

RESOLUTION NO. 24-R-10

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING AGREEMENTS WITH CV SCHERTZ TX BTR, LP FOR A SUBDIVISION IMPROVEMENT AGREEMENT AND ROADWAY CAPITAL RECOVERY OFFSET AGREEMENT FOR THE CONSTRUCTION OF PUBLIC IMPROVEMENTS IN THE CITY OF SCHERTZ, TEXAS AND OTHER MATTERS IN CONNECTION THEREWITH.

WHEREAS, the Landowner desires to defer certain dedication and public improvements obligations for Schertz Station Subdivision Lot 11 &13, Block 1; and

WHEREAS, pursuant to Section 21.4.15 of the City's Unified Development Code, the obligation to dedicate and construct improvements for the Subdivision may be deferred if an Improvement Agreement is executed and if sufficient surety is provided to secure the obligation to construct the improvements; and

WHEREAS, the City staff of the City of Schertz has recommended that the City enter into a Subdivision Improvement Agreement; and

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

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS THAT:

Section 1. The City Council hereby authorizes entering into a Subdivision Improvement Agreement and Roadway Capital Recovery Offset Agreement generally as per the Attached Exhibit "A" and "B".

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resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.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 _____, 2024.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Sheila Edmondson, City Secretary

Exhibit "A"

Subdivision Improvement Agreement

After Recording, Please Return To:
City of Schertz
1400 Schertz Parkway
Schertz, Texas 78154
Attention: City Manager

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

**SUBDIVISION IMPROVEMENT AGREEMENT
SCHERTZ STATION SUBDIVISION - MULTIFAMILY**

This SUBDIVISION IMPROVEMENT AGREEMENT (the “Agreement”) is made by and between **CV SCHERTZ TX BTR, LP**, a Texas limited partnership (the “Developer”), and the **CITY OF SCHERTZ**, a Texas municipal corporation (the “City”), and is effective upon the execution of this Agreement by both parties (the “Effective Date”).

WHEREAS, Developer is the owner of approximately 33.822 acres located in the City of Schertz, Guadalupe County, Texas, more specifically described on Exhibit “A” (the “Property”); and

WHEREAS, Developer is constructing a single-family rental community on the Property (the “BTR Community”); and

WHEREAS, the BTR Community is part of a planned, 73-acre mixed-use project located at IH-35 and Cibolo Valley Drive (“Project”); and

WHEREAS, on October 25, 2023 the City of Schertz Planning and Zoning Commission approved a preliminary plat for the Project, including the Property, a copy of such preliminary plat being attached hereto as Exhibit “B”, and incorporated herein by reference; and

WHEREAS, the construction of certain public improvements are required in conjunction with the platting of the Property (the “Subdivision”), such as the construction of the Ripps Kreisler roadway; and

WHEREAS, certain utility and other public improvements necessary to provide services to the project are not yet complete and will be constructed at a future time, as set forth hereinafter, but which will be after the recording of the final plat for the Subdivision; and

WHEREAS, pursuant to Section 21.4.15 of the City’s Unified Development Code (“UDC”), the obligation to construct public improvements that serve a subdivision may be deferred if a subdivision improvement agreement is executed and if sufficient surety is provided to secure the obligation to construct the public improvements; and

WHEREAS, the Developer seeks to defer the construction of the public improvements associated with the Subdivision to after the recording of the final plat for the Subdivision in the

Guadalupe County Real Property Records (the “Final Plat Recordation”) pursuant to UDC Section 21.4.15(F).

NOW THEREFORE, in consideration of the agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and stipulated, the Developer and the City agree as follows.

AGREEMENT

1. Development of the Property. Developer hereby represents and warrants that, as of the Effective Date, it is the owner of the Property. Developer understand that this Agreement is for its sole benefit, and does not extend to other parties, unless provided for otherwise herein.

2. Scope of Improvements. The public improvements addressed and contemplated by this Agreement to be completed subsequent to Final Plat Recordation include improvements to be undertaken by the Developer which are more specifically described in Exhibit “C” (the “Improvements”). A draft of the Final Plat is attached as Exhibit “D”.

3. Construction of Improvements; Covenants. The Developer and the City covenant and agree to the following:

(a) The Developer is obligated by UDC Section 21.12.10 to construct, or cause to be constructed, all public improvements shown on Exhibit “C”, all of which are included in the application for final plat approval for the Subdivision titled Schertz Station Subdivision - Multifamily Plat.

(b) The Developer agrees that the Improvements shall be built and completed in accordance with City design standards within eighteen months (18 months) of the Final Plat Recordation.

(c) The cost of the Improvements is estimated to be four million eleven thousand two hundred and forty-seven dollars and zero cents (\$4,011,047.00) (the “Cost Estimate-Improvements”). The Developer and the City agree that the amount of the Cost Estimate-Improvements set forth herein is a commercially reasonable estimate of the cost of the Improvements.

(d) In lieu of the Developer’s obligation to construct, or cause to be constructed, the Improvements at or before the Final Plat Recordation, Developer shall provide to the City, prior to Final Plat Recordation, surety (the “Surety”) in an aggregate amount equal to 120% of the Cost Estimate-Improvements (the “Improvement Funds”) and which Surety shall provide that it automatically renews in the event that it has not been released at the time of its expiration. The Surety shall be similar in the form to the construction performance bond example included in Exhibit “E” but may vary provided the Surety is provided. As portions of the Improvements are constructed and accepted by the City, the Surety may be reduced by the, the cost of that particular portion.

(e) For the purpose of clarification, and in no way limiting Developer's obligations under UDC Section 21.4.15, the Parties agree that full completion of Improvements shall not be deemed to have occurred until the City accepts such Improvements in the manner prescribed in UDC Section 21.4.15. D.

(f) In the event Developer fails to fully complete construction of the Improvements as required per Section 3(b) herein, the City may declare this Agreement to be in default and at the City's sole discretion:

- (i) require that all Improvements as required per this Agreement be installed by Developer regardless of the extent of completion of the improvements on the Property at the time this Agreement is declared to be in default;
- (ii) unilaterally draw from the Improvement Funds sufficient amount to complete the Improvements itself or through a third party; or
- (iii) assign the Improvement Funds to any third party, including a subsequent owner of the Property, provided that such Improvements Funds shall only be assigned for the purpose of causing the construction of the Improvements by such third party and for no other purpose and in exchange for the subsequent owner's agreement and posting of security to complete the Improvements.

(g) Within 30 days of the City's acceptance of all Improvements, the City shall release the Surety to Developer and the Parties shall have no further obligation to each other under this Agreement.

4. Approval of Agreement. The City has approved the execution and delivery of this Agreement pursuant to UDC Section 21.4.15(F), and the Developer represents and warrants that it has taken all necessary action to authorize its execution and delivery of this Agreement.

5. 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.

6. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, representatives, successors, and assigns, and the terms hereof shall run with the Property. Any obligations, benefits, or requirements of this Agreement shall automatically be assigned to subsequent owners of the Property following conveyance.

7. 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.

8. 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 Developer

and the City. The Developer and the City each agrees that there are no oral agreements, understandings, representations or warranties which are not expressly set forth herein.

9. Notices. Any notice or communication required or permitted hereunder shall be deemed to be delivered 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 Developer:
CV SCHERTZ TX BTR, LP
c/o Embrey
7600 Broadway, Suite 300
San Antonio, Texas 78209
Attn: Jeremy Williams

With copy to:
Killen, Griffin & Farrimond
10101 Reunion Place, Suite 250
San Antonio, Texas 78216
Attention: Ashley Farrimond

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

With copy to:
Denton Navarro Rocha Bernal Hyde & Zech, P.C.
2517 N. Main Avenue
San Antonio, Texas 78212
Attention: T. Daniel Santee

10. 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.

11. 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.

12. 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.

13. 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 a consent by suit by any party.

[Signatures and acknowledgments on the following pages]

Signature Page to
Subdivision Improvement Agreement

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

Developer:

CV SCHERTZ TX BTR, LP,
a Texas limited partnership

By: CV Schertz BTR GP, LLC,
a Texas limited liability company,
its General Partner

By: _____
Name: Sara Hanback
Title: Vice President of Finance

THE STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledged before me on the ____ day of February, 2024 by Sarah Hanback, Vice President of Finance, CV Schertz BTR GP, LLC, General Partner, CV SCHERTZ TX BTR, LP.

(SEAL)

Notary Public in and for
The State of Texas

My Commission Expires: _____

Signature Page to
Subdivision Improvement Agreement

This Subdivision Improvement 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 February, 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"

Legal Description - The Property

A METES AND BOUNDS DESCRIPTION OF A 33.822 ACRE TRACT OF LAND

BEING a 33.822 acre (1,473,277 square feet) tract of land situated in the J.F. Walker Survey No. 113, Abstract No. 244, City of Schertz, Guadalupe County, Texas; and being portion of that certain 200.198 acre tract described in instrument to San Antonio One, Limited Partnership and San Antonio Three Limited Partnership in Volume 979, Page 475 of the Official Public Records of Guadalupe County; and being more particularly described as follows:

BEGINNING, at a brass TXDOT monument found at the intersection of the southeasterly right-of-way line of Interstate Highway No. 35 (variable width public right-of-way) and the northeasterly right-of-way line of Wiederstein Road (variable width public right-of-way), and marking the southwest corner of that certain 4.086 acre right-of-way dedication to the State of Texas in Document No. 202099013526 of the Official Public Records of Guadalupe County;

THENCE, North 43°13'55" East, 28.87 feet to a point, along the southeasterly right-of-way line of said Interstate Highway No. 35, same being the southeasterly line of said 4.086 right-of-way dedication;

THENCE, departing said Interstate Highway No. 35 and crossing a said 200.198 acre tract the following twelve (12) courses and distances:

1. in a southerly direction along a tangent curve to the left, having a radius of 25.00 feet, a chord of South 06°00'13" West, 30.25 feet, a central angle of 74°27'24", and an arc length of 32.49 feet to a point;
2. South 31°13'29" East, 561.58 feet to a point;
3. in a easterly direction along a tangent curve to the left, having a radius of 25.00 feet, a chord of South 76°13'29" East, 35.36 feet, a central angle of 90°00'00", and an arc length of 39.27 feet to a point;
4. North 58°46'31" East, 84.26 feet to a point;
5. in a northeasterly direction along a tangent curve to the right, having a radius of 821.00 feet, a chord of North 64°15'10" East, 156.73 feet, a central angle of 10°57'17", and an arc length of 156.97 feet to a point;
6. in a northerly direction along a reverse tangent curve to the left, having a radius of 15.00 feet, a chord North 19°14'42" East, 23.14 feet, a central angle of 100°58'13", and an arc length of 26.43 feet to a point;
7. South 81°29'31" East, 65.03 feet to a point;
8. in a easterly direction along a non-tangent curve to the left, having a radius of 15.00 feet, a chord South 67°42'38" East, 17.83 feet, a central angle of 72°56'26", and an arc length of 19.10 feet to a point;
9. in a easterly direction along a reverse tangent curve to the right, having a radius of 800.00 feet, a chord North 83°20'44" East, 209.57 feet, a central angle of 15°03'10", and an arc length of 210.17 feet to a point;
10. in a northeasterly direction along a reverse tangent curve to the left, having a radius of 720.00 feet, a chord North 60°51'48" East, 720.18 feet, a central angle of 60°01'01", and an arc length of 754.20 feet to a point;
11. in a northeasterly direction along a reverse tangent curve to the right, having a radius of 870.00 feet, a chord North 37°59'25" East, 216.14 feet, a central angle of 14°16'16", and an arc length of 216.70 feet to a point;
12. North 31°13'29" West, 24.55 feet to 1/2 inch iron rod (w/illegible cap) found marking the southwesterly corner of that certain 17.430 acre tract described in instrument to 1290 Entertainment, LLC in Volume 979, Page 475 of the Official Public Records of Guadalupe County;

THENCE, along the southeasterly boundary line of said 17.430 acre tract the following two (2) courses and distances:

1. North 58°46'09" East, 545.83 feet to a 1/2 inch iron rod (with plastic cap stamped "Stantec") found for corner;
2. North 58°48'24" East, 244.12 feet to a 1/2 inch iron rod (with plastic cap stamped "Spoooner and Associates") found on the southwesterly boundary of that certain 21.50 acre tract described in instrument to Bussey's LTD. in Volume 717, Page 727 of the Official Public Records of Guadalupe County;

THENCE, South 31°15'40" East, 245.30 feet along the southwesterly boundary of said 21.50 acre tract to a 1/2 inch iron rod (with plastic cap stamped "BPI") found on the northwesterly boundary of that certain 101.239 acre tract

described in instrument to Schertz-Cibolo-Universal City Independent School District in Volume 4216, Page 649 of the Official Public Records of Guadalupe County;

THENCE, along the boundary of said 101.239 acre tract, and crossing the said 200.198 acre tract, the following four (4) courses and distances:

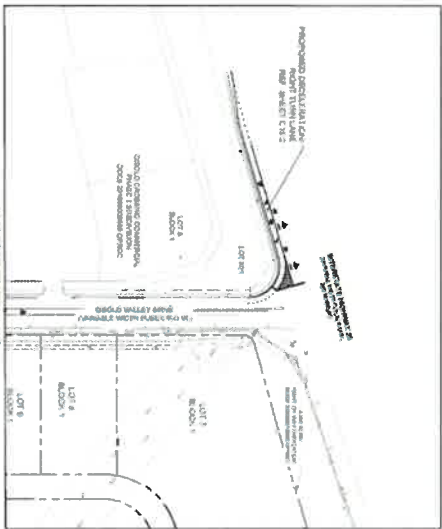
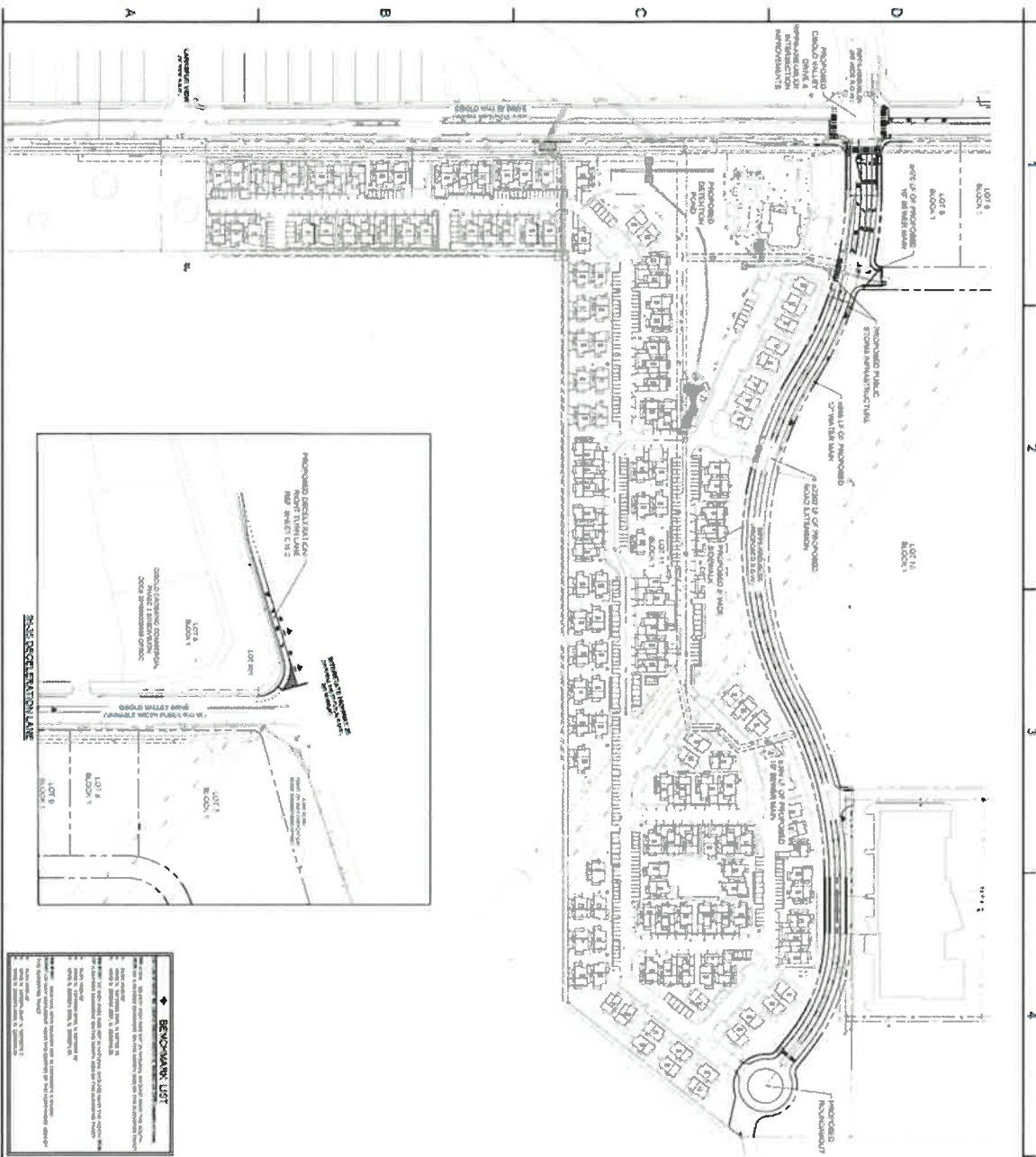
1. South 06°50'59" West, 496.09 feet to a 1/2 inch iron rod (with plastic cap stamped "BPI") found for corner;
2. South 58°45'23" West, 1694.02 feet to a 1/2 inch iron rod found for corner;
3. South 31°12'33" East, 816.94 feet to a 1/2 inch iron rod (with plastic cap stamped "BPI") found for corner;
4. South 58°45'35" West, 250.05 feet to a 1/2 inch iron rod (with plastic cap stamped "KHA") set on the northeasterly right-of-way line of aforesaid Wiederstein Road marking the south corner of the herein described tract;

THENCE, along the northeasterly right-of-way line of said Wiederstein Road the following three (3) courses and distances:

1. North 31°13'29" West, 1974.37 feet to a point;
2. North 35°00'36" West, 50.59 feet to a point;
3. North 32°28'19" West, 99.85 to the **POINT OF BEGINNING** and containing 33.822 acres of land in Guadalupe County, Texas. The basis of bearing for this description is the Texas State Plane Coordinate System Grid, South Central Zone (FIPS 4204) (NAD'83). All distances are on the Surface and shown in U.S. Survey Feet. Apply the combined Surface to Grid Scale Factor of 0.999870 to convert Surface distanced to Grid. This description was generated on 9/7/2023 at 5:38 PM, based on geometry in the drawing file K:\SNA_Survey\064362018-EMBREY CIBOLO VALLEY SCHERTZ\Dwg\Surveys\TRACT 3 - 33.822 EMBREY ALTA.dwg, in the office of Kimley-Horn and Associates in San Antonio, Texas.

John G. Mosier
Registered Professional Land Surveyor No. 6330
Kimley-Horn and Associates, Inc.
601 NW Loop 410, Suite 350
San Antonio, Texas 78216
Ph. 210-541-9166
greg.mosier@kimley-horn.com

EXHIBIT "C" Improvements



BENCHMARK LIST

1. ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF UNLESS OTHERWISE NOTED.

2. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.

3. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.

4. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.

5. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.

6. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.

7. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.

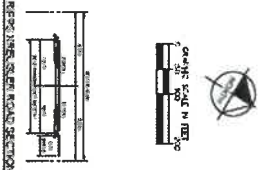
8. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.

9. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.

10. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.

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Roadway Improvements:

- Extension of Ripps Kreusler Road
- 8' wide sidewalk along Ripps Kreusler Road
- Intersection Plans at Cibolo Valley Drive and Ripps Kreusler Road (Traffic Signalization)
- Intersection Plans for Ripps Kreusler Road and marginal access drive

Stormwater:

- Storm Infrastructure within Ripps Kreusler Road with a stub to access drive

Water:

- Partial Relocation of existing 12" water line to follow new alignment of Ripps-Kreusler Road
- 12" water stub to access drive

Sewer:

- Sanitary sewer extension to the access drive right-of-way line.
- Relocation of existing sewer line

EXHIBIT "D"
Final Plat

expense which the Beneficiary may incur in making good any default or deficiency, then this obligation shall be void; otherwise, it shall remain in full force and effect and the Beneficiary may demand payment hereon, and the Surety shall make immediate payment hereon to the Beneficiary.

PROVIDED FURTHER, if any legal action be filed on this Bond, exclusive venue shall lie in Guadalupe County, Texas.

AND PROVIDED FURTHER, the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the work to be performed thereunder or the plans, specifications, and all other Contract documents related to the Project shall in any way affect its obligation on this Bond, and (except for written notice to the Surety of any increase in the Total Sum) it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract, or to the plans, specifications, or other Contract documents or to the work to be performed thereunder.

This Bond is given pursuant to the provisions of Chapter 2253 of the Texas Government Code, and any other applicable statutes of the State of Texas.

The undersigned and designated agent is hereby designated by the Surety herein as the Resident Agent in Guadalupe County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship, as provided by Article 7.19-1 of the Texas Insurance Code, as amended.

IN WITNESS WHEREOF, this instrument is executed in six copies, each one of which shall be deemed an original, this, the _____ day of _____, 20 ____.

PRINCIPAL: _____ [A] _____

By: _____

Name: _____

Title: _____

SURETY: _____ [C] _____

By: _____

Name: _____

Title: _____

The Resident Agent of the Surety in Guadalupe County or [M] _____ County, Texas, for delivery of all notices hereunder and service of process relating hereto is:

Name: _____

Physical Address: _____

City, State, Zip Code: _____

Mailing Address: _____

City, State, Zip Code: _____

Exhibit "B"

Roadway Capital Recovery Offset Agreement

THE STATE OF TEXAS §
 §
GUADALUPE COUNTY §

ROADWAY CAPITAL RECOVERY OFFSET AGREEMENT

This Roadway Capital Recovery Offset Agreement (this “AGREEMENT”) is made by and between the City of Schertz (hereinafter “CITY”), a Texas Home Rule municipality and CV SCHERTZ TX BTR, LP (hereinafter “DEVELOPER”), a Texas 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, 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 approximately 71-acre Schertz Station mixed use development located at the intersection of IH-35 and Cibolo Valley Drive in the City of Schertz municipal boundaries. The Project will include a mixture of

residential and commercial uses. The Schertz Station Subdivision Preliminary Plat (“Preliminary Plat”) was approved by the City’s Planning and Zoning Commission on October 25, 2023, and is attached hereto as **Exhibit A**.

- B. Roadway Improvements.** The Schertz Station Subdivision – Multifamily Plat (“Final Plat”) is a proposed final plat included within the Preliminary Plat boundaries. This Final Plat includes roadway improvements and dedications to be made by DEVELOPER, as further outlined in **Exhibit B**.

**Article II.
ROADWAY CAPITAL RECOVERY FEES**

- A. Roadway Capital Recovery Fees.** The Roadway Capital Recovery Fees for the project are currently assessed as \$1,000 per service unit for residential uses and \$175 for nonresidential use per service unit.

**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 the Infrastructure Costs do not exceed the amount required for infrastructure improvements that are roughly proportionate to the impact of the Project.

**Article IV.
ROADWAY CAPITAL RECOVERY FEE OFFSET CREDIT**

- A. Roadway Capital Recovery Fee Offset Credit Calculation.** As shown on **Exhibit C**, 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 for the Final Plat is estimated to be 625.02 vehicle miles.
 - ii. The Roadway Capital Recovery Fee Offset Credit that DEVELOPER is eligible to receive is 625.02 service units towards the Credit.
 - iii. The Roadway Capital Recovery Fee Offset Credits that the DEVELOPER shall receive may be used to offset the roadway impact fees due from within

the Project. The City shall accept Credits at time of issuance of building permit.

- iv. DEVELOPER shall receive the Roadway Capital Recovery Fee Offset Credit upon execution of this AGREEMENT. Provided, however, DEVELOPER shall complete the public improvements shown on Exhibit B, and the City shall accept the same for public maintenance in accordance with the terms of applicable provisions of the City's Code of Ordinances prior to issuance of a certificate of occupancy associated with the Final Plat.

**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 (10) years following execution of this AGREEMENT.

- i. The DEVELOPER must apply for reimbursement within six months following either:
 - a. Completion of the Project 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 Preliminary 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.

8. 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.

9. 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.

10. Execution of Agreement.

- a. City Council has authorized the City Manager to execute this AGREEMENT on behalf of the CITY, as evidenced by Resolution _____, dated _____, 2024.
- b. Sara Hanback is authorized to execute this AGREEMENT on DEVELOPER'S behalf.

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 the 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:

If to Developer:

CV SCHERTZ TX BTR, LP
c/o Embrey
7600 Broadway, Suite 300
San Antonio, Texas 78209
Attention: Jeremy Williams

With a copy to:

Killen, Griffin & Farrimond, PLLC
10101 Reunion Place, Suite 250
San Antonio, Texas 78216
Attention: Ashley Farrimond

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

18. Ordinance Applicability. The signatories hereto shall be subject to all ordinances of 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.

19. 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 as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

20. 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.

EXECUTED in duplicate originals to be effective as of the date of the last signature below (the “**Effective Date**”).

Signature Pages to Follow

This Roadway Capital Recovery Offset Agreement has been executed by the PARTIES as of the dates of the Acknowledgments to be effective as of the Effective Date.

DEVELOPER:

CV SCHERTZ TX BTR, LP,
a Texas limited partnership

By: CV Schertz BTR GP, LLC,
a Texas limited liability company,
its General Partner

By: _____
Name: Sara Hanback
Title: Vice President of Finance

THE STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledged before me on the ____ day of _____, 2024 by Sara Hanback, Vice President of Finance, CV Schertz BTR GP, LLC, General Partner, CV SCHERTZ TX BTR, LP.

(SEAL)

Notary Public in and for
The State of Texas

My Commission Expires: _____

City:

CITY OF SCHERTZ,
a Texas municipal corporation

By: _____

Name: Steve Williams, 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.

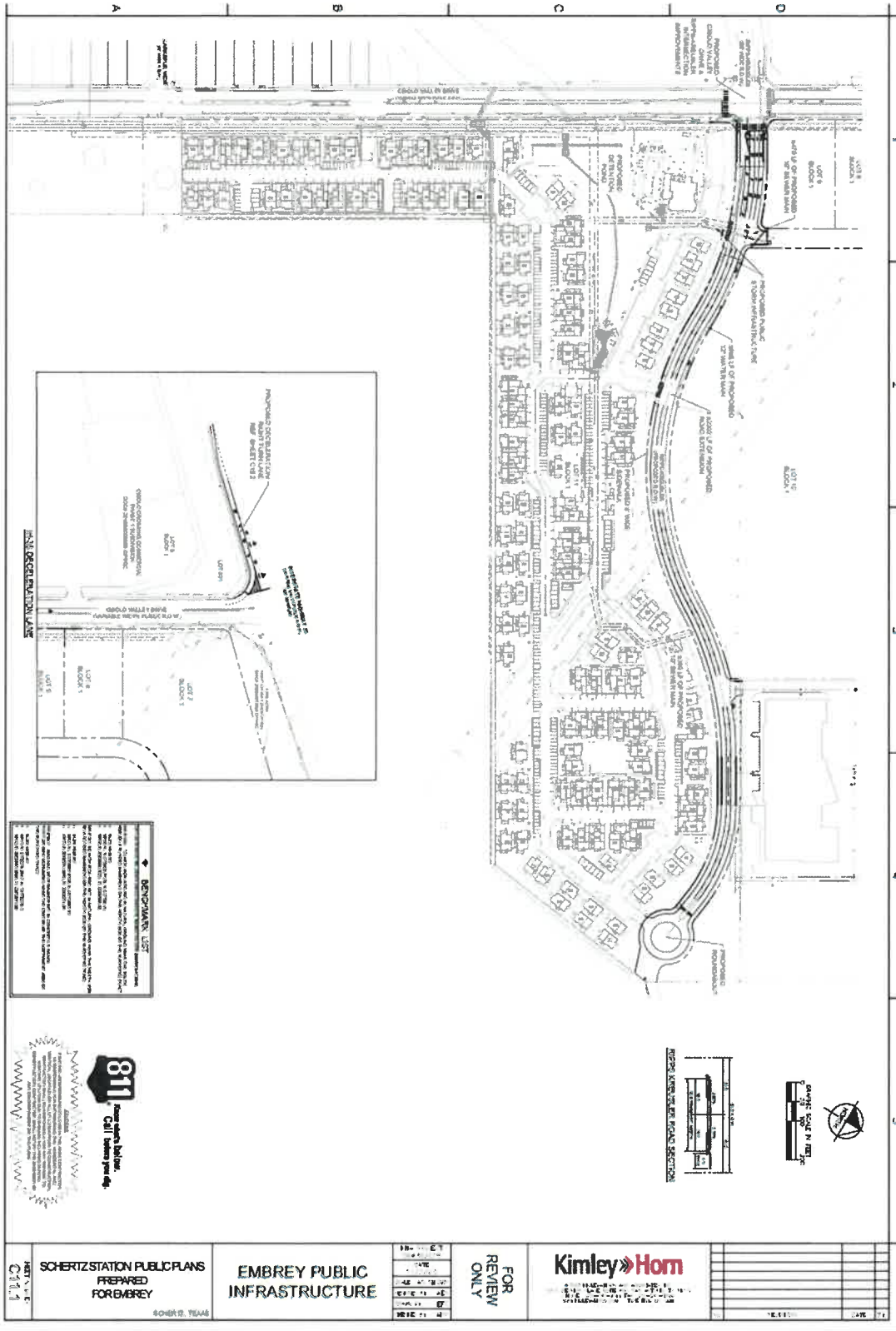
(SEAL)

Notary Public in and for
The State of Texas

My Commission Expires: _____

EXHIBIT "B"

Depiction of System Roadway Improvements



SCHERTZ STATION PUBLIC PLANS
 PREPARED FOR EMBREY

EMBREY PUBLIC INFRASTRUCTURE

FOR REVIEW ONLY



DATE	7/1
SCALE	AS SHOWN
DRAWN BY	...
CHECKED BY	...
DATE	...

Roadway Improvements:

- Extension of Ripps Kreusler Road
- 8' wide sidewalk along Ripps Kreusler Road
- Intersection Plans at Cibolo Valley Drive and Ripps Kreusler Road (Traffic Signalization)
- Intersection Plans for Ripps Kreusler Road and other driveway(s)
- IH-35 Deceleration Lane

EXHIBIT "C"

Roadway Capital Recovery Fees Calculation