

RESOLUTION NO. 24-R-99

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING AN AGREEMENT WITH THE DEVELOPER OF THE DEN OTT HILL PROPERTY FOR THE REIMBURSEMENT OF COSTS ASSOCIATED WITH RIGHT-OF-WAY ACQUISITION AND ROAD CONSTRUCTION AND APPROVAL TO SUBSEQUENTLY ACQUIRE THE RIGHT-OF-WAY FROM THE SCHERTZ CIBOLO UNIVERSAL CITY INDEPENDENT SCHOOL DISTRICT.

WHEREAS, there is a lack of street access to serve an area of northern Schertz near the intersection of the south side of IH-35 and FM 2252; and

WHEREAS, the City of Schertz' approved Master Thoroughfare Plan provides for the future extension of Ripps-Kreusler Boulevard to intersect with the future extension of FM 2252 to not only provide for access to the properties in the immediate area, but also provide for needed circulation to the large area in the City of Schertz; and

WHEREAS, the Developer of the Den Ott Hill Property is proposing to construct the offsite section of Ripps-Kreusler Boulevard from where it is currently under construction to their property, across the property owned by SCUCISD; and

WHEREAS, SCUCISD has indicated a willingness to sell the needed right-of-way to the City of Schertz in order that it may be constructed; and

WHEREAS, the Developer of the Den Ott Hill Property has requested to pay for the cost of the right-of-way acquisition and construction if the City will acquire it from SCUCISD; and

WHEREAS, the City Council finds that it is in the best interest of the City to enter into the Agreement with Developer for acquisition of the right-of-way necessary for the construction of the extension of Ripps-Kreusler Boulevard and to authorize the acquisition of the right-of-way from SCUCISD in order to provide the infrastructure to serve other properties outside of the Den Ott Hill property and the larger community.

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 the agreement with Developer for acquisition of right-of-way needed for the construction of Ripps-Kreusler Boulevard, generally in the form attached as Exhibit "A", subject to changes approved by the City Manager and City Attorney and to enter into any necessary agreements to acquire the right-of-way from SCUCISD.

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 ____th day of September, 2024.

CITY OF SCHERTZ, TEXAS

Mayor, Ralph Gutierrez

ATTEST:

City Secretary, Sheila Edmondson

(CITY SEAL)

Exhibit "A"

Agreement with the Den Ott Hill Developer

construction of Public Improvement in order to provide the infrastructure to serve other properties outside the boundary of the proposed Den-Ott Subdivision plat:

NOW THEREFORE, in consideration of the agreements set forth herein and for other reciprocal good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and stipulated by the Parties, the Owner and the City agree as follows:

1. Ownership of the Property. The Owner hereby represents and warrants that, as of the Effective Date, it has not conveyed, assigned, or transferred all or any portion of its interest in the Property to any other person or entity (any such person or entity referred to herein as “Purchaser”), nor is it a party to any contract or other understanding to do so that is not subject to this Agreement.

2. Acquisition of Right-of-way; Covenants. The Owner and the City covenant and agree to the following:

- a) The Owner is obligated by Section 21.14.1 L of the City’s Unified Development Code all residential subdivisions shall have a minimum of two (2) locations accessing existing public streets.
- b) The Owner is proposing one point of access to an existing public street to be from Ripps-Kreusler Parkway.
- c) Construction of the roadway improvements requires acquisition of offsite right-of-way and the Owner is proposing to bear the cost of right-of-way acquisition. The Owner has sought the City’s assistance in acquiring the offsite right-of-way see Exhibit “B”. The Owner agrees to reimburse the City for all costs associated with acquiring the easements, including but not limited to the appraisal cost and acquisition price. The acquisition costs may include the costs of surveys. The Owner shall pay the City the amount of the total costs required to acquire the easements in advance of the City closing on the acquisition. The cost of the appraisal shall be paid upon execution of the agreement.
- d) The Owner shall bear the cost of SCUCISD acquiring an appraisal for the subject property.
- e) Prior to moving forward with the actual acquisition of the Property after the purchase price has been provided by SCUCISD, the Owner will provide written notice to the City to proceed with acquisition along with paying the City the cost to acquire the right-of-way from SCUCISD.
- f) Upon provision of notice to acquire the property as provide above, the Owner shall provide a surety in such form as acceptable to the City for construction of the section of Ripps-Kreusler Boulevard plus an additional 20% and construct the road within 2 years.

3. Approval of Agreement. The City has approved the execution and delivery of this Agreement pursuant to Section 21.4.15(C.)(2.) of the City's Unified Development Code, and the Owner represents and warrants that it has taken all necessary action to authorize its execution and delivery of this Agreement.

4. 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.

5. 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.

6. 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.

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

8. 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 Owner:

Marstan Equities, LLC
1519 East 27th Street
Brooklyn, New York 11229
Attention: XXXX

With copy to:

Killen, Griffin & Farrimond, PLLC
10101 Reunion Place, Suite 250
San Antonio, Texas
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

9. 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.

10. 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.

11. 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.

12. 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 consent by suit by any party.

[Signatures and acknowledgments on the following pages]

Signature Page to
Improvement Agreement

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

Owner:

MARSTAN EQUITIES, LLC

By: _____

Name: _____

Title: _____

Date: _____

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2024 by _____, the _____ of Marstan Equities, LLC.

(SEAL)

Notary Public in and for
The State of Texas

My Commission Expires: _____

Signature Page to
Improvement Agreement

This 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, 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 "A"

The Property

Legal Metes and Bounds
and
Master Plan

[See attached]

EXHIBIT "B"

The Right-of-Way

[See attached]