

WHISPER SOUTH PUBLIC IMPROVEMENT DISTRICT  
FINANCING AGREEMENT

BETWEEN

HARRIS HILL RESIDENTIAL LAND HOLDINGS, LTD., a Texas limited partnership

HARRIS HILL COMMERCIAL LAND HOLDINGS, LTD., a Texas limited partnership

AND

CITY OF SAN MARCOS, TEXAS

## WHISPER SOUTH PUBLIC IMPROVEMENT DISTRICT FINANCING AGREEMENT

This Whisper South Public Improvement District Financing Agreement (this “**Agreement**”), dated as of \_\_\_\_\_, 2021 (the “**Effective Date**”), is entered into among Harris Hill Residential Land Holdings, Ltd., a Texas limited partnership (“**Harris Hill Residential**”) and Harris Hill Commercial Land Holdings, Ltd., a Texas limited partnership (“**Harris Hill Commercial**”) (Harris Hill Residential and Harris Hill Commercial 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, Harris Hill Residential owns a total of approximately 379.84 acres of land located within the City which is more particularly described in Exhibit “A-1” attached hereto and made a part hereof (the “**Harris Hill Residential Property**”);

WHEREAS, Harris Hill Commercial owns a total of approximately 216.1 acres of land located within the City which is more particularly described in Exhibit “A-2” attached hereto and made a part hereof (the “**Harris Hill Commercial Property**”);

WHEREAS, the Harris Hill Residential Property consists of and is sometimes referred to herein as the proposed “**Improvement Area #1**” and “**Improvement Area #3**”, and the Harris Hill Commercial Property is sometimes referred to herein as the proposed “**Improvement Area #2**” (Improvement Area #1, Improvement Area #2, and Improvement Area #3 are as defined and depicted in the Service and Assessment Plan (as hereinafter defined) and sometimes individually referred to herein as an “**Improvement Area**” and collectively as the “**Improvement Areas**”). The Harris Hill Residential Property and the Harris Hill Commercial 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 Harris Hill Residential Property have been agreed to by the City and the Owners pursuant to the Whisper South Development Agreement (the “**Residential Development Agreement**”) which was approved by the City on August 3, 2021;

WHEREAS, the City Council made findings as to the advisability of improvements proposed within and authorized the creation of the Whisper South Public Improvement District (the “**District**”) on May 4, 2021, pursuant to two City Resolutions (as defined in Section 2.01(a) below) in accordance with the PID Act;

WHEREAS, Harris Hill Residential proposes to construct certain public improvements over time, to serve the District (or portions thereof) and transfer some or all of those improvements to the City or the Maxwell Special Utility District (“**Maxwell SUD**”), a political subdivision of the State of Texas operating under the authority of Chapters 49 and Chapter 65 of the Texas Water Code, as amended;

WHEREAS, the City intends to (upon satisfaction of the conditions and in accordance with the terms set forth in this Agreement) adopt the Whisper South Public Improvement District Service and Assessment Plan (the “**Service and Assessment Plan**”), approve one or more Assessment Ordinances (as defined in the Service and Assessment Plan) and levy Assessments (as defined in the Service and Assessment Plan) 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 Authorized Improvements (as defined in the Service and Assessment Plan) 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 interest to contract with the Owners for the construction and financing of the Authorized 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 Assessments on the Property (Article II), the construction of Authorized Improvements to be acquired by the City (Article III), funding of Authorized Improvements through the issuance of PID Bonds, acquisition and maintenance of Authorized Improvements within the District (Article IV), and the issuance of bonds for the financing of the Authorized Improvements (Article V). Definitions used herein are as set forth in the Service and Assessment Plan.

## **ARTICLE II. APPORTIONMENT, LEVY AND COLLECTION OF ASSESSMENTS**

### **Section 2.01. Preliminary Matters**

(a) On May 4, 2021, the City made findings as to the advisability of the Authorized Improvements and authorized the creation of the District by Resolution No. 2021-87R and Resolution No. 2021-91R, respectively. 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 “B.” The Owners and the City acknowledge and agree that the terms of this Agreement and the Service and Assessment Plan attached hereto as Exhibit “B” replace and supersede the “term sheet” attached to the District petition filed by the Owners and approved by the City to the extent of any conflict. It is anticipated that PID Bonds for Improvement Area #1, Improvement Area #2 and Improvement Area #3 will be issued prior to commencement of construction of the Authorized Improvements to fund the construction of the Authorized Improvements which will benefit each Improvement Area and result in Assessments being levied as specified in the Service and Assessment Plan. The Owners and the City 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(s) and PID Bonds being issued. The final Service and Assessment Plan approved pursuant to the Assessment Ordinance(s) shall be substantially similar to the draft attached hereto as Exhibit "B" and shall be substituted for and replace Exhibit "B", 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 Authorized Improvements. Nevertheless, the basic terms and methodology described in the Service and Assessment Plan will generally apply to the PID Bonds, and other reimbursements due to Harris Hill Residential.

(c) The Owners will develop the Property in phases. It is anticipated that some Authorized Improvements will benefit the entire District and that other Authorized Improvements will benefit only Improvement Area #1, Improvement Area #2, and Improvement Area #3. The anticipated Actual Costs of the Authorized Improvements have been or will be allocated to Improvement Area #1, Improvement Area #2, and Improvement Area #3 according to such benefit as set forth in the Service and Assessment Plan. 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 Authorized Improvements within each Improvement Area within the District as reflected in the Service and Assessment Plan.

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

(e) The Property may also be subject to one or more property owners association assessment(s) if established by the Owners. The City hereby acknowledges and agrees that the Authorized Improvements will be dedicated, conveyed, leased or otherwise provided to or for the benefit of the City or Maxwell SUD.

(f) Promptly following submission to the City of the initial 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, one or more Assessment Ordinances 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 Assessments on the Property in accordance with the terms of this Agreement and 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 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 Assessments levied pursuant to one or more Assessment Ordinances 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 Assessments due on any portion of the Property until (i) any PID Bonds related to that particular portion of the Property are no longer considered outstanding, whether as a result of payment in full, defeasance, or otherwise, and (ii) any other reimbursements due to Harris Hill Residential hereunder are paid. .

(b) While the parties hereto acknowledge and agree that it is the intention to issue PID Bonds for all Improvement Areas prior to commencement of construction of the Authorized Improvements to provide funding for such work, prior to the issuance of such PID Bonds, any Assessments collected by the City may also be utilized by Harris Hill Residential as provided herein. It is accordingly hereby acknowledged that Assessments may be used for the following purposes: (i) after completion of all or a portion of an Authorized Improvement, and prior to the issuance of PID Bonds if a request for a PID Bond issuance (a "**Bond Issuance Request**") is submitted in accordance with Section 5.01(a) below, if any, for such Authorized Improvement(s), Harris Hill Residential shall be reimbursed for some or all of the Actual Costs associated with such Authorized Improvement(s) as requested by Harris Hill Residential in its sole discretion incurred prior to the issuance of the PID Bonds from Assessments collected by the City and held by the City pursuant to one or more construction, funding and agreements between Harris Hill Residential, any other applicable Owner and the City (each a "**Construction Funding and Acquisition Agreement**"); and (ii) after any PID Bonds are issued with respect to any completed Authorized Improvements, the Assessments levied against the Property will be used first to secure such PID Bonds and second, to the extent any such Assessments are remaining after payments are made on the PID Bonds, to fund the construction costs of any Authorized Improvements directly, in whole or in part, as work progresses on such Authorized Improvements and/or to reimburse Harris Hill Residential for any Actual Costs not paid or reimbursed by the PID Bonds. The interest on Actual Costs to be reimbursed shall be calculated from the date such reimbursable Actual Costs were paid by Harris Hill Residential at (x) the maximum interest rate permitted by the PID Act prior to PID Bond issuance or (y) the interest rate of the PID Bonds after PID Bond issuance, calculated from the respective dates of the expenditures until the date of reimbursement therefore.

(c) Notwithstanding anything to the contrary contained herein or in the Service and Assessment Plan, once PID Bonds have been issued, the Assessments collected annually from the area of the Property for which PID Bonds were issued will be deposited in the Pledged Revenue Fund created pursuant to an Indenture and thereafter transferred in the priority as set forth in such 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 Assessments such that the 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 Assessments through Landowner Agreement**

Concurrently with the levy of the 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 Assessments by the City. The Landowner Agreement further shall (a) evidence the Owners' intent that the Assessments be covenants running with the land that (i) will bind any and all current and successor owners of the Property to the 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 Assessments; and (b) provide that the liens created by the levy of the 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) Harris Hill Residential'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 Harris Hill Residential (or its Transferee (as defined below)) and no other third party shall have any claim or right to such funds unless Harris Hill Residential 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, Harris Hill Residential has the right to convey, transfer, assign, mortgage, pledge, or otherwise encumber, in whole or in part, all or any portion of Harris Hill Residential's right, title, or interest under this Agreement including, but not limited to, any right, title or interest of Harris Hill Residential in and to payment of its unreimbursed Actual Costs (a "**Transfer**," and the person or entity to whom the transfer is made, a "**Transferee**"). The foregoing notwithstanding, no Transfer of payments hereunder may be pledged to the payment of debt service on public securities issued by any state of the United States or any political subdivision thereof without the approval of the City Council. 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 Harris Hill Residential without any obligation to investigate or confirm the Transfer.

#### **Section 2.06. Obligations Secured by Pledged Revenues**

**THE PID BONDS ARE SPECIAL, LIMITED 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.**

**Section 2.07.** Section 5.014 Notice

(a) After the City Council approves the Service and Assessment Plan or any subsequent updates or amendments thereto, the City shall file a copy of the Service and Assessment Plan or the updates and amendments thereto with the County Clerk of Hays County, Texas (the “**County Clerk**”) in accordance with the PID Act. The Service and Assessment Plan, including any annual update thereto, will include the notice form required by Section 5.014 of the Texas Property Code (the “**Section 5.014 Notice**”). The Owners shall pay any expenses incurred by the City in filing the original Service and Assessment Plan with the County Clerk. Any costs incurred in filing future updates or amendments to the Service and Assessment Plan with the County Clerk will be paid as an Annual Collection Cost.

(b) The Owners shall execute and provide to any potential purchaser of Assessed Property the Section 5.014 Notice in accordance with Subchapter A of Chapter 5 of the Texas Property Code and, upon closing of the purchase and sale of such Assessed Property, execute a copy of the Section 5.014 Notice in recordable form and file or cause to be filed such notice in the deed records of the County in accordance with Subchapter A of Chapter 5 of the Texas Property Code.

(c) If foregoing procedures set forth in this Section 2.04 are later amended by the Texas Legislature, the amended provisions of the PID Act or Subchapter A of Chapter 5 of the Texas Property Code shall be deemed to amend this Section 2.07 without any further actions by the City or the Owners.

**ARTICLE III. CONSTRUCTION AND ACQUISITION**

**Section 3.01.** Acquisition of Authorized Improvements

(a) The Owners will dedicate, convey, lease or otherwise provide the applicable Authorized Improvements identified in Exhibit “C” to the City or Maxwell SUD as described herein upon completion of Authorized Improvements, and the City will accept and/or allow such dedication or conveyance of such Authorized Improvements after confirming that the Authorized Improvements have been completed in accordance with this Agreement and any applicable regulatory requirements. Some of the Authorized Improvements may be dedicated or conveyed to the City and Maxwell SUD by grant of an easement for the benefit of the City or Maxwell SUD.

### **Section 3.02. Designation of Construction Manager, Construction Engineers**

(a) The City hereby designates Harris Hill Residential, 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 Authorized 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 Authorized Improvement being conveyed to the City will be by the City's construction representative or its designee. Any City inspection of an Authorized Improvement being conveyed to the City will be in accordance with any requirements of the City.

(c) Harris Hill Residential shall be entitled to a separate "Construction Management Fee" for the construction of each portion of the Authorized Improvements, unless Harris Hill Residential contracts with a third party to act as the Construction Manager with respect to construction of the Authorized 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 Harris Hill Residential in connection with its services as Construction Manager.

(e) Harris Hill Residential shall designate the consulting engineers for the Authorized Improvements for the compensation specified by Harris Hill Residential.

### **Section 3.03. Designation of Construction Manager Subcontractor**

The City acknowledges and agrees that Harris Hill Residential may subcontract out all or some of the duties of Construction Manager to a third party. Harris Hill Residential may designate an individual, company, or partnership or other entity as a subcontractor for construction management services for one or more Authorized Improvements or distinct portions thereof provided that such designee has the technical capacity, experience and expertise to perform such construction management duties or obligations. Harris Hill Residential 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 shall maintain each Authorized Improvement (or portion thereof) in good and safe condition until such Authorized Improvement (or portion thereof) is accepted by the City, or Maxwell SUD as applicable, for dedication, or conveyance to the City or Maxwell SUD, as applicable. The City's acceptance of Authorized 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 Authorized Improvement. On or before the acceptance by the City or Maxwell SUD of an Authorized Improvement (or portion thereof), the Owners shall assign to the

City or Maxwell SUD as applicable all of the Owners' rights in any warranties, guarantees, maintenance obligations, or other evidences of contingent obligations of third persons with respect to such Authorized Improvement (or portion 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 Authorized 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 hereby agrees to provide such certifications to Harris Hill Residential, the Owners and/or to suppliers and contractors as may be required to assure such exemptions, including providing a fully executed and completed Sales Tax Exemption Letter substantially in the form attached hereto as Exhibit D within ten (10) days of a written request by Harris Hill Residential or the Owners.

(c) The City and the Owners shall cooperate in structuring the construction contracts for the Authorized 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 Authorized 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 Authorized Improvements have been submitted to the City for review prior to the Effective Date and will be approved by the City prior to PID Bond issuance.

## **ARTICLE IV. PAYMENT FOR AUTHORIZED IMPROVEMENTS**

### **Section 4.01. Overall Requirements**

(a) The City shall not be obligated to provide funds for any Authorized Improvement except from the proceeds of the PID Bonds or from Assessments as provided in Section 2.03(b) above. 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 Authorized Improvements to be constructed for or acquired by the City will be sufficient for the construction or acquisition of all of those particular Authorized Improvements. The Parties acknowledge that the Actual Cost to construct

the Authorized Improvements may be greater than the proceeds of the PID Bonds and Assessments available for Authorized Improvements and any shortfalls will be funded by Harris Hill Residential, subject to Section 2.03(b).

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

(c) The construction of the Authorized Improvements is intended to be financed primarily through the issuance of PID Bonds that are issued prior to construction of the Authorized Improvements from the proceeds of such PID Bonds held in funds pursuant to an Indenture; however, if requested by the Harris Hill Residential, the City may also pay for the Authorized Improvements through reimbursement to Harris Hill Residential from Assessments collected by the City and held pursuant to one or more Construction Funding and Acquisition Agreements (i) prior to the issuance of PID Bonds intended to fund such Authorized Improvements or (ii) if PID Bonds are not issued for an Authorized Improvement. The funding of the Authorized Improvements may be governed by the applicable Construction Funding and Acquisition Agreement and Section 4.02 of this Agreement.

#### **Section 4.02. Payments for Completed Authorized Improvements**

Pursuant to the terms of an Construction Funding and Acquisition Agreement entered into following letting the construction contract for an applicable Authorized Improvement, Harris Hill Residential shall convey, and the City or Maxwell SUD, as applicable shall acquire, the given Authorized Improvement for the Actual Cost, after such Authorized Improvement is completed and has been accepted by the City or Maxwell SUD, as applicable. The general process for funding of Authorized Improvements is as follows:

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

(1) The City and Owners will execute one or more Construction Funding and Acquisition Agreements which will provide for Assessments that, if requested by Owners, will reimburse Harris Hill Residential for Actual Costs incurred in connection with the Authorized Improvements until the PID Bonds, if any, are issued and as Assessments are collected in an amount necessary to reimburse Harris Hill Residential for the Actual Costs of the Authorized Improvements less any amounts already reimbursed to Harris Hill Residential pursuant to the Construction Funding and Acquisition Agreements, as provided in Section 2.03(b).

(2) As soon as practical after the Effective Date, the City will approve one or more Assessment Ordinances which will include the Service and Assessment Plan. The City will thereby levy and collect the Assessment for the Authorized Improvements. The Parties contemplate and intend that the Assessment Ordinance(s) will be approved simultaneously with the issuance of PID Bonds.

(3) At any time during the term of this Agreement and after the Effective Date

of this Agreement, Harris Hill Residential may cause the construction of the Authorized Improvements.

(4) After adoption of the Assessment Ordinance(s), the City will begin collecting the Assessments on the Property in accordance with the Annual Installment schedule in the Service and Assessment Plan. Upon collection of such Assessments, the City will place such 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 Harris Hill Residential for the Actual Costs of the Authorized Improvements, if requested by Harris Hill Residential, pursuant to the terms of the Construction Funding and Acquisition Agreements and to pay debt service on PID Bonds, if any, and to pay such other costs associated with the PID Bond issuance.

(5) Upon the City's receipt of a Bond Issuance Request from Harris Hill Residential, the City will issue the PID Bonds for all Improvement Areas, subject to meeting the requirements and conditions stated herein and State law, to pay for and/or reimburse Harris Hill Residential for its Actual Costs of the Authorized Improvements, less any amounts already reimbursed to Harris Hill Residential pursuant to any Construction Funding and Acquisition Agreement. If Harris Hill Residential does not make a Bond Issuance Request, the City shall, nevertheless collect Assessments and pay or reimburse Harris Hill Residential for Actual Costs of the Authorized Improvements pursuant to any Construction Funding and Acquisition Agreements.

(b) To receive funds from the proceeds of the PID Bonds, if any, to pay the Actual Cost of the Authorized Improvements, Harris Hill Residential shall deliver to the City documentation evidencing the Actual Costs as construction progresses. Nothing herein shall prohibit Harris Hill Residential from paying or being reimbursed out of PID Bonds proceeds and/ or Assessments for design costs associated with an Authorized Improvement.

(c) Harris Hill Residential shall, concurrently with each draw from the Assessments and/ or the proceeds of the PID Bonds submit a disbursement request to the City and the Trustee, if applicable, to pay and/or reimburse Harris Hill Residential for (i) progress payments as work on portions of the Authorized Improvements are completed and/or the Unpaid Balance, if any, under the applicable Construction Funding and Acquisition Agreement; and (ii) any other qualified and permitted costs approved by the City (collectively, the "**Owner Expended Funds**") as construction progresses. Prior to disbursement of any Assessments and/ or the proceeds of the PID Bonds, the City will sign the disbursement requests described above and deliver said disbursement requests to the Trustee, as applicable. As construction of the Authorized Improvements progresses, and prior to acceptance by the applicable entity, the Actual Costs for such Authorized Improvements will either be paid directly to Harris Hill Residential and/or Harris Hill Residential shall be reimbursed an amount set forth in the Indenture and such amount shall be transferred to the Trustee for distribution to Harris Hill Residential or Harris Hill Residential's designee as the work progresses.

## **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 Authorized Improvements primarily through the issuance of PID Bonds for all Improvement Areas used to finance the construction of the Authorized Improvements; however, the City may also pay for the Authorized Improvements through reimbursement to Harris Hill Residential out of Assessments collected for Actual Costs of the applicable Authorized Improvements pursuant to an applicable Construction Funding and Acquisition Agreement. The City will use diligent, reasonable and good faith efforts, subject to meeting the requirements and conditions stated herein and State law, to issue an initial series of PID Bonds for all or a portion of the Authorized Improvements on or before January \_\_, 2022, and the completion of the applicable Authorized Improvements contemplated to be paid for by the PID Bonds to be issued, provided that Harris Hill Residential 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, Harris Hill Residential 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 Assessments securing the PID Bonds (the "**Appraisal**"), however such Appraisal requirement may be waived by the City for any series of PID Bonds issued to refund an outstanding series of PID Bonds. The City shall select the appraiser, in consultation with Harris Hill Residential and the Underwriter, and all reasonable fees of the Appraisal shall be paid by Harris Hill Residential 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 Authorized Improvements, including soft costs and construction management; (ii) required reserves and capitalized interest of not more than 12 months after the completion of construction of the applicable Authorized Improvements funded by the PID Bond issue in question; and (iii) any other District Formation and Bond Issuance Costs (including, without limitation, district formation, assessment levy and bond issuance costs incurred by Owners). 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 any 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) As stated in Section 2.03(b) above, it is the current intent of Harris Hill Residential to request one simultaneous PID Bond issuance for all Improvement Areas, 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 payments and reimbursements. However, Harris Hill Residential retains the right to request the agreed upon reimbursements through fewer or additional PID Bond issues subject to the condition that the maximum amount of total indebtedness shall not exceed \$14,000,000.

(e) The initial Annual Installment equivalent ad valorem tax rate shall not exceed (i) \$0.23 per \$100 of assessed valuation for any single-family detached residential Parcels, and (ii) \$0.23 per \$100 of assessed valuation with respect to any other individual Parcel. In the event that

an initial Annual Installment equivalent tax rate on any individual Parcel is determined upon subdivision of such Parcel to exceed \$0.23, then the Owner of such Parcel shall make a mandatory partial prepayment of the assessment in an amount sufficient to bring the equivalent tax rate for such Parcel to \$0.23 or less before any subsequent Assessments for such Parcel are levied and collected, if applicable. Assessments on any given portion of the Property may be adjusted in connection with subsequent PID Bond issues, as long as the maximum Annual Installment equivalent tax rate, as described in the foregoing sentence, is not exceeded, and the Assessments are determined in accordance with the Service and Assessment Plan. Assessments on any portion of the Property shall bear a direct proportionate relationship to the special benefit of the Authorized 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 3 to 1 on an overall basis considering all Parcels.

(g) 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.

(h) 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**”). Owners will cooperate with the City in providing any information that the City requests in order to execute the Tax Certificate.

(i) 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 defined in the Indenture) 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 Authorized 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 pledged revenues, all to be as described and provided in the applicable Indenture.

(b) The final and adopted versions of the City ordinance authorizing the issuance of PID Bonds 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 Harris Hill Residential.

#### **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 Harris Hill Residential 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 Harris Hill Residential.

#### **Section 5.05. INTENTIONALLY DELETED**

#### **Section 5.06. Assessments from Two or More Series of PID Bonds**

If the total Assessments levied on a particular Parcel within the Project consist of Assessments associated with two or more different series of PID Bonds and an owner of an Assessed Property pays only a portion of the total Annual Installment due for such aggregate Assessments, then such payment will be allocated pro-rata based on the portion of the Annual Installment for each series of PID Bonds outstanding. For example, assume that a Parcel has Assessments totaling \$20,000, \$12,000 of which is for the first series of PID Bonds and \$8,000 of which is for a second series of PID Bonds. Further assume that the Annual Installment for such Parcel is \$1,000 which consists of a \$550 Annual Installment from the first series of PID Bonds and a \$450 Annual Installment from a second 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 Assessment for the first series of PID Bonds; and

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

**Total:** \$600

Notwithstanding the foregoing, if a partial payment of an Assessment is received, the City shall proceed with the collection of any delinquent portion of an Annual Installment of an Assessment in accordance with the same procedures permitted for the collection of ad valorem taxes under the Texas Tax Code.

#### **Section 5.07. Construction Funding and Acquisition Agreements**

The City intends to pay for the Authorized Improvements primarily through the issuance of PID Bonds used to finance the construction of the Authorized Improvements; however, the costs of some or all of the Authorized Improvements may be financed through Construction Funding and Acquisition Agreements. As provided in Section 4.02 above, Harris Hill Residential and the City will enter into one or more Construction Funding and Acquisition Agreements, which will provide for either PID Bonds or Assessments that will pay and/or reimburse Harris Hill Residential for Actual Costs incurred in connection with the Authorized Improvements in amount necessary to reimburse Harris Hill Residential for the Actual Costs of the Authorized Improvements less any amounts already reimbursed to Harris Hill Residential pursuant to the Construction Funding and Acquisition Agreements.

#### **Section 5.08. Dissolution Upon Non-Issuance**

Harris Hill Residential or its Designated Successor and Assign shall petition the City to dissolve the District if PID Bonds have not been issued within five (5) years from the date that the City approves the first Assessment Ordinance for parcels within the District.

### **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 each of Harris Hill Residential and Harris Hill Commercial is a limited partnership duly organized and validly existing under the laws of the State of Texas. The Owners further represent and warrant that each Owner is in compliance with the laws of the State of Texas, and each has 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 each Owner has 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 Harris Hill Residential commences construction of a portion of the Authorized Improvements it will use its reasonable and diligent efforts to do all things which may be lawfully required of it in order to cause such portion of the Authorized Improvements of the Authorized 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 and the applicable Construction Funding and Acquisition Agreement with respect to any requests for payment.

(f) For a period of three (3) years after the final Acceptance Date of each applicable Authorized Improvement, the Owners covenant to maintain proper books of record and account for the Authorized 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 AUTHORIZED IMPROVEMENT ACQUIRED BY THE CITY; OR (iii) THE OWNERS' NONPAYMENT UNDER CONTRACTS WITH THE OWNERS FOR ANY AUTHORIZED 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 Authorized 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:               Harris Hill Residential Holdings, Ltd.  
100 NE Loop 410, Suite 775  
San Antonio, Texas 78216

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 Annual Collection Costs.

(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 Annual Collection Costs 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 their respective 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 Authorized Improvements, however, the Owners shall not transfer or assign their 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 Authorized 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" (defined herein as (i) an entity to which an Owner assigns (in writing) its rights and obligations contained in this Agreement pursuant to this Section 8.03; (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) 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 “Authorized 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 Authorized Improvements**

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

### **Section 8.14. Anti-Boycott Verification**

Pursuant to Section 2271.002, Texas Government Code, the Owners hereby verify that the Owners, and any parent company, wholly- or majority-owned subsidiaries, and other affiliates of any of the Owners, if any, do not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Section 2271.002, Texas Government Code, and to the extent such Section does not contravene applicable State or Federal law. As used in the foregoing verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Owners understand "affiliate" to mean an entity that controls, is controlled by, or is under common control with any of the Owners and exists to make a profit.

### **Section 8.15. Iran, Sudan and Foreign Terrorist Organizations**

Pursuant to Subchapter F, Chapter 2252, Texas Government Code, the Owners represent that none of the Owners, nor any parent company, wholly- or majority-owned subsidiaries, and other affiliates of any of the Owners is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,  
<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or  
<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable State or Federal law and excludes the Owners, and each parent company, wholly- or majority-owned subsidiaries, and other affiliates of the Owners, if any, that the United States government has affirmatively declared to be

excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Owners understand “affiliate” to mean any entity that controls, is controlled by, or is under common control with any of the Owners and exists to make a profit.

**Section 8.16.** No Discrimination Against Fossil-Fuel Companies) Verifications

To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 13 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, the Owners hereby verify that they and their parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to enable the City to comply with such Section and to the extent such Section does not contravene applicable Federal or Texas law. As used in the foregoing verification, “boycott energy companies,” a term defined in Section 2274.001(1), Texas Government Code (as enacted by such Senate Bill) by reference to Section 809.001, Texas Government Code (also as enacted by such Senate Bill), shall mean, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by (A) above.

As used in this Section, the Owners understand ‘affiliate’ to mean an entity that controls, is controlled by, or is under common control with the Owners within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit.

**Section 8.17.** No Discrimination Against Firearm Entities and Firearm Trade Associations) Verifications:

To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 19 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, each of the Owners hereby verify that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of this Agreement. The foregoing verification is made solely to enable the City to comply with such Section and to the extent such Section does not contravene applicable Federal or Texas law.

As used in the foregoing verification and the following definitions,

(a) ‘discriminate against a firearm entity or firearm trade association,’ a term defined in Section 2274.001(3), Texas Government Code (as enacted by such Senate Bill), (A) means, with respect to the firearm entity or firearm trade association, to (i) refuse to engage in the trade of any goods or services with the firearm entity or firearm trade association based solely on its status as a firearm

entity or firearm trade association, (ii) refrain from continuing an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, or (iii) terminate an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association and (B) does not include (i) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories and (ii) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship (aa) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency or (bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association,

(b) 'firearm entity,' a term defined in Section 2274.001(6), Texas Government Code (as enacted by such Senate Bill), means a manufacturer, distributor, wholesaler, supplier, or retailer of firearms (defined in Section 2274.001(4), Texas Government Code, as enacted by such Senate Bill, as weapons that expel projectiles by the action of explosive or expanding gases), firearm accessories (defined in Section 2274.001(5), Texas Government Code, as enacted by such Senate Bill, as devices specifically designed or adapted to enable an individual to wear, carry, store, or mount a firearm on the individual or on a conveyance and items used in conjunction with or mounted on a firearm that are not essential to the basic function of the firearm, including detachable firearm magazines), or ammunition (defined in Section 2274.001(1), Texas Government Code, as enacted by such Senate Bill, as a loaded cartridge case, primer, bullet, or propellant powder with or without a projectile) or a sport shooting range (defined in Section 250.001, Texas Local Government Code, as a business establishment, private club, or association that operates an area for the discharge or other use of firearms for silhouette, skeet, trap, black powder, target, self-defense, or similar recreational shooting), and

(c) 'firearm trade association,' a term defined in Section 2274.001(7), Texas Government Code (as enacted by such Senate Bill), means any person, corporation, unincorporated association, federation, business league, or business organization that (i) is not organized or operated for profit (and none of the net earnings of which inures to the benefit of any private shareholder or individual), (ii) has two or more firearm entities as members, and (iii) is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c) of that code.

As used in this Section, the Owners understand 'affiliate' to mean an entity that controls, is controlled by, or is under common control with the Owners within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit.

### **Section 8.18. Exhibits**

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

Exhibit A-1	-	Harris Hill Residential Property
Exhibit A-2	-	Harris Hill Commercial Property

- Exhibit B - Draft of Service and Assessment Plan
- Exhibit C - INTENTIONALLY DELETED
- Exhibit D - Form Sales Tax Exemption Letter

[Signature Pages to Follow]

**City of San Marcos, Texas**

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

[Signatures Continue on Next Page]

**HARRIS HILL RESIDENTIAL  
LAND HOLDINGS, LTD.,**  
a Texas limited partnership

By: Harris Hill GP, LLC,  
a Texas limited liability company,  
its General Partner

By: \_\_\_\_\_  
Robert W. McDonald IV, Manager

**HARRIS HILL COMMERCIAL  
LAND HOLDINGS, LTD.,**  
a Texas limited partnership

By: Harris Hill GP, LLC,  
a Texas limited liability company,  
its General Partner

By: \_\_\_\_\_  
Robert W. McDonald IV, Manager

**Exhibit “A-1”**

Harris Hill Residential Property

[to be attached]

**Exhibit “A-2”**

Harris Hill Commercial Property

[to be attached]

**Exhibit “B”**

Draft of Service and Assessment Plan

*[Exhibit “B” follows on next page]*

**Exhibit “C”**

INTENTIONALLY DELETED

**Exhibit “D”**

Form Sales Tax Exemption Letter

[to be attached]