

**RESOLUTION NO. 24-R-98**

**A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING A REIMBURSEMENT AGREEMENT FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS AND A SUBDIVISION IMPROVEMENT AGREEMENT WITH THE DEVELOPER OF THE ACKERMAN SUBDIVISION IN THE CITY OF SCHERTZ, TEXAS, AND RELATED MATTERS IN CONNECTION THEREWITH**

**WHEREAS**, the Developer desires to defer certain waterline improvements to allow time for the City to acquire offsite easements; 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.

**WHEREAS**, the Developer of the Ackerman Subdivision is constructing public improvements and the City desires for additional public improvements related to those improvements to be constructed at this time; and

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

**WHEREAS**, the City Council finds that it is in the best interest of the City to enter into the Subdivision Improvement Agreement and Reimbursement Agreement with the Developer of the Ackerman Property.

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

Section 1. The City Council hereby authorizes the City Manager to execute the agreement generally in the form attached subject to approval of minor changes approved by the City Attorney as shown on Exhibit "A".

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 3. All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws

of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

PASSED AND ADOPTED, this \_\_\_\_ day of \_\_\_\_\_, 2024.

CITY OF SCHERTZ, TEXAS

\_\_\_\_\_  
Ralph Gutierrez, Mayor

ATTEST:

\_\_\_\_\_  
Sheila Edmondson, City Secretary

## **Exhibit A**

After Recording, Please Return To:

City of Schertz  
1400 Schertz Parkway  
Schertz, Texas 78154  
Attention: City Manager

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

**REIMBURSEMENT AGREEMENT AND SUBDIVISION IMPROVEMENT AGREEMENT  
WITH DEVELOPER FOR CONSTRUCTION OF PUBLIC IMPROVEMENT**

This Development Agreement (the “Agreement”) is by and between the City of Schertz, a Texas municipal corporation (the “City”), and Mustang Oaks, LLC, a limited liability copmany, 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, the Owner is the owner of that certain real property located in the City of Schertz, Guadalupe County, Texas, more specifically described on Exhibit “A”, attached hereto and made a part hereof for all purposes (the “Property”); and

**WHEREAS**, the Property is the subject of the applications for Subdivision Plat establishing the Ackerman Subdivision Units I and II; and

**WHEREAS**, during the development planning stage for the Property, the Developer submitted to the City a request that the City participate in the completion of the Improvements, an offsite waterline, which will benefit portions of the City beyond the Ackerman Subdivision; and

**WHEREAS**, Developer has requested that it be allowed to construct all Improvements to serve the Property and share the costs with the City; and

**WHEREAS**, the City has agreed to acquire the necessary offsite easement; and

WHEREAS, the Developer wishes to be able to construct 40 single family residential homes prior to construction of the offsite waterline

**WHEREAS**, the City and Developer find it to be to their mutual advantage to enter into this Agreement for the construction of appropriate and necessary public facilities; and

**WHEREAS**, Section 212.071, et. seq. of the Texas Local Government Code authorizes municipalities to enter into a contract with a developer of a subdivision or land in the municipality to construct public improvements related to the development without complying with the competitive sealed bidding procedures of Chapter 252 of the Texas Local Government Code; and,

**WHEREAS**, Section 212.071, et. seq. of the Texas Local Government Code limits the

participation by the municipality at a level not to exceed 30 percent of the total contract price.

**NOW THEREFORE**, 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. “Improvements” shall mean the improvements described on Exhibit “A”
- 1.4. “City’s Participation Costs” shall mean costs associated with the construction of the Improvements, as designated on Exhibit “B” as City of Schertz responsibility.

**ARTICLE II – Construction of Improvements.**

- 2.1. Acquisition of Easements. The City agrees to acquire the necessary offsite easement/s as illustrated in Exhibit “A” attached hereto at the City’s sole expense and there shall be no participation by the Developer in the easement acquisition costs. Easements on the property shall be dedicated by the Developer at no cost to the City via approved recorded subdivision plat or through separate instrument approved by the City.
- 2.2. Construction of Improvements. Developer agrees to construct the Improvements in accordance with the plans and specifications approved by the City Engineer as illustrated in Exhibit “A” attached hereto. 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, except as herein provided.
- 2.3. Contracts for Construction. Developer shall utilize the competitive sealed bidding procedure as defined in Local Government Code Sec.252 Subchapter C to select a qualified Contractor to construct the Improvements in accordance with the approved plans and specifications. The contract may be awarded to either to the lowest responsible bidder or to the bidder who provides goods and services at the best value for the municipality. The City Engineer shall review all bid documents, contract documents, and costs estimates, and shall approve the Contractor prior to the award of the contract for the Improvements. 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.
- 2.4. Performance, Payment and Warranty Bonds. Developer shall post within the City faithful performance, payment, and warranty bonds for construction of the

Improvements to ensure completion of the project. The bond must be executed by a corporate surety in accordance with Chapter 2253, Texas Government Code. The Developer shall covenant to warrant the public improvements for a period of two (2) years following acceptance by the City of all Improvements. A warranty bond shall be provided in the amount of 20% of the costs of the Improvements for such period.

2.5. 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.

2.6. Insurance. The Contractor awarded the contract to construct the Improvements shall be required to carry Worker's Compensation Insurance on his employees and public liability and property damage insurance on his equipment and employees. The public liability insurance shall be not less than five hundred thousand dollars (\$500,000.00) per person and one million dollars (\$1,000,000.00) per occurrence, with property damage insurance of not less than five hundred thousand dollars (\$500,000.00). In addition, City shall be furnished with Certificates of Insurance and shall be named an additional named insured on such Certificates, and City shall be notified within thirty calendar days of any cancellation of such insurance.

2.7. Accounting. Developer shall submit to City a complete accounting of all costs incurred by Developer in the construction of the Improvements. City will not contribute or pay for any costs incurred by Developer which were not approved by City prior to it being incurred. Developer shall maintain the accounting of the Improvements for a period of two years from the date of acceptance by the City, and the City may inspect the Developer's books and records related to the Improvements at any time with reasonable notice.

2.8. **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.**

2.9. The City agrees to allow the filing of the plats for the Ackerman Subdivision Units I and II after construction of all of the necessary public improvements except the offsite section of waterline.

2.10. The City agrees to allow the issuance of building permits and certificates of occupancy for up to forty (40) single family residential homes prior to completion of the offsite section of waterline up construction and acceptance of all other public improvements and filing of the plats for the Ackerman Subdivision Units I and II.

### **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 illustrated 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 XXXXXX DOLLARS AND XXXX CENTS. (\$XXX,XXX0.XX) (hereinafter the "City's Share").

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

3.2.1 Submittal and review. Developer shall submit and the City Engineer shall review documentation, as may be reasonably required by City Engineer, showing final, actual construction costs paid by the Developer.

3.2.2 Upon the City Engineer's review and approval of the documents, a final inspection on the Improvements shall be conducted, noting any required corrections or repairs. Once corrections or repairs are made and deemed acceptable, the City will accept the Improvements.

3.2.3 Developer shall submit and the City Engineer shall review documentation dedicating all required utility easements. Utility easements shall be considered dedicated upon appropriate approval, execution, and recordation of any documents establishing the easements with the Bexar County Clerk's office. Developer shall be responsible for any associated recording fees.

3.2.4 Within 30 days of both the acceptance of the Improvements and the dedication of all necessary utility easements, the City will pay to Developer the City's Share of the offsite water line costs (\$XXX,XXX.XX) and offsite water line costs as shown on Exhibit "B". Any additional costs above XXXXXX DOLLARS AND XXX CENTS. (\$XXX,XXX.XX) must be approved by the City Council via resolution prior to being incurred.

#### **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.

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 Rocha Bernal & Zech, P.C.  
2417 N. Main Avenue  
San Antonio, TX 78212  
Attention: T. Daniel Santee

If to Developer: Mustang Oaks, LLC  
18602 Castellani  
San Antonio, TX 78258  
Attention: Austin Hagauer

With Copy to: Caroline McDonald  
Brown & McDonald  
100 NE Loop 410, Suite 1385  
San Antonio, Texas 78216

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:

**MUSTANG OAKS, LLC**

by:

\_\_\_\_\_  
Name:

Title:

THE STATE OF \_\_\_\_\_ §

§

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2024 by \_\_\_\_\_, 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 Community Facilities Agreement has been executed by the parties as of the dates of the Acknowledgments to be effective as of the Effective Date.

City:

**CITY OF SCHERTZ,**  
a Texas municipal corporation

By: \_\_\_\_\_  
Name: Steve Williams, its City Manager

THE STATE OF TEXAS           §  
  §  
COUNTY OF GUADALUPE       §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2024 by Steve Williams, City Manager of the City of Schertz, Texas, a Texas municipal corporation, on behalf of said City.

(SEAL)

\_\_\_\_\_  
Notary Public in and for  
The State of Texas

My Commission Expires: \_\_\_\_\_

**EXHIBIT A  
IMPROVEMENTS**

**EXHIBIT B**  
**CITY'S PARTICIPATION COSTS**