not received by the due date, the City's Time of Performance for the associated reimbursement payment will be 30 days after the receipt of the Annual Report.

5.4 Roadway Impact Fee Refund. During the term the the City shall pay, in accordance with the schedule set out above in Section 5.3, one hundred percent (100%) of the Roadway Impact Fees assessed on each developed property within the Navarro Oaks Subdivision at the time a building permit is issued.

ARTICLE 6.

Developer's Representations and Duties

6.1 Developer makes the following covenants and warranties to City, and agrees to timely and fully perform the following obligations and duties.

6.1.1 Developer is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas during the Term of this Agreement.

6.1.2 The execution of this Agreement has been duly authorized by the Developer, and the parties signing this Agreement are empowered to execute such Agreement and bind the partnerships, said authorization, signing and binding effect is not in contravention of any law, rule or regulation, or of the provisions of Developer's partnership agreements, such authority to be evidenced by partnership resolutions.

6.1.3 No litigation or governmental proceeding is pending or, to the knowledge of Developer or Developer's officers, threatened against or affecting the Developer that may result in any material adverse change in Developer's business, properties or operation. No consent, approval or authorization of or registration or declaration with any governmental

authority is required in connection with the execution of this Agreement or the transactions contemplated hereby.

6.1.4 There are no bankruptcy proceedings or other proceedings currently pending or contemplated, and the Developer has not been informed of any potential involuntary bankruptcy proceedings.

6.1.5 To its current, actual knowledge, the Developer has acquired and maintained, or will acquire and maintain, all necessary rights, licenses, permits and authority to carry on its business in Seguin, Texas, and will continue to use its best efforts to maintain all necessary rights, licenses, permits and authority.

6.1.6 The Developer shall timely and fully comply with all of the terms and conditions of this Agreement, subject to Force Majeure.

6.1.7 Developer shall maintain all public improvements constructed on the Project until said improvements are turned over to the appropriate Owners Association who will then maintain said improvements in perpetuity. After acceptance by the City, streets and City-owned utility infrastructure shall be maintained by the City.

6.1.8 Subject to Force Majeure, Developer shall construct the Project in a manner such that prior to substantial completion no period greater than two years occurs where no construction progress is being made.

6.1.9 Reports and Certification. On or before January 15 of each year of this agreement, Developer will provide the City's Director of Finance with a Annual Report containing:

- (a) written confirmation that it is in compliance with the terms of this agreement,
- (b) a summary narrative providing an update on the status of the project
- (c) detailed costs report for Approved Developer Improvements that are subject to reimbursement under the terms of this Agreement.

6.1.10 Developer shall collect and maintain all relevant records of Developer, successors, assigns, and tenants related to each of the economic development considerations and incentives and performance requirements, in accordance with the terms and conditions of this Agreement.

6.1.11 Separated Contracts The owner will provide in any contract for the construction of the Developer Improvements that the contract be a separated contract so that there is imposed, and the contractor will be required to pay, the City's municipal sales tax on the sales price of materials incorporated into the Developers Improvements.

ARTICLE 7.
Suspensions/Termination

7.1 City, under the following circumstances, and at its sole discretion, may suspend its obligations under this Agreement or terminate this Agreement and all future payment obligations shall automatically cease upon any one of the following events, each of which is an Act of Default.

7.1.1 The appointment of a receiver of the Developer, or of all or any substantial part of its property, and the failure of such receiver to be discharged within sixty (60) days thereafter.

7.1.2 The adjudication of the Developer as bankrupt.

7.1.3 The filing of a voluntary or involuntary petition seeking bankruptcy, receivership, reorganization, or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding.

7.2 If Developer fails to execute the Agreement within sixty (60) days of approval by the Seguin City Council such approval is deemed rescinded and the Agreement is null and void.

ARTICLE 8.
Default

8.1 Should Developer fail to comply with its obligations under this Agreement (subject in all cases to Force Majeure), following thirty (30) days' written notice thereof delivered by City, such failure shall be an Act of Default by Developer, and City, as its sole and exclusive remedy, may cease making any further Chapter 380 Payments until such Act of Default is cured. Developer shall not be required to refund to City any Chapter 380 Payments or any other money grants and consideration previously paid to it by City prior to such cessation of payments.

8.2 City shall have no right to terminate this Agreement or cease to make payments hereunder if the Developer's Performance Criteria under Article 4 is achieved and the Approved Developer Improvements have been constructed, or are in progress of construction.

8.3 Developer shall not be liable to City for any alleged consequential damages.

8.4 Any waiver granted by City to Developer of an Act of Default shall not be deemed to be or constitute a waiver of any other existing or future Act of Default by the Developer or of a subsequent Act of Default of the same act or event by Developer.

8.5 The failure by Developer to begin construction of the Project within six months of the date that public improvement construction begins for Phase Three (3) shall be considered a default for which the City may terminate this Agreement in full.

Article 9.
City Default. Liability Limitations.

9.1 Should City fail to timely comply with its obligations under this Agreement, following thirty (30) days' written notice thereof delivered by Developer, such failure shall be an Act of Default by City. Developer specifically agrees that City shall only be liable to the Developer for the amount of the Chapter 380 Payments it is required to pay to Developer, and shall not be liable to Developer for any other actual or consequential damages, direct or indirect, or interest for any Act of Default by City under the terms of this Agreement. It is further specifically agreed that City shall only be required to pay the Chapter 380 Payments solely out of the *Ad Valorem* Tax Revenues and roadway impact fees assessed from the subject Project.

ARTICLE 10.
Miscellaneous Provisions

10.1 Changes in Law. If, during the Term of this Agreement, State law applicable to *ad valorem* taxes changes and, as a result, the Chapter 380 Payments differ from the amount which would have been paid to the Developer under the laws in effect as of the Effective Date, then the City, in its sole discretion, may adjust the Chapter 380 Payments utilizing whatever revenues are legally available to the City to be allocated to the Chapter 380 Payments, with the intent being that the payments hereunder are at least as much as they would have been had the law not changed. The foregoing does not require the City to use funds from sources which are not within the City's discretion to allocate to the Project in order to achieve the same economic benefits to both parties, which would have resulted if the law had not changed.

10.2 Mutual Assistance. The City and the Developer each agree to do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement, and to aid and assist the other in carrying out such terms and provisions in order to put the other in the same economic condition contemplated by this Agreement, regardless of any changes in public policy, the law or taxes or assessments attributable to the Property.

10.3 Permitting. The City agrees to cooperate in good faith with the Developer to expeditiously process permits, including plat or zoning applications and building permits required for the Project.

10.4 Attorney's Fees. If any legal action or proceeding is commenced between the City and the Developer to enforce the provisions of this Agreement or to recover damages

for its breach, the prevailing party in the legal action will be entitled to recover its reasonable attorney's fees and expenses incurred by reason of such action, to the extent allowed by law.

10.5 Binding Effect. This Agreement will be binding on and inure to the benefit of the parties and their respective successors and assigns.

10.6 Notice. Any notice or their communication ("Notice") given under this Agreement must be in writing, and may be given: (a) by depositing the Notice in the United States Mail, postage paid, certified, and addressed to the party to be notified with return receipt requested; (b) by personal delivery of the Notice to the party, or an agent of the party; or (c) by confirmed facsimile, provided that a copy of the Notice is also given in one of the manners specified in (a) or (b). Notice deposited in the mail in the manner specified will be effective two (2) days after deposit. Notice given in any other manner will be effective only if and when received by the party to be notified. For the purposes of Notice, the addresses of the parties will, until changed as provided below, be as follows:

Developer: Jay Atchley, Managing Member
Navarrow 123, LLC
1915 Walnut Green
Houston, TX 77062
Ph: (713) 557-4250
Fax: _____

City: Douglas G. Faseler, City Manager
City of Seguin
205 N River Street
Seguin, Texas 78155
Ph: (830) 379-3212
Fx: (830)

With a copy to: Andrew Quittner, City Attorney
City of Seguin
205 N River Street
Seguin, Texas 78155
Ph: (830) 379-3212
Fax: (830) 455-1028

Any party may designate a different address at any time by giving Notice to the other parties.

10.7 Successors and Assigns. This Agreement shall bind and benefit the respective parties and their legal successors, and may be assignable by the Developer, upon approval by the City Council and execution of assignment agreement, said approval not to be

unreasonably withheld, to a successor Developer of a portion of the Property. Requests for assignment must be delivered to the City at least ten (10) days prior to requested assignment date. Nothing herein shall be construed as creating any personal liability on the part of any officer or agency of the City.

10.8 Interpretation. Each of the parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. In the event of any dispute regarding the interpretation of this Agreement, this Agreement will be interpreted fairly and reasonably and neither more strongly for or against any party based on draftsmanship.

10.9 Relationship of the Parties. This Agreement will not be construed as establishing a partnership or joint venture, joint enterprise, express or implied agency, or employer-employee relationship between the parties. Neither the City, nor its past, present or future officers, elected officials, employees or agents, assume any responsibility or liability to any third party in connection with the development of the Project or the design, construction or operation of any portion of the Project.

10.10 Applicable Law. This Agreement is made, and will be construed and interpreted, under the laws of the State of Texas and venue will lie in Guadalupe County, Texas.

10.11 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, it is the intention of the parties that the remainder of this Agreement not be affected and it is also the intention of the parties that, in lieu of each provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

10.12 Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the paragraphs.

10.13 No Third Party Beneficiaries. This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.

10.14 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument. A facsimile signature will be deemed to be an original signature for all purposes.

10.15 County Participation. The City hereby acknowledges that Guadalupe County may participate, pursuant to a separate agreement between the Developer and Guadalupe County, in the cost of a portion of the Developer Improvements.

10.17 Exhibits. The following exhibits are attached to and incorporated into this Agreement for all purposes.

Exhibit "A": Resolution
Exhibit "B": Approved Preliminary Master Plan
Exhibit "C": Approved Estimate of Project Cost

EXECUTED to be effective as of the ____ day of October, 2019.

Navarro 123M, LLC
A Texas Limited Liability Corporation

By: _____
Jay Atchley, Managing Member

Date: _____

City of Seguin, Texas
a home rule city and municipal corporation

By: _____
Douglas G. Faseler, City Manager

Date: _____

APPROVED as to form:

Andrew Quittner, City Attorney

Exhibit “A”

Economic Development Program Resolution

[SEE ATTACHED]

Exhibit “B”

Approved Preliminary Master Plan

[SEE ATTACHED]

Exhibit “C”

Project Cost Estimate

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