

**RESOLUTION NO. 2019-23R**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING A THIRD AMENDMENT TO THE TERM SHEET ATTACHED TO RESOLUTION NO. 2014-143R REGARDING THE ADVISABILITY OF THE IMPROVEMENTS IN THE WHISPER PUBLIC IMPROVEMENT DISTRICT FOR THE PURPOSE OF EXTENDING THE DATE BY WHICH CONSTRUCTION OF THE PUBLIC IMPROVEMENTS MUST BE COMPLETED TO MAY 31, 2019 AND ESTABLISHING REQUIREMENTS FOR TRAFFIC IMPACT ANALYSIS UPDATES AND DECLARING AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:**

**PART 1.** The Term Sheet for the Whisper Texas Public Improvement District approved by Resolution No. 2014-143R and previously amended by Resolution 2015-178R and 2017-140R by Resolution No. 2019-23R is hereby amended as shown in Exhibit "A," attached hereto and made a part hereof.

**PART 2.** All other terms and conditions of said Term Sheet shall remain the same.

**PART 3.** This resolution shall be in full force and effect immediately from and after its passage.

**ADOPTED** on January 29, 2019.

Jane Hughson  
Mayor

Attest:

Jamie Lee Case  
City Clerk

**EXHIBIT A**  
**TERM SHEET**  
**WHISPER TEXAS PUBLIC IMPROVEMENT DISTRICT**  
**09/5/2017 01/29/2019**

The following limitations and performance standards shall apply to the Whisper Texas Public Improvement District as agreed by the City of San Marcos (“the City”) and McDonald Development Group (“McDonald”):

**FINANCING CRITERIA**

1. Maximum total indebtedness: \$14,630,000
2. Maximum annual assessment rate as equivalent tax rate: \$0.17 for residential and a max rate of \$0.22 for non-residential (multi-family, commercial, etc.)
3. Maximum construction costs to be funded: \$10,398,361
4. Minimum appraised value to lien ratio at date of each bond issue: 3:1
5. Maximum annual permitted increase in annual assessment: 2%
6. Maximum years of capitalized interest for each bond issue : 2
7. Maturity for each series of bonds (to extent allowed by law): 30 years
8. The aggregate principal amount of bonds required to be issued shall not exceed an amount sufficient to fund: (i) the actual costs of the qualified public improvements (ii) required reserves and capitalized interest during the period of construction and not more than 12 months after the completion of construction and in no event for a period greater than 2 years from the date of the initial delivery of the bonds and (iii) any costs of issuance. 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 Bond issuances.

### **PROJECTED LAND USES**

<b>Parcels</b>	<b>Approximate Acreage</b>	<b>Proposed Land Use</b>
1 - 2	281	Business Park
3	10	Commercial
4 - 5	22	Commercial
6	153	Commercial
7	106	SF Residential - Detached/Townhomes
8	111	Master Retail and Commercial Center
Rights of Way	23	Rights of Way
<b>Totals</b>	<b>706</b>	

### **DEFINITIONS**

1. “City” shall mean the City of San Marcos, Texas
2. “Developer” shall mean McDonald Development Group and/or its successors and assigns
3. “Project” shall consist of the approximately 706 acres as described in Exhibit A and illustrated in Exhibit B
4. “Improvements” shall refer to the construction projects to be funded by the Public Improvement District (“PID”)

Definitions shall be effective in every instance regardless of capitalization.

### **PROPOSED PROJECT TIMETABLE**

1. Engineering and Design of the Improvements shall commence within 90 days from February 1, 2016.
2. Engineering and Design of the Improvements shall be submitted to the City for review by June 15, 2016.
3. The Improvements shall be constructed ~~by September 1, 2018~~ **by May 31, 2019**, subject to *force majeure*.
4. Construction of a 50,000 square foot speculative commercial building, in accordance with the minimum specifications below, shall commence within 100 days of City acceptance of the Improvements.

## **TERMS AND CONDITIONS**

1. No PID bonds will be issued without the approval by the City Council of a Service and Assessment Plan for the District.
2. No General Obligation or Certificate of Obligation bonds will be utilized by the City to fund the PID.
3. The Appraiser preparing the appraisal required in connection with the PID Bonds shall be selected by the City in consultation with the Developer and all reasonable fees shall be paid by the Developer.
4. The Developer agrees to obtain site development and building permits and, commence construction of a 50,000 square foot speculative commercial building (i) within 100 days of City acceptance of the Improvements, and (ii) before any PID Bonds are issued to reimburse the Developer for the costs of such Improvements.
5. The City and the Developer agree that the following will constitute the minimum building standards for the 50,000 square foot speculative building.
  - 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. It is the intent of the Developer to request the issuance of one PID bond to provide the agreed upon reimbursements. However, the Developer retains the right to request the agreed upon reimbursements through more than one PID Bond issue with the condition that the maximum construction costs to be reimbursed will not exceed the amount described in Financing Criteria #3 and the total amount of all Bond issues shall not exceed the amount described in Financing Criteria #1.
7. The Developer and the City agree that each PID bond issue will be subject to approval by the City Council but that the terms outlined in this term sheet will apply.
8. Special assessments on any given portion of the property may be adjusted in connection with subsequent bond issues as long as the maximum annual assessment rate as described in Financing Criteria #2 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 will bear a direct proportionate relationship to the special benefit of the Improvements to that improvement area.

9. The City shall not be obligated to provide funds for any improvement except from the proceeds of the bonds and/or per the terms of an Oversize Participation Agreement.
10. The City and the Developer may enter into an Oversize Participation Agreement under which the City will agree to fund the costs of additional lanes for public roadways as illustrated in the attached exhibits.
11. No PID bond funds are permitted to be used to construct water line improvements within that portion of the Project not located with the City of San Marcos Water CCN.
12. Should the portions of the Project that are not currently located within the City's Water CCN hereafter be relocated into the City's Water CCN, the Developer will have the right to request reimbursement through PID bond issues for the water line improvements as long as the amounts requested do not result in total maximum construction costs exceeding the amount described in Financing Criteria #3 and the total amount of all Bond issues does not exceed the amount described in Financing Criteria #1.
13. Each PID Bond Indenture will contain language precluding the City from making any debt service payments for the PID Bonds other than from available special assessment revenues.
14. The PID will be responsible for payment of all of the City's reasonable and customary costs and expenses including, but not limited to, administration, collection services and legal representation as necessary.
15. The Developer consents to annexation of the portion of the Project currently located within the extraterritorial jurisdiction of the City. The Developer will submit a zoning change request to the City for the annexed portion of the Property consistent with the zoning classifications shown on the Concept Plan attached as Exhibit B, in compliance with Term #16 below. The Annexation of and approval of zoning for such portion shall be completed prior to the issuance of any PID bonds.
16. The Developer will submit a zoning request to the City for all or portions of the Project, as desired by Developer; provided that, such zoning request shall be consistent with the zoning classifications shown on the Concept Plan attached as Exhibit B. The City acknowledges that the location and configuration of the Parcels shown on the Concept Plan are preliminary and approximate and changes, subject to approval of the city may be made by the Developer.
17. The PID may be exempt from any public bidding or other purchasing and procurement policies per Texas Local Government Code Section 252.022(a) (9) which states that a project is exempt from such policies if "paving, drainage, street widening, and other improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements."

18. The Improvements to be funded by the PID are limited to those defined as Authorized Improvements under Texas Local Government Code Section 372.003 as agreed upon by the City and as referenced in the attached exhibits.
19. No additional security or surety, beyond the land and any Improvements on the land, will be provided by the Developer, or its assignees, for the PID Bonds.
20. The PID will automatically dissolve if no PID Bonds are issued within a period of five (5) years from the date of the formation of the PID by the San Marcos City Council.
21. All landowners will provide any required continuing disclosure obligations associated with the issuance of PID Bonds as required under the Indenture or any other regulatory agreement or regulatory agency.
22. PID bonds shall be issued by the City upon request by the Developer and approval by the City Council following (i) City acceptance of the Improvements, (ii) annexation of the portion of the Project currently located in the City's extra-territorial jurisdiction, and (iii) commencement of the construction of a commercial building described under Terms and Conditions #3. Proceeds from the issuance of the PID bonds will be used to reimburse the Developer for the costs to construct the Improvements.
23. A Traffic Impact Analysis (TIA) will be required once the total trip generation associated with the Whisper development reaches 25,000 Vehicles Per Day (VPD) then a TIA is required which reflects the 70,000 VPD trips anticipated in the current concept plan. Subsequent changes in the concept plan which changes the 70,000 VPD would require an amendment to the TIA. The developer would be responsible for any traffic improvements identified by the update to the Traffic Impact Analysis study.

