

RESOLUTION NO. 25-R-068

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING A WASTEWATER 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 sewer line that is on the wastewater impact fee capital improvements plan; and

WHEREAS, Section 90-152 Offsets and Credits Against Capital Recovery Fees stipulates how to calculate offsets and credits; and

WHEREAS, the City Council finds it is in the best interest of the City to enter into the Wastewater Capital Recover Offset 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 Wastewater 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resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.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 WASTEWATER CAPITAL RECOVERY OFFSET AGREEMENT

This agreement (“**AGREEMENT**”) is made by and between the City of Schertz, (hereinafter “**CITY**”) a Texas Home Rule municipality and Platte Development, LLC (hereinafter “**DEVELOPER**”), collectively, the “**PARTIES**”.

RECITALS

WHEREAS, pursuant to City of Schertz Code of Municipal Ordinances Chapter 90, Article V, the City of Schertz has adopted Water and Wastewater Capital Recovery Fees (sometimes hereinafter referred to as “capital recovery fee”); and

WHEREAS, pursuant to City of Schertz Code of Municipal Ordinances Section 90-152, the city shall offset the present value of any system-related facilities, pursuant to rules established in this section, and which have been dedicated to and have been received by the city, including the value of rights-of-way or capital improvements constructed pursuant to an agreement with the city, against the amount of the capital recovery fee due for that category of capital improvement due from the contribution; and

WHEREAS, pursuant to the City of Schertz Code of Municipal Ordinances Section 90-152, the unit costs used to calculate the offsets shall not exceed those assumed for the capital improvements included in the capital improvements program for the category of facility within the service area for which the capital recovery fee is imposed and if an offset or credit applicable to a plat has not been exhausted within ten years from the date of the acquisition of the first building permit issued or connection made after the effective date of this article or within such period as may be otherwise designated by contract, such offset or credit shall lapse.

WHEREAS, CITY and DEVELOPER desire to enter into this AGREEMENT in order to memorialize Wastewater 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 which consists of 214 single family residential lots.
- B. Location. The Project is located in the Wastewater Impact Fee Service Area, 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.

WASTEWATER CAPITAL RECOVERY FEES

- A. Wastewater Capital Recovery Fees. The Maximum Wastewater Capital Recovery Fee per Land Use Equivalent ("LUE") is \$5,556.00 and are currently assessed as \$5,556.00 per LUE.

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.

WASTEWATER CAPITAL RECOVERY FEE OFFSET CREDIT

- A. Wastewater Capital Recovery Fee Offset Credit Calculation. As shown on *Exhibit "B"*, to this AGREEMENT, the PARTIES agree to the following:
 - i. The total amount of the Wastewater Capital Recovery Fee Offset Credit is \$ _____.
 - ii. The Wastewater Capital Recovery Fee Offset Credits that the DEVELOPER shall receive shall be used to offset the Wastewater Capital Recovery Impact Fees due within

the Heritage Oaks 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.

- iii. DEVELOPER shall receive the Wastewater Capital Recovery Fee Offset Credits 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.
- iv. The DEVELOPER has prepaid 100 LUEs of Wastewater Capital Recovery Fees for lots within the Heritage Oaks Development. The estimated total Wastewater Capital Recovery Fees due for the remaining 114 lots within the Heritage Oaks Development is \$633,384.00.

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 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 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: Platte Development, LLC
 c/o Jane Schaefer
 334 N. Park Road
 San Antonio, TX 78216
 Teugenio@presidio-sa.com

WITH COPY TO LEGAL COUNSEL:

Anthony W. Eugenio
334 N. Park Drive
San Antonio, Texas 78216
210-826-9000
teugenio@presidio-sa.com

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 "A"

Heritage Oaks Development

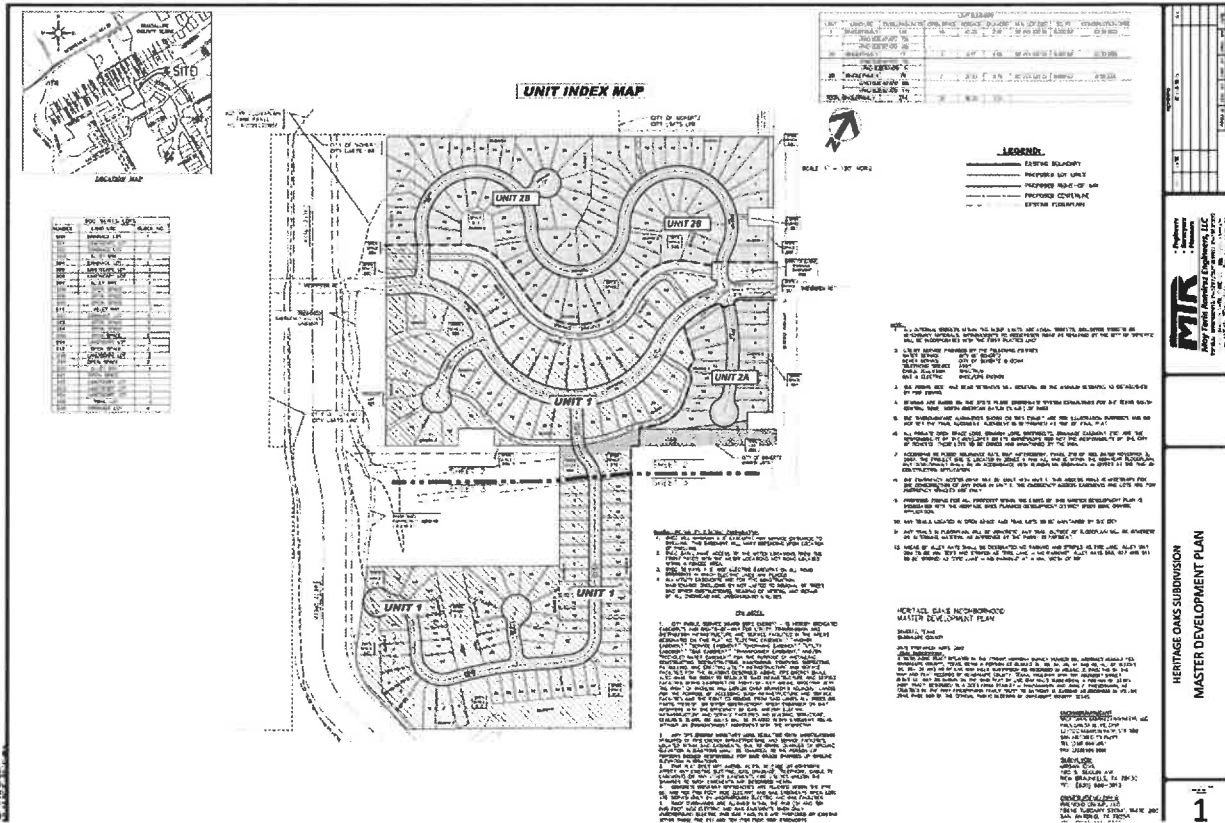


Exhibit "B"

Approved Costs for the Wiederstein Road 8" Sewer Line to Constitute the Wastewater Capital
Recovery Fee Offset Credit

