

**REIMBURSEMENT AGREEMENT WITH DEVELOPER FOR
CONSTRUCTION OF PUBLIC IMPROVEMENTS
ASSOCIATED WITH FM 1518**

THE STATE OF TEXAS §
 § KNOW ALL PERSONS BY THESE PRESENTS:
COUNTY OF BEXAR §

This Reimbursement Agreement with Developer for Construction of Public Improvements Associated with FM 1518(the “Agreement”) is by and between the City of Schertz, a Texas municipal corporation (the “City”), and Schertz 1518, Ltd., owner and developer of certain hereinafter described property located within the City (the “Developer”), all collectively referred to as “Parties”, and is effective upon the execution of this Agreement by the Developer and the City (the “Effective Date”).

WHEREAS, Developer wishes to develop certain property (the “Property”) located within the City limits, out of the Julian Diaz Survey No.66, Abstract No. 187, County Block 5059, the E.R. Evans Survey No. 80, Abstract No. 216, County Block 5060 and being out of a 145.427 acre tract of land as conveyed to Schertz 1518, Ltd. of record in Volume 11564 Page 1814 and a 91.288 acre tract of land as conveyed to Schertz 1518, LTD of record in Volume 11601 Page 2280, all being of the official public records of Bexar County, Texas and situated in the City of Schertz, Bexar County, Texas.

WHEREAS, FM 1518, a Texas Department of Transportation (“TxDOT”) roadway, is being widened and certain water infrastructure (“Water Infrastructure”) and wastewater infrastructure (“Wastewater Infrastructure”) along with ancillary and related improvements necessitated by the widening of FM 1518 (collectively the “Improvements”) located in the right-of-way must be relocated, extended, and/or upsized as depicted in **Exhibit “A”**; and

WHEREAS, the City submitted to the Developer a request that the Developer undertake the completion of the Improvements for the benefit of TxDOT, the City, and of the Developer, which Improvements will benefit portions of the City beyond the Property; and

WHEREAS, the City anticipates entering into an agreement with TxDOT pursuant to which TxDOT will reimburse the City for, among other things, the costs associated with the relocation of the ten inch (10”) wastewater line (10” WWL”) including all hard costs, soft costs, and ancillary costs associated with the relocation of the 10” WWL (the “TxDOT Reimbursement Agreement”); and

WHEREAS, it is not anticipated that the TxDOT Reimbursement Agreement will reimburse the City for any other costs associated with the Improvements other than the costs associated with the relocation of the 10” WWL including, however, all hard costs, soft costs, and ancillary costs associated with the relocation and construction of the 10” WWL and that the remaining costs of the Improvements shall be the responsibility of the City except as set forth in Section 2.8: and

WHEREAS, Developer and the City have agreed that the Developer will construct (i) the Improvements to serve the Property, and (ii) the remaining improvements that must be relocated out of the FM 1518 ROW as depicted in **Exhibit “A”** and further described herein and in **Exhibit “B”**; and

WHEREAS, the City has agreed to reimburse the Developer for certain costs associated with the construction of the Improvements as more specifically set forth herein and as set forth in **Exhibit “B”**; and

WHEREAS, the City and Developer find it to be to their mutual advantage to enter into this Agreement for the construction of the Improvements; and

WHEREAS, the Property and Improvements are located within the Schertz Tax Increment Reinvestment Zone Number Two; and

WHEREAS, Section 212.071, et. seq. of the Texas Local Government Code authorizes municipalities to enter into a contract with a developer of a subdivision or land in the municipality to construct public improvements related to the development without complying with the competitive sealed bidding procedures of Chapter 252 of the Texas Local Government Code; and,

NOW THEREFORE, for and in consideration of the premises and mutual obligations, covenants, and benefits hereinafter set forth, the Parties agree as follows:

ARTICLE I – Definitions.

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

- 1.1. “Agreement” means this agreement, including any amendments hereto, between the City and Developer.
- 1.2. “Contractor” shall mean the person, firm, corporation, partnership, association, or other entity awarded the contract by Developer for the construction and installation of the Improvements pursuant to public bid.
- 1.3. “City’s Participation Costs” shall mean actual costs associated with the construction of the Improvements, including, but not limited to, construction costs, engineering costs, legal costs, administrative costs, and consulting costs of third parties, the cost of bonds and insurance, costs or expenses associated with soliciting bids for the construction of the Improvements, all costs of acquiring easements (whether in cash or in-kind), surveying, geotechnical, and materials testing costs; ancillary costs associated with, caused by, or occasioned by any delay on the part of the City in obtaining permits, approving plans, submissions, or applications, i.e., remobilization costs or increases in the cost of materials resulting from such delays, and similar costs or expenses; it being the intent hereof that all City’s Participation Costs shall be the responsibility of the City of Schertz to the extent of and as set forth

on **Exhibit “B”** hereto and Developer shall have no cost, exposure or liability therefor except as set forth (i) in Section 2.2 below, (ii) as identified and set forth on **Exhibit “B”** attached hereto, and (iii) in Section 2.8 below. The City’s Participation Costs are estimated to be approximately Three Million One Hundred Eight Thousand Eight Hundred Twenty-Seven and 67/100 Dollars (\$3,108,827.67), subject to reimbursement from TxDOT pursuant to the TxDOT Reimbursement Agreement (hereinafter defined); however, the City’s Participation Costs shall not exceed the actual costs expended.

1.4. “Improvements” shall mean the improvements described herein, depicted on **Exhibit “A”** and further described on **Exhibit “B”**.

ARTICLE II – Construction of Improvements.

2.1. Acquisition of Easements. Developer agrees to acquire and dedicate (or provide for future dedication) of all necessary utility easements as illustrated in **Exhibit “A”** attached hereto. The City’s Participation costs will include the easement acquisition costs for easements from third parties who are not affiliated with Developer as set forth and described on **Exhibit “B”** (the “Easement Consideration”) and the reimbursement to Developer for Easement Consideration shall not be limited by any provision of the TxDOT Reimbursement Agreement. The Easement Consideration may include the costs of construction of improvements paid for by Developer for the benefit of such third party and shall also include such professional fees as may have been associated with such Easement Consideration. Easements may be dedicated via approved recorded subdivision plat or through separate instrument approved by the City.

2.2. Construction of Improvements. Developer agrees to construct the Improvements in accordance with the plans and specifications to be prepared by Malone/Wheeler, Inc., approved by the City Engineer, and, to the extent required by the TxDOT Reimbursement Agreement, also approved by TxDOT. The parties acknowledge that the plans and specifications for the Improvements have not yet been bid and may be subject to change. After approval and issuance of construction permits for the Improvements by all necessary governmental regulatory bodies, no change in the construction plans shall be made by Developer without the prior written consent of the City Engineer and, to the extent required by the TxDOT Reimbursement Agreement, also approved by TxDOT. The entire cost of the construction of the Improvements shall be the responsibility and obligation of Developer, subject to the reimbursement obligations of the City as herein provided. For the purposes of clarity, the approvals of TxDOT set forth herein and in the TxDOT Reimbursement Agreement shall not limit, diminish, or cap the reimbursements to Developer hereunder.

2.3. Contracts for Construction. The City and Developer acknowledge that Developer will utilize the competitive sealed bidding procedure as defined in Local Government Code Sec.252 Subchapter C to select a qualified Contractor to construct the Improvements in accordance with the plans and specifications as they may be

approved by the City Engineer. The City Engineer shall promptly review all bid documents, contract documents, cost estimates, and construction plans for the Improvements that are submitted to the City for City approval. Developer shall be solely responsible for payment of the work as it is completed, and shall make all payments in a timely manner to the Contractor, sub-contractors, and other parties involved in the construction of the Improvements.

2.4. Performance, Payment and Warranty Bonds. Developer shall post (or cause to be posted) with the City faithful performance, payment, and warranty bonds for construction of the Improvements to ensure completion of the project. The bond must be executed by a corporate surety in accordance with Chapter 2253, Texas Government Code. The Developer shall covenant (or cause the Contractor to covenant) to warrant the public improvements for a period of two (2) years following acceptance by the City of all Improvements. A warranty bond shall be provided in the amount of 20% of the costs of the Improvements for such period. The costs of such bonds shall be a reimbursable cost as set forth on **Exhibit "B"**; provided, however, the bond costs shall be allocated ratably between the improvements which are being reimbursed to the City by TXDOT and those which are the exclusive expense of the City or Developer.

2.5. Inspection. The City Engineer or designee shall periodically inspect the construction of the Improvements in the same manner, and shall possess the same authority, as is provided during the construction of subdivision improvements pursuant to the City of Schertz Subdivision Ordinance, as amended.

2.6. Insurance. The Contractor awarded the contract to construct the Improvements shall be required to carry Worker's Compensation Insurance on his employees and public liability and property damage insurance on his equipment and employees. The public liability insurance shall be not less than five hundred thousand dollars (\$500,000.00) per person and one million dollars (\$1,000,000.00) per occurrence, with property damage insurance of not less than five hundred thousand dollars (\$500,000.00). In addition, City shall be furnished with Certificates of Insurance and shall be named an additional insured on such Certificates, and City shall be notified within thirty calendar days of any cancellation of such insurance. To the extent required by the TxDOT Reimbursement Agreement, TxDOT shall be furnished with Certificates of Insurance and shall be named an additional insured on such Certificates, and TxDOT shall be notified within thirty calendar days of any cancellation of such insurance.

2.7. Accounting. Developer shall submit to City a complete accounting of all costs incurred by Developer in the construction of the Improvements. City will not contribute or pay for any costs incurred by Developer which were not contemplated to be reimbursable costs by City as set forth herein. Developer shall maintain the accounting of the Improvements for a period of two years from the date of acceptance by the City, and the City may inspect the Developer's books and records related to the Improvements at any time with reasonable notice.

2.8. TxDOT Reimbursement Agreement. The reimbursements provided by the TxDOT Reimbursement Agreement to the City shall be for the cost of the ten inch (10”) wastewater line and the associated costs, including, but not limited to those items enumerated and identified as City’s Participation Costs. Except as otherwise provided for herein, the City shall not be obligated for reimbursing to Developer individual costs or line items under this Agreement which are identified as reimbursable items to the City in the TxDOT Reimbursement Agreement and which are in excess of the amount of reimbursement which the City receives pursuant to the TxDOT Reimbursement Agreement. It is understood and agreed by the parties that TXDOT will only reimburse City for the costs associated with the moving and relocation of the ten inch (10”) wastewater line and that Developer shall be responsible for the upsizing to an eighteen inch (18”) wastewater line. For the purposes hereof, the determination of the cost of Upsizing shall be by an alternate bid from the Contractor reflecting the differential in cost between the ten inch (10”) wastewater line and eighteen inch (18”) wastewater line. The City agrees to consult with and keep Developer advised of negotiations with TxDOT with regard to costs being reimbursed under the TxDOT Reimbursement Agreement in order to assist Developer in being fully reimbursed for its costs hereunder.

2.9. **Indemnity. Developer agrees to protect, indemnify, and save City harmless from and against all claims, demands and causes of action of every kind and character arising in favor of any third party on account of, or resulting from, the performance of this Agreement by Developer or Developer’s agents, representatives, employees, contractors, or subcontractors.**

ARTICLE III – Obligations and Payments.

3.1. Developer Obligations. The Developer agrees to dedicate or cause to be dedicated to the City all necessary easements required in order to construct the Improvements. Easements which are granted will be reflected on the final plats or, where necessary, dedicated by separate instrument. Easements granted by third parties will be dedicated by separate instrument.

3.2. City Obligations. The City agrees to pay to Developer City’s Participation Costs which shall equate to the actual costs for the City’s responsibility as set forth on **Exhibit “B”** and as otherwise specified herein. Notwithstanding any provision of this Agreement to the contrary, City’s Obligation shall only be for the reimbursement of costs incurred by Developer and shall not in any event exceed the percentage of Costs as set forth on **Exhibit “B”** for any individual line item (hereinafter the “City’s Share”).

3.3. Payment Procedures. City shall deliver to Developer payment of the City’s Share as provided in this this section.

3.3.1 Developer shall periodically submit (anticipated to be monthly) a draw request (the “Draw Request”) and the City Engineer shall review the

Draw Request showing costs incurred by the Developer during the prior month (or similar construction period). The Draw Request shall include (i) all Contractor pay applications (including non-reimbursable costs and expenses), and (ii) lien waivers from the contractor for the percentage of completion or amount requested. At the request of the City, engineering or other professional fees shall be invoiced based on a fee schedule (or similar methodology) rather than a lump sum basis. Within eight (8) days of the submission of the Draw Request to the City, the Developer shall certify to the City that it has approved the Draw Request. Provided, however, City understands and recognizes that Developer is advancing its capital for City's Costs and that Developer may submit Draw Requests more frequently than monthly to the extent that some invoices and/or Draw Requests are submitted by the Contractor to Developer more frequently than monthly.

3.3.2 Upon the City Engineer's receipt of each Draw Request, the City Engineer shall promptly inspect the Improvements (or otherwise be satisfied with information and evidence submitted by Developer) to confirm the percentage of completion as set forth in the Draw Request. The City Engineer shall approve or reject the Draw Request within ten (10) days of submission of the Draw Request by Developer. If approved, the City Engineer shall promptly cause the City to reimburse Developer for the amount of the Draw Request which Draw Request shall be funded within fifteen (15) days of approval by the City Engineer. If rejected, the City Engineer shall specify the reason for rejection and the requirements to cure the objection. Upon cure and approval, the City Engineer shall immediately cause the City to reimburse Developer for the amount of the Draw Request. It is understood and acknowledged that the City's Costs may be part of a larger draw request for work being performed by and for Developer.

3.3.3 Upon the City Engineer's receipt of the final Draw Request, a final inspection on the Improvements shall be conducted, noting any required corrections or repairs. Once corrections or repairs are made and deemed acceptable, the City will accept the Improvements and reimburse Developer the final payment as represented by the final Draw Request which shall be City's Share of (i) waste water line costs and water line relocation costs, and (ii) TxDOT reimbursable Improvements.

3.3.4 Developer shall submit and the City Engineer shall review documentation dedicating all required utility easements. Utility easements shall be considered dedicated upon appropriate approval, execution, and recordation of any documents establishing the easements with the Bexar County Clerk's office. The recording fees (if any) shall be a reimbursable cost.

Article IV – Assignment, Modification and Waiver.

4.1. Assignment. This Agreement shall bind and benefit the respective Parties and their legal successors and shall not be assignable, in whole or in part, by any party

without first obtaining written consent of the other party.

4.2. Amendment or Modification. Except as otherwise provided in this Agreement, this Agreement shall be subject to change, amendment or modification only in writing, and by the signatures and mutual consent of the Parties.

4.3. Parties in Interest. This Agreement shall be for the sole and exclusive benefit of the Parties hereto and shall not be construed to confer any rights upon any third party.

4.4. Remedies Not Exclusive. The rights and remedies contained in this Agreement shall not be exclusive, but shall be cumulative of all rights and remedies now or hereinafter existing, by law or in equity.

4.5. Waiver. The failure of any party to insist in any one or more instances on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, or condition, or right with respect to further performance.

4.6. Entire Agreement. This Agreement constitutes the entire agreement between the Parties related to the subject matter of this Agreement and supersedes any and all prior agreements, whether oral or written, dealing with the subject matter of this Agreement.

4.7. Venue. This Agreement shall be performable and enforceable in Bexar County, Texas, and shall be construed in accordance with the laws of the State of Texas.

4.8. Severability. If any term or provision of this Agreement is held to be invalid, void or unenforceable by a court of competent jurisdiction, the remainder of the terms and provisions of this Agreement shall remain in full force and effect and shall not in any way be invalidated, impaired or affected.

4.9. Notices. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by (i) depositing the same in the United States mail, addressed to the party to be notified, postage prepaid, registered or certified mail, return receipt requested; or (ii) by delivering the same in person to such party; or (iii) by overnight or messenger delivery service that retains regular records of delivery and receipt; or (iv) by facsimile; provided a copy of such notice is sent within one (1) day thereafter by another method provided above. The initial addresses of the parties for the purpose of notice under this Agreement shall be as follows:

If to City:

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

With copy to: Denton Navarro Rocha Bernal & Zech, P.C.
2417 N. Main Avenue
San Antonio, TX 78212
Attention: T. Daniel Santee

If to Developer: Schertz 1518, Ltd.
2402 S. 2nd St.
Austin, Texas 78704
Attn: Bradley Bechtol

With a copy to: Bradford L. Pittenger
Round One Capital
9525 N. Capital of Texas Hwy., #123
Austin, Texas 78759

4.10. No Joint Venture. Nothing contained in this Agreement is intended by the Parties to create a partnership or joint venture between the Parties and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either Party as an agent of the other for any purpose whatsoever. Except, as otherwise specifically provided herein, neither Party shall in any way assume any of the liability of the other for acts of the other or obligations of the other.

4.11. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which constitute one instrument.

[Signatures and acknowledgments on the following pages]

Signature Page to
Reimbursement Agreement with Developer for Construction of Public Improvements
Associated With FM 1518

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

Developer:

SCHERTZ 1518, LTD., a Texas limited partnership
BY: MTR-Schertz 1518 Management Company, LLC, a Texas limited liability company

By: _____
Bradley Bechtol, Manager

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the ____ day of _____, 2023 by Bradley Bechtol, Manager of for the MTR-Schertz 1518 Management Company, LLC, a Texas limited liability company, general partner of Schertz 1518, Ltd., a Texas limited partnership, on behalf of such entities, purposes herein expressed.

(SEAL)

Notary Public in and for
The State of Texas

My Commission Expires: _____

Signature Page to
Reimbursement Agreement with Developer for Construction of Public Improvements
Associated With FM 1518

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: _____

City Manager

THE STATE OF TEXAS §

§

COUNTY OF BEXAR §

§

This instrument was acknowledged before me on the ____ day of _____, 2023 by _____, 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
IMPROVEMENTS**



CIVIL ENGINEERING ★ DEVELOPMENT CONSULTING ★ PROJECT MANAGEMENT
5113 Southwest Pkwy, Suite 260
Austin, Texas 78735
Phone: (512) 899-0601 Fax: (512) 899-0655
Firm Registration No. F-786

FM 1518 UTILITY RELOCATION SCHERTZ, TEXAS EXHIBIT 'A'

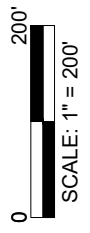
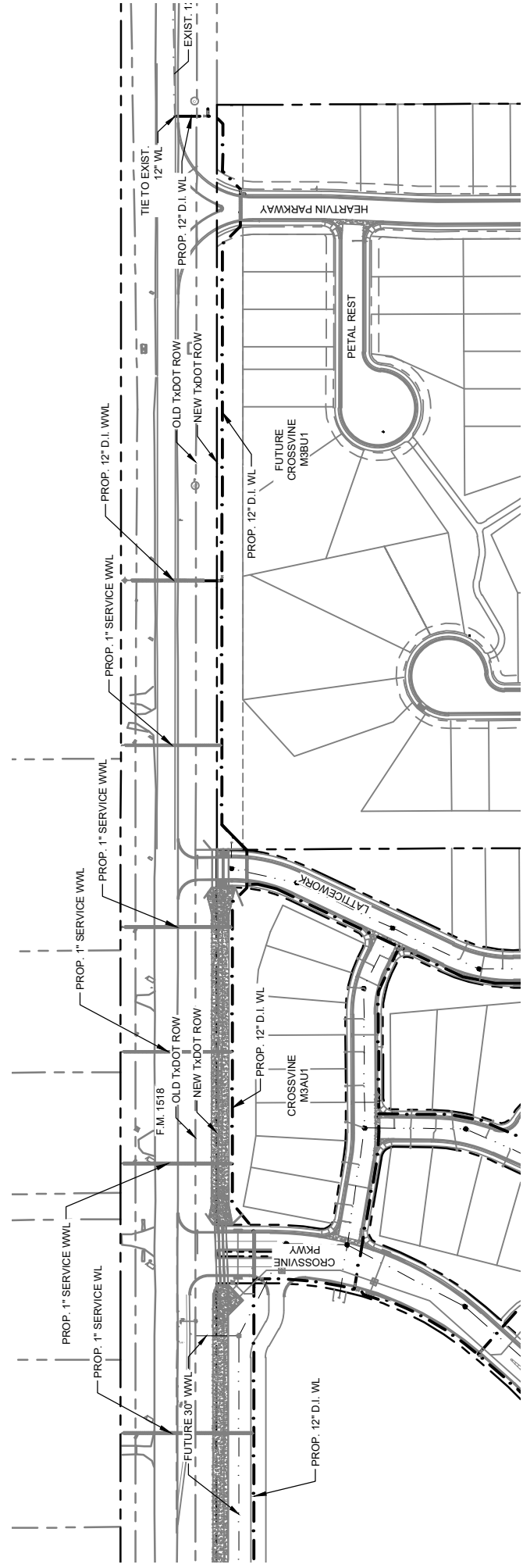
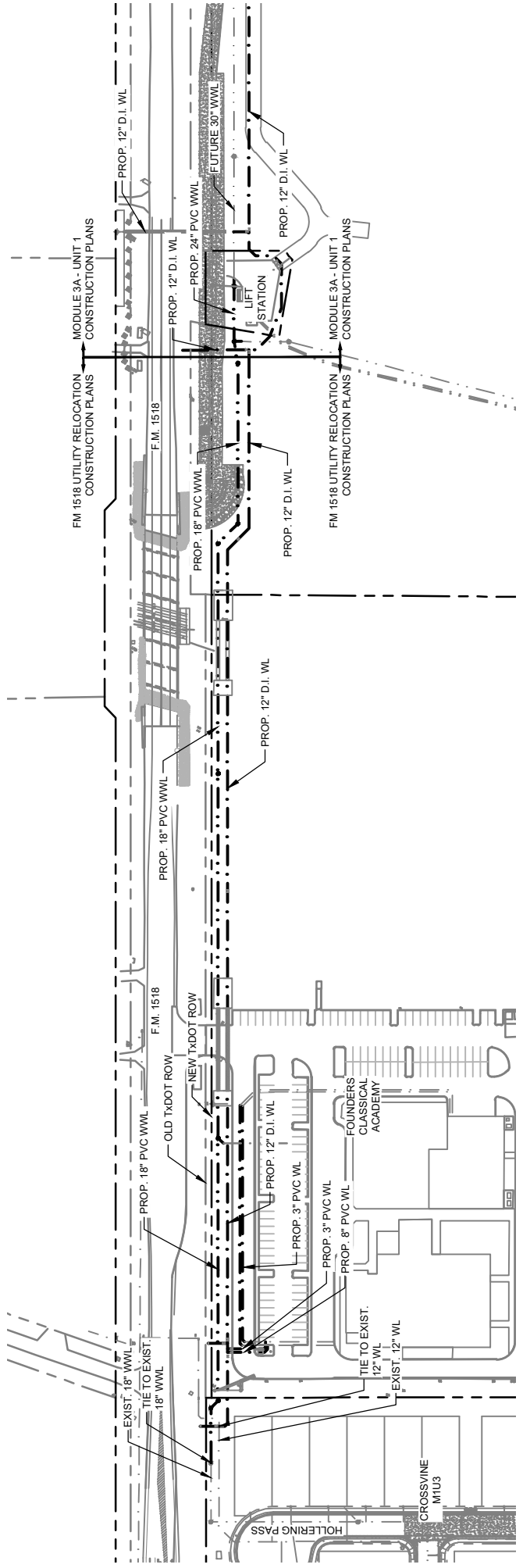


EXHIBIT B
CITY'S PARTICIPATION COSTS

EXHIBIT B
ESTIMATED COSTS FOR
REIMBURSEMENT AGREEMENT FOR
CONSTRUCTION OF IMPROVEMENTS
ASSOCIATED WITH FM 1518

Cost and Responsibility Allocation	City Responsibility		Schertz 1518 Ltd.	
	Estimated	Percentage	Estimated	Percentage
Easement Acquisition Cost				
Easement Acquisition	\$ 118,992.53	100%	\$ -	0%
Engineering	\$ 35,933.50	100%	\$ -	0%
Legal Consulting	\$ 37,237.50	100%	\$ -	0%
Wastewater Line (18")*				
Construction	*	*	\$ 1,344,332.82	
Engineering	*	*	*	
Legal Consulting	*	*	*	
Wastewater Line (10")				
Construction	\$ 1,063,659.72	100%	\$ -	0%
Engineering	\$ 125,500.00	100%	\$ -	0%
Legal Consulting	\$ 5,000.00	100%	\$ -	0%
Bonds	\$ 21,273.19	100%		
Differential (18" vs. 10")				
Construction	\$ -	0%	\$ 280,673.10	100%
Engineering	\$ -	0%	\$ -	100%
Legal Consulting	\$ -	0%	\$ -	100%
Water Line				
Construction	\$ 1,234,383.72	100%	\$ -	0%
Engineering	\$ 125,500.00	100%	\$ -	0%
Legal Consulting	\$ 5,000.00	100%	\$ -	0%
Bonds	\$ 24,687.67	100%		
Miscellaneous Costs				
Other**	\$ 75,000.00	100%	\$ -	0%
*The intent is that the City is responsible for 100% of the costs of the WWL and the WL with the exception of the cost associated with upsizing the WWL from a 10" to an 18". The cost differential is based on the difference in the bid alternates of a 10" WWL vs. an 18" WWL.				
** May include services such as Surveying, Geotechnical services, Materials testing, Arborist services, Landscape Repair, etc., but will not exceed actual costs for services				
Total Reimbursable to Schertz 1518, Estimated \$ 2,826,206.97				
+10% Contingency \$ 3,108,827.67				