

RESOLUTION NO. 25-R-044

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING A REIMBURSEMENT AGREEMENT FOR THE CONSTRUCTION OF PUBLIC IMPROVEMENTS WITH THE DEVELOPER OF THE HERITAGE OAKS RESIDENTIAL SUBDIVISION IN THE CITY OF SCHERTZ, TEXAS AND OTHER MATTERS IN CONNECTION THEREWITH.

WHEREAS, the Developer of the Heritage Oaks residential subdivision is constructing public improvements and the City desires for additional public related to those improvements to be constructed at the same time; and

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

WHEREAS, per Subchapter C of Section 212 of the Texas Local Government Code, a municipality may contract with a developer of the subdivision of land to construct public improvements; and

WHEREAS, the City Council finds it is in the best interest of the City to enter into the Reimbursement agreement with the Developer of the Heritage Oaks residential subdivision.

NOW THEREFORE, 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 execute a Reimbursement Agreement, generally in the form attached in Exhibit "A" subject to minor changes approved by the City Manager and City Attorney, with Anthony W. Eugenio, the developer of the Heritage Oaks residential subdivision for an amount not to exceed **ONE HUNDRED FIFTY-FOUR THOUSAND FIVE HUNDRED THIRTY-SIX DOLLARS** (\$154,536.00).

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resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.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 ____ day of _____, 2025.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Sheila Edmondson, City Secretary

Exhibit "A"
Heritage Oaks Residential Subdivision Reimbursement Agreement

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

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

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

WHEREAS, Developer wishes to develop certain property (the “Property”) located within the City limits, which is approximately 66 acres of land, out of the Toribio Survey No.68, Abstract No. 153, and situated in the City of Schertz, Guadalupe County, Texas; and

WHEREAS, a portion of the Property is the subject of the application for Replat of Live Oak Hills Subdivision Plat establishing Live Oak Hills Subdivision, Unit 1; and

WHEREAS, the Property abuts a portion of Wiederstein Road located in the City of Schertz, wherein Wiederstein will be widened and improved from the Property to the West Dietz Creek bridge (the “**Wiederstein Extension Property**”) and any necessary utilities, if any,(collectively the “**Improvements**”) must be relocated, extended, and/or upsized as depicted in **Exhibit “A”**, and where said Improvements have not been completed; and

WHEREAS, during the development planning stage for the Property, the City submitted to the Developer a request that the Developer design an extension of Wiederstein, from the Property to the bridge crossing West Dietz Creek, consistent with the Developers design of the Property and the City participate in the completion of the Improvements, which will benefit portions of the City beyond the Live Oak Hills Subdivision, Unit 1; and

WHEREAS, Developer and the City have agreed that the Developer will construct all Improvements on the Wiederstein Extension Property as described in **Exhibit “A”**, and the City has agreed to reimburse the Developer for certain costs associated with the construction of the Improvements as more specifically set forth herein and as set forth in **Exhibit “B”**; and

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

WHEREAS, Section 212.071, et. seq. of the Texas Local Government Code authorizes municipalities to enter into a contract with a developer of a subdivision or land in the municipality to construct public improvements related to the development without

complying with the competitive sealed bidding procedures of Chapter 252 of the Texas Local Government Code; and,

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

ARTICLE I – Definitions.

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

- 1.1. “Agreement” means this agreement, including any amendments hereto, between the City and Developer.
- 1.2. “Contractor” shall mean the person, firm, corporation, partnership, association, or other entity awarded the contract by Developer for the construction and installation of the Improvements.
- 1.3. “City’s Participation Costs” shall mean costs associated with the construction of the Improvements, as designated on Exhibit “B” as City of Schertz responsibility.
- 1.4. “Improvements” shall mean the improvements described on Exhibit “A”

ARTICLE II – Construction of Improvements.

- 2.1. Construction of Improvements. Developer agrees to construct the Improvements in accordance with the plans and specifications approved by the City Engineer. No change in the construction plans shall be made by Developer without the prior written consent of the City Engineer. The entire cost of the construction of the Improvements shall be the responsibility and obligation of Developer, subject to the reimbursement obligations of the City as herein provided.
- 2.2. Contracts for Construction. The City acknowledges that Developer will select a qualified Contractor to construct the portion of the Improvements in accordance with the plans and specifications which will have been approved by the City Engineer prior to construction. Developer shall be solely responsible for payment of the work as it is completed, and shall make all payments in a timely manner to the Contractor, sub-contractors, and other parties involved in the construction of the Improvements.
- 2.3. Performance, Payment and Warranty Bonds. Developer shall post (or cause to be posted) with the City faithful performance, payment, and warranty bonds for construction of the Improvements to ensure completion of the project. The bond must be executed by a corporate surety in accordance with Chapter 2253, Texas Government Code. The Developer shall covenant to warrant the public improvements for a period of two (2) years following acceptance by the City of all Improvements. A warranty bond shall be provided in the amount of 20% of the costs of the Improvements for such period. The costs of such bonds shall be a reimbursable cost

as set forth on Exhibit "B".

2.4. 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.

2.5. 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 insured on such Certificates, and City shall be notified within thirty calendar days of any cancellation of such insurance.

2.6. 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 contemplated to be reimbursable costs by City as set forth on Exhibit "B". Developer shall maintain the accounting of the Improvements for a period of two years from the date of acceptance by the City, and the City may inspect the Developer's books and records related to the Improvements at any time with reasonable notice.

2.7. **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.**

ARTICLE III – Obligations and Payments.

3.1. 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 set forth on Exhibit "B". 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 FIFTY-FOUR THOUSAND FIVE HUNDRED THIRTY-SIX DOLLARS (\$154,536)** which is the percentage of Costs as set forth on Exhibit "B" (hereinafter the "City's Share").

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

3.2.1 Submittal and Review. Developer shall periodically submit (anticipated to be monthly) a draw request (the "Draw Request") and the City

Engineer shall review the Draw Request showing costs incurred by the Developer during the prior month (or similar construction period). The Draw Request shall include lien waivers from the contractor for the percentage of completion or amount requested.

3.2.2 Upon the City Engineer's receipt of each Draw Request, the City Engineer shall inspect the Improvements (or otherwise be satisfied with information and evidence submitted by Developer) to confirm the percentage of completion as set forth in the Draw Request. The City Engineer shall approve or reject the Draw Request. If approved, the City Engineer shall promptly cause the City to reimburse Developer for the amount of the Draw Request which Draw Request shall be funded within thirty (30) days of approval by the City Engineer (which shall not be more than forty-five (45) days from submission by Developer. If rejected, the City Engineer shall specify the reason for rejection the requirements to cure the objection. Upon cure and approval, the City Engineer shall promptly cause the City to reimburse Developer for the amount of the Draw Request. A final inspection on the Improvements shall be conducted, noting any required corrections or repairs. Once corrections or repairs are made and deemed acceptable, the City will accept the Improvements. It is understood and acknowledged that the City Reimbursable Costs may be part of a larger draw request for work being performed by and for Developer.

3.2.3 Upon the City Engineer's receipt of the final Draw Request, a final inspection on the Improvements shall be conducted, noting any required corrections or repairs. Once corrections or repairs are made and deemed acceptable, the City will accept the Improvements and reimburse Developer the final payment as represented by the final Draw Request which shall be City's Share of costs.

Article IV – Assignment, Modification and Waiver.

4.1. Assignment. This Agreement shall bind and benefit the respective Parties and their legal successors and shall not be assignable, in whole or in part, by any party without first obtaining written consent of the other party. Notwithstanding anything herein to the contrary, Anthony W. Eugenio intends to assign this Developer Participation Agreement to a development entity for performance of the development work. Anthony W. Eugenio shall obtain the City approval in writing prior to such assignment.

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

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

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

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

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

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

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

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

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

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

If to Developer: Anthony Eugenio
334 N. Park Rd.
San Antonio, Texas 78216

With a copy to:

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

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

[Signatures and acknowledgments on the following pages]

Signature Page to
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.

Developer:

By: _____
Anthony W. Eugenio

THE STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledged before me on the ____ day of _____, 2025 by Anthony W. Eugenio, for the purposes herein expressed.

(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 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: _____, its City Manager

THE STATE OF TEXAS §
 §
COUNTY OF GUADALUPE §

This instrument was acknowledged before me on the ____ day of _____, 2025 by _____, City Manager of the City of Schertz, Texas, a Texas municipal corporation, on behalf of said City.

(SEAL)

Notary Public in and for
The State of Texas

My Commission Expires: _____

EXHIBIT A IMPROVEMENTS

- 1. Wiederstein Rd. will be widened to the proposed 26-foot section provided in the current construction plans for the Property.**
- 2. A taper will match the proposed width to the existing bridge (± 30 feet).**
- 3. The sidewalks and access Rd. will be adjusted to match the new road width.**
- 4. Drainage will continue down Wiederstein and leave the street near Dietz Creek bank through the curb cuts in the flume.**
- 5. The drainage report will be updated to provide calculations for sizing the curb cuts and flumes.**
- 6. CMA has requested longer sleeves should be placed under the wider roadways for its water reuse line. The reuse line must be adjusted as part of this extension to include a new pipe and sleeve under the widened roadway. The plans will be submitted to CCMA for approval.**

EXHIBIT B
CITY'S PARTICIPATION COSTS

- 1. Engineering costs (\$24,600 per the engineer proposal attached as Exhibit "C") for the Improvements on the Wiederstein Extension Property.**
- 2. All Construction costs and incidentals (\$129,936 as shown on the Engineer's Estimate of Probable Construction Costs as attached as Exhibit "C".**
- 3. City to approve invoices during construction of the, to be submitted and City approved Contractor Bids for the Improvements on the Wiederstein Extension Property**

EXHIBIT C
ENGINEERING PROPOSAL

January 16, 2024

Via: E-Mail

Mr. Tony Eugenio
334 N. Park Drive
San Antonio, TX 78216
PH: (210) 826-9000
Email: teugenio@presidio-sa.com

**Re: Agreement for Civil Engineering Design Services
Wiederstein Rd Extension - Heritage Oaks Subdivision**

Dear Tony:

The Heritage Oaks Unit 1 plans propose a 26 ft wide section for Wiederstein Road. After leaving the Heritage Oaks boundary, the road tapers down to the existing two-lane road. This proposal details the effort needed to extend the 26 ft wide section to the Dietz Creek Bridge, per the City of Schertz's request.

I have enclosed our Agreement for services for your consideration. If the Agreement is acceptable, please sign and return a copy. Please get in touch with me if you have questions about the proposed scope of work, the completion timeline, or other issues.

We are prepared to begin this project as soon as you authorize. We look forward to continuing our work with you!

Regards,

Binkley & Barfield, Inc.



Jerod Mott, P.E., CFM
Project Manager



Steve Albert, P.E., CFM
Vice President - Infrastructure

Assumptions and Exclusions

Assumptions and Exclusions used to define the scope of services for this Agreement include:

- Vehicular access to the project site will be available to Binkley & Barfield and their subconsultants.
- We currently have a survey of the bridge and creek bank area. No additional surveying will be required.
- Master plan updates are not required.
- The geotechnical study previously used for Unit 1 will be used for this extension.
- ADA submittals and Registered ADA Specialist reviews are not included.
- The Owner/Client or Contractor will be the "Primary Operator" and will be responsible for implementing and maintaining the SWPPP during construction.
- The Client will be responsible for paying all permit or City review fees.
- Subsurface Utility Engineering (SUE) for exposing existing utility locations is not included.
- Design for extension or relocation of public or franchise utilities is not included.
- Environmental Site Assessments, historical, archaeological, or endangered species services are not included.
- Bidding documentation is not included.
- SWPPP inspections, SWPPP permitting, or documentation is not included.
- It is assumed no floodplain permitting will be needed. CLOMR/LOMR design, submission, and fees to FEMA are not included.

Fees

We will perform and coordinate the services described in the Scope of Services for the fee listed below.

<u>Task and Fee Summary</u>	<u>Fee Type</u>	<u>Fee Amount</u>
Scope Listed Above	Lump Sum	\$ 24,600

Please indicate your acceptance of the Agreement below.

Regards,

Binkley & Barfield, Inc.

Accepted this ____ day of _____, 202__



Steve Albert, P.E., CFM
 Vice President - Infrastructure
salbert@binkleybarfield.com

 Signature

 Print Name

 Title

 Company

**HERITAGE OAKS SUBDIVISION
WIEDERSTEIN EXTENSION ENGINEER'S ESTIMATE OF PROBABLE CONSTRUCTION COSTS**

DEMOLITION					
ITEM	DESCRIPTION	UNIT	QUANTITY	COST/UNIT (\$)	TOTAL (\$)
1	REMOVE AND DISPOSE EXISTING PAVEMENT AND BASE	SY	278	9	2,502
DEMOLITION SUBTOTAL					2,502

PAVEMENT					
ITEM	DESCRIPTION	UNIT	QUANTITY	COST/UNIT (\$)	TOTAL (\$)
2	7" HMAC PAVEMENT (Addition to Bridge)	SY	384	47	18,048
3	10" AGGREGATE BASE (Addition to Bridge)	SY	469	12	5,632
4	LIME TREATED SUBGRADE (8" COMPACTED DEPTH)	SY	469	12	5,632
5	4" CONCRETE SIDEWALK, 5' WIDE	SY	126	67	8,442
6	6" CURB AND GUTTER	LF	192	30	5,760
PAVEMENT, STRIPING AND SIGNAGE SUBTOTAL					43,514

DRAINAGE & EROSION CONTROL					
ITEM	DESCRIPTION	UNIT	QUANTITY	COST/UNIT (\$)	TOTAL (\$)
7	SIDEWALK DRAIN/CURB OPENING	EA	3	14,000	42,000
8	5' CONCRETE PILOT CHANNEL	SY	111	150	16,650
9	ROCK FILETER DAMS TYPE 1 (INSTALL)	LF	32	33	1,056
10	ROCK FILTER DAMS (REMOVE)	LF	32	14	448
11	HYDRO-MULCHING	ACRE	0.08	12,350	962
12	6" D50 ROCK RIPRAP	SY	22	52	1,144
DRAINAGE SUBTOTAL					62,260

CONSTRUCTION COST TOTAL **108,276**
 CONTINGENCY (20%) 21,660

ENGINEER'S OPINION OF PROBABLE CONSTRUCTION COST **129,936**

NOTES:

- 1) PAVEMENT QUANTITIES BASED ON NON-ROCK SECTIONS
- 2) OPEN CHANNEL DRAINAGE ASSUMED FOR EACH SIDE TIEING INTO EXISTING CONC AT BRIDGE
- 3) UNIT COSTS BASED ON HERITAGE OAKS BID PRICING
- 4) QUANTITIES BASED ON PRELIMINARY SCHEMATIC DESIGN

THIS DOCUMENT IS RELEASED
 FOR THE PURPOSE OF
 PERMITTING ONLY
 UNDER THE AUTHORITY OF
 JEROD MOTT, P.E. 113132
 ON 20 Mar 2025
 IT IS NOT TO BE USED FOR
 CONSTRUCTION OR BIDDING
 PURPOSES.