

RESOLUTION NO. 25 -R-020

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING A PRO-RATA AGREEMENT WITH JEN TEXAS 32, LLC FOR CONSTRUCTION OF A SEWER LIFT STATION AND ASSOCIATED FORCE MAIN IN THE CITY OF SCHERTZ, TEXAS, AND RELATED MATTERS IN CONNECTION THEREWITH.

WHEREAS, the Developer of Saddlebrook is constructing a sewer lift station and associated force main to serve their development; and

WHEREAS the Developer constructed the sewer lift station and associated force main with more capacity than is required by the Saddlebrook development; and

WHEREAS, there is a benefit to oversizing the lift station and associated force main to serve other properties; and

WHEREAS, the City has agreed to acquire a portion of the excess capacity in the sewer lift station and associated force main; and

WHEREAS, the City Council finds that it is in the best interest of the City to enter into the Pro-Rata Agreement with the Developer of the Saddlebrook development.

NOW THEREFORE, BE IT RESOLVED, THAT THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS THAT:

Section 1. The City Council hereby authorizes the City Manager to execute the agreement generally in the form attached subject to approval of minor changes approved by the City Attorney as shown on Exhibit "A".

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 3. All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

PASSED AND ADOPTED, this ____th day of _____, 2025.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Sheila Edmondson, City

Exhibit A
Pro Rata Agreement

After Recording, Please Return To:

City of Schertz.
1400 Schertz Parkway
Schertz, Texas 78154
Attention: City Manager

STATE OF TEXAS

§

§ KNOW ALL PERSONS BY THESE

PRESENTS:

COUNTY OF BEXAR

§

PRO-RATA AGREEMENT
SADDLEBROOK

This PRO-RATA AGREEMENT (this "Agreement") is by and between Jen Texas 32, LLC, a Texas limited liability company (the "Owner"), and the CITY OF SCHERTZ, a Texas municipal corporation (the "City") (sometimes collectively referred to as the "Parties") and is effective upon the execution of this Agreement by the Owner and the City (the "Effective Date").

WHEREAS, the Owner is the owner of that certain real property located in the City of Schertz, Bexar County, Texas, more specifically described on Exhibit "A", attached hereto and made a part hereof for all purposes (the "Property" or "Saddlebrook"); and

WHEREAS, the Owner seeks to develop a residential subdivision on the Property that requires the construction of certain public improvements: and

WHEREAS, the Owner seeks to construct sewer lines, a sewer lift station and force main (the "Saddlebrook Lift Station Improvements") to provide sewer service necessary for the development of the Property; and

WHEREAS, an existing sewer lift station and force main, the Croton Lift Station (the "Croton Lift Station"), is located near the Property and connects to the CCMA OJR Regional Water Reclamation Plant (the "Plant"); and

WHEREAS, rights-of-first refusal to capacity (the "Allocated Capacity") in the Croton Lift Station have been granted to property owners per the Third Agreement Regarding Sewer Facilities; and

WHEREAS, it was initially understood that the Plant did not have the ability for an additional sewer force main to connect the Plant; and

WHEREAS, the Owner had designed and constructed the Saddlebrook Lift Station Improvements to accommodate a portion of the existing and Allocated Capacity flows from the existing Croton Lift Station (the "Croton Additional Flows") in order to be able to utilize the existing Croton Lift Station connection to the Plant; and

WHEREAS, the Owner constructed more capacity in the Saddlebrook Lift Station Improvements than was required to accommodate the Croton Ultimate Flows and anticipated flows from the development of the Property; and

WHEREAS, the Owner seeks to be reimbursed for a portion of the cost of designing and constructing the Saddlebrook Lift Station Improvements (the “Saddlebrook Lift Station Improvement Costs”) from landowners seeking to utilize this excess capacity.

NOW THEREFORE, in consideration of the agreements set forth herein and for other reciprocal good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and stipulated by the Parties, the Owner and the City agree as follows:

1. Definitions: The following terms and phrases used in this Agreement shall have the meanings ascribed hereto:

- a) “Agreement” means this agreement, including any amendments hereto, between the City and Developer.
- b) “Contractor” shall mean a person, firm, corporation, partnership, association, or other entity awarded the contact by Developer for the construction and installation of the Improvements.EDU Sewer Facility Reimbursement Fee” shall mean the cost per EDU of Pro-rata due to the Owner for utilizing one of the remaining 2,000 EDUs of capacity in the Saddlebrook Lift Station.
- c) “Excess EDUs of Capacity shall mean the 2,000 EDUs of capacity of the Saddlebrook Lift Station Improvements out of the 2,700 EDUs of total capacity minus the capacity reserved for the Owner of the Property and the Croton Ultimate Flows.
- d) “Saddlebrook Lift Station Improvement Costs” shall mean the verified costs to construct the Saddlebrook Lift Station Improvements. improvements described on Exhibit “B” and Section 3(a) below.
- e) “Saddlebrook Lift Station Improvements” shall mean the improvements described on Exhibit “C” and Section 3 (a) below.

2. Ownership of the Property. The Owner hereby represents and warrants that, as of the Effective Date, it has not conveyed, assigned, or transferred all or any portion of its interest in the Property to any other person or entity.

3. Construction of Improvements; Covenants. The Owner and the City covenant and agree to the following:

- a) The Owner is obligated by Section 21.12.10 of the City’s Unified Development Code to construct, or cause to be constructed, sanitary sewer improvements more particularly described as the Saddlebrook Lift Station

Improvements shown on the Construction Plans approved June 2, 2023 (the “Construction Plans”) and that are included as part of the application for final plat approval for the subdivision titled Saddlebrook Subdivision Unit 1B.

- b) The cost of the Saddlebrook Lift Station Improvements is estimated to be **Five Million One Hundred Sixty-Five Thousand Nine Hundred Thirty-Nine Dollars and Thirty-Five Cents (\$5,165,939.35)** (the “Saddlebrook Lift Station Improvements Cost Estimate”), as more particularly shown on **Exhibit “C”** attached hereto and made a part hereof for all purposes. The Owner and the City agree that the amount of the Saddlebrook Lift Station Improvement Cost Estimate set forth herein is a commercially reasonable estimate of the cost to complete the Improvements.

4. Allocation of the Rights to the EDUs in the Saddlebrook Lift Station Improvements. The Parties hereby allocate rights to the EDUs of capacity in the Saddlebrook Lift Station Improvements, which are proposed to have 2,700 EDUs of capacity, as follows:

- a) The right to utilize up to Seven Hundred (700) EDUs of capacity in the Saddlebrook Lift Station Improvements is hereby assigned to the Owner for the Property (the Saddlebrook Subdivision) (the “Saddlebrook Property EDUs”).
- b) The Remaining EDUs of Capacity in the Saddlebrook Lift Station Improvements (the “Excess EDUs of Capacity”), which are estimated to be approximately Two Thousand (2,000) EDUs of capacity, are allocated as follows:
 - (i) 360 EDUS are allocated to the City of Schertz. Schertz can choose to allocated these EDUs as they choose.
 - (ii) 250 EDUs are allocated to the Rumpf/Brady Tract.
 - (iii) 127 EDUs are allocated to the Carmel Ranch Development.
 - (iv) 420 EDUs are allocated to the Judah Ranch (Baumann) Tract.
 - (v) The remaining estimated 843 EDUs of capacity, which actual number may vary due to usage patterns, shall be available for use by other property located within the service area of the lift station and within the City of Schertz on a first-come, first-served basis. Such EDUs of capacity will be allocated, if available, at the time of preliminary plat approval and paid prior to recordation of the final plat.
- a) Rights Run with the Land. The Parties agree that the allocation right to the Saddlebrook Property EDUs shall run with title of the Property and shall

not be assignable by the Owner without the prior written consent of the City.

5. EDU Sewer Facility Reimbursement Fee. A sewer facility reimbursement fee (the "SFR Fee") of **One Thousand Nine Hundred Thirteen Dollars and Thirty-One Cents (\$1,913.31)** per EDU of capacity in the Saddlebrook Lift Station Improvements, which number was calculated by dividing the approved cost to construct the Saddlebrook Lift Station Improvements, as documented in **Exhibit "C"** by the estimated Two Thousand Seven Hundred (2,700) EDUs of capacity in the Saddlebrook Lift Station Improvements, shall be due and payable upon conveyance of any of the Excess EDUs of Capacity in the Saddlebrook Lift Station Improvements to a property owner. The Owner is exempt from paying the SFR Fee for the Saddlebrook Property EDUs.

a) As used in this Section 5, "conveyance" of EDUs of capacity in the Sewer Facilities shall be deemed to occur upon recordation of a final plat.

(b) The City agrees to use commercially reasonable efforts to collect the SFR Fees from property owners at the time of conveyance of EDUs of capacity in the Upgraded Sewer Facilities. Within thirty (30) calendar days of the City's receipt of SFR Fees associated with the Upgraded Sewer Facilities, the City shall pay the Owner the amount of the SFR Fees collected by the City.

6. The City agrees to pay for the 360 EDUs of Capacity within 90 days of acceptance of the Saddlebrook Lift Station Improvements.

7. Approval of Agreement. The City has approved the execution and delivery of this Agreement pursuant to Section 21.4.15(C.) (2.) of the City's Unified Development Code, and the Owner represents and warrants that it has taken all necessary action to authorize its execution and delivery of this Agreement.

8. Governmental Immunity. The City does not waive or relinquish any immunity or defense on behalf of itself, its officers, employees, Councilmembers, and agents as a result of the execution of this Agreement and the performance of the covenants and actions contained herein.

9. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

10. Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts shall be construed together and shall constitute one and the same Agreement.

11. Integration. This Agreement is the complete agreement between the Parties as to the subject matter hereof and cannot be varied except by the written agreement of the

Owner and the City. The Owner and the City each agrees that there are no oral agreements, understandings, representations or warranties which are not expressly set forth herein.

12. Notices. Any notice or communication required or permitted hereunder shall be deemed to be delivered (i) upon receipt, if hand delivered or delivered by express delivery service or (ii) three (3) days after such notice is deposited in the United States mail, postage fully prepaid, registered or certified mail return receipt requested, and addressed to the intended recipient at the address shown herein. Any address for notice may be changed by written notice delivered as provided herein. All notices hereunder shall be in writing and served as follows:

If to the Owner:

Jen Texas 32, LLC
8023 Vantage Drive, Suite 220
San Antonio, TX 78230
Attention: Trey Marsh

If to the City:

CITY OF SCHERTZ
1400 Schertz Parkway
Schertz, Texas 78154
Attention: City Manager

With copy to:

Denton Navarro Rocha Bernal & Zech, P.C.
2517 N. Main Avenue
San Antonio, Texas 78212
Attention: T. Daniel Santee

13. Legal Construction. If any provision in this Agreement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the Parties, such unenforceability will not affect any other provision hereof, and this Agreement will be construed as if the unenforceable provision had never been a part of this Agreement. Whenever the context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this Agreement are for reference only and are not intended to restrict or define the text of any section. This Agreement will not be construed more or less favorably between the Parties by reason of authorship or origin of language.

14. Recitals; Exhibits. Any recitals in this Agreement are represented by the Parties hereto to be accurate, constitute a part of the Parties' substantive agreement, and are fully incorporated herein as matters of contract and not mere recitals. Further, any

exhibits to this Agreement are incorporated herein as matters of contract and not mere exhibits.

15. No Joint Venture. It is acknowledged and agreed by the Parties that the terms hereof are not intended to, and shall not be deemed to, create a partnership or joint venture among the Parties.

16. Choice of Law. This Agreement will be construed under the laws of the State of Texas without regard to choice-of-law rules of any jurisdiction. Venue shall be in the State District Courts of Guadalupe County, Texas with respect to any lawsuit arising out of or construing the terms and provisions of this Agreement. No provision of this Agreement shall constitute consent by suit by any Party.

[Signatures and acknowledgments on the following pages]

Signature Page to
Improvement Agreement

This Agreement has been executed by the Parties as of the dates of the Acknowledgments to be effective as of the Effective Date.

Owner:

Jen Texas 32, LLC

By: _____

Name: _____

Title: _____

Date: _____

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2025 by _____, the _____ of Jen Texas 32, LLC, on behalf of said limited liability company.

(SEAL)

Notary Public in and for
The State of Texas

My Commission Expires: _____

**Signature Page to
Improvement Agreement**

This Agreement has been executed by the Parties as of the dates of the Acknowledgments to be effective as of the Effective Date.

City: _____

CITY OF SCHERTZ,
a Texas municipal corporation

By: _____

Name: Steve Williams, its City Manager

Date: _____

THE STATE OF TEXAS §
 §
COUNTY OF GUADALUPE §

This instrument was acknowledged before me on the ____ day of _____, 2025 by Steve Williams, City Manager of the City of Schertz, Texas, a Texas municipal corporation, on behalf of said City.

(SEAL)

Notary Public in and for
The State of Texas

My Commission Expires: _____

EXHIBIT "A"

The Property

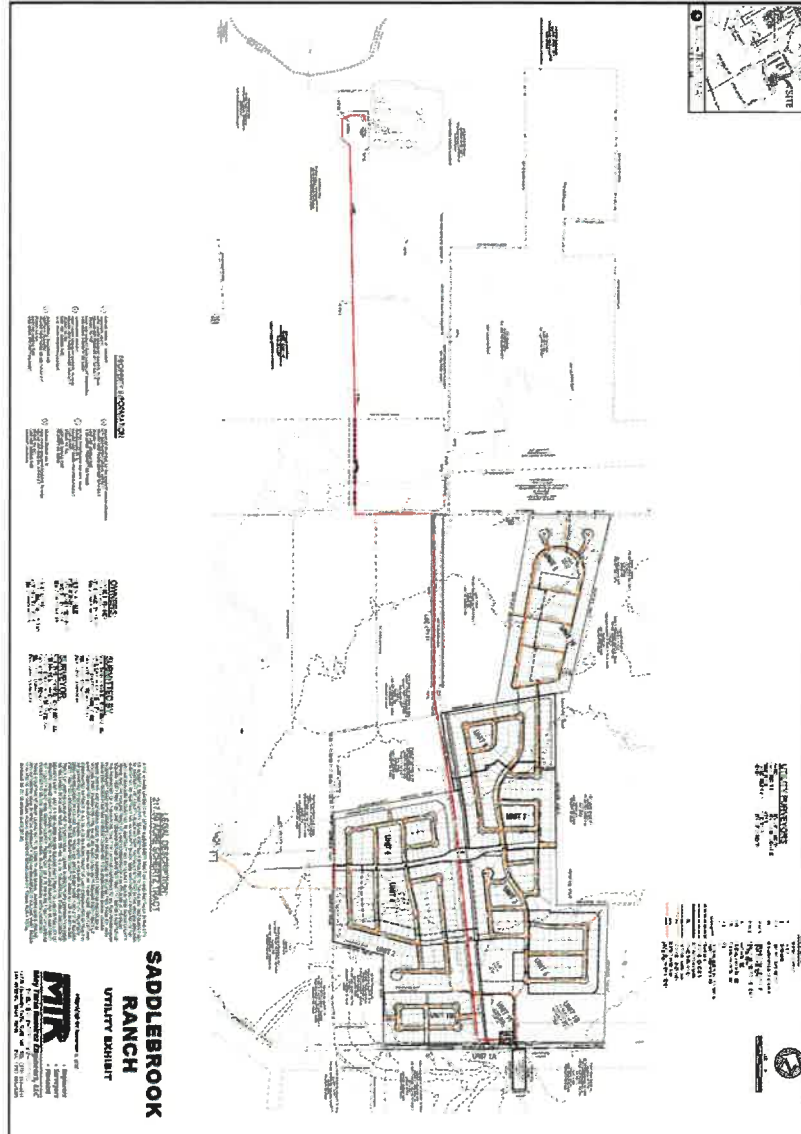


EXHIBIT "B"

The Saddleborok Lift Station Improvement Costs

11/13/2023
Job No.-20080

**SADDLEBROOK SEWER LIFT STATION OPCS
SANITARY SEWER IMPROVEMENTS**

ITEM	DESCRIPTION	UNIT	ESTQTY	\$/UNIT	AMOUNT
1	Lift Station	L.S.	1	\$ 3,419,977.02	\$ 3,419,977.02
2	Force Main	L.S.	1	\$ 1,576,002.53	\$ 1,576,002.53
TOTAL CONSTRUCTION COST					\$ 4,995,979.55
Estimated Permit Fees					\$ 49,959.80
Engineering					\$ 120,000.00
TOTAL COST					\$ 5,165,939.35
TOTAL CAPACITY (EDUs):					2,700
COST PER EDU					\$ 1,913.31

EXHIBIT "C"

The Saddlebrook Lift Station Improvements

[See attached]