

RESOLUTION NO. 24-R-52

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING A REIMBURSEMENT AGREEMENT FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS IN THE CITY OF SCHERTZ, TEXAS, AND RELATED MATTERS IN CONNECTION THEREWITH

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 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 agreement 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resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.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

**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 Jen Texas 32, 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 Ninety-Four Thousand Nine Hundred Seventy-Six Dollars and Twenty-Four Cents (\$194,976.24)** (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 part, 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:

Jen Texas 32, LLC
8023 Vantage Drive, Suite 220
San Antonio, TX 78230
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:

Jen Texas 32, 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 Jen Texas 32, LLC, on behalf of said limited liability company.
(SEAL)

Notary Public in and for
The State of Texas

My Commission Expires:

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

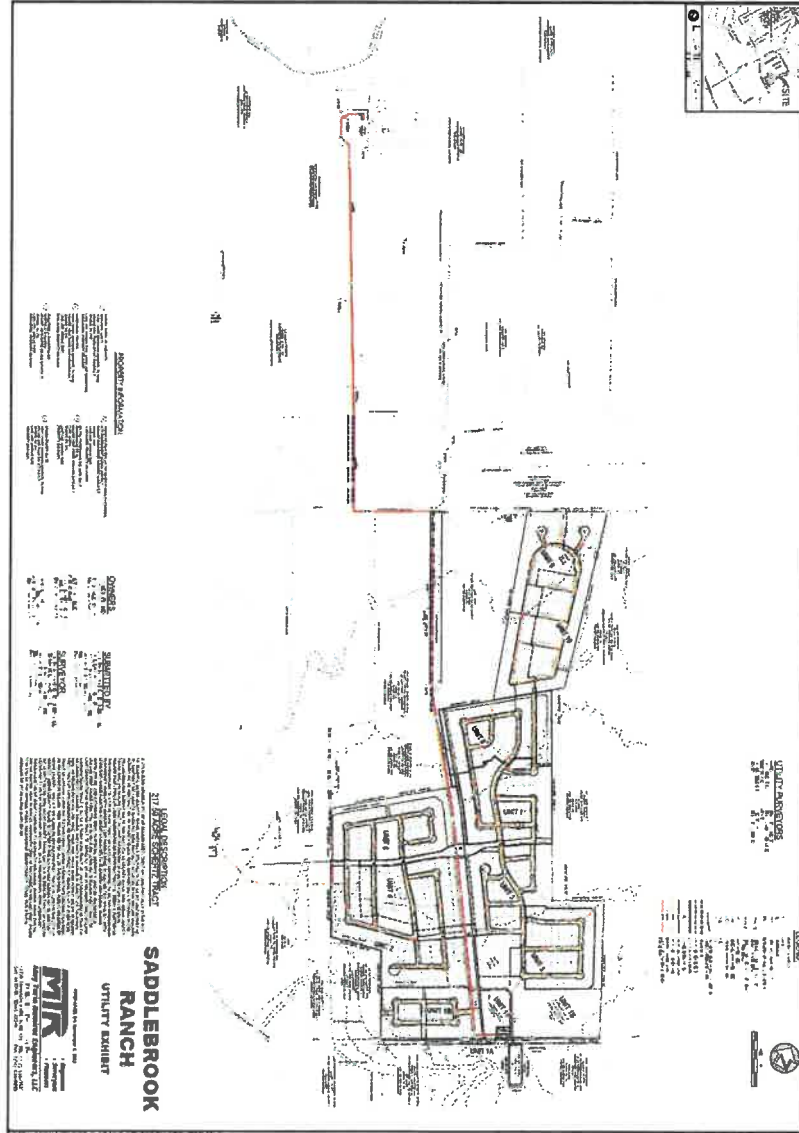
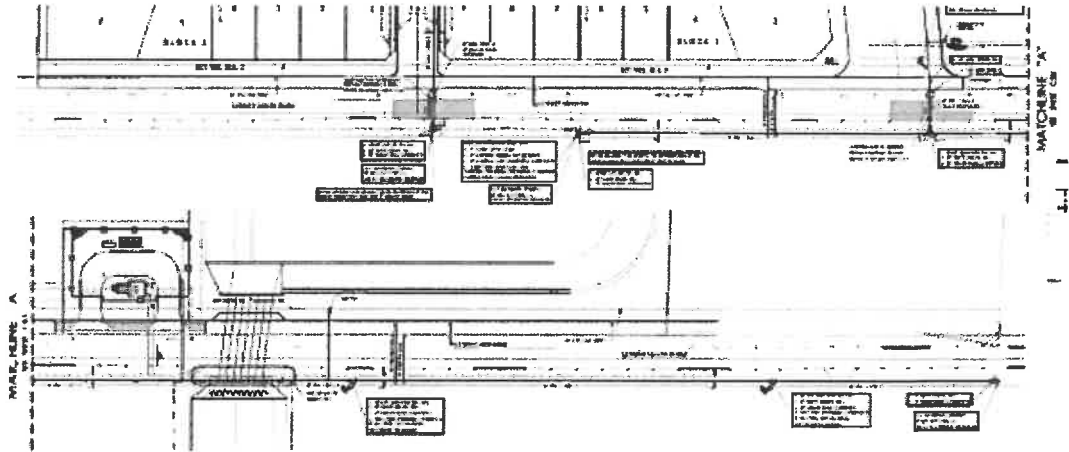
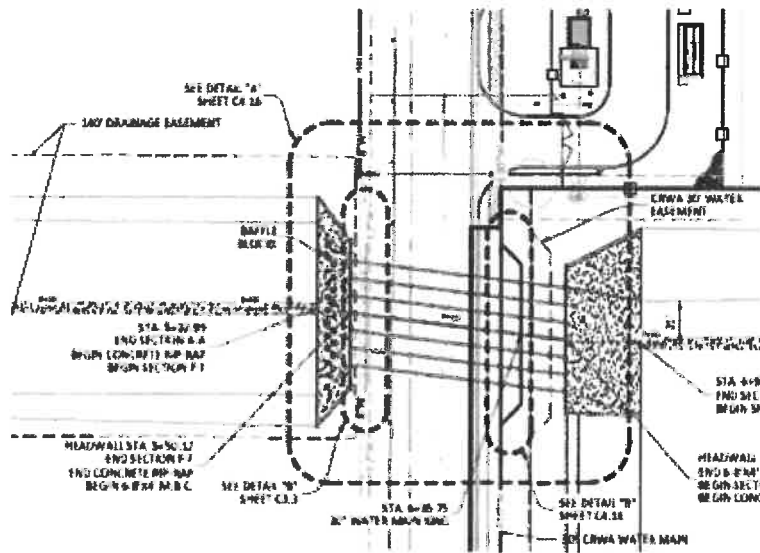


EXHIBIT B The Improvements

Water Main Upsizing



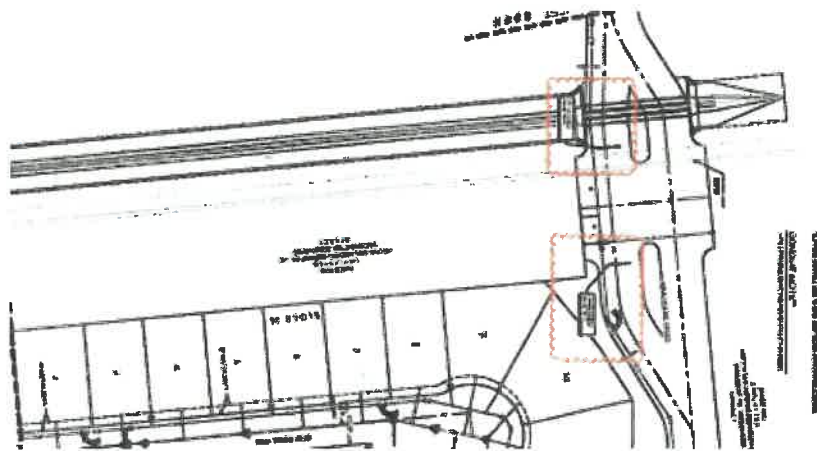
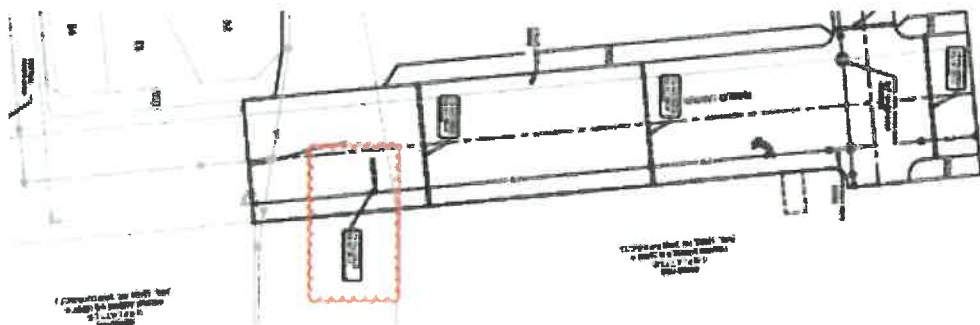
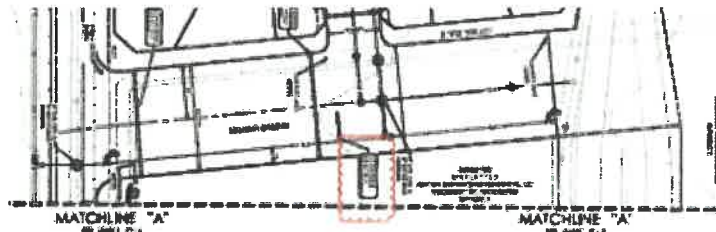
Culvert Extension

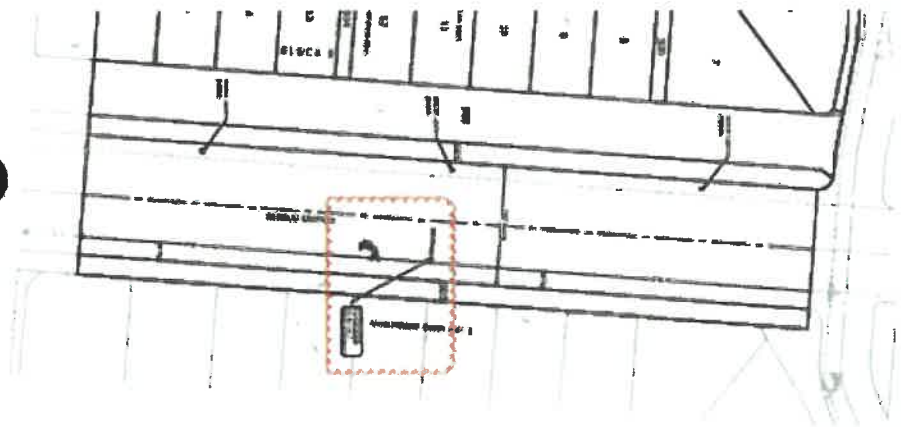
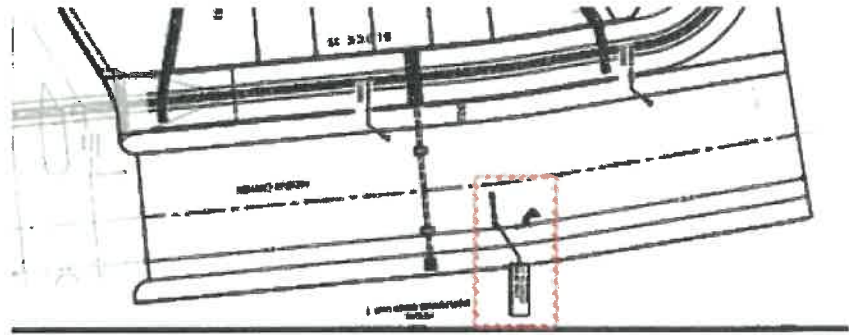


DRAIN "A"

STA. 0100.00 TO STA. 1400.00

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	1,895	\$ 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	12" Pipe DR 14 PVC	LF	1,765	\$ 96.93	\$ 171,081.45
5	12" Pipe DI Pipe	LF	80	\$ 96.93	\$ 7,754.40
6	12" Gate Valve	EA	4	\$ 4,000.00	\$ 16,000.00
TOTAL CONSTRUCTION COST					\$ 85,206.88

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
TOTAL CONSTRUCTION COST					\$ 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					\$ 14,994.00

TOTAL OVERALL CONSTRUCTION COST \$ 194,976.24

\$194,976.24 Total City's Participation Costs