

RESOLUTION NO. 25-R-055

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING A ROADWAY CAPITAL RECOVERY OFFSET AGREEMENT 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 a section of roadway that is on the roadway impact fee capital improvements plan; and

WHEREAS, per Section 395.023 Credits Against Roadway Facilities Fees of the Texas Local Government Code stipulates that any construction of, contributions to, or dedications of off-site roadway facilities agreed to or required by a political subdivision as a condition of development approval shall be credited against roadway facilities impact fees otherwise due from the development; and

WHEREAS, Section 78-178 Offsets and Credits Against Capital Recovery Fees stipulates that the value of offset shall be stated in service units.

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 Roadway Capital Recovery Offset Agreement, generally in the form attached in Exhibit "A" subject to minor changes approved by the City Manager and City Attorney.

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resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.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

THE STATE OF TEXAS §

§

BEXAR COUNTY §

HERITAGE OAKS 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 Anthony W. Eugenio (hereinafter “**DEVELOPER**”), 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 Heritage Oaks Development.
- B. Location. The Project is located in Roadway Impact Fee Service Area 2, on the west side of Schertz Parkway and approximately 200' east of Dietz Creek, on the north and south sides of Wiederstein 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 2 are \$1,35.25 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 376.33 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 373.66 service units which equates to calculated at 111.67 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: Anthony W. Eugenio
334 N. Park Road
San Antonio, TX 78216
Teugenio@presidio-sa.com

WITH COPY TO LEGAL COUNSEL:

XXX
Attn:
XXX
XXX
XXX

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:

Anthony W. Eugenio

By: _____

Name: _____

Title: _____

Date: _____

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2025 by
_____.

(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 _____, 2025 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"

Roadway Capital Recovery Fee Offset Credit Calculation

Heritage Oaks Roadway Impact Estimate

Within Service Area 2

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

214 Single Family Lots

3.37 vehicle miles per development unit

$214 \times 3.37 = 721.18$ vehicle miles of traffic

Capacity added via road construction

Wiederstein Road Undivided Collector 2 lanes Divided Arterial 500 vehicle miles per lane mile

675 vehicle miles per lane mile equal 0.0946 vehicle miles per lane foot (VMPLF)

$2 \text{ lanes} \times 1,987' = 3,974 \text{ lane feet} \times 0.0946 \text{ VMPLF} = 373.66$ vehicle miles of capacity created

$373.66 \div 3.37 = 111.67$ houses worth of credit

273.66 vehicle miles of capacity created vs 721.18 vehicle miles of traffic added to the system

Exhibit "C"

Roadway CIP Roadways to be Constructed

