

## **WHISPER PUBLIC IMPROVEMENT DISTRICT ACQUISITION AND REIMBURSEMENT AGREEMENT**

This Whisper Public Improvement District Acquisition and Reimbursement Agreement (this “Reimbursement Agreement”) is executed between San Marcos, Texas (“City”), and Whisper Master Community Limited Partnership, a Texas limited partnership (“Whisper MC”), Yarrington Partners, Ltd., a Texas limited partnership (“Yarrington Partners”), Whisper Industrial 2019 QOZB, LLC, a Texas limited liability company (“Whisper Industrial”), and 135 Residential Development, LLC, a Texas limited liability company (“135 Residential”) (Whisper MC, Yarrington Partners, Whisper Industrial, and 135 Residential, including their Designated Successors and Assigns, are individually referred to herein as an “Owner” and collectively referred to herein as the “Owners”), to be effective as of May 8, 2020 (each individually referred to as a “Party” and collectively as the “Parties”).

### **RECITALS**

WHEREAS, on October 6, 2014, the City Council of the 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 shown on a map thereof in the Creation Resolution (the “District Property”); and

WHEREAS, on September 5, 2017, the City Council approved that certain Whisper Public Improvement District Financing Agreement by and among Whisper MC, Yarrington Partners and the City, which was amended and restated to be effective as of May 8, 2020 pursuant to that certain Amended and Restated Whisper Public Improvement District Financing Agreement among the Owners and the City (as it may be amended from time to time, the “PID Financing Agreement”); and

WHEREAS, assessments in the approximate amount of \$14,075,000.00 (the “Assessments”) will be levied against the District Property for the construction of the Authorized Improvements by 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”);

WHEREAS, Whisper MC has completed a portion of the Authorized Improvements, and proposes to construct certain other of the Authorized Improvements over time, to serve the District Property (or portions thereof), and to transfer all of those Authorized Improvements to the City or to a property owners association for the benefit of the City and subject to public easement in accordance with the terms and provisions of the PID Financing Agreement;

WHEREAS, all revenue received and collected by the City from the Assessments (including pre-payments and amounts received from the foreclosure of liens but excluding Annual Collection Costs and Delinquent Collection Costs, the “Assessment Revenue(s)”) shall be deposited (1) as provided in the Indenture (as defined herein) if PID Bonds secured by such

Assessments are issued or (2) into an account established by the City under this Reimbursement Agreement, which is held by the City and is segregated from all other funds of the City (the “PID Reimbursement Fund”), if no such PID Bonds are issued or none of such PID Bonds remain outstanding. For the avoidance of doubt, the Annual Installments (excluding Annual Collection Costs and Delinquent Collection Costs) shall be included within the definition of Assessment Revenues; and

WHEREAS, proceeds derived from the issuance and sale of PID Bonds that are made available to pay Actual Costs (the “Bond Proceeds”) shall be deposited into a fund, established by the City under an Indenture (and segregated from all other funds of the City) (the “Project Fund”) as provided in the applicable trust indenture pursuant to which a series of PID Bonds are issued (the “Indenture”);

WHEREAS, the Parties intend that the Repayment Amount (defined below) shall be reimbursed to Whisper MC from (i) the Bond Proceeds, if PID Bonds are issued, or (ii) the PID Reimbursement Fund, if no such PID Bonds are issued or none of such PID Bonds remain outstanding; and

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

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

1. Recitals. The recitals to this Reimbursement Agreement are true and correct, and are incorporated as part of this Reimbursement Agreement for all purposes.

2. Fund Deposits. Until PID Bonds are issued, the City shall bill, collect, and immediately deposit into the PID Reimbursement Fund all Assessment Revenue consisting of: (1) revenue collected from the payment of Assessments (including pre-payments and amounts received from the foreclosure of liens but excluding Annual Collection Costs and Delinquent Collection Costs); and (2) revenue collected from the payment of Annual Installments (excluding Annual Collection Costs and Delinquent Collection Costs). Once PID Bonds are issued, the City shall bill, collect, and immediately deposit all Assessment Revenue in the manner set forth in the Indenture for such PID Bonds. The City shall also deposit Bond Proceeds and any other funds authorized or required by such Indenture in the manner set forth in such Indenture. Annual Installments shall be billed and collected by the City (or by any person, entity, or governmental agency permitted by law) in the same manner and at the same time as City ad valorem taxes are billed and collected. Funds in the Project Fund shall only be used in accordance with the Indenture for a series of PID Bonds. Funds in the PID Reimbursement Fund shall only be used to pay Actual Costs of the Authorized Improvements or all or any portion of the Unpaid Balance (as defined herein) in accordance with this Reimbursement Agreement. Notwithstanding any other provision in this Reimbursement Agreement, the Actual Costs of the Authorized Improvements shall be paid from the Assessment Revenue collected solely from Assessments levied on the District Property benefitting from such Authorized Improvements.

3. Repayment Amount. Subject to the terms, conditions, and requirements contained herein, the City agrees to reimburse Whisper MC, and Whisper MC shall be entitled to receive from the City, the amount equal to the Actual Costs of the Authorized Improvements (the “Repayment Amount”) plus interest on the unpaid balance in accordance with the terms of this Reimbursement Agreement until September 1, 2050 (the “Maturity Date”); provided, however, the Repayment Amount shall not exceed \$11,733,710.00 plus Developer District Formation Costs. The Repayment Amount shall be payable to Whisper MC upon completion of the Authorized Improvements, solely from: (i) the Assessment Revenues deposited in the PID Reimbursement Fund; or (ii) Bond Proceeds, to the extent that PID Bonds are issued by the City with respect to the District Property; or (iii) a combination of items (i), and (ii). Payments made from Bond Proceeds shall be made in the manner set forth in the Indenture for a series of PID Bonds. Payments made from the PID Reimbursement Fund toward any outstanding Unpaid Balance, shall first be applied to unpaid interest on such Unpaid Balance owed to Whisper MC, and second to unpaid principal of the Unpaid Balance owed to Whisper MC.

The Repayment Amount is authorized by the PID Act, was approved by the City Council, and represents the total costs to be assessed against the District Property for the Authorized Improvements which, upon completion, will be (i) dedicated, conveyed, leased or otherwise provided to or for the benefit of the City or a homeowners’ association or property owners’ association formed by an owner of any portion of the District Property (each an “Owners Association”), and (ii) that in the case of any Authorized Improvements conveyed or dedicated to an Owners Association, such Authorized Improvements are nevertheless provided “for the benefit of” in accordance with Section 372.023 (a) of the PID Act and such Owners Association will be an entity approved by the City Council and authorized by the City to own, operate and maintain such Authorized Improvements for the City in accordance with Section 372.023(a)(3) of the PID Act. Each Owner acknowledges that the Authorized Improvements, together with the land, easements, or other rights-of-way needed for the Authorized Improvements, shall be dedicated, conveyed, leased or otherwise provided to or for the benefit of the City or an authorized Owners Association as provided in the PID Financing Agreement. Without limiting the generality of any of the foregoing, with respect to any Authorized Improvements that are dedicated, conveyed, leased or otherwise provided to an Owners Association as provided herein, the Owner of the applicable portion of the District Property shall execute any necessary easements to the public with respect thereto in order to evidence that although such Authorized Improvements are owned and maintained by such Owners Association, the Authorized Improvements are provided for the use and benefit of the public. Each Owner will execute such conveyances and/or dedications as may be reasonably required to evidence the same. The unpaid Repayment Amount shall bear simple interest per annum commencing upon the completion of the Authorized Improvements at the rate of (x) 6.00% for years one through five and (y) 5.5% for years six through the Maturity Date or unless and until PID Bonds are sold. If any portion of the Repayment Amount remains unpaid after the City issues its PID Bonds, the interest rate paid to Whisper MC shall be the same as the interest rate on the PID Bonds; provided, however, that such rate shall not exceed 5.5%. The interest rate has been approved by the City Council and complies with the Act.

4. Unpaid Balance. The Repayment Amount, plus interest as described above (collectively, the “Unpaid Balance”), is payable to Whisper MC 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, subject to the Repayment Amount authorized in Section 3, the obligation of the City to use the PID Reimbursement Fund or Bond Proceeds, as applicable, to pay the Unpaid Balance to Whisper MC is absolute and unconditional and 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, or cause to be received and collected, Assessment Revenues (including the foreclosure of liens resulting from the nonpayment of Assessments), the Assessments or other charges due and owing under the SAP), and upon receipt and collection, immediately deposit the same in accordance with Section 2 of this Reimbursement Agreement. Notwithstanding its collection efforts, if the City fails to receive all or any part of the Assessments, such failure and inability shall not constitute default by the City under this Reimbursement Agreement. This Reimbursement Agreement and/or the 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 Assessments or from Bond Proceeds.

6. Process for Payment of the Repayment Amount. Whisper MC may submit (but not more frequently than monthly) to the City a written request for payment from the PID Reimbursement Fund or the Project Fund, as applicable, in the form attached hereto as Schedule 1 (each a “Certification for Payment”) to disburse a portion of the Repayment Amount to pay for the Actual Costs of constructing the applicable Authorized Improvements not previously reimbursed. Each Certification for Payment shall designate the Authorized Improvements (or portion thereof) to which the Certification for Payment pertains. This process will continue until the Unpaid Balance is paid in full, whether through the issuance of PID Bonds or not, subject to the Repayment Amount.

7. Issuance of PID Bonds. The City, in its sole, legislative discretion, may issue PID Bonds, in one or more series, when and if the City Council determines it is financially feasible for the purposes of: (1) paying the Unpaid Balance; or (2) paying directly Actual Costs of Authorized Improvements. PID Bonds issued for such purpose will be secured by and paid solely as authorized by the Indenture for such series of PID Bonds. Upon the issuance of PID Bonds for such purpose and for so long as PID Bonds remain outstanding, Whisper MC’s right to receive payments each year in accordance with Section 3 shall be subordinate to the deposits required under the Indenture related to any outstanding PID Bonds and Whisper MC shall be entitled to receive funds pursuant to the flow of funds provisions of such Indenture. If the outstanding PID Bonds are less than the outstanding Assessments, then, in addition to receiving the net proceeds of the PID Bonds, Whisper MC may continue to receive Assessment Revenue deposited into the PID Reimbursement Fund up to the Unpaid Balance, subject to the Repayment Amount.

8. Termination. Subject to the Repayment Amount, once all payments paid to Whisper MC under this Reimbursement Agreement (including net proceeds of the PID Bonds, if applicable) equal the Unpaid Balance, this Reimbursement Agreement shall terminate; provided, however that if on the Maturity Date, after application of Bond Proceeds, if any, 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 Assessment Revenue remain due and payable and are uncollected on the Maturity Date, such Assessment Revenue, when, as, and if collected after the Maturity Date, shall be applied to any amounts due in connection with outstanding PID Bonds, and then paid to Whisper MC 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) Assessments, or (ii) Bond Proceeds, if applicable; 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 Whisper MC 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 Authorized Improvements, there will be no conditions or defenses to the obligation of the City to use Bond Proceeds to pay the Unpaid Balance and to pledge the Assessment Revenues as security for such PID Bonds, other than the City's right to pay costs of issuance of such PID Bonds and/or other costs incurred by the City relating to the Authorized Improvements. As applicable, the City hereby agrees to transfer such portion of the 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 Authorized 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 FedEx 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: Chief Financial Officer  
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

Yarrington Partners, Ltd.  
9811 South IH 35  
Building 3, Suite 100  
Austin, Texas 78744

Whisper Industrial 2019 QOZB, LLC  
9811 South IH 35  
Building 3, Suite 100  
Austin, Texas 78744

135 Residential Development, LLC  
9811 South IH 35  
Building 3, Suite 100  
Austin, Texas 78744

With 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

With a copy to: John C. Lewis Company  
3839 Bee Cave Road, Suite 204  
Austin, Texas 78746

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 Whisper MC. Whisper MC's right, title and interest into the payments of Repayment Amounts, 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 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, 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 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 by Whisper MC. The City may rely conclusively on any written notice of a Transfer provided to the City by Whisper MC without any obligation to investigate or confirm the Transfer.

16. Assignment.

(a) Subject to subparagraph (b) below, any Owner may, in its sole and absolute discretion, assign this Reimbursement Agreement with respect to all or part of the property within the District owned by such Owner from time to time to any third party. An Owner shall provide the City thirty (30) days prior written notice of any such assignment. Upon such assignment or partial assignment, such 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 relating to the property within the District so assigned.

(b) Any sale of a portion of the property within the District 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 within the District 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 an 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 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.

(e) The Owner waives all rights or claims against the City for any funds paid to a third party as a result of a Transfer for which the City received notice from Whisper MC. 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.

17. Failure; Default; Remedies.

(a) If any 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, any 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 period and has provided written notice to the other Parties that additional time is needed, then 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 an Owner is in Default, the City’s sole and exclusive remedy shall be to seek specific enforcement of this Reimbursement Agreement. No Default by any Owner, however, shall: (1) affect the obligations of the City to use the Bond Proceeds 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 another Party, or the failure by a Party to exercise its rights upon a Default by another Party shall not constitute a waiver of such Party’s right to insist and demand strict compliance by any 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 an 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 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.

19. 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 the Owners, if any, do not boycott Israel and, to the extent this Reimbursement Agreement is a contract for goods or services, will not boycott Israel during the term of this Reimbursement 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 the Owners and exists to make a profit.

20. Iran, Sudan and Foreign Terrorist Organizations. Pursuant to Subchapter F, Chapter 2252, Texas Government Code, the Owners represent that neither the Owners, nor any parent company, wholly- or majority-owned subsidiaries, and other affiliates of the Owners are 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 understands “affiliate” to mean any entity that controls, is controlled by, or is under common control with the Owners and exists to make a profit.

[Signature pages to follow]

IN WITNESS WHEREOF, the Parties have caused this Reimbursement Agreement to be executed as of May 8, 2020, to be effective as of the date written on the first page of this Reimbursement Agreement.

**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. 15<sup>th</sup>, Inc., a Texas corporation, Its General  
Partner

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

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

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

**WHISPER INDUSTRIAL 2019 QOZB, LLC**, a Texas  
limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**135 RESIDENTIAL DEVELOPMENT, LLC**, a Texas  
limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **EXHIBIT A**

### **AUTHORIZED IMPROVEMENTS**

#### **A. Major Improvements**

- Road A: Opportunity Boulevard – Improvements including subgrade stabilization (including subgrade treatment, lime stabilization, road base import and compaction), concrete and reinforcing steel for roadways and sidewalks, material and compaction testing, handicapped ramps, and streetlights. All related earthwork, excavation, erosion control, retaining walls, intersections, signage, utility infrastructure, drainage infrastructure including drainage infrastructure flowing to the District detention pond shown on **Exhibit H** attached to the SAP, street lighting, landscaping, irrigation, entrance monumentation and re-vegetation of all disturbed areas within the right-of-way are included. The street improvements will provide a benefit to each Lot within the District.
- Road B: Fortuna Road – Improvements including subgrade stabilization (including subgrade treatment, lime stabilization, road base import and compaction), concrete and reinforcing steel for roadways and sidewalks, material and compaction testing, handicapped ramps, and streetlights. All related earthwork, excavation, erosion control, retaining walls, intersections, signage, utility infrastructure, drainage infrastructure including drainage infrastructure flowing to the District detention pond shown on **Exhibit H** attached to the SAP, street lighting, landscaping, irrigation and re-vegetation of all disturbed areas within the right-of-way are included. The street improvements will provide a benefit to each Lot within the District.
- Lift Station & Wastewater Line D: Improvements including trench excavation and embedment, trench safety, piping, manholes, service connections, testing, related earthwork, excavation, and erosion control and all necessary appurtenances constructed to City standards required to provide wastewater service to the District.
- Road C: Susurro Parkway – Improvements including subgrade stabilization (including subgrade treatment, lime stabilization, road base import and compaction), concrete and reinforcing steel for roadways and sidewalks, material and compaction testing, handicapped ramps, and streetlights. All related earthwork, excavation, erosion control, retaining walls, intersections, signage, utility infrastructure, drainage infrastructure including drainage infrastructure flowing to the District detention pond shown on **Exhibit H** attached to the SAP, street lighting, landscaping, irrigation and re-vegetation of all disturbed areas within the right-of-way are included. The street improvements will provide a benefit to each Lot within the District.
- Offsite Wastewater Line B: Improvements including trench excavation and embedment, trench safety, piping, manholes, service connections, testing, related earthwork, excavation, and erosion control and all necessary appurtenances required to provide wastewater service to the District.
- Detention Pond: Improvements providing drainage, detention and water quality treatment of stormwater runoff serving the District and the other Major Improvements, including without limitation the detention basin, water quality facilities, and related drainage inlets, swales, storm sewers, culverts

and outfall structures located in the area shown on **Exhibit H** attached to the SAP. All related earthwork, excavation, erosion control, retaining walls, drainage infrastructure, landscaping, irrigation and re-vegetation of all disturbed areas within the detention pond area are included. The detention pond will provide a benefit to each Lot within the District.

- *Soft Costs/Construction Management*: Includes engineering, geotechnical, permitting, inspection, surveying, design, and other professional fees and 4.0% construction management fee.

## **B. District Formation and Bond Issuance Costs**

- *Debt Service Reserve Requirement*: Equals the amount required to fund a reserve under the Indenture in connection with the issuance of PID Bonds.
- *Capitalized Interest*: Equals the amount of capitalized interest available for payment of interest on PID Bonds as reflected in the Indenture.
- *Underwriter's Discount*: Equals a percentage of the par amount of a particular series of PID Bonds.
- *Underwriter's Counsel*: Equals a percentage of the par amount of a particular series of PID Bonds reserved for the underwriter's attorney fees.
- *Cost of Issuance*: Costs associated with issuing PID Bonds, including but not limited to attorney fees, financial advisory fees, consultant fees, appraisal fees, printing costs, publication costs, City costs, fees charged by the Texas Attorney General, and any other cost or expense directly associated with the issuance of PID Bonds.
- *Developer District Formation Costs*: Expenses directly incurred by the Developer associated with forming the District, levying Assessments, and issuing the PID Bonds.
- *First Year Annual Collection Costs*: Expenses directly associated with forming the District including first year Annual Collection Costs.

## Schedule 1

### 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 Amended and Restated Whisper Public Improvement District Financing Agreement between Whisper Master Community Limited Partnership, a Texas limited partnership (“**Whisper MC**”), Yarrington Partners, Ltd., a Texas limited partnership (“**Yarrington Partners**”), Whisper Industrial 2019 QOZB, LLC, a Texas limited liability company (“**Whisper Industrial**”), and 135 Residential Development, LLC, a Texas limited liability company (“**135 Residential**”), and the City of San Marcos (the “**City**”), dated as of May 8, 2020 (as may be amended from time to time, the “**Financing 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 Certification 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 Certification 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 a 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 Costs 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 FOR PAYMENT (DESIGN)

Description of Design Work	Percentage of Design Work Completed under this Certification for Payment	Design Costs	Total Percentage of Design Work Completed
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ATTACHMENT B TO CERTIFICATION FOR PAYMENT (DESIGN)

[attached – bills paid affidavit]

ATTACHMENT C TO CERTIFICATION FOR PAYMENT (DESIGN)

[attached – receipts]

FORM OF CERTIFICATION FOR PAYMENT  
(Construction – Whisper)

\_\_\_\_\_ (“**Construction Manager**”) hereby requests payment of the Actual Costs of the work described in Attachment A attached hereto (the “**Draw Actual Costs**”). Capitalized undefined terms shall have the meanings ascribed thereto in the Amended and Restated Whisper Public Improvement District Financing Agreement between Whisper Master Community Limited Partnership, a Texas limited partnership (“**Whisper MC**”), Yarrington Partners, Ltd., a Texas limited partnership (“**Yarrington Partners**”), Whisper Industrial 2019 QOZB, LLC, a Texas limited liability company (“**Whisper Industrial**”), and 135 Residential Development, LLC, a Texas limited liability company (“**135 Residential**”), and the City of San Marcos, Texas (the “**City**”), dated as of May 8, 2020 (as may be amended from time to time, the “**Financing 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 Certification 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 Certification 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 the portion(s) of the Authorized Improvements described in Attachment A has been paid in full for all work completed through a 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 the portion(s) of the Authorized Improvements 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.

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Project Engineer

### APPROVAL BY THE CITY

The Draw Actual Costs of the portion(s) of the Authorized Improvements 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 portion(s) of the Authorized Improvements is hereby approved.

Date: \_\_\_\_\_

**CITY OF SAN MARCOS, TEXAS**

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



ATTACHMENT A TO CERTIFICATION FOR PAYMENT (CONSTRUCTION)

Portion(s) of the Authorized Improvements	Description of Work Completed Under this Certification for Payment	Draw Actual Costs
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ATTACHMENT B TO CERTIFICATION FOR PAYMENT (CONSTRUCTION)

[bills paid affidavit – attached]

ATTACHMENT C TO CERTIFICATION FOR PAYMENT (CONSTRUCTION)

[receipts – attached]