

THE STATE OF TEXAS

COUNTY OF GUADALUPE

§ **FIRST AMENDMENT AND RESTATEMENT**
§ **OF INTERLOCAL AGREEMENT BETWEEN**
§ **THE CITY OF SCHERTZ AND THE CITY OF**
§ **CIBOLO**

PREAMBLE:

This FIRST AMENDMENT AND RESTATEMENT OF INTERLOCAL AGREEMENT BETWEEN THE CITY OF SCHERTZ AND THE CITY OF CIBOLO (this “Amendment”) is entered into effective as of _____, 2020 the City of Cibolo and the City of Schertz (collectively referred to as the “Parties”), and completely amends and restates that certain Interlocal Agreement between the City of Schertz and the City of Cibolo dated executed to be effective as of 3rd day of September, 2019 (as restated by this Amendment, the “Agreement”).

The Parties enter into this Amendment under the general provisions of the Interlocal Cooperation Act, Texas Government Code Chapter 791, under the specific authority of §791.026 and Texas Education Code §44.031(a)(5). This Amendment is made for the purpose of efficient and effective use of resources and is in the best economic interests of the Parties. The City of Cibolo and the City of Schertz are political subdivisions of the State of Texas.

RECITALS

WHEREAS, the Parties have identified certain common, legitimate public purposes in entering into this Agreement; and

WHEREAS, the governing bodies of the City of Cibolo and the City of Schertz each met in legally convened open meetings and authorized their respective representatives to enter into this Agreement; and

WHEREAS, the Parties intend to enter into a new agreement whereby the City of Cibolo will construct or cause to be constructed Wiederstein Road generally from Cibolo Valley Drive through the intersection of the northbound frontage road of Interstate Highway 35, the full right-of-way which is located in the corporate boundaries of Cibolo and Schertz, as shown on Exhibit “A” and the City of Schertz contribute funds toward that construction; and

WHEREAS, the City of Schertz desires to provide up to \$1,300,000 towards the cost of the construction; and

WHEREAS, the City Council of the City of Schertz has changed the name of Wiederstein Road from Cibolo Valley Drive to the northbound frontage road of Interstate Highway 35 to Cibolo Valley Drive via Ordinance 19-S-16 in support of working in partnership with the City of Cibolo on areas of mutual interest; and

III. MUTUAL PROMISES AND COVENANTS OF THE PARTIES

The Parties, in consideration of the mutual promises and covenants contained in this Agreement, agree as follows:

- A. The recitals set out in the preamble are hereby incorporated herein, for all purposes.
- B. Pursuant to the terms of the Development Agreement, the City of Cibolo shall cause to be constructed, roadway, traffic signals and associated improvements more particularly shown on the plans and specifications prepared by Westwood Professional Services, signed and sealed by Arlyn Samuelson, P.E. and Steve Manhart, P.E. on September 18, 2019, and approved by the Parties (“Construction Plans”) for improvement to Wiederstein Road between Interstate 35 to Old Wiederstein Road (approximately 3,100 feet) called the “Project”.
- C. The Construction Plans for the Project have been prepared by the Developer using the design standards of the City of Schertz.
- D. The improvements shall be built and completed in accordance with the City of Schertz design standards within fifteen (15) months of the beginning if the term of this Agreement, unless extended by Force Majeure.
- E. Pursuant to the terms of the Development Agreement, the City of Cibolo shall cause to be procured a construction company to construct the Project. The City of Schertz shall provide inspections throughout the project to insure the Project is being constructed in accordance with the approved plans. Changes made in the plans during construction shall be approved by both Cities.
- F. The costs of the Wiederstein Road improvements are estimated to be Four Million Eight Hundred Six Thousand Seven Hundred Sixty-Two Dollars (\$4,806,762) (the “cost estimate”), as more particularly shown on Exhibit “B” attached hereto and made a part hereof for all purposes.
- G. Within thirty (30) days of the beginning of the term of this Agreement: (i) the City of Schertz shall deposit into escrow the amount of One Million Three Hundred Thousand Dollars (\$1,300,000) for the City of Schertz’s contribution to the cost of construction of Wiederstein Road to be released and paid upon completion and acceptance of the Wiederstein Road Improvements by the City of Schertz, and (ii) the City of Cibolo shall cause the Developer to provide or cause to be provided a surety in a form agreeable to the City of Schertz in the amount of Three Million Five Hundred Twenty-Five Thousand (\$3,525,000) that can be used by the City of Schertz to construct the Project pursuant to the terms of Section 3(I) hereof. Upon the completion of the Wiederstein Road Improvements and acceptance by the City of Schertz, the City of Schertz shall be responsible for all maintenance of the Wiederstein Road Improvements.
- H. The costs of improvements are subject to review by the City of Schertz and shall be standard reasonable costs.

I. The City of Cibolo will provide monthly updates on the status of construction of the Wiederstein Road Improvements and shall meet the schedule attached as Exhibit “C”; provided, however, such dates may be extended due to Force Majeure and the terms, notice periods, and cure periods due the Developer pursuant to the Development Agreement (*i.e.* the Development Agreement provides that Developer has thirty (30) days after receipt of notice from the City of Cibolo to cure any default, provided that in the event the cure cannot be achieved in thirty (30) days with diligent pursuit, Developer will have sixty (60) days after receipt of such notice to cure, or longer if allowed by the City of Cibolo). After giving effect to such extensions, should the City of Cibolo fail to meet the construction schedule in Exhibit “C”, they are considered to be in Breach of the agreement. The City of Cibolo will have sixty (60) working days to address the default. If, after the expiration of all Force Majeure and applicable extension, notice, and cure periods under the Development Agreement, the Developer defaults under the Development Agreement in its duties to timely construct the Project, the City of Schertz shall have the right, but not the obligation, to assume responsibility for the construction of the Project. If the City of Schertz chooses to exercise such option and provides notice of default thereof, within sixty (60) days, the City of Cibolo shall provide the balance of funding for the Project to the City of Schertz to be used to complete the construction.

IV. MISCELLANEOUS

A. Notice and Addresses. All notices required hereunder must be given by certified mail or registered mail, addressed to the proper Party, at the following addresses:

To City of Schertz: City of Schertz, Texas
Attn: Dr. Mark Browne, City Manager
1400 Schertz Parkway
Schertz, TX 78154

With a copy to: City of Cibolo, Texas
Attn: Robert T. Herrera, City Manager
200 S. Main Street
Cibolo, TX 78108

Either Party may change the address to which notices are to be sent by giving the other Party notice of the new address in the manner provided in this section. Notices shall be deemed to have been received three (3) days after deposit in the mail.

For ease of administration of this contract, a main contact person has been designated for each of the Parties as follows:

For the City of Cibolo: Robert T. Herrera, City Manager

For the City of Schertz: Mark Browne, City Manager

B. Parties Bound. This Agreement shall be binding upon, and inure to the benefit of, the Parties of this Agreement and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

C. Prior Agreement Superseded. This Agreement constitutes the sole and only agreement of the Parties regarding their responsibilities to each other concerning the work noted herein on the Project and supersedes any prior understandings or written or oral agreements between the Parties respecting the Project. This Agreement in no way modifies or supersedes any document executed by the Parties prior to this Agreement which does not involve the Project.

D. Amendment. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the Parties to this Agreement.

E. Hold Harmless. The City of Cibolo will hold the City of Schertz harmless from any claims contemplated by this Agreement (e.g., contract claims between the City and any contractors and/or injury or property damage claims) to the extent permitted by Texas law. The City of Cibolo is solely responsible and liable for ensuring all requirements for procurement and bidding are followed.

F. Violation of Law. The City of Cibolo and the City of Schertz shall not knowingly violate any Federal, State or local Laws, regulations, or ordinances in the performance of this Agreement.

G. Enforceability. If any provision of this Agreement proves unlawful or unenforceable by a court having jurisdiction over the Parties or the subject matter, such provision shall be severable from the other provision of this Agreement, and all remaining provision shall be fully enforceable.

H. Governing Law and Place for Performance. This Agreement shall be governed by the laws of Texas, which state shall also be deemed the place where this Agreement was entered into and the place of performance and transaction of business and Parties. In the event of litigation pertaining to the Agreement, the exclusive forum, venue, and place of jurisdiction shall also be the County of Guadalupe and the State of Texas unless otherwise agreed in writing by the Parties. The Parties acknowledge that each has had the unfettered opportunity to review, revise, and negotiate the terms of this Agreement and that if in the future there is a dispute as to the meaning of any provision herein, then no such provision shall be construed against the drafter of the Agreement.

I. Exhibits Incorporated. All exhibits to this Agreement are incorporated by reference as if completely set out herein.

J. Signature Warranty Clause. The signatories to this Agreement represent and warrant that they have the authority to execute this Agreement on behalf of the City of Cibolo and the City of Schertz, respectively.

K. No Waiver of Immunities. Nothing in the Agreement shall be construed to waive any immunities from suit or liability enjoyed by the City of Cibolo, the City of Schertz, their past or present officers, employees, or agents of employees.

L. No Third Party Beneficiary. This Agreement inures to the benefit of and obligates only the parties executing it. No term or provision of this Agreement shall benefit or obligate any person or entity not a party to it besides the Developer, as detailed herein. The parties hereto shall cooperate fully in opposing any attempt by any third person or entity besides the Developer to claim any benefit, protection, release, or other consideration under this Agreement.

M. No Joint Venture. Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationship between the parties hereto.

N. Approval by Governing Bodies. This Agreement has been approved by the Governing bodies of the City of Cibolo and the City of Schertz.

O. Payment from Current Revenues. Each Party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying Party.

P. Assignment. Neither Party may assign their interests in this Agreement except upon receiving the written consent of the other Party.

EXECUTED TO BE EFFECTIVE this as of the ____ day of _____, 20__.

CITY OF CIBOLO

By: _____
Robert T. Herrera, City Manager

ATTEST:

By: _____
Peggy Cimics, City Secretary

CITY OF SCHERTZ

By: _____
Mark Browne, City Manager

ATTEST:

By: _____
Brenda Dennis, City Secretary

EXHIBIT "A"

DEPICTION OF PROJECT

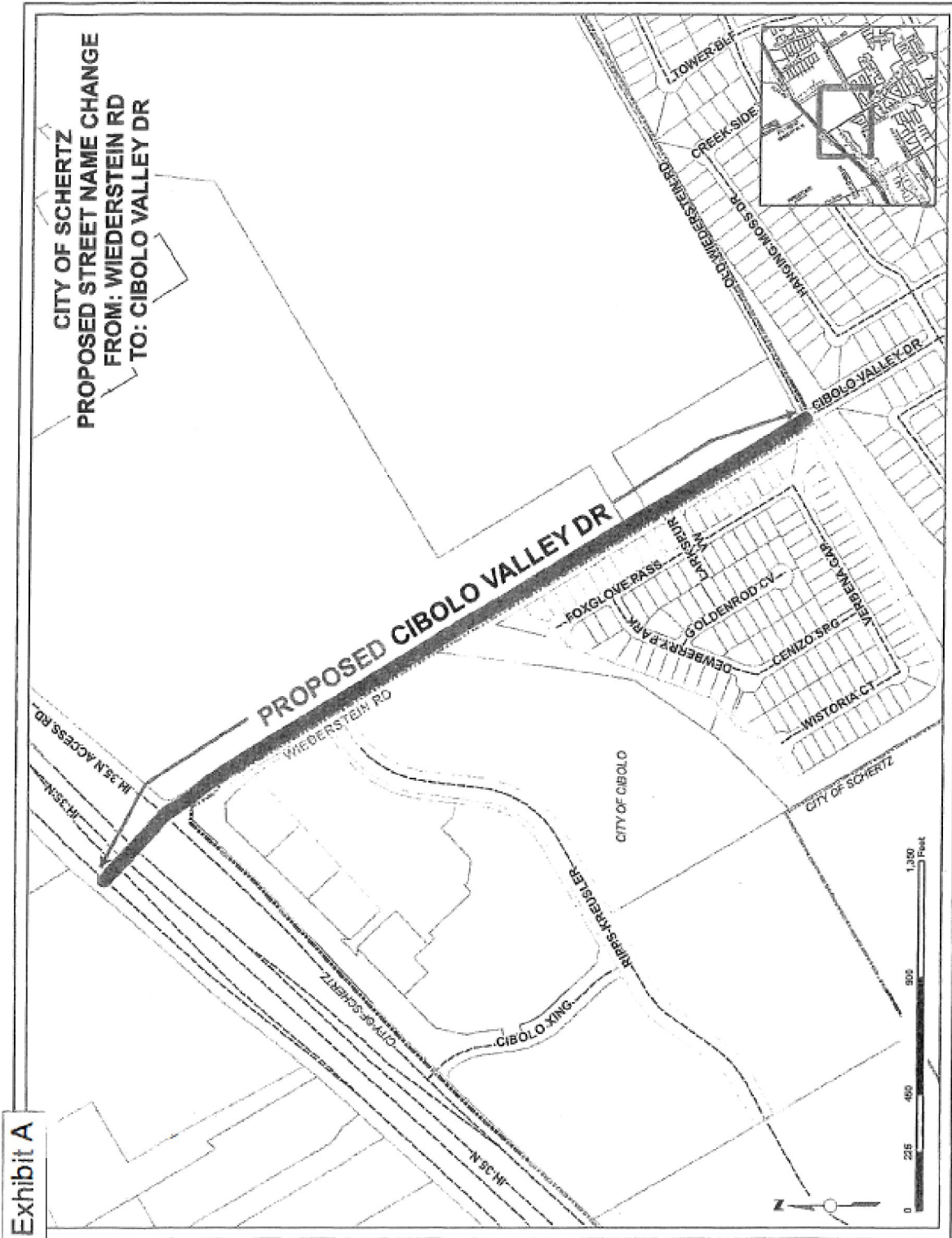


Exhibit "A"

EXHIBIT "B"

ESTIMATED PROJECT COST

Cibolo Valley Drive (aka Wiederstein Road) Expansion Project
Estimated Project Cost
December 27, 2019

Description	Original Budget	Proposed Budget
Prime Contract - JR Sitework	4,006,432.00	4,200,525.00
Engineering and Surveying - Westwood (Paid to Date)	430,000.00	245,724.00
Engineering - Construction Admin (Budget)		60,000.00
Surveying - Construction (Budget)		50,000.00
Environmental Studies - SWCA (Paid)		3,608.00
Geotechnical Studies - Raba Kistner (Paid)		7,655.00
Testing - Raba Kistner (Budget)	22,000.00	35,000.00
Utility Relocation (Budget)	363,500.00	70,000.00
Streetlighting (Budget)	-	40,000.00
Subtotal	4,821,932.00	4,712,512.00
Contingency (3%)		94,250.00
Total	4,821,932.00	4,806,762.00

EXHIBIT "C"

CONSTRUCTIONS SCHEDULE