

RESOLUTION 25-R-134

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING A SUBDIVISION IMPROVEMENT AGREEMENT WITH EASTGROUP PROPERTIES, L.P. FOR BNSF SCHERTZ BUSINESS PARK.

WHEREAS, the landowner desires to defer certain sewer public improvements obligations for BNSF Schertz Business Park; 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, the City Council finds that it is in the best interest of the City to enter into the agreement with the landowner to defer the construction sewer improvements.

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 the Subdivision Improvement Agreement for BNSF Schertz Business Park Subdivision 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resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.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 APPROVED, this _____ day of _____, 2025.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Sheila Edmondson, City Secretary

Exhibit "A"
Subdivision Improvement Agreement for BNSF Schertz Business Park

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
EASTGROUP INDUSTRIAL PROJECT**

This SUBDIVISION IMPROVEMENT AGREEMENT (the “Agreement”) is made by and between EastGroup Properties, L.P., a Delaware limited partnership authorized to do business in Texas (hereinafter called “EastGroup” or “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 pursuing the acquisition of approximately 79.497 acres located on FM 3009 near Thousand Oaks in Comal County and recorded by the Comal County Appraisal District as Parcel IDs 147738, 147739, 147740, 147741, Texas, more specifically described on Exhibit “A” (the “Property”); and

WHEREAS, Developer is constructing an industrial development on the Property (the “Project”); and

WHEREAS, the Developer has submitted a Replat Certification for the Property, Replat Establishing BNSF Schertz Business Park on July 1, 2025, a copy of such Replat Certification being attached hereto as Exhibit “B”; and incorporated herein by reference; and

WHEREAS, the construction of certain public improvements (the “Sewer Improvements”) are required in conjunction with the replatting of the Property (the “Subdivision”), such as the construction of a sanitary sewer line as shown on the attached Exhibit “C”; and

WHEREAS, the Sewer 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 Sewer Improvements associated with the Subdivision to after the recording of the final replat for the Subdivision in the Comal County Real Property Records (the “Final Replat Recordation”) pursuant to UDC Section 21.4.15(F); and

WHEREAS, The City of Schertz Economic Development Corporation entered into an Economic Development Agreement with Boomerang Interests, LLC and L1Acquisitions, LLC on September 25, 2023 related to the construction of approximately 1.8 miles of sanitary sewer line (the “Eastern Sewer Section”) that the Sewer Improvements must tie into as depicted on Exhibit “D” attached hereto; and

WHEREAS, the Developer seeks the ability to utilize an onsite septic system until the Sewer Improvements and Eastern Sewer Section have been constructed and accepted by the City of Schertz.

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 pursuing the acquisition 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 Replat Recordation consist of the Sewer Improvements to be undertaken by the Developer which are more specifically described in Exhibit “C”.

3. Construction of Sewer 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, the Sewer Improvements shown on Exhibit “C”, prior to filing the Final Replat of the Property.

(b) The Developer agrees that it will commence construction of the Sewer Improvements within four (4) years after the date Developer breaks ground on its development of the Property, and complete such construction in accordance with City design standards within twenty-four (24) months thereafter, subject to Force Majeure Delay.

(c) The cost of the Sewer Improvements is estimated to be Six Million, Eight Hundred Fifty-Eight Thousand, Five Hundred Thirty-One Dollars and NO cents (\$6,858,531.00) (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 Sewer Improvements.

(d) In lieu of the Developer’s obligation to construct, or cause to be constructed, the Sewer Improvements at or before the Final RePlat Recordation, Developer shall provide to the City, prior to Final Plat Recordation, surety (the “Surety”) in the form of a letter of credit in an aggregate amount equal to 110% 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 letter of credit example included in Exhibit “D” 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 the Sewer Improvements shall not be deemed to have occurred until the City accepts such Sewer Improvements in the manner prescribed in UDC Section 21.4.15. D.

(f) In the event Developer fails to fully complete construction of the Sewer 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 completion of 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.
- (iv) If City proceeds under clauses (ii) or (iii) above, it, or its assigns, may only draw such amounts from the Improvement Funds as are needed to complete the Improvements, and City and any such assignee must account for, and refund to Developer, any part of the Improvement Funds drawn in excess of such amount.

(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.

(h)

4. Onsite Septic System. Until such time as the Sewer Improvements and the Eastern Sewer Section have been completed and accepted by the City and are operational, the City agrees that Developer may construct and operate an onsite sanitary septic system on the Property to serve the Project, and the City agrees not to withhold Replat approval, any Certificate of Occupancy or

any other approval for the Project based on Developer's use of an onsite sanitary septic system at the Project.

5. 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.

6. 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.

7. Force Majeure. Developer shall be excused for the period of any delay and shall not be deemed in default with respect to the performance of any of its obligations when prevented from so doing by a cause beyond Developer's reasonable control, including, but not limited to, labor disputes, fire or casualty, inability to obtain materials or services, inability to obtain necessary right of way, acts of God, governmental preemption in connection with a national emergency, pandemics, epidemics or the conditions of supply and demand which have been or are affected by war or other emergency (each, a "Force Majeure Delay")

8. 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.

9. 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.

10. 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.

11. 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, or one (1) business day after such notice is deposited with a nationally recognized overnight courier, and in each case 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:
EastGroup Properties, L.P.
Attention: Matt Troutt
6565 N. MacArthur Blvd, Suite 255
Irving, Texas 75039

With copy to:
Butler Snow LLP
Attention: Craig D. Smith
1020 Highland Colony Parkway, Suite 1400
Ridgeland, Mississippi 39157

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

12. 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.

13. 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.

14. 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.

15. 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:

EASTGROUP PROPERTIES, L.P., a Delaware
limited partnership

By EastGroup Properties General Partners, Inc.,
a Delaware corporation, its general partner

By: _____
Name:
Title:

By: _____
Name:
Title:

THE STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledged before me on the ____ day of _____, 2025, by _____ and _____, the _____ and _____, respectively, of EastGroup Properties General Partners, Inc., a Delaware corporation, the sole general partner of EASTGROUP PROPERTIES, L.P., a Delaware limited partnership, on behalf of said corporation and limited partnership.

(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 _____, 2026 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

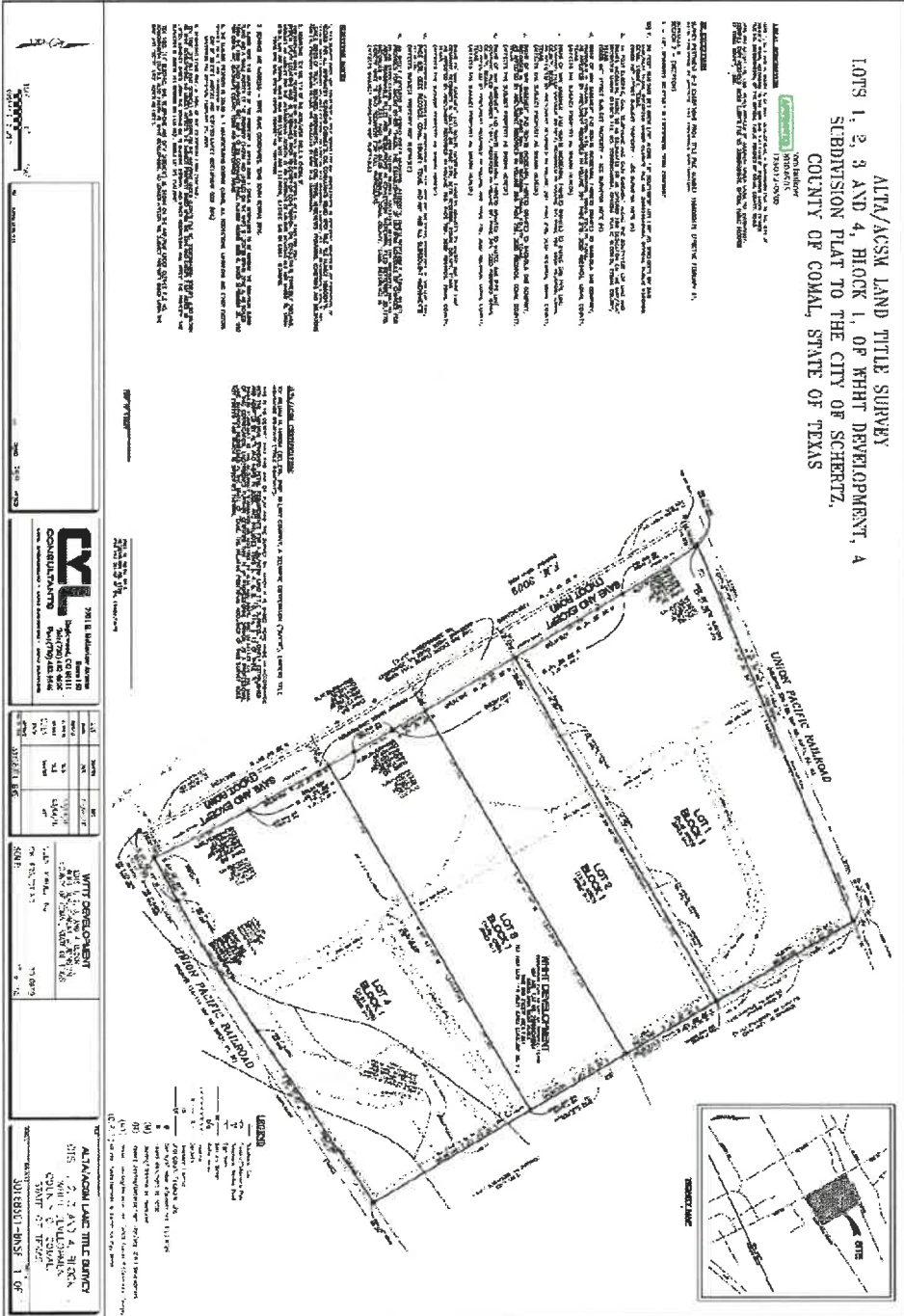


EXHIBIT "C"
Sewer Improvements

[insert cover page for approved Public Infrastructure plans]



(PROJECT COST ESTIMATE)

Item	Cost	LF	\$/LF
RC Page Bid	\$ 4,683,925	9,000	\$ 520.44
Civil	\$ 70,000		
ROW Surveying	\$ 60,000		
ROW Acquisition	\$ 720,000	9,000	\$ 4.00
ROW Acq. Agent	\$ 226,800		
Contingency	\$ 288,036		
Construction Management	\$ 302,438		
Construction Interest	\$ 507,332		
Total	\$ 6,858,531		

EXHIBIT "D"
Eastern Sewer Section

