

RESOLUTION 26-R-006

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS, AUTHORIZING A ROADWAY CAPITAL RECOVERY OFFSET AGREEMENT WITH THE DEVELOPER OF THE ACKERMANN SUBDIVISION AND OTHER MATTERS IN CONNECTION THEREWITH.

WHEREAS, the Developer of the Ackermann Subdivision constructed a new lane segment of Eckhardt Road along the subdivision; and

WHEREAS, Eckhardt Road is an undivided collector roadway on the City's adopted roadway impact fee capital improvements plan; and

WHEREAS, per Section 395.023 Credits Against Roadway Facilities Fees of the Texas Local Government Code stipulates that any construction of, contributions to, or dedications of off-site roadway facilities agreed to or required by a political subdivision as a condition of development approval shall be credited against roadway facilities impact fees otherwise due from the development; and

WHEREAS, Section 78-178 Offsets and Credits Against Capital Recovery Fees stipulates that the value of the offset shall be stated in service units; and

WHEREAS, the City Council finds it is in the best interest of the City to enter into the offset agreement with the Developer of the Ackermann Subdivision.

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

Section 1. The City Council hereby authorizes the City Manager to execute a Roadway Capital Recovery Offset Agreement, generally in the form attached in Exhibit "A" subject to minor changes approved by the City Manager and City Attorney.

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

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resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

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

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject

matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

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

PASSED AND APPROVED on the _____ day of _____, 2026.

CITY OF SCHERTZ, TEXAS

Ralph Rodriguez, Mayor

ATTEST:

Sheila Edmondson, TRMC
City Secretary

EXHIBIT A

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 Mustang Oaks, LLC (hereinafter “**DEVELOPER**”), a Texas limited liability company created under the laws of Texas, collectively, the “**PARTIES**”.

RECITALS

WHEREAS, pursuant to City of Schertz Code of Municipal Ordinances (“**Code of 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 Code of 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 (collectively the “**System Facilities**”) 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 Ackermann Subdivision comprising of approximately fifty-six (56) single-family lots or “**Project**”.

B. Location. The Project is located on 19.55 acres of land in the City of Schertz, Guadalupe County generally between Froboese Lane on the north, Eckhardt Road on the East, Green Valley Road on the South, and Schwab Road on the West, as more particularly described in Exhibit A.

Article II.
ROADWAY CAPITAL RECOVERY FEES

A. Roadway Capital Recovery Fees. The Roadway Capital Recovery Fee for the Project is currently assessed as \$1,614.54 per Service Unit (one vehicle mile of travel in the afternoon peak hour of traffic – can also be referred to as “Vehicle Mile”. *City of Schertz Unified Development Code* § 78-173.). This assessment is based on the calculations set out in Exhibit B, to this AGREEMENT.

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. Project’s 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 Units of capacity supplied by the System Facilities contributed by the DEVELOPER is 97.19 vehicle miles added capacity.
- ii. The Credit that DEVELOPER is eligible to receive is 29 lots.

iv. DEVELOPER shall receive the Credit for 29 lots upon completion of the public improvements shown on **Exhibit D**; and the CITY'S acceptance of same for public maintenance in accordance with the terms of applicable provisions of the Code of Ordinances.

B. Offset Application to Future Platted Developments. The offset may be used to reduce Capital Recovery Fees imposed on new developments contained within the land subject to the associated plat after the effective date of the AGREEMENT.

Article V. REIMBURSEMENT OF EXCESS OFFSETS

A. Reimbursement of Excess Offsets. In addition to the Roadway Capital Recovery Fee Offset Credits to be allotted to DEVELOPER pursuant to Article IV above, DEVELOPER may apply for reimbursement of excess Service Units that the DEVELOPER provides beyond the Project's expectation ("**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 contemplated in this Article V 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 the Capital Recovery Fee per Service Unit to be collected, as set forth herein in effect on the date of execution of this AGREEMENT (which is \$1,000), as set forth in the capital recovery plan, established in accordance with the Code of 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 less than 50 percent of the number of Service Units in the plat, with

which the System Facilities giving rise to the excess offset, have been developed on the date of application for excess offsets;

c. Repayment of Excess Offsets pursuant to this Article V, shall be made within five years from the date of execution of a reimbursement agreement that might be entered into 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 Units to a dollar value, the number of Service Units 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; and

f. All Excess Offset amounts payable to DEVELOPER in accordance with the terms of this Article V, shall be paid to DEVELOPER (via check) within thirty (30) days after DEVELOPER has submitted reasonable documentation to the City Manager at the CITY supporting its claim for payment for such Excess Offsets. In the event CITY determines that additional reasonable documentation is needed to support DEVELOPER's request, CITY must request such additional reasonable documentation within ten (10) days of receiving DEVELOPER's original submission. Such request for additional reasonable documentation by the City shall extend the thirty (30) day timeframe for payment set forth above day for day until such additional reasonable information is provided by DEVELOPER. Notwithstanding the foregoing however, in the event (a) CITY and DEVELOPER cannot agree as to the documentation reasonably required for CITY to process DEVELOPER's request for payment or (b) CITY refuses to pay DEVELOPER any or all of the Excess Offsets being sought, within sixty (60) days after the date of DEVELOPER's original submission, such actions shall be deemed to be a refusal by CITY to pay DEVELOPER the requested Excess Offset amounts being sought by DEVELOPER, and DEVELOPER may pursue any and all remedies available to it under this Agreement for CITY's failure to pay such amounts.

Article VI.
MISCELLANEOUS

The following miscellaneous provisions are made part of this AGREEMENT:

1. Additional Instruments. CITY and DEVELOPER agree and covenant to cooperate, negotiate in good faith, and to execute such other and further instruments and documents as may be reasonably required to fulfill the public purposes provided for and included within this AGREEMENT.

2. Amendments. This AGREEMENT constitutes the entire understanding and agreement of the PARTIES as to the matters set forth in this AGREEMENT. No alteration of or amendment to this AGREEMENT shall be effective unless given in writing and signed by the PARTY or PARTIES sought to be charged or bound by the alteration or amendment.

3. Applicable Law and Venue. This AGREEMENT shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the PARTIES created hereunder are performable in Guadalupe County, Texas. Venue for any action arising under this AGREEMENT shall lie in the state district courts of Guadalupe County, Texas.

4. Assignment. The DEVELOPER may assign this AGREEMENT with the CITY's consent (such consent not to be unreasonably conditioned, withheld or delayed), but in no event shall the offsets provided for in the AGREEMENT be transferred to any development not subject to the plat associated with such offsets.

5. Binding Obligation. This AGREEMENT shall become a binding obligation on the signatories upon execution by all signatories hereto. The CITY warrants and represents that the individual executing this AGREEMENT on behalf of the CITY has full authority to execute this AGREEMENT and bind the CITY to the same. DEVELOPER warrants and represents that the individual executing this AGREEMENT on its behalf has full authority to execute this AGREEMENT and bind it to the same.

6. Counterparts. This AGREEMENT may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

7. Construction. The PARTIES acknowledge that the PARTIES and their counsel have reviewed and revised the AGREEMENT and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the AGREEMENT.

8. Notice and Opportunity to Cure. If either PARTY defaults in its obligations under this AGREEMENT, the other PARTY must, prior to exercising a remedy available to that PARTY due to the default, give written notice to the defaulting PARTY, specifying the nature of the alleged default and the manner in which it can be satisfactorily cured, and extend to the defaulting PARTY at least thirty (30) calendar days from receipt of the notice to cure the default. If the nature of the default is such that it cannot reasonably be cured within the thirty (30) calendar day period, the commencement of the cure within the thirty (30) calendar day period and the diligent prosecution of the cure to completion will be deemed a cure within the cure period. Notwithstanding the foregoing, the occurrence of a Bankruptcy Event shall result in immediate default hereunder without opportunity to cure.

9. Enforcement. The City Attorney or his or her designee may enforce all legal rights and obligations under this AGREEMENT without further authorization. DEVELOPER shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining DEVELOPER'S compliance with this AGREEMENT. DEVELOPER may seek to enforce all legal rights and obligations under this AGREEMENT at law or in equity.

10. Entire Agreement. This AGREEMENT constitutes the entire agreement between the PARTIES with respect to the subject matter covered in this AGREEMENT. There is no other collateral oral or written agreement between the PARTIES that, in any manner, relates to the subject matter of this AGREEMENT, except as provided for in any Exhibits attached hereto or duly approved amendments to this AGREEMENT, as approved by the City Council of the City of Schertz, Texas.

11. Execution of AGREEMENT.

- i. City Council has authorized the City Manager to execute this AGREEMENT on behalf of the CITY, as evidenced by Resolution 26-R-006, dated _____.
- ii. Austin W. Hagauer is authorized to execute this AGREEMENT on DEVELOPER'S behalf, as evidenced by Company Resolution, dated _____, 2026 and attached hereto as **Exhibit E**.

12. Exhibits and Attachments. All Exhibits and Attachments referenced in this AGREEMENT are attached hereto and incorporated herein for all purposes.

13. 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.

14. 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.

15. 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.

16. Immunities and defenses.

i. 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.

ii. 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.

17. 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.

18. 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:

Mustang Oaks, LLC
Attention: Austin W. Hagauer
18602 Castellani
San Antonio, Texas 78258

With copy to:

Brown & McDonald, PLLC
Attention: Caroline McDonald
100 NE Loop 410, Suite 1385
San Antonio, Texas, 78216

If to the City:

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

With copy to:

Denton Navarro Rodriguez Bernal Santee & Zech, P.C.
Attention: T. Daniel Santee
2517 N. Main Avenue
San Antonio, Texas 78212

19. 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.

20. Severability. In the event any provision of this AGREEMENT is illegal, invalid, or unenforceable under the present or future laws, then, and in that event, it is the intention of the PARTIES hereto that the remainder of this AGREEMENT shall not be affected thereby, and it is also the intention of the PARTIES to this AGREEMENT that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be

added to this AGREEMENT which is legal, valid and enforceability and is a similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

21. Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the PARTIES, as well as any rights and benefits of the PARTIES, pertaining to a period of time following the termination of this AGREEMENT shall survive termination.

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

DRAFT

Signature Page to
Roadway Capital Recovery Offset Agreement

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:
MUSTANG OAKS, LLC, a Texas
limited liability company

By: _____
Name: Austin W. Hagauer, Manager
Date: _____

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2026 by Austin W. Hagauer, Manager of Mustang Oaks, LLC, a Texas limited liability company.

(SEAL)

Notary Public in and for
The State of Texas

My Commission Expires: _____

Signature Page to
Roadway Capital Recovery Offset Agreement

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.

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 _____, 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"

Plat

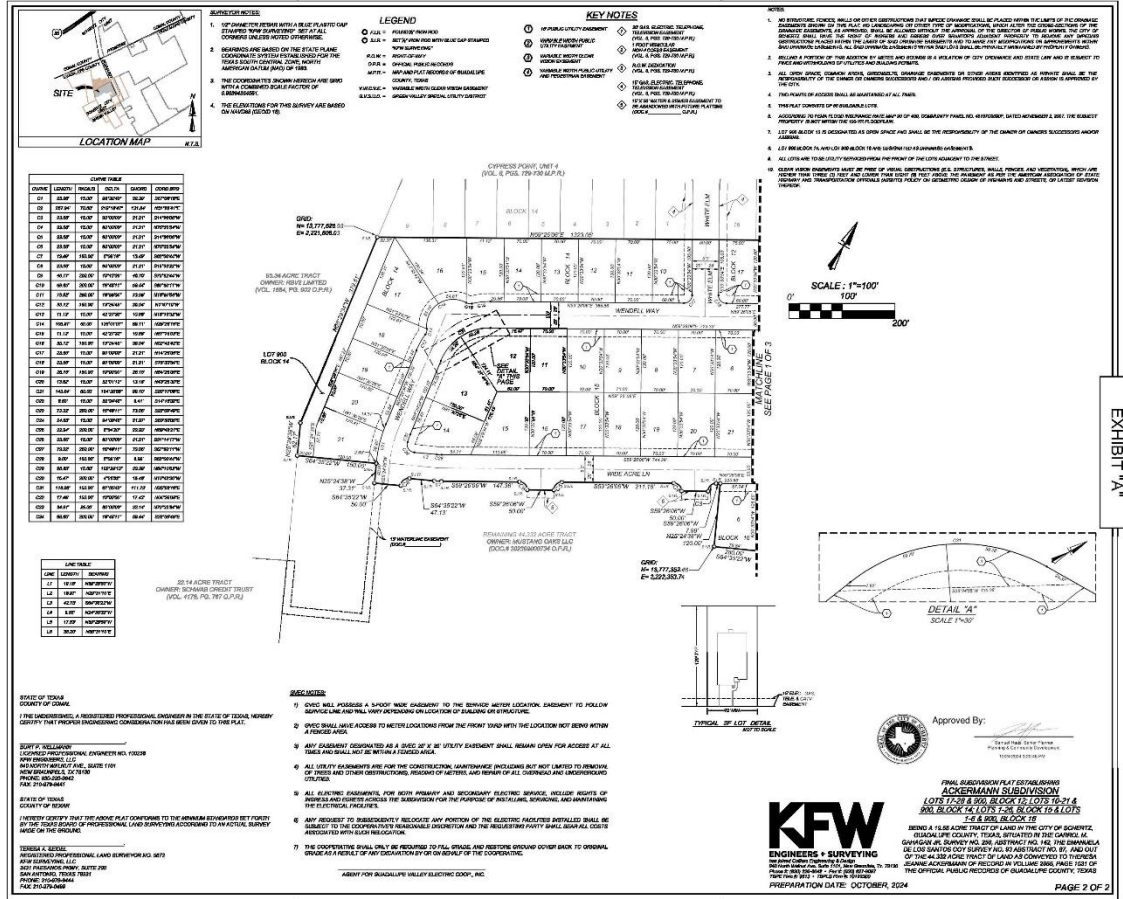


EXHIBIT "C"

Roadway Capital Recovery Fee Offset Credit Calculation

Ackermann Subdivision Roadway Impact Estimate

Service Area 1
SF Lots 56
CIP ID: 17A - Eckhardt Road

Projected Vehicle Miles

Single-Family detached housing = 3.37 Veh-Mi per Development Unit
Development Units = 56 SF Lots
Total Projected Vehicle Miles = (Development units x Veh-Mi per Development Unit)
= **188.72 Vehicle Miles of new demand**

Roadway Improvement - added capacity

Roadway	Type of Roadway	Veh-Mi capacity per lane mile	=	Veh-Mi Capacity per lane foot
Eckhardt Road	Undivided Collector	500	=	0.0947
Eckhardt Road Improvements		= 1026.4 LF (1 Lane)		
		= 1026.4 x 0.0947		
		= 97.19 Veh-Mi added Capacity		
Impact fee offset Credit due		=		28.84 Lots

EXHIBIT "D"
Proposed Public Improvement

DRAFT

EXHIBIT “E”
Developer Resolution

**RESOLUTION ADOPTED BY UNANIMOUS WRITTEN
CONSENT OF THE SOLE MANAGER OF
MUSTANG OAKS, LLC**

The undersigned being the sole manager of Mustang Oaks, LLC, a Texas limited liability company, does hereby consent to take the following actions, to adopt the following resolutions and to transact the following business of the company:

Resolved, that Austin W. Hagauer, President of Mustang Oaks, LLC, be and he is hereby authorized to execute and deliver to the City of Schertz the Roadway Capital Recovery Offset Agreement dated _____, 2026.

This consent is executed pursuant to the Texas Business Organizations Code which authorizes the taking of action by managers by unanimous written consent without a meeting.

Effective as of the _____ day of _____, 2026.

Austin W. Hagauer, Manager