

State of Georgia
Effingham County

OLD AUGUSTA ROAD WATER AND SEWER DEVELOPMENT AGREEMENT

This Agreement is made and entered into this 16th day of February, 2022, by and between Cowan Investments, LLC, a Georgia Limited Liability Company, hereinafter referred to as the “Developer”, and the Effingham County Board of Commissioners, hereinafter referred to as the “County”, the lawfully elected governing authority of Effingham County, a political subdivision of the State of Georgia.

RECITALS:

Whereas, Cowan Investments, LLC is the developer of Old Augusta Road Warehouse, hereinafter referred to as the “Project”, a proposed subdivision consisting of approximately 716,100 square feet of warehouse space as shown on the attached drawing entitled Old Augusta Road Warehouse (dated January 4, 2022), attached hereto as Exhibit A; and

Whereas, the Developer desires certain commitments from the County, with regard to the supply of water and sanitary sewer service for the Project; and

Whereas, the Developer requests that the County provide water supply and sewage disposal to the Project; and

Whereas the County finds that the provision of water and sewer service to the Project is consistent with and in furtherance of the goals and purposes of the Effingham County Water, Sewer and Reuse Master Plan and is in the public interest, it is hereby agreed as follows:

WITNESSETH:**Section 1. Definitions.**

Equivalent Residential Unit or ERU shall mean the number of residential units to which the water demand of a customer is equivalent, where a single-family detached residential unit is assumed to have an average demand of 300 gallons per day. The number of ERUs assigned to a building or structure shall be determined in accordance with the water use load factors established by ordinance of the County.

Section 2. Off-Site Improvements

- A. Developer has retained, subject to approval by the County, one or more competent professional engineers registered in the State of Georgia to design and observe the construction of such improvements as are necessary to extend the County water distribution and sewer collection systems from the current terminus of water distribution and sewer collection along Old Augusta Road to the Project on-site connection point to distribute water and sewer within said Project, as shown on the Preliminary Engineering Plan titled Old Augusta Road Warehouse (dated January 4, 2022) and attached hereto as Exhibit A, and hereinafter referred to as the Off-Site Improvements.
- B. The Developer has constructed or will construct water and sewer systems having sufficient capacity to provide water and sewer to the Project, as shown on the Preliminary Engineering Plan titled Old Augusta Road Warehouse (dated January 4, 2022) and attached hereto as Exhibit A. The County shall ensure the availability of water and sewer

services at the connection point. The off-site improvements shall be constructed pursuant to plans approved by the County and appropriate regulatory authorities.

- C. The County has constructed or will construct water and sewer systems having sufficient capacity to provide water and sewer to the Project.
- D. The County has determined the water line size needed to serve the Project is sixteen (16) inch and the sewer line size needed to serve the Project is four (4) inch. The County desires to extend both water and sewer to within 1,000 feet of the project site. By Effingham County Code of Ordinances, the Developer shall then extend the water and sewer services to the Project site. The Developer and County agree that the Engineer(s) will design the water and sewer lines to the desired size and the Developer will construct said line, with Engineer(s) oversight during construction, at the Developer's sole expense.
- E. The County is responsible for the cost of design and construction of the water and sewer lines from the current terminus, going north to a point 1,000 feet south of the intersection of Old Augusta Road and Abercorn Road. The design cost shall not exceed \$25,750 and the construction cost shall not exceed **\$700,500**, both as determined by estimates provided by the Developer's Engineer.
- F. Reimbursement for the construction costs associated with the County's portion of the water and sewer line extension by the County to the Developer shall be in the form of reimbursement of actual costs supported with invoice.

Section 3. On-Site Improvements.

Developer has retained, subject to approval by the County, one or more competent professional engineers registered in the State of Georgia to design and observe the construction

of such improvements as are necessary to extend the County water distribution and sewer collection systems from the connection points to the Project and to distribute water and sewer within said Project, as shown on the Preliminary Engineering Plan titled Old Augusta Road Warehouse (dated January 4, 2022) and attached hereto as Exhibit A, and hereinafter referred to as the On-Site Improvements. The On-Site Improvements shall be constructed at Developer's sole expense. Developer shall ensure that the On-Site Improvements are of sufficient capacity to serve the Project.

Section 4. Inspection, Construction and Dedication of Off-Site Improvements.

- A. Developer shall provide for inspection of the Off-Site Improvements by the design engineer during construction and shall ensure compliance with all County design and construction requirements. Developer shall provide to the County a statement from the design engineer certifying, based on the best of his/her information, knowledge, and belief based on periodic observation, that the materials and workmanship, including but not limited to pipes, bedding, thrust blocks, valves, pumps, and other related material and work meet the County's specifications and standards. Developer shall provide two (2) copies, and an electronic file, of "record" drawings of the Off-Site Improvements signed by the design engineer and/or independent inspector. Upon request of the County, the certification shall be substantiated by material affidavits from suppliers and by applicable test results for deflection, pressure, leaks, bacteria, compaction and flow tests required by the County. All design, construction, inspection, and other costs incurred to construct the Off-Site Improvements and connect to the County water and sewer systems shall be borne by the Developer. The Developer shall hold the County harmless for and

indemnify the County against any and all claims for damages or personal injuries caused by or arising from the faulty or negligent construction of the Off-Site Improvements.

- B. Upon completion of the construction of the Off-Site Improvements, certification by the design engineer, provision of the “record” drawings, and compliance with any other requirements imposed by the County pursuant to Section three (3) of this agreement, the County shall, upon dedication by the Developer and subject to approval of the County, which approval shall not be unreasonably withheld, accept title to and assume responsibility for maintenance and operation of those portions of the Off-Site Improvements located within public easements or right-of-ways, up to but not including individual water metering points. This dedication shall include all rights, title, and interest that the Developer has in the Off-Site Improvements and also all easements and/or right-of-way required for the purpose of maintenance thereof.
- C. Developer shall provide to the County a recordable plat(s) showing all public easements and/or rights-of-way that contain utilities that, are to be owned and maintained by the County. If the Developer fails to provide the recordable plat, the County shall not accept the Off-Site Improvements, nor issue a Certificate of Occupancy for any building or structure within that phase of the Project.

Section 5. Service Recovery Fees & Credits.

- A. The Developer shall pay to the County service recovery fees as established by ordinance of the County, currently \$2,000.00 per ERU for water supply and distribution (the “water service recovery fees”) and \$3,300.00 per ERU for sewer collection (the “sewer service recovery fees”). The water and sewer service recovery fees shall apply to all connections

made within the Project and shall be due and payable in accordance with the ordinances of the County, except as otherwise provided by this Agreement. The water and sewer service recovery fees are subject to amendment by ordinance of the County.

Section 6. Other Fees.

The provision of water and sewer services within the Project shall be subject to all other fees and charges established by ordinance or regulation of the County, including, but not limited to, tap and connection fees. Such fees and charges shall be due and payable as provided by ordinance of the County. Such fees and charges may be changed from time-to-time by ordinance of the County.

Section 7. User Rates.

User charges for water and sewer consumption shall be billed to the property owner(s) or occupant(s) based upon the rates and terms established by ordinance of the County.

Section 8. Term; Renewal.

The initial term of this agreement shall be two (2) years, commencing on February 16, 2022 and ending on February 15, 2024. This agreement shall be renewed automatically on the same terms and conditions herein for an additional one (1) year period, unless notice is given by either party of the intent not to renew on or before November 15, 2023.

Section 9. Compliance with Laws.

Developer shall comply with all existing and future County ordinances, rules, and regulations relating to the connection to and use of the County's water and sewer. Nothing in this Agreement shall limit the right of the County to impose other fees or to create special tax

districts to enable the County to recover all costs incurred in providing water and sewer service to the Property.

Section 10. Governing Law; Forum Selection.

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Georgia. Any action arising from this Agreement shall be filed in the Superior Court of Effingham County.

Section 11. Entire Agreement.

This Agreement shall constitute the entire agreement between the parties.

Section 12. Modification of Agreement.

Any modification or amendment to this Agreement shall be binding only if reduced to writing and approved and executed by both parties.

Section 13. No Waiver.

The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

Section 14. Effect of Partial Invalidity.

In the event that any part or subpart of this Agreement is held to be invalid or unenforceable by any court of competent jurisdiction, the parties agree that the remaining provisions shall be deemed to be in full force and effect.

Section 15. Paragraph Headings.

The headings and subheadings within this Agreement are solely for the convenience of the parties and shall not be construed to modify, explain, or aid in the interpretation of this Agreement.

Section 16. Notices.

Any notice provided for or concerning this Agreement shall be in writing and shall be deemed sufficiently given upon receipt by certified or registered mail or hand delivery as follows:

If to the County: Effingham County Board of Commissioners
601 North Laurel Street
Springfield GA 31329

If to Developer: Cowan Investments, LLC, a Georgia Limited Liability Company
c/o _____

_____, GA 3 _____

Section 17. Excusable Delay.

Neither the County nor Developer shall be liable to the other or any successor in interest for any loss, cost, or damage arising out of, or resulting from, non-performance or delayed performance of the terms of this Agreement where such non-performance or delayed performance is the result of circumstances or occurrences beyond the reasonable control of the

responsible party (each, a “force majeure”), which, as used herein, shall be deemed to include, non-performance or delayed performance resulting from acts of God, strikes, lockouts, blockades, insurrections, riots, explosions, fire, floods, or any other cause not within the reasonable control of the responsible party. In no event shall the County be held liable to the Developer for consequential damages or economic losses arising from delayed performance; provided, however, that in the event the County fails to timely perform its obligations under this Agreement after written notice of default from the Developer, then Developer shall be entitled to complete the County’s construction obligations hereunder, and, if Developer undertakes to and does complete all or a portion of the County’s construction obligations hereunder, in accordance with Section 9 of the Effingham County Georgia Impact Fee Ordinance (or any successor provision), be entitled to a credit for the cost of such completion against the reuse water service recovery fees and capacity fees otherwise payable under this Agreement.

Section 18. Assignment.

This Agreement may be assigned in whole or in part by the Developer with the prior written approval of the County, which approval shall not be unreasonably withheld, conditioned, or delayed. This Agreement shall bind and inure to the benefit of the parties hereto and their permitted successors and assigns.

Section 19. Construction of Agreement.

The parties acknowledge that each party has participated in the negotiation and preparation of this Agreement. This Agreement shall be construed without regard to any presumption or other statute or rule of law requiring construction against the party causing the Agreement to be drafted.

IN WITNESS WHEREOF the Developer has executed these presents under seal, and the County has cause these presents to be executed by its proper officer under seal, affixed, this 16th day of February, 2022.

EFFINGHAM COUNTY BOARD OF COMMISSIONERS

BY: _____

WESLEY CORBITT, CHAIRPERSON

ATTEST: _____

STEPAHNIE JOHNSON, CLERK

DEVELOPER: _____

BY: _____

Member

EXECUTED IN THE PRESENCE OF:

WITNESS

Sworn to and subscribed before me this

____ day of _____, 20____.

NOTARY PUBLIC

IN WITNESS WHEREOF the Developer has executed these presents under seal, and the County has cause these presents to be executed by its proper officer under seal, affixed, this 16th day of February, 2022.

EFFINGHAM COUNTY BOARD OF COMMISSIONERS

BY: Wesley M. Corbitt
WESLEY CORBITT, CHAIRPERSON

ATTEST: S. Johnson
STEPHANIE JOHNSON, CLERK

DEVELOPER: WAZ

BY: WYNNE CONNOR CONNOR FINKELSTEIN
Member

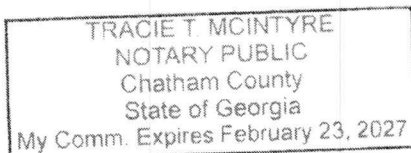
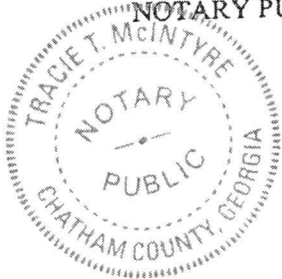
EXECUTED IN THE PRESENCE OF:

[Signature]
WITNESS

Sworn to and subscribed before me this
9 day of MAY, 2023.

Tracie T. McIntyre

NOTARY PUBLIC



Staff Report

Subject: Development Agreement for a water and sewer extension on Old Augusta Road

Author: Eric Larson, Asst. County Manager

Department: Public Works

Meeting Date: February 15, 2022

Item Description: Enter into a Development Agreement with Cowan Investments LLC for engineering and construction services to develop water and sewer line extension plan along Old Augusta Road.

Summary Recommendation:

Cowan Investments recently acquired and rezoned a parcel along Old Augusta Road, at the intersection of Abercorn Road. In a mutual desire to extend water and sanitary sewer service to the site, Effingham County requested proposals from qualified consultants selected under the 2021 IDC contract (RFP 21-007) to provide Engineering Services to develop the water and sanitary sewer design for an extension along Old Augusta Road. Prospective firms were required to provide a proposed work plan, schedule, and fee as part of the proposal submittal. The selected consultant for that project was Coleman Company. County staff and representatives for Cowan Investment agreed that a DA would be beneficial to both parties given that Coleman Company was already under contract with Cowan for the site development and a portion of their water and sanitary sewer line construction. A DA would allow the County to construct the needed improvements with a maximum funding limit and allow Cowan Investments to build the improvements on their time frame.

Executive Summary/Background:

- The County prepared a RFP for IDC firms to submit a work plan, cost, and schedule and selected Coleman Company for the design work.
- Cowan Investments, LLC has retained Coleman Company for engineering services related to the project.
- It is mutually beneficial for the County and Cowan Investments to cost-share the design and construction, with Cowan leading the effort via a Development Agreement.
- The County staff recommend a Development Agreement with Cowan Investments, LLC.

Alternatives for Commission to Consider

- 1 – Approve a Development Agreement with Cowan Investments for extension of water and sewer lines on Old Augusta Road.
- 2 – Take no action

Recommended Alternative: Alternative 1

Other Alternatives: N/A

Department Review: County Engineering; County Attorney

Funding Source: Water and Sewer Operating Fund

Attachments: 1. DA