

**Porter Country Public Improvement District  
Financing Agreement**

This Porter Country Public Improvement District Financing Agreement (this “Agreement”) is entered into by Hillside Terrace Development, LLC, a Texas limited liability company (the “Developer”) and the City of Kyle, Texas (the “City”), to be effective May 2, 2023, (the “Effective Date”). The Developer and the City are individually referred to as a “Party” and collectively as the “Parties.”

**SECTION 1. RECITALS**

1.1 WHEREAS, capitalized terms used in this Agreement shall have the meanings given to them in Section 2;

1.2 WHEREAS, unless otherwise defined: (1) all references to “sections” shall mean sections of this Agreement; (2) all references to “exhibits” shall mean exhibits to this Agreement which are incorporated as part of this Agreement for all purposes; and (3) all references to “ordinances” or “resolutions” shall mean ordinances or resolutions adopted by the City Council;

1.3 WHEREAS, the Developer is a Texas limited liability company;

1.4 WHEREAS, the City of Kyle is a Texas home-rule municipality;

1.5 WHEREAS, the Developer and the City entered into that certain Porter Country Development Agreement, effective March 17, 2022, as amended by the First Amendment to the Porter Country Development Agreement, dated as of September 6, 2022 (as may be amended, the “Development Agreement”) pertaining to development matters with respect to the Property;

1.6 WHEREAS, it is intended that the Property will be developed as a residential and commercial development, in accordance with the Development Agreement and the Planned Unit Development District zoning (as may be further amended, the “PUD”), adopted by the City Council pursuant to Ordinance No. 1204 on June 7, 2022;

1.7 WHEREAS, on July 5, 2022, the City Council passed and approved the PID Creation Resolution authorizing the creation of the PID pursuant to the Act, covering approximately 259.02 contiguous acres within the City's corporate limits, which land is described in the PID Creation Resolution;

1.8 WHEREAS, contemporaneously with the approval of this Agreement, the City Council passed and approved an Assessment Ordinance for Improvement Area #1;

1.9 WHEREAS, the Assessment Ordinance for Improvement Area #1 approved the SAP;

1.10 WHEREAS, the SAP identifies Authorized Improvements to be designed, constructed, and installed by or at the direction of the Parties that confer a special benefit on the Assessed Property;

- 1.11 WHEREAS, the SAP sets forth the Actual Costs of the Authorized Improvements;
- 1.12 WHEREAS, the Assessed Property is being developed in phases or “Improvement Areas;”
- 1.13 WHEREAS, this Agreement shall apply to all phases and no additional financing agreement shall be required for future Improvement Areas;
- 1.14 WHEREAS, the SAP determines and apportions the Actual Costs of the Authorized Improvements to the Assessed Property, which Actual Costs are allocated based upon the special benefit that the Authorized Improvements confer upon the Assessed Property as required by the Act;
- 1.15 WHEREAS, the Assessment Ordinance for Improvement Area #1 levied the Improvement Area #1 Assessments against the Improvement Area #1 Assessed Property in the amounts set forth on the Improvement Area #1 Assessment Roll;
- 1.16 WHEREAS, an assessment ordinance will be considered for future Improvement Areas to levy Assessments against Assessed Property in the amounts set forth on the Assessment Roll(s) related to such Improvement Areas;
- 1.17 WHEREAS, Assessments, including the Annual Installments thereof, are due and payable as described in the SAP;
- 1.18 WHEREAS, Annual Installments shall be billed and collected by the City or its designee;
- 1.19 WHEREAS, Assessment Revenue from the collection of Assessments, including the Annual Installments thereof, shall be deposited (1) as provided in the applicable Indenture if PID Bonds secured by such Assessments are issued, or (2) into the City Project Fund if no such PID Bonds are issued or no PID Bonds remain outstanding;
- 1.20 WHEREAS, Bond Proceeds shall be deposited as provided in the applicable Indenture;
- 1.21 WHEREAS, the PID Project Fund shall only be used in the manner set forth in the applicable Indenture;
- 1.22 WHEREAS, the foregoing RECITALS: (1) are part of this Agreement for all purposes; (2) are true and correct; and (3) each Party has relied upon such Recitals in entering into this Agreement; and
- 1.23 WHEREAS, all resolutions and ordinances referenced in this Agreement (e.g., the PID Creation Resolution and each Assessment Ordinance), together with all other documents referenced in this Agreement (e.g., the SAP and each Indenture), are incorporated as part of this Agreement for all purposes as if such resolutions, ordinances, and other documents were set forth in their entirety in or as exhibits to this Agreement.

NOW THEREFORE, for and in consideration of the mutual obligations of the Parties set forth in this Agreement, the Parties agree as follows:

## SECTION 2. DEFINITIONS

- 2.1 “Act” is defined as Chapter 372, Texas Local Government Code, as amended.
- 2.2 “Actual Costs” is defined in the SAP.
- 2.3 “Actual Increased Costs” is defined in Section 4.11.
- 2.4 “Actual Increased City Obligation Costs” is defined in Section 4.11.
- 2.5 “Additional Costs” is defined in Section 4.11.
- 2.6 “Administrator” is defined in the SAP.
- 2.7 “Agreement” is defined in the introductory paragraph.
- 2.8 “Annual Collection Costs” are defined in the SAP.
- 2.9 “Annual Installment” is defined in the SAP.
- 2.10 “Applicable Laws” means the Act and all other laws or statutes, rules, or regulations of the State of Texas or the United States, as the same may be amended, by which the City and its powers, securities, operations, and procedures are, or may be, governed or from which its powers may be derived.
- 2.11 “Assessed Property” is defined in the SAP.
- 2.12 “Assessment” is defined in the SAP.
- 2.13 “Assessment Ordinance” is defined in the SAP.
- 2.14 “Assessment Revenue” means the revenues actually received by or on behalf of the City from the collection of Assessments, including Prepayments, Annual Installments and foreclosure proceeds.
- 2.15 “Assessment Roll” is defined in the SAP.
- 2.16 “Authorized Improvements” is defined in the SAP.
- 2.17 “Bond Improvement Account” means the account under the PID Project Fund established by an Indenture relating to PID Bonds, including the IA #1 Improvements Account relating to the Improvement Area #1 Bonds, into which Bond Proceeds are deposited to pay for the Actual Costs of the Authorized Improvements as described in the Indenture.

2.18 “Bond Proceeds” mean the proceeds derived from the issuance and sale of a series of PID Bonds that are deposited and made available to pay Actual Costs in accordance with the applicable Indenture.

2.19 “Certificate for Payment” means a certificate (substantially in the form of Exhibit A or as otherwise approved by the Developer and the City Representative) executed by a representative of the Developer and approved by a City Representative, delivered to a City Representative (and/or, if applicable, to the trustee named in any applicable Indenture), specifying the work performed and the amount charged (including materials and labor costs) for Actual Costs of Authorized Improvements, and requesting payment of such amount from the Bond Improvement Account of the PID Project Fund or the City Project Fund, as applicable. Each certificate shall include supporting documentation in the standard form for City construction projects and evidence that the Authorized Improvements (or its completed segment) covered by the certificate have been inspected by the City.

2.20 “Certificate for Payment – Developer Improvement Account” means a certificate (substantially in the form of Exhibit B or as otherwise approved by the Developer and the City Representative) executed by a representative of the Developer and approved by a City Representative, delivered to a City Representative (and/or, if applicable, to the trustee named in any applicable Indenture), specifying the work performed and the amount charged (including materials and labor costs) for Actual Costs of Authorized Improvements, and requesting payment of such amount from the Developer Improvement Account of the PID Project Fund. Each certificate shall include supporting documentation in the standard form for City construction projects and evidence that the Authorized Improvements (or its completed segment) covered by the certificate have been inspected by the City.

2.21 “Change Order” is defined in Section 3.12.

2.22 “City” is defined in the introductory paragraph.

2.23 “City Council” means the governing body of the City.

2.24 “City Obligations” is defined in the Section 4.11.

2.25 “City Project Fund” means the fund established by the City under this Agreement or a Reimbursement Agreement (and segregated from all other funds of the City) into which the City deposits Assessment Revenue if not deposited into the PID Pledged Revenue Fund.

2.26 “City Representative” means any person authorized by the City Council to undertake the actions referenced herein.

2.27 “Closing Disbursement Request” means a request in the form of Exhibit E or as otherwise approved by the Parties.

2.28 “Cost Overrun” is defined in Section 3.2.

2.29 “Cost Underrun” is defined in Section 3.11.

- 2.30 “Default” is defined in Section 4.8.1.
- 2.31 “Delinquent Collection Costs” is defined in the SAP.
- 2.32 “Developer” is defined in the introductory paragraph.
- 2.33 “Developer Advances” means advances made by the Developer to pay Actual Costs.
- 2.34 “Developer Continuing Disclosure Agreement” means any *Continuing Disclosure Agreement of Developer* executed contemporaneously with the sale of PID Bonds.
- 2.35 “Developer Improvement Account” means the account under the PID Project Fund established by an Indenture relating to the PID Bonds issued for an Improvement Area into which the Developer will deposit funds to pay for the Actual Costs of the Authorized Improvements benefitting such Improvement Area as described in the Indenture.
- 2.36 “Development Agreement” is defined in Section 1.5.
- 2.37 “Effective Date” is defined in the introductory paragraph.
- 2.38 “End User” is defined as a residential homebuyer or purchaser of a fully developed and improved lot.
- 2.39 “Estimated Additional Costs” is defined in the Section 4.11.
- 2.40 “Estimated Additional City Obligation Costs” is defined in the Section 4.11.
- 2.41 “Failure” is defined in Section 4.8.1.
- 2.42 “Home Buyer Disclosure Program” is defined as the disclosure program, administered by the Builder (as defined in Exhibit G) as set forth in a document in substantially the same form as Exhibit G attached hereto, that establishes a mechanism to disclose to each Buyer (as defined in Exhibit G) the terms and conditions under which their lot is burdened by the PID.
- 2.43 “Improvement Area” is defined in the SAP.
- 2.44 “Improvement Area #1” is defined in the SAP.
- 2.45 “Improvement Area #1 Bonds” is defined in the SAP.
- 2.46 “Indenture” means the applicable trust indenture pursuant to which PID Bonds are issued.
- 2.47 “Maturity Date” is the date one year after the last Annual Installment is collected.
- 2.48 “Non-Benefited Property” is defined in the SAP.

- 2.49 “Parcel” is defined in the SAP.
- 2.50 “Party” and “Parties” are defined in the introductory paragraph.
- 2.51 “PID” is defined as the Porter Country Public Improvement District, created by the PID Creation Resolution.
- 2.52 “PID Bonds” is defined in the SAP.
- 2.53 “PID Creation Resolution” is defined as Resolution No. 1316 passed and approved by the City Council on July 5, 2022.
- 2.54 “PID Pledged Revenue Fund” means the fund, including all accounts created within such fund, established by the City under an Indenture (and segregated from all other funds of the City) into which the City deposits Assessment Revenue from the collection of Assessments, including Annual Installments thereof, securing PID Bonds issued and still outstanding under such Indenture.
- 2.55 “PID Project Fund” means the fund, including all accounts or subaccounts created within such fund, established by the City under an Indenture (and segregated from all other funds of the City) into which the City deposits a portion of the Bond Proceeds and any other funds authorized or required by such Indenture.
- 2.56 “Prepayment” is defined in the SAP.
- 2.57 “Property” is defined as that certain 259.02 acre tract within the City's corporate limits, which tract is described in the PID Creation Resolution.
- 2.58 “PUD” is defined in Section 1.6.
- 2.59 “QTEO” is defined in the Section 4.11.
- 2.60 “Reimbursement Agreement” means any Porter Country Public Improvement District Reimbursement Agreement by and between the City and the Developer entered into for the payment of Assessments in installments, applicable to any Improvement Area within the District.
- 2.61 “Reimbursement Agreement Balance” means, upon the levy of Assessments, any unpaid amount owed to the Developer for Actual Costs of Authorized Improvements pursuant to a Reimbursement Agreement from Assessments collected in the City Project Fund.
- 2.62 “Reimbursement Obligation” is defined in the applicable Reimbursement Agreement.
- 2.63 “Service and Assessment Plan” or “SAP” is defined as the *Porter Country Public Improvement District Service and Assessment Plan* approved as part of the Assessment Ordinance, as the same may be updated or amended by City Council action in accordance with the Act.

2.64 “Tax Certificate” is defined in Section 4.7.2.

2.65 “Transfer” and “Transferee” are defined in Section 4.10.

### **SECTION 3. FUNDING AUTHORIZED IMPROVEMENTS**

3.1 Fund Deposits. Until or unless PID Bonds are issued, the City shall bill, collect, and deposit into the City Project Fund all Assessment Revenue consisting of: (1) revenue collected from the payment of Assessments (including Prepayments and amounts received from the foreclosure of liens but excluding costs and expenses related to collection); 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 deposit all Assessment Revenue in the manner set forth in the applicable Indenture. Upon the issuance of PID Bonds, the City shall also deposit Bond Proceeds and any other funds authorized or required by the Indenture and the Developer shall deposit any funds or provide other fiscal security required by this Agreement and the Indenture in the manner set forth in the applicable 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 PID Project Fund shall only be used in accordance with the applicable Indenture. Funds in the City Project Fund shall only be used to pay Actual Costs of the Authorized Improvements or all or any portion of the Reimbursement Obligation in accordance with the Reimbursement Agreement. Notwithstanding any other provision in this Agreement, the Actual Costs of Authorized Improvements allocable to each phase or “Improvement Area” shall be paid from the Bond Proceeds or Assessment Revenue collected solely from Assessments levied on the property within such phase or “Improvement Area” benefitting from such Authorized Improvements. The City will take and pursue all actions permissible under Applicable Laws to cause the Assessments to be collected and the liens related to such Assessments to be enforced continuously, in the manner and to the maximum extent permitted by the Applicable Laws, and, to the extent permitted by Applicable Laws, to cause no reduction, abatement or exemption in the Assessments for so long as any PID Bonds are outstanding or a Reimbursement Obligation remains outstanding. The City shall determine or cause to be determined, no later than February 15 of each year whether any Annual Installment is delinquent and if such delinquencies exist, the City will order and cause to be commenced as soon as practicable, and subject to any necessary action required by the City Council, any and all appropriate and legally permissible actions to obtain such Annual Installment, and any delinquent charges and interest thereon, including without limitation diligently prosecuting an action to foreclose the currently delinquent Annual Installment; provided, however, the City shall not be required under any circumstances to pay any delinquent Assessment or purchase or make payment for the purchase of the corresponding Assessed Property.

3.2 Payment of Actual Costs. If PID Bonds are not issued (or prior to such issuance) to pay Actual Costs of Authorized Improvements, the Developer may elect to make Developer Advances to pay Actual Costs. If PID Bonds are issued, the Bond Proceeds shall be used in the manner provided in the applicable Indenture; and the Developer shall have no obligation to make Developer Advances so long as fiscal security acceptable to the City is provided for completion of the Authorized Improvements. If the Developer elects to make Developer Advances in connection with the issuance of a series of PID Bonds, then such Developer Advances may be reduced by the amount of payments of Actual Costs of the Authorized Improvements (or portions thereof) to be financed by such PID Bonds that

the Developer has previously paid if (i) the Developer submits to the City all information related to such costs that would be required by a Closing Disbursement Request, and (ii) the City approves such Actual Costs in writing at least five (5) days prior to the pricing of the PID Bonds. The Developer shall also make Developer Advances to pay for any cost overrun (“Cost Overrun”) after applying cost savings, including Cost Underruns. The Developer agrees to pay the Actual Costs of the Authorized Improvements set forth in the SAP that are not funded by Bond Proceeds or by funds in the City Project Fund (as provided in the Reimbursement Agreement), if any, and agrees to maintain sufficient funds for such purpose in the form of: (i) loan funds, (ii) funds available pursuant to a letter of credit, (iii) available cash, or (iv) any combination of (i) – (iii) as required by and acceptable to the City.

3.3 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 a Reimbursement Obligation (as provided in the applicable Reimbursement Agreement); or (2) paying directly Actual Costs of Authorized Improvements described in the applicable Indenture. PID Bonds issued for such purpose will be secured by and paid solely as authorized by the applicable Indenture. The failure of the City to issue PID Bonds shall not constitute a “Failure” by the City or otherwise result in a “Default” by the City. Upon the issuance of the PID Bonds, the Developer has a duty to construct those Authorized Improvements described in the applicable Indenture. The Developer shall not be relieved of its duty to construct or cause to be constructed such improvements even if there are insufficient funds in the PID Project Fund to pay the Actual Costs. This Agreement shall apply to all of the PID Bonds issued by the City whether in one or more series, and no additional financing agreement shall be required for future series of PID Bonds.

### 3.4 Disbursements and Transfers at and after Bond Closing.

3.4.1 The City and the Developer agree that from the proceeds of the PID Bonds, and upon the presentation of evidence satisfactory to the City Representative, the City will cause the trustee under the applicable Indenture to pay at closing of the PID Bonds approved amounts from the appropriate account to the City or the Developer, as applicable, which costs may include payment for costs of issuance of PID Bonds and payment of costs incurred in the establishment, administration, and operation of the PID and any other eligible items expended by the Developer and the City as of the time of the delivery of the PID Bonds as described in the SAP. In order to receive disbursement, the Developer shall execute a Closing Disbursement Request to be delivered to the City no less than five (5) days prior to the scheduled pricing date for the PID Bonds for payment in accordance with the provisions of the applicable Indenture.

3.4.2 In order to receive disbursements for Actual Costs of Authorized Improvements from the applicable fund under this Agreement, a Reimbursement Agreement, and applicable Indenture, the Developer shall execute a Certificate for Payment or Certificate for Payment – Developer Improvement Account, as applicable, no more frequently than monthly, to be delivered to the City for payment in accordance with the provisions of the applicable Indenture and this Agreement. Upon receipt of a Certificate for Payment or Certificate for Payment – Developer Improvement Account (along with all accompanying documentation required by the City) from the Developer, the City shall conduct a review in order to confirm that such request is complete, to confirm that the work for which



payment is requested was performed in accordance with all Applicable Laws and applicable plans therefore and with the terms of this Agreement, the Reimbursement Agreement, and any other agreement between the parties related to property in the PID, and to verify and approve the Actual Costs of such work specified in such certificate. The City shall also conduct such review as is required in its discretion to confirm the matters certified in the Certificate for Payment or Certificate for Payment – Developer Improvement Account.

3.4.3 The Developer agrees to cooperate with the City in conducting each such review required to be made for the approval of a Certificate for Payment or Certificate for Payment – Developer Improvement Account, as applicable; and, the Developer agrees to provide the City with such additional information and documentation as is reasonably necessary for the City to conclude each such review.

3.4.4 Within ten (10) business days following receipt of any Certificate for Payment or Certificate for Payment – Developer Improvement Account, the City shall either: (1) approve such certificate and forward it to the trustee under the applicable Indenture for payment, or (2) provide the Developer with written notification of disapproval of all or part of such certificate, specifying the basis for any such disapproval. Any disputes shall be resolved as required by Section 3.4.5 herein. The City shall (i) make payment under the approved or partially approved Certificate for Payment from the City Project Fund, or (ii) deliver the approved or partially approved Certificate for Payment or Certificate for Payment – Developer Improvement Account, to the trustee under the applicable Indenture for payment from the Bond Improvement Account or the Developer Improvement Account, as applicable, and such trustee shall make the disbursements as quickly as practicable thereafter.

3.4.5 If there is a dispute over the amount of any payment, the City shall nevertheless pay the undisputed amount, and the Parties shall use all reasonable efforts to resolve the disputed amount before the next payment is made; however, if the Parties are unable to resolve the disputed amount, then the City's determination of the disputed amount (as approved by the City Council) shall control.

3.5 Obligations Limited. The obligations of the City under this Agreement shall not, under any circumstances, give rise to or create a charge against the general credit or taxing power of the City or constitute a debt or other obligation of the City payable from any source other than the City Project Fund or the PID Project Fund. Unless approved by the City, no other City funds, revenues, taxes, or income of any kind shall be used to pay: (1) the Actual Costs of the Authorized Improvements; (2) the Reimbursement Obligation even if the Reimbursement Obligation is not paid in full on or before the Maturity Date; or (3) debt service on any PID Bonds. None of the City or any of its elected or appointed officials or any of its officers, employees, consultants or representatives shall incur any liability hereunder to the Developer or any other party in their individual capacities by reason of this Agreement or their acts or omissions under this Agreement.

3.6 Obligation to Pay. Subject to the provisions of Section 3.4.7 and 3.5 of this Agreement and any Reimbursement Agreement, if applicable, if the Developer is (1) current on payment of all taxes,

assessments and fees owed to the City, and (2) in then current compliance with its obligations under (a) this Agreement, and (b) all Developer Continuing Disclosure Agreements (if PID Bonds are issued and remain outstanding); then, following the inspection and approval by the City of any portion of Authorized Improvements for which Developer seeks reimbursement of the Actual Costs by submission of a Certificate for Payment, Certificate for Payment – Developer Improvement Account, or Closing Disbursement Request, the obligations of the City under this Agreement to pay disbursements (whether to the Developer or to any assignee of the Developer) identified in any approved Certificate for Payment, Certificate for Payment – Developer Improvement Account, or Closing Disbursement Request and to pay debt service on PID Bonds are unconditional AND NOT subject to any defenses or rights of offset except as may be provided in any Indenture.

3.7 City Delegation of Authority. All Authorized Improvements shall be constructed by or at the direction of the Developer in accordance with the plans and in accordance with this Agreement, the Development Agreement, the PUD, and any other agreement between the parties related to property in the PID. The Developer shall perform, or cause to be performed, all of its obligations and shall conduct, or cause to be conducted, all operations with respect to the construction of Authorized Improvements in a good, workmanlike and commercially reasonable manner, with the standard of diligence and care normally employed by duly qualified persons utilizing their commercially reasonable efforts in the performance of comparable work in accordance with City ordinances, City regulations, the PUD, and generally accepted practices appropriate to the activities undertaken. The Developer has sole responsibility of ensuring that all Authorized Improvements are constructed in a good, workmanlike and commercially reasonable manner, with the standard of diligence and care normally employed by duly qualified persons utilizing their commercially reasonable efforts in the performance of comparable work in accordance with City ordinances, City regulations, the PUD, and generally accepted practices appropriate to the activities undertaken. The Developer shall employ at all times adequate staff or consultants with the requisite experience necessary to administer and coordinate all work related to the design, engineering, acquisition, construction and installation of all Authorized Improvements to be acquired and accepted by the City from the Developer. If any Authorized Improvements are or will be on land owned by the City, the City shall grant to the Developer a license agreement in a form acceptable to the City to enter upon such land for purposes related to construction (and maintenance pending acquisition and acceptance) of the Authorized Improvements. Inspection and acceptance of Authorized Improvements will be in accordance with applicable City ordinances and regulations.

3.8 Security for Authorized Improvements. Prior to completion and conveyance to the City of any Authorized Improvements, the Developer shall cause to be provided to the City a maintenance bond in the amount required by the City's subdivision regulations for applicable Authorized Improvements, which maintenance bond shall be for a term of two years from the date of final acceptance of the applicable Authorized Improvements. Any surety company through which a bond is written shall be a surety company duly authorized to do business in the State of Texas, provided that legal counsel for the City has the right to reject any surety company regardless of such company's authorization to do business in Texas. Nothing in this Agreement shall be deemed to prohibit the Developer or the City from contesting in good faith the validity or amount of any mechanics or materialman's lien and/or judgment nor limit the remedies available to the Developer or the City with respect thereto so long as such delay in performance shall not subject the Authorized Improvements to foreclosure, forfeiture, or sale. In the event that any such lien and/or judgment with respect to the Authorized Improvements

is contested, the Developer shall be required to post or cause the delivery of a surety bond or letter of credit, whichever is preferred by the City, in an amount reasonably determined by the City, not to exceed one hundred twenty percent (120%) of the disputed amount.

3.9 Ownership and Transfer of Authorized Improvements. The Developer shall furnish to the City a preliminary title report for land related to the Authorized Improvements to be acquired and accepted by the City from the Developer and not previously dedicated or otherwise conveyed to the City. The report shall be made available for City review and approval at least fifteen (15) business days prior to the scheduled transfer of title. The City shall approve the preliminary title report unless it reveals a matter which, in the reasonable judgment of the City, would materially affect the City's use and enjoyment of the Authorized Improvements. If the City objects to any preliminary title report, the City shall not be obligated to accept title to the applicable Authorized Improvements until the Developer has cured the objections to the reasonable satisfaction of the City.

3.10 Remaining Funds After Completion of an Authorized Improvement. Upon the entering into final construction contracts for an Authorized Improvement, if the Actual Cost of such Authorized Improvement is less than the budgeted cost as shown in Exhibit B to the SAP, as the same may be updated by the City, (a "Cost Underrun"), any remaining budgeted cost will be available to pay Cost Overruns on any other Authorized Improvement. Additionally, upon the final completion of an Authorized Improvement and payment of all outstanding invoices for such Authorized Improvement, any Cost Underrun will be available to pay Cost Overruns on any other Authorized Improvement. A City Representative shall promptly confirm to the Administrator (as defined in the SAP) that such remaining amounts are available to pay such Cost Overruns, and the Developer, the Administrator and the City Representative will agree how to use such moneys to secure the payment and performance of the work for other Authorized Improvements. Any Cost Underrun for any Authorized Improvement is available to pay Cost Overruns on any other Authorized Improvement and may be added to the amount approved for payment in any Certificate for Payment, as agreed to by the Developer, the Administrator and the City Representative.

3.11 Contracts and Change Orders. The Developer shall be responsible for entering into all contracts and any supplemental agreements (herein referred to as "Change Orders") required for the construction of an Authorized Improvement. The Developer or its contractors may approve and implement any Change Orders even if such Change Order would increase the Actual Cost of an Authorized Improvement, but the Developer shall be solely responsible for payment of any Cost Overruns resulting from such Change Orders except to the extent amounts are available as Cost Underruns pursuant to Section 3.10 hereof.

3.12 Landowner Consent and Recordation of Assessments.

3.12.1 Concurrently with the levy of the Assessments, the Developer shall execute (and shall cause any other owner of any of the Assessed Property to execute) a landowner consent certificate (the "Landowner Certificate") in which the Owner 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 Certificate further shall (a) evidence the Developer's or landowner's intent that the Assessments be covenants running with the land that (i) will bind any and all current and successor owners of the Assessed 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 Assessed Property, subject only to liens for ad valorem taxes of the State, County, City, or school district. A form of the Landowner Certificate is attached hereto as Exhibit F.

3.12.2 After the City Council approves a Service and Assessment Plan and 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"). Any fees or other costs associated with the filing of the original Service and Assessment Plan and any amendment or updated thereto in connection with the issuance of PID Bonds with the County Clerk shall be paid by Developer. Any fees or other costs associated with the filing of all other amendments or updates to the Service and Assessment Plan with the County Clerk will be paid as an Annual Collection Cost.

3.12.3 The Developer 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.

3.12.4 If foregoing procedures set forth in this Section 3.12 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 3.12 without any further actions by the City or the Developer.

#### **SECTION 4. ADDITIONAL PROVISIONS**

4.1 Term. The term of this Agreement shall begin on the Effective Date and shall continue until the Maturity Date and the Reimbursement Agreement Balance is paid in full.

4.2 No Competitive Bidding. Construction of the Authorized Improvements shall not require competitive bidding pursuant to Section 252.022(a)(9) of the Texas Local Government Code, as amended. All plans and specifications, but not construction contracts, shall be reviewed and approved, in writing, by the City staff prior to Developer selecting the contractor.

4.3 Independent Contractor. In performing this Agreement, the Developer is an independent contractor and not the agent or employee of the City.

4.4 Audit. The City Representative shall have the right, during normal business hours and upon five (5) business days' prior written notice to the Developer, to review all books and records of the Developer pertaining to costs and expenses incurred by the Developer with respect to any of the

Authorized Improvements. For a period of two (2) years after completion of the Authorized Improvements or after the expenditure of all Bond Proceeds, whichever is later, the Developer shall maintain proper books of record and account for the construction of the Authorized Improvements and all costs related thereto. Such accounting books shall be maintained in accordance with customary real estate accounting principles. The Developer shall have the right, during normal business hours, to review all records and accounts pertaining to the Assessments upon written request to the City. The City shall provide the Developer an opportunity to inspect such books and records relating to the Assessments during the City's regular business hours and on a mutually agreeable date no later than ten (10) business days after the City receives such written request. The City shall keep and maintain a proper and complete system of records and accounts pertaining to the Assessments for so long as PID Bonds remain outstanding or Reimbursement Obligation remains unpaid.

4.5 Developer's Right to Protest Ad Valorem Taxes. Nothing in this Agreement shall be construed to limit or restrict Developer's right to protest ad valorem taxes. The Developer's decision to protest ad valorem taxes on Assessed Property does not constitute a Default under this Agreement.

4.6 PID Administration and Collection of Assessments. If the City designates an Administrator who shall have the responsibilities provided in the SAP related to the duties and responsibilities of the administration of the PID, the City shall provide the Developer upon request with a copy of the agreement between the City and the Administrator. If the City contracts with a third-party for the collection of Annual Installments of the Assessments, the City shall provide the Developer with a copy of such agreement. During the term of this Agreement, the City shall notify the Developer of any change of Administrator or third-party collection of the Assessments.

4.7 Representations and Warranties.

4.7.1 The Developer represents and warrants to the City that: (1) the Developer has the authority to enter into and perform its obligations under this Agreement; (2) the Developer has the financial resources, or the ability to obtain sufficient financial resources, to meet its obligations under this Agreement; (3) any information provided by the Developer for inclusion in an offering document or official statement for an issue of PID Bonds will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading; (4) the person executing this Agreement on behalf of the Developer has been duly authorized to do so; (5) this Agreement is binding upon the Developer in accordance with its terms; and (6) the execution of this Agreement and the performance by the Developer of its obligations under this Agreement does not constitute a breach or event of default by the Developer under any other agreement, instrument, or order to which the Developer is a party or by which the Developer is bound.

4.7.2 If in connection with the issuance of PID Bonds the City is required to deliver a certificate as to tax exemption (a "Tax Certificate") to satisfy requirements of the Internal Revenue Code, the Developer agrees to provide, or cause to be provided, such facts and

estimates as the City reasonably considers necessary to enable it to execute and deliver its Tax Certificate. The Developer represents that 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 knowledge of the officers of the Developer providing such facts and estimates, true, correct and complete as of such date. To the extent that it exercises control or direction over the use or investment of any proceeds from the sale of PID Bonds (including, but not limited to, the use of the Authorized Improvements), the Developer further agrees that it will not knowingly make, or permit to be made, any use or investment of such funds that would cause any of the covenants or agreements of the City contained in a 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.

4.7.3 The City represents and warrants to the Developer that: (1) the City has the authority to enter into and perform its obligations under this Agreement; (2) the person executing this Agreement on behalf of the City has been duly authorized to do so; (3) this Agreement is binding upon the City in accordance with its terms; and (4) the execution of this Agreement and the performance by the City of its obligations under this Agreement do not constitute a breach or event of default by the City under any other agreement, instrument, or order to which the City is a party or by which the City is bound.

#### 4.8 Default/Remedies.

4.8.1 If either Party fails to perform an obligation imposed on such Party by this Agreement (a “Failure”) and such Failure is not cured after notice and the expiration of the cure periods provided in this section, then such Failure shall constitute a “Default.” If a Failure is monetary, the non-performing Party shall have ten (10) business days within which to cure. If the Failure is non-monetary, the non-performing Party shall have thirty (30) days within which to cure. However, if the non-monetary Failure is of such a nature that it cannot reasonably be expected to be cured within thirty (30) days, then the Party who failed to perform shall have such time as is necessary to cure the default, so long as the failing Party commences the cure within thirty (30) days and diligently pursues such cure to completion, but in no event more than ninety (90) days.

4.8.2 If the Developer is in Default, the City shall have available all remedies at law or in equity; provided that, except as otherwise provided in this Agreement, no default by the Developer shall entitle the City to terminate this Agreement or to withhold payments to the Developer in accordance with this Agreement, any Reimbursement Agreement, and any Indenture, as applicable. Notwithstanding the foregoing, in the event the Developer attempts to transfer its interests in this Agreement in violation of Section 4.10 of this Agreement, the City, in its sole discretion shall have the right to terminate this Agreement.

4.8.3 If the City is in Default, the Developer shall have available all remedies at law or in equity; provided, however, no Default by the City shall entitle the Developer to terminate this Agreement.

4.8.4 The City shall give notice of any alleged Failure by the Developer to each Transferee identified in any notice from the Developer, and such Transferees shall have the right, but not the obligation, to cure the alleged Failure within the same cure periods that are provided to the Developer. The election by a Transferee to cure a Failure by the Developer shall constitute a cure by the Developer but shall not obligate the Transferee to be bound by this Agreement unless the Transferee agrees in writing to be bound.

4.9 Remedies Outside the Agreement. Nothing in this Agreement constitutes a waiver by the City of any remedy the City may have outside this Agreement against the Developer, any Transferee, or any other person or entity involved in the design, construction, or installation of the Authorized Improvements. The City shall not be deemed to waive any defenses or immunities, whether sovereign, governmental, legislative, qualified or otherwise, all such defenses and immunities being expressly retained. The obligations of the Developer hereunder shall be those of a party hereto and not as an owner of property in the PID. Nothing herein shall be construed as affecting the City's or the Developer's rights or duties to perform their respective obligations under other agreements, use regulations, or subdivision requirements relating to the development property in the PID.

4.10 Indemnification. THE DEVELOPER COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS CITY (AND THEIR ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES), INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE BROUGHT BY ANY THIRD PARTY AND RELATING TO DEVELOPER'S CONSTRUCTION OF THE PUBLIC IMPROVEMENTS INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY OR DEATH AND PROPERTY DAMAGE, MADE UPON CITY OR DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO DEVELOPER OR DEVELOPER'S CONTRACTORS' NEGLIGENCE, WILLFUL MISCONDUCT OR CRIMINAL CONDUCT IN ITS ACTIVITIES, INCLUDING ANY SUCH ACTS OR OMISSIONS OF DEVELOPER OR DEVELOPER'S CONTRACTORS, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANTS OF DEVELOPER OR DEVELOPER'S CONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES, ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY, UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE CITY AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. DEVELOPER SHALL PROMPTLY ADVISE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST CITY, RELATED TO OR ARISING OUT OF DEVELOPER OR DEVELOPER'S CONTRACTORS ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT THE DEVELOPER'S COST TO THE EXTENT REQUIRED UNDER THE INDEMNITY IN THIS PARAGRAPH. CITY SHALL HAVE THE RIGHT, AT THEIR OPTION AND AT THEIR OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING DEVELOPER OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

IT IS THE EXPRESS INTENT OF THIS SECTION THAT THE INDEMNITY PROVIDED TO THE CITY AND THE DEVELOPER SHALL SURVIVE THE TERMINATION AND/OR EXPIRATION OF THIS AGREEMENT AND SHALL BE BROADLY INTERPRETED AT ALL TIMES TO PROVIDE THE MAXIMUM INDEMNIFICATION OF THE CITY AND/OR THEIR OFFICERS, EMPLOYEES AND ELECTED OFFICIALS PERMITTED BY LAW.

4.11 Transfers. The Developer has the right to convey, transfer, assign, mortgage, pledge, or otherwise encumber, in whole or in part without the consent of (but with notice to) the City, the Developer's right, title, or interest to payments under this Agreement (but not performance obligations), but only as it relates to each separate Improvement Area within the PID, including, but not limited to, any right, title, or interest of the Developer in and to payments from Bond Proceeds or the City Project Fund (any of the foregoing, a "Transfer," and the person or entity to whom the transfer is made, a "Transferee"); provided, however, that no such conveyance, transfer, assignment, mortgage, pledge, or other encumbrance shall be made without prior written consent of the City Council if such conveyance, transfer, assignment, mortgage, pledge, or other encumbrance would result in (1) the issuance of municipal securities, and/ or (2) the City being viewed as an "obligated person" within the meaning of Rule 15c2-12 of the United States Securities and Exchange Commission, and/or (3) the City being subjected to additional reporting or recordkeeping duties. Notwithstanding the foregoing, no Transfer shall be effective until notice of the Transfer is given to the City. The City may rely on notice of a Transfer received from the Developer without obligation to investigate or confirm the validity of the Transfer. The Developer 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.

4.12 Qualified Tax-Exempt Status. In any calendar year in which PID Bonds are issued, the Developer agrees to pay the City additional costs ("Additional Costs") the City may incur in the issuance of City obligations (the "City Obligations") as described in this Section 4.11 if the City Obligations are deemed not to qualify for the designation of "qualified tax-exempt obligations" ("QTEO") as defined in Section 265(b)(3) of the Internal Revenue Code of 1986, as amended, as a result of the issuance of PID Bonds by the City in any given year. The City agrees to deposit all funds for the payment of such Additional Costs received under this Section 4.11 into a segregated account of the City, and such funds shall remain separate and apart from all other funds and accounts of the City until December 31 of the calendar year in which the PID Bonds are issued, at which time the City is authorized to utilize such funds for any purpose permitted by law. Additionally, the City will provide the Developer on an annual basis no later than August 15th each year the projected amount of City Obligations to be issued in the upcoming year based on its annual budget process.

In the event the City issues PID Bonds prior to the issuance of City Obligations, the City's Financial Advisor shall calculate the estimated Additional Costs based on the market conditions as they exist approximately thirty (30) days prior to the date of the pricing of the PID Bonds (the "Estimated Additional Costs"), and the City shall provide a written invoice to the Developer. Unless otherwise agreed to in writing by the City, the Developer shall pay such Estimated Additional Costs to the City on or before the earlier of (i) ten (10) business days after the date of the City's invoice and (ii) five (5) business days prior to pricing the PID Bonds. The City shall not be required to price or sell any issue of PID Bonds until the Developer has paid to the City the Estimated Additional Costs related to the PID Bonds then being issued. The Estimated Additional Costs are an estimate of the



increased cost to the City to issue its City Obligations as non-QTEO. Upon the City's approval of the City Obligations, the City's Financial Advisor shall calculate the actual Additional Costs to the City of issuing its City Obligations as non-QTEO (the "Actual Increased Costs"). The City will, within five (5) business days of the issuance of the City Obligations, notify the Developer of the Actual Increased Costs. In the event the Actual Increased Costs are less than the Estimated Additional Costs, the City will refund to the Developer the difference between the Actual Increased Costs and the Estimated Additional Costs within ten (10) business days of the date of the City's notice to the Developer of the Actual Increased Costs. If the Actual Increased Costs are more than the Estimated Additional Costs, the Developer will pay to the City the difference between the Actual Increased Costs and the Estimated Additional Costs within ten (10) business days of the date of the City's notice to the Developer of the Actual Increased Costs. If the Developer does not pay the City the difference between the Actual Increased Costs and the Estimated Additional Costs within ten (10) business days of the date of the City's notice to the Developer of the Actual Increased Costs, the Developer shall not be reimbursed for any Developer Advances until such payment is made in full.

In the event the City issues City Obligations prior to the issuance of PID Bonds, the City's Financial Advisor shall calculate the estimated Additional Costs based on the market conditions as they exist approximately twenty (20) days prior to the date of the pricing of the City Obligations (the "Estimated Additional City Obligation Costs"), and the City shall provide a written invoice to the Developer. The Developer shall pay such Estimated Additional City Obligation Costs to the City at least ten (10) days prior to pricing the City Obligations. If the Developer has not paid the Estimated Additional City Obligation Costs to the City by the required time, the City, at its option, may elect to designate such City Obligations as QTEO, and the City shall not be required to issue any PID Bonds in such calendar year. The Estimated Additional City Obligation Costs are an estimate of the increased cost to the City to issue its City Obligations as non-QTEO. Upon the City's approval of the City Obligations, the City's Financial Advisor shall calculate the actual Additional Costs to the City of issuing its City Obligations as non-QTEO (the "Actual Increased City Obligation Costs"). The City will, within five (5) business days of the issuance of the City Obligations, notify the Developer of the Actual Increased City Obligation Costs. In the event the Actual Increased City Obligation Costs are less than the Estimated Additional City Obligation Costs, the City will refund to the Developer the difference between the Actual Increased City Obligation Costs and the Estimated Additional City Obligation Costs within ten (10) business days of the date of the City's notice to the Developer of the Actual Increased City Obligation Costs. If the Actual Increased City Obligation Costs are more than the Estimated Additional City Obligation Costs, the Developer will pay to the City the difference between the Actual Increased City Obligation Costs and the Estimated Additional City Obligation Costs within ten (10) business days of the date of the City's notice to the Developer of the Actual Increased City Obligation Costs. If the Developer does not pay the City the difference between the Actual Increased City Obligation Costs and the Estimated Additional City Obligation Costs within ten (10) business days of the date of the City's notice to the Developer of the Actual Increased City Obligation Costs, the Developer shall not be reimbursed for any Developer Advances until such payment is made in full.

To the extent any developer(s) or owner(s) (including the Developer, as applicable) has (have) paid Additional Costs for any particular calendar year, any such Additional Costs paid subsequently by a developer or owner (including the Developer, as applicable) to the City applicable to the same calendar year shall be reimbursed by the City to the developer(s) or owner(s) (including the Developer,

as applicable) as necessary so as to put all developers and owners so paying for the same calendar year in the proportion set forth in the next paragraph, said reimbursement to be made by the City within ten (10) business days after its receipt of such subsequent payments of such Additional Costs.

The City shall charge Additional Costs attributable to any other developer or owner on whose behalf the City has issued debt in the same manner as described in this Section 4.11, and the Developer shall only be liable for its portion of the Additional Costs under this provision, and if any Additional Costs in excess of the Developer's portion had already been paid to the City under this provision, then such excess of Additional Costs shall be reimbursed to the Developer. The portion owed by the Developer shall be determined by dividing the total Bond Proceeds from any debt issued on behalf of the Developer in such calendar year by the total Bond Proceeds from any debt issued by the City for the benefit of all owners or developers (including the Developer) in such calendar year.

If in any calendar year the City issues City Obligations or PID Bonds on its own account that exceed the amount that would otherwise qualify the City for the issuance of bank qualified debt, then no Additional Costs shall be due from the Developer in connection with such PID Bonds. The Additional Costs incurred with respect to such PID Bonds shall be allocated as described above, and if any Additional Costs had already been paid by the Developer to the City for such calendar year, then such excess of Additional Costs shall be reimbursed to the Developer within five (5) business days of the issuance of such City Obligations or PID Bonds, as applicable.

4.13 Estoppel Certificate. From time to time upon written request of the Developer, the City Manager will execute a written estoppel certificate (1) identifying any obligations of the Developer under this Agreement that are in default or, with the giving of notice or passage of time, would be in default; or (2) stating, to the extent true, that to the best knowledge and belief of the City, the Developer is in compliance with its duties and obligations under this Agreement.

4.14 Applicable Law; Venue. This 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, the substantive laws of the State of Texas shall govern the interpretation and enforcement of this Agreement. In the event of a dispute involving this Agreement, venue shall lie in any court of competent jurisdiction in Hays County, Texas.

4.15 Notice. Any notice referenced in this Agreement must be in writing and shall be deemed given at the addresses shown below: (1) when delivered by a nationally recognized delivery service such as FedEx or UPS with evidence of delivery signed by any person at the delivery address regardless of whether such person is the named addressee; or (2) 72 hours after deposited with the United States Postal Service, Certified Mail, Return Receipt Requested.

To the City:                      City of Kyle  
   Attn: City Manager  
   100 W. Center Street  
   Kyle, Texas 78640

With a copy to: The Knight Law Firm, LLP  
Attn: Paige H. Saenz  
223 West Anderson Lane, Suite A-105  
Austin, Texas 78752

To the Developer: Hillside Terrace Development, LLC  
Attn.: Garrett Martin  
2100 Northland Drive  
Austin, Texas 78756

With a copy to: Winstead PC  
Attn: Ross Martin  
2728 N. Harwood, Suite 500  
Dallas, Texas 75201

Any Party may change its address by delivering notice of the change in accordance with this section.

4.16 Conflicts; Amendment. In the event of any conflict between this Agreement and any other instrument, document, or agreement by which either Party is bound: (1) first, the provisions and intent of any applicable Indenture shall control, (2) second, the provisions and intent of this Agreement shall control subject only to the terms of any applicable Indenture. This Agreement may only be amended by written agreement of the Parties.

4.17 Severability. If any provision of this Agreement is held invalid by any court, such holding shall not affect the validity of the remaining provisions.

4.18 Non-Waiver. The failure by a Party to insist upon the strict performance of any provision of this Agreement by the other Party, or the failure by a Party to exercise its rights upon a Default by the other Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by such other Party with the provisions of this Agreement.

4.19 Third Party Beneficiaries. Nothing in this Agreement is intended to or shall be construed to confer upon any person or entity other than the City, the Developer, and Transferees any rights under or by reason of this Agreement. All provisions of this Agreement shall be for the sole and exclusive benefit of the City, the Developer, and Transferees.

4.20 Counterparts. This Agreement may be executed in multiple counterparts, which, when taken together, shall be deemed one original.

4.21 Iran, Sudan, and Foreign Terrorist Organizations. The Developer represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates 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 Federal or State law and excludes the Developer and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, 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 Developer understands "affiliate" to mean any entity that controls, is controlled by, or is under common control with the Developer and exists to make a profit.

4.22 No Boycott of Israel. The Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, 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 Federal or State 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 Developer understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Developer and exists to make a profit.

4.23 Anti-Boycott Verification – Energy Companies. The Developer hereby verifies that it and its 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 comply with Section 2274.002, Texas Government Code, and to the extent such Section is not inconsistent with a governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds. As used in the foregoing verification, "boycott energy company" means, 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 the preceding statement in (A). The Developer understands "affiliate" to mean any entity that controls, is controlled by, or is under common control with the Developer and exists to make a profit.

4.24 Anti-Discrimination Verification – Firearm Entities and Firearm Trade Associations. The Developer hereby verifies 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 have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association during the term of this Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas

Government Code. As used in the foregoing verification, “discriminate against a firearm entity or firearm trade association” means: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; but does not include (a) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; or (b) 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 to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or 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. The Developer understands "affiliate" to mean any entity that controls, is controlled by, or is under common control with the Developer and exists to make a profit.

4.25 Form 1295. Submitted herewith is a completed Form 1295 in connection with the Developer’s participation in the execution of this Agreement generated by the Texas Ethics Commission’s (the “TEC”) electronic filing application in accordance with the provisions of Section 2252.908 of the Texas Government Code and the rules promulgated by the TEC (the “Form 1295”). The City hereby confirms receipt of the Form 1295 from the Developer, and the City agrees to acknowledge such form with the TEC through its electronic filing application not later than the 30th day after the receipt of such form. The Developer and the City understand and agree that, with the exception of information identifying the City and the contract identification number, neither the City nor its consultants are responsible for the information contained in the Form 1295; that the information contained in the Form 1295 has been provided solely by the Developer; and, neither the City nor its consultants have verified such information.

4.26 Employment of Undocumented Workers. During the term of this Agreement, and to the extent required under State law, the Developer agrees not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a (f), the Developer shall repay the taxes abated herein within 120 days after the date the Developer is notified by the City of such violation, plus interest at the rate of six percent (6%) compounded annually from the date of violation until paid. Pursuant to Section 2264.101 (c), Texas Government Code, a business is not liable for a violation of Chapter 2264 by a subsidiary, affiliate, or franchisee of the business, or by a person with whom the business contracts.

*[Execution pages follow.]*

**CITY OF KYLE, TEXAS**

By: \_\_\_\_\_  
Travis Mitchell, Mayor

**ATTEST:**

By: \_\_\_\_\_  
Jennifer Kirkland, City Secretary

**HILLSIDE TERRACE DEVELOPMENT, LLC,**  
a Texas limited liability company

By: MSCB Hillside, LLC  
a Texas limited liability company  
its Managing Member

By:  
Name: Garrett S. Martin  
Title: Manager

**EXHIBIT A**

**FORM OF CERTIFICATE FOR PAYMENT**

The undersigned is an agent for Hillside Terrace Development, LLC, a Texas limited liability company (the “Developer”) and requests the City of Kyle, Texas (the “City”) approve payment from the [**Improvement Area # \_\_\_ Improvements Account of the PID Project Fund**] [**City Project Fund**] in the amount of \_\_\_\_\_ for labor, materials, fees, and/or other general costs related to the creation, acquisition, or construction of certain Authorized Improvements providing a special benefit to property within the \_\_\_\_\_ Public Improvement District. Unless otherwise defined, any capitalized terms used herein shall have the meanings ascribed to them in the \_\_\_\_\_ PID Financing Agreement between the Developer and the City (the “Financing Agreement”).

In connection with the above referenced payment, the Developer represents and warrants to the City as follows:

1. The undersigned is a duly authorized officer of the Developer, is qualified to execute this Certificate for Payment on behalf of the Developer, and is knowledgeable as to the matters set forth herein.
2. The payment requested for the below referenced Authorized Improvements has not been the subject of any prior payment request submitted for the same work to the City or, if previously requested, no disbursement was made with respect thereto.
3. The amount listed for the Authorized Improvements below is a true and accurate representation of the Actual Costs associated with the creation, acquisition, or construction of said Authorized Improvements, and such costs (i) are in compliance with the Financing Agreement, and (ii) are consistent with the SAP.
4. The Developer is in compliance with the terms and provisions of the Financing Agreement, the SAP, and the Developer Continuing Disclosure Agreement.
5. The Developer has timely paid all ad valorem taxes and annual installments of Assessments it owes or an entity the Developer controls owes, located in the Porter Country Public Improvement District and has no outstanding delinquencies for such assessments.
6. All conditions set forth in the Indenture (as defined in the Financing Agreement) for the payment hereby requested have been satisfied.
7. The work with respect to the Authorized Improvements referenced below (or its completed segment) has been completed, and the City has inspected such Authorized Improvements (or its completed segment).



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

9. No more than ninety-five percent (95%) of the budgeted or contracted hard costs for Authorized Improvements identified may be paid until the work with respect to such Authorized Improvements (or segment) has been completed and the City has accepted such Authorized Improvements (or segment). One hundred percent (100%) of soft costs (e.g., engineering costs, inspection fees and the like) may be paid prior to City acceptance of such Authorized Improvements (or segment).

10. The Developer confirms that **[based on the statements provided by the Trustee (as defined in the SAP)] [based on all prior amounts paid to Developer from the City Project Fund]** as of the date of this Certificate for Payment and based on the percentage of completion of the Authorized Improvements as of the date of this Certificate for Payment as verified by the City payment of the amounts requested in this Certificate for Payment, taking into account all prior payments for the Authorized Improvements and the amount of work related to the Authorized Improvements remaining to be completed as of the date of this Certificate for Payment will not cause the amounts on deposit in **[the PID Project Fund] [the City Project Fund]** to fall below the amount necessary to complete the remaining Authorized Improvements taking into account the amounts available to the Developer under its private loan, a line of credit and/or any other form acceptable to the City.

11. ***[THIS SECTION ONLY USED FOR DRAWS FROM BOND IMPROVEMENT ACCOUNT OF PROJECT FUND UNDER IMPROVEMENT AREA #1 BOND INDENTURE:*** With respect to PID Bonds for Improvement Area #1, no payments shall be made that cause the aggregate amount of payments, when taking into account all amounts previously paid from the IA#1 Improvements Account of the Project Fund (as defined in the Bond Indenture for the Improvement Area #1 Bonds (the "Improvement Area #1 Bond Indenture"), to exceed \_\_\_\_\_ DOLLARS AND 00/100 (\$\_\_\_\_\_) (the "Unrestricted Amount"), until a "Release Restriction" as defined in and required by Section 6.5(i) of the Improvement Area #1 Bond Indenture has been met. The Developer confirms that the amounts requested under this Certificate for Payment when taking into account all payments previously made from the IA #1 Improvements Account of the Project Fund shall not cause disbursements from the IA #1 Improvements Account of the Project Fund to exceed the Unrestricted Amount prior to the satisfaction of the Release Restriction.]

**Payments requested are as follows:**

- a. X amount to Person or Account Y for Z goods or services.
- b. Payment / Wire Instructions

Attached hereto are invoices, cancelled checks, receipts, purchase orders, change orders, and similar instruments which support and validate the above requested payments. Also attached hereto are “bills paid” affidavits and supporting documentation in the standard form for City construction projects.

Pursuant to the Financing Agreement, after receiving this payment request, the City has inspected the Authorized Improvements (or completed segment) and confirmed that said work has been completed in accordance with approved plans and all applicable governmental laws, rules, and regulations.

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

**HILLSIDE TERRACE DEVELOPMENT, LLC,**  
a Texas limited liability company

By: MSCB Hillside, LLC  
a Texas limited liability company  
its Managing Member

By: \_\_\_\_\_  
Name: Garrett S. Martin  
Title: Manager

**APPROVAL OF REQUEST BY CITY**

The City is in receipt of the attached Certificate for Payment, acknowledges the Certificate for Payment, acknowledges that the Authorized Improvements (or its completed segment) covered by the certificate have been inspected by the City, and otherwise finds the Certificate for Payment to be in order. After reviewing the Certificate for Payment, the City approves the Certificate for Payment [and shall include said payments in the City Order (as defined in the Indenture) submitted to the Trustee directing payments to be made from the applicable fund in accordance with the Indenture] [and approves direct payment to be made from the City Project Fund] to the Developer or to any person designated by the Developer.

**CITY OF KYLE, TEXAS**

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

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

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

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

**EXHIBIT B**  
**FORM OF CERTIFICATE FOR PAYMENT –**  
**DEVELOPER IMPROVEMENT ACCOUNT**

The undersigned is an agent for [DEVELOPER], a Texas limited partnership (the “Developer”) and requests the City of Kyle, Texas (the “City”) approve payment from the Developer Improvement Account of the PID Project Fund in the amount of \_\_\_\_\_ for labor, materials, fees, and/or other general costs related to the creation, acquisition, or construction of certain Authorized Improvements providing a special benefit to property within the Porter Country Public Improvement District. Unless otherwise defined, any capitalized terms used herein shall have the meanings ascribed to them in the Porter Country Public Improvement District Financing Agreement between the Developer and the City (the “Financing Agreement”).

In connection with the above referenced payment, the Developer represents and warrants to the City as follows:

1. The undersigned is a duly authorized officer of the Developer, is qualified to execute this Certificate for Payment on behalf of the Developer, and is knowledgeable as to the matters set forth herein.
2. The payment requested for the below referenced Authorized Improvements has not been the subject of any prior payment request submitted for the same work to the City or, if previously requested, no disbursement was made with respect thereto.
3. The amount listed for the Authorized Improvements below is a true and accurate representation of the Actual Costs associated with the creation, acquisition, or construction of said Authorized Improvements, and such costs (i) are in compliance with the Financing Agreement, and (ii) are consistent with the SAP.
4. The Developer is in compliance with the terms and provisions of the Financing Agreement, the SAP, and the Developer Continuing Disclosure Agreement.
5. The Developer has timely paid all ad valorem taxes and annual installments of Assessments it owes or an entity the Developer controls owes, located in the Porter Country Public Improvement District and has no outstanding delinquencies for such assessments.
6. All conditions set forth in the Indenture (as defined in the Financing Agreement) for the payment hereby requested have been satisfied.
7. The work with respect to the Authorized Improvements referenced below (or its completed segment) has been completed, and the City has inspected such Authorized Improvements (or its completed segment).

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

9. No more than ninety-five percent (95%) of the budgeted or contracted hard costs for Authorized Improvements identified may be paid until the work with respect to such Authorized Improvements (or segment) has been completed and the City has accepted such Authorized Improvements (or segment). One hundred percent (100%) of soft costs (e.g., engineering costs, inspection fees and the like) may be paid prior to City acceptance of such Authorized Improvements (or segment).

10. The Developer confirms that based on the statements provided by the Trustee (as defined in the SAP) as of the date of this Certificate for Payment and based on the percentage of completion of the Authorized Improvements as of the date of this Certificate for Payment as verified by the City payment of the amounts requested in this Certificate for Payment, taking into account all prior payments for the Authorized Improvements and the amount of work related to the Authorized Improvements remaining to be completed as of the date of this Certificate for Payment will not cause the amounts on deposit in the PID Project Fund to fall below the amount necessary to complete the remaining Authorized Improvements taking into account the amounts available to the Developer under its private loan, a line of credit and/or any other form acceptable to the City.

**Payments requested are as follows:**

- a. X amount to Person or Account Y for Z goods or services.
- b. Payment / Wire Instructions

Attached hereto are invoices, cancelled checks, receipts, purchase orders, change orders, and similar instruments which support and validate the above requested payments. Also attached hereto are "bills paid" affidavits and supporting documentation in the standard form for City construction projects.

Pursuant to the Financing Agreement, after receiving this payment request, the City has inspected the Authorized Improvements (or completed segment) and confirmed that said work has been completed in accordance with approved plans and all applicable governmental laws, rules, and regulations.

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

**HILLSIDE TERRACE DEVELOPMENT, LLC,**  
a Texas limited liability company

By: MSCB Hillside, LLC  
a Texas limited liability company  
its Managing Member

By: \_\_\_\_\_  
Name: Garrett S. Martin  
Title: Manager

**APPROVAL OF REQUEST BY CITY**

The City is in receipt of the attached Certificate for Payment, acknowledges the Certificate for Payment, acknowledges that the Authorized Improvements (or its completed segment) covered by the certificate have been inspected by the City, and otherwise finds the Certificate for Payment to be in order. After reviewing the Certificate for Payment, the City approves the Certificate for Payment and shall include said payments in the City Order (as defined in the Indenture) submitted to the Trustee directing payments to be made from the Developer Improvement Account of the PID Project Fund in accordance with the Indenture to the Developer or to any person designated by the Developer.

**CITY OF KYLE, TEXAS**

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

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

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

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



**EXHIBIT C**

**[INTENTIONALLY BLANK]**

**EXHIBIT D**

**[INTENTIONALLY BLANK]**

**Exhibit E**  
**FORM OF CLOSING DISBURSEMENT REQUEST**

The undersigned is an agent for Hillside Terrace Development, LLC, a Texas limited liability company (the “Developer”) and requests the City of Kyle, Texas (the “City”) approve payment to the Developer (or to the person designated by the Developer) from the applicable account of the PID Project Fund from \_\_\_\_\_ (the “Trustee”) in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_) to be transferred from the applicable account of the PID Project Fund upon the delivery of the PID Bonds for costs incurred in the establishment, administration, and operation of the Porter Country Public Improvement District (the “District”) and costs associated with the issuance of PID Bonds, as follows. Unless otherwise defined, any capitalized terms used herein shall have the meanings ascribed to them in the Porter Country Public Improvement District Financing Agreement between the Developer and the City (the “Financing Agreement”).

In connection with the above referenced payment, the Developer represents and warrants to the City as follows:

1. The undersigned is a duly authorized officer of the Developer, is qualified to execute this Closing Disbursement Request on behalf of the Developer, and is knowledgeable as to the matters set forth herein.
2. The payment requested for the below referenced establishment, administration, and operation of the PID and/or costs of issuance of the PID Bonds at the time of the delivery of the PID Bonds have not been the subject of any prior payment request submitted to the City.
3. The amount listed for the below costs is a true and accurate representation of the Actual Costs associated with the establishment, administration and operation of the PID at the time of the delivery of the PID Bonds, and such costs are in compliance with the SAP.
4. The Developer is in compliance with the terms and provisions of the Financing Agreement, the SAP, and the Developer Continuing Disclosure Agreement and Indenture.
5. All conditions set forth in the Indenture and the Financing Agreement for the payment hereby requested have been satisfied.
6. The Developer agrees to cooperate with the City in conducting its review of the requested payment and agrees to provide additional information and documentation as is reasonably necessary for the City to complete said review.

**Payments requested hereunder shall be made as directed below:**

[Information regarding Payee, amount, and deposit instructions attached]

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

**HILLSIDE TERRACE DEVELOPMENT, LLC,**  
a Texas limited liability company

By: MSCB Hillside, LLC  
a Texas limited liability company  
its Managing Member

By: \_\_\_\_\_  
Name: Garrett S. Martin  
Title: Manager

**APPROVAL OF REQUEST BY CITY**

The City is in receipt of the attached Closing Disbursement Request, acknowledges the Closing Disbursement Request, and finds the Closing Disbursement Request to be in order. After reviewing the Closing Disbursement Request, the City approves the Closing Disbursement Request and shall include said payments in the City Order submitted to the Trustee directing payments to be made from the applicable account under the Indenture upon delivery of the PID Bonds.

**CITY OF KYLE, TEXAS**

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

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

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

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

**Exhibit F**  
**FORM OF LANDOWNER CONSENT CERTIFICATE**

This Landowner Consent Certificate is issued by [LANDOWNER], a \_\_\_\_\_, (“Landowner”), as the landowner that holds record title to approximately [ ] acres (the “Property”), as more particularly described by metes and bounds in Exhibit “A” attached to this Landowner Consent Certificate and incorporated herein for all purposes, within the Porter Country Public Improvement District (the “PID”) created by the City of Kyle, Texas (the “City”). Capitalized terms used herein and not otherwise defined shall have the meaning given to such terms in the City’s ordinance levying assessments on property within the PID, anticipated to be adopted on [ ], 20[ ], including the Service and Assessment Plan and Assessment Roll attached thereto (the ordinance and Service and Assessment Plan, including Assessment Roll, as of the date actually adopted by the City Council is referred to collectively as the “Assessment Ordinance”).

Landowner hereby declares and confirms that it holds record title to the Property located within the PID which is subject to the special assessments (the “Assessments”) levied by the City under the Assessment Ordinance. Further, Landowner hereby ratifies, declares, consents to, affirms, agrees to and confirms each of the following:

- The Landowner is the sole owner of the Property as of the date of this Landowner Consent Certificate and will be the sole owner of the Property on the date of the Assessment Ordinance.
- The right, power and authority of the City Council of the City to adopt the Assessment Ordinance, including the attachments thereto, and to levy the Assessments against the Property.
- The Authorized Improvements specially benefit the Property in an amount equal to or in excess of the Assessments levied on the Property as shown on the Assessment Roll.
- The Assessment against the Property is final, conclusive and binding upon the Landowner.
- Landowner shall pay the Assessment levied on the Assessed Property owned by such Landowner when due and in the amount required by and stated in the Assessment Ordinance and the attachments thereto.
- Delinquent installments of the Assessments shall incur and accrue interest, penalties, and attorney’s fees as provided in Service and Assessment Plan and in accordance with Chapter 372 of the Texas Local Government Code, as amended (the “PID Act”).
- The “Annual Installments” (as defined in the Service and Assessment Plan) of the Assessment levied against the Property may be adjusted, decreased and extended in accordance with the Porter Country Development Agreement, the Service and Assessment Plan and the PID Act.
- All notices required to be provided to it under the PID Act have been received and to the extent of any defect in such notice, Landowner hereby waives any notice requirements.

- Landowner consents to all actions taken by the City with respect to the creation of the PID and the levy of Assessments against the Property.

Landowner hereby waives any and all defects, irregularities, illegalities or deficiencies in the proceedings establishing the PID, defining the Assessed Property, adopting the Assessment Ordinance, Service and Assessment Plan and each Assessment Roll, levying of the Assessments, and determining the amount of the Annual Installments of the Assessments.

IN WITNESS WHEREOF, the undersigned has caused this Landowner Consent Certificate to be executed as of \_\_\_\_\_, 20\_\_.

**[LANDOWNER]**

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

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

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

**Exhibit G**  
**HOME BUYER DISCLOSURE PROGRAM**

1. A Builder<sup>1</sup> for an Assessed Property shall provide each residential homebuyer or purchaser (the “Buyer”) with the “Notice of Obligation to Pay Public Improvement District Assessment to the City”, in accordance with the PID Act and on the form attached to the Service and Assessment Plan.
2. A Builder for an Assessed Property shall provide evidence of compliance with 1 above, signed by such Buyer, to the City upon receipt of written request by the City or the Owner which sets forth the County’s mailing address and other contact information.
3. A Builder for an Assessed Property shall prominently display signage provided by the Owner or the Administrator in the Builder’s model homes, if any, located within the Property.
4. If prepared and provided by the City and approved by Owner (such approval not to be unreasonably withheld), a Builder for an Assessed Property shall distribute informational brochures about the existence and effect of the District in prospective homebuyer sales packets.

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<sup>1</sup> Builder” means a commercial builder who is in the business of constructing and/or selling residences to individual home buyers.