

WHISPER PUBLIC IMPROVEMENT DISTRICT
FINANCING AGREEMENT

BETWEEN

WHISPER MASTER COMMUNITY LIMITED PARTNERSHIP, a Texas limited partnership

AND

YARRINGTON PARTNERS, LTD., a Texas limited partnership

AND

CITY OF SAN MARCOS, TEXAS

**WHISPER PUBLIC IMPROVEMENT DISTRICT
FINANCING AGREEMENT**

This Whisper Public Improvement District Financing Agreement (this “**Agreement**”), dated as of _____, 2017, (the “**Effective Date**”), is entered into between Whisper Master Community Limited Partnership, a Texas limited partnership (“**Whisper MC**”), and Yarrington Partners, Ltd., a Texas limited partnership (“**Yarrington Partners**”), (Whisper MC and Yarrington Partners, including their Designated Successors and Assigns, are collectively referred to herein as the “**Owners**”), and the City of San Marcos, Texas (the “**City**”), acting by and through its duly authorized representative.

Recitals:

WHEREAS, Whisper MC owns a total of approximately 590.663 acres of land located within the City which is more particularly described in Exhibit “B-1” attached hereto and made a part hereof (the “**Whisper MC Property**”).

WHEREAS, Yarrington Partners owns a total of approximately 115.686 acres of land located within the City which is more particularly described in Exhibit “B-2” attached hereto and made a part hereof (the “**Yarrington Property**”).

WHEREAS, the Whisper MC Property and the Yarrington Property are collectively referred to herein as the “**Property**,” and it is intended that the Property will be developed as a mixed use development (the “**Project**”);

WHEREAS, the terms of annexation and zoning of the Property have been agreed to by the City and the Owners pursuant to the Whisper Planned Development District agreement (the “**PDD**”) which was approved by the City on even date herewith;

WHEREAS, the City Council authorized the formation of the Whisper Public Improvement District (the “**District**”) on October 6, 2014, pursuant to a City Resolution in accordance with the PID Act (as defined in Exhibit “A”);

WHEREAS, pursuant to the terms of this Agreement, the City has agreed to allow financing of certain public improvements conferring special benefits to the Property via a public improvement district;

WHEREAS, the Owners propose to construct certain improvements over time to serve Property located in the District (or portions thereof) and transfer some or all of those improvements to the City or City in accordance with the terms and provisions of this Agreement;

WHEREAS, the City intends to (upon satisfaction of the conditions and in accordance with the terms set forth in this Agreement) adopt the Service and Assessment Plan (as defined herein), approve the Assessment Ordinance and levy Special Assessments on all or a portion of the property located within the District and issue bonds in one or more series for payment of costs associated with construction and/or acquisition of the Public Improvements (as defined

herein) included in the Service and Assessment Plan, as such plan may be amended from time to time; and

WHEREAS, the City has determined that it is in its best interests to contract with the Owners for the construction of the Public Improvements, which will result in the efficient and effective financing of the costs associated with the implementation of the Service and Assessment Plan.

NOW, THEREFORE, for and in consideration of the mutual agreements, covenants, and conditions contained herein, and other good and valuable consideration, the parties hereto agree as follows:

ARTICLE I. SCOPE OF AGREEMENT

This Agreement establishes provisions for the apportionment, levying, and collection of Special Assessments on the Property (Article II), the construction of Public Improvements to be acquired by the City (Article III), funding of Public Improvements through the issuance of PID Bonds (as hereinafter defined), acquisition and maintenance of Public Improvements within the District (Article IV), and the issuance of bonds for the financing of the Public Improvements (Article V). Definitions used herein are set forth in Exhibit "A", attached hereto and made a part hereof and in the Service and Assessment Plan.

ARTICLE II. APPORTIONMENT, LEVY AND COLLECTION OF ASSESSMENTS

Section 2.01. Preliminary Matters

(a) On October 6, 2014, the City authorized the formation of the District by Resolution No. 2014-143R. The District includes all of the Property.

(b) A draft of the initial Service and Assessment Plan for the Property is attached hereto as Exhibit "C." The Owners acknowledge and agree that the Service and Assessment Plan must meet the requirements of Texas law; including, Texas Local Government Code Sections 372.013 and 372.014 and be presented to the City Council for review and approval prior to approval of the Assessment Ordinance and PID Bonds being issued. The final Service and Assessment Plan approved pursuant to the Initial Assessment Ordinance shall be substantially similar to the draft attached hereto as Exhibit "C" and shall be substituted for and replace Exhibit "C", hereto. Thereafter, the Service and Assessment Plan will be updated and amended by the City or its Administrator at least once per year, and submitted for the City Council's review and approval. Notwithstanding the above, it is hereby understood and acknowledged by the Parties that the Service and Assessment Plan may need to be amended over time if there are any changes in the Public Improvements. Nevertheless, the basic terms and methodology described in the Service and Assessment Plan will generally apply to the PID Bonds.

(c) Special Assessments on any portion of the Property will bear a direct proportional relationship to, and be less than or equal to, the special benefit of the Public Improvements within the District.

(d) Special Assessments on any portion of the Property may be adjusted in connection with subsequent PID Bond issues or otherwise so long as the Special Assessments are determined in accordance with the Service and Assessment Plan.

(e) The Property may also be subject to an Owner's Association assessment if established by the Owners.

(f) Promptly following submission to the City of the initial or an updated Service and Assessment Plan (or any subsequent amendment or supplement to the Service and Assessment Plan) acceptable in form and substance to the City and to the Owners with respect to the matters therein that require approval by the Owners as provided in this Agreement, the City Council shall consider, if applicable, an Assessment Ordinance relating to the applicable plan or amendment or supplement. If an Assessment Ordinance is adopted, the City shall use reasonable, good faith efforts to expeditiously initiate and approve all necessary documents and orders required to effectuate the Service and Assessment Plan and Assessment Ordinance.

Section 2.02. Apportionment and Levy of Assessments

The City will levy Special Assessments on the Property in accordance herewith and with the Service and Assessment Plan (as such plan is amended from time to time) at such time as an Assessment Ordinance is approved by the City Council in accordance with Article IV hereof. The City's apportionment and levy of Special Assessments will be made in accordance with the PID Act.

Section 2.03. Collection of Assessments

(a) Subject to the terms and conditions of this Agreement, the City covenants and agrees that it shall, as authorized by the PID Act and other applicable law, continuously collect or cause to be collected Special Assessments levied pursuant to an Assessment Ordinance in accordance with the Service and Assessment Plan during the term of this Agreement in the manner and to the maximum extent permitted by applicable law. The City covenants and agrees that to the extent permitted by applicable law, it will not permit a reduction, abatement, or exemption in the Special Assessments due on any portion of the Property until any PID Bonds related to that particular portion of the Property are no longer outstanding, whether as a result of payment in full, defeasance, or otherwise. The City shall use best efforts to collect the Special Assessments consistent with the City's policies and standard practices applicable to the collection of City taxes and assessments.

(b) It is hereby acknowledged that Special Assessments can be used for the following purposes: (i) after completion of the applicable Public Improvements, but prior to the issuance of PID Bonds if a Bond Issuance Request is submitted in accordance with Section 5.01(a) below, if any, for those Public Improvements, Whisper MC shall be reimbursed for some or all of the Actual Costs associated with those Public Improvements as requested by Whisper PC in its sole discretion (including without limitation interest incurred by Owners and Administrative Expenses) incurred prior to issuance of the PID Bonds from Special Assessments collected by

the City and held by the City pursuant to an applicable Acquisition and Reimbursement Agreement; (ii) after any PID Bonds are issued with respect to any given completed Public Improvements, the Special Assessments will be used first to secure such PID Bonds and second, to the extent any such Special Assessments are remaining after payments are made on the PID Bonds, to reimburse Whisper MC for any Actual Costs not reimbursed by the PID Bonds; and (iii) after completion of the applicable Public Improvements, if Whisper does not submit a Bond Issuance Request and no PID Bonds are issued, Whisper MC shall be reimbursed for all of the Actual Costs associated with those Public Improvements only to the amount of the assessment levied. Any reimbursement obligation to Whisper MC under an Acquisition and Reimbursement Agreement or as provided above will be subordinate to payment of the applicable PID Bonds. Owners agree to reduce the amount of PID bonds to be issued by an amount equal to the reimbursements received by Whisper MC directly prior to issuance of the PID bonds, SAVE and EXCEPT for any interest incurred by Owners prior to PID Bond issuance. The Interest shall be calculated (x) at the maximum interest rate permitted by the PID Act prior to Bond Issuance or (y) the interest rate of the Bonds after Bond Issuance, calculated from the respective dates of the expenditures until the date of reimbursement therefore. Interest does not accrue until improvement accepted by the City.

(c) Notwithstanding anything to the contrary contained herein or in the Service and Assessment Plan, once PID Bonds have been issued, the Special Assessment Revenues collected annually from the Property will be deposited in the Pledged Revenue Fund and thereafter transferred in the priority as set forth in the applicable Indenture.

(d) Further, notwithstanding anything to the contrary contained herein, the City covenants and agrees to use best efforts to contract with the Hays County Tax Collector for the collection of the Special Assessments such that the Special Assessments will be included on the ad valorem tax bill(s) for the Property and will be collected as part of and in the same manner as ad valorem taxes.

Section 2.04. Approval and Recordation of Special Assessments through Landowner Agreement

Concurrently with the levy of the Special Assessments for any portion of the Property, the Owners shall execute (and shall cause any other owner of any of the Property that will be subject to the future special assessments to execute) a Landowner Agreement (herein so called) in which the Landowner shall approve and accept the apportionment of assessments in the Service and Assessment Plan and the levy of the Special Assessments by the City. The Landowner Agreement further shall (a) evidence the Owners' intent that the Special Assessments be covenants running with the land that (i) will bind any and all current and successor owners of the Property to the Special Assessments, including applicable interest thereon, as and when due and payable thereunder and (ii) provide that subsequent purchasers of such land take their title subject to and expressly assume the terms and provisions of the Special Assessments; and (b) provide that the liens created by the levy of the Special Assessments are a first and prior lien on the Property, subject only to liens for ad valorem taxes of the State, County, City, or school district.

Section 2.05. Reimbursement of Owner-Expended Costs

(a) Whisper MC's right, title and interest in and to the payments of unreimbursed Actual Costs, as described herein, shall be the sole and exclusive property of Whisper MC (or its Transferee) and no other third party shall have any claim or right to such funds unless Whisper MC transfers its rights to its unreimbursed Actual Costs to a Transferee in writing and otherwise in accordance with the requirements set forth herein. Subject to the terms of Section 8.03 hereof, Whisper MC has the right to convey, transfer, assign, mortgage, pledge, or otherwise encumber, in whole or in part, all or any portion of Whisper MC's right, title, or interest under this Agreement including, but not limited to, any right, title or interest of Whisper MC in and to payment of its unreimbursed Actual Costs (a "Transfer," and the person or entity to whom the transfer is made, a "Transferee"). Notwithstanding the foregoing, no Transfer shall be effective until written notice of the Transfer, including the name and address of the Transferee, is provided to the City. The City may rely conclusively on any written notice of a Transfer provided by Whisper MC without any obligation to investigate or confirm the Transfer.

Section 2.06. Obligations Secured by Pledged Revenues

THE PID BONDS ARE SPECIAL OBLIGATIONS OF THE CITY SECURED SOLELY BY PLEDGED REVENUES (AS DEFINED IN AN INDENTURE) AND ANY OTHER FUNDS HELD UNDER AN INDENTURE, AS AND TO THE EXTENT PROVIDED IN AN INDENTURE. THE PID BONDS DO NOT GIVE RISE TO A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWERS OF THE CITY AND ARE NOT SECURED EXCEPT AS PROVIDED IN AN INDENTURE. THE OWNERS OF ANY BONDS SHALL NEVER HAVE THE RIGHT TO DEMAND PAYMENT THEREOF OUT OF ANY FUNDS OF THE CITY OTHER THAN THE PLEDGED REVENUES AND ANY OTHER FUNDS HELD UNDER AN INDENTURE, AS AND TO THE EXTENT PROVIDED IN AN INDENTURE. THE CITY SHALL HAVE NO LEGAL OR MORAL OBLIGATION TO THE OWNERS OF ANY PID BONDS TO PAY ANY PID BONDS OUT OF ANY FUNDS OF THE CITY OTHER THAN THE PLEDGED REVENUES.

ARTICLE III. CONSTRUCTION AND ACQUISITION

Section 3.01. Acquisition of Public Improvements and Additional Public Improvements

(a) The Owners will dedicate the applicable Public Improvements identified in Exhibit "D" to the City upon completion of Public Improvements, and the City will accept dedication of such Public Improvements after confirming that the Public Improvements have been completed in accordance with this Agreement and the Regulatory Requirements. Some of Public Improvements may be dedicated to the City by grant of an easement for the benefit of the City.

Section 3.02. Designation of Construction Manager, Construction Engineers

(a) The City hereby designates Whisper MC, or its assignees, as the Construction

Manager with full responsibility for the design, the designation of easement locations, facilities site designations and acquisitions, supervision of construction, and the bidding and letting of construction contracts for the construction of the Public Improvements in accordance with the provisions of this Article III and in accordance with any requirements of the City and, as applicable, City approved plans.

(b) Except as otherwise provided herein, inspection of the construction of any Public Improvement being conveyed to the City will be by City Construction Representative or its designee. Any City inspection of a Public Improvement being conveyed to the City will be in accordance with any requirements of the City.

(c) Whisper MC shall be entitled to a separate Construction Management Fee for the construction of each Segment, unless Whisper MC contracts with a third party to act as the Construction Manager with respect to construction of the Public Improvements. The Construction Management Fee is part of Actual Costs and will be paid as part of the Actual Costs.

(d) The City shall cooperate with Whisper MC in connection with its services as Construction Manager.

(e) Whisper MC shall designate the consulting engineers for the Public Improvements for the compensation specified by Whisper MC.

Section 3.03. Designation of Construction Manager Subcontractor

The City acknowledges and agrees that Whisper MC may subcontract out all or some of the duties of Construction Manager to a third party. Whisper MC may designate an individual, company, or partnership or other entity as a subcontractor for construction management services for one or more Public Improvements or distinct Segments thereof provided that such designee has the technical capacity, experience and expertise to perform such construction management duties or obligations. Whisper MC may make such designation under the same terms as set out in Section 8.03(a) of this Agreement.

Section 3.04. Maintenance of Project, Warranties

Unless otherwise provided for, the Owners (or the Owner's Association, as applicable) shall maintain each Public Improvement (or Segment thereof) in good and safe condition until such Public Improvement (or Segment thereof) is accepted by the City. The City's acceptance of Public Improvements shall be in accordance with the City's standard rules and procedures for the type of improvements being constructed. Prior to such acceptance, the Owners shall be responsible for performing any required maintenance on such Public Improvement. On or before the acceptance by the City of a Public Improvement (or Segment thereof), the Owners shall assign to the City all of the Owners' rights in any warranties, guarantees, maintenance obligations, or other evidences of contingent obligations of third persons with respect to such Public Improvement (or Segment thereof).

Section 3.05. Sales and Use Tax Exemptions

(a) The parties agree that, as municipally and publicly owned and acquired properties, all costs of materials, other properties and services used in constructing the Public Improvements to be acquired by the City are currently exempt under the Texas Tax Code from sales and use taxes levied by the State of Texas, or by any County, City, special district, or other political subdivision of the State, as set forth in Texas Tax Code Section 151.309, which may change with future action by the Texas Legislature.

(b) The City will provide such certifications to the Owners and/or to suppliers and contractors as may be required to assure such exemptions.

(c) The City and the Owners shall cooperate in structuring the construction contracts for the Public Improvements to comply with requirements (including those set forth in Texas Tax Code Section 151.309) for exemption from sales and use taxes.

Section 3.06. Exemption from Public Bidding

(a) It is agreed that the PID Improvements are currently exempt from any public bidding or other purchasing and procurement policies pursuant to Texas Local Government Code Section 252.022(a)(9), which may change with future action by the Texas Legislature.

Section 3.07. Project Timetable

(a) Construction plans for the Public Improvements have been submitted to the City for review prior to the Effective Date.

(b) The Public Improvements shall be constructed within eighteen months of City approval of construction plans for the Public Improvements, subject to *force majeure*.

ARTICLE IV. PAYMENT FOR PUBLIC IMPROVEMENTS

Section 4.01. Overall Requirements

(a) The City shall not be obligated to provide funds for any Public Improvement except from the proceeds of the PID Bonds or from Special Assessments as provided in Section 2.03(b) above; provided, however the City and the Owners intend to enter into an Oversize Participation Agreement pursuant to a form reasonably acceptable to both the City and Owners under which the City will agree to fund the costs of any public improvements or oversizing of Public Improvements above and beyond the infrastructure needed to serve the Project. The City makes no warranty, either express or implied, that the proceeds of the PID Bonds available for the payment of the Actual Cost of the Public Improvements to be constructed for or acquired by the City will be sufficient for the construction or acquisition of all of those particular Public Improvements. The Parties acknowledge that the Actual Cost to construct the Public Improvements may be greater than the proceeds of the PID Bonds available for Public Improvements and any shortfalls will be funded by the Owners, subject to Section 2.03(b).

(b) Upon written acceptance of a Public Improvement, and subject to any applicable maintenance-bond period if a maintenance bond is required pursuant to applicable City regulations, the City shall be responsible for all operation and maintenance of such Public Improvements, including all costs thereof and relating thereto.

(c) The Public Improvements are intended to be constructed pursuant to one or more Acquisition and Reimbursement Agreements and paid for by the Owners prior to the issuance of PID Bonds intended to fund such Public Improvements. Such funding of the Public Improvements will be governed by the applicable Acquisition and Reimbursement Agreement and Section 4.02 of this Agreement.

Section 4.02. Payments for Completed Public Improvements

The costs of all Public Improvements will be initially financed through Acquisition and Reimbursement Agreements. Pursuant to the terms of an Acquisition and Reimbursement Agreement entered into concurrently with letting the construction contract for an applicable Public Improvement, the Owners shall convey, and the City shall acquire, the given Public Improvement for the Actual Cost, after such Public Improvement is completed and has been accepted by the City. The general process for funding of Public Improvements is as follows:

(a) The following provisions apply with respect to the Public Improvements:

(1) Concurrently with letting a construction contract for the Public Improvements, the City and Owners will execute an Acquisition and Reimbursement Agreement for the Public Improvements which will provide for Special Assessments that will reimburse Whisper MC for Actual Costs incurred in connection with the Public Improvements until the PID Bonds, if any, are issued in amount necessary to reimburse Whisper MC for the Actual Costs of the Public Improvements less any amounts already reimbursed to Whisper MC pursuant to the Acquisition and Reimbursement Agreement, as provided in Section 2.03(b).

(2) As soon as practical after the Effective Date and after the Appraisal required in Section 2.01(g) above, the City will approve the Initial Assessment Ordinance which will include the Service and Assessment Plan. The City will thereby levy (but not collect) the Special Assessment for the Public Improvements prior to construction of the Public Improvements.

(3) Whisper MC will construct or cause the construction of the Public Improvements, after approval of the Initial Assessment Ordinance.

(4) After the completion of all of the Public Improvements, the City will begin collecting the Special Assessments on the Property. Upon collection of such Special Assessments, the City will place such Special Assessments in a designated account separate from the City's other accounts. As set forth in Section 2.03(b), the funds within the account will be used to reimburse Whisper MC for the Actual Costs of the Public Improvements pursuant to the terms of the Acquisition and Reimbursement Agreement.

(5) Subject to Force Majeure and any delays in obtaining City approvals and/or permits, within 100 days of City acceptance of the Public Improvements and prior to issuance of the PID Bonds, Whisper MC agrees to obtain site development and building permits for, and commence construction of, at least a 50,000 square foot speculative commercial building that meets the following minimum standards:

a. The building shall have a minimum of 35% glazing on all primary street facing facades and 20% on all secondary street facing facades.

b. A maximum of one row of parking (defined to include two sides of parking) shall be permitted between the street and the front of the building.

c. Decorative awnings shall be provided over pedestrian entrances.

d. All street facing facades shall be a minimum of 50% decorative masonry.

e. A landscape area of 15% shall be required and shall follow Section 6.1.1.4 of the City's Land Development Code.

f. No freestanding pole signs shall be permitted.

g. All utilities shall be underground (there shall be no overhead utilities).

(6) Upon completion of the Public Improvements contemplated by the Acquisition and Reimbursement Agreement and the City's receipt of a Bond Issuance Request from Whisper MC, the City will issue the PID Bonds, subject to meeting the requirements and conditions stated herein and State law, to reimburse Whisper MC for Actual Cost of the Public Improvements less any amounts already reimbursed to Whisper MC pursuant to the Acquisition and Reimbursement Agreement. The City may commence the documentation and preparation for sale of the PID Bonds based on written notice by Whisper MC of the anticipated completion date of the Public Improvements within 120 days and the City's receipt of a Bond Issuance Request from Whisper MC. If Whisper MC does not make a Bond Issuance Request, the City shall, nevertheless collect Special Assessments and reimburse Whisper MC for Actual Costs of the Public Improvements pursuant to an applicable Acquisition and Reimbursement Agreement.

(b) To receive funds from the proceeds of the PID Bonds, if any, to pay the Actual Cost of a given Public Improvement, the Owners shall deliver to the City (i) documentation evidencing the Actual Cost, (ii) documentation evidencing the acceptance of the Public Improvement by the City or Owners' execution of an easement granting the City and the public the right of access to and use of such Public Improvement (as set forth in the PDD), and (iii) an assignment of the warranties and guaranties, if applicable, for such Public Improvement, in form reasonably acceptable to the City. Nothing herein shall prohibit Whisper MC from being reimbursed for design costs associated with a Public Improvement.

(c) At the time of the closing of any PID Bonds, Whisper MC shall, concurrently with the initial draw from the proceeds of the PID Bonds submit to the City a Closing Disbursement Request to the City and the Trustee to be reimbursed for (i) the Unpaid Balance under the applicable Acquisition and Reimbursement Agreement and (ii) any other qualified and permitted costs approved by the City (collectively, the “**Owner Expended Funds**”). The total amount of Owner Expended Funds approved by the City pursuant to this Section shall be referred to herein as the “**Reimbursement Payment.**” Prior to disbursement of proceeds of the PID Bonds, the City will sign the Closing Disbursement Request and deliver said Closing Disbursement Request to the Trustee. At the closing of the PID Bonds, Whisper MC shall be reimbursed an amount equal to the Reimbursement Payment and such amount shall be transferred to the Trustee for distribution to Whisper MC or Whisper MC’s designee.

ARTICLE V. PID BONDS

Section 5.01. Issuance of PID Bonds

(a) Subject to the terms and conditions set forth in this Article V, the City intends to pay for the Public Improvements, by either (i) reimbursing Whisper MC out of Special Assessments collected for Actual Costs of the Public Improvements pursuant to an applicable Acquisition and Reimbursement Agreement, and/ or (ii) by issuing PID Bonds in one or more series. The City will use diligent, reasonable and good faith efforts, subject to meeting the requirements and conditions stated herein and State law, to issue PID Bonds within four (4) to six (6) months after receiving a Bond Issuance Request from Whisper MC and the completion of the applicable Public Improvements contemplated to be paid for by the PID Bonds to be issued, provided that Whisper MC can reasonably demonstrate to the City and its financial advisors that there is sufficient security for the PID Bonds, based upon the bond market conditions existing at the time of such proposed sale. The planning and documentation of a PID Bond issuance shall begin upon delivery of a Bond Issuance Request. Prior to PID Bond issuance, the Owners shall provide an Appraisal to the City for the City’s review and approval covering the portions of the Property that will be subject to the Special Assessments securing the PID Bonds. The City shall select the appraiser, in consultation with the Owners and the Underwriter, and all reasonable fees of the Appraisal shall be paid by the Owners and shall be included in the Actual Costs.

(b) The aggregate principal amount of PID Bonds required to be issued hereunder shall not exceed an amount sufficient to fund: (i) the Actual Costs of the Public Improvements, (ii) required reserves and capitalized interest of not more than 12 months after the completion of construction of the applicable Public Improvements funded by the PID Bond issue in question (iii) Bond Issuance Costs. Provided, however that to the extent the law(s) which limit the period of capitalized interest to 12 months after completion of construction change, the foregoing limitation may be adjusted to reflect the law(s) in effect at the time of future PID Bond issuances.

(c) The final maturity for each series of PID Bonds shall occur no later than 30 years from the issuance date of said PID Bonds.

(d) It is the current intent of the Owners to request one PID Bond issuance, with such

bond issue permitted to include more than one series of PID Bonds as allocated to separate components of the Project, to provide the agreed upon reimbursements. However, the Owners retain the right to request the agreed upon reimbursements through additional PID Bond issues subject to the condition that the maximum Actual Cost of Public Improvements to be reimbursed shall not exceed \$10,399,030.00, and the maximum amount of total indebtedness shall not exceed \$14,125,000.00.

(e) Subject to the annual permitted increases allowed in Section 5.01(g) below, the initial PID Annual Installment equivalent tax rate shall not exceed (i) \$0.17 for any single-family detached residential Parcels, and (ii) \$0.22 with respect to any other individual Parcel. In the event that an initial PID Annual Installment equivalent tax rate on any individual Parcel is determined upon subdivision of such Parcel to exceed \$0.22 (subject to the annual permitted increases allowed in Section 5.01(g) below), then the owner of such Parcel shall make a mandatory partial prepayment of the special assessment in an amount sufficient to bring the equivalent tax rate for such Parcel to \$0.22 before any subsequent Special Assessments for such Parcel are levied and collected. Special Assessments on any given portion of the Property may be adjusted in connection with subsequent PID Bond issues, as long as the maximum annual PID Annual Installment equivalent tax rate, as described in the foregoing sentence, is not exceeded, and the Special Assessments are determined in accordance with the Service and Assessment Plan. Special Assessments on any portion of the Property shall bear a direct proportionate relationship to the special benefit of the Public Improvements to that portion of the Property.

(f) The minimum value to lien ratio at the issuance date of each series of PID Bonds shall be (i) 3 to 1 on an overall basis considering all Parcels, and (ii) 2.5 to 1 with respect to any individual Parcel.

(g) The maximum annual permitted increase in PID Annual Installments shall be 2%.

(h) In addition to any other requirements of this Agreement, including but not limited to City Council approval, PID Bonds are not required to be issued under this Article V unless (i) the statutory requirements set forth in Chapter 372 of the Texas Local Government Code have been satisfied; (ii) the City receives at the time of issuance of such PID Bonds an opinion of counsel selected by the City stating in effect that the PID Bonds are legal and valid obligations under Texas law and that all preconditions to their issuance under State law have been satisfied; and (iii) the Attorney General of the State of Texas has issued an opinion approving issuance of the bonds as required by the PID Act and the PID bonds have been registered by the Texas Comptroller.

(i) The City will deliver a certificate relating to any PID Bonds authorized by the City Council (such certificate being referred to herein as the “**Tax Certificate**”) containing covenants and agreements designed to satisfy the requirements of the Tax Code related to the issuance of debt whose interest is exempt from Federal Income Taxation and the income tax regulations issued thereunder relating to the use of the proceeds of the PID Bonds or of any monies, securities or other obligations on deposit to the credit of any of the funds and accounts created by the Indenture or this Agreement or otherwise that may be deemed to be proceeds of the Bonds within the meaning of the Tax Code (collectively, “**Bond Proceeds**”).

- (j) The foregoing requirements apply to each series of PID Bonds, if any.

Section 5.02. Project Fund

The City hereby covenants and agrees that if PID Bonds are issued, the Indenture will establish a Project Fund as a separate fund to be held by the Trustee under the Indenture. The portion of the proceeds of the PID Bonds issued to pay Actual Costs of Public Improvements and Bond Issuance Costs shall be deposited upon issuance into separate accounts within the Project Fund.

Section 5.03. Denomination, Maturity, Interest, and Security for Bonds

(a) Each series of PID Bonds is subject to authorization by the City Council. If authorized, the PID Bonds shall be issued in the denominations, shall mature and be prepaid, shall bear interest, and shall be secured by and payable solely from the PID Bond Security, all to be as described and provided in the PID Bond Ordinance or Indenture, as applicable.

(b) The final and adopted versions of the PID Bond Ordinance and the Indenture (and all documents incorporated or approved therein) shall contain provisions relating to the withdrawal, application, and uses of the proceeds of the PID Bonds when and as issued and delivered and otherwise contain such terms and provisions as are mutually approved by the City and Whisper MC.

Section 5.04. Sale of PID Bonds

The PID Bonds, if issued by the City, may be marketed and sold through a negotiated or privately placed sale to an approved third party or parties with the cooperation and assistance of Whisper MC in all respects with respect to the preparation of marketing documents, such as preliminary and final official statements or in such other marketing and/or sales method mutually agreed upon by the City and Whisper MC.

Section 5.05. Named Public Improvements

The Public Improvements to be constructed and funded in connection with the PID Bonds are more particularly described on Exhibit "D" attached hereto.

Section 5.06. Intentionally Deleted

Section 5.07. Assessments from Two or More Series of PID Bonds

If the total Special Assessments levied on a particular Parcel within the Project consist of Special Assessments stemming from two or more different series of PID Bonds and an owner of an Assessed Property pays only a portion of the Annual Installment due for such Special Assessments, then such payment will be allocated pro-rata based on the portions of the Annual Installment for each series of PID bonds outstanding. For example, assume that a parcel has

Special Assessments totaling \$20,000, \$12,000 of which is for one series of PID Bonds and \$8,000 of which is for another series of PID Bonds. Further assume that the Annual Installment for such Parcel is \$1,000 which consists of a \$550 annual installment from one series of PID Bonds and a \$450 annual installment from another series of PID Bonds and an owner of an Assessed Property pays \$600, then the \$600 will be allocated as follows:

\$360 (60% of \$600) will go towards the Special Assessment for the first series of PID Bonds; and

\$240 (40% of \$600) will go towards the Special Assessment for the second series of PID Bonds

Total: \$600

Section 5.08. Acquisition and Reimbursement Agreements

The costs of all Public Improvements will be initially financed through Acquisition and Reimbursement Agreements. As provided in Section 4.02 above, concurrently with letting the construction contract of any Public Improvements, Owners and the City will enter into an Acquisition and Reimbursement Agreement, which will provide for Special Assessments that will reimburse Whisper MC for Actual Costs incurred in connection with the Public Improvements until PID Bonds, if any, are issued in amount necessary to reimburse Whisper MC for the Actual Costs of the Public Improvements less any amounts already reimbursed to Whisper MC pursuant to the Acquisition and Reimbursement Agreement.

Section 5.09. Dissolution Upon Non-Issuance

Whisper MC or its Designated Successor and Assign shall petition the City to dissolve the District if the Public Improvements have not been completed within five (5) years from the date that the City approves the Initial Assessment Ordinance.

ARTICLE VI. REPRESENTATIONS, WARRANTIES, AND INDEMNIFICATION

Section 6.01. Representations and Warranties of City

The City makes the following covenant, representation and warranty for the benefit of the Owners:

The City is a political subdivision of the State of Texas, duly incorporated, organized and existing under the Constitution and general laws of the State, and has full legal right, power and authority under the PID Act and other applicable law (i) to enter into, execute and deliver this Agreement, (ii) to adopt the Assessment Ordinance, and (iii) to carry out and consummate the transactions contemplated by this Agreement.

Section 6.02. Covenants, Representation, and Warranties of Owners

The Owners make the following representations, warranties and covenants for the benefit of the City:

(a) The Owners represent and warrant that Whisper MC is a limited partnership duly organized and validly existing under the laws of the State of Texas and Yarrington Partners is a limited partnership duly organized and validly existing under the laws of the State of Texas. The Owners further represent and warrant that the Owners are in compliance with the laws of the State of Texas, and have the power and authority to own their properties and assets and to carry on their business as now being conducted and as now contemplated.

(b) The Owners represent and warrant that the Owners have the power and authority to enter into this Agreement, and have taken all action necessary to cause this Agreement to be executed and delivered, and this Agreement has been duly and validly executed and delivered on behalf of the Owners.

(c) The Owners represent and warrant that this Agreement is valid and enforceable obligation of the Owners and is enforceable against the Owners in accordance with its terms, subject to bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditors' rights in general and by general equity principles.

(d) The Owners covenant that once Whisper MC commences construction of a Segment it will use its reasonable and diligent efforts to do all things which may be lawfully required of it in order to cause such Segment of the Public Improvements to be completed in accordance with this Agreement.

(e) The Owners represent and warrant that (i) they will not request payment from the City for the acquisition of any public improvements that are not part of the Project, and (ii) they will diligently follow all procedures set forth in this Agreement with respect to Payment Requests.

(f) For a period of three (3) years after the final Acceptance Date of each applicable Public Improvement, the Owners covenant to maintain proper books of record and account for the Public Improvements and all costs related thereto. The Owners covenant that such accounting books will be maintained in accordance with sound accounting practices, and will be available for inspection by the City or its agent at any reasonable time during regular business hours upon at least 24 hours' notice.

(g) The Owners agree to provide the information required pursuant to the Owners Continuing Disclosure Agreement executed by the Owners in connection with the PID Bonds.

(h) The Owners covenant to provide, or cause to be provided, such facts and estimates as the City reasonably considers necessary to enable it to execute and deliver a Tax Certificate. The Owners further covenant that (i) such facts and estimates will be based on its reasonable expectations on the date of issuance of the PID Bonds and will be, to the best of the knowledge of the officers of the Owners providing such facts and estimates, true, correct and complete as of that date, and (ii) the Owners will make reasonable inquiries to ensure such truth,

correctness and completeness. The Owners covenant that it will not make, or (to the extent that it exercises control or direction) permit to be made, any use or investment of the Bond Proceeds that would cause any of the covenants or agreements of the City contained in the Tax Certificate to be violated or that would otherwise have an adverse effect on the tax-exempt status of the interest payable on the PID Bonds for federal income tax purposes.

Section 6.03. Indemnification and Hold Harmless by Owners

THE OWNERS WILL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, AND ITS OFFICIALS, EMPLOYEES, OFFICERS, REPRESENTATIVES, AND AGENTS (IN THIS SECTION, THE "CITY") AGAINST AND FROM, AND WILL PAY TO THE CITY, THE AMOUNT COLLECTIVELY OF, ALL ACTIONS, DAMAGES, CLAIMS, LOSSES, OR EXPENSE OF ANY TYPE, WHETHER OR NOT INVOLVING A THIRD-PARTY CLAIM (COLLECTIVELY, "DAMAGES"), ARISING DIRECTLY OR INDIRECTLY, FROM (i) THE BREACH OF ANY PROVISION OF THIS AGREEMENT BY THE OWNERS; (ii) THE NEGLIGENT DESIGN, ENGINEERING, OR CONSTRUCTION BY THE OWNERS OF ANY PUBLIC IMPROVEMENT ACQUIRED BY THE CITY; OR (iii) THE OWNERS' NONPAYMENT UNDER CONTRACTS WITH THE OWNERS FOR ANY PUBLIC IMPROVEMENT UNDER THIS AGREEMENT. THE OWNERS WILL DEFEND THE CITY AGAINST ALL SUCH CLAIMS AND THE CITY WILL REASONABLY COOPERATE AND ASSIST IN PROVIDING SUCH DEFENSE. THIS SECTION SURVIVES THE TERMINATION OF THIS AGREEMENT INDEFINITELY, SUBJECT TO APPROPRIATE STATUTES OF LIMITATIONS, AS THEY MAY BE TOLLED OR EXTENDED BY AGREEMENT OR OPERATION OF LAW.

ARTICLE VII. DEFAULT AND REMEDIES

(a) A Party shall be deemed in default under this Agreement (which shall be deemed a breach hereunder) if such Party fails to materially perform, observe or comply with any of its covenants, agreements or obligations hereunder or breaches or violates any of its representations contained in this Agreement.

(b) Before any failure of any Party to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the Party claiming such failure shall notify, in writing, the Party alleged to have failed to perform of the alleged failure and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining Party within thirty (30) days of the receipt of such notice (or five (5) days in the case of a monetary default), subject, however, in the case of non-monetary default, to the terms and provisions of subparagraph (c). Upon a breach of this Agreement, the non-defaulting Party in any court of competent jurisdiction, by an action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements herein contained (and/or an action for mandamus as and if appropriate). Except as otherwise set forth herein, no action taken by a Party pursuant to the provisions of this Article VII or pursuant to the provisions of any other Section of this Agreement shall be deemed to constitute an election of remedies and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any

Party at law or in equity. Each of the Parties shall have the affirmative obligation to mitigate its damages in the event of a default by the other Party. Notwithstanding any provision contained herein to the contrary, the Owners shall not be required to construct any portion of the Public Improvements (or take any other action related to or in furtherance of same) while the City is in default under this Agreement).

(c) Notwithstanding any provision in this Agreement to the contrary, if the performance of any covenant or obligation to be performed hereunder by any Party is delayed as a result of circumstances which are beyond the reasonable control of such Party (which circumstances may include, without limitation, pending litigation, acts of God, war, acts of civil disobedience, widespread pestilence, fire or other casualty, shortage of materials, adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or tornadoes, labor action, strikes, changes in the law affecting the obligations of the Parties hereunder, or similar acts), the time for such performance shall be extended by the amount of time of the delay directly caused by and relating to such uncontrolled circumstances. The Party claiming delay of performance as a result of any of the foregoing "force majeure" events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming Party becomes aware of the same, and if the claiming Party fails to so notify the other Party of the occurrence of a "force majeure" event causing such delay, the claiming Party shall not be entitled to avail itself of the provisions for the extension of performance contained in this Article; however in no event shall a change in law which prohibits a party from fulfilling its obligations hereunder be considered a breach of this Agreement or defaults hereunder.

ARTICLE VIII. GENERAL PROVISIONS

Section 8.01. Notices

Any notice, communication, or disbursement required to be given or made hereunder shall be in writing and shall be given or made by facsimile, hand delivery, overnight courier, or by United States mail, certified or registered mail, return receipt requested, postage prepaid, at the addresses set forth below or at such other addresses as any be specified in writing by any Party hereto to the other parties hereto. Each notice which shall be mailed or delivered in the manner described above shall be deemed sufficiently given, served, sent, and received for all purpose at such time as it is received by the addressee (with return receipt, the delivery receipt or the affidavit of messenger being deemed conclusive evidence of such receipt) at the following addresses:

If to City: City of San Marcos
Attn: City Manager
630 East Hopkins
San Marcos, TX 78666
Facsimile: 512-396-2683

If to Owners: Whisper Master Community and Yarrington Partners, Ltd.
Limited Partnership
9811 South IH 35
Building 3, Suite 100
Austin, Texas 78744

With a copy to: McLean & Howard, L.L.P.
Attn: Jeffrey S. Howard
Barton Oaks Plaza, Building II
901 South MoPac Expressway, Suite 225
Austin, Texas 78746
Facsimile: 512-328-2409

Section 8.02. Fee Arrangement/Administration of District

(a) The Owners agree that they will pay all of the City's costs and expenses (including the City's third party advisors and consultants) related to the creation and administration of the District, as well as costs and expenses relating to the development and review of the Service and Assessment Plan and this Agreement (including legal fees and financial advisory fees) ("City PID Costs"). Prior to closing of the PID Bonds, the City shall (i) submit to the Owners and the Trustee invoices and other supporting documentation evidencing the City PID Costs and (ii) direct the Trustee to pay these fees, as applicable, to the City or on behalf of the City from proceeds of the PID Bonds. In addition to any City PID Costs pursuant to the preceding sentences, all fees of legal counsel related to the issuance of the PID Bonds, including fees for the review of the District creation and District administration documentation, the preparation of customary bond documents and the obtaining of Attorney General approval for the PID Bonds, will be paid at closing from proceeds of the PID Bonds. Further, the Owners agree that it will be responsible for paying the Administrative Expenses.

(b) The City may enter into a separate agreement with an Administrator to administer the District upon adoption of the Service and Assessment Plan. The Administrative Expenses shall be collected as part of and in the same manner as Annual Installments in the amounts set forth in the Service and Assessment Plan.

Section 8.03. Assignment

(a) Owners may, in their sole and absolute discretion, transfer or assign its rights or obligations under this Agreement with respect to all or part of the Project from time to time to an Affiliate without the consent of the City. Prior to the completion of the Public Improvements, however, Owners shall not transfer or assign its rights or obligations under this Agreement with

respect to all or part of the Project to a non-affiliated entity without the prior consent of the City. After the completion of the Public Improvements, the Owners may transfer or assign their rights or obligations under this Agreement to any party without the City's consent. Owners shall provide the City thirty (30) days prior written notice of any such assignment. Upon such assignment or partial assignment, Owners shall be fully released from any and all future obligations under this Agreement and shall have no liability for such obligations with respect to this Agreement for the part of the Project so assigned.

(b) The City hereby acknowledges and agrees that Owners shall have the right to make a collateral assignment of any reimbursements and/or proceeds under this Agreement to any lender on the Project and the City shall execute any documentation reasonably requested by such lender evidencing such fact.

(c) Any sale of a portion of the Property or assignment of any right hereunder shall not be deemed a sale or assignment to a Designated Successor or Assign unless the conveyance or transfer instrument effecting such sale or assignment expressly states that the sale or assignment is to a Designated Successor or Assign.

(d) Any sale of a portion of the Property or assignment of any right hereunder shall not be deemed a Transfer unless the conveyance or transfer instrument effecting such sale or assignment expressly states that the sale or assignment is deemed to be a Transfer.

Section 8.04. Construction of Certain Terms

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction shall apply:

(a) Words importing a gender include either gender.

(b) Words importing the singular include the plural and vice versa.

(c) A reference to a document includes an amendment, supplement, or addition to, or replacement, substitution, or novation of, that document but, if applicable, only if such amendment, supplement, addition, replacement, substitution, or novation is permitted by and in accordance with that applicable document.

(d) Any term defined herein by reference to another instrument or document shall continue to have the meaning ascribed thereto whether or not such other instrument or document remains in effect.

(e) A reference to any Party includes, with respect to Owners, its Designated Successors and Assigns, and reference to any Party in a particular capacity excludes such Party in any other capacity or individually.

(f) All references in this Agreement to designated "Articles," "Sections," and other subdivisions are to the designated Articles, Sections, and other subdivisions of this Agreement.

All references in this Agreement to “Exhibits” are to the designated Exhibits to this Agreement.

(g) The words “herein,” “hereof,” “hereto,” “hereby,” “hereunder,” and other words of similar import refer to this Agreement as a whole and not to the specific Section or provision where such word appears.

(h) The words “including” and “includes,” and words of similar import, are deemed to be followed by the phrase “without limitation.”

(i) Unless the context otherwise requires, a reference to the “Property,” the “Public Improvements,” or the “District” is deemed to be followed by the phrase “or a portion thereof.”

(j) Every “request,” “order,” “demand,” “direction,” “application,” “appointment,” “notice,” “statement,” “certificate,” “consent,” “approval,” “waiver,” “identification,” or similar action under this Agreement by any Party shall, unless the form of such instrument is specifically provided, be in writing duly signed by a duly authorized representative of such Party.

(k) The Parties hereto acknowledge that each such party and their respective counsel have participated in the drafting and revision of this Agreement. Accordingly, the Parties agree that any rule of construction that disfavors the drafting party shall not apply in the interpretation of this Agreement.

Section 8.05. Table of Contents; Titles and Headings

The titles of the articles and the headings of the sections of this Agreement are solely for convenience of reference, are not a part of this Agreement, and shall not be deemed to affect the meaning, construction, or effect of any of its provisions.

Section 8.06. Amendments

This Agreement may be amended, modified, revised or changed by written instrument executed by the Parties and approved by the City Council.

Section 8.07. Time

In computing the number of days for purposes of this Agreement, all days will be counted, including Saturdays, Sundays, and legal holidays; however, if the final day of any time period falls on a Saturday, Sunday, or legal holiday, then the final day will be deemed to be the next day that is not a Saturday, Sunday, or legal holiday.

Section 8.08. Counterparts

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument.

Section 8.09. Entire Agreement

This Agreement contains the entire agreement of the Parties.

Section 8.10. Severability; Waiver

If any provision of this Agreement is illegal, invalid, or unenforceable, under present or future laws, it is the intention of the parties that the remainder of this Agreement not be affected and, in lieu of each illegal, invalid, or unenforceable provision, a provision be added to this Agreement which is legal, valid, and enforceable and is as similar in terms to the illegal, invalid, or enforceable provision as is possible.

Any failure by a Party to insist upon strict performance by the other party of any material provision of this Agreement will not be deemed a waiver or of any other provision, and such Party may at any time thereafter insist upon strict performance of any and all of the provisions of this Agreement.

Section 8.11. Owners as Independent Contractors

In performing under this Agreement, it is mutually understood that the Owners are acting as independent contractors, and not an agent of the City.

Section 8.12. Supplemental Agreements

Other agreements and details concerning the obligations of the Parties under and with respect to this Agreement are/or will be included in the Service and Assessment Plan, the Assessment Ordinance, PID Bond Ordinance and/or Indenture. The Owners will provide any continuing disclosures required under the Indenture and will execute a separate agreement outlining Owners' continuing disclosure obligations, if required.

Section 8.13. City's Acceptance of Public Improvements

The City hereby agrees that it will not unreasonably withhold the final acceptance of any of the Public Improvements and will work with the Owners in good faith to expedite review and acceptance of such Public Improvements.

Section 8.14. Exhibits

The following exhibits are attached to and incorporated into this Agreement for all purposes:

- Exhibit A - Definitions
- Exhibit B - Property
- Exhibit B-1 - Whisper MC Property
- Exhibit B-2 - Yarrington Property
- Exhibit C - Draft of Service and Assessment Plan
- Exhibit D - Public Improvements
- Exhibit E - Form of Certification for Payment

- Exhibit F - Closing Disbursement Request
- Exhibit G - Form of Acquisition and Reimbursement Agreement

[Signature Pages to Follow]

City of San Marcos, Texas

By: _____

Name: _____

Title: _____

[Signatures Continue on Next Page]

WHISPER MASTER COMMUNITY LIMITED PARTNERSHIP, a Texas limited partnership

By: Whisper M.C., LLC, a Texas limited liability company, Its General Partner

By: _____

Name: _____

Title: _____

YARRINGTON PARTNERS, LTD., a Texas limited partnership

By: Texas Realty/Retail Partners, Inc., a Texas corporation, Its General Partner

By: _____

Name: _____

Title: _____

By: 501 W. 15th, Inc., a Texas corporation, Its General Partner

By: _____

Name: _____

Title: _____

Exhibit "A"

DEFINITIONS

Unless the context requires otherwise, and in addition to the terms defined above, each of the following terms and phrases used in this Agreement has the meaning ascribed thereto below:

"Acceptance Date" means, with respect to a Segment, the date that the Actual Cost thereof is paid to the Owners pursuant to the terms hereof

"Acquisition and Reimbursement Agreement" means (whether one or more) an agreement that provides for construction and dedication of a Public Improvement (or Segment) to the City or City prior to the Owners being paid out of the applicable Additional Improvement PID Bond proceeds, whereby all or a portion of the Actual Costs will be paid to Owners initially from Special Assessment Revenues (and ultimately from Additional Improvement PID Bonds) to reimburse the Owners for actual costs paid by the Owners that are eligible to be paid with PID Bond proceeds. The form of Acquisition and Reimbursement Agreement shall be reasonably acceptable to both City or City (as applicable) and Owners and substantially in accordance with the form attached hereto as Exhibit "G".

"Actual Cost(s)" means, with respect to the Public Improvements, the Landowners' demonstrated, reasonable, allocable, and allowable costs of constructing such Public Improvement in an amount not to exceed the amount for each Public Improvements as set forth in the Service and Assessment Plan. Actual Costs may include (a) the costs incurred by or on behalf of the Landowners (either directly or through affiliates) for the design, planning, financing, administration/management, acquisition, installation, construction and/or implementation of such Public Improvements, (b) the fees paid for obtaining permits, licenses or other governmental approvals for such Public Improvements, (c) Construction Management Fee, (d) the costs incurred by or on behalf of the Landowners for external professional costs, such as engineering, geotechnical, surveying, land planning, architectural landscapers, research studies, appraisals, legal, accounting and similar professional services, (e) all labor, bonds and materials, including equipment and fixtures, by contractors, builders and materialmen in connection with the acquisition, construction or implementation of the Public Improvements, (f) all related permitting and public approval expenses, architectural, engineering, and consulting fees, financing charges relating to the PID, governmental fees and charges, insurance premiums, and all payments for Administrative Expenses after the date of a resolution authorizing such reimbursement, plus Interest, if any, at the lower of (x) the maximum interest rate permitted by the PID Act or (y) the interest rate of the Bonds calculated from the respective dates of the expenditures until the date of reimbursement therefore.

"Administrator" has the meaning given in the Service and Assessment Plan.

"Administrative Expenses" means the administrative, organization, maintenance and operation costs and expenses associated with, or incident to, the administration, organization, maintenance and operation of the PID, including, but not limited to, the costs of (i) legal counsel, engineers, accountants, financial advisors, investment bankers or other consultants and advisors,

(ii) creating and organizing the PID and preparing the assessment roll, (iii) computing, levying, collecting and transmitting the Special Assessments or the Annual Installments thereof, (iv) maintaining the record of installments, payments and reallocations and/or cancellations of the Special Assessments, (v) paying and redeeming the PID Bonds, (vi) investing or depositing the Special Assessments or other monies, (vii) complying with the PID Act with respect to the PID Bonds, (viii) paying the paying agent/registrar's and trustee's fees and expenses (including the fees and expenses of its legal counsel) related to the PID Bonds, and (ix) administering the construction of the Public Improvements.

"Affiliate" means an entity which is controlled by, controls, or is under common control with Owners.

"Agreement" has the meaning given in the recitals to this Agreement.

"Annual Installment" shall have the meaning given in the Service and Assessment Plan.

"Annual Service Plan Update" has the meaning set forth in Section V of the Service and Assessment Plan.

"Appraisal" means each appraisal of the Property (or applicable component thereof, as required by Section 2.01 (h) hereof

"Assessed Property" or **"Assessed Properties"** means property on which Special Assessments have been levied as shown on the Assessment Roll (as the same may be updated each year by the Annual Service Plan Update) and which includes any and all Parcels within the PID other than Non-Benefited Property.

"Assessment Ordinance" means each ordinance adopted by the City Council approving the Service and Assessment Plan (or amendments or supplements to the Service and Assessment Plan) and levying the Special Assessments.

"Assessment Roll" means the Assessment Roll included in the Service and Assessment Plan as Appendix A, which may be updated, modified or amended from time to time in accordance with the procedures set forth herein and in the PID Act, including updates prepared in connection with the issuance of PID Bonds or in connection with any Annual Service Plan Update.

"Attorney General" means the Texas Attorney General's Office.

"Bond Counsel" means McCall Parkhurst & Horton or their successor.

"Bond Improvement Account" means an account established pursuant to an Indenture and into which the Trustee will deposit Bond Proceeds to be used for the construction of any Public Improvements.

"Bond Issuance Costs" means costs relating to the authorization, sale and issuance of the

PID Bonds including, printing costs, costs of reproducing and binding documents, closing costs, filing and recording fees, initial fees, expenses and charges of the Trustee, including its first annual administration fee, expenses incurred by the City or Owners in connection with the issuance of the PID Bonds (provided such expenses are defined as “issuance costs” under the Tax Code), the SAP Consultant’s fees, bond (underwriter’s) discount or underwriting fee, legal fees and charges, including Bond Counsel, charges for execution, transportation and safekeeping of the PID Bonds and other costs, charges and fees in connection with the issuance of the PID Bonds.

“**Bond Issuance Request**” means written request made by Whisper MC to the City in good faith as evidenced by Whisper MC’s expenditure of necessary amounts for market studies, financial analysis, legal counsel, and other professional services and due diligence necessary to support the request.

“**Bond Ordinance**” shall mean the ordinance of the City Council that will authorize and approve the issuance and sale of the PID Bonds and provide for their security and payment, either by the terms of the Bond Ordinance or an Indenture related to the PID Bonds.

“**Bond Proceeds**” shall have the meaning given in Section 6.01(a) hereof.

“**Certification for Payment**” means the certificate (whether one or more) in substantially the same form as Exhibit “E” attached hereto.

“**City**” means the City of San Marcos, Texas.

“**City Construction Representative**” means the City Engineer or such other person selected by the City to oversee the construction of the Public Improvements on behalf of the City.

“**City Council**” means the City Council of City of San Marcos, Texas.

“**City PID Costs**” shall have the meaning given in Section 8.02 of this Agreement.

“**Closing Disbursement Request**” means the request (whether one or more) in substantially the same form as Exhibit “F” attached hereto.

“**Construction Management Fee**” means 4% of the costs incurred by or on behalf of Owners for the construction of each Segment. The Construction Management Fee is part of the Actual costs as shown on Exhibit “D.”

“**Construction Manager**” means initially Whisper MC, and thereafter subject to change in accordance with Section 3.03 of this Agreement. The City acknowledges and agrees that (i) Whisper MC intends to subcontract out the duties of Construction Manager to a third party and (ii) Whisper MC’s hiring of the initial subcontractor to serve as the Construction Manager shall not be deemed a change in the Construction Manager pursuant to the terms and conditions of Section 3.03.

“Cost of Issuance Account” shall have the meaning given in the Indenture.

“County” means Hays County, Texas.

“Debt” means any bond, note, or other evidence of indebtedness incurred, entered into, or issued by the City related exclusively to the District.

“Designated Successors and Assigns” shall mean (i) an entity to which an Owner assigns (in writing) its rights and obligations contained in this Agreement pursuant to Section 8.03 related to all or a portion of the Property, (ii) any entity which is the successor by merger or otherwise to all or substantially all of such Owner’s assets and liabilities including, but not limited to, any merger or acquisition pursuant to any public offering or reorganization to obtain financing and/or growth capital; or (iii) any entity which may have acquired all of the outstanding stock or ownership of assets of such Owner.

“District” or **“PID”** has the meaning given in the recitals to this Agreement.

“Effective Date” has the meaning given in the recitals to this Agreement.

“force majeure” shall mean delays due to strikes, acts of God, inability to obtain labor or materials, litigation, enemy action, civil commotion, fire, rain or windstorm, governmental action or inaction, or similar causes, provided such similar causes are beyond the reasonable control of the party whose obligations are affected by such acts.

“Indenture” means the applicable Indenture of Trust between the City and the Trustee relating to the issuance of a series of PID Bonds for financing costs of Public Improvements, as it may be amended from time to time.

“Initial Assessment Ordinance” means the ordinance, resolution or order to be adopted by the City Council that will levy the Special Assessments associated with the Public Improvements.

“Interest” shall mean the interest rate charged for the PID Bonds or such other interest rate as may be required by applicable law.

“Issue Date” means the date of the initial delivery of any of the PID Bonds.

“Non-Benefited Property” means Parcels within the boundaries of the District that accrue no special benefit from the Public Improvements, property, real property, right of way and easements located within the boundaries of the PID that is owned by or irrevocably offered for dedication to the federal government, the State of Texas, the County, the City, a school district, a public utility provider or any other political subdivision or public agency, whether in fee simple, through an exclusive use easement, plat, or a public utility easement. Property identified as Non-Benefited Property at the time the Special Assessments (i) are imposed or (ii) are reallocated pursuant to a subdivision of a Parcel is not assessed. Assessed Property converted to Non-Benefited Property, if the Special Assessments may not be reallocated

pursuant to Section VI.D of the Service and Assessment Plan or Section VI.E of the Service and Assessment Plan, remains subject to the Special Assessments and requires the Special Assessments to be prepaid as provided for in Section VI.E of the Service and Assessment Plan.

“**Notice**” means any notice, writing, or other communication given under this Agreement.

“**Owner**” and “**Owners**” have the meaning given in the recitals to this Agreement.

“**Owner’s Association**” means a homeowner’s association or property owner’s association.

“**Owner Association Property**” means property within the boundaries of the District that is owned by or irrevocably offered for dedication to, whether in fee simple or through an exclusive use easement, an Owner’s Association established for the benefit of a group of homeowners or property owners within the District.

“**Owner Continuing Disclosure Agreement**” shall have the meaning given in the Indenture or any purchase agreement relating to the sale of the PID Bonds.

“**Owner Expended Funds**” has the meaning given in Section 4.02(c) of this Agreement.

“**Party**” means the Owners or the City, as parties to this Agreement, and “**Parties**” means collectively, the Owners and the City.

“**Payment Request**” means the document to be provided by Whisper MC to substantiate the Actual Cost of one or more Segments.

“**PDD**” has the meaning given in the recitals to this Agreement.

“**PID Act**” means Chapter 372 of the Texas Local Government Code, as amended.

“**PID Bonds**” means the special assessment revenue bonds to be issued by the City, in one or more series, to finance the Public Improvements that confer special benefit on the land within the PID, which may include funds for any required reserves and amounts necessary to pay the PID Bond issuance costs, and to be secured by the revenues and funds pledged under an Indenture, consisting primarily of the Special Assessments, pursuant to the authority granted in the PID Act, and as described by this Agreement for the purposes of (i) financing the costs of Public Improvements and related costs and (ii) reimbursing Whisper Master Community Limited Partnership for Actual Costs paid prior to the issuance of the PID Bonds. This term is used to collectively refer to the PID Bonds.

“**PID Bond Ordinance**” means and refers to the order(s) or ordinances of the City Council that will authorize and approve the issuance and sale of the PID Bonds and provide for their security and payment, either under the terms of the bond order or a trust indenture related to the PID Bonds.

“PID Bond Security” means the funds that are to be pledged in or pursuant to the PID Bond Ordinance or the Indenture to the payment of the debt service requirements on the PID Bonds, consisting of the Special Assessments, including earnings and income derived from the investment or deposit of Special Assessments in the special funds or accounts created and established for the payment and security of the PID Bonds, unless such earnings are required to be deposited into a rebate fund for payment to the federal government.

“Pledged Revenue Fund” means the separate and unique fund established by the City under such name pursuant to the Indenture wherein the Special Assessment Revenues are deposited.

“Prepayment” means the payment of all or a portion of a Special Assessment before the due date thereof. Amounts received at the time of a Prepayment which represent a payment of principal, interest or penalties on a delinquent installment of a Special Assessment are not to be considered a Prepayment, but rather are to be treated as the payment of the regularly scheduled Special Assessment.

“Project” has the meaning given in the recitals to this Agreement.

“Project Costs” means the total of all Actual Costs.

“Project Engineer” means the civil engineer or firm of civil engineers selected by Whisper MC to perform the duties set forth herein, which is currently Doucet & Associates. Whisper MC reserves the right to replace the Project Engineer at any time in Whisper MC’s sole discretion.

“Project Fund” means the separate and unique fund established by the City under such name pursuant to the Indenture as described in Section 5.02 hereof.

“Property” has the meaning given in the recitals to this Agreement.

“Public Improvements” means the Authorized Improvements designed, constructed, and installed in accordance with the Service and Assessment Plan for which Special Assessments are levied against the Assessed Property that receives a special benefit from such improvement and depicted in Appendix D of the Service and Assessment Plan.

“Public Property” means property, plat, real property, right of way and easements located within the boundaries of the District that is owned by or irrevocably offered for dedication to the federal government, the State of Texas, the County, the City, a school district, a public utility provider or any other political subdivision or public agency, whether in fee simple, through an exclusive use easement, or through a public utility easement.

“Regulatory Requirements” means the requirements and provisions of the City over the Public Improvements, as adjusted by the PDD.

“Reimbursement Payment” has the meaning given in Section 4.02(c).

“SAP Consultant” means Development Planning & Financing Group, Inc.

“Segment” or **“Segments”** means the discrete portions of the Public Improvements identified as such.

“Service and Assessment Plan” or **“SAP”** or **“Assessment Plan”** means the Whisper Public Improvement District Service and Assessment Plan, a draft of which is attached hereto as Exhibit “C”, (as such plan is amended, supplemented and updated from time to time) approved by the City Council in the first Assessment Ordinance.

“Special Assessments” means the assessments levied against properties in the District, as provided for in the applicable Assessment Ordinance and in the Service and Assessment Plan, including any supplemental assessments or reallocation of assessments levied in accordance with Sections 372.019 and 372.020 of the PID Act.

“Special Assessment Revenues” means money collected by or on behalf of the City from any one or more of the following: (i) a Special Assessment levied against an Assessed Property, or Annual Installment payment thereof, including any interest on such Special Assessment or Annual Installment thereof during any period of delinquency, (ii) a Prepayment, (iii) Delinquent Collection Costs (as defined in the Indenture), and (iv) Foreclosure Proceeds (as defined in the Indenture).

“State” means the State of Texas.

“Tax Certificate” shall have the meaning given in Section 6.02(a) hereof

“Tax Code” means the Internal Revenue Code of 1986, as amended, or may be amended or replaced in the future including applicable regulations, published rulings and court decisions.

“Transfer” shall have the meaning given in Section 2.05(b) hereof

“Transferee” shall have the meaning given in Section 2.05(b) hereof

“Trustee” means the trustee under the Indenture, and any successor thereto permitted under such Indenture and any other Trustee under a future Indenture.

“Underwriter” means FMSBonds, Inc. or other qualified underwriter reasonably acceptable to the District, City, and Owners.

“Unpaid Balance” shall have the meaning given in the applicable Acquisition and Reimbursement Agreement.

“Whisper MC” means Whisper Master Community Limited Partnership, a Texas limited partnership.

“Yarrington Partners” means Yarrington Partners, Ltd., a Texas limited partnership.

Exhibit "B"

The Property

The "Property" as defined in the Agreement consists of two tracts:

- (1) That certain approximately 590.663 acre tract, referred to as the "Whisper MC Property" in the Agreement, which is more particularly described in Exhibit "B-1" attached hereto;
and
- (2) That certain approximately 115.686 acre tract, referred to as the "Yarrington Property" in the Agreement, which is more particularly described in Exhibit "B-2" attached hereto.

Exhibit "B-1"

The Whisper MC Property

The "Whisper MC Property" as defined in the Agreement consists of four (4) tracts:

- (1) That certain approximately 86.948 acre tract, which is more particularly described in Exhibit "B-1-1" attached hereto;
- (2) That certain approximately 99.80 acre tract, which is more particularly described in Exhibit "B-1-2" attached hereto; and
- (3) That certain approximately 318.105 acre tract, which is more particularly described in Exhibit "B-1-3" attached hereto.
- (4) That certain approximately 85.81 acre tract, which is more particularly described in Exhibit "B-1-4" attached hereto.

EXHIBIT "B-1-1"

S. CRAIG HOLLMIG, INC.
CONSULTING ENGINEERS - SURVEYORS
410 N. SEGUIN STREET
NEW BRAUNFELS, TEXAS 78130-8085

TEXAS SOCIETY OF PROFESSIONAL ENGINEERS
AMERICAN SOCIETY OF CIVIL ENGINEERS

TEXAS SURVEYORS ASSOCIATION
TELEPHONE (830) 825-8558 • FAX (830) 825-8558

WATER SYSTEMS • SEWER SYSTEMS • SUBDIVISIONS • LAND PLANNING • STREETS • SURVEYING

FIELD NOTES FOR AN 86.948 ACRE TRACT

Being an 86.948 acre tract of land situated in the Joel Miner Survey, Abstract No. 321, Hays County, Texas, being a portion of that certain tract of land called 97.84 acres conveyed to Albert M. Walker, Trustee, by instrument recorded in Volume 714, Page 603 of the Official Public Records of Hays County, Texas, and all bearings referred to in this description are referenced to a bearing of N 24° 08' 30" E between monumentation found along the Easterly right-of-way line of Interstate Highway 35 (basis is taken from Texas State Highway Department Right-of-Way Map), said 86.948 acre tract of land surveyed under the supervision of Richard A. Goodwin, RPLS #4069, S. Craig Hollmig, Inc., and being more particularly described as follows:

BEGINNING: At a 1/2" iron pin set on the Northeasterly line of the above referenced 97.84 acre tract, same being a Southwesterly line of that certain tract now being a remainder of a 328.824 acre tract described in Volume 720, Page 152 of the Official Public Records of Hays County, Texas, said 1/2" iron pin set S 45° 57' 20" E 232.0 feet from a 3/4" iron pipe found on the Easterly right-of-way line of Interstate Highway 35, for the North corner of the above referenced 97.84 acre tract, for a Northerly corner of this tract;

THENCE: Generally along an old meandering cedar post and wire fence (falling down), with a Southwesterly line of said 328.824 acre tract, the Northeasterly line of the above referenced 97.84 acre tract, S 45° 57' 20" E 1,913.50 feet to a 1/2" iron pin found for a Southwesterly corner of said 328.824 acre tract, situated on the Northwesterly line of a tract called 72.85 acres (Popham Tract), recorded in Volume 895, Page 450 of the Official Public Records of Hays County, Texas, for the East corner of the above referenced 97.84 acre tract, for the East corner of this tract;

THENCE: Generally with fence, along a Southeast line of the above referenced 97.84 acre tract, the Northwest line of said 72.85 acre tract, S 44° 19' 36" W 390.40 feet to a 1/2" iron pin found and S 44° 37' 31" W 551.28 feet to a 3/4" iron pin found for the West corner of said 72.85 acre tract, same being the North corner of Saddle Brook Subdivision, a plat recorded in Volume 9, Pages 107-109 of the Map and Plat Records of Hays County, Texas, for a corner of this tract;

THENCE: Continuing along the Southeast line of the above referenced 97.84 acre tract, a Northwest line of said Saddle Brook Subdivision, generally along a wood fence, S 44°

16' 53" W 1,278.72 feet to a ½" iron pin set for an interior corner of Saddle Brook Subdivision, for the South corner of this tract;

THENCE: Entering the above referenced 97.84 acre tract, with a Northeasterly line of Saddle Brook Subdivision, N 46° 04' 27" W 1,232.19 feet to a ½" iron pin set on said Northeast line, for a Southwesterly corner of this tract;

THENCE: Leaving the Northeasterly line of Saddle Brook Subdivision, N 24° 08' 30" E 52.37 feet to a ½" iron pin set and N 59° 31' 04" W 90.55 feet to a ½" iron pin set on the Easterly right-of-way line of Interstate Highway 35, for a Southwest corner of this tract, being located N 24° 08' 30" E 30.0 feet from a ½" iron pin found for a corner of Saddle Brook Subdivision;

THENCE: Continuing with the Easterly right-of-way line of Interstate Highway 35, N 24° 08' 30" E 959.44 feet to a ½" iron pin set in the curving Southeast line of that certain 10.67 acre tract described in Deed from Kitty Page Yarrington to State of Texas, dated February 7, 1935, recorded in Volume 110, Page 219 of the Deed Records of Hays County, Texas, for a corner of this tract;

THENCE: Entering the above referenced 97.84 acre tract (which is in conflict with the 10.67 acre tract), with the Southeast line of said 10.67 acre tract, in a curve to the right, having a radius of 2,925.00 feet, an arc length of 415.32 feet, a central angle of 08° 08' 07", and a chord bearing and distance of N 55° 56' 05" E 414.97 feet to a ½" iron pin set for an interior corner of this tract;

THENCE: Continuing with the remainder of said 10.67 acre tract, N 47° 55' 30" W 229.79 feet to a ½" iron pin found on the Easterly right-of-way line of Interstate Highway 35, for a corner of this tract;

THENCE: Continuing with said Easterly right-of-way line, N 24° 08' 30" E 851.42 feet to a ½" iron pin set in same, for the most Northwesterly corner of this tract;

THENCE: Entering the above referenced 97.84 acre tract, S 45° 57' 20" E 232.00 feet to a ½" iron pin set for an interior corner of this tract and N 24° 08' 30" E 100.00 feet to the Point of Beginning and containing 86.948 acres of land, more or less.

The foregoing field notes represent the results of an on-the-ground survey made under my supervision, October 13, 2005. Reference plat prepared this same date of this 86.948 acre tract.



Job #05-901

A handwritten signature in black ink, appearing to read "Richard A. Goodwin".

Richard A. Goodwin, RPLS #4069

EXHIBIT "B-1-2"

VICKREY & ASSOCIATES, Inc.
CONSULTING ENGINEERS

**METES AND BOUNDS DESCRIPTION
FOR A 99.80 ACRE TRACT OF LAND
OUT OF THE JOEL MINER SURVEY,
ABSTRACT 321,
HAYS COUNTY, TEXAS**

Being a 99.80 acre tract of land situated in the Joel Miner Survey, Abstract No. 321 in Hays County, Texas, being the same property called two 50 acre tracts of land conveyed to Jane Richmond Benasutti, Trustee of Thomas R. Richmond Testamentary Family Trust by Deed recorded in Volume 52, Page 68 of the Deed Records of Hays County, Texas, and individually one-half interest to Victoria Elizabeth Richmond a/k/a Elizabeth L. Richmond by Deed recorded in Volume 850, Page 595 of the Deed Records of Hays County, Texas, said 99.80 acre tract being more particularly described by metes and bounds with all bearings being referenced to the North American Datum 1983, Texas Coordinate System, South Central Zone; Ground distances may be converted to grid by dividing by 1.0001700:

BEGINNING at a ½-inch iron rod found at the intersection of the Southwest line of County Road No. 159, known as Yarrington Road and the Northwest line of County Road No. 160, known as Harris Hill Road for the East corner of the herein described tract, said Beginning point having Texas South Central Grid Coordinates of (N=13,886,570.38, E= 2,327,818.81);

Thence: S 43°21'39" W, along the Northwest line of said County Road No. 160, a distance of 2086.12 feet to a found ½ inch iron rod with yellow cap, for a Northeast corner of a 318.105 acre tract of land recorded in Volume 2715, Page 533 of the Official Public Records of Hays County, Texas, being the South corner of the herein described tract;

Thence: N 46°11'01" W, along the common line of said 318.105 acre tract and the herein described tract, a distance of 2092.35 feet to a found ½ inch iron pipe in concrete being a re-entrant corner of said 318.105 acre tract and the West corner of the herein described tract;

Thence: N 43°31'53" E, along a Southeasterly line of said 318.105 acre tract, passing the common corner of said 318.105 acre tract and a 201.496 acre tract recorded in Volume 2494, Page 403 of the Official Public Records of Hays County, Texas, at a distance of 818.94 feet, and continuing along the Southeast line of said 201.496 acre tract, for a total distance of 2075.38 feet, to a found ½" iron rod on the Southwest line of said County Road No. 159 and being the North corner of the herein described tract;

Thence: S 46°28'39" E, along said Southwest line of County Road No. 159, a distance of 2086.11 feet to the POINT OF BEGINNING and containing 99.80 acres of land, more or less.

Note: Survey Plat of even date accompanies this legal description.

Hal B. Lane III 4/11/06

Hal B. Lane III
Registered Professional Land Surveyor
Texas Registration Number 4690
Vickrey & Associates, Inc.



Job No. 2042-002-104
99.80 Acres 041106
April 6, 2006
April 11, 2006

EXHIBIT "B-1-3"

5171-03-1013



Professional Land Surveying, Inc.
Surveying and Mapping

Office: 512-443-1724
Fax: 512-441-6987

2807 Manchaca Road
Building One
Austin, Texas 78704

**318.105 ACRES
JOEL MINER SURVEY**

A DESCRIPTION OF 318.105 ACRES IN THE JOEL MINER SURVEY, HAYS COUNTY, TEXAS, BEING A PORTION OF A 328.824 ACRE TRACT OF LAND DESCRIBED IN TRUSTEE'S DEED TO JIM McCROCKLIN, TRUSTEE, DATED MARCH 1, 1988, OF RECORD IN VOLUME 720, PAGE 152 OF THE REAL PROPERTY RECORDS OF HAYS COUNTY, TEXAS; SAID 318.105 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a ½" rebar found in the east right-of-way line of Interstate Highway 35 (right-of-way width varies) for the west corner of said 328.824 acre tract and the north corner of a 97.84 acre tract of land described in Volume 714, Page 603 of the Real Property Records of Hays County, Texas;

THENCE North 22°55'27" East, with the east right-of-way line of said IH-35 and the northwest line of the 328.824 acre tract, a distance of 1366.86 feet to a ½" rebar with cap set for the southwest corner of Lot 1, San Marcos Technology Park, a subdivision of record in Volume 5, Page 147 of the Plat Records of Hays County, Texas, from which a concrete highway monument found bears North 22°55'27" East, a distance of 2010.30 feet;

THENCE South 67°05'52" East, over and across the 328.824 acre tract with the southwest line of said San Marcos Technology Park, a distance of 1606.37 feet to a ½" rebar with cap set for an angle point in the north line of the 328.824 acre tract and the south corner of Lot 3, San Marcos Technology Park;

THENCE with the north line of the 328.824 acre tract and the southeast line of Lots 3 and 4, San Marcos Technology Park, the following three (3) courses:

1. North 43°06'54" East, a distance of 1113.31 feet to a ½" rebar found;
2. North 41°52'41" East, a distance of 231.92 feet to a ½" rebar found;
3. North 43°00'24" East, a distance of 894.28 feet to a ½" rebar found in the southwest line of a 214.40 acre tract of land described in Volume 773, Page 816 of the Real Property Records of Hays County, Texas, for the east corner of Lot 4, San Marcos Technology Park and the north corner of the 328.824 acre tract;

THENCE South 47°05'53" East, with the northeast line of the 328.824 acre tract

318.105 ACRES

Page 2

and the southwest line of said 214.40 acre tract, a distance of 2136.85 feet to a ½" rebar found for the south corner of the 214.40 acre tract and the northeast corner of the 328.824 acre tract and in the northwest line of a 100 acre tract of land described in Volume 52, Page 68 of the Deed Records of Hays County, Texas;

THENCE with the common line of the 328.824 acre tract and the said 100 acres, the following two (2) courses:

1. South 42°49'26" West, a distance of 819.02 feet to a ½" iron pipe found for the west corner of the 100.00 acre tract;
2. South 46°53'58" East, a distance of 2092.27 feet to a ½" rebar with cap set in the northwest right-of-way line of County Road 160 (Harris Hill Road, right-of-way width varies) for the easternmost corner of the 328.824 acre tract;

THENCE with the northwest right-of-way line of said C.R. 160 and the southeast line of the 328.824 acre tract, the following six (6) courses:

1. South 43°41'13" West, a distance of 675.23 feet to a ½" rebar with cap set;
2. South 45°13'02" West, a distance of 369.18 feet to a ½" rebar with cap set;
3. South 45°38'13" West, a distance of 508.86 feet to a ½" rebar with cap set;
4. South 57°29'20" West, a distance of 74.15 feet to a ½" rebar with cap set;
5. South 33°18'43" West, a distance of 64.34 feet to a ½" rebar with cap set;
6. South 45°42'28" West, a distance of 395.47 feet to a ½" rebar found for the south corner of the 328.824 acre tract and the east corner of a 36.40 acre tract of land described in Volume 1435, Page 407 of the Official Public Records of Hays County, Texas;

THENCE North 47°04'03" West, with a southwest line of the 328.824 acre tract and the northeast line of said 36.40 acre tract, a distance of 3052.04 feet to a ½" rebar found for the north corner of the 36.40 acre tract;

318.105 ACRES

Page 3

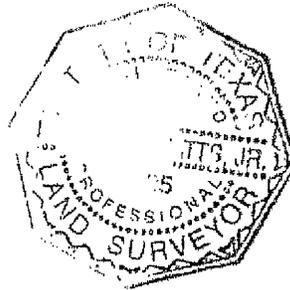
THENCE South 42°56'45" West, with a southwest line of the 328.824 acre tract and the northwest line of the 36.40 acre tract, passing at a distance of 521.59 feet a ½" rebar found for the west corner of the 36.40 acre tract and the north corner of a 36.40 acre tract described in Document No. 9924088 of the Official Public Records of Hays County, Texas, for a total distance of 1163.93 feet to a ½" rebar found for the east corner of a 6.6 acre tract described in Volume 946, Page 575 of the Official Public Records of Hays County, Texas, being in the northwest line of a 72.85 acre tract described in Volume 895, Page 450 of the Official Public Records of Hays County, Texas;

THENCE North 47°09'41" West, with a southwest line of the 328.824 acre tract and the northeast lines of said 6.6 acre tract and said 97.84 acre tract, a distance of 2145.66 feet to the **POINT OF BEGINNING**, containing 318.105 acres of land, more or less.

Surveyed on the ground September 12, 2003. Attachments: survey drawing 111-005-T1. Bearing Basis: Grid Azimuth for Texas Central Zone, 1983/93 HARN Values from LCRA Control Network.



Robert C. Watts, Jr.
Registered Professional Land Surveyor
State of Texas No. 4995



3-11-05

"EXHIBIT B-1-4"



SPOT ON SURVEYING

1345 Elliott Ranch Rd., Buda Texas 78610

FIELD NOTES-METES AND BOUNDS DESCRIPTION

Texas Firm No. 10193894 - J/N:0019-15-005

BEING 85.81 ACRES OF LAND OUT OF THE JOEL MINER SURVEY, HAYS COUNTY, TEXAS AND BEING A PORTION OF THAT 201.496 ACRE TRACT OF LAND OUT OF THE WILLIAM WARD SURVEY NO. 3 AND THE JOEL MINER SURVEY AS DESCRIBED TO YARRINGTON PARTNERS, L.T.D. A TEXAS LIMITED PARTNERSHIP IN VOLUME 2494, PAGE 403, AS DOCUMENT NO. 04018594, OFFICIAL PUBLIC RECORDS, HAYS COUNTY, TEXAS, (O.P.R.H.C.TX.), AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a found iron rod with cap stamped "SAM INC.", being accepted as the most Southerly corner of the 3.275 Acres of land conveyed to Hays County from Yarrington Partners, LTD. In Document No. 14036525, recorded in Volume 5090, Page 263, O.P.R.H.C.TX., said point being accepted as an angle point in the Southwest and Northwest Right of Way limits of Yarrington Road;

THENCE S 43° 28' 13" W, 1239.58 feet, along the Northwest Right of Way of said Yarrington Road to a found 1/2" iron rod, down 4", accepted as an angle point in the Northwest and Southwest Right of Way limits of said Yarrington Road;

THENCE S 46° 29' 38" E, 555.61 feet, along the Southwest Right of Way limits of said Yarrington Road to a set iron rod and cap stamped, "SPOT ON SURVEYING", (SIRC) said point to be used as the TRUE POINT OF BEGINNING for the description of this 85.81 Acre tract hereon;

THENCE S 46° 29' 38" E, 3144.84 feet, continuing along the Southwest Right of Way limits of said Yarrington Road to a found 1/2" iron rod, down 6", accepted as the East corner of said 201.496 Acre tract also being the East corner of the 85.81 Acre tract described herein and accepted as the North corner of that 99.80 Acres conveyed to the State of Texas in Document No. 06017062, as recorded in Volume 2941, Page 831, O.P.R.H.C.TX.;

THENCE S 43° 31' 37" W, 1256.19 feet, along the common line of said 201.496 and 99.80 Acre tracts to a found 1/2" iron rod, flush, accepted as the South corner of said 201.496 Acre tract also being the South corner of the 85.81 Acre tract described herein and accepted as the East corner of that 318.105 Acres conveyed to the State of Texas in Document No. 05018360, as recorded in Volume 2715, Page 533, O.P.R.H.C.TX.;

THENCE N 46° 26' 03" W, 1315.46 feet, along the common line of said 201.496 and 318.105 Acre tracts to a found 1/2" iron rod, down 2", accepted as the Southerly limits of Gas easement described in Volume 801, Page 847, Deed Records, Hays County, Texas, D.R.H.C.TX., also being accepted as the Southwesterly limits of that 50 foot wide gas pipeline easement described in Volume 230, Page 120, Real Property Records, Hays County, Texas, R.P.R.H.C.TX. and being an angle point in the Southwesterly line of the 85.81 Acre tract described herein;

THENCE N 46° 18' 25" W, 1503.36 feet, along the Southwesterly line of said 201.496 Acre tract and the Northeasterly lines of said 318.105 Acre tract with the Northeasterly lines of Lot 4, of the San Marcos Technology Park, Subdivision as recorded in Volume 5, Page 147, Plat Records, Hays County, Texas, P.R.H.C.TX. and the 0.769 Acre tract to Pedernales Electric Cooperative, Inc. as recorded in Volume 826, Page 691, O.P.R.H.C.TX., to a found iron rod with cap stamped "BYRN SURVEYING", said point being accepted as the West corner of the 85.81 acre tract described herein also being accepted as the Southeasterly limits of that (ten) 10 foot wide easement to the City of San Marcos for waterline purposes, as recorded in Volume 1207, Page 627, O.P.R.H.C.TX. and the Southeasterly limits of a (one hundred) 100 foot wide easement to the Lower Colorado River Authority (LCRA) as recorded in Volume 148, Page 570, D.R.H.C.TX., a found 3/4" iron pipe accepted as the East corner of Lot 5 of said San Marcos Technology Park, Subdivision falls N 46° 18' 25" W, 1.11 feet from said point for a witness corner;

THENCE N 28° 54' 22" E, 1291.61 feet, along the Easterly limits of said 10 foot and 100 foot wide easements to the POINT OF BEGINNING hereof, containing a calculated area of 3,738,047.2 sq. ft., 85.81 Acres, said field notes being described in accordance with a survey made on the ground by me or under my direction. All bearings shown are based on NAD 83 Texas State Plane Coordinate System, South Central Zone. All distances shown are surface or ground distances.

Scott A. Hahn



January 19, 2016

Scott A. Hahn, RPLS 6375

Date

Exhibit “B-2”

The Yarrington Property

The “Yarrington Property” as defined in the Agreement consists of approximately 115.686 acres of land described as follows:

That certain approximately 201.496 acre tract, which is more particularly described in Exhibit “B-2-1” attached hereto SAVE AND EXCEPT that certain 85.81 acre tract, which is more particularly described in Exhibit “B-2-2” attached hereto

EXHIBIT "B-2-1"

FIELD NOTES FOR A 201.496 ACRE TRACT

Being a 201.496 acre tract of land, being approximately 94.659 acres out of the William Ward Survey No. 3 and approximately 106.837 acres out of the Joel Miner Survey, Hays County, Texas, and being out of a tract called 214.40 acres conveyed to Yarrington Properties by Warranty Deed recorded in Volume 773, Page 816 of the Official Public Records of Hays County, Texas, and all bearings referred to in this description are rotated to and referenced to a bearing of N 45° 52' W between iron pins found along the Southwest line of the above referenced 214.40 acre tract, and all bearings and distances referred to in this description as record calls are taken from Volume 773, Page 816 of the Official Public Records of Hays County, Texas, said 201.496 acre tract of land surveyed under the supervision of Richard A. Goodwin, RPLS #4069, S. Craig Hollmig, Inc., and being more particularly described as follows:

BEGINNING: At a concrete highway monument found at the intersection of the Southwest line of a road, called County Road No. 159, called Yarrington Road, with the Southeast line of Interstate Highway No. 35, for the most Northerly corner of the above referenced 214.40 acre tract, for the most Northerly corner and Point of Beginning of this tract;

THENCE: Leaving Interstate Highway No. 35, with a Southwest line of Yarrington Road, S 46° 02' 04" E 1812.44 feet (record call: S 46° 01' 00" E - 1813.06 feet) to a ½" iron pin found for a corner of the above referenced 214.40 acre tract, for a corner of this tract;

THENCE: Continuing along the Southwest line of said Yarrington Road and a turn to the right in said Yarrington Road, S 36° 43' 40" E 14.10 feet, a ½" iron pin set, S 02° 13' 26" E 44.83 feet, a ½" iron pin set, and S 40° 10' 14" W 32.45 feet to a ½" iron pin found in the Northwest line of said Yarrington Road, for a corner of the above referenced 214.40 acre tract, for a corner of this tract;

THENCE: Along said Northwest line, S 43° 58' 45" W 1263.87 feet (record call: S 43° 59' 00" W - 1263.40 feet) to a ½" iron pin found at a turn in said Yarrington Road, for an interior corner of the above referenced 214.40 acre tract, for an interior corner of this tract;

THENCE: Along a Southwest line of said Yarrington Road, a Northeast line of the above referenced 214.40 acre tract, S 45° 58' 21" E 3700.49 feet (record call: S 45° 58'

00" E - 3700.64 feet) to a 1/2" iron pin found in same, for the Lower East corner of the above referenced 214.40 acre tract, for the East corner of this tract;

THENCE: Along the Southeast line of the above referenced 214.40 acre tract, the Northwest line of a tract called 100 acres recorded in Volume 52, Page 68 of the Deed Records of Hays County, Texas, S 44° 02' 31" W 1256.51 feet to a 1/2" iron pin found at fence corner, for the South corner of the above referenced 214.40 acre tract, an East corner of a tract called 328.824 acres described in Volume 720, Page 155 of the Official Public Records of Hays County, Texas, for the South corner of this tract;

THENCE: Along the Southwest line of the above referenced 214.40 acre tract, the Northeast line of said 328.824 acre tract, the general direction of an existing fence, N 45° 52' 00" W 2136.80 feet to a 1/2" iron pin found at fence corner, for a North corner of said 328.824 acre tract, a corner of the above referenced 214.40 acre tract, the East corner of Lot 4 of San Marcos Technology Park, a subdivision of record in Volume 5, Page 147 of the Map and Plat Records of Hays County, Texas, for a corner of this tract;

THENCE: Along the Northeast line of Lots 4 and 5 of said San Marcos Technology Park, and continuing along the Southwest line of the above referenced 214.40 acre tract, the general direction of an existing fence, N 45° 47' 19" W 692.77 feet, a 1/2" iron pin found, N 45° 52' 57" W 696.50 feet to a 1/2" iron pin set and N 46° 02' 37" W 201.81 feet to a 3/4" pipe found at fence corner, for an interior corner of the above referenced 214.40 acre tract, the North corner of Lot 5, the East corner of Lot 6, for an interior corner of this tract;

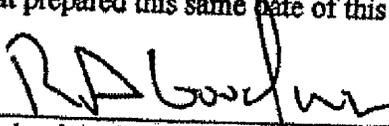
THENCE: Along the North line of Lot 6, S 82° 00' 53" W 1041.40 feet to a 1/2" iron pin found at the Northwest corner of Lot 6, lying in the Southeast line of Interstate Highway No. 35, for the most Westerly corner of this tract;

THENCE: Along the Southeast line of Interstate Highway No. 35, as now found upon the ground, N 21° 19' 20" E (record call: N 21° 17' E) 416.11 feet, a 1/2" iron pin found, N 24° 08' 41" E 2699.76 feet (record call: N 24° 09' E - 2700.00 feet) to a 1/2" iron pin found, N 24° 55' 22" E 367.45 feet to a concrete monument found, N 24° 56' 43" E 85.45 feet (record call for last two calls: N 24° 55' E - 452.99 feet) to a concrete monument found and N 79° 32' 49" E 57.95 feet (record call: 57.80 feet) to the Point of Beginning and containing 201.496 acres of land, more or less.

The foregoing field notes represent the results of an on-the-ground survey made under my supervision, August 1, 2003. Reference plat prepared this same date of this 201.496 acre tract.

Job #03-643




Richard A. Goodwin, RPLS #4069



SPOT ON SURVEYING

1345 Elliott Ranch Rd., Buda Texas 78610

FIELD NOTES-METES AND BOUNDS DESCRIPTION

Texas Firm No. 10193894 - J/N:0019-15-005

EXHIBIT "B-2-2"

BEING 85.81 ACRES OF LAND OUT OF THE JOEL MINER SURVEY, HAYS COUNTY, TEXAS AND BEING A PORTION OF THAT 201.496 ACRE TRACT OF LAND OUT OF THE WILLIAM WARD SURVEY NO. 3 AND THE JOEL MINER SURVEY AS DESCRIBED TO YARRINGTON PARTNERS, LTD. A TEXAS LIMITED PARTNERSHIP IN VOLUME 2494, PAGE 403, AS DOCUMENT NO. 04018594, OFFICIAL PUBLIC RECORDS, HAYS COUNTY, TEXAS, (O.P.R.H.C.TX.), AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a found iron rod with cap stamped "SAM INC.", being accepted as the most Southerly corner of the 3.273 Acres of land conveyed to Hays County from Yarrington Partners, LTD. in Document No. 14036525, recorded in Volume 5090, Page 263, O.P.R.H.C.TX., said point being accepted as an angle point in the Southwest and Northwest Right of Way limits of Yarrington Road;

THENCE S 43° 28' 13" W, 1239.58 feet, along the Northwest Right of Way of said Yarrington Road to a found 1/2" iron rod, down 4", accepted as an angle point in the Northwest and Southwest Right of Way limits of said Yarrington Road;

THENCE S 46° 29' 38" E, 555.61 feet, along the Southwest Right of Way limits of said Yarrington Road to a set iron rod and cap stamped, "SPOT ON SURVEYING", (SIRC) said point to be used as the TRUE POINT OF BEGINNING for the description of this 85.81 Acre tract hereon;

THENCE S 46° 29' 38" E, 3144.84 feet, continuing along the Southwest Right of Way limits of said Yarrington Road to a found 1/2" iron rod, down 6", accepted as the East corner of said 201.496 Acre tract also being the East corner of the 85.81 Acre tract described herein and accepted as the North corner of that 99.80 Acres conveyed to the State of Texas in Document No. 06017062, as recorded in Volume 2941, Page 831, O.P.R.H.C.TX.;

THENCE S 43° 31' 37" W, 1256.19 feet, along the common line of said 201.496 and 99.80 Acre tracts to a found 1/2" iron rod, flush, accepted as the South corner of said 201.496 Acre tract also being the South corner of the 85.81 Acre tract described herein and accepted as the East corner of that 318.105 Acres conveyed to the State of Texas in Document No. 05018360, as recorded in Volume 2715, Page 533, O.P.R.H.C.TX.;

THENCE N 46° 26' 03" W, 1315.46 feet, along the common line of said 201.496 and 318.105 Acre tracts to a found 1/2" iron rod, down 2", accepted as the Southerly limits of Gas easement described in Volume 801, Page 847, Deed Records, Hays County, Texas, D.R.H.C.TX., also being accepted as the Southwesterly limits of that 50 foot wide gas pipeline easement described in Volume 230, Page 120, Real Property Records, Hays County, Texas, R.P.R.H.C.TX. and being an angle point in the Southwesterly line of the 85.81 Acre tract described herein;

THENCE N 46° 18' 25" W, 1503.36 feet, along the Southwesterly line of said 201.496 Acre tract and the Northeasterly lines of said 318.105 Acre tract with the Northeasterly lines of Lot 4, of the San Marcos Technology Park, Subdivision as recorded in Volumes 5, Page 147, Plat Records, Hays County, Texas, P.R.H.C.TX. and the 0.769 Acre tract to Pedernales Electric Cooperative, Inc. as recorded in Volume 826, Page 691, O.P.R.H.C.TX., to a found iron rod with cap stamped "BYRN SURVEYING", said point being accepted as the West corner of the 85.81 acre tract described herein also being accepted as the Southeasterly limits of that (ten) 10 foot wide easement to the City of San Marcos for waterline purposes; as recorded in Volume 1207, Page 627, O.P.R.H.C.TX. and the Southeasterly limits of a (one hundred) 100 foot wide easement to the Lower Colorado River Authority (LCRA) as recorded in Volume 148, Page 570, D.R.H.C.TX., a found 3/4" iron pipe accepted as the East corner of Lot 5 of said San Marcos Technology Park, Subdivision falls N 46° 18' 25" W, 1.11 feet from said point for a witness corner;

THENCE N 28° 54' 22" E, 1291.61 feet, along the Easterly limits of said 10 foot and 100 foot wide easements to the POINT OF BEGINNING hereof, containing a calculated area of 3,738,047.2 sq. ft., 85.81 Acres, said field notes being described in accordance with a survey made on the ground by me or under my direction. All bearings shown are based on NAD 83 Texas State Plane Coordinate System, South Central Zone. All distances shown are surface or ground distances.

Scott A. Hahn

Scott A. Hahn, RPLS 6375



January 19, 2016

Date

EXHIBIT "C"

Whisper
Public Improvement District

Service and Assessment Plan

August 31, 2017

Section I

PLAN DESCRIPTION AND DEFINED TERMS

A. Introduction

On October 6, 2014, (the "**Creation Date**"), the City Council (the "**City Council**") of the City of San Marcos, Texas (the "**City**") approved Resolution No. 2014-143R, which authorized the creation of the Whisper Public Improvement District (the "**PID**") to finance the Actual Costs of the Public Improvements for the benefit of certain property in the PID, all of which is located within the city limits of the City of San Marcos, Texas (the "**City**").

Chapter 372 of the Texas Local Government Code (as amended, the "**PID Act**"), governs the creation and operation of public improvement districts within the State of Texas. This Service and Assessment Plan (the "**SAP**") was prepared pursuant to the PID Act. The PID Act requires that a service plan "cover a period of at least five years and must also define the annual indebtedness and the projected costs for improvements." The PID Act also requires a service plan "be reviewed and updated annually for the purpose of determining the annual budget for improvements." The service plan for the PID is described in more detail in **Section V** herein.

The Assessment Roll for the PID is attached hereto as **Appendix A**, and is addressed in **Section VII** of this SAP. The Special Assessments as shown on the Assessment Roll are based on the method for establishing and levying the Special Assessment described in **Sections IV** and **VI** of this SAP.

B. Definitions

Capitalized terms shall have the meanings ascribed to them as follows:

"Acquisition and Reimbursement Agreement" means (whether one or more) an agreement that provides for construction and dedication of a Public Improvement to the City prior to the Landowners being paid out of the applicable PID Bonds proceeds, whereby all or a portion of the Actual Costs will be paid to Landowners initially from Special Assessments and/or PID Bond proceeds Revenues (and ultimately from the applicable PID Bonds) to reimburse the Landowners for Actual Costs paid by the Landowners that are eligible to be paid with Special Assessments and/or PID Bond proceeds. It is intended that Acquisition and Reimbursement Agreements will be used in connection with the Public Improvements.

"Actual Cost(s)" means, with respect to the Public Improvements, the Landowner's demonstrated, reasonable, allocable, and allowable costs of constructing such Public Improvement in an amount not to exceed the amount for each Public Improvements as set forth in this SAP. Actual Costs may include (a) the costs incurred by or on behalf of the Landowners (either directly or through affiliates) for the design, planning, financing, administration/management, acquisition, installation, construction and/or implementation

of such Public Improvements, (b) the fees paid for obtaining permits, licenses or other governmental approvals for such Public Improvements, (c) construction management fee, (d) the costs incurred by or on behalf of the Landowners for external professional costs, such as engineering, geotechnical, surveying, land planning, architectural landscapers, research studies, appraisals, legal, accounting and similar professional services, (e) all labor, bonds and materials, including equipment and fixtures, by contractors, builders and materialmen in connection with the acquisition, construction or implementation of the Public Improvements, (f) all related permitting and public approval expenses, architectural, engineering, and consulting fees, financing charges relating to the PID, governmental fees and charges, insurance premiums, and all payments for Administrative Expenses after the date of a resolution authorizing such reimbursement, plus interest, if any, at the lower of (x) the maximum interest rate permitted by the PID Act or (y) the interest rate of the Bonds calculated from the respective dates of the expenditures until the date of reimbursement therefore.

“Administrative Expenses” means the administrative, organization, maintenance and operation costs and expenses associated with, or incident to, the administration, organization, maintenance and operation of the PID, including, but not limited to, the costs of (i) legal counsel, engineers, accountants, financial advisors, investment bankers or other consultants and advisors, (ii) creating and organizing the PID and preparing the Assessment Roll, (iii) computing, levying, collecting and transmitting the Special Assessments or the Annual Installments thereof, (iv) maintaining the record of installments, payments and reallocations and/or cancellations of the Special Assessments, (v) paying and redeeming the PID Bonds, (vi) investing or depositing the Special Assessments or other monies, (vii) complying with the PID Act with respect to the PID Bonds, (viii) paying the paying agent/registrar’s and trustee’s fees and expenses (including the fees and expenses of its legal counsel) related to the PID Bonds, and (ix) administering the construction of the Public Improvements.

“Administrator” means an employee of the City or third party designee of the City who shall have the responsibilities provided for herein, in an Indenture relating to PID Bonds or in any other agreement approved by the City Council.

“Annual Installment” means, with respect to each Parcel, each annual payment of: (i) the Special Assessment (including the principal of and interest on), as shown on the Assessment Roll attached hereto as **Appendix A**, as applicable, or in an Annual Service Plan Update, and calculated as provided in **Section VI** of this SAP, (ii) Administrative Expenses, (iii) the Prepayment Reserve described in **Section IV** of this SAP, and (iv) the Delinquency Reserve described in **Section IV** of this SAP.

“Annual Service Plan Update” has the meaning set forth in **Section V** of this SAP.

“Assessed Property” or **“Assessed Properties”** means property on which Special Assessments have been levied as shown on the Assessment Roll (as the same may be updated each year by the Annual Service Plan Update) and which includes any and all Parcels within the PID other than Non-Benefited Property.

“Assessment Ordinance” means each ordinance adopted by the City Council approving this SAP (or amendments or supplements to the SAP) and levying the Special Assessments.

“Assessment Roll” means the Assessment Roll included in this SAP as **Appendix A**, which may be updated, modified or amended from time to time in accordance with the procedures set forth herein and in the PID Act, including updates prepared in connection with the issuance of PID Bonds or in connection with any Annual Service Plan Update.

“Authorized Improvements” means improvements authorized by Section 372.003 of the PID Act including those listed in **Section III.A** of this SAP.

“City” means the City of San Marcos, Texas.

“City Council” means the City Council of City of San Marcos, Texas.

“County” means Hays County, Texas.

“Delinquency Reserve” has the meaning set forth in **Section IV.I** of this SAP.

“Delinquent Collection Costs” means interest, penalties and expenses incurred or imposed with respect to any delinquent Special Assessment, or an Annual Installment thereof, in accordance with the PID Act which includes the costs related to pursuing collection of such delinquent Special Assessment, or an Annual Installment thereof, and the costs related to foreclosing the lien against the Assessed Property, including attorney’s fees.

“Indenture” means the applicable Indenture of Trust between the City and the Trustee relating to the issuance of a series of PID Bonds for financing costs of Public Improvements, as it may be amended from time to time.

“Landowners” means Yarrington Partners, Ltd., a Texas limited partnership, and Whisper Master Community Limited Partnership, a Texas limited partnership.

“Land Use” means a use classification for final subdivided lots or final building Lots with similar characteristics (e.g. commercial, light industrial, multifamily residential, single family residential or other uses), as determined or approved by the Administrator. In the case of single family residential Lots, the Land Use shall be defined by classifying the residential Lots with an equal assessment based on an assumed average home price of \$215,000. If any change in Land Use requires a change in zoning or other entitlement process, such change must be approved by the City prior to any change in the SAP.

“Lot” means (i) for any portion of the Property for which a subdivision plat has been recorded in the official public records of the County, a tract of land described as a “lot” in such subdivision plat, and (ii) for any portion of the Property for which a subdivision plat has not been recorded in the official public records of the County, a tract of land anticipated to be described as a “lot” in a final recorded subdivision plat.

“Lot Type” means a classification of final building Lots with similar characteristics (e.g. commercial, light industrial, business park, single family residential, etc.), as determined by the Administrator and confirmed by the City Council.

“Non-Benefited Property” means Parcels within the boundaries of the District that accrue no special benefit from the Public Improvements, property, real property, right of way and easements located within the boundaries of the PID that is owned by or irrevocably offered for dedication to the federal government, the State of Texas, the County, the City, a school district, a public utility provider or any other political subdivision or public agency, whether in fee simple, through an exclusive use easement, plat, or a public utility easement.. Property identified as Non-Benefited Property at the time the Special Assessments (i) are imposed or (ii) are reallocated pursuant to a subdivision of a Parcel is not assessed. Assessed Property converted to Non-Benefited Property, if the Special Assessments may not be reallocated pursuant to **Section VI.D** or **Section VI.E**, remains subject to the Special Assessments and requires the Special Assessments to be prepaid as provided for in **Section VI.E**.

“Parcel” means a property identified by a tax map identification number assigned by the Hays County Appraisal District for real property tax purposes.

“PID” means the Whisper Public Improvement District created by the City pursuant to Resolution No. 2014-143R approved October 6, 2014.

“PID Act” means Chapter 372 of the Texas Local Government Code, as amended.

“PID Bonds” means the special assessment revenue bonds to be issued by the City, in one or more series, to finance the Public Improvements that confer special benefit on the land within the PID, which may include funds for any required reserves and amounts necessary to pay the PID Bond issuance costs, and to be secured by the revenues and funds pledged under an Indenture, consisting primarily of the Special Assessments, pursuant to the authority granted in the PID Act, and as described by the PID Finance Agreement for the purposes of (i) financing the costs of Public Improvements and related costs and (ii) reimbursing Whisper Master Community Limited Partnership for Actual Costs paid prior to the issuance of the PID Bonds. This term is used to collectively refer to the PID Bonds.

“PID Finance Agreement” means the Whisper Public Improvement District Financing Agreement approved by the City on ____, 2017.

“Prepayment Costs” mean interest and expenses to the date of prepayment, plus any additional expenses, if any, related to the prepayment, reasonably expected to be incurred by or imposed upon the City as a result of any prepayment of a Special Assessment and the PID Bonds secured by such Special Assessment.

“Prepayment Reserve” has the meaning set forth in **Section IV.H** of this SAP.

“Property” means the approximately 706 acres of property depicted and described by metes and bounds on Exhibit A to Resolution No. 2014-143R as adopted by City Council on October 6, 2014. The Property is located within the City and is legally described in **Appendix B** to this SAP and is depicted in **Table I** of this SAP.

“Public Improvements” mean the Authorized Improvements designed, constructed, and installed in accordance with this SAP for which Special Assessments are levied against the Assessed Property that receives a special benefit from such improvement and depicted in **Appendix D**.

“Public Improvement Costs” mean the actual or budgeted costs, as applicable, of all or any portion of the Public Improvements, as these costs may be updated from time to time.

“Service and Assessment Plan” or **“SAP”** or **“Assessment Plan”** means this Whisper Public Improvement District Service and Assessment Plan (as such plan is amended, supplemented or updated from time to time) approved by the City Council in the first Assessment Ordinance.

“Special Assessment(s)” means the assessments levied against properties in the District, as provided for in the applicable Assessment Order and in the Service and Assessment Plan, including any supplemental assessments or reallocation of assessments levied in accordance with Sections 372.019 and 372.020 of the PID Act.

“Trustee” means the trustee under the Indenture, and any successor thereto permitted under such Indenture and any other Trustee under a future Indenture.

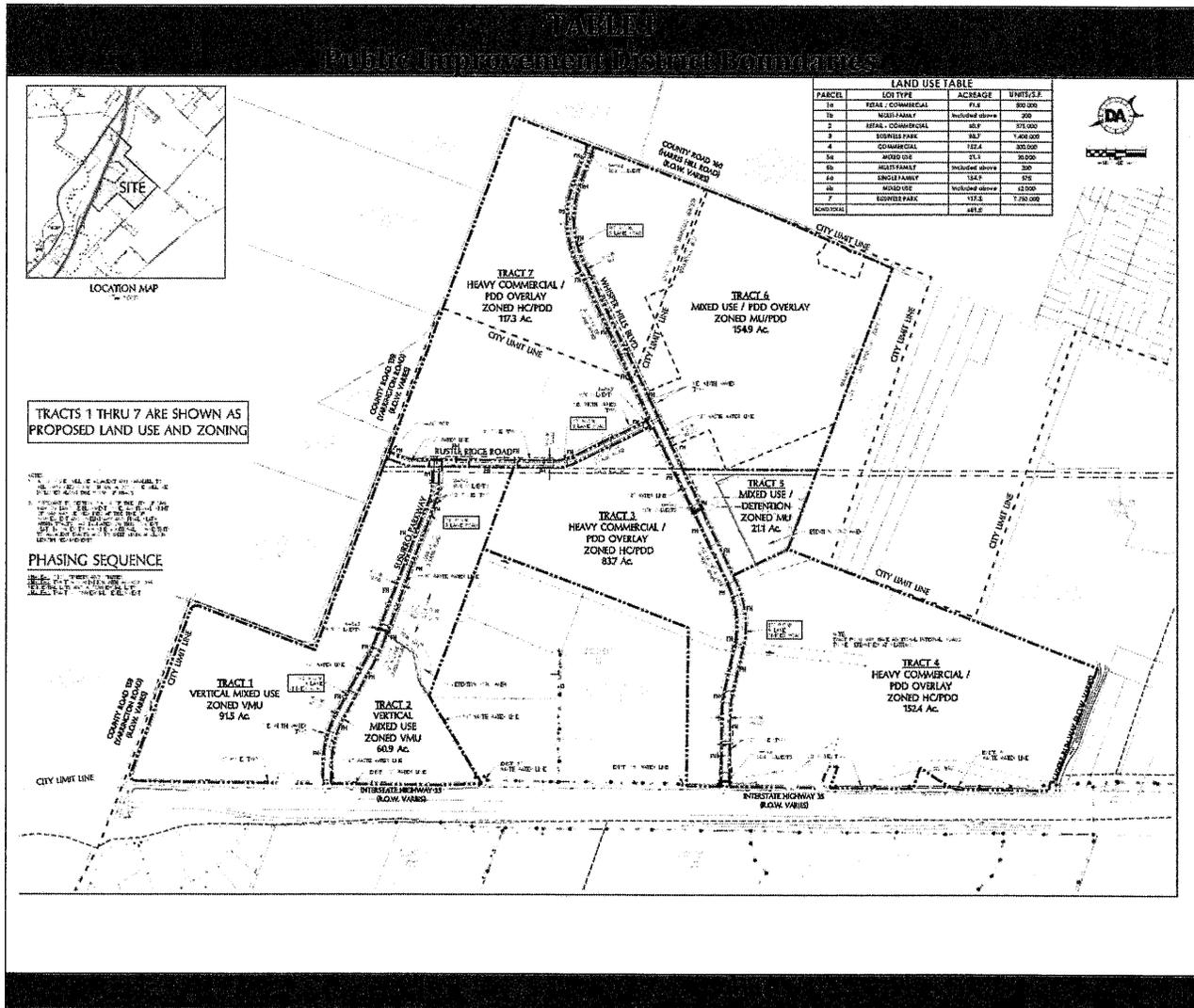
Section II

PROPERTY INCLUDED IN THE PID

A. Property Included in the PID

The PID is comprised of the Property. The PID is located entirely within the City's jurisdiction. It contains approximately 706 acres planned for development to include a combination of residential and commercial development as well as the associated rights of way, landscaping, and infrastructure necessary to provide roadways, drainage, and utilities to the Property.

A map of the Property within the PID is shown in **Table I**. Legal descriptions for all Parcels within the PID are included in **Appendix C**.



Section III

DESCRIPTION OF THE PUBLIC IMPROVEMENTS

A. Authorized Improvement Overview

Section 372.003 of the PID Act identifies the authorized improvements that a City may choose to undertake with the establishment of a PID. The Authorized Improvements identified in the PID Act include:

- (i) landscaping;
- (ii) erection of fountains, distinctive lighting, and signs;
- (iii) acquiring, constructing, improving, widening, narrowing, closing, or rerouting of sidewalks or of streets, any other roadways, or their rights-of-way;
- (iv) construction or improvement of pedestrian malls;
- (v) acquisition and installment of pieces of art;
- (vi) acquisition, construction or improvement of libraries;
- (vii) acquisition, construction or improvement of off-street parking facilities;
- (viii) acquisition, construction, improvement, or rerouting of mass transportation facilities;
- (ix) acquisition, construction or improvement of water, wastewater, or drainage facilities or improvements;
- (x) the establishment or improvement of parks;
- (xi) projects similar to those listed in Subdivisions (i)-(x)
- (xii) acquisition, by purchase or otherwise, of real property in connection with an authorized improvement;
- (xiii) special supplemental services for improvement and promotion of the district, including services relating to advertising, promotion, health and sanitation, water and wastewater, public safety, security, business recruitment, development recreation and cultural enhancement;
- (xiv) payment of expenses incurred in the establishment, administration and operation of the district; and
- (xv) the development, rehabilitation, or expansion of affordable housing.

The City has determined that of the improvements authorized under the PID Act, it will undertake at this time only those Public Improvements more particularly described in **Section III.B.**

B. Descriptions and of the Public Improvements and Public Improvement Costs

The Public Improvements are described below and generally depicted in **Appendix D. Table III** shows the Public Improvement Costs to be funded by the PID Bonds. The Public Improvement Costs are \$10,399,030 as shown in Table III and which may be revised during Annual Service Plan Updates.

A description of the Public Improvements to be funded by the PID Bonds is as follows:

- *Road A & Associated Utilities*
 - Road A (Whisper Hills Boulevard) improvements will consist of construction of a divided arterial road beginning at the northbound frontage road of IH 35 service road for 4,324 feet and transiting to a collector road that ends at existing Harris Hill Road (CR 160) approximately 2,675 feet for a total Road A distance of 6,999 feet. These improvements will provide road and thoroughfare access to phases of the Project north and south of Road A and consist of the construction of related earthwork, drainage, paving, sidewalks, signage, traffic control devices, manholes, water/waste water trunk mains, pipes, valves and associated appurtenances. All roadway improvements will be constructed according to City standards. The Actual Costs for these Public Improvements are \$5,323,410.

- *Road B & Associated Utilities*
 - Road B (Rustle Ridge Road) improvements will consist of construction of a collector road beginning at road A (Whisper Hills Boulevard) and extending north for 2,859 feet to existing Yarrinton Road (CR159). These improvements will provide road and thoroughfare access to phases of the Project east and west of Road B and consist of the construction of related earthwork, drainage, paving, sidewalks, signage, traffic control devices, manholes, water/waste water trunk mains, pipes, valves and associated appurtenances. All roadway improvements will be constructed according to City standards. The Actual Costs for these Public Improvements are \$2,225,247.

- *Lift Station & Waste Water Line D*
 - A proposed 8 inch wastewater line extends north and south of Road A (Whisper Hills Boulevard) at Harris Hill Road. These improvements will provide service to phases of the Project north and south of Road A (Whisper Hills Boulevard) near Harris Hill Road. All utility improvements will be constructed according to City standards. The Actual Costs for these Public Improvements are \$245,929.

- *Road C & Associated Utilities*
 - Road C (Susurro Parkway) improvements will consist of construction of a divided arterial road beginning at the northbound frontage road of IH 35 service road for 2,000 feet and transiting to a collector road that ends at existing Harris Hill road (CR 160) approximately 1,541 feet for a total Road C distance of 3,541 feet. These improvements will provide road and thoroughfare access to phases of the Project north and south of Road C and consist of the construction of related earthwork, drainage, paving, sidewalks, signage, traffic control devices, manholes, water/waste water trunk mains, pipes, valves and associated appurtenances. All roadway improvements will be constructed according to City standards. The Actual Costs of these Public Improvements are \$2,332,692. Actual Costs expended as of July 12, 2017 are \$_____.

- *Offsite Waste Water Line B*
 - A proposed 8 inch wastewater line begins at an existing manhole located near the northwest corner of the San Marcos Technology Park subdivision approximately 1,500 south of the Susurro Parkway and IH 35 Frontage Road intersection. The 8 inch wastewater line extends northeast a distance of 1,900 feet and end at Susurro Parkway (Revised to Wastewater Line C in PID Construction plans station 1+00 to 19+00). These improvements will provide service to phases of the Project south of Road C (Susurro Parkway). All utility improvements will be constructed according to City standards. The Actual Costs for these Public Improvements are \$271,752.

| Table III PID Bonds Public Improvements | |
|---|----------------------|
| | |
| Description | Total (a) |
| <i>Public Improvements</i> | |
| Road A & Associated Utilities | \$ 5,323,410 |
| Road B & Associated Utilities | 2,225,247 |
| Lift Station & Waste Water Line D | 245,929 |
| Road C & Associated Utilities | 2,332,692 |
| Offsite Waste Water Line B | 271,752 |
| Total Public Improvements | \$ 10,399,030 |
| (a) Public Improvement Costs provided by McDonald Development and Doucet & Associates. The figures shown in Table III may be revised in Annual Service Plan Updates. | |

Section IV

ASSESSMENT PLAN

A. Introduction

The PID Act requires the City Council to apportion the Public Improvement Costs based on the special benefits conferred to each Parcel or Lot from the Public Improvements. The PID Act provides that the Public Improvement Costs may be assessed: (i) equally per front foot or square foot; (ii) according to the value of the property as determined by the governing body, with or without regard to improvements on the property; or (iii) in any other manner that results in imposing equal shares of the cost on property similarly benefited. The PID Act further provides that the City Council may establish the methods of assessing the special benefits for various classes of improvements.

Table IV-A details the allocation of costs of the Public Improvements funded by the PID Bonds to the Assessed Property.

This section of this Service and Assessment Plan is intended to describe the special benefit conferred to each Parcel within the PID as a result of the Public Improvements funded by the PID Bonds, to provide the basis and justification for the determination that this special benefit exceeds the amount of the Special Assessments, and to explain the methodologies by which the City Council allocates and reallocates the special benefit of the Public Improvements to Parcels or Lots so that there is an equal share of the Actual Cost being apportioned to Parcels or Lots similarly benefited. The determination by the City Council of the assessment methodology set forth below is the result of the discretionary exercise by the City Council of its legislative authority and governmental powers and is conclusive and binding on the Landowners and all future owners and developers of any Assessed Property.

B. Special Benefit

The Assessed Property must receive a direct and special benefit from the Public Improvements, which must be equal to or greater than the amount of the Special Assessments. The Public Improvements are provided solely for the benefit of the Assessed Property.

When the City Council approved this SAP, the Landowners owned 100% of the Assessed Property. The Landowners have acknowledged that the Public Improvements confer a special benefit on the Assessed Property and consented to the imposition of the Special Assessments to pay for the Actual Costs associated therewith. The Landowners have ratified, confirmed, accepted, agreed to and approved: (i) the determinations and findings by the City Council as to the special benefits described herein and the Assessment Ordinance; (ii) the SAP and the Assessment Ordinance, and (iii) the levying of Special Assessments on the Assessed Property.

The City Council determined that funding the Actual Costs for the Public Improvements through the PID is beneficial to the City. Accordingly, the Public Improvements confer a special benefit to the Assessed Property, and such special benefit exceeds the amount of the Special Assessment levied on the Assessed Property from the PID Bonds. This conclusion is supported by the evidence, information, and testimony provided to the City Council.

C. Allocation of Actual Costs of Public Improvements

The Public Improvements will provide a special benefit to the Property, other than the Non-Benefited Property, in the PID. The Public Improvement Costs are, therefore, allocated to the Assessed Property, as shown in **Table IV-A**. The Public Improvement Costs detailed in **Table IV-A** are subject to revision through the Annual Service Plan Updates, but may not result in increased Special Assessments except as authorized under this SAP or the PID Act.

| Table IV-A PID Bonds Allocation of Public Improvement Costs | | | |
|--|----------------------|----------------------------|-----------------------|
| Public Improvements | Total Cost | Public Improvements | |
| | | % Allocation | Share of Costs |
| Road A & Associated Utilities | \$ 5,323,410 | 100% | \$ 5,323,410 |
| Road B & Associated Utilities | \$ 2,225,247 | 100% | \$ 2,225,247 |
| Lift Station & Waste Water Line D | \$ 245,929 | 100% | \$ 245,929 |
| Road C & Associated Utilities | \$ 2,332,692 | 100% | \$ 2,332,692 |
| Offsite Waste Water Line B | \$ 271,752 | 100% | \$ 271,752 |
| Total Public Improvements | \$ 10,399,030 | | \$ 10,399,030 |

D. Special Assessment Methodology

The City Council may assess Public Improvement Costs against Assessed Property so long as the special benefit conferred upon the Assessed Property by the Public Improvements equals or exceeds the amount of the Special Assessments. The Actual Costs may be assessed using any methodology that results in the imposition of equal shares of the Actual Costs on Assessed Property similarly benefited.

- *Assessment Methodology for the PID*

For purpose of this SAP, the City Council has determined that the Actual Costs of the portion of the Public Improvements to be financed with the Special Assessments shall be allocated to the Assessed Property by spreading the entire Special Assessment across all Parcels and Lots within Assessed Property based on the ratio of the estimated build out value of each Lot or Parcel to the total build out value for all Lots or Parcels with such Special Assessment not to exceed the Actual Costs allocated to a particular portion of the Project. **Table IV-B** summarizes the Special Assessments relating to the Assessed Property.

Based on the Actual Costs provided by the Landowners for the Public Improvements, the City Council has determined that the benefit to the Assessed Property from the Public Improvements is at least equal to the Special Assessments levied on the Assessed Property.

The Special Assessments and Annual Installments for each Parcel or Lot is shown on the Assessment Roll, attached as **Appendix A**, and no Special Assessment shall be changed except as authorized by this SAP or the PID Act. **Table IV-B** summarizes the initial allocation of the Special Assessment relating to the Assessed Property at the time the Assessment Ordinance relating to the PID was adopted by the City Council. This SAP will be modified as appropriate if and when PID Bonds are issued.

In the event that a Lot or a Parcel is subdivided, the reallocation of the Special Assessment will be undertaken utilizing the methodology described in this **Section IV.D**. The City may request that, in the event of a subdivision of a Lot or Parcel, , an independently prepared market analysis, at the expense of the owner of the Lot or Parcel to be subdivided, to support its estimated build out value of the subdivided Parcels.

**Table IV-B
PID Bonds
Special Assessment Allocation (a)**

| Land Use | Units / Square Feet | Assessed Value Per Unit/SF | Build Out Value | Total Assessment | Annual Installment | Assessment per Unit | Assessment per SF | Annual Installment per Unit | Annual Installment per SF | Equivalent Tax Rate per \$100 AV |
|-------------------|---------------------|----------------------------|-----------------------|----------------------|---------------------|---------------------|-------------------|-----------------------------|---------------------------|----------------------------------|
| Retail/Commercial | 875,000 | \$ 114 | \$ 100,000,000 | \$ 2,358,786 | \$ 171,077 | \$ - | \$ 2.70 | \$ - | \$ 0.20 | \$ 0.17 |
| Multi-Family | 400 | \$ 70,000 | \$ 28,000,000 | \$ 660,460 | \$ 47,901 | \$ 1,651 | \$ - | \$ 120 | \$ - | \$ 0.17 |
| Business Park | 3,150,000 | \$ 98 | \$ 308,000,000 | \$ 7,265,061 | \$ 526,916 | \$ - | \$ 2.31 | \$ - | \$ 0.17 | \$ 0.17 |
| Commercial | 300,000 | \$ 100 | \$ 30,000,000 | \$ 707,636 | \$ 51,323 | \$ - | \$ 2.36 | \$ - | \$ 0.17 | \$ 0.17 |
| Mixed-Use | 92,000 | \$ 100 | \$ 9,200,000 | \$ 217,008 | \$ 15,739 | \$ - | \$ 2.36 | \$ - | \$ 0.17 | \$ 0.17 |
| Single Family | 575 | \$ 215,000 | \$ 123,625,000 | \$ 2,916,049 | \$ 211,494 | \$ 5,071 | \$ - | \$ 368 | \$ - | \$ 0.17 |
| Total | | | \$ 598,825,000 | \$ 14,125,000 | \$ 1,024,450 | | | | | \$ 0.17 |

(a) Estimates based on information available as of xx/xx/17, the date the original SAP was adopted by the City Council. The actual unit counts may vary from the estimates shown above, the initial assessment allocation for each Land Use will be set when subdivided and approved in a Annual Service Plan Update approved by the City Council, subject to the terms of this SAP, the PID Act, and any other documents associated with PID Bonds if issued in the future. The above estimates assume an average 6.50% interest rate and a 30 year term for the Special Assessments and any PID Bonds and an annual administrative expense of \$35,000 increasing at 2.0% per year.

E. Special Assessment and Annual Installments

The Special Assessments will be levied on each Parcel or Lot according to the Assessment Roll, as applicable. The Annual Installments for the Special Assessments will be collected on the dates and in the amounts shown on the Assessment Roll, subject to any revisions made during an Annual Service Plan Update.

F. Administrative Expenses

The cost of administering the PID and collecting the Annual Installments shall be paid for on a pro rata basis by each Parcel or Lot based on the amount of outstanding Special Assessment remaining on the Parcel or Lot. The Administrative Expenses shall be collected as part of and in the same manner as Annual Installments in the amounts shown on the Assessment Roll shown on **Appendix A**, which is subject to revision through Annual Service Plan Updates.

G. Additional Interest

Pursuant to the PID Act, the interest rate for Special Assessments may exceed the actual interest rate per annum paid on bonds issued by a PID by no more than one half of one percent (0.50%) per annum, (the "Additional Interest"). For the PID, there will be forty percent (40.0%) of the funds generated by the Additional Interest (i.e. 0.20%) per annum that is dedicated to fund the Prepayment Reserve as described in **Section IV.H** below. The remaining sixty percent (60.0%) balance of the funds generated by the Additional Interest (i.e. 0.30%) per annum is dedicated to the Delinquency Reserve as described in **Section IV.I** below.

H. Prepayment Reserve

As described above, a portion of the funds generated by the Additional Interest will be allocated to fund the associated interest charged between the date of prepayment of a Special Assessment and the date on which related PID Bonds are actually redeemed (the "**Prepayment Reserve**"). The Prepayment Reserve shall be funded each year until it reaches 1.5% of the par amount of the related PID Bonds, but in no event will the annual collections be more than 0.20% per annum higher than the actual interest rate paid on the related PID Bonds. If the PID Act is subsequently amended to allow a prepayment of a Special Assessment to include all applicable interest from the date of prepayment through and including the date of the regularly scheduled PID Bond payments to be charged upon the prepayment of the Special Assessment, the 0.20% per annum allocated to fund the associated interest charged between the date of prepayment of the Special Assessment and the date on which PID Bonds are actually prepaid may be eliminated at the election of the City. If the Prepayment Reserve requirement is so eliminated or in a given year the additional reserve is fully funded at 1.5% of the par amount of the PID Bonds, the City can allocate the Prepayment Reserve component of the Additional Interest collected during that year to the Delinquency Reserve or to pay Administrative Expenses or for any other use that benefits the Assessed Property as set forth in the Indenture related to such PID Bonds and as determined by the City.

I. Delinquency Reserve

As described above, a portion of the funds generated by the Additional Interest will be allocated to offset any possible delinquent payments. This additional reserve (the "**Delinquency Reserve**") shall be funded each year up to 4.0% of the par amount of the related PID Bonds, but in no event will the annual collection of the Delinquency Reserve be more than 0.30% per annum higher than the actual interest rate paid on the related PID Bonds. If in a given year the additional reserve is fully funded at 4.0% of the par amount of the related PID Bonds, the City can allocate the Delinquency Reserve component of the Additional Interest collected during that year to redeem PID Bonds or for any other use that benefits the Assessed Property as set forth in the Indenture related to such PID Bonds and as determined by the City.

Section V

SERVICE PLAN

The PID Act requires the Service Plan (i) cover a period of at least five years, and (ii) define the annual projected costs and indebtedness for the Public Improvements undertaken within the PID during the five year period. It is anticipated that it will take approximately __ months for the Public Improvements to be constructed.

The Actual Costs for the Public Improvements plus costs related to the issuance of the PID Bonds, and payment of expenses incurred in the establishment, administration and operation of the PID is \$14,142,155 as shown in **Table V-A**. The Service Plan shall be reviewed and updated at least annually for purposes of determining the annual budget for Administrative Expenses, updating the Actual Costs of the Public Improvements, and updating the Assessment Roll shown on **Appendix A**. Any update to this SAP is herein referred as an "Annual Service Plan Update."

Table V-A summarizes the sources and uses of funds required to construct the Public Improvements, establish the PID, levy the Special Assessment, and issue the planned PID Bonds. The sources and uses of funds shown in **Table V-A** shall be updated each year in the Annual Service Plan Update to reflect any revisions to the Actual Costs and any PID Bond issues, if any.

**Table V-A
PID Bonds
Sources and Uses of Funds**

| Sources of Funds | |
|-----------------------------|----------------------|
| Gross Bond Amount | \$ 14,125,000 |
| Landowners Contribution (a) | 17,155 |
| | <u>\$ 14,142,155</u> |

| Uses of Funds | |
|---|----------------------|
| Public Improvements (b): | <u>\$ 10,399,030</u> |
| Other Fund Deposits: | |
| Debt Service Reserve Fund (c): | \$ 1,412,500 |
| Capitalized Interest (d): | 918,125 |
| | <u>\$ 2,330,625</u> |
| Cost of Issuance: | <u>\$ 988,750</u> |
| Underwriter Discount/Underwriter Counsel (e): | <u>\$ 423,750</u> |
| | <u>\$ 14,142,155</u> |

- (a) Landowners will fund all costs not covered by the PID Bonds.**
- (b) See Table III and Table IV-A for details.**
- (c) The planned PID Bonds will include a debt service reserve fund calculated in accordance with the applicable IRS regulations.**
- (d) The planned PID Bonds will include 12 months of capitalized interest.**
- (e) The planned PID Bonds will have an Underwriter Discount and Underwriter Counsel Fee equal to 3.0% of the Gross Bond Amount.**

The projected Annual Installments for the first five years after the approval of this SAP for the Special Assessments and the planned PID Bonds are presented in **Table V-B**. The annual projected Annual Installments are subject to revision and shall be updated in the Annual Service Plan Update to reflect any change expected for each year.

**Table V-B
PID Bonds
Projected Annual Installments (a)**

| Year | Period Ending June 1 | Principal Payments | Interest Expense | Administrative Expenses (b) | Prepayment Reserve | Delinquency Reserve | Capitalized Interest | Annual PID Installments |
|------|----------------------|--------------------|---------------------|-----------------------------|--------------------|---------------------|----------------------|-------------------------|
| 1 | 2019 | \$ - | \$ 918,125 | \$ 35,000 | \$ 28,250 | \$ 42,375 | \$ 918,125 | \$ 105,625 |
| 2 | 2020 | \$ - | \$ 918,125 | \$ 35,700 | \$ 28,250 | \$ 42,375 | \$ - | \$ 1,024,450 |
| 3 | 2021 | \$ - | \$ 918,125 | \$ 36,414 | \$ 28,250 | \$ 42,375 | \$ - | \$ 1,025,164 |
| 4 | 2022 | \$ - | \$ 918,125 | \$ 37,142 | \$ 28,250 | \$ 42,375 | \$ - | \$ 1,025,892 |
| 5 | 2023 | \$ 25,000 | \$ 918,125 | \$ 37,885 | \$ 28,200 | \$ 42,300 | \$ - | \$ 1,051,510 |
| | Total | \$ 25,000 | \$ 4,590,625 | \$ 182,141 | \$ 141,200 | \$ 211,800 | \$ 918,125 | \$ 4,232,641 |

(a) The Projected Annual Installments are the expenditures associated with the formation of the PID, the costs of issuance and repayment of the planned PID Bonds and the administration of the PID. The debt service estimates are based on an average 6.50% interest rate and a 30 year term for the initial series of the planned PID Bonds.

(b) Administrative expenses are estimated to increase at a rate of 2.0% per year.

Section VI

TERMS OF THE SPECIAL ASSESSMENTS

A. Amount of Special Assessments and Annual Installments for Parcels

The Special Assessments and Annual Installments for the Assessed Property are shown on the Assessment Roll in **Appendix A**. The Special Assessment and Annual Installments shall not be changed except as authorized under the terms of this SAP and the PID Act. The Annual Installments shall be collected in an amount sufficient to pay (i) the principal and interest on the PID Bonds, (ii) to fund the Prepayment Reserve for the PID Bonds, (iii) to fund the Delinquency Reserve for the PID Bonds, and (iv) to cover the Administrative Expenses of the PID Bonds.

B. Reallocation of Assessments for Parcels Located Within Assessed Property

1. *Upon Subdivision by a Recorded Subdivision Plat*

Upon the subdivision of any Parcel or Lot, the Special Assessment for the Parcel or Lot prior to the subdivision shall be reallocated among the new subdivided Parcels or Lots according to the following formula:

$$A = B \times (C \div D)$$

Where:

A = the Special Assessment for each new subdivided Parcel or Lot

B = the Special Assessment for the Parcel or Lot prior to subdivision

C = the estimated buildout value of each new subdivided Parcel or Lot

D = the sum of the estimated buildout value to be built on all new subdivided Parcels or Lots

The calculation of the estimated buildout value of a Parcel or Lot shall be performed by the Administrator and confirmed by the City Council based on information provided to the City, including any market studies required under Section IV.D. The estimate as confirmed by City Council shall be conclusive.

The sum of the Special Assessment for all newly subdivided Parcels or Lots shall equal the Special Assessment for the parcel or lot prior to subdivision. The calculation shall be made separately for each newly subdivided Parcel or Lot. Any reallocation pursuant to this section shall be reflected in an Annual Service Plan Update approved by the City Council.

2. *Upon Consolidation*

Upon the consolidation of two or more Assessed Properties, the Special Assessment for the consolidated Assessed Property shall be the sum of the Special Assessments for the Assessed Properties prior to consolidation. The reallocation of a Special Assessment for an Assessed Property that is a homestead under Texas law may not exceed the Special Assessment prior to the reallocation. Any reallocation pursuant to this section shall be calculated by the Administrator and reflected in an update to this SAP approved by the City Council. The consolidation of any Assessed Property as described herein shall be considered an administrative action and will not require any notice or public hearing (as defined in the PID Act) by the City Council.

C. Mandatory Prepayment of Assessments

If Assessed Property or a portion thereof is transferred to a party that is exempt from the payment of the Special Assessment under applicable law, or if an owner causes a Parcel, Lot, or portion thereof to become Non-Benefited Property, the owner of such Parcel, Lot, or portion thereof shall pay to the City the full amount of the Special Assessment, plus all Prepayment Costs, for such Parcel, Lot or portion thereof prior to any such transfer or act.

D. Reduction of Special Assessments

If after all Public Improvements to be funded with PID Bonds have been completed and the Actual Costs for the Public Improvements are less than the Public Improvement Costs used to calculate the Special Assessments securing such PID Bonds, resulting in excess PID Bond proceeds, then the City may, at its discretion and in accordance with the Indenture related to such PID Bonds, reduce the Special Assessment securing the series of PID Bonds for each Assessed Property pro rata such that the sum of the resulting reduced Special Assessments for all Assessed Properties equals the reduced Actual Costs and such excess PID Bond proceeds shall be applied to redeem PID Bonds. Additionally, the City may, at its discretion and in accordance with the Indenture related to such PID Bonds, use such excess bond proceeds to fund additional Public Improvements in the PID. The Special Assessments shall not be reduced to an amount less than the principal amount of the related outstanding PID Bonds.

Similarly, if the City does not undertake some of the Public Improvements to be funded with a series of PID Bonds resulting in excess PID Bond proceeds then the City may, at its discretion and in accordance with the related Indenture related to such PID Bonds, reduce the Special Assessment securing the PID Bonds for each Assessed Property pro-rata to reflect only the Actual Costs that were expended and apply such excess PID Bond proceeds as described in the paragraph immediately above. The Special Assessments shall not be reduced to an amount less than the principal amount of the related outstanding PID Bonds.

E. Payment of Special Assessments

1. Payment in Full

- i. The Special Assessment for any Parcel or Lot may be paid in full at any time in accordance the PID Act. The Payment shall include all Prepayment Costs, if any. If prepayment in full will result in redemption of PID Bonds, the payment amount shall be reduced by the applicable portion of the proceeds from a debt service reserve fund applied to the redemption pursuant to the Indenture, net of any other costs applicable to the redemption of PID Bonds.
- ii. If an Annual Installment has been billed prior to payment in full of a Special Assessment, the Annual Installment shall be due and payable and shall be credited against the payment-in-full amount upon payment.
- iii. Upon payment in full of a Special Assessment and all Prepayment Costs, the City shall deposit the payment in accordance with the related Indenture; whereupon, the Special Assessment for the Parcel or Lot shall be reduced to zero, and the Parcel or Lot owner's obligation to pay the Special Assessment and Annual Installments thereof shall automatically terminate. The City shall provide the owner of the affected Assessed Property a recordable "Notice of PID Assessment Termination."
- iv. At the option of a Parcel or Lot owner, the Special Assessment on any Parcel or Lot may be paid in part in an amount equal to the amount of prepaid Special Assessments plus Prepayment Costs, if any, with respect thereto. Upon the payment of such amount for a Parcel or Lot, the Special Assessment for the Parcel or Lot shall be reduced by the amount of such partial payment, the Assessment Roll shall be updated to reflect such partial payment, and the obligation to pay the Annual Installment for such Parcel or Lot shall be reduced to the extent the partial payment is made.

2. Payment of Annual Installments

- i. The PID Act provides that a Special Assessment for a Parcel or Lot may be paid in full at any time. If not paid in full, the PID Act authorizes the City to collect interest and collection costs on the outstanding Special Assessment. A Special Assessment for a Parcel or Lot that is not paid in full will be collected in Annual Installments each year in the amounts shown in the Assessment Roll, which includes interest on the outstanding Special Assessment and Administrative Expenses.
- ii. The Annual Installments as listed on the Assessment Roll have been calculated assuming a weighted average interest rate on the PID Bonds of 6.5%. The Annual Installments may not exceed the amounts shown on the Assessment Roll except pursuant to any amendment or update to this SAP.

- iii. The Annual Installments shall be reduced to equal the actual costs of repaying the related series of PID Bonds and actual Administrative Expenses (as provided for in the definition of such term), taking into consideration any other available funds for these costs, such as interest income on account balances.
- iv. The City reserves and shall have the right and option to refund PID Bonds in accordance with Section 372.027 of the PID Act (Section 1207, of the Texas Government Code) and the Indenture related to such PID Bonds. In the event of issuance of refunding bonds, the Administrator shall recalculate the Annual Installments, and if necessary, may adjust, or decrease, the amount of the Annual Installment so that total Annual Installments of Special Assessments will be produced in annual amounts that are required to pay the debt service on the refunding bonds when due and payable as required by and established in the ordinance and/or the indenture authorizing and securing the refunding bonds, and such refunding bonds shall constitute "PID Bonds" for purposes of this SAP.

F. Collection of Annual Installments

The Administrator shall, no less frequently than annually, prepare and submit to the City for its approval, an Annual Service Plan Update to allow for the billing and collection of Annual Installments. Each Annual Service Plan Update shall include an updated Assessment Roll and a calculation of the Annual Installment for each Assessed Property. Administrative Expenses shall be allocated among Assessed Properties in proportion to the amount of the Annual Installments for the Assessed Property. Each Annual Installment shall be reduced by any credits applied under the applicable Indenture, such as capitalized interest, interest earnings on any account balances, and any other funds available to the Trustee for such purpose, and existing deposits for a Prepayment Reserve.

Annual Installments may be collected by the City (or such entity to whom the City directs) in the same manner and at the same time as ad valorem taxes. Annual Installments shall be subject to the penalties, procedures, and foreclosure sale in case of delinquencies as set forth in the PID Act. The City may provide for other means of collecting the Annual Installments to the extent permitted under the PID Act. The Assessments shall have lien priority as specified in the PID Act.

Any sale of Assessed Property for nonpayment of the delinquent Annual Installments shall be subject to the lien established for the remaining unpaid Annual Installments against such Assessed Property and such Assessed Property may again be sold at a judicial foreclosure sale if the purchaser thereof fails to make timely payment of the non-delinquent Annual Installments against such Assessed Property as they become due and payable.

Each Annual Installment, including the interest on the unpaid amount of a Special Assessment, shall be assessed annually. Each Annual Installment together with interest thereon shall be delinquent if not paid prior to February 1 of the following year. The initial Annual Installments relating to the Special Assessments will be due when billed, and will be delinquent if not paid prior to February 1 of the year subsequent to the planned issuance of PID Bonds. Should PID Bonds not be issued by the City within six months of the completion of the Authorized Improvements, the initial Annual Installments will be due when billed, and will be delinquent if not paid prior to February of the year subsequent to the completion of the Authorized Improvements.

G. Surplus Funds Remaining in the PID Bond Account

If proceeds from the PID Bonds still remain after all of the Public Improvements are constructed and accepted by the City, the proceeds may be utilized in accordance with **Section VI.E** of this SAP.

Section VII

THE ASSESSMENT ROLL

A. Assessment Roll

The City Council has evaluated each Parcel and Lot within the Project (based on numerous factors such as the applicable zoning for developable area, Non-Benefited Property, the types of Public Improvements, and other development factors deemed relevant by the City Council) to determine the amount of Assessed Property within the Parcels.

The Assessed Property will be assessed for the special benefits conferred upon the property resulting from the Public Improvements and funded by the PID Bonds. **Table VII** summarizes the \$14,142,155 in special benefit received by the Assessed Property from the Public Improvement Costs, the costs of the PID formation, and the planned PID Bond issuance costs. The par amount of the PID Bonds are \$14,125,000, which is less than the benefit received by the Assessed Property. The Special Assessment for each Parcel or Lot within the Assessed Property is calculated based on the allocation methodologies described in **Section IV.D and Section VI.B**. The Assessment Roll is attached hereto as **Appendix A**.

| Table VII PID Bonds Special Benefit Summary | |
|--|----------------------|
| Public Improvement | Total Cost |
| Total Public Improvements | \$ 10,399,030 |
| <i>PID Formation/Bond Cost of Issuance</i> | |
| Reserve Fund | \$ 1,412,500 |
| Capitalized Interest | \$ 918,125 |
| Underwriter Discount/Underwriter Counsel | \$ 423,750 |
| Cost of Issuance | \$ 988,750 |
| PID Formation/Bond Cost of Issuance | \$ 3,743,125 |
| <i>Special Benefit</i> | |
| Total Special Benefit | \$ 14,142,155 |
| Projected PID Special Assessment | \$ 14,125,000 |
| Excess Benefit | \$ 17,155 |

B. Annual Assessment Roll Updates

The Administrator shall prepare, and shall submit to the City for approval, updates to the Assessment Roll and the Annual Service Plan Update to reflect changes such as (i) the identification of each Parcel or Lot (ii) the Special Assessment for each Assessed Property, including any adjustments authorized by this SAP or in the PID Act; (iii) the Annual Installment for the Assessed Property for the year (if the Special Assessment is payable in installments); and (iv) payments of the Special Assessment, if any, as provided by **Section VI.E** of this SAP.

The Service and Assessment Plan Update shall reflect the actual interest on the PID Bonds on which the Annual Installments shall be paid, any reduction in the Special Assessments, and any revisions in the Actual Costs to be funded by the PID Bonds and Landowners funds.

Section VIII

MISCELLANEOUS PROVISIONS

A. Administrative Review

The City may elect to designate a third party to serve as Administrator of the PID. The City shall notify the Landowners in writing upon appointing a third party Administrator.

To the extent consistent with the PID Act, if an owner of Assessed Property claims that a calculation error has been made in the Assessment Roll, including the calculation of the Annual Installment, that owner must send a written notice describing the error to the Administrator no later than thirty (30) days after the date the invoice or other bill for the Annual Installment is received. If the owner fails to give such notice, such owners shall be deemed to have accepted the calculation of the Assessment Roll (including the Annual Installments) and to have waived any objection to the calculation. The Administrator shall promptly review the notice, and if necessary, meet with the Assessed Property owner, consider written and oral evidence regarding the alleged error and decide whether, in fact, such a calculation error occurred.

If the Administrator determines that a calculation error has been made and the Assessment Roll should be modified or changed in favor of the Assessed Property owner, such change or modification shall be presented to the City for approval, to the extent permitted by the PID Act. A cash refund may not be made for any amount previously paid by the Assessed Property owner (except for the final year during which the Annual Assessment shall be collected), but an adjustment may be made in the amount of the Annual Installment to be paid in the following year. The decision of the Administrator regarding a calculation error relating to the Assessment Roll may be appealed to City Council for determination. Any amendments made to the Assessment Roll pursuant to calculation errors shall be made pursuant to the PID Act.

B. Termination of Assessments

Each Special Assessment shall terminate on the date the Special Assessment is paid in full, including payment of any unpaid Annual Installments and Delinquent Collection Costs, if any. After the termination of the Special Assessment, and the collection of any delinquent Annual Installments and Delinquent Collection Costs, the City shall provide the owner of the affected Parcel a recordable "Notice of the PID Assessment Termination."

C. Amendments

Amendments to this SAP can be made as permitted or required by the PID Act and under Texas law.

D. Administration and Interpretation of Provisions

The City Council shall administer (or cause the administration of) the PID, this SAP, and all Annual Service Plan Updates consistent with the PID Act.

E. Severability

If any provision, section, subsection, sentence, clause or phrase of this SAP, or the application of same to an Assessed Parcel or any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this SAP or the application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this SAP that no part thereof, or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, vividness or invalidity of any other part hereof, and all provisions of this SAP are declared to be severable for that purpose.

If any provision of this SAP is determined by a court to be unenforceable, the unenforceable provision shall be deleted from this SAP and the unenforceable provision shall, to the extent possible, be rewritten to be enforceable and to give effect to the intent of the City.

Appendix A

Assessment Roll

To be added upon final approval of this Service and Assessment Plan and approval of the Assessment Ordinance.

Appendix B

Legal Descriptions for Parcels within PID

To be added upon final approval of this Service and Assessment Plan and approval of the Assessment Ordinance.

Appendix C

Parcel Map (Conceptual)

To be added upon final approval of this Service and Assessment Plan and approval of the Assessment Ordinance.

Appendix D

Public Improvements

EXHIBIT "D"

PUBLIC IMPROVEMENTS

The Public Improvements are described below. The current costs for the Public Improvements are \$10,399,030 as shown in Table III and which may be revised during Annual Service Plan Updates.

- *Road A & Associated Utilities*
 - Road A (Whisper Hills Boulevard) improvements will consist of construction of a divided arterial road beginning at the northbound frontage road of IH 35 service road for approximately 4,324 feet and transiting to a collector road that ends at existing Harris Hill Road (CR 160) approximately 2,675 feet for a total Road A distance of approximately 6,999 feet. These improvements will provide road and thoroughfare access to phases of the Project north and south of Road A and consist of the construction of related earthwork, drainage, paving, sidewalks, signage, traffic control devices, manholes, water/waste water trunk mains, pipes, valves and associated appurtenances. All roadway improvements will be constructed according to City standards. The Actual Costs for these Public Improvements are \$5,323,410.

- *Road B & Associated Utilities*
 - Road B (Rustle Ridge Road) improvements will consist of construction of a collector road beginning at road A (Whisper Hills Boulevard) and extending north for 2,859 feet to existing Yarrington Road (CR159). These improvements will provide road and thoroughfare access to phases of the Project east and west of Road B and consist of the construction of related earthwork, drainage, paving, sidewalks, signage, traffic control devices, manholes, water/waste water trunk mains, pipes, valves and associated appurtenances. All roadway improvements will be constructed according to City standards.

- *Lift Station & Waste Water Line D*
 - A proposed 8 inch wastewater line extends north and south of Road A (Whisper Hills Boulevard) at Harris Hill Road. These improvements will provide service to phases of the Project north and south of Road A (Whisper Hills Boulevard) near Harris Hill Road. All utility improvements will be constructed according to City standards.

- *Road C & Associated Utilities*
 - Road C (Susurro Parkway) improvements will consist of construction of a divided arterial road beginning at the northbound frontage road of IH 35 service road for approximately 2,000 feet and transiting to a collector road that ends at existing Harris Hill road (CR 160) approximately 1,541 feet for a total Road C distance of approximately 3,541 feet. These improvements will provide road and thoroughfare access to phases of the Project north and south of Road C and consist of the construction of related earthwork, drainage, paving, sidewalks, signage, traffic control devices, manholes, water/waste water trunk mains, pipes, valves and associated appurtenances. All roadway improvements will be constructed according to City standards.

- *Offsite Waste Water Line B*
 - A proposed 8 inch wastewater line begins at an existing manhole located near the northwest corner of the San Marcos Technology Park subdivision approximately 1,500 south of the Susurro Parkway and IH 35 Frontage Road intersection. The 8 inch wastewater line extends northeast a distance of approximately 1,900 feet and end at Susurro Parkway (Revised to Wastewater Line C in PID Construction plans station 1+00 to 19+00). These improvements will provide service to phases of the Project south of Road C (Susurro Parkway). All utility improvements will be constructed according to City standards.

| Table III PID Bonds Public Improvements | |
|--|----------------------|
| Description | Total (a) |
| <i>Public Improvements</i> | |
| Road A & Associated Utilities | \$ 5,323,410 |
| Road B & Associated Utilities | 2,225,247 |
| Lift Station & Waste Water Line D | 245,929 |
| Road C & Associated Utilities | 2,332,692 |
| Offsite Waste Water Line B | 271,752 |
| Total Public Improvements | \$ 10,399,030 |

(a) Public Improvement Costs provided by McDonald Development and Doucet & Associates. The figures shown in Table III may be revised in Annual Service Plan Updates.

EXHIBIT "E"
FORM OF CERTIFICATION FOR PAYMENT
(Design - Whisper)

_____ ("**Construction Manager**") hereby requests payment for the percentage of design costs completed (the "**Design Costs**") described in Attachment A attached hereto. Capitalized undefined terms shall have the meanings ascribed thereto in the Whisper Public Improvement District Financing Agreement between Whisper Master Community Limited Partnership, a Texas limited partnership, and the City of San Marcos (the "**City**"), dated as of _____ (the "**Finance Agreement**"). In connection with this Certification for Payment, the undersigned, in his or her capacity as the of Construction Manager, to his or her knowledge, hereby represents and warrants to the City as follows:

1. He (she) is a duly authorized representative of Construction Manager, qualified to execute this request for payment on behalf of the Construction Manager and knowledgeable as to the matters forth herein.
2. The design work described in Attachment A has been completed in the percentages stated therein.
3. The true and correct Design Costs for which payment is requested is set forth in Attachment A and payment for such requested amounts and purposes has not been subject to any previously submitted request for payment.
4. Attached hereto as Attachment B is a true and correct copy of a bills paid affidavit evidencing that any contractor or subcontractor having performed design work described in Attachment A has been paid in full for all work completed through the previous Certification for Payment.
5. Attached hereto as Attachment C are invoices, receipts, worksheets and other evidence of costs which are in sufficient detail to allow the City to verify the Design Costs for which payment is requested.

[Signature Page Follows]

SIGNATURE PAGE TO
FORM OF CERTIFICATION FOR PAYMENT

Date: _____

[Construction Manager Signature Block to be added]

APPROVAL BY THE CITY

The Design described in Attachment A has been reviewed, verified and approved by the City Construction Representative. Payment of the Design Costs are hereby approved.

Date: _____

CITY OF SAN MARCOS, TEXAS

By: _____

ATTACHMENT A TO CERTIFICATION OF PAYMENT (DESIGN)

| Description of Design Work | Percentage of Design Work Completed under this Certification for Payment | Design Costs | Total Percentage of Design Work Completed |
|----------------------------|--|--------------|---|
|----------------------------|--|--------------|---|

ATTACHMENT B TO CERTIFICATION OF PAYMENT (DESIGN)

[attached – bills paid affidavit]

ATTACHMENT C TO CERTIFICATION OF PAYMENT (DESIGN)

[attached – receipts]

FORM OF CERTIFICATION FOR PAYMENT
(Construction - Whisper)

_____ ("**Construction Manager**") hereby requests payment of the Actual Cost of the work described in Attachment A attached hereto (the "**Draw Actual Costs**"). Capitalized undefined terms shall have the meanings ascribed thereto in the Whisper Public Improvement District Financing Agreement between Whisper Master Community Limited Partnership and the City of San Marcos, Texas (the "**City**"), dated as of _____. In connection with this Certification for Payment, the undersigned, in his or her capacity as the _____ of Construction Manager, to his or her knowledge, hereby represents and warrants to the City as follows:

1. He (she) is a duly authorized representative of Construction Manager, qualified to execute this request for payment on behalf of the Construction Manager and knowledgeable as to the matters forth herein.

2. The true and correct Draw Actual Costs for which payment is requested is set forth in Attachment A and payment for such requested amounts and purposes has not been subject to any previously submitted request for payment.

3. Attached hereto as Attachment B is a true and correct copy of a bills paid affidavit evidencing that any contractor or subcontractor having performed work on a Segment described in Attachment A has been paid in full for all work completed through the previous Certification for Payment.

4. Attached hereto as Attachment C are invoices, receipts, worksheets and other evidence of costs which are in sufficient detail to allow the City to verify the Draw Actual Costs of each Segment for which payment is requested.

[Signature Page Follows]

SIGNATURE PAGE TO
FORM OF CERTIFICATION FOR PAYMENT

Date: _____

[Construction Manager Signature Block to be
inserted]

JOINDER OF PROJECT ENGINEER

The undersigned Project Engineer joins this Certification for Payment solely for the purposes of certifying that the representations made by Construction Manager in Paragraph 2 above are true and correct in all material respects.

Project Engineer

APPROVAL BY THE CITY

The Draw Actual Costs of each Segment described in Attachment A has been reviewed, verified and approved by the City Construction Representative of the City. Payment of the Draw Actual Costs of each such Segment is hereby approved.

Date: _____

CITY OF SAN MARCOS, TEXAS

By: _____

ATTACHMENT A TO CERTIFICATION OF PAYMENT (CONSTRUCTION)

| Segment | Description of Work Completed Under this Certification for Payment | Draw Actual Costs |
|---------|--|-------------------------|
|---------|--|-------------------------|

ATTACHMENT B TO CERTIFICATION OF PAYMENT (CONSTRUCTION)

[bills paid affidavit – attached]

ATTACHMENT C TO CERTIFICATION OF PAYMENT (CONSTRUCTION)

[receipts – attached]

Exhibit "F"

FORM OF CLOSING DISBURSEMENT REQUEST

The undersigned is a lawfully authorized representative for Whisper Master Community Limited Partnership, a Texas limited partnership (the "**Owner**"), and requests payment from the Costs of Issuance Account of the Project Fund (as defined in the Whisper Public Improvement District Financing Agreement) from _____ (the "**Trustee**") in the amount of _____ (\$ _____) to be transferred from the [Cost of Issuance Account of the Project Fund] upon the delivery of the [_____ Bonds] for costs incurred in the establishment, administration, and operation of the Whisper Public Improvement District (the "**District**"), as follows:

In connection to the above-referenced payment, the Owner represents and warrants to the City as follows:

1. The undersigned is a duly authorized officer of the Owner, is qualified to execute this Closing Disbursement Request on behalf of the Owner, and is knowledgeable as to the matters set forth herein.

2. The payment requested for the below referenced establishment, administration, and operation of the District at the time of the delivery of the Bonds has not been the subject of any prior payment request submitted to the City.

3. The amount listed for the below itemized costs is a true and accurate representation of the Actual Costs incurred by Owner with the establishment of the District at the time of the delivery of the Bonds, and such costs are in compliance with the Service and Assessment Plan. The itemized costs are as follows:

[insert itemized list of costs here]

TOTAL REQUESTED: \$ _____

4. The Owner is in compliance with the terms and provisions of the Whisper Public Improvement District Financing Agreement, the Indenture and the Service and Assessment Plan.

5. All conditions set forth in the Indenture and [the Acquisition and Reimbursement Agreement for _____] for the payment hereby requested have been satisfied.

6. The Owner agrees to cooperate with the City in conducting its review of the requested payment, and agrees to provide additional information and documentation as is reasonably necessary for the City to complete its review.

Payments requested hereunder shall be made as directed below:

[Information regarding Payee, amount, and deposit instructions]

I hereby declare that the above representations and warranties are true and correct.

**WHISPER MASTER COMMUNITY LIMITED
PARTNERSHIP, a Texas limited partnership**

By: Whisper M.C., LLC, a Texas limited liability company,
Its General Partner

By: _____
Name: _____
Title: _____

APPROVAL OF REQUEST BY CITY

The City is in receipt of the attached Closing Disbursement Request. After reviewing the Closing Disbursement Request, the City approves the Closing Disbursement Request and shall include said payments in the City Certificate submitted to the Trustee directing payments to be made from Costs Issuance Account upon delivery of the Bonds.

CITY OF SAN MARCOS, TEXAS

By: _____
Name: _____
Title: _____

Exhibit “G”

FORM OF ACQUISITION AND REIMBURSEMENT AGREEMENT

[See Attached]

DRAFT

WHISPER PUBLIC IMPROVEMENT DISTRICT REIMBURSEMENT AGREEMENT

This Whisper Public Improvement District Reimbursement Agreement (this "**Reimbursement Agreement**") is executed between San Marcos, Texas ("**City**"), and Whisper Master Community Limited Partnership, a Texas limited partnership (including its Designated Successors and Assigns, the "**Owner**"), to be effective _____, 20__ (each individually referred to as a "**Party**" and collectively as the "**Parties**").

RECITALS

WHEREAS, on October 6, 2014, the City Council of City of San Marcos, Texas (the "**City Council**"), passed and approved Resolution No. 2014-143R (the "**Creation Resolution**") authorizing the creation of the Whisper Public Improvement District (the "**District**") covering approximately 705.853 acres of land described by exhibits in the Creation Resolution (the "**District Property**"); and

WHEREAS, on _____, 2017, the City Council approved that certain Whisper Public Improvement District Financing Agreement by and between the Owner and City (the "**PID Finance Agreement**");

WHEREAS, the purpose of the District is to finance certain improvements authorized by Chapter 372, Texas Local Government Code (as may be amended, the "**Act**") that promote the interests of the City and confer a special benefit on the Assessed Property within the District; and

WHEREAS, the District Property is being developed in phases and the Owner intends to construct certain Public Improvements over time to serve District Property (or portions thereof); and

WHEREAS, Special Assessments have been levied against the Assessed Property within the District for the construction of the Public Improvements pursuant to an ordinance of the City Council in accordance with the Whisper Public Improvement District Service and Assessment Plan (as the same may be amended or updated from time to time, the "**SAP**") which was approved by the City Council on _____, 20__;

WHEREAS, Owner is ready to commence the construction of the Public Improvements (herein so called) which are more particularly described in the SAP and on Exhibit A attached hereto and made a part hereof; and

WHEREAS, the SAP Consultant recommended a Special Assessment be levied against the District Property in the amount of \$ _____ (the "**PID Special Assessment**"); and

WHEREAS, all revenue received and collected by the City from the PID Special Assessment (excluding any reasonable collection and/or administrative costs, the "**PID Special Assessment Revenue**") shall be deposited into an account held by the City that is segregated from all other funds of the City and used solely for the purposes set forth herein (the "**PID Project Fund**"); and

WHEREAS, the Parties intend that the Periodic Repayment Amount (defined below) shall be reimbursed to Owner from (i) the PID Project Fund (ii) the net proceeds of Public Improvement PID Bonds issued by the City and secured by the PID Project Fund; and

WHEREAS, capitalized terms not defined herein shall have the meaning ascribed to them in the PID Finance Agreement.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION THE RECEIPT AND ADEQUACY OF WHICH ARE ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:

1. Recitals. The recitals in the "WHEREAS" clauses of this Reimbursement Agreement are true and correct, and are incorporated as part of this Reimbursement Agreement for all purposes.

2. Project Fund. The City shall cause the PID Special Assessment Revenue to be deposited into the PID Project Fund.

3. Periodic Repayment Amount. Subject to the terms, conditions, and requirements contained herein, the City agrees to reimburse the Owner, and the Owner shall be entitled to receive from the City, the amount equal to the Actual Cost of the Public Improvements (the "**Periodic Repayment Amount**") plus interest on the unpaid balance in accordance with the terms of this Reimbursement Agreement until _____, 20__ (the "**Maturity Date**"); provided, however, the Periodic Repayment Amount shall not exceed \$_____. The Periodic Repayment Amount shall be payable to the Owner upon completion of the Public Improvements, solely from: (i) the PID Special Assessment Revenues deposited in the PID Project Fund; or (ii) the net proceeds (after payment of costs of issuance) of the Public Improvement PID Bonds issued by the City and secured by the PID Special Assessment Revenues; or (iii) a combination of items (i), and (ii). The Periodic Repayment Amount is authorized by the Act, was approved by the City Council, and represents the total costs to be assessed against the Assessed Property within the District for the Public Improvements which, upon completion, will be dedicated in fee or by easement and accepted by the City. The unpaid Periodic Repayment Amount shall bear simple interest per annum at the rate of (x) ___% for years one through five and (y) _____% for years six through the Maturity Date or until Public Improvement PID Bonds are sold. If any portion of the Periodic Repayment Amount remains unpaid after the City has elected to sell Public Improvement PID Bonds, the interest rate paid to the Owner shall be the same as the interest rate on the Public Improvement PID Bonds; provided, however, that such rate shall not exceed _____%. The interest rate has been approved by the City Council and complies with the Act.

4. Unpaid Balance. The Periodic Repayment Amount, plus interest as described above (collectively, the "**Unpaid Balance**"), is payable to the Owner and secured under this Reimbursement Agreement solely as described herein. No other City funds, revenue, taxes, income, or property shall be used even if the Unpaid Balance is not paid in full at the Maturity Date. The City acknowledges and agrees that until the Unpaid Balance is paid in full, the obligation of the City to use the PID Project Fund to pay the Unpaid Balance to Owner is absolute and unconditional and that the City does not have, and will not assert, any defenses to such obligation.

5. City Collection Efforts. The City will use all reasonable efforts to receive and collect PID Special Assessment Revenue (including the foreclosure of liens resulting from the nonpayment of the PID Special Assessments created by the Improvement PID Bonds, the PID Special Assessments or other charges due and owing under the SAP), and upon receipt and collection, immediately deposit the same into the PID Project Fund. Notwithstanding its collection efforts, if the City fails to receive all or any part of the PID Special Assessments, such failure and inability shall not constitute default by the City under this Reimbursement Agreement. This Reimbursement Agreement and/or the Public Improvement PID Bonds shall never give rise to or create:

- a. a charge against the general credit or taxing powers of the City or any other taxing unit; or
- b. a debt or other obligation of the City payable from any source of revenue, taxes, income, or properties of the City other than from the PID Special Assessments or from the net proceeds of the Public Improvement PID Bonds.

6. Process for Payment of the Periodic Repayment Amount. After completion of construction of the Public Improvements, Owner may submit (but not more frequently than monthly) to the City a written request for payment from the PID Project Fund in the form attached hereto as Schedule 1 (each a "**Payment Request**") to disburse a portion of the Periodic Repayment Amount to pay for the cost of constructing the applicable Public Improvements. Each Payment Request shall designate the Public Improvements (or portion thereof) to which the Payment Request pertains. This process will continue until the Unpaid Balance is paid in full, whether through the issuance of Public Improvement PID Bonds or not.

7. Issuance of Public Improvement PID Bonds. Upon completion of the Public Improvements, the City intends to issue Public Improvement PID Bonds to reimburse the Developer for the Unpaid Balance. If the Public Improvement PID Bonds are not sufficient to fully reimbursement the Developer for the Unpaid Balance, or if Owner does not submit a Bond Issuance Request (as defined in the PID Finance Agreement) then, in addition to receiving the net proceeds of the Public Improvement PID Bonds, the Owner may continue to receive the Periodic Repayment Amounts.

8. Termination. Once all payments paid to the Owner under this Reimbursement Agreement (including net proceeds of the Public Improvement PID Bonds) equal the Unpaid

Balance, this Reimbursement Agreement shall terminate; provided, however that if on the Maturity Date, after application of the net proceeds of any Public Improvement PID Bonds, any portion of the Unpaid Balance remains unpaid, such Unpaid Balance shall be canceled and for all purposes of this Reimbursement Agreement shall be deemed to have been conclusively and irrevocably PAID IN FULL; provided further that if any PID Assessment Revenue remain due and payable and are uncollected on the Maturity Date, such PID Assessment Revenue, when, as, and if collected after the Maturity Date, shall be applied to any amounts due in connection with outstanding Public Improvement PID Bonds, and then paid to the Owner and applied to the Unpaid Balance.

9. Non-Recourse Obligation. The obligations of the City under this Reimbursement Agreement are non-recourse and payable only from (i) PID Special Assessments, or (ii) net proceeds of Public Improvement PID Bonds; and such obligations do not create a debt or other obligation payable from any other City revenues, taxes, income, or property. None of the City or any of its elected or appointed officials or any of its employees shall incur any liability hereunder to the Owner or any other party in their individual capacities by reason of this Reimbursement Agreement or their acts or omission under this Reimbursement Agreement.

10. No Defense. Following the City's inspection and approval of the Public Improvements, there will be no conditions or defenses to the obligation of the City to use the proceeds of the Public Improvement PID Bonds to pay the Unpaid Balance and to pledge the PID Special Assessment Revenues as security for such bonds, other than the City's right to pay costs of issuance of such bonds and/or other costs incurred by the City relating to the Public Improvements. As applicable, the City hereby agrees to transfer such portion of the PID Special Assessment Revenues to the Trustee under the applicable Indenture.

11. No Waiver. Nothing in this Reimbursement Agreement is intended to constitute a waiver by the City of any remedy the City may otherwise have outside this Reimbursement Agreement against any person or entity involved in the design, construction, or installation of the Public Improvements.

12. Governing Law Venue. This Reimbursement Agreement is being executed and delivered, and is intended to be performed in the State of Texas. Except to the extent that the laws of the United States may apply to the terms hereof, the substantive laws of the State of Texas shall govern the validity, construction, enforcement, and interpretation of this Reimbursement Agreement. In the event of a dispute involving this Reimbursement Agreement, venue for such dispute shall lie in any court of competent jurisdiction in San Marcos, Texas.

13. Notice. Any notice required or contemplated by this Reimbursement Agreement shall be deemed given at the addresses shown below: (i) when delivered by a national company such as Fed Ex or UPS with evidence of delivery signed by any person at the delivery address regardless of whether such person was the named addressee; or (ii) 24 hours after the notice was deposited with the United States Postal Service, Certified Mail, Return Receipt Requested. Any Party may change its address by delivering written notice of such change in accordance with this section.

If to City: City of San Marcos
Attn: City Manager
630 East Hopkins
San Marcos, TX 78666
Facsimile: 512-396-2683

If to Owner: Whisper Master Community Limited Partnership
9811 South IH 35
Building 3, Suite 100
Austin, Texas 78744

With a copy to: McLean & Howard, L.L.P.
Attn: Jeffrey S. Howard
Barton Oaks Plaza, Building II
901 South MoPac Expressway, Suite 225
Austin, Texas 78746
Facsimile: 512-328-2409

14. Invalid Provisions. If any provision of this Reimbursement Agreement is held invalid by any court, such holding shall not affect the validity of the remaining provisions, and the remainder of this Reimbursement Agreement shall remain in full force and effect.

15. Exclusive Rights of Owner. Owner's right, title and interest into the payments of Periodic Repayment Amounts, as described herein, shall be the sole and exclusive property of Owner (or its Transferee) and no other third party shall have any claim or right to such funds unless Owner transfers its rights to its Unpaid Balance to a Transferee in writing and otherwise in accordance with the requirements set forth herein. Subject to the terms of Section 16 hereof, Owner has the right to convey, transfer, assign, mortgage, pledge, or otherwise encumber, in whole or in part, all or any portion of Owner's right, title, or interest under this Agreement including, but not limited to, any right, title or interest of Owner in and to payment of its Unpaid Balance (a "**Transfer**," and the person or entity to whom the transfer is made, a "**Transferee**"). Notwithstanding the foregoing, no Transfer shall be effective until written notice of the Transfer, including the name and address of the Transferee, is provided to the City. The City may rely conclusively on any written notice of a Transfer provided by Owner without any obligation to investigate or confirm the Transfer.

16. Assignment.

- a. Subject to subparagraph (b) below, Owner may, in its sole and absolute discretion, assign this Reimbursement Agreement with respect to all or part of the Property from time to time to any third party. Owner shall provide the City thirty (30) days' prior written notice of any such assignment. Upon such assignment or partial assignment, Owner shall be fully released from any and all obligations under this Reimbursement Agreement and shall have no further liability with respect to this Reimbursement Agreement for the part of the Project so assigned.

- b. Any sale of a portion of the Property or assignment of any right hereunder shall not be deemed a sale or assignment to a Designated Successor or Assign unless the conveyance or transfer instrument effecting such sale or assignment expressly states that the sale or assignment is to a Designated Successor or Assign.
- c. Any sale of a portion of the Property or assignment of any right hereunder shall not be deemed a Transfer unless the conveyance or transfer instrument effecting such sale or assignment expressly states that the sale or assignment is deemed to be a Transfer.
- d. "**Designated Successors and Assigns**" shall mean (i) an entity to which Owner assigns (in writing) its rights and obligations contained in this Reimbursement Agreement pursuant to this Section 16; (ii) any entity which is the successor by merger or otherwise to all or substantially all of Owner's assets and liabilities including, but not limited to, any merger or acquisition pursuant to any public offering or reorganization to obtain financing and/or growth capital; or (iii) any entity which may have acquired all of the outstanding stock or ownership of assets of Owner.

17. Failure; Default; Remedies.

- a. If either Party fails to perform an obligation imposed on such Party by this Reimbursement Agreement (a "**Failure**") and such Failure is not cured after written notice and the expiration of the cure periods provided in this section, then such Failure shall constitute a "**Default.**" Upon the occurrence of a Failure by a non-performing Party, the other Party shall notify the non-performing Party in writing specifying in reasonable detail the nature of the Failure. The non-performing Party to whom notice of a Failure is given shall have at least 30 days from receipt of the notice within which to cure the Failure; however, if the Failure cannot reasonably be cured within 30 days and the non-performing Party has diligently pursued a cure within such 30-day the cure period shall be extended for an additional period (not to exceed 90 days) so long as the non-performing Party is diligently pursuing a cure.
- b. If the Owner is in Default, the City's sole and exclusive remedy shall be to seek specific enforcement of this Reimbursement Agreement. No Default by the Owner, however, shall: (1) affect the obligations of the City to use the net proceeds of Public Improvement PID Bonds as provided in Section 6 of this Reimbursement Agreement; or (2) entitle the City to terminate this Reimbursement Agreement. In addition to specific enforcement, the City shall be entitled to attorney's fees, court costs, and other costs of the City to obtain specific enforcement.
- c. If the City is in Default, the Owner's sole and exclusive remedies shall be to: (1) seek a writ of mandamus to compel performance by the City; or (2) seek specific enforcement of this Reimbursement Agreement.

18. Miscellaneous.

- a. The failure by a Party to insist upon the strict performance of any provision of this Reimbursement Agreement by the other Party, or the failure by a Party to exercise its rights upon a Default by the other Party shall not constitute a waiver of such Party's right to insist and demand strict compliance by such other Party with the provisions of this Reimbursement Agreement.
- b. The City does not waive or surrender any of its governmental powers, immunities, or rights except to the extent permitted by law and necessary to allow the Owner to enforce its remedies under this Reimbursement Agreement.
- c. Nothing in this Reimbursement Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or entity other than the City and the Owner any rights, remedies, or claims under or by reason of this Reimbursement Agreement, and all covenants, conditions, promises, and agreements in this Reimbursement Agreement shall be for the sole and exclusive benefit of the City and the Owner.
- d. This Reimbursement Agreement may be amended only by written agreement of the Parties.
- e. This Reimbursement Agreement may be executed in counterparts, each of which shall be deemed an original.

[Signature pages to follow]

IN WITNESS WHEREOF, the Parties have caused this Reimbursement Agreement to be executed as of _____, 20____, to be effective as of the date written on the first page of this Reimbursement Agreement.

City of San Marcos, Texas

By: _____
Name: _____
Title: _____

**WHISPER MASTER COMMUNITY LIMITED
PARTNERSHIP**, a Texas limited partnership

By: Whisper M.C., LLC, a Texas limited liability company,
Its General Partner

By: _____
Name: _____
Title: _____