

RESOLUTION NO. 23-R-63

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING A ROADWAY CAPITAL RECOVERY OFFSET AGREEMENT WITH SCRAPPY DEVELOPMENT, LLC FOR ROADWAY IMPACT FEE CREDITS FOR THE EXTENSION OF SYSTEM ROADWAYS AND OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, Scappy Development, LLC (“Developer”) is the developer of the Parklands II Development; and

WHEREAS, Developer intends to develop public roadways that are system facilities; and

WHEREAS, in accordance with Ordinance 18-M-13 Roadway Capital Recovery Fees, the City shall offset the reasonable value of system facilities through an offset agreement; and

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

Section 1. The City Council hereby authorizes the City Manager to enter into a roadway offset agreement with Scappy Development, LLC in a form generally as attached hereto as 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resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.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 _____, 2023

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Sheila Edmondson, City Secretary

(CITY SEAL)

Exhibit "A"

THE STATE OF TEXAS §
§
GUADALUPE COUNTY §

ROADWAY CAPITAL RECOVERY OFFSET AGREEMENT

This Roadway Capital Recovery Offset Agreement (this “AGREEMENT”) is made by and between the City of Schertz (hereinafter “CITY”), a Texas Home Rule municipality and Scrappy Development, LLC (hereinafter “DEVELOPER”), a Texas limited liability company created under the laws of Texas, collectively, the “PARTIES”.

RECITALS

WHEREAS, pursuant to City of Schertz Code of Municipal Ordinances Chapter 78, Article VII, the City of Schertz has adopted Roadway Capital Recovery Fees (sometimes hereinafter referred to as “capital recovery fee”); and,

WHEREAS, pursuant to City of Schertz Code of Municipal Ordinances Section 78-178, where, in order to serve new development, a developer is required to construct, contribute to, or dedicate, capital improvement or facility expansion identified in the capital improvements plan, the CITY and DEVELOPER may enter into this AGREEMENT whereby the developer is: (1) credited for the reasonable and necessary costs of the capital improvement or facility expansion against the impact fees otherwise due from the new development; or (2) reimbursed for all or a portion of the reasonable and necessary costs of the capital improvement or facility expansion from impact fees as received from other new developments that use the capital improvement or facility expansion; and,

WHEREAS, CITY and DEVELOPER desire to enter into this AGREEMENT in order to memorialize Roadway Capital Recovery Fee Credits (sometimes hereinafter referred to as the “Credits”) achieved by DEVELOPER for reasonable and necessary costs of the capital improvement or facility expansion it incurred.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the PARTIES hereto, intending to be legally bound, hereby agree as follows:

Article I.
PROJECT DESCRIPTION

A. Project. The project is the Parklands II master planned community.

B. Location. The project is located at the intersection of Parklands Way and Pinder Way, as more particularly described in Exhibit A (the “Project”).

Article II.
ROADWAY CAPITAL RECOVERY FEES

A. Roadway Capital Recovery Fees. The Roadway Capital Recovery Fees for the project are currently assessed as \$1,647 per service unit. This assessment is based on the calculations set out in Exhibit B, to this AGREEMENT.

Article III.
CAPITAL IMPROVEMENT PLAN IMPROVEMENTS MADE BY DEVELOPER

A. Rough Proportionality. The PARTIES acknowledge that as provided in Texas Local Government Code Section 212.904, the CITY may require DEVELOPER to contribute a portion of the costs of municipal infrastructure improvements by the making of dedications, the payment of fees, or the payment of construction costs (collectively the “Infrastructure Costs”), provided DEVELOPER’S portion of the Infrastructure Costs do not exceed the amount required for infrastructure improvements that are roughly proportionate to the impact of the project (the “Proportionate Costs”).

Article IV.
ROADWAY CAPITAL RECOVERY FEE OFFSET CREDIT

A. Roadway Capital Recovery Fee Offset Credit Calculation. As shown on Exhibit C, to this AGREEMENT, the PARTIES agree to the following:

i. The total number of service unit equivalents of capacity supplied by the system facility contributed by the DEVELOPER is estimated to be 225.08 service units, and reduced by the following:

ii. The Roadway Capital Recovery Fee Offset Credit that DEVELOPER is eligible to receive is 225.08 service units calculated at 66.79 Lots eligible for Credit.

iii. The Roadway Capital Recovery Fee Offset Credits that the DEVELOPER shall receive may be used to offset the roadway impact fees due in Units 1, 2, 3 and 4. The City shall assign Credits to the unit when a final plat is filed in accordance with this AGREEMENT.

iv. DEVELOPER shall receive the Roadway Capital Recovery Fee Offset Credit upon completion of the public improvements shown on Exhibit D; and the City’s acceptance of same for public maintenance in accordance with the terms of applicable provisions of the City’s Code of Ordinances.

**Article V.
REIMBURSEMENT OF EXCESS OFFSETS**

A. DEVELOPER may apply for reimbursement of excess offsets following either completion of all development subject to the plat with which the excess offsets are associated or after ten (10) years following execution of this AGREEMENT.

i. The DEVELOPER must apply for reimbursement within six months following either:

a. Completion of the Project development subject to the plat with which the excess offsets are associated; or

b. Ten years after the date of execution of this AGREEMENT.

ii. The excess reimbursement shall be enforced in accordance with the following terms:

a. The excess offset amount to be reimbursed shall be equal to the number of excess offsets (expressed as a number of service units) multiplied by a fraction equal to the capital recovery fee per service unit to be collected, as set forth herein in effect on the date of execution of this AGREEMENT, divided by the maximum assessable capital recovery fee per service unit, as set forth in the capital recovery plan, established in accordance with the City of Schertz Code of Municipal Ordinances Chapter 78, Article VII, in effect on the date of execution of this AGREEMENT;

b. The amount to be reimbursed for excess offsets may be further equitably reduced, if fewer than 50 percent of the number of service units in the plat with which the system facility giving rise to the excess offset have been developed on the date of application for excess offsets;

c. Repayment of excess offsets shall be made within five years from the date of execution of a reimbursement agreement between the PARTIES hereto pertaining to the applicable excess offsets from roadway capital recovery fees collected within the same roadway service area in which the property in question is located, subject to the availability of such funds;

d. Termination or reduction of the CITY's authority under state law to impose capital recovery fees for roadway facilities shall terminate or correspondingly reduce any obligation of the CITY to make payments under this AGREEMENT or any reimbursement agreement; and

e. In converting the excess offsets from service unit equivalents to a dollar value, the number of service unit equivalents shall be multiplied by the value of a service unit expressed in dollars using the rates in effect at the time this AGREEMENT was executed.

B. Execution of an excess offset reimbursement agreement with respect to a plat as provided for in above pursuant to City of Schertz Code of Municipal Ordinances Section 78-178 shall automatically terminate any excess offsets associated with that plat pursuant to this AGREEMENT. Any new development within the area subject to such plat shall pay roadway capital recovery fees in accordance with **Schedule 1 (Exhibit E)** then in effect under said Municipal Ordinance.

Article VI. MISCELLANEOUS

The following miscellaneous provisions are made part of this AGREEMENT:

1. **Additional Instruments.** CITY and DEVELOPER agree and covenant to cooperate, negotiate in good faith, and to execute such other and further instruments and documents as may be reasonably required to fulfill the public purposes provided for and included within this AGREEMENT.

2. **Amendments.** This AGREEMENT constitutes the entire understanding and agreement of the PARTIES as to the matters set forth in this AGREEMENT. No alteration of or amendment to this AGREEMENT shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

3. **Applicable Law and Venue.** This AGREEMENT shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the PARTIES created hereunder are performable in Guadalupe County, Texas. Venue for any action arising under this AGREEMENT shall lie in the state district courts of Guadalupe County, Texas.

4. **Assignment.** The DEVELOPER may assign this AGREEMENT with the CITY's consent (such consent not to be unreasonably conditioned, withheld or delayed, but in no event shall the offsets provided for in the AGREEMENT be transferred to any development not subject to the plat associated with such offsets.

5. **Binding Obligation.** This AGREEMENT shall become a binding obligation on the signatories upon execution by all signatories hereto. The CITY warrants and represents that the individual executing this AGREEMENT on behalf of the CITY has full authority to execute this AGREEMENT and bind the CITY to the same. DEVELOPER warrants and represents that the individual executing this AGREEMENT on its behalf has full authority to execute this AGREEMENT and bind it to the same.

6. Counterparts. This AGREEMENT may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

7. Construction. The PARTIES acknowledge that the PARTIES and their counsel have reviewed and revised the AGREEMENT and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the AGREEMENT.

8. Enforcement. The City Attorney or his or her designee may enforce all legal rights and obligations under this AGREEMENT without further authorization. DEVELOPER shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining DEVELOPER'S compliance with this AGREEMENT.

9. Entire Agreement. This AGREEMENT constitutes the entire agreement between the PARTIES with respect to the subject matter covered in this AGREEMENT. There is no other collateral oral or written agreement between the PARTIES that, in any manner, relates to the subject matter of this AGREEMENT, except as provided for in any Exhibits attached hereto or duly approved amendments to this AGREEMENT, as approved by the City Council of the City of Schertz, Texas.

10. Execution of AGREEMENT.

a) City Council has authorized the City Manager to execute this AGREEMENT on behalf of the CITY, as evidenced by Resolution, dated _____.

b) Gordon V. Hartman is authorized to execute this AGREEMENT on its behalf, as evidenced by Company Resolution, dated _____ and attached hereto as **Exhibit F**.

11. Exhibits and Attachments. All Exhibits and Attachments referenced in this AGREEMENT are attached hereto and incorporated herein for all purposes.

12. Force Majeure. It is expressly understood and agreed by the PARTIES to this AGREEMENT that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, or court injunction, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, governmental regulations, governmental controls, governmental action, delay in issuance of permits or approvals (including, without limitation, fire marshal approvals), enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the obligated party and delays caused by the other party, the party so obligated or permitted shall be excused from doing or

performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.

13. Gender. The gender of the wording throughout this AGREEMENT shall always be interpreted to mean either sex, and where the context requires, the plural of any word shall include the singular.

14. Governmental Records. All invoices, records and other documents required for submission to the CITY pursuant to the terms of this AGREEMENT are Governmental Records for the purposes of Texas Penal Code Section 37.10.

15. Immunities and defenses.

a) By entering into this AGREEMENT, the PARTIES do not waive, and shall not be deemed to have waived, any rights, immunities, or defenses either may have, including the defense of the PARTIES, and nothing contained herein shall ever be construed as a waiver of sovereign, statutory or official immunity by the CITY with such rights being expressly reserved to the fullest extent authorized by law and to the same extent which existed prior to the execution hereof.

b) No employee of CITY, or any councilmember or agent of CITY, shall be personally responsible for any liability arising under or growing out of this AGREEMENT.

16. Mutual Assistance. CITY and DEVELOPER will do all things reasonably necessary or appropriate to carry out the terms and provisions of this AGREEMENT and to aid and assist each other in carrying out such terms and provisions.

17. Notices. Any notice, statement and/or communication required and/or permitted to be delivered hereunder shall be in writing and shall be mailed by first-class mail, postage prepaid, or delivered by hand, by messenger, by facsimile, or by reputable overnight carrier, and shall be deemed delivered when received at the addresses of the PARTIES set forth below, or at such other address furnished in writing to the other PARTIES thereto:

If to Developer:

Scrappy Development, LLC
5210 Thousand Oaks, Suite 1318
San Antonio, TX 78233
Attention: Gordon Hartman

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

18. Ordinance Applicability. The signatories hereto shall be subject to all ordinances of CITY, whether now existing or in the future arising provided however no ordinance shall reduce or diminish the contractual obligations contained herein. This AGREEMENT shall confer no vested rights on the Project unless specifically enumerated herein.

19. Severability. In the event any provision of this AGREEMENT is illegal, invalid, or unenforceable under the present or future laws, then, and in that event, it is the intention of the PARTIES hereto that the remainder of this AGREEMENT shall not be affected thereby, and it is also the intention of the PARTIES to this AGREEMENT that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this AGREEMENT which is legal, valid and enforceability and is a similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

20. Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the PARTIES, as well as any rights and benefits of the PARTIES, pertaining to a period of time following the termination of this AGREEMENT shall survive termination.

EXECUTED in duplicate originals to be effective as of the date of the last signature below.

Signature Page to
Roadway Capital Recovery Offset Agreement

This Roadway Capital Recovery Offset Agreement has been executed by the PARTIES as of the dates of the Acknowledgments to be effective as of the Effective Date.

Owner:

SCRAPPY DEVELOPMENT, LLC, a
Texas limited liability company

By: _____

Name: Gordon V. Hartman

Title: President

Date: _____

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2023 by Gordon V. Hartman, the President of Scrappy Development, LLC, on behalf of said limited liability company.

(SEAL)

Notary Public in and for
The State of Texas

My Commission Expires: _____

Signature Page to
Roadway Capital Recovery Offset Agreement

This Roadway Capital Recovery Offset 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, City Manager

Date: _____

THE STATE OF TEXAS §
 §
COUNTY OF GUADALUPE §

This instrument was acknowledged before me on the ____ day of _____, 2023 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"
Roadway Capital Recovery Offset Agreement

Project

A 60.80 acre tract of land, being all of a 10.0 acre tract, called Tract 1, the remaining portion of a 50.800 acre tract, called Tract 2 conveyed to Nancy Pinder of Record in Volume 1306 Page 477 of the Official Public Records of Guadalupe County, Texas, a 10.01 acre tract conveyed to Thomas Jordan of record in Volume 3068 Page 400 of the Official Public Records of Guadalupe County, Texas, a 3.00 acre tract conveyed to Patrick Lynn Pinder of record in Volume 2338 Page 732 of the Official Public Records of Guadalupe County, Texas, a 2.00 acre tract conveyed to Nancy Pinder of record in Volume 3062 Page 852 of the Official Public Records of Guadalupe County, Texas and a 1.00 acre tract conveyed to Nancy Pinder of Record in Volume 2550 Page 244 of the Official Public Records of Guadalupe County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a found ½" iron rod, for a southerly southeast corner of a 194.56 acre tract conveyed to Rolling Hills Ranch Development LTD. of record in Volume 2260 Page 335 of the Official Public Records of Guadalupe County, Texas and the southwest corner of the remaining portion of the 50.800 acre tract and tract described herein;

THENCE: Along and with the common lines of the 194.56 acre tract, the remaining portion of the 50.800 acre tract and the 10.01 acre tract, the following two (2) courses:

1. **N 25°21'43" W**, a distance of **1392.89 feet** to a found ½" iron rod, for an interior corner of the 194.56 acre tract, the northeast corner of the 10.01 acre tract and the tract described herein, and
2. **N 66°50'31" E**, a distance of **2092.08 feet** to a found ½" iron rod in a southwest line of a 80.00 acre tract as conveyed to Roland K. and Suzanne L. Schott of record in Volume 2944 Page 640 of the Official Public Records of Guadalupe County, Texas, for an easterly southeast corner of the 194.56 acre tract, the northeast corner of the remaining portion of the 50.800 acre tract and the tract described herein;

THENCE: **S 24°36'55" E**, along and with a southwest line of the 80.00 acre tract, the northeast line of the remaining portion of the 50.800 acre tract and the 10.0 acre tract, at a distance of **487.85 feet** passing a found ½" iron rod for the northeast corner of the 10.0 acre tract and an easterly exterior corner of the remaining portion of the 50.80 acre tract and continuing for a total distance of **1150.18 feet** to a found ½" iron rod in the northwest line of a 40.00 acre tract conveyed to Weston Ranch Foundation of record in Volume 2338 Page 451 of the Official Public Records of Guadalupe County, Texas as described in Volume 589 Page 776 of the Official Public Records of Guadalupe County, Texas, for the southeast corner of the 80.00 acre tract, the southeast corner of the 10.0 acre tract and the tract described herein;

THENCE: **S 60°09'56" W**, along and with the northwest line of the 40.00 acre tract and a 167.89 acre tract conveyed to Weston Ranch Foundation of record in Volume 2338 Page 451 of the Official Public Records of Guadalupe County, Texas and the southeast line of the 10.0 acre tract, the remaining portion of the 50.800 acre tract, the 1.00 acre tract, the 2.00 acre tract and the 3.00 acre tract, at a distance of **852.65 feet** to a found ½" iron rod (bent) for the southeast corner of the 1.00 acre tract and continuing for a total distance of **2081.88 feet** to the **POINT OF BEGINNING** and containing 60.80 acres more or less, in Guadalupe County, Texas. Said tract being described in accordance with a survey prepared by KFW Surveying. Bearings are based on NAD83 Texas State Plane South Central Zone. A

EXHIBIT "B"

Roadway Capital Recovery Offset Agreement

Roadway Capital Recovery Fees Calculation

EXHIBIT "C"

Roadway Capital Recovery Offset Agreement

Roadway Capital Recovery Fee Offset Credit Calculation

Development: Parklands II, Units 1-4
CIP ID: Big John Ln.
Date: 5/9/2023
Lots: 214

Capacity Added:
LF: 2085
Lanes: 24' of 42' ultimate = 1.14
Unit Capacity (Undivided Collector): lanes
Capacity: 500 Veh-Mi per lane mile 225.08 Veh-Mi

Offset Fee Calculation:
Total Demand per RIFCC Worksheet: 721.18 Veh-Mi
Total Fees due (\$1000/Veh-Mi) \$721,180.00
Net Demand (Demand - Capacity added) 496.10 Veh-Mi
Net Fees Due (\$1000/Veh-Mi) \$523,740.00
Impact Fee Offset Credit Due (\$Amount) \$197,440.00
Impact Fee Offset Credit Due (# Lots) 66.79 Lots

EXHIBIT "D"
Roadway Capital Recovery Offset Agreement

Depiction of Big John Road

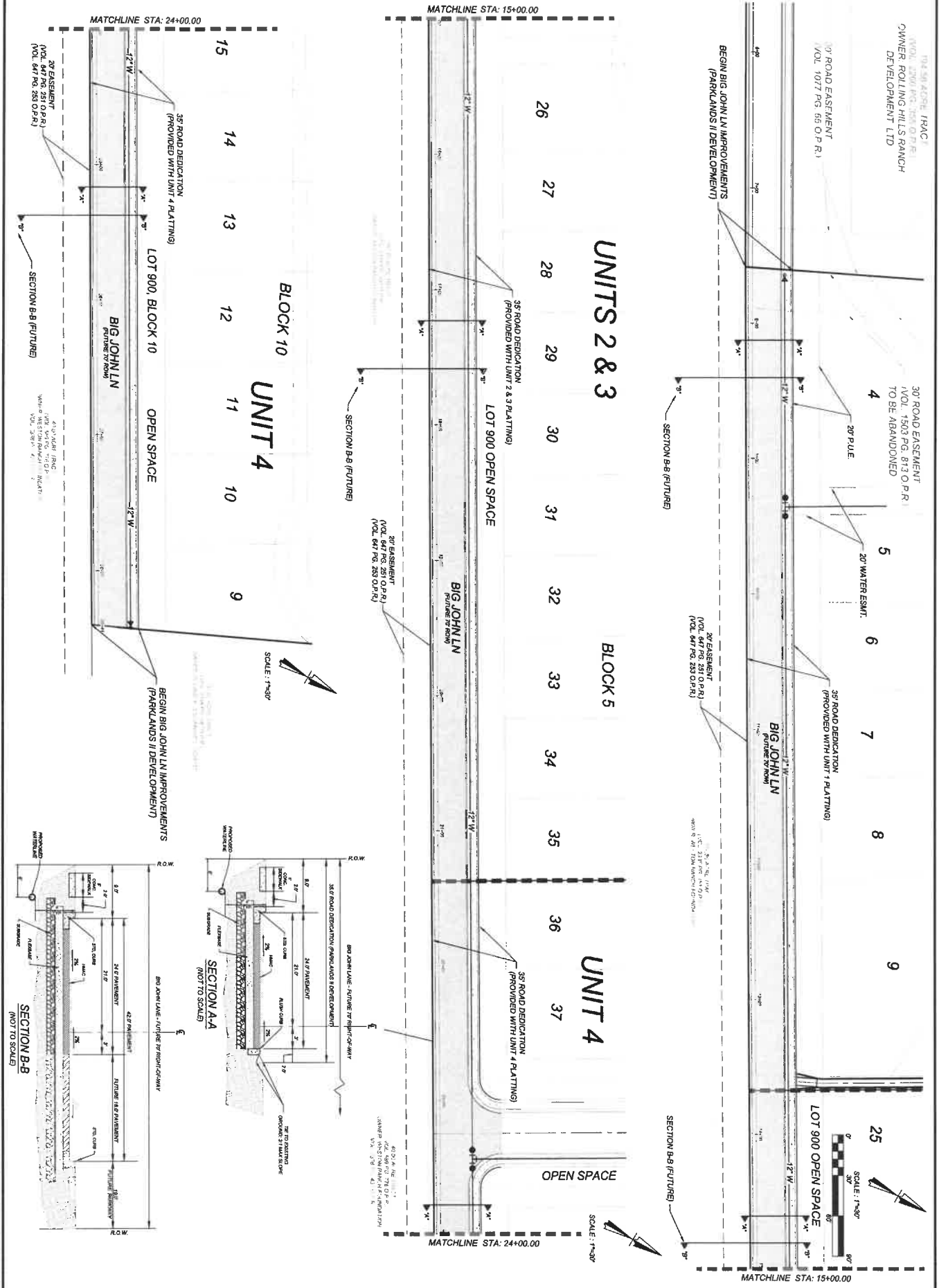


EXHIBIT "E"

Roadway Capital Recovery Offset Agreement

Capital Recovery Roadway Impact Fee Schedule

Sec. 78-175. Roadway capital recovery fees per service unit.

- (a) The maximum assessable capital recovery fee per service unit (post-credit) for any use in each service area platted on or before April 12, 2022 shall be as calculated and documented in the capital recovery plan as follows:
- (1) The capital recovery fee per service unit in Service Area 1 is \$1,647.53.
 - (2) The capital recovery fee per service unit in Service Area 2 is \$1,327.89.
 - (3) The capital recovery fee per service unit in Service Area 3 is \$1,044.48.
 - (4) The capital recovery fee per service unit in Service Area 4 is \$2,392.72.
- (b) The maximum assessable capital recovery fee per service unit (post-credit) for any use in each service area platted on or after April 13, 2022 shall be as calculated and documented in the capital recovery plan per the 2021 Roadway Impact Fee Program Amendment Technical Memorandum as follows:
- (1) The capital recovery fee per service unit in Service Area 1 is \$1,614.54.
 - (2) The capital recovery fee per service unit in Service Area 2 is \$1,350.25.
 - (3) The capital recovery fee per service unit in Service Area 3 is \$1,061.26.
 - (3) The capital recovery fee per service unit in Service Area 4 is \$2,386.93.
- (c) The assessable capital recovery fee per service unit set forth herein that is assessed to new development, as may be amended from time to time, is declared to be the roughly proportionate measure of the impact(s) generated by a new unit of development on the city's transportation system. To the extent that the capital recovery fee per service unit collected is less than the maximum assessable capital recovery fee per service unit (post credit), as calculated and documented in the capital recovery plan, such difference is hereby declared to be founded on policies unrelated to the measurement of the actual impacts of the development on the city's transportation system. The maximum assessable capital recovery fee per service unit may be used in evaluating any claim by an applicant, developer, or property owner that the dedication, construction, or contribution of a capital improvement imposed as a condition of development approval pursuant to the city's regulations is not roughly proportionate to the impact(s) of the new development on the city's transportation system.

(Ord. No. 18-M-13 , § 1(Exh. A), 3-27-2018; Ord. No. 22-T-12 , § 1(Exh. A), 4-12-2022)

EXHIBIT "F"
Roadway Capital Recovery Offset Agreement

Developer Resolution