

BLANCO RIVER RANCH PUBLIC IMPROVEMENT DISTRICT FINANCING AGREEMENT

This Blanco River Ranch Public Improvement District Financing Agreement (this “**Agreement**”), dated as of July 18, 2017, (the “**Effective Date**”), is entered into between HMBRR Development, Inc., a Texas corporation, HMBRR, L.P., a Texas limited partnership, and HMBRR LP #2, a Texas limited partnership (including their Designated Successors and Assigns, collectively the “**Owner**”), and the City of Kyle, Texas (the “**City**”), acting by and through its authorized representative (collectively, the “**Parties**”).

Recitals:

WHEREAS, HMBRR Development, Inc., owns approximately 61.49 acres, which is more particularly described in attached Exhibit “B-1”;

WHEREAS, HMBRR, LP, owns approximately 188.51 acres, which is more particularly described in attached Exhibit “B-2”;

WHEREAS, HMBRR, LP #2, owns approximately 608.7 acres, which is more particularly described in attached Exhibit “B-3”;

WHEREAS, the term “**Property**” means and refers to the 858.7 acres so owned by HMBRR Development, Inc., HMBRR, LP and HMBRR LP #2;

WHEREAS, it is intended that the Property will be developed as a single family residential development (the “**Project**”);

WHEREAS, the Kyle City Council (“**City Council**”) authorized the formation of the Blanco River Ranch Public Improvement District (the “**District**”) on June 6, 2017, pursuant to City resolution no. 1065 in accordance with the PID Act (as defined in Exhibit “A”);

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

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

WHEREAS, contemporaneously herewith the City intends to (upon satisfaction of the conditions and in accordance with the terms set forth in this Agreement), at the request, and with the consent, approval, and agreement of, the Owner, adopt a form of the Service and Assessment Plan (as defined herein) that provides for the construction and financing of certain public improvements conferring special benefits within the District pursuant to the Service and

Assessment Plan, payable in whole or in part, by and from assessments levied against property within the District, as more specifically provided for in the Service and Assessment Plan;

WHEREAS, the City intends to (upon satisfaction of the conditions and in accordance with the terms set forth in this Agreement) levy Assessments on all or a portion of the property located within the District and issue bonds in one or more series for payment of costs associated with construction and/or acquisition of the Authorized Improvements (as defined herein) included in the Service and Assessment Plan, as such plan may be amended from time to time; and

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

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

ARTICLE I. SCOPE OF AGREEMENT

This Agreement establishes provisions for the apportionment, levying, and collection of Assessments on the Property (Article II), the Construction of Authorized Improvements to be acquired by the City or County (Article III), advancement of construction funds through the issuance of the PID Bonds (defined herein), acquisition and maintenance of Authorized Improvements within the District (Article IV), and the issuance of bonds for the financing of the Authorized Improvements (Article V). Definitions used herein are set forth in attached Exhibit "A" and in the Service and Assessment Plan.

ARTICLE II. APPORTIONMENT, LEVY, AND COLLECTION OF ASSESSMENTS

Section 2.01. Preliminary Matters

(a) On June 6, 2017, the City approved a resolution authorizing the formation of the District. The District includes all of the Property.

(b) The Property may be developed in phases. It is anticipated that some Authorized Improvements will be constructed that benefit only Improvement Area #1 or a Future Improvement Area, while other Authorized Improvements will benefit the entire District. As a result, Assessments will be levied only on Improvement Area #1 and certain Future Improvement Areas from time to time as the development in the District progresses. As such, it is currently contemplated that there will be bonds issued for Improvement Area #1 and Future Improvement Areas: the **"Improvement Area #1 Bonds," "Additional Improvement Area #1 Bonds,"** and **"Future Improvement Area Bonds"** (all as further defined in Exhibit "A").

(c) The initial Service and Assessment Plan for the Property is attached as Exhibit "C." The Owner acknowledges and agrees that the Service and Assessment Plan must meet the requirements of Texas Local Government Code Sections 372.013 and 372.014 and be

presented to the City Council for review and approval prior to Assessments being levied and PID Bonds being issued. Thereafter, the Service and Assessment Plan will be updated and amended by the City or its Administrator at least once per year, and submitted for the City Council's review and approval. Notwithstanding the above, it is understood and acknowledged by the Parties that the Assessments associated with the Improvement Area #1 Bonds and Additional Improvement Area #1 Bonds are the only Assessments that can currently be addressed with reasonable certainty in the Service and Assessment Plan. As a result, the Service and Assessment Plan will need to be amended over time if any Future Improvement Area Bonds are issued and Future Improvement Areas are developed (and applicable PID Bonds are issued) in accordance with the terms set forth in this Agreement. Nevertheless, the basic terms and methodology described in the Service and Assessment Plan will generally apply to Additional Improvement Area #1 Bonds and Future Improvement Area Bonds.

(d) Assessments on any portion of the Property will bear a direct proportional relationship to and be less than or equal to the special benefit of the Authorized Improvements within the District (or specific Improvement Area, as applicable).

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

(f) The Property may also be subject to an Owner's Association assessment.

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

Section 2.02. Apportionment and Levy of Assessments

The City intends to levy Assessments on the Property in accordance herewith and with the Service and Assessment Plan (as such plan is amended from time to time) at such time prior to or as PID Bonds are issued in accordance with Article IV hereof. The City's apportionment and levy of Assessments will be made in accordance with the PID Act.

Section 2.03. Collection of Assessments

(a) The City covenants and agrees that it will, as authorized by the PID Act and other applicable law, continuously collect or cause to be collected Assessments levied pursuant to the Service and Assessment Plan during the term of this Agreement in the manner and to the maximum extent permitted by applicable law. The City covenants and agrees that to the extent permitted by applicable law, it will not permit a reduction, abatement, or exemption in the Assessments due on any portion of the Property until the PID bonds related to that particular portion of the Property are no longer outstanding, whether as a result of payment in full,

defeasance, or otherwise. The City shall use best efforts to collect the Assessments consistent with the City's policies and standard practices applicable to the collection of City ad valorem taxes and assessments.

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

(c) Owner will be reimbursed for Actual Costs associated with the Authorized Improvements from Assessments collected by the City and held by the City pursuant to an applicable Acquisition and Reimbursement Agreement. Any reimbursement obligation to Owner under an Acquisition and Reimbursement Agreement will be subordinate to payment of the applicable PID Bonds.

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

Section 2.04. Approval and Recordation of Assessments through Landowner Agreement

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

Section 2.05 Reimbursement Of Actual Costs

The Assessments levied for Improvement Area #1 Improvements may not be in an amount sufficient to fully fund the Improvement Area #1 Improvements. Owner's right, title and interest in the payments of unreimbursed Actual Costs, as described herein, shall be the sole and exclusive property of Owner and no other third party shall have any claim or right to such funds unless Owner collaterally transfers its rights to its unreimbursed Actual Costs to a Transferee in writing as described in this Section 2.05, and otherwise in accordance with the requirements set forth herein or assigns this Agreement as to all or a part of the Project to a Designated Successor or Assignor as described in Section 8.03(a) Owner has the right to collaterally convey, transfer, assign, mortgage, pledge, or otherwise encumber, in whole or in part, all or any portion of Owner's right, title, or interest under this Agreement including, but not limited to, any right, title

or interest of Owner in and to payment of its unreimbursed Actual Costs (a “**Transfer**,” and the person or entity to whom the transfer is made, a “**Transferee**”). No Transfer shall be effective, however, until written notice of the Transfer, including the name and address of the Transferee, is provided to the City. The City may rely conclusively on any written notice of a Transfer provided by Owner without any obligation to investigate or confirm the Transfer. Any sale of a portion of the Property or assignment of any right hereunder will not be deemed a Transfer unless the conveyance or transfer instrument effecting such sale or assignment expressly states that the sale or assignment is deemed to be a Transfer.

Section 2.06. Obligations Secured by Pledged Revenues

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

ARTICLE III. CONSTRUCTION AND ACQUISITION

Section 3.01. Acquisition of Authorized Improvements

The owner will dedicate the applicable Improvement Area #1 Improvements identified in Exhibit “D” to the City or County (as applicable, “**Entity**”) upon completion of those Improvements, after confirmation by the Entity’s construction representative that the Improvement Area #1 Improvements have been completed in accordance with this agreement and the design guidelines mutually agreed to by the owner and Entity. Applicable City and County requirements shall govern the procedure for inspection, dedication, and acceptance of the Improvement Area #1 Improvements being conveyed to the City and County, respectively. The City’s Subdivision Ordinance shall govern the procedure for inspection, dedication, and acceptance of the Improvement Area #1 Improvements being conveyed to the City.

Section 3.02. Acquisition of Subsequent Authorized Improvements

The provisions of Section 3.01 will apply to the Improvement Area #1 Improvements and any other Authorized Improvements constructed concurrent with or after the Improvement Area #1 Improvements; provided however once the applicable Authorized Improvements to be funded with a particular Future Improvement Area Bond are identified, Exhibit “F” will be revised to delineate which Authorized Improvements will be dedicated to which Entity and what easements, if any, are needed.

Section 3.03. Designation of Construction Manager, Construction Engineers

(a) The City hereby designates the Owner, or its assignees, as the Construction Manager with full responsibility for the design, the designation of easement locations, facilities site designations and acquisitions, supervision of construction, and the bidding and letting of construction contracts for the construction of the Authorized Improvements in accordance with the provisions of this Article III.

(b) Except as otherwise provided herein, inspection of the construction of any Authorized Improvement being conveyed to the City will be by City Construction Representative or its designee and in accordance with any requirements of the City. The Owner agrees to notify the City within 24 hours of the scheduling of any City Inspection, and at that same time to provide any design or construction-related documents to be used as part of the inspection. The Owner agrees that the City Construction Representative may be present at any City inspection, and is responsible for ensuring the City Construction Representative is informed of the date, time, and location of each City inspection.

(c) The Owner shall be entitled to a separate Construction Management Fee for the construction of each Segment, unless Owner contracts with a third party to act as the Construction Manager with respect to construction of the Authorized Improvements.

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

(e) The Owner shall designate the consulting engineers for the Authorized Improvements for the compensation specified by the Owner.

Section 3.04. Designation of Construction Manager Subcontractor

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

Section 3.05. Project Funding and Completion

(a) If at any time there are not sufficient funds in the Project Fund to complete an Authorized Improvement, the Owner will demonstrate committed capital (including by proof of bank financing) to the City in an amount confirmed by an engineer's estimate of probable cost, which represents the difference between the budgeted cost to complete the public improvements assumed to be complete in the Appraisal and the net proceeds of the PID bonds. The City acknowledges that it will accept such proof.

(b) If subcontractors providing labor or materials for the Authorized Improvements file claims or otherwise give notice asserting failure to receive payment for such labor or

materials, the City may require the Owner to post fiscal security for the estimated cost of constructing the Authorized Improvements. The Owner shall give the City a copy of any such claims within three (3) business days of receipt of the claim.

(1) If the Owner has commenced construction but fails or refuses to complete the construction of a particular Authorized Improvement (or Segment thereof) in accordance with the terms and conditions set forth in this Agreement, such failure or refusal will be considered an event of default and, after giving notice of default and reasonable opportunity to cure as herein provided, the City will have the right, but not the obligation, to draw on the funds within the Project Fund and complete (or cause the completion of) the applicable Authorized Improvement (or Segment thereof).

(2) If the City elects to complete an Authorized Improvement (or Segment thereof), all plans and specifications, designs, easements, real and personal property, and improvements acquired, produced, or installed in aid of completing such component of the Authorized Improvement (or Segment thereof) by the Owner or its engineers or contractors before such default described in paragraph (c) above, will become the property of the City. In such event, the Owner will provide, within five (5) business days of the City's request, documentation to the City that the above listed items have been conveyed and have become the property of the City. Notwithstanding anything to the contrary contained herein, if the Owner fails or refuses to timely complete the construction of a Authorized Improvement (or Segment thereof) and such default cannot reasonably be cured in 30 days, Owner will have such additional time as is reasonably necessary to cure as long as the Owner commences the cure within 30 days and diligently pursues the same to completion. If Owner has still not completed the applicable component of the Authorized Improvement (or Segment thereof) after the notice and cure periods provided for above, the City shall either:

(i) Assume the construction management role and direct the completion of the applicable Authorized Improvement (or Segment thereof); or

(ii) Assume the construction management role and direct the closeout of the applicable Authorized Improvement (or Segment thereof).

(3) In the event the City assumes the construction management role for a given Authorized Improvement (or Segment thereof) (as provided above) then the Owner agrees as follows:

(i) The City may draw down funds from the Project Fund to complete the Authorized Improvement (or Segment thereof) in question;

(ii) All construction contracts, related completion bonds, warranties, plans and specifications, designs, easements, and improvements acquired, produced, or installed in connection with completing such Authorized Improvement (or Segment thereof) by the Owner or its engineers, contractors, or other consultants, and all other personal property and rights associated with the applicable component of the Authorized Improvement (or Segment thereof), will automatically without further action by the Owner become the property of the City; and

(iii) The Owner will automatically forgo and release any claims or rights to those items listed in (ii) above.

Section 3.06. Maintenance of Project, Warranties

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

Section 3.07. Sales and Use Tax Exemptions

(a) The Parties agree that, as municipally and publicly owned and acquired properties, all costs of materials, other properties and services used in constructing the Authorized Improvements to be acquired by the Entity are exempt under the Texas Tax Code from sales and use taxes levied by the State, or by any city, county, special district, or other political subdivision of the State, as set forth in Texas Tax Code Section 151.309.

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

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

Section 3.08. Public Bidding Requirements/City Cooperation in Plan Review

(a) The City and the Owner anticipate that the Authorized Improvements will be exempt from any public bidding or other City purchasing and procurement policies to the extent that the Authorized Improvements meet the standard of Texas Local Government Code Section 252.022(a)(9).

(b) The City Construction Representative agrees to cooperate with the Owner to the extent reasonably possible without detriment to proper engineering review, comment, and revision on the review and approval of the engineering, design, plans, and specifications of all Authorized Improvements submitted by the Owner.

Section 3.09. Additional Requirements for Authorized Improvements Funded with Progress Payments

The following additional requirements shall be applicable to Authorized Improvements funded in accordance with the procedures set forth in Section 4.02:

(a) Prior to the later to occur of (i) the Effective Date, or (ii) commencing construction of any such Authorized Improvements, the Project Engineer shall review all plans and specifications, construction contracts, and related materials for the applicable Authorized Improvements, and shall certify to the Owner, City, and Trustee that the Project Funds plus the committed capital referenced in Section 3.05(a) above are anticipated sufficient to fund the full cost of design and construction of the applicable Authorized Improvements (but excluding any Construction Management Fees or contingencies (if any) as set forth in the Service and Assessment Plan).

(b) The Construction Manager will maintain an ongoing monthly updated accounting of funds disbursed, work progress and remaining funding needed to complete each applicable Authorized Improvement. Such accounting will include a reconciliation of any un-advanced amounts out of the segregated accounts in the Project Fund under the applicable Indenture as compared to the remaining costs to complete each applicable Authorized Improvements. The Construction Manager will provide such monthly reports to the Owner, the City Construction Representative, and the Trustee.

(c) After bids and construction contracts have been executed for the applicable Authorized Improvements, all change orders or costs increases for such applicable Authorized Improvements must be approved by the Owner, Construction Manager and the City Construction Representative, to the extent any such change order is in excess of \$100,000.00 for any Segment of such applicable Authorized Improvement. The Construction Manager shall provide copies of all approved change orders to the PID Administrator and Trustee within ten (10) days after approval.

ARTICLE IV. PAYMENT FOR AUTHORIZED IMPROVEMENTS

Section 4.01. Overall Requirements

(a) The City shall not be obligated to provide funds for any Authorized Improvement except from the proceeds of the PID Bonds or from Assessments. The City makes no warranty, either express or implied, that the proceeds of the PID Bonds available for the payment of the Actual Cost of the Authorized Improvements to be constructed for or acquired by the City (or the County) will be sufficient for the construction or acquisition of all of those particular Authorized Improvements. The Parties anticipate that the Actual Cost to construct the Authorized Improvements may be greater than the proceeds of the PID Bonds and Assessments available for Authorized Improvements.

(b) The City shall not be obligated to provide funds for any Authorized Improvement unless and until the City determines that: (i) the Owner is in then current compliance with its obligations under this Agreement and PID-related obligations of the Blanco River Ranch (Phase

One Residential Area) De-Annexation and Development Agreement (the “**Development Agreement**”); and (ii) the City has approved the Authorized Improvements, including inspection and acceptance, if applicable (except this subsection (ii) will not apply if payment is being made through progress payments as provided herein); and, if PID Bonds have been issued, (iii) the PID Administrator provides written confirmation of compliance with the conditions and provisions of the Disclosure Agreement of Developer at the time of the withdrawal of funds from the Project Fund, or from any other eligible account or fund under the Indenture.

(c) Upon written acceptance of an Authorized Improvement, and subject to any applicable maintenance-bond period, the Entity accepting the Authorized Improvement shall be responsible for all operation and maintenance of such Authorized Improvement, including all costs thereof and relating thereto.

(d) The Parties hereby acknowledge and agree that:

(1) When PID Bonds are issued, the City shall bill, collect, and deposit into the Pledged Revenue Fund of the Indenture all Assessment Revenue constituting “pledged revenues” as defined in the Indenture.

(2) When PID Bonds have been defeased, the City shall bill, collect, and immediately deposit the Assessments collected into an Assessment Reimbursement Fund (excluding Administrative Expenses and Delinquent Collection Costs). Funds in the Assessment Reimbursement Fund shall only be used to pay Costs of the Authorized Improvements in accordance with this Agreement.

(3) The Improvement Area #1 Improvements may be funded by progress payments through PID Bonds (i.e., PID Bonds are sold and then Improvement Area #1 Improvements are funded by PID Bond proceeds) and to that extent will be governed by Section 4.02 of this Agreement. Other Authorized Improvements may be funded by progress payments through PID Bonds in the same manner as Improvement Area #1 Improvements and in such case will be governed by Section 4.02 of this Agreement.

(4) If requested by the Owner, the City agrees to allow for construction and funding of Authorized Improvements to be handled in accordance with progress payments (Section 4.02), reimbursement payments pursuant to an Acquisition and Reimbursement Agreement (Section 4.03), or a combination thereof.

(5) Except as otherwise provided herein, the Authorized Improvements are intended to be constructed pursuant to one or more Acquisition and Reimbursement Agreements and paid for by the Owner prior to the issuance of PID Bonds intended to fund such Authorized Improvements. Such funding of the Authorized Improvements will be governed by the applicable Acquisition and Reimbursement Agreement and Section 4.03 of this Agreement.

(e) The procedures set forth in Section 4.02 below will apply to all Certifications for Payment regardless of which account within the Project Fund the actual funds are being paid from.

Section 4.02. Progress Payments for Authorized Improvements

(a) Owner shall deliver and the City shall accept the Authorized Improvements to be conveyed to the City in accordance with the terms herein. The net proceeds from the issuance of the PID Bonds will be held by the Trustee in various segregated accounts under the Project Fund. Those sums held in the various segregated accounts will be advanced to the Owner by the Trustee to fund the costs of construction, City and County inspection and administrative costs, and other soft costs (as more particularly specified herein and in the Service and Assessment Plan) upon receipt of a completed Certification for Payment (in the form as attached in Exhibit "E"). Payments will be made to Owner, or subcontractor (as provided in Section 4.02(b)) periodically as construction progresses. The procedures for such progress payments are contained in this Section 4.02 and the Indenture. As set forth in the Indenture, such payments shall be made by Trustee on a monthly basis and within five (5) business days of the Trustee's receipt of the completed Certification for Payment from the City Director of Finance. The City Construction Representative or its designee shall deliver to the City Director of Finance his/her concurrence to pay pursuant to a completed Certification for Payment within fifteen (15) calendar days after its receipt of the required submittal items pursuant to either subparagraph (b) or (c) below, as applicable and the City Director of Finance will then have up to ten (10) calendar days to forward the executed Certification for Payment to the Trustee for payment. If the City disapproves any Certification for Payment, the City shall provide a written explanation of the reasons for such disapproval so that if the Certification for Payment is revised in accordance with City's comments, the Certification for Payment can be approved. Notwithstanding anything to the contrary contained herein, if the monthly reconciliation provided by the Construction Manager pursuant to Section 3.09(b) above for a particular Authorized Improvement shows there are not enough funds in the segregated account to fund the remaining design and construction costs of that Authorized Improvement after taking into consideration any contingencies, the City Construction Representative, the City Director of Finance, and the PID Administrator shall not be obligated to authorize payments of funds exceeding the balance in the segregated account until such time as Owner provides evidence satisfactory to the City Construction Representative that Owner has or will provide funds in an amount sufficient to fully fund the remaining design and construction costs of that Authorized Improvement.

(b) During the design phase for any Authorized Improvement to be funded by the PID Bonds, Owner will be entitled to receive draws (not to exceed one (1) per month) based on the percentage of design work completed up to the date of the draw. The submittal items necessary for a design payment are as follows:

(1) A Certification for Payment executed by the Project Engineer and Construction Manager specifying the percentage of design that has been completed on the applicable Authorized Improvement; and

(2) Copies of all supporting invoices with respect to such design payment.

(c) The submittal for the last draw for design work will also include evidence of approval of design phase documents by the applicable Entity.

(d) During the construction phase for any Authorized Improvement to be funded by PID Bonds, Owner shall be entitled to receive draws (not to exceed two (2) per month) based on the Actual Cost of the construction completed. The City is not obligated to authorize a construction payment until such time that the applicable Entity has approved the plans and specifications for the applicable Authorized Improvement (if such approval is required pursuant to this Agreement). The items required for a construction payment are as follows:

(1) A Certification for Payment executed by the Project Engineer and Construction Manager specifying the amount of work that has been performed and the cost thereof;

(2) A Bills Paid Affidavit from the contractor;

(3) Copies of all supporting invoices with respect to such payment; and

(4) Waivers of liens for work on the applicable Authorized Improvements through the previous Certification for Payment and receipts for payment from the contractor and, if requested by the City, any subcontractors for the current Certification for Payment.

(e) In addition to the submitted items required in subparagraph (c) above, in order to obtain the final payment for an Authorized Improvement funded by the PID Bonds pursuant to this Section 4.02, the following are required:

(1) The Owner will have provided to the City or the County, as applicable, an assignment of the warranties and guaranties, if applicable, for the Authorized Improvement;

(2) Before the final Certification for Payment is submitted to the City, the Project Engineer shall conduct a review for the County to confirm that such Authorized Improvement was constructed in accordance with the plans therefor and the Project Engineer will verify and approve the Actual Cost of such Authorized Improvement specified in such Certification for Payment. Upon confirmation by the Project Engineer to the City Construction Representative and the submission of the final Certification for Payment indicating that such Authorized Improvement has been constructed in accordance with the plans therefor, and verification and approval of the Actual Cost of such Authorized Improvement, the City Construction Representative shall within fifteen (15) calendar days thereafter accept such Authorized Improvement and the City Construction Representative shall sign the Certification for Payment and forward the same to the City Director of Finance and the PID Administrator. The City Director of Finance shall then have up to ten (10) calendar days to forward the executed Certification for Payment to the Trustee for payment. The City agrees to instruct the Project Engineer to conduct each such review in an expeditious manner not to exceed fifteen (15) calendar days after the Certification for Payment is submitted to the City.

(f) The Parties acknowledge that certain Authorized Improvements identified on Exhibit "D" will be dedicated to the City and certain Authorized Improvements identified on Exhibit "D" will be dedicated to the County. Therefore, with respect to the Authorized Improvements that are to be dedicated to and accepted by (1) the City, the terms, conditions and

procedures set forth in Section 4.02(a)-(e) shall apply and (2) the County, the terms, conditions and procedures set forth in Section 4.02(a) – (e) shall apply except as set forth below:

(1) The County (not the City) will be accepting such Authorized Improvements;

(2) The County (not the City) will be approving the plans and specifications for such Authorized Improvements;

(3) The County (not the City) will be inspecting such Authorized Improvements subject to City participation as described in Section 3.03 of this Agreement; and

(4) In order to obtain the final payment for such Authorized Improvements a written acknowledgement from the County that all requirements for acceptance of such Authorized Improvements (and except any applicable maintenance-bond period) have been complied with shall be provided to the City. Upon receipt of such written acknowledgment from the County, the City Construction Representative, within fifteen (15) days thereafter, shall sign the Certification for Payment and forward the same to the City Director of Finance. The City Director of Finance shall then have up to ten (10) calendar days to forward the executed Certification for Payment to the Trustee for payment.

(g) The Owner has determined that prior to the Effective Date, it has expended funds for costs reimbursable under the PID Act, including: (i) the design of the Authorized Improvements and associated due diligence matters (e.g., environmental and wetland studies), (ii) construction of the Authorized Improvements, (iii) costs in obtaining permits required for the construction of the Authorized Improvements, and (iv) other costs associated with the formation of the District (“**Initial Owner Expended Funds**”). Owner will submit to the City information documenting the amount of Initial Owner Expended Funds paid by Owner between September 1, 2016 and July 18, 2017. The total amount of Initial Owner Expended Funds approved by the City pursuant to this Section 4.02 and the PID Act shall be referred to herein as the “**Initial Reimbursement Payment.**”

(h) Prior to disbursement of proceeds of the PID Bonds, (1) Owner may submit to the City a Closing Disbursement Request satisfactory to the City and the Trustee for the remainder of the Initial Reimbursement Payment and (2) the City, upon verifying the accuracy of all representations of the Owner made in such Closing Disbursement Request, will sign the Closing Disbursement Request and deliver that Closing Disbursement Request to the Trustee. At the closing of the PID Bonds, Owner shall be reimbursed an amount equal to the Initial Reimbursement Payment and such amount shall be transferred to the Trustee for distribution to the Owner or the Owner’s designee.

(i) At the closing of the PID Bonds, the Owner shall be reimbursed Bond Issuance Costs for PID Bonds paid by the Owner, as described in the Service and Assessment Plan and approved by the City. Such Bond Issuance Costs paid at closing shall be set forth in a closing memorandum issued by the Underwriter or the Financial Advisor and included in the Certification for Payment. Bond Issuance Costs for any Future Improvement Area Bonds will be paid after the closing of the applicable Future Improvement Area Bonds upon submittal of proper

documentation so long as such Bond Issuance Costs are described in the Service and Assessment Plan and funds remain in the respective Costs of Issuance Account described in the Indenture.

Section 4.03. Payments for Completed Authorized Improvements

(a) Pursuant to the terms of an Acquisition and Reimbursement Agreement entered into prior to commencement of construction of an applicable Authorized Improvement, the Owner shall convey, and the City or the County (as applicable) shall acquire, the given Authorized Improvement for the Actual Cost, after such Authorized Improvement is completed and has been accepted by the applicable Entity. The general process for funding of Authorized Improvements under an Acquisition and Reimbursement Agreement is as follows:

(1) The Owner and the City will enter into an Acquisition and Reimbursement Agreement to finance the Authorized Improvements as agreed between the Parties, which will provide for Assessments that will reimburse the Owner for Actual Costs incurred in connection with certain Authorized Improvements until PID Bonds are issued in an amount necessary to reimburse Owner for the Actual Costs of those certain Authorized Improvements less any amounts already reimbursed to Owner pursuant to the Acquisition and Reimbursement Agreement. The form of the Acquisition and Reimbursement Agreement shall be reasonably acceptable to both the City (as applicable) and Owner and substantially in accordance with the form attached as Exhibit “H”.

(2) Simultaneously, the Service and Assessment Plan will be amended to reflect the Assessments and those certain Authorized Improvements as contemplated by the Acquisition and Reimbursement Agreement. The City will levy the Assessment for the associated improvement area.

(3) Owner will construct or cause the construction of the Authorized Improvements for the associated improvement area.

(4) After the levy of the Assessments contemplated by an Acquisition and Reimbursement Agreement, the City will begin collecting the Annual Installments for the associated improvement area. Upon collection of such Annual Installments, the City will place such Annual Installments in a designated account separate from the City’s other accounts. The funds within the account will be used to reimburse Owner for the Actual Costs of the Authorized Improvements pursuant to the terms of the Acquisition and Reimbursement Agreement. If the PID Bonds are issued in an amount that is not sufficient to fully reimburse the Owner for the Actual Costs of the Authorized Improvements less any amounts already reimbursed to Owner pursuant to the Acquisition and Reimbursement Agreement, then Additional PID Bonds may be issued to reimburse the Owner for any Actual Costs not reimbursed by such PID Bonds and Acquisition and Reimbursement Agreement.

(5) Upon completion of the Authorized Improvements contemplated by the Acquisition and Reimbursement Agreement and compliance with the applicable Future Bond Test, the City intends to issue PID Bonds to reimburse the Owner for Actual Cost of those Authorized Improvements less any amounts already reimbursed to Owner pursuant to the Acquisition and Reimbursement Agreement.

(6) If the PID Bonds issued as described in subparagraph 4 above are not sufficient to fully reimburse the Owner for the Actual Costs of those Authorized Improvements less any amounts already reimbursed to Owner pursuant to the Acquisition and Reimbursement Agreement, then so long as the applicable Future Bond Test is satisfied, Additional PID Bonds may be issued to reimburse the Owner for any Actual Costs not reimbursed by the PID Bonds and Acquisition and Reimbursement Agreement.

(b) To receive funds from the proceeds of the Improvement Area #1 Bonds or Additional Improvement Area #1 Bonds (as applicable) to pay the Actual Cost of a particular Improvement Area #1 Improvement, the Owner shall deliver to the City and the Project Engineer (x) documentation evidencing the Actual Cost, (y) documentation evidencing the acceptance of the Improvement Area #1 Improvement by the City or County, as applicable, and (z) an assignment of the warranties and guaranties, if applicable, for such Authorized Improvement, in form reasonably acceptable to the City (if the City is the entity accepting such Authorized Improvements) or the County (if the County is the entity accepting such Authorized Improvement). Nothing herein shall prohibit Owner from being reimbursed for design costs associated with an Improvement Area #1 Improvement (provided that the plans and specifications for such applicable Improvement Area #1 Improvement have been accepted by the City or County, as applicable) prior to the completion of construction of such Improvement Area #1 Improvement or for other costs that are otherwise eligible to be paid under the PID Act prior to completion of construction of such Improvement Area #1 Improvement.

(c) At the time of the closing of any PID Bonds, Owner may, concurrently with the initial draw from the PID Bonds and under substantially the same procedures as set forth above, be reimbursed for (i) the Unpaid Balance under the applicable Acquisition and Reimbursement Agreement and (ii) any other qualified and permitted costs approved by the City under substantially the same procedures as set forth above (collectively, the “**Owner Expended Funds**”). The total amount of Owner Expended Funds approved by the City pursuant to this Section shall be referred to herein as the “**Reimbursement Payment.**”

(d) The City, in its discretion, may allow for construction and funding of Authorized Improvements to be handled in accordance with Section 4.02 or with a combination of progress payments (Section 4.02) and reimbursement payments pursuant to an Acquisition and Reimbursement Agreement (Section 4.03). If the City, in its discretion, elects to allow for such combination, this Agreement shall be modified accordingly to reflect such terms.

ARTICLE V. PID BONDS

Section 5.01. Issuance of PID Bonds

(a) Subject to the terms and conditions set forth in this Article ~~V~~, the City intends to pay for the Authorized Improvements, by issuing PID Bonds in one or more series. The City will use reasonable and good faith efforts to issue PID Bonds after receiving a Bond Issuance Request from Owner, provided that Owner can reasonably demonstrate to the City and its financial advisors that (i) the applicable Future Bonds Test, if any, has been satisfied and (ii) there is sufficient security for the PID Bonds, based upon the bond market conditions existing at

the time of such proposed sale. In addition to the criteria outlined in the applicable Future Bonds Test, the City may consider additional requirements prior to authorizing the issuance of any Future Improvement Area Bonds, including but not limited to a market condition assessment (including market study update), development of the District and current status of Owner, developers, and related builder positions. The City Council may require a recommendation from City staff, advisors and consultants.

(b) The aggregate principal amount of PID Bonds required to be issued hereunder shall not exceed an amount sufficient to fund: (i) the Actual Costs of the Authorized Improvements, (ii) required reserves and capitalized interest during the period of construction and not more than 12 months after the completion of construction of the applicable Authorized Improvements funded by the PID Bond issue in question and in no event for a period greater than 24 months from the date of the initial delivery of the applicable PID Bonds and (iii) Bond Issuance Costs. Provided, however that to the extent the law(s) which limit the period of capitalized interest to 12 months after completion of construction change, the foregoing limitation may be adjusted to reflect the law(s) in effect at the time of future PID Bond issuances.

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

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

(e) The foregoing requirements apply to each series of PID Bonds issued.

(f) If proceeds from the PID Bonds or Future Improvement Area Bonds are still available after all the Authorized Improvements are accepted by the City or County and Owner has been reimbursed for all unreimbursed Actual Costs incurred in connection therewith, the proceeds may be utilized to finance other Authorized Improvements within the Property as allowed by the PID Act, if approved by the City.

Section 5.02. Project Fund

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

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

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

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

Section 5.04. Sale of PID Bonds.

The PID Bonds, if issued by the City, shall be marketed and sold through negotiated sale to an approved third party(s) by an approved Underwriter with the cooperation and assistance of the Owner in all respects with respect to the preparation of marketing/offering documents, such as preliminary and final official statements or in such other marketing and/or sales method mutually agreed upon by the City and the Owner.

Section 5.05. Sale of PID Bonds

Notwithstanding the foregoing, the City may authorize the issuance of the PID Bonds contemporaneously with authorizing the execution of this Agreement. The Authorized Improvements to be constructed and funded in connection with the PID Bonds are more particularly described on attached Exhibit "D".

Section 5.06. Phased Issuance of Debt

As previously noted, the proposed bond issuance program is anticipated to entail a series of bond financings that will finance the Authorized Improvements required for the development of the Project. This financing will be undertaken in phases to coincide with the private investment and development of the Authorized Improvements. Following the issuance of the Improvement Area #1 Bonds, Additional Improvement Area #1 Bonds and/or Future Improvement Area Bonds may be issued over the upcoming years as the subsequent phases of the Project are gradually constructed.

The purpose of this gradual issuance of any Additional Improvement Area #1 Bonds and Future Improvement Area Bonds in phases is to mirror the actual private development of the Authorized Improvements. The Additional Improvement Area #1 Bonds and Future Improvement Area Bonds to be issued are most prudently and efficiently utilized when directly coinciding with construction of public infrastructure needed for private development that is to occur once the infrastructure is completed; it is most effective to issue the Additional Improvement Area #1 Bonds and Future Improvement Area Bonds when the infrastructure is needed, not before. Furthermore, there is no economic advantage, and several disadvantages, to

issuing debt and encumbering property within the District prior to the need for the Authorized Improvements.

Section 5.07. Phased Assessments

In connection with the issuance of Additional Improvement Area #1 Bonds and Future Improvement Area Bonds and/or execution of related Acquisition and Reimbursement Agreements, the Service and Assessment Plan will be updated to reflect the special benefit each Parcel of Assessed Property within an Improvement Area receives from the specific Authorized Improvements funded with those Improvement Area Bonds issued with respect to that Improvement Area.

It is acknowledged and agreed that one or more of the following types of PID Bonds contemplated to be issued for this Project (Additional Improvement Area #1 Bonds and Future Improvement Area Bonds) may be covered under a new and separate Indenture; however, all of the Assessments pledged for the payment of any PID Bonds will have the same lien priority as the Assessments pledged for the payment of Improvement Area #1 Bonds.

If the total Assessments levied on a particular Parcel within the Project consist of Assessments stemming from two or more different types of PID Bonds and an owner of an Assessed Parcel pays only a portion of the Annual Installment due for such Assessments, then such payment will be allocated pro-rata to the payment of the Annual Installment based on the portions of each Assessment as it relates to the total Assessments. For example, assume that a parcel has Assessments totaling \$20,000, \$12,000 of which is for the Improvement Area #1 Bonds and \$8,000 of which is for an Additional Improvement Area #1 Bond. Further assume that the Annual Installment for such Parcel is \$1,000 which consists of a \$550 annual installment from the Improvement Area #1 Bonds and a \$450 annual installment from the Additional Improvement Area #1 Bonds and an owner of an Assessed Parcel pays \$600, then the \$600 will be allocated as follows:

\$360 (60% of \$600) will go towards the Assessment for the Improvement Area #1 Bonds; and

\$240 (40% of \$600) will go towards the Assessment for the Additional Improvement Area #1 Bonds

Total: \$600

Further detail regarding partial payments of the Annual Installments will be contained in the Indenture relating to Additional Improvement Area #1 Bonds and Future Improvement Area Bonds.

Section 5.08. Acquisition and Reimbursement Agreements

The costs of some Authorized Improvements will be initially financed through Acquisition and Reimbursement Agreements. As provided in Section 4.03 above, prior to commencing construction of any such Authorized Improvements, the Owner and the City will

enter into an Acquisition and Reimbursement Agreement, which will provide for Assessments that will reimburse the Owner for Actual Costs incurred in connection with those Authorized Improvements until PID Bonds are issued in an amount equal to the outstanding Special Assessments.

Section 5.09. Future Bonds Tests

(a) The City has reserved the right to issue Additional Improvement Area #1 Bonds to pay the Improvement Area #1 Reimbursement Obligation, in accordance with the conditions set forth below. Terms used in this Section but not defined herein shall have the meanings assigned to them in the Indenture for the Improvement Area #1 Bonds:

(i) The City Representative shall certify that the City is not in default in the performance and observance of any of the terms, provisions and conditions applicable to the City contained in the Indenture;

(ii) The Developer, through an authorized representative, shall certify that the Developer is not in default beyond any applicable notice and cure period in the performance and observance of any of the PID-related terms, provisions and conditions applicable to the Developer contained in the Development Agreement, or in the performance and observance of any provisions and conditions applicable to the Developer contained in this Agreement, any Acquisition and Reimbursement Agreement applicable to Improvement Area # 1, or any continuing disclosure agreement entered into by the Developer relating to PID Bonds, unless any defaults under the foregoing agreement (except for disagreements under any continuing disclosure agreements entered into by the Developer, which shall be cured) are disclosed in a certificate from the Developer to the City, acting by and through its City Council, elects to proceed with the issuance of Additional Improvement Area #1 Bonds regardless of the existence of such default or defaults;

(iii) A certificate or report from the Developer, through an authorized representative, shall certify that (A) certificates of occupancy have been issued for a minimum of thirty-five percent (35%) of the single-family homes to be built within Improvement Area #1; and a certificate or report from an independent certified appraiser or appraisal firm (that may rely on County assessed value figures for the completed homes as to their value) that, assuming completion of the improvements to be financed with the proceeds of the Additional Improvement Area #1 Bonds or with funds withdrawn from the Developer Improvement Account of the Project Fund, as applicable, (B) the appraised value of the property within Improvement Area #1 of the PID is equal to at least four (4) times the principal amount of the Outstanding Bonds Similarly Secured, taking into account the Additional Improvement Area #1 Bonds to be issued, (C) the appraised value allocated to each parcel within Improvement Area #1 is at least three (3) times the portion of the principal amount of any Outstanding Bonds Similarly Secured, taking into account the Additional Improvement Area #1 Bonds to be issued, that is allocated to each such parcel;

(iv) The principal of and interest on the Additional Improvement Area #1 Bonds must be scheduled to be paid or mature on March 1 or September 1, or both, of the years in which each principal or interest are scheduled to be paid or mature;

(v) There shall be deposited to the Reserve Fund an amount equal to the Reserve Fund Requirement taking into account the Outstanding Bonds Similarly Secured, and the Additional Improvement Area #1 Bonds then proposed to be issued;

(vi) The maximum amount of Additional Improvement Area #1 Bonds that may be issued, subject to the approval of the City, in total, is the then outstanding balance of the Improvement Area #1 Reimbursement Obligation; and

(vii) The Developer, through an authorized representative, shall certify that the Developer is in compliance with any further conditions established by the City, its advisors, or the underwriter(s).

(b) The City has reserved the right to issue Future Improvement Area Bonds for any purpose permitted by the Act, and in accordance with the conditions set forth below:

(i) The City Representative shall certify that the City is not in default in the performance and observance of any of the terms, provisions and conditions applicable to the City contained in the Indenture;

(ii) The Developer, through an authorized representative, shall certify that the Developer is not in default beyond any applicable notice and cure period in the performance and observance of any of the PID-related terms, provisions and conditions applicable to the Developer contained in the Development Agreement, or in the performance and observance of any provisions and conditions applicable to the Developer contained in this Agreement, any Acquisition and Reimbursement Agreement applicable to Improvement Area # 1, or any continuing disclosure agreement entered into by the Developer relating to PID Bonds, unless any defaults under the foregoing agreement (except for disagreements under any continuing disclosure agreements entered into by the Developer, which shall be cured) are disclosed in a certificate from the Developer to the City, acting by and through its City Council, elects to proceed with the issuance of Future Improvement Area Bonds regardless of the existence of such default or defaults;

(iii) A certificate or report from the Developer, through an authorized representative, shall certify that either (A) seventy-five percent (75%) or less of the Lots within Improvement Area #1 have been sold to end-users, and at least fifty percent (50%) of the Lots within the particular Future Improvement Area for which Authorized Improvements are financed by the Future Improvement Area Bonds are under contract with merchant builders unaffiliated with the Owner; or that (B) more than seventy-five (75%) of the Lots within Improvement Area #1 have been sold to end users, and at least thirty-five percent (35%) of the Lots within the particular Future Improvement Area for which Authorized Improvements are financed by the Future Improvement Area Bonds are under contract with merchant builders unaffiliated with the Owner.

(iv) The ratio of the appraised value of all of the land in the particular Future Improvement Area of the PID, based on an independent appraisal and assuming completion of the improvements within such phase to be financed with the proceeds of the Future Improvement Area Bonds to be issued, to the principal amount of the Future Improvement Area Bonds to be issued must be at least 3.0:1;

(v) Construction contracts for One-hundred percent (100%) of the costs of the Authorized Improvements in such Future Improvement Area to be paid with proceeds of the applicable series of Future Improvement Area Bonds must be executed and ready to proceed, and the construction of each such Authorized Improvement must be no less than seventy-five percent (75%) complete; and

(vi) The Developer, through an authorized representative, shall certify that the Developer is in compliance with any further conditions established by the City, its advisors, or the underwriter(s).

Section 5.10. Non-Bank Qualified Debt

(a) If in any calendar year (including 2018) the City issues debt obligations that would be qualified tax-exempt obligations but for the issuance of the PID Bonds or other bonds supporting public improvements for non-City owned development projects, including bonds authorized by the Act, then the Owner shall pay to the City a fee (the “**PID Bond Fee**”) to compensate the City for the interest savings the City would have achieved had the debt issued by the City been qualified tax-exempt obligations, provided that all other developers or owners benefitting from the City issuing debt for non-City owned development projects are similarly burdened with an obligation to compensate the City proportionately based on the original principal amount of such PID Bonds or other City debt supporting public improvements for non-City owned development projects. The City and the Owner shall approve an estimate of the PID Bond Fee for all series of PID Bonds at least 10 business days prior to pricing the first series of PID Bonds. The Owner agrees to pay the approved estimated PID Bond Fee to the City on the later of (1) five business days prior to the closing of any series of PID Bonds or other City-issued debt, or (2) five business days after the City and the Owner approve the estimated PID Bond Fee. The City shall not be required to sell any series of PID Bonds until the Owner has paid the approved estimated PID Bond Fee.

(b) To the extent any developer or owner (including the Owner, as applicable) has paid all or part of a PID Bond Fee estimate for any particular calendar year, any such PID Bond Fee estimate paid subsequently by a developer or owner (including the Owner, as applicable) to the City applicable to the same calendar year shall be reimbursed by the City to the developer or owner (including the Owner, as applicable) as necessary so as to put all developers and owners so paying for the same calendar year in the required payment proportion as set forth above, such reimbursement to be made by the City within 10 business days after its receipt of such subsequent payments of the estimated PID Bond Fee. The City will deposit all payments of a PID Bond Fee estimate received from a developer or owner (including the Owner, as applicable) into a segregated account until such time as (1) the City transfers funds from the segregated

account to a capital improvement project fund in conjunction with issuing City debt; and/or (2) the City refunds a portion of the estimated PID Bond Fee consistent with the pro rata formula described above within 10 days of issuing the PID Bonds. On or before January 15th of the following calendar year, the final PID Bond Fee shall be agreed to by the City and the Owner. By January 31st of such year, any funds in excess of the final PID Bond Fee that remain in such segregated account on December 31st of the preceding calendar year shall be refunded to the developers or owners (including the Owner as applicable), and any deficiencies in the estimated PID Bond Fee paid to the City by any developer or owner (including the Owner, as applicable) shall be remitted to the City by the respective developer or owner (including the Owner, as applicable).

ARTICLE VI. REPRESENTATIONS, WARRANTIES, AND INDEMNIFICATION

Section 6.01. Representations and Warranties of City

The City makes the following covenants, representations and warranties for the benefit of the Owner:

(a) The City will deliver a certificate relating to the PID Bonds (such certificate, as it may be amended and supplemented from time to time, being referred to herein as the “**Tax Certificate**”) containing covenants and agreements designed to satisfy the requirements of Sections 103 and 141 through 150, inclusive, of the Texas Tax Code and the income tax regulations issued thereunder relating to the use of the proceeds of the PID Bonds or of any monies, securities or other obligations on deposit to the credit of any of the funds and accounts created by the Indenture or this Agreement or otherwise that may be deemed to be proceeds of the Bonds within the meaning of Section 148 of the Tax Code (collectively, “**Bond Proceeds**”).

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

Section 6.02. Covenants, Representation, and Warranties of Owner

The Owner makes the following representations, warranties and covenants for the benefit of the City:

(a) The Owner represents and warrants that each Owner entity is organized and validly existing under the laws of the State of Texas, is in compliance with the laws of the State of Texas, and has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated.

(b) The Owner represents and warrants that the Owner has the power and authority to enter into this Agreement, and has taken all action necessary to cause this Agreement to be executed and delivered, and this Agreement has been validly executed and delivered on behalf of the Owner.

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

(d) The Owner covenants that once it commences construction of an Authorized Improvement or Segment, it will use its reasonable and diligent efforts to do all things which may be lawfully required of it in order to cause such Authorized Improvement or Segment to be completed in accordance with this Agreement.

(e) The Owner covenants that it will not commit or knowingly permit any act in, upon, or to the Property or the Project in violation of any law, ordinance, rule, regulation, or order of any governmental authority or any covenant, condition, or restriction now or hereafter affecting the Property or the Project.

(f) The Owner represents and warrants that (i) it will not request payment from the City for the acquisition of any Authorized Improvements that are not part of the Project, and (ii) it will diligently follow all procedures set forth in this Agreement with respect to Payment Requests.

(g) For a period of two (2) years after the final Acceptance Date of each applicable Authorized Improvement, the Owner covenants to maintain proper books of record and account for the Authorized Improvements and all costs related thereto. The Owner covenants that such accounting books will be maintained in accordance with sound accounting practices, and will be available for inspection by the City or its agent at any reasonable time during regular business hours upon at least 72 hours' notice.

(h) The Owner agrees to provide the information required pursuant to the Owner Continuing Disclosure Agreement executed by the Owner in connection with the issuance of the PID Bonds.

(i) The Owner covenants that, in its contracts with builders, it shall require that a builder for an assessed parcel shall distribute informational brochures about the existence and effect of the PID in prospective homebuyer sales packets, if such brochures are prepared and provided by the City. For this section 6.01(i), a builder mean a commercial builder who is in the business of constructing and/or selling residences to individual home buyers.

(j) The Owner covenants 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 Owner further covenants that (i) such facts and estimates will be based on its reasonable expectations on the date of issuance of the PID Bonds and will be, to the best of the knowledge of the officers of the Owner providing such facts and estimates, true, correct and complete as of that date, and (ii) the Owner will make reasonable inquiries to ensure such truth, correctness and completeness. The Owner covenants that it will not make, or (to the extent that it exercises control or direction) permit to be made, any use or investment of the Bond Proceeds that would cause any of the covenants or agreements of the City contained in the Tax Certificate to be violated or that would otherwise have an adverse effect on the tax-exempt status of the

interest payable on the PID Bonds for federal income tax purposes.

(k) The Owner agrees not to take any action or actions to reduce the total amount of such Assessments to be levied as of the Effective Date.

Section 6.03. Indemnification and Hold Harmless by Owner

THE OWNER WILL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, AND ITS OFFICIALS, EMPLOYEES, OFFICERS, REPRESENTATIVES, AND AGENTS (IN THIS SECTION, THE “CITY”) AGAINST AND FROM, AND WILL PAY TO THE CITY, THE AMOUNT OF, ALL ACTIONS, DAMAGES, CLAIMS, LOSSES, OR EXPENSE OF ANY TYPE, WHETHER OR NOT INVOLVING A THIRD-PARTY CLAIM (COLLECTIVELY, “DAMAGES”), ARISING DIRECTLY OR INDIRECTLY, FROM (i) THE BREACH OF ANY PROVISION OF THIS AGREEMENT BY THE OWNER; (ii) THE NEGLIGENT DESIGN, ENGINEERING, OR CONSTRUCTION BY THE OWNER OF ANY AUTHORIZED IMPROVEMENT ACQUIRED BY THE CITY; (iii) THE OWNER’S NONPAYMENT UNDER CONTRACTS WITH THE OWNER FOR ANY AUTHORIZED IMPROVEMENT UNDER THIS AGREEMENT; (iv) ANY CLAIMS AGAINST THE CITY RELATING TO ANY AUTHORIZED IMPROVEMENT ACQUIRED UNDER THIS AGREEMENT; OR (v) ANY THIRD PARTY CLAIMS RELATING TO ANY AUTHORIZED IMPROVEMENT ACQUIRED UNDER THIS AGREEMENT, INCLUDING ANY CLAIM RELATING TO NEGLIGENCE OF THE CITY. THE OWNER WILL DEFEND THE CITY AGAINST ALL SUCH CLAIMS AND THE CITY WILL REASONABLY COOPERATE AND ASSIST IN PROVIDING SUCH DEFENSE. THE CITY WILL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY THE OWNER IN FULFILLING ITS OBLIGATIONS HEREUNDER. THE CITY RESERVES THE RIGHT, BUT IS NOT REQUIRED, TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE AT ITS OWN EXPENSE. THE OWNER SHALL RETAIN CITY-APPROVED DEFENSE COUNSEL WITHIN 10 BUSINESS DAYS OF WRITTEN NOTICE THAT THE CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION AND IF THE OWNER DOES NOT DO SO, THE CITY MAY RETAIN ITS OWN DEFENSE COUNSEL AND THE OWNER WILL BE LIABLE FOR ALL REASONABLE SUCH COSTS. THIS SECTION SURVIVES THE TERMINATION OF THIS AGREEMENT INDEFINITELY, SUBJECT TO APPROPRIATE STATUTES OF LIMITATIONS, AS THEY MAY BE TOLLED OR EXTENDED BY AGREEMENT OR OPERATION OF LAW.

ARTICLE VII. DEFAULT AND REMEDIES

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

(b) Before any failure of any Party to perform its obligations under this Agreement will be deemed to be a breach of this Agreement, the Party claiming such failure shall notify, in writing, the Party alleged to have failed to perform of the alleged failure and shall demand performance. No breach of this Agreement may be found to have occurred if performance has

commenced to the reasonable satisfaction of the complaining Party within thirty (30) days of the receipt of such notice (or five (5) days in the case of a monetary default), subject, however, in the case of nonmonetary default, to the terms and provisions of subparagraph (c) below. Upon a breach of this Agreement, the nondefaulting Party in any court of competent jurisdiction, by an action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements herein contained (and/or an action for mandamus as and if appropriate). Except as otherwise set forth herein, no action taken by a Party pursuant to the provisions of this Article VII or pursuant to the provisions of any other Section of this Agreement shall be deemed to constitute an election of remedies and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any Party at law or in equity. Each of the Parties shall have the affirmative obligation to mitigate its damages in the event of a default by the other Party. Notwithstanding any provision contained herein to the contrary, the Owner shall not be required to construct any portion of the Authorized Improvements (or take any other action related to or in furtherance of same) while the City is in default under this Agreement).

(c) Notwithstanding any provision in this Agreement to the contrary, if the performance of any covenant or obligation to be performed hereunder by any Party is delayed as a result of circumstances which are beyond the reasonable control of such Party (which circumstances may include, without limitation, pending litigation, acts of God, war, acts of civil disobedience, widespread pestilence, fire or other casualty, shortage of materials, adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or tornadoes, labor action, strikes, changes in the law affecting the obligations of the Parties hereunder, or similar acts), the time for such performance shall be extended by the amount of time of the delay directly caused by and relating to such uncontrolled circumstances. The Party claiming delay of performance as a result of any of the foregoing “force majeure” events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming Party becomes aware of the same, and if the claiming Party fails to so notify the other Party of the occurrence of a “force majeure” event causing such delay, the claiming Party shall not be entitled to avail itself of the provisions for the extension of performance contained in this Article.

ARTICLE VIII. GENERAL PROVISIONS

Section 8.01. Notices.

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

If to City: Scott Sellers

City Manager
City of Kyle
100 W. Center St.
Kyle, TX 78640
Facsimile: (512) 262-3987

With a copy to:

Bickerstaff Heath Delgado Acosta LLP
Attn: David Méndez
3711 S. MoPac Expressway
Building One
Suite 300
Austin, Texas 78746
Facsimile: (512) 320-5638

If to Owner: Blake Magee Co.
Attn: Blake Magee
1011 North Lamar Blvd
Austin, Texas 78703
Facsimile: (512) 481-0333

With a copy to: Armbrust & Brown, PLLC
Attn: Sharon Smith
100 Congress Avenue, Suite 1300
Austin, Texas 78701
Facsimile: (512) 435-2360

Section 8.02. Fee Arrangement /Administration of District

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

(b) The Owner will be solely responsible for the costs associated with the issuance of any Additional Improvement Area #1 Bonds and Future Improvement Area Bonds. The terms of subparagraph (a) above will apply to the Owner in the event that such bonds are issued.

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

Section 8.03. Assignment and Other Transfers

(a) Subject to subparagraph (b) below, Owner may, in its sole and absolute discretion, assign this Agreement with respect to all or part of the Project from time to time so long as the assigned rights and obligations are assumed without modifications to this Agreement. Owner shall provide the City thirty (30) days prior written notice of any such assignment. Upon such assignment or partial assignment, Owner will be fully released from any and all obligations under this Agreement and will have no further liability with respect to this Agreement for the part of the Project so assigned.

(b) Any sale of a portion of the Property or assignment of any right hereunder will 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) For the purposes of 17 Code of Federal Regulations 240.15c2-12 and municipal securities disclosure, a purchaser of Property, or an assignee under this section 8.03, is an “Obligated Person” to the extent the purchaser or assignee meets the definition of “Obligated Person” in the Owner Continuing Disclosure Agreement.

Section 8.04. Term of Agreement

This Agreement will terminate on the date on which the City and Owner discharge all of their obligations hereunder; provided, that if the Assessments are not levied on or before the date five years after the effective date of the creation of the PID, the City may dissolve the District and the Owner hereby consents to the City taking any and all steps necessary to dissolve the District in accordance with Section 372.011, Texas Local Government Code. This section is a covenant running with the land and is binding on the Owner’s successors and assigns.

Section 8.05. Construction of Certain Terms

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

- (a) Words importing a gender include either gender.
- (b) Words importing the singular include the plural and vice versa.

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

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

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

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

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

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

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

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

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

Section 8.06. Table of Contents; Titles and Headings

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

Section 8.07. Amendments.

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

Section 8.08. Time

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

Section 8.09. Counterparts

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

Section 8.10. Entire Agreement

This Agreement contains the entire agreement of the Parties.

Section 8.11. Severability; Waiver

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

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

Section 8.12. Owner as Independent Contractor

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

Section 8.13. Supplemental Agreements

Other agreements and details concerning the obligations of the Parties under and with respect to this Agreement are included in the Service and Assessment Plan, the Assessment Ordinance, PID Bond Ordinance and Indenture.

Section 8.14. Audit

The City Construction Representative or City Finance Director will have the right, during normal business hours and upon the giving of three business days' prior written notice to the Owner, to review all books and records of the Owner pertaining to costs and expenses incurred by the Owner with respect to any of the Authorized Improvements and any bids taken or received for the construction thereof or materials therefor.

Section 8.15. Exhibits

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

Exhibit A	-	Definitions
Exhibits B-1, B-2, and B-3		Property Description for Project
Exhibit B-4		Improvement Areas
Exhibit C	-	Form of Service and Assessment Plan
Exhibit D	-	Major Improvements
Exhibit E	-	Form of Certification for Payment
Exhibit F	-	Improvement Area #1 Improvements
Exhibit G	-	Closing Disbursement Request
Exhibit H	-	Acquisition and Reimbursement Agreement

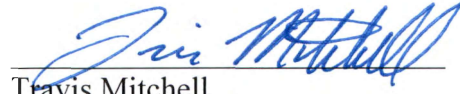
[Signature Pages to Follow]

CITY OF KYLE, TEXAS, a municipal corporation

By:

Name:

Title:




Travis Mitchell

Mayor


[Signatures Continue on Next Page]

[SIGNATURE PAGE]

HMBRR DEVELOPMENT, INC.,
a Texas corporation

By: 
Name: Blake J. Magee
Title: President

HMBRR, LP, a Texas limited partnership

By: 
Name: Blake J. Magee
Title: Partner

HMBRR, LP #2, a Texas limited partnership


By: 
Name: Blake J. Magee
Title: Partner

Exhibit “A”

DEFINITIONS

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

“Acceptance Date” means, with respect to a Segment, the date that the Actual Cost thereof is paid to the Owner pursuant to the terms hereof.

“Acquisition and Reimbursement Agreement” means agreement that obligates the City to reimburse the Owner for Actual Costs of an Authorized Improvement not funded with PID Bonds, secured solely by Assessments to be paid to Owner pursuant to an agreement between the City and the Owner.

“Actual Costs” mean, with respect to Authorized Improvements, the actual costs paid or incurred by or on behalf of owners and developers of the Property: (1) to plan, finance, design, acquire, construct, install, and dedicate such improvements to the City; (2) to prepare plans, specifications (including bid packages), contracts, and as-built drawings; (3) to obtain zoning, licenses, plan approvals, permits, inspections, and other governmental approvals; (4) to acquire easements and other right-of-way; (5) for third-party professional consulting services including, but not limited to, engineering, surveying, geotechnical, land planning, architectural, landscaping, legal, accounting, and appraisals; (6) of labor, materials, equipment, fixtures, payment and performance bonds and other construction security, and insurance premiums; (7) the City’s cost of reviewing a Certification for Payment; (8) of fees charged by the City or any other political subdivision or governmental authority; and (9) to implement, administer, and manage the above-described activities including, but not limited to, a construction management fee equal to four percent (4%) of construction costs if managed by or on behalf of the owners or developers. Actual Costs shall not include general contractor’s fees in an amount that exceeds a percentage equal to the percentage of work completed or construction management fees in an amount that exceeds an amount equal to the construction management fee amortized in approximately equal monthly installments over the term of the applicable construction management contract. Amounts expended for costs described in subsections (3), (4), (5), and (8) above shall be excluded from the amount upon which the general contractor and construction management fees are calculated.

“Additional Improvement Area #1 Bonds” means bonds issued to fund Improvement Area #1 Improvements or refund the Improvement Area #1 Reimbursement Obligation, in whole or in part, that are secured by the Improvement Area #1 Assessments.

“Administrative Expenses” means the actual or budgeted costs and expenses related to the creation and operation of the PID, the issuance and sale of PID Bonds, and the administration of construction of the Authorized Improvements, including, but not limited to, costs and expenses for: (1) the Administrator; (2) legal counsel, engineers, accountants, financial advisors, and other consultants engaged by the City; (3) calculating, collecting, and maintaining records

with respect to Assessments and Annual Installments; (4) preparing and maintaining records with respect to assessment rolls and annual Service Plan updates; (5) issuing, paying, and redeeming PID Bonds; (6) investing or depositing Assessments and Annual Installments; (7) complying with this SAP and the Act with respect to the issuance and sale of PID Bonds, including continuing disclosure requirements; (8) the paying agent/registrar and Trustee in connection with PID Bonds, including their respective legal counsel; and (9) administering the construction of the Authorized Improvements. Administrative Expenses collected but not expended in any year shall be carried forward and applied to reduce Administrative Expenses for subsequent years.

“Administrator” means the person or independent firm designated by the City Council to perform the duties and obligations of the Administrator in the Service and Assessment Plan. The initial Administrator is PIDWorks, LLC, and Administrator includes any successor designated by the City.

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

“Annual Installment” has the meaning given in the Service and Assessment Plan.

“Appraisal” means the Appraisal of Blanco River Ranch dated effective _____, prepared by _____.

“Assessed Parcel” means, for any year, Parcels within the District other than Non-Benefited Property.

“Assessment Ordinance” means each ordinance adopted by the City Council levying the Assessments on the Property, as required by Article II of this Agreement.

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

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

“Attorney General” means the Texas Attorney General’s Office.

“Authorized Improvements” means collectively the Major Improvements described in Exhibit “D”, and Improvement Area #1 Improvements described in Exhibit “F”, together with any and all of the improvements which are included in the Service and Assessment Plan as such plan is amended and updated from time to time.

“Bond Counsel” means Bickerstaff Heath Delgado Acosta LLP or its successor.

“Bond Issuance Cost” means the total of the expenses associated with the sale of PID Bonds, including such items as underwriter’s discount, if any, and financial advisory, bond counsel, other counsel and rating agency fees, printing costs, and other expenses relating to the sale of the PID Bonds.

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

“Bond Proceeds” has the meaning given to them in Section 6.01(a) hereof.

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

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

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

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

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

“Construction Management Fee” means 4% of the costs incurred by or on behalf of Owner for the construction of each Segment.

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

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

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

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

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

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

“Future Bonds Test” means the additional investment and underwriting criteria which must be met prior to the issuance of PID Bonds (other than the PID Bonds that are being issued concurrently herewith) which are more particularly described in an Indenture.

“Future Improvement Area Bonds” means bonds issued to fund Authorized Improvements (or a portion thereof) in a Future Improvement Area. In connection with the Future Improvement Area Bonds, Assessments will be levied only on Parcels located within the Future Improvement Area in question.

“Future Improvement Areas” means the property within the District, excluding Improvement Area #1, as depicted on the map on Exhibit B-4 consisting of approximately _____ acres within the District. Future Improvement Areas may be developed in phases after Improvement Area #1, as generally depicted in Exhibit B-4. The Future Improvement Areas are subject to adjustment and are shown for example only.

“Improvement Area #1” means the initial area to be developed within the PID, consisting of approximately ____ acres within the District and as specifically described in **Exhibit B** and as depicted in **Exhibit B-4**.

“Improvement Area #1 Bonds” means the “City of Kyle, Texas, Assessment Revenue Bonds, Series 2018 (Blanco River Ranch Public Improvement District Improvement Area #1 Project)” that are secured by actual revenues received by or on behalf of the City from the collection of Assessments levied against Improvement Area #1 Assessed Property, or the Annual Installments thereof, for the Improvement Area #1 Improvements.

“Improvement Area #1 Improvements” means (i) the pro rata portion of the Major Improvements that benefit the entire District, allocable to Improvement Area #1, and (ii) the Authorized Improvements which only benefit the Improvement Area #1 Assessed Property and are described in Section III.A. of the Service and Assessment Plan, and which are to be financed with Improvement Area #1 Bonds.

“Improvement Area #1 Reimbursement Obligation” means the \$3,710,000 secured by Improvement Area #1 Assessed Property to be paid to Owner pursuant to the “Blanco River Ranch Public Improvement District Improvement Area #1 Acquisition and Reimbursement Agreement” with an effective date of _____.

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

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

“Initial Reimbursement Payment” has the meaning given in Section 4.02(g) of this Agreement.

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

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

“Major Improvements” means both onsite and offsite Authorized Improvements which benefit Improvement Area #1 as well as Future Improvement Areas, and as further described in attached Exhibit F.

“Nonbenefited Property” means Parcels within the boundaries of the District that accrue no special benefit from the Authorized Improvements, including Owners Association Property, Public Property.

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

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

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

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

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

“Owner Expended Funds” has the meaning given in Section 4.03(c).

“Parcel” means a property identified by either a tax map identification number assigned by the Hays Central Appraisal District for real property tax purpose, by metes and bounds description, by lot and block number in a final subdivision plat recorded in the Official Public Records of Hays County, or by any other means determined by the City.

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

“Payment Request” means the Certification for Payment.

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

“PID Bond Ordinance” means and refers to the ordinance(s) of the City Council that will authorize and approve the issuance and sale of the PID Bonds and provide for their security

and payment, either under the terms of the bond ordinance or a trust indenture related to the PID Bonds.

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

“PID Bonds” means the bonds to be issued by the City, in one or more series, to finance the Authorized Improvements that confer special benefit on the Property, which may include funds for any required reserves and amounts necessary to pay the PID Bond Issuance Costs, and to be secured by a pledge of the Assessments pursuant to the authority granted in the PID Act, for the purposes of (i) financing the costs of Authorized Improvements and related costs, and (ii) reimbursement for Actual Costs paid prior to the issuance of and payment for the PID Bonds. This term is used to collectively refer to the Improvement Area #1 Bonds and the Future Improvement Area Bonds throughout this SAP.

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

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

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

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

“Project Engineer” means the civil engineer or firm of civil engineers selected by the Owner to perform the duties set forth herein, which is currently Kimley-Horn and Associates.

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

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

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

“Regulatory Requirements” means the requirements and provisions of any state or federal law, and any permits, rules, orders or regulations issued or adopted from time to time by

any regulatory authority, state, federal or other, having jurisdiction over the Authorized Improvements, as adjusted by the Development Agreement.

“Reimbursement Payment” has the meaning given in Section 4.03(c).

“SAP Consultant” means PIDWorks, LLC.

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

“Service and Assessment Plan” means the Blanco River Ranch Public Improvement District Service and Assessment Plan (as such plan is amended and updated from time to time), to be initially adopted by the City Council in the Assessment Ordinance for the purpose of assessing allocated costs against property located within the boundaries of the District having terms, provisions, and findings approved and agreed to by the Owner, as required by Article II of this Agreement.

“Subdivision Ordinance” means the Hays County Subdivision and Development Regulations in effect as of the Effective Date.

“Tax Certificate” shall have the meaning given in Section 6.01(a) hereof.

“Tax Code” means the Internal Revenue Code of 1986, as amended, including applicable regulations, published rulings and court decisions.

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

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

“Trustee” means the trustee (or successor trustee) under an Indenture.

“Underwriter” means _____, or its successor.

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

Exhibits “B-1”

PROPERTY DESCRIPTION FOR PROJECT

Exhibit “B-4”

IMPROVEMENT AREAS

Exhibit “C”

FORM OF SERVICE AND ASSESSMENT PLAN

[See Attached]

Exhibit “D”

MAJOR IMPROVEMENTS

[illegible]

EXHIBIT "E"
FORM OF CERTIFICATION FOR PAYMENT
(Blanco River Ranch)

_____ ("**Construction Manager**")
hereby requests payment for the Actual Cost of the work (the "Draw Actual Costs") described in attached Attachment A. Capitalized undefined terms shall have the meanings ascribed thereto in the Blanco River Ranch Public Improvement District Financing Agreement between HMBRR Development, Inc., and HMBRR, L.P. (the "**Owner**"), and the City of Kyle, Texas (the "**City**"), dated as of _____ (the "**Finance Agreement**"). In connection with this Certification for Payment, the undersigned, in his or her capacity as the _____ of Construction Manager, to his or her knowledge, hereby represents and warrants to the City as follows:

1. He (she) is an authorized representative of Construction Manager, qualified to execute this request for payment on behalf of the Construction Manager and knowledgeable as to the matters forth herein.
2. The true and correct Draw Actual Costs for which payment is requested is set forth in Attachment A and payment for such requested amounts and purposes has not been subject to any previously submitted request for payment.
3. Attached as Attachment B is a true and correct copy of a bills paid affidavit evidencing that any contractor or subcontractor having performed work on a Segment described in Attachment A has been paid in full for all work completed through the previous Certification for Payment.
4. Attached 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 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 Draw Actual Costs of each Segment described in Attachment A have been reviewed, verified, and approved by the City Construction Representative. Payment of the Draw Actual Costs of each such Segment is hereby approved.

Date: _____

CITY OF KYLE, TEXAS

By: _____

ATTACHMENT A TO CERTIFICATION OF PAYMENT

<u>Segment</u>	<u>Description of Work Completed under this Certification for Payment</u>	<u>Draw Actual Costs</u>
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ATTACHMENT B TO CERTIFICATION OF PAYMENT

[attached – bills paid affidavit]

ATTACHMENT C TO CERTIFICATION OF PAYMENT

[attached – receipts]

Exhibit “F”

IMPROVEMENT AREA #1 IMPROVEMENTS

[To be provided prior to prior to or simultaneously with issuance of Improvement Area #1 Bonds.]

Exhibit "G"

FORM OF CLOSING DISBURSEMENT REQUEST

The undersigned is a lawfully authorized representative for HMBRR Development, Inc., and HMBRR, L.P. (the "**Owner**"), and requests payment from the Costs of Issuance Account of the Project Fund (as defined in the Blanco River Ranch Public Improvement District Financing Agreement) from _____ (the "**Trustee**") in the amount of _____ (\$_____) to be transferred from the Cost of Issuance Account of the Project Fund upon the delivery of the [_____] Bonds] for costs incurred in the establishment, administration, and operation of the Blanco River Ranch Public Improvement District (the "**District**"), as follows.

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

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

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

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

[insert itemized list of costs here]

TOTAL REQUESTED: \$_____

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

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

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

Payments requested hereunder shall be made as directed below:

[Information regarding Payee, amount, and deposit instructions]

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

By:

By: _____

Name: _____

Title: _____

APPROVAL OF REQUEST BY CITY

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

CITY OF KYLE, TEXAS

By: _____
Name: _____
Title: _____

Exhibit “H”

ACQUISITION AND REIMBURSEMENT AGREEMENT

[See Attached]

**BLANCO RIVER RANCH PUBLIC IMPROVEMENT DISTRICT
ACQUISITION AND REIMBURSEMENT AGREEMENT**

This Blanco River Ranch Public Improvement District Acquisition and Reimbursement Agreement (this “Agreement”) is executed between HMBRR Development, Inc., a Texas corporation, HMBRR, LP, a Texas limited partnership, and HMBRR, LP #2, a Texas limited partnership (including their designated successors and assigns, the “Owner”) and the City of Kyle, Texas (the “City”) to be effective _____, 20__ (collectively, the “Parties”).

RECITALS

WHEREAS, on June 6, 2017, the Kyle City Council (the “City Council”) passed and approved a resolution (the “Creation Resolution”) authorizing the creation of the Blanco River Ranch Public Improvement District (the “PID” or “District”) covering approximately 858.7 acres of land described by a map thereof in the Creation Resolution (the “District Property”); and

WHEREAS, on _____, 2017, the City Council approved the Blanco River Ranch Public Improvement District Financing Agreement by and between the Owner and City (the “PID Financing Agreement”);

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

WHEREAS, Assessments have been levied against the Assessed Property within the District for the construction of the Authorized Improvements in accordance with the Blanco River Ranch Public Improvement District Service and Assessment Plan (as the same may be amended or updated from time to time, the “SAP”) which was originally approved by the City Council on _____, 2018; and

WHEREAS, the SAP recommended an assessment be levied against the District Property in the amount of \$ _____ (the “Assessment”); and

WHEREAS, the SAP recommended that each of the lots within District Property be assessed \$ _____; and

WHEREAS, the PID Financing Agreement between the Owner and the City states that certain Authorized Improvements are intended to be constructed pursuant to one or more Acquisition and Reimbursement Agreements and paid for by the Owner prior to the issuance of PID Bonds intended to fund such Authorized Improvements and that the funding of such improvements will be governed by the applicable Acquisition and Reimbursement Agreement and Article IV of the PID Financing Agreement; and

WHEREAS, Owner is ready to commence the design and/or construction of the Authorized Improvements (herein so called) which are more particularly described in the SAP and on the attached Exhibit A; and

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

WHEREAS, the Parties intend that the Repayment Amount (defined below) shall be reimbursed to Owner from (i) the Assessment Reimbursement Fund, and/or (ii) the net proceeds of PID Bonds issued by the City and secured by the Project Fund; 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 in the “WHEREAS” clauses of this Agreement are true and correct, and are incorporated as part of this Agreement for all purposes.
2. Assessment Reimbursement Fund.
 - (a) When PID Bonds are issued, the City shall bill, collect, and deposit into the Pledged Revenue Fund of the Indenture all Assessment Revenue constituting “pledged revenues” as defined in the Indenture.
 - (b) When PID Bonds have been defeased, the City shall bill, collect, and immediately deposit the Assessments collected into an Assessment Reimbursement Fund (excluding Administrative Expenses and Delinquent Collection Costs). Funds in the Assessment Reimbursement Fund shall only be used to pay Costs of the Authorized Improvements in accordance with this Agreement.
3. Repayment Amount. Subject to the terms, conditions, and requirements contained herein, the City agrees to reimburse the Owner, and the Owner shall be entitled to receive from the City, the amount equal to the Actual Cost of the Authorized Improvements (the “Repayment Amount”) plus interest on the unpaid balance in accordance with the terms of this Agreement until _____, 20____ (the “Maturity Date”); provided, however, the Repayment Amount shall not exceed \$_____. The Repayment Amount shall be payable to the Owner solely from: (i) the Assessment Revenues deposited in the Assessment Reimbursement Fund; (ii) the net proceeds (after payment of costs of issuance) of PID Bonds issued by the City and secured by the Assessment Revenues; or (iii) a combination of items (i) and (ii). The Repayment Amount is authorized by the Act, was approved by the City Council, and represents the total costs to be assessed against the Assessed Property for the Authorized Improvements which, upon completion, will be dedicated in fee and accepted by the City or County, pursuant to the terms of the PID Financing Agreement. The unpaid

Repayment Amount shall bear simple interest per annum at the rate of (x) ____ % for years one through five and (y) ____ % for years six through the Maturity Date or until PID Bonds are sold, whichever is earlier. If any portion of the Repayment Amount remains unpaid after the City has elected to sell PID Bonds, the interest rate paid to the Owner shall be the same as the interest rate on the PID Bonds; however, such rate shall not exceed ____ %. 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 the Owner and secured under this Agreement solely as described herein. No other City funds, revenue, taxes, income, or property shall be used even if the Unpaid Balance is not paid in full at the Maturity Date. The City acknowledges and agrees that until the Unpaid Balance is paid in full, the obligation of the City to use the Assessment Reimbursement Fund to pay the Unpaid Balance to Owner is absolute and unconditional and that the City does not have, and will not assert, any defenses to such obligation.
5. City Collection Efforts. The City will use all reasonable efforts to receive and collect Assessment Revenue concurrently with the collection of City ad valorem taxes (including the foreclosure of liens resulting from the nonpayment of the Assessments, or other charges due and owing under the SAP), and upon receipt and collection, immediately deposit the same into the Assessment Reimbursement Fund. 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 Agreement. This Agreement and/or any of 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 the net proceeds of the PID Bonds.
6. Process for Payment from the Assessment Reimbursement Fund. After completion of design or construction of the Authorized Improvements, Owner may submit (but not more frequently than monthly) to the City a written request for payment from the Assessment Reimbursement Fund in the form attached hereto as Schedule 1 (each a “Payment Request”) to disburse all or a portion of the Assessment Reimbursement Fund to pay for the cost of constructing the Authorized Improvements. Each Payment Request shall designate the Authorized Improvements (or portion thereof) to which the Payment Request pertains. This process will continue until the Unpaid Balance is paid in full, whether through the issuance of PID Bonds or not.
7. Issuance of PID Bonds. The City intends to issue PID Bonds to reimburse the Developer for the Unpaid Balance. If the PID Bonds are not sufficient to fully reimburse the Developer for the Unpaid Balance, then, in addition to receiving the net proceeds of the PID Bonds, the Owner may continue to receive the Periodic Repayment Amounts from eligible accounts and

funds established in the Indenture.. Furthermore, if the Owner has still not received the entire Unpaid Balance after the foregoing actions, then, the City intends to issue Additional PID Bonds to reimburse Owner for the Unpaid Balance. In the case where net proceeds of the PID Bonds do not cover the entire Unpaid Balance, then PID Bonds Assessment Revenues shall first be used to service the PID Bonds and then to reimburse Owner for the Unpaid Balance in accordance with the Indenture. The Parties acknowledge that the approval of the issuance of any PID Bonds by the City Council is a governmental function within the City Council's sole discretion.

8. Termination. Once all payments paid to the Owner under this Agreement (including net proceeds of PID Bonds) equal the Unpaid Balance, this Agreement shall terminate; provided, however that if on the Maturity Date, after application of the net proceeds of any PID Bonds, any portion of the Unpaid Balance remains unpaid, such Unpaid Balance shall be canceled and for all purposes of this Agreement shall be deemed to have been conclusively and irrevocably PAID IN FULL; if any Assessment Revenue remains 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 the Owner and applied to the Unpaid Balance in accordance with the Indenture.
9. Nonrecourse Obligation. The obligations of the City under this Agreement are nonrecourse and payable only from (i) Assessments, or (ii) net proceeds of PID Bonds; such obligations do not create a debt or other obligation payable from any other City revenues, taxes, income, or property. None of the City or any of its elected or appointed officials or any of its employees shall incur any liability hereunder to the Owner or any other party in their individual capacities by reason of this Agreement or their acts or omission under this 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 the proceeds of any PID Bonds to pay the Unpaid Balance and to pledge the Assessment Revenues as security for such bonds, other than the City's right to pay costs of issuance of such bonds, costs of collection and administration, and/or other costs incurred by the City relating to the Authorized Improvements. As applicable, the City agrees to transfer such portion of the Assessment Revenues to the Trustee under the 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 Agreement against any person or entity involved in the design, construction, or installation of the Authorized Improvements.
12. Amendment for Additional PID Bonds. If Additional PID Bonds are issued in the future, the Owner and City agree to amend this Agreement (if required or reasonably necessary) to adjust defined terms and/or other applicable provisions.

13. Governing 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 to the terms hereof, the substantive laws of the State of Texas shall govern the validity, construction, enforcement, and interpretation of this Agreement. In the event of a dispute involving this Agreement, venue for such dispute shall lie in any court of competent jurisdiction in Hays County, Texas.
14. Notice. Any notice required or contemplated by this 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: Scott Sellers
 City Manager
 City of Kyle
 100 W. Center St.
 Kyle, Texas 78640
 Facsimile: (512) _____

If to Owner: Blake Magee
 1011 North Lamar Blvd.
 Austin, Texas 78703
 Facsimile: (512) 481-0333

With a copy to: Armbrust & Brown, PLLC
 Attn: Sharon Smith
 100 Congress Avenue, Suite 1300
 Austin, Texas 78701
 Facsimile: (512) 435-2360

15. Invalid Provisions. If any provision of this Agreement is held invalid by any court, such holding shall not affect the validity of the remaining provisions, and the remainder of this Agreement shall remain in full force and effect.
16. Exclusive Rights of Owner. Owner's right, title and interest into the payments of Repayment Amounts, as described herein, shall be the sole and exclusive property of Owner (or its Transferee) and no other third party shall have any claim or right to such funds unless Owner transfers its rights to its Unpaid Balance to a Transferee in writing and otherwise in accordance with the requirements set forth herein. Subject to the terms of Section 17 hereof, Owner has the right to collaterally convey, transfer, assign, mortgage, pledge, or otherwise encumber, in whole or in part, all or any portion of Owner's right, title, or interest under this Agreement including, but not limited to, any right, title or interest regarding receipt of payments of Owner in and to payment of its Unpaid Balance (a "Transfer," and the person or

entity to whom the transfer is made, a “Transferee”). Further, any sale of a portion of the Property or assignment of any right hereunder shall not be deemed a Transfer unless the conveyance or transfer instrument effecting such sale or assignment expressly states that the sale or assignment is deemed to be a Transfer. No Transfer shall be effective until written notice of the Transfer, including the name and address of the Transferee, is provided to the City. The City may rely conclusively on any written notice of a Transfer provided by Owner without any obligation to investigate or confirm the Transfer.

17. Assignment.

- (a) Subject to subparagraph (b) below, Owner may, in its sole and absolute discretion, assign this Agreement with respect to all or part of the Property from time to time to any third party. Owner shall provide the City thirty (30) days prior written notice of any such assignment. Upon such assignment or partial assignment, Owner shall be fully released from any and all obligations under this Agreement and shall have no further liability with respect to this Agreement for the part of the Project so assigned. The City, may, in its discretion, determine that an assignee is an “Obligated Person,” for the purposes of compliance with 17 C.F.R. § 240.15c2-12 (f)(10). For the purposes of 17 Code of Federal Regulations 240.15c2-12 and municipal securities disclosure, an assignee under this section 17(a) is an “Obligated Person” to the extent the assignee meets the definition of “Obligated Person” in the Owner Continuing Disclosure Agreement.
- (b) Any sale of a portion of the Property or assignment of any right hereunder shall not be deemed a sale or assignment to a Designated Successor or Assign unless the conveyance or transfer instrument effecting such sale or assignment expressly states that the sale or assignment is to a Designated Successor or Assign.
- (c) “Designated Successors and Assigns” shall mean (i) an entity to which Owner assigns (in writing) its rights and obligations contained in this Agreement pursuant to Section 16; (ii) any entity which is the successor by merger or otherwise to all or substantially all of Owner’s assets and liabilities including, but not limited to, any merger or acquisition pursuant to any public offering or reorganization to obtain financing and/or growth capital; or (iii) any entity which may have acquired all of the outstanding stock or ownership of assets of Owner.

18. Right to Designate Right to Receive Payments. The Owners, in its sole discretion, may designate, by written notice to the City, which party comprising the Owner will receive payments under this Agreement, and if payments are to be allocated between more than one such Owner, what percentage or amount is payable to each such Owner party.

19. Failure; Default; Remedies.

- (a) If either Party fails to perform an obligation imposed on such Party by this 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 nonperforming Party, the other Party shall notify the nonperforming Party in writing specifying in reasonable detail the nature of the Failure.

The nonperforming 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 nonperforming Party has diligently pursued a cure within such 30-day period and has provided written notice to the other Party 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 nonperforming Party is diligently pursuing a cure.

- (b) If the Owner is in Default, the City's sole and exclusive remedy shall be to seek specific enforcement of this Agreement. No Default by the Owner, however, shall: (1) affect the obligations of the City to use the net proceeds of the PID Bonds as provided in Sections 6 and 7 of this Agreement; or (2) entitle the City to terminate this 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 Agreement.

20. Miscellaneous.

- (a) 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.
- (b) The City does not waive or surrender any of its governmental powers, immunities, or rights except to the extent permitted by law and necessary to allow the Owner to enforce its remedies under this Agreement.
- (c) Nothing in this Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or entity other than the City and the Owner any rights, remedies, or claims under or by reason of this Agreement, and all covenants, conditions, promises, and agreements in this Agreement shall be for the sole and exclusive benefit of the City and the Owner.
- (d) This Agreement may be amended only by written agreement of the Parties.
- (e) This Agreement may be executed in counterparts, each of which shall be deemed an original.

[Signature pages to follow]

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

CITY OF KYLE, TEXAS

By: _____
Name: _____
Title: _____

[Signatures Continue on Next Page]

HMBRR DEVELOPMENT, INC.,
a Texas corporation

By: _____
Blake J. Magee, President

HMBRR, LP, a Texas limited partnership

By: Hanna Magee GP #1, Inc., a Texas
corporation, its General Partner

By: _____
Blake J. Magee, President

HMBRR, LP #2, a Texas limited partnership

By: Hanna Magee GP #1, Inc., a Texas
corporation, its General Partner

By: _____
Blake J. Magee, President

Exhibit A

Authorized Improvements

Schedule 1

Form of Payment Request

[Insert example from Financing Agreement]