

**RESOLUTION NO.
24-R-40**

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING AGREEMENTS WITH ASHTON SAN ANTONIO RESIDENTIAL LLC FOR A PRO-RATA AGREEMENT, A ROADWAY CAPITAL RECOVERY OFFSET AGREEMENT AND A REIMBURSEMENT AGREEMENT FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS IN THE CITY OF SCHERTZ, TEXAS, AND RELATED MATTERS IN CONNECTION THEREWITH

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

WHEREAS, the Developer of Saddlebrook is constructing public improvements and the City desires for additional public improvements related to those improvements to be constructed at this time; and

WHEREAS the Developer has agreed to construct the additional improvements if the City agrees to participate by paying for the cost of those additional improvements; and

WHEREAS, the Developer is constructing as sewer lift station to serve their development; and

WHEREAS, the Developer of the Homestead Subdivision agrees to construct sewer lift station and associated infrastructure of which the capacity is more than is required by the Homestead property; and

WHEREAS, there is a benefit to oversizing the lift station and associated sewer infrastructure to serve other properties, and

WHEREAS, the City has agreed to acquire the excess capacity from the lift station and associated sewer infrastructure; and

WHEREAS, the City Council finds that it is in the best interest of the City to enter into the Pro-Rata Agreement, Roadway Impact Fee Credit Agreement and Reimbursement 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 agreements 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resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.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 _____, 2024.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Sheila Edmondson, City

Exhibit A

THE STATE OF TEXAS §

§

BEXAR COUNTY §

SADDLEBROOK ROADWAY CAPITAL RECOVERY OFFSET AGREEMENT

This agreement (“**AGREEMENT**”) is made by and between the City of Schertz, (hereinafter “**CITY**”) a Texas Home Rule municipality and Ashton San Antonio Residential, LLC (hereinafter “**DEVELOPER**”) a Limited Partnership 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, a 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 Saddlebrook Development.
- B. Location. The Project is located in Roadway Impact Fee Service Area 3, between Raf Burnette and Lower Seguin Road, approximately 1 mile east of Lower Seguin Road, as more precisely described in *Exhibit "A"*.

Article II.

ROADWAY CAPITAL RECOVERY FEES

- A. Roadway Capital Recovery Fees. The Maximum Roadway Capital Recovery Fees per service unit for Service Area 3 are \$1,061.26 and are currently assessed as \$1,000.00 per service unit for residential development and \$175.00 per service unit for non-residential development.

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 Infrastructure Costs do not exceed the amount required for infrastructure improvements that are roughly proportionate to the PROJECT impact (the "**Proportionate Costs**").

Article IV.

ROADWAY CAPITAL RECOVERY FEE OFFSET CREDIT

- A. Roadway Capital Recovery Fee Offset Credit Calculation. As shown on *Exhibit "B"*, 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 2,488 service units, and shall be reduced by:

- (a) The number of service units (Vehicle Miles of Travel) developed within the plat since the contribution of the system facility, which as of the effective date hereof, using the LUVMET is 0; and
 - (b) The amount of the City's participation in the excess costs of the system facility (expressed in service unit equivalents), which as of the effective date hereof is 0; and
 - (c) The amount of any payments received from other new developments utilizing the system facility (expressed in service unit equivalents) which as of the effective date hereof is 0.
- ii. The Roadway Capital Recovery Fee Offset Credit that DEVELOPER is eligible to receive is 2,488 service units which equates to calculated at 738 Residential Lots.
- iii. The Roadway Capital Recovery Fee Offset Credits that the DEVELOPER shall receive may be used to offset the roadway impact fees due within the Saddlebrook Development as shown on *Exhibit "A"*. 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 "C"*, 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 years following execution of the AGREEMENT.
 - i. The DEVELOPER must apply for reimbursement within six months following either:
 - a. Completion of all 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 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.
9. **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.
10. **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.

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 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:

DEVELOPER: Ashton San Antonio Residential, LLC
Attn: Kyle Lents, PE
17319 San Pedro Avenue, Suite 140
San Antonio, TX 78232
Kyle.lents@ashtonwoods.com

WITH COPY TO LEGAL COUNSEL:

Barton Benson Jones PLLC.
Attn: Buck Benson
2000 Broadway
San Antonio, TX 78215
Phone: (210) 610-5335

City: City Manager
City of Schertz
1400 Schertz Parkway
Schertz, TX 78154
Phone: (210) 619-1000
Fax: (210) 619-1029

WITH COPY TO: Denton Navarro Rocha Bernal & Zech
A Professional Corporation
Attn. T. Daniel Santee
2517 N. Main Avenue
San Antonio, Texas 78212
Phone: (210) 227-3243
Fax: (210) 225-4481

19. Ordinance Applicability. The signatories hereto shall be subject to all ordinances of the 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.
20. 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.
21. 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.

[Page Ends Here – Signature Pages Follow]

**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:

ASHTON SAN ANTONIO RESIDENTIAL, LLC

By: *Kyle Lents*

Name: Kyle Lents

Title: Director - Land

Date: 7/6/2023

THE STATE OF TEXAS

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COUNTY OF Bexar

This instrument was acknowledged before me on the 6th day of July, 2023 by Kyle Lents, the Director-Land of ASHTON SAN ANTONIO RESIDENTIAL, LLC, on behalf of said limited liability company.

(SEAL)



Ph
Notary Public in and for
The State of Texas

My Commission Expires: 11/22/2026

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 _____, 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"

The Saddlebrook Development

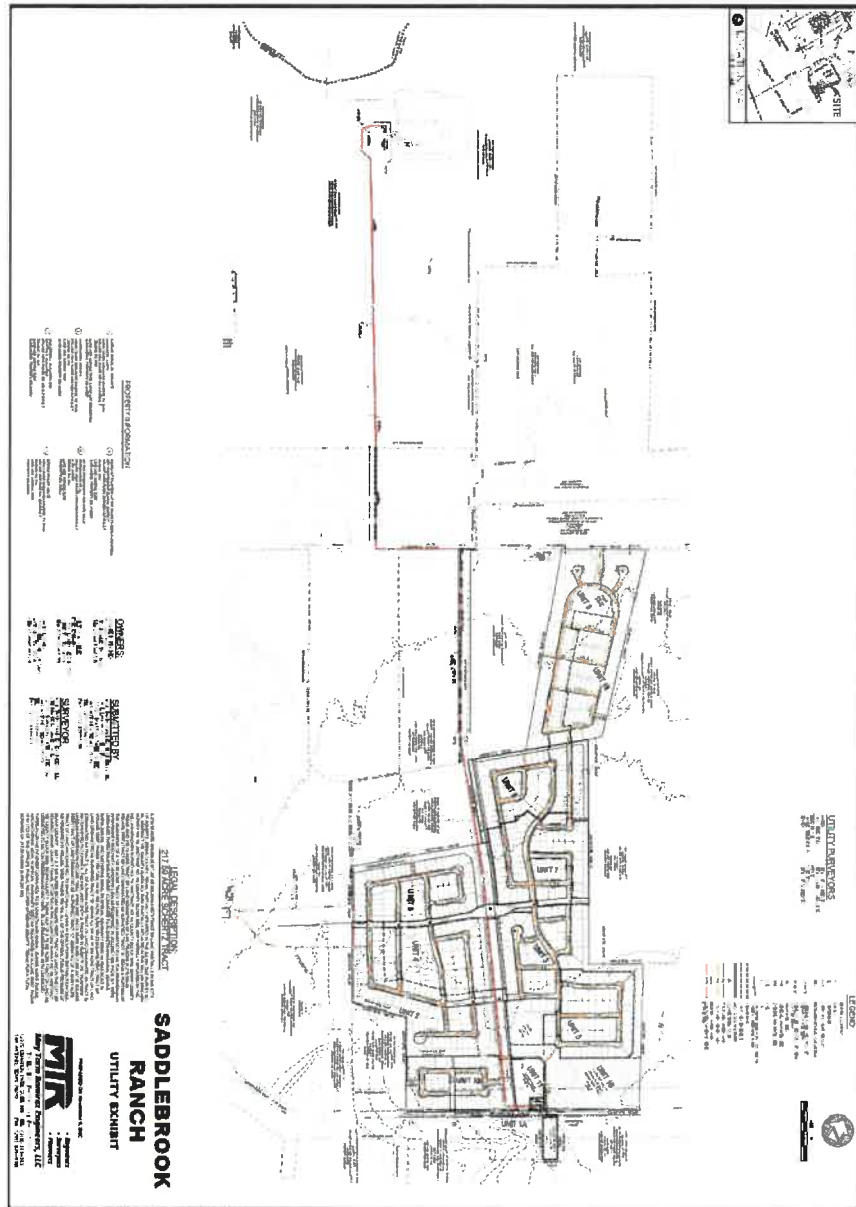


Exhibit "B"

Roadway Capital Recovery Fee Offset Credit Calculation

Saddlebrook Roadway Impact Estimate

Adjacent to Service Area 3

639 Single Family Lots

4.2 acres of Commercial land (GB Zoning)

Road construction of Redbud Canyon, Lower Seguin Road and Raf-Burnette

Traffic Contributed

639 Single Family Lots

3.37 vehicle miles per development unit

$639 \times 3.37 = 2,154$ vehicle miles of traffic

4.2 acres of commercial land proposed to be zoned GB

Based on likely development estimate 25,200 sq. ft. of office or 28,000 sq. ft. of retail

Office – 5.69 vehicle miles per development unit per 1,000 sq. ft. $\times 25,200$ sq. ft. = 144

Retail - 4.47 vehicle miles per development unit per 1,000 sq. ft. $\times 28,000$ sq. ft. = 125

Averaging the two come to about 135 vehicle miles of traffic

Total estimated traffic contributed to the system is 2,289 vehicle miles

Capacity added via road construction

Redbud Canyon Principal Arterial 4 lanes Divided Arterial 675 vehicle miles per lane mile

Lower Seguin Road Secondary Arterial 4 lanes Divided Arterial 675 vehicle miles per lane mile

Raf-Burnette Secondary Arterial 4 Lanes Divided Arterial 675 vehicle miles per lane mile

675 vehicle miles per lane mile equal 0.1278 vehicle miles per lane foot (VMPLF)

RC 4 lanes $\times 2,800'$ = 11,200 lane feet $\times 0.1278$ VMPLF = 1,432 vehicle miles of capacity created

RC 2 lanes $\times 858'$ = 1,716 lane feet $\times 0.1278$ VMPLF = 219 vehicle miles of capacity created

LSR 2 lanes $\times 2,400'$ = 4,800 lane feet $\times 0.1278$ VMPLF = 614 vehicle miles of capacity created

RB 2 lanes $\times 870'$ = 1,740 lane feet $\times 0.1278$ VMPLF = 223 vehicle miles of capacity created

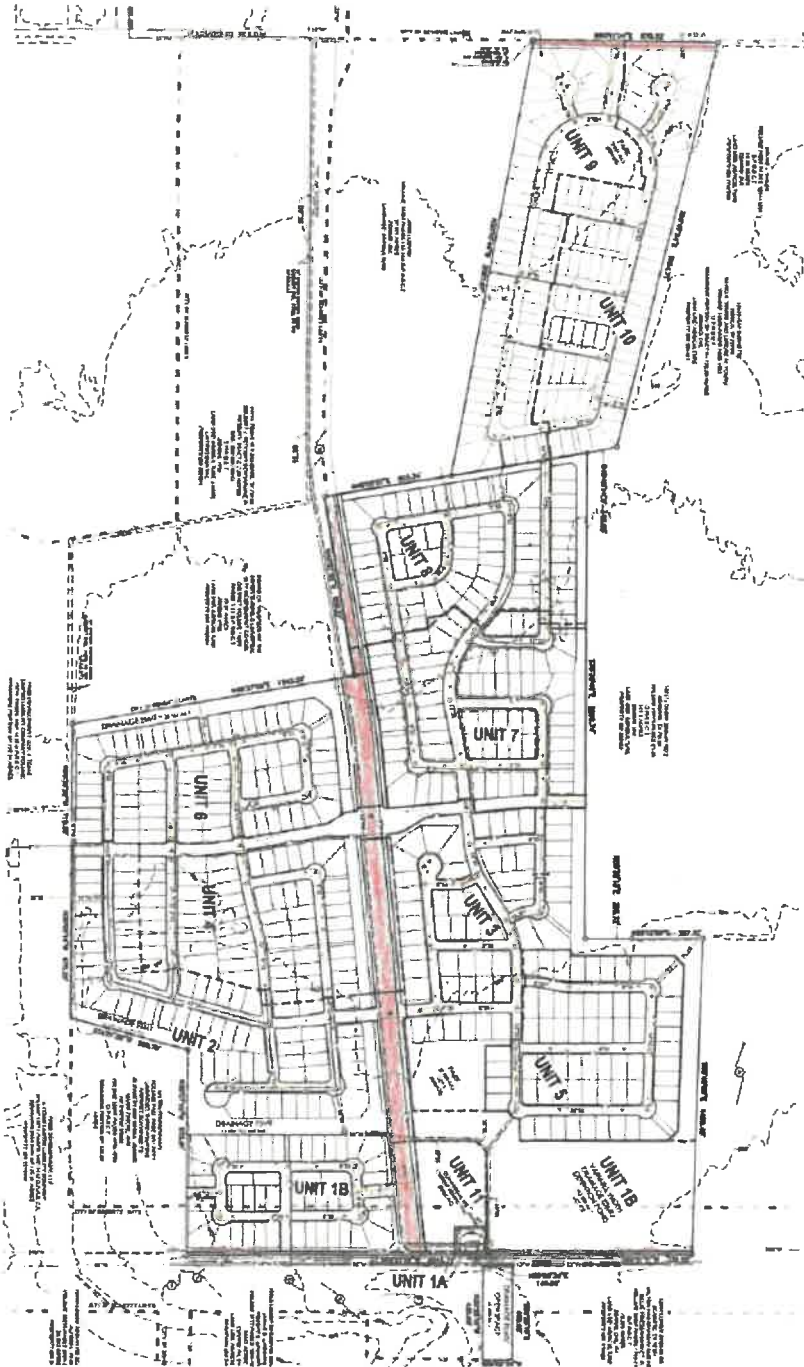
$1,432 + 219 + 614 + 223 = 2,488$ vehicle miles of capacity created

2,488 vehicle miles of capacity created vs 2,289 vehicle miles of traffic added to the system

Providing 199 excess vehicle miles of capacity which equates to 8.7% more capacity than traffic

Exhibit "C"

Roadway CIP Roadways to be Constructed



**REIMBURSEMENT AGREEMENT WITH SADDLEBROOK DEVELOPER FOR
CONSTRUCTION OF PUBLIC IMPROVEMENTS**

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

This REIMBURSEMENT AGREEMENT (the “Agreement”) is by and between ASHTON SAN ANTONIO RESIDENTIAL, LLC. (the “Owner” or “Developer”) 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 Developer 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, during the development planning stage for the Property, the Developer submitted to the City a request that the City participate in the completion of some of the Improvements (the “Improvements”), which will benefit portions of the City beyond the Saddlebrook property; and

WHEREAS, Developer has requested that it be allowed to construct the Improvements to serve the Property, which will also benefit portions of the City beyond the Saddlebrook property and share the costs with the City; and

WHEREAS, Developer has commenced construction or will commence construction of the remainder of the Improvements; and

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

WHEREAS, Section 212.071, et. seq. of the Texas Local Government Code limits the participation by the municipality at a level not to exceed 30 percent of the total contract price.

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:
 - 1.1. “Agreement” means this agreement, including any amendments hereto, between the City and Developer.
 - 1.2. “Contractor” shall mean each person, firm, corporation, partnership, association, or other entity awarded a contract by Developer for the construction and installation of the Improvements (or portion thereof).
 - 1.3. “Improvements” shall mean the improvements described on Exhibit “B”
 - 1.4. “City’s Participation Costs” shall mean costs associated with the construction of the Improvements, as designated on Exhibit “C” as City of Schertz responsibility.
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:
 - 3.1. Construction of Improvements. Developer agrees to construct the Improvements in accordance with the plans and specifications for units 1B, 2, & 3 as approved by the City Engineer on June 13, 2023, June 15, 2023 and April 21, 2023, respectively, as illustrated in Exhibit “B” attached hereto. No change in the shall be made by Developer without the prior written consent of the City Engineer, which consent shall be unreasonably conditioned, withheld or delayed. The entire cost of the construction of the Improvements shall be the responsibility and obligation of Developer, except as herein provided.
 - 3.2. Contracts for Construction. Developer shall 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 approved plans and specifications if required per Local Government Code Sec. 212 Subchapter C. The contract may be awarded via one or more contracts to either to the lowest responsible bidder(s) or to the bidder(s) who provides goods and services at the best value for the municipality. The City Engineer shall review all bid documents, contract documents, and costs estimates. 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, and any other parties under contract with the Developer in connection with the construction of the Improvements.

- 3.3. Performance, Payment and Warranty Bonds. Developer's Contractor shall post within 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 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.
- 3.4. 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.
- 3.5. 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 named insured on such Certificates, and City shall be notified within thirty calendar days of any cancellation of such insurance.
- 3.6. 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 approved by City prior to it being incurred. 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.
- 3.7. 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.
4. Obligations and Payments: The Owner and the City covenant and agree to the following:
- 4.1. 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 illustrated on Exhibit "C". Notwithstanding any provision of this Agreement to contrary, City's Obligation shall only be for the reimbursement of costs incurred by Developer and shall not in any event exceed **One Hundred Nine Thousand Seven Hundred Sixty-Nine Dollars and Thirty-Six Cents**

(\$109,769.36) (hereinafter the “City’s Share”).

- 4.2. Payment Procedures. City shall deliver to Developer full payment of the City’s Share as provided in this this section.
 - 4.3. Submittal and review. Developer shall submit and the City Engineer shall review documentation, as may be reasonably required by City Engineer, showing final, actual construction costs paid by the Developer.
 - 4.4. Upon the City Engineer’s review and approval of the documents, 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.
 - 4.5. Within 30 days of both the acceptance of the Improvements and the dedication of all necessary utility easements, the City will pay to Developer the City’s Participation Costs (**Exhibit “C”**).
5. Assignments, Modifications and Waiver.
- 5.1. Assignment. This Agreement shall bind and benefit the respective Parties and their legal successors and shall not be assignable, in whole or in party, by any party without first obtaining written consent of the other party.
 - 5.2. 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.
 - 5.3. 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.
 - 5.4. 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.
 - 5.5. 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.
 - 5.6. 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.

- 5.7. Venue. This Agreement shall be performable and enforceable in Guadalupe County, Texas, and shall be construed in accordance with the laws of the State of Texas.
- 5.8. 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.
- 5.9. 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: No Joint Venture.

If to the Owner:

ASHTON SAN ANTONIO RESIDENTIAL, LLC
17319 San Pedro Avenue, Suite 140
San Antonio, TX 78232
Attention: Blake Harrington

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

- 5.10. 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.

- 5.11. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which constitute one instrument.
- 5.12. 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.
- 5.13. 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.
- 5.14. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.
- 5.15. 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.
- 5.16. 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.
- 5.17. 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.
- 5.18. 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.

[Signatures and acknowledgments on the following pages]

Signature Page to
Agreement with Developer for Construction of Public Improvement

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

Owner:

ASHTON SAN ANTONIO RESIDENTIAL,
LLC

By: *Kyle Lents*

Name: *Kyle Lents*

Title: *Director - Land*

Date: *1/11/2024*

THE STATE OF TEXAS §
 §
COUNTY OF Brewer §

This instrument was acknowledged before me on the 11 day of January, 2024 by Kyle Lents, the Director of ASHTON SAN ANTONIO RESIDENTIAL, LLC, on behalf of said limited liability company.
(SEAL)



Lucille Rose Garza
Notary Public in and for
The State of Texas

My Commission Expires: 3/15/26

Signature Page to
Agreement with Developer for Construction of Public Improvement

This Community Facilities 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

THE STATE OF TEXAS §
 §
COUNTY OF GUADALUPE §

This instrument was acknowledged before me on the ____ day of _____, 2024 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

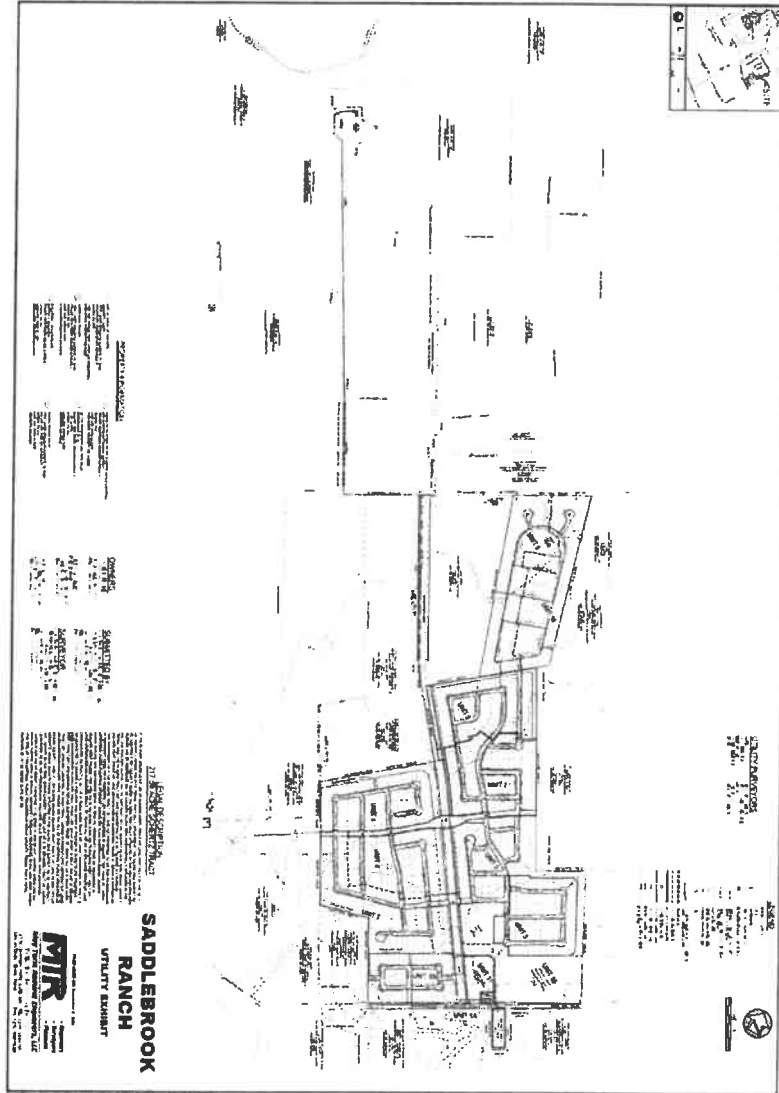
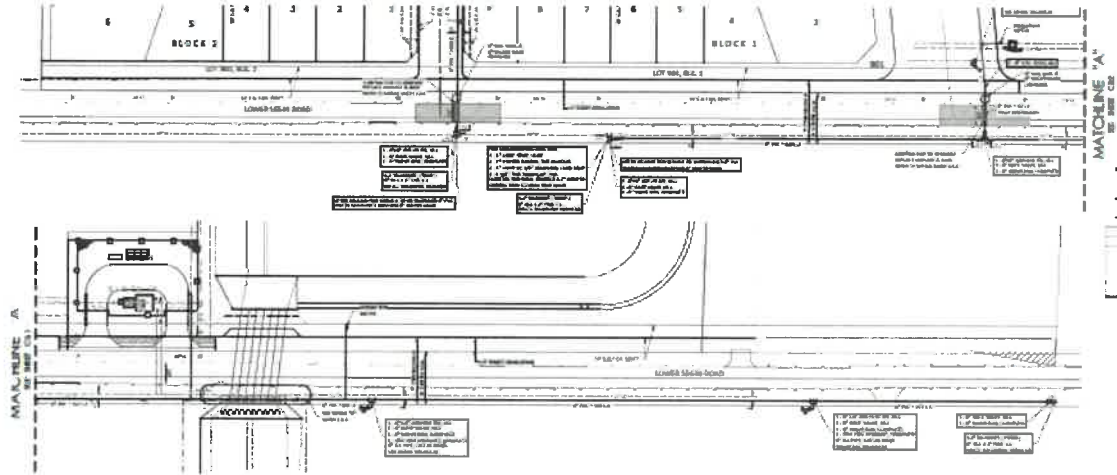
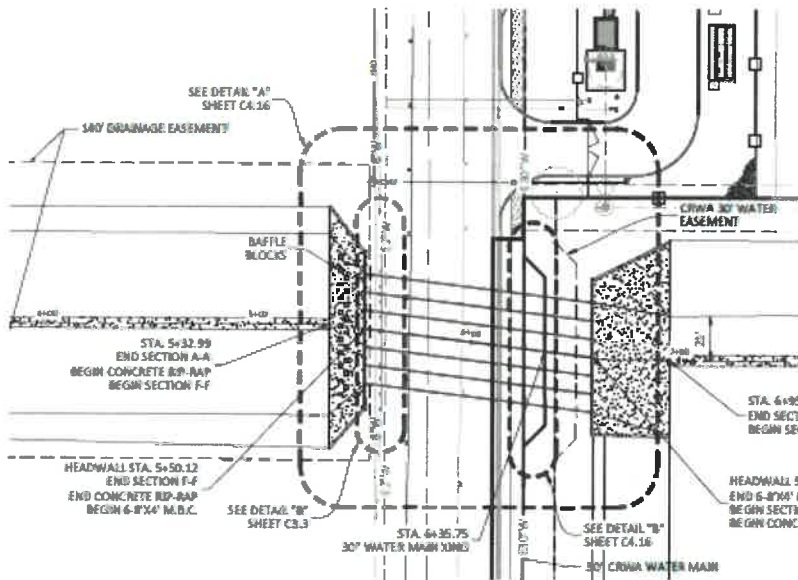


EXHIBIT B The Improvements

Water Main Upsizing

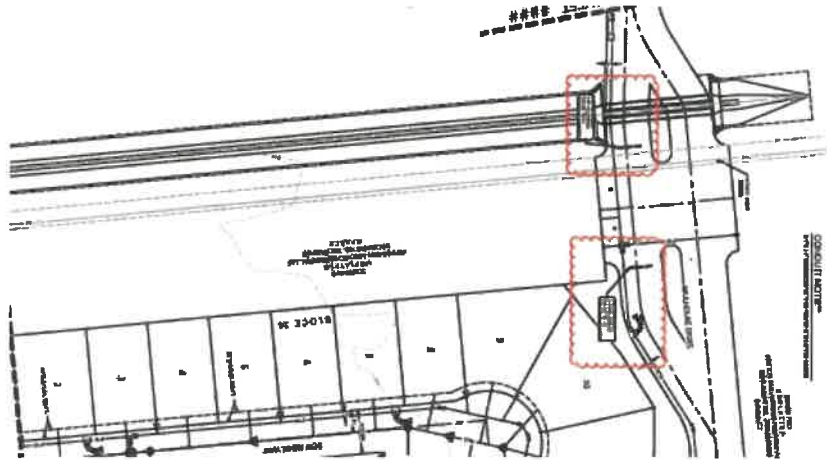
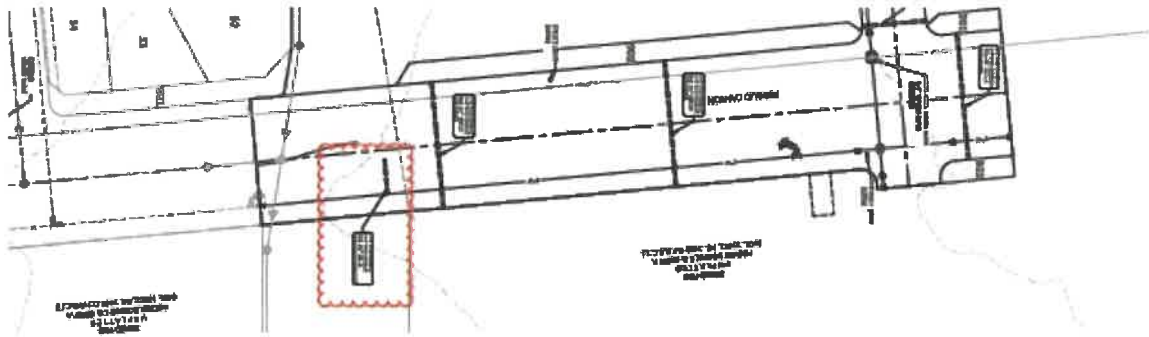
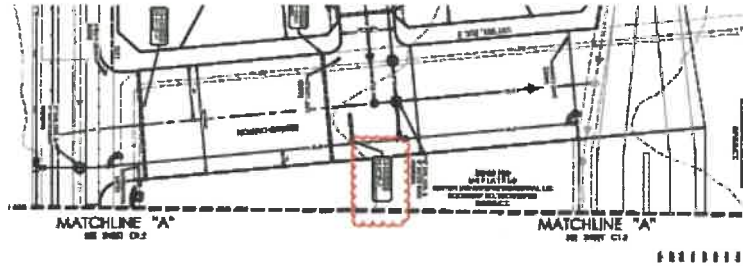


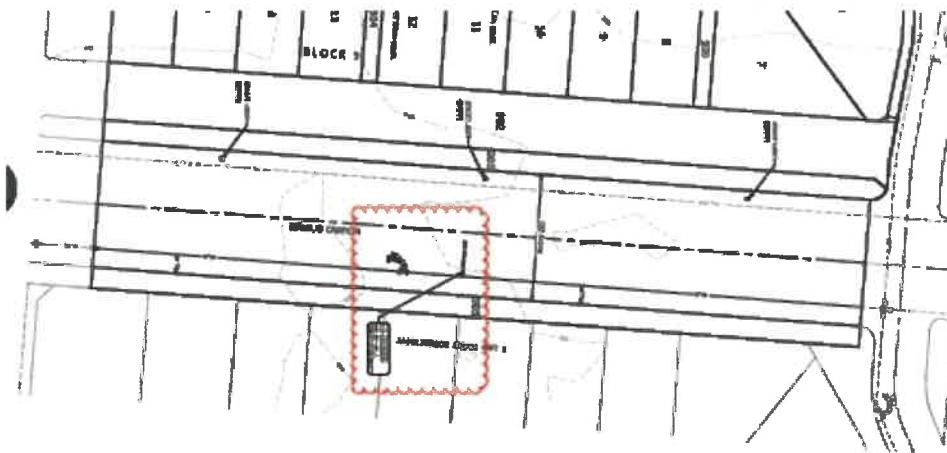
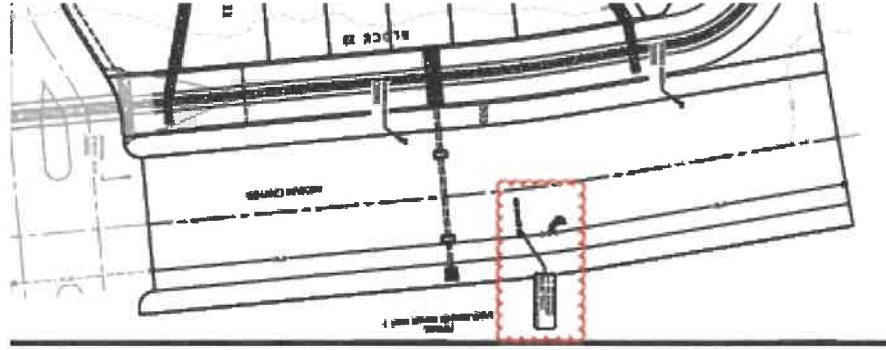
Culvert Extension



DRAIN "A"
STA. 0+00.00 TO STA. 14+00.00

Irrigation Conduits





**EXHIBIT C
CITY'S PARTICIPATION COSTS**

City of Schertz Oversizing Estimate

WATER IMPROVEMENTS - LOWER SEGUIN RD.

ITEM	DESCRIPTION	UNIT	EST/QTY	\$/UNIT	AMOUNT
1	8" Pipe DR 14 PVC	LF	1,695	\$ 55.71	94,428.45
2	8" Pipe DI Pipe	LF	80	\$ 92.11	7,368.80
3	8" Gate Valve	EA	4	\$ 1,957.93	7,831.72
4	8" Pipe DR 14 PVC	LF	160	\$ 55.71	\$ 8,913.60
5	12" Pipe DR 14 PVC	LF	1,615	\$ 96.93	\$ 156,541.95
6	12" Pipe DI Pipe	LF	80	\$ 96.93	\$ 7,754.40
7	12" Gate Valve	EA	4	4000	\$ 16,000.00
TOTAL CONSTRUCTION COST					\$ 79,580.98

Drain A- Offsite & Lower Seguin Rd Crossing

ITEM	DESCRIPTION	UNIT	EST/QTY	\$/UNIT	AMOUNT
1	Additional 8' x 4' MBC	LF	113	\$ 838.72	\$ 94,775.36

Conduits

ITEM	DESCRIPTION	UNIT	EST/QTY	\$/UNIT	AMOUNT
1	Irrigation - 1-6"/1-4" PVC Bundle	LF	200	\$ 74.97	\$ 14,994.00
TOTAL CONSTRUCTION COST					\$ 109,769.36

\$109,769.36 Total City's Participation Costs

WHEREAS, the Owner seeks to construct more capacity in the Saddlebrook Lift Station Improvements than is 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 contract by Developer for the construction and installation of the Improvements.
- c) "EDU Sewer Facility Reimbursement Fee" shall mean the cost per EDU of Pro-rata due to the Owner for utilizing one of the remaining 725 EDUs of capacity in the Saddlebrook Lift Station.
- d) "Excess EDUs of Capacity" shall mean the 725 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.
- e) "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.
- f) "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 Six Hundred Seventy-Five (675) 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) One Thousand Three Hundred (1,300) EDUs shall be used to accommodate the Croton Ultimate Flows (the “Croton Lift Station EDUs”).
- c) The Remaining EDUs of Capacity in the Saddlebrook Lift Station Improvements (the “Excess EDUs of Capacity”), which are estimated to be approximately Seven Hundred Twenty-Five (725) EDUs of capacity, are allocated to the City of Schertz. Schertz can choose to allocated these EDUs as they choose.
- d) 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. No SFR Fee shall be due for the Croton Lift Station EDUs.

- a) The City agrees to pay for the 725 EDUs of Capacity within 90 days of acceptance of the Saddlebrook Lift Station Improvements.

6. 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.

7. 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.

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

9. 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.

10. 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.

11. 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:

ASHTON SAN ANTONIO RESIDENTIAL, LLC
17319 San Pedro Avenue, Suite 140
San Antonio, TX 78232
Attention: Blake Harrington

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

12. 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.

13. 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.

14. 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.

15. 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:

ASHTON SAN ANTONIO
RESIDENTIAL, LLC

By: _____

Name: _____

Title: _____

Date: _____

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2024 by _____, the _____ of ASHTON SAN ANTONIO RESIDENTIAL, 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 _____, 2024 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 "B"

The Saddleborok Lift Station Improvement Costs

SADDLEBROOK SEWER LIFT STATION OPCS						
<u>SANITARY SEWER IMPROVEMENTS</u>						
ITEM	DESCRIPTION	UNIT	EST/QTY	\$/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]