

KYLE 57 PUBLIC IMPROVEMENT DISTRICT
FINANCING AGREEMENT

BETWEEN

KYLE 57 DEVELOPMENT, INC
AND

THE CITY OF KYLE, TEXAS

KYLE 57 PUBLIC IMPROVEMENT DISTRICT
FINANCING AGREEMENT

This Kyle 57 Public Improvement District Financing Agreement (this “**Agreement**”), dated as of October 4, 2021, (the “**Effective Date**”), is entered into between KYLE 57 DEVELOPMENT, INC, a Texas corporation and/or its assigns (including its Designated Successors and Assigns, the “**Owner**”), and the CITY OF KYLE, TEXAS (the “**City**”), a home rule municipal corporation, acting by and through its duly authorized representative.

Recitals:

WHEREAS, Owner owns a total of approximately 57.293 acres of land located in Hays County, Texas, including an estimated 53.7-acre tract (“**Residential Tract**”) and an estimated 3.3-acre tract (“**Commercial Tract**”), as more particularly described by metes and bounds on the attached Exhibit “B” (the Residential Tract and the Commercial Tract together referred to herein as the “**Property**”);

WHEREAS, the City has adopted Ordinance No. 1133 establishing a Planned Unit Development District (as may be amended, the “**PUD**”) for the Property;

WHEREAS, it is intended that the Property will be developed as a single family residential and commercial development in accordance with the PUD and District approval (the “**Project**”);

WHEREAS, the City Council authorized the formation of the Kyle 57 Public Improvement District pursuant to Resolution No. 1249 (the “**District**”) on September 7, 2021, 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 within 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 donate some of those improvements to the City in accordance with the terms and provisions of this Agreement;

WHEREAS, the City intends to (after approval of, 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 the Assessment Ordinance (as defined in Exhibit “A”) and adopt the Service and Assessment Plan (as defined in Exhibit “A”) that provides for the construction and financing of certain public improvements 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 for payment of costs associated with construction and/or

acquisition of the Authorized Improvements (as defined in Exhibit “A”) included in the Service and Assessment Plan, as such plan may be amended from time to time;

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;

WHEREAS, from the proceeds of the PID Bonds, the City will, upon satisfaction of the conditions and in accordance with the terms set forth in this Agreement, acquire those certain Authorized Improvements provided for in this Agreement and the Owner will be paid or repaid or reimbursed for the costs of acquisition, construction, and improvement of the Segments (as defined in Exhibit “A”) that are completed from time to time and operative, subject to the terms and limitations set forth herein; and

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

ARTICLE I. SCOPE OF AGREEMENT

This Agreement establishes provisions for the apportionment, levying, and collection of Assessments on the Property (Article II), the Construction of Authorized Improvements to be Acquired by the City (Article III), reimbursement and/or advancement of construction funds for the PID Bonds and acquisition, ownership 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 Exhibit “A” attached hereto and made a part hereof and in the Service and Assessment Plan.

ARTICLE II. APPORTIONMENT, LEVY AND COLLECTION OF ASSESSMENTS

Section 2.01. Preliminary Matters

(a) On September 7, 2021, the City authorized the formation of the District in Resolution No. 1249. The District includes all of the Property.

(b) The Property may be developed in phases in accordance with the phasing plan approved by the City (the “**Phasing Plan**”). It is anticipated that all of the Authorized Improvements that will be constructed will benefit the entire District. As such, it is currently contemplated that there will be one series of bonds issued for the entire District, the “**PID Bonds**” (as further defined in Exhibit “A”);

(c) A draft of the form of the initial Service and Assessment Plan for the Property is attached hereto as Exhibit “C”. The Owner acknowledges and agrees that the Service and Assessment Plan must meet the requirements of Texas Local Government Code §§ 372.013 and 372.014 and be presented to the City Council for review and approval prior to PID Bonds being

issued. The final Service and Assessment Plan approved pursuant to the initial Assessment Ordinance shall be substantially similar to the form attached hereto as “Exhibit “C”” and shall be substituted for and replace Exhibit “C” hereto. The Parties agree that the attached Service and Assessment Plan is based on information provided by the Owner and that such information is subject to review and verification. The form of the Service and Assessment Plan will be modified as required to comply with the requirements of Chapter 372, Texas Local Government Code and the Texas Attorney General’s Office. The annual indebtedness defined by the Service and Assessment Plan shall be consistent with the terms for the issuance of PID Bonds as set forth in this Agreement. The estimated cost of the public improvements will be supported by an engineer’s report containing detailed costs estimates. The Owner shall further reasonably demonstrate that the Owner has or will have adequate funding to timely complete the portions of the Authorized Improvements and Subdivision Improvements that will not be paid for or reimbursed by PID Bonds or Assessments. After approval, the Service and Assessment Plan will be updated and amended by the Administrator at least once per year, and submitted for the City Council’s review and approval.

(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.

(e) Assessments on any given portion of the Property may be adjusted so long as the Assessments are determined in accordance with the Service and Assessment Plan.

(f) The District will fund no more than \$8,000,000 in Authorized Improvements, including Bond Issuance and financing costs.

(g) As consideration for the creation of the District, levy of Assessments and issuance of PID Bonds by the City, Owner agrees to provide the following public community benefits for dedication to the City:

1. Owner agrees to dedicate up to 6 acres to the City of publicly dedicated, privately maintained parkland, which will be further illustrated and described on the applicable final plat.
2. Owner agrees to construct and dedicate the following public trails to the City:
 - 2,970 feet of twelve foot (12’) wide trails, to be consistent with the City’s trail master plan.
 - 1,705 feet of 6’ wide trails
 - 1,692 feet of 4’ wide trails
3. Owner will be obligated to cause the electric and telecommunications facilities located adjacent to and abutting the full length of the Owner’s property boundary along FM 150 to be relocated underground on the Owner’s property boundary along FM 150, and shall remove the existing above-ground electric and telecommunications infrastructure (the “Undergrounding Work”). The Owner anticipates completion of the Undergrounding Work within one (1) year of the issuance of the PID Bonds. To guarantee completion of the Undergrounding Work,

notwithstanding any other term or condition contained herein to the contrary, the City will retain one million dollars (\$1,000,000.00) from the PID Bond proceeds until completion and acceptance of the Undergrounding Work. In the event that the Developer fails to complete the Undergrounding Work within two and one-half years of the issuance of the PID Bonds, the \$1,000,000.00 will be forfeited and the City will use the \$1,000,000.00 to pay debt service on the PID Bonds and reduce the Assessment. For the avoidance of doubt, the City and the Owner hereby agree that PID Bond proceeds shall be used only for Authorized Improvements and also agree that no portion or amount of the PID Bond proceeds shall be used for the Undergrounding Work.

4. Owner will provide additional screening and beautification of the FM 150 pump station, along with cost participation in its construction, which will be an Authorized Improvement under this Agreement.

(h) As consideration for the creation of the District, levy of Assessments and issuance of PID Bonds by the City, Owner agrees to provide the following private community benefits:

1. Owner agrees to construct and provide a playground, dog park, multiple gravel picnic/lounge areas, plantings, sod, and oak mott preservation.
2. Owner agrees to construct a 6 foot high masonry wall along the portion of FM 150 located within the Property.
3. Owner shall construct primary entry monumentation with masonry, corten steel, lighting features, and landscaping.
4. Owner shall construct 1 acre private amenity site with pool, sun shelf, lawn, lounge and activity areas, shade structures, and restrooms.

(i) The Property shall be subject to an Owners' Association assessment for the provision of authorized services within the District as set forth in Section 3.09 and as required by the Subdivision Ordinance and plat notes that appear on final plats for the Property.

(j) Promptly following submission to the City of an Service and Assessment Plan (or any subsequent amendment or supplement to the Service and Assessment Plan) acceptable in form and substance to the City, 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 orders required to effectuate and implement the Service and Assessment Plan and Assessment Ordinance.

Section 2.02. Apportionment and Levy of Assessments.

As stated above, 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 as an Assessment Ordinance is approved by the City. The City's apportionment and levy of Assessments shall be made in accordance with the PID Act.

Section 2.03. Collection of Assessments.

(a) The City covenants and agrees that it shall, as authorized by the PID Act and other applicable law, continuously collect or cause to be collected Assessments levied pursuant to 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; provided that certain portions of the Property, as defined in the Service and Assessment Plan, will not be subject to the Assessments. The City shall use good and sound practices to collect the Assessments consistent with the City's policies and standard practices applicable to the collection of City taxes and assessments.

(b) Notwithstanding anything to the contrary contained herein or in the Service and Assessment Plan, the Assessment Revenues collected annually from the Property will be deposited in the Bond Pledged Revenue Account of the Pledged Revenue Fund and thereafter transferred as more particularly set forth in the Indenture.

(c) Further notwithstanding anything to the contrary contained herein, the City covenants to use diligent, good faith efforts to contract with Hays County for the collection of the Assessments such that the Assessments will be included on the ad valorem tax bill(s) for the Property and will be collected as part of and in the same manner as ad valorem taxes.

Section 2.04. Landowner Consent and Recordation of Assessments.

(a) Concurrently with the levy of the Assessments on the Property, the Owner shall execute (and shall cause any other owner of any of the Assessed Property to execute) a Landowner Certificate (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 Certificate 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 Assessed Property to the Assessments, including applicable interest thereon, as and when due and payable thereunder and (ii) provide that subsequent purchasers of such land take their title subject to and expressly assume the terms and provisions of the Assessments; and (b) provide that the liens created by the levy of the Assessments are a first and prior lien on the Assessed Property, subject only to liens for ad valorem taxes of the State or municipality (if any), County, school district, special district or other political subdivision. A form of the Landowner Certificate is attached hereto as Exhibit "F".

(b) After the City Council approves a Service and Assessment Plan and any subsequent updates or amendments thereto, the City shall file a copy of the Service and Assessment Plan or

the updates and amendments thereto with the County Clerk of Hays County, Texas (the “County Clerk”) in accordance with the PID Act. The Service and Assessment Plan, including any annual update thereto, will include the notice form required by Section 5.014 of the Texas Property Code (the “Section 5.014 Notice”). The fees associated with filing the original Service and Assessment Plan with the County Clerk shall be paid by the Owner. The fees associated with filing any updates or amendments to the Service and Assessment Plan with the County Clerk shall be paid as an Annual Collection Costs.

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

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

Section 2.05. Actual Costs

(a) Notwithstanding anything to the contrary contained herein, the City and Owner hereby acknowledge and agree that the costs expended by Owner to complete the Authorized Improvements will not be fully reimbursed from the PID Bonds. Owner shall only be reimbursed from the proceeds of the PID Bonds and shall not seek further reimbursement from Assessment Revenues.

(b) The Owner reimbursement provisions contained in this Section 2.05 shall not, under any circumstances, give rise to or create a charge against the general credit or taxing power of the City or a debt or other obligation of the City payable from any source other than net proceeds from the PID Bonds and Assessment Revenues.

(c) Owner’s right, title, and interest to the payments of unreimbursed Actual Costs shall be the sole and exclusive property of Owner (or its Transferee, as defined in this subsection 2.05(c) and no other third party shall have any claim or right to such funds unless Owner transfers its rights to its unreimbursed Actual Costs to a Transferee in writing and otherwise in accordance with the requirements set forth herein. Subject to the terms of Section 8.03 hereof, Owner has the right to 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 in and to payment of its unreimbursed Actual Costs (a “**Transfer**,” and the person or entity to whom the transfer is made, a “**Transferee**”). The Owner waives all rights or claims against the City for any funds paid to a third party as a result of a Transfer for which the City received notice. The foregoing notwithstanding, no Transfer of payments hereunder may be pledged to the payment of debt service on public securities issued by any state of the United States or any political subdivision

thereof without the approval of the City Council. Notwithstanding the foregoing, no Transfer shall be effective until written notice of the Transfer, including the name and address of the Transferee, is provided to the City. The City may rely conclusively on any written notice of a Transfer provided by Owner without any obligation to investigate or confirm the Transfer.

Section 2.06. Obligations Secured by Pledged Revenues.

THE PID BONDS ARE LIMITED, 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

(a) As of the Effective Date hereof, some of the Authorized Improvements have been designed.

(b) The Owner will dedicate the public improvements identified in Exhibit “D” and the Service and Assessment Plan to the City upon completion of said Authorized Improvements and the City will accept dedication of such Authorized Improvements, except as provided in subsection 3.01(c) hereof, after confirming that the applicable Authorized Improvements have been completed in accordance with this Agreement and the Subdivision Ordinance and after receiving the documents and information required by Chapter 41, Article II of the Subdivision Ordinance.

(c) Section 41-53 of the Subdivision Ordinance shall govern the procedure for inspection, dedication, and acceptance of the Authorized Improvements. In the event any Authorized Improvements are dedicated to an Owners’ Association, the Owner shall execute and deliver to the City an easement and restrictive covenant agreement providing for the public use and control of the Authorized Improvement using the City’s standard forms for improvements funded by public improvement districts.

Section 3.02. 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, subject to the City's review and approval of design specifications and easement locations.

(b) Inspection of the construction of all Authorized Improvements shall be by City Construction Representative or its designees. If the PID Bonds have not been issued, the Owner shall pay the inspection fee which shall be included in the Actual Cost and may later be reimbursed to Owner when PID Bonds are issued. If the PID Bonds have been issued, the Owner may pay the inspection fee out of the PID Bond proceeds.

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

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

Section 3.03. 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, partnership or other entity as a subcontractor for construction management services for one or more Authorized Improvements or distinct Segments thereof.

Section 3.04. Fiscal Security

If prior to commencement of construction of a given Authorized Improvement, there are funds within the Project Fund of the Indenture sufficient to pay for completion of that Authorized Improvement, it is intended that the Owner not be required to post fiscal security as required by the Subdivision Ordinance for the applicable Authorized Improvement; provided however, a payment and performance bond (as described in Section 3.08(d) below) will still be required. 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 a payment bond for the estimated cost of constructing the Authorized Improvements. The Owner shall give the City a copy of any such claims within three business days of receipt of the claim. The City acknowledges that it will accept fiscal security, if required, for the Authorized Improvements in the form of an irrevocable letter of credit, surety bond, cash deposit, or other security acceptable to the City, including a lender set-aside letter. If no such account exists or such account is not appropriately funded, then the Owner shall be required to post fiscal security for Authorized Improvements in accordance with Section 11 of the Subdivision Ordinance. No final plat for the Property may be approved unless either: a) the Authorized Improvements and the Subdivision Improvements required for the property subject to the final plat have been completed; or b) Owner has posted fiscal surety with the City in an amount equal to 110% of an amount equal to the difference between the amount held in the Project Fund and the

estimated cost to complete the Authorized Improvements, and the Owner has posted any fiscal surety required by the Subdivision Ordinance to guarantee the completion of the Subdivision Improvements required for the property subject to the final plat.

Section 3.05. 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 City. The City's acceptance of Authorized Improvements shall be in accordance with the City standard rules and procedures for the acceptance of subdivision improvements, as modified by this Agreement. 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 City of an Authorized Improvement (or Segment thereof), the Owner shall assign to the City 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) and shall provide the City with the items set forth in Subsections 41-53(h) and (j) of the Subdivision Ordinance.

Section 3.06. Reserved.

Section 3.07. Regulatory Requirements

(a) Notwithstanding anything to the contrary contained herein, the Owners shall be responsible for the costs of designing, constructing, and obtaining the City's acceptance of the Authorized Improvements and the Subdivision Improvements, in accordance with applicable local, state, and federal regulations, the City-approved plans and specifications, and good engineering practices. The Owner will be entitled to reimbursement for the Actual Costs of the Authorized Improvements as provided in this Agreement and any other agreement with the City and subject to the terms and limitations of said agreements; provided that Owner will be responsible for the costs that exceed the authorized reimbursement amounts. Once Owner begins construction of any Authorized Improvement or Segment thereof, Owner shall complete said Authorized Improvement or Segment thereof within timeframes required, if any, for completion of public infrastructure set forth in the Subdivision Ordinance.

(b) It is agreed that the District will be exempt from any public bidding or other purchasing and procurement policies pursuant to Texas Local Government Code Section 252.022(a)(9) which states that a project is exempt from such policies regarding "paving, drainage, street widening, and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through assessments levied on property that will benefit from the improvements."

(c) 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 3.08. 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 commencing construction of any such Authorized Improvements, the Project Engineer shall review all plans and specifications, construction contract and related materials for the applicable Authorized Improvement, and shall certify to the Owner, City, and Trustee that the amount of funding under the PID Bonds (as specified in the Service and Assessment Plan and Indenture), including but not limited to the fiscal security referenced in Section 3.04 above, is sufficient to fund the full cost of design and construction of the applicable Authorized Improvements (but excluding any Construction Management Fees or contingencies as set forth in the Service and Assessment Plan).

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

(c) All change orders or costs increases for 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; provided that no change order (regardless of the amount) shall substantially change the character or nature of the Authorized Improvement. The Construction Manager shall provide copies of all approved change orders to the Financial Advisor, Underwriter, and Trustee within ten (10) days after approval.

(d) After the Effective Date and prior to commencement of construction of an Authorized Improvement, Owner shall cause its general contractor to provide a payment and performance bond meeting the requirements set forth in Chapter 2253, Texas Government Code.

Section 3.09. Owner's Association

(a) The Owner will create a property owners association over the residential areas in the Property (collectively the “**Owners’ Association**”), and shall establish bylaws, rules, regulations and restrictive covenants (collectively the “**Association Regulations**”) to assure the Owners’ Association performs and accomplishes the duties and purposes required to be performed and accomplished by the Owners’ Association pursuant to this Section, the Subdivision Ordinance, and plat notes that appear on final plats for the Property, including maintenance of parks, trails, entryways, common area landscaping and right-of-way landscaping subject to a qualified management agreement satisfactory to the City.

(b) The Owners' Association dues and assessments required to be established, maintained and collected by the Owners' Association pursuant to this Agreement shall be in addition to, and not in lieu of, any and all other fees, charges and assessments that will be applicable to the Property.

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 the Assessments. The City makes no warranty, either express or implied, that the proceeds of the PID Bonds or Assessments available for the payment of the Actual Cost of the Authorized Improvements to be constructed for or acquired by the City will be sufficient for the construction or acquisition of all of those particular Authorized Improvements. The Parties anticipate that the cost to construct the Authorized Improvements will be greater than the proceeds of the PID Bonds available for Authorized Improvements.

(b) Owner may enter into agreements with one or more real estate owners or builders (commercial or residential) to sell or develop a portion of the Property and/or to construct certain Authorized Improvements (each such Owner, a "**Co-Owner**") in accordance with the terms and conditions of this Agreement. The Owner may submit Actual Costs paid for by a Co-Owner and obtain reimbursement of such Actual Costs on behalf of and to be paid to such Co-Owner.

(c) The procedures set forth in Section 4.02 below shall apply to all Certifications for Payment regardless of which account within the Project Fund the actual funds are being paid from and the parties agree to consider such procedures in the Indenture. If the procedures in Section 4.02 conflict with the Indenture, then the Indenture shall control.

(d) Notwithstanding anything contained herein to the contrary, the City will not release any payments for the Actual Costs of the Authorized Improvements then being funded by PID Bonds or Assessments until the Owner has submitted and obtained approval by the City of construction plans for the applicable Authorized Improvements.

(e) Notwithstanding anything contained herein to the contrary, Owner shall not be obligated to construct the Authorized Improvements if the PID Bonds or Assessment are not approved and implemented, but Owner may, in its sole discretion, proceed with development of the Project and construction of the Subdivision Improvements in conformance with applicable City regulations in lieu of this Agreement if the PID Bonds or Assessment are not approved and implemented.

Section 4.02. Payments for Authorized Improvements

(a) Upon completion of an Authorized Improvement, the Owner shall convey, and the City shall acquire, as more particularly described in Section 3.01 above, the given Authorized Improvement for the Actual Cost, after such Authorized Improvement is completed and has been accepted by the City. The general process for funding of Authorized Improvements is as follows:

(1) Prior to the commencement of construction of the Authorized Improvements, the City will approve the Service and Assessment Plan, identifying the Authorized Improvements to be constructed by Owner.

(2) Bond Issuance and Levy of Assessments

(i) As requested by Owner, the City will issue the PID Bonds, subject to meeting the requirements and conditions stated in State law, to reimburse the Owner for Actual Cost of those Authorized Improvements that are complete at the time of bond issue and to be completed by progress payments.

(ii) Contemporaneously with or prior to the Bond issue, the City will adopt an Assessment Ordinance which will include the Service and Assessment Plan. The City will levy and collect the Assessments on the Property for the Authorized Improvements in accordance with the Service and Assessment Plan, and the applicable Assessment Ordinance.

(b) To receive funds from the proceeds of the PID Bonds to pay the Actual Cost of the Authorized Improvements, the Owner shall deliver to the City and the Project Engineer (i) a Certification for Payment evidencing the Actual Cost; (ii) evidence of the acceptance by the City of those Authorized Improvements to be funded by the PID Bond in question and the conveyance to the City of those Authorized Improvements to be funded by the PID Bonds as described in Section 3.01 above; and (iii) an assignment of the warranties and guaranties, if applicable, to those Authorized Improvements to be funded by the PID Bonds, in form reasonably acceptable to the City. Nothing herein shall prohibit Owner from being reimbursed for design costs associated with the Authorized Improvements.

(c) After the Certification for Payment is submitted to the City Construction Representative, the City shall conduct a review to confirm those Authorized Improvements to be funded by the PID Bonds were constructed in accordance with the plans therefor (for completed Authorized Improvements only) and to verify the Actual Cost of Authorized Improvements specified in such Certification for Payment. The City agrees to conduct such review in an expeditious manner after the Certification for Payment is submitted to the City and the Owner agrees to cooperate with the City in conducting each such review and to provide the City with such additional information and documentation as is reasonably necessary for the City to conclude each such review. Upon confirmation by the City that Authorized Improvements to be funded by the PID Bonds have been constructed in accordance with the plans therefor and this Agreement (for completed Authorized Improvements only), verification and approval of the Actual Cost of those Authorized Improvements, the City shall within thirty (30) calendar days thereafter accept those Authorized Improvements not previously accepted by the City and an authorized representative of the City shall sign the Certification for Payment and forward the same to the Finance Director. The Finance Director shall then have up to ten (10) calendar days to forward the executed Certification for Payment to the Trustee for payment.

(d) At the time of the closing of the PID Bonds, Owner shall, concurrently with the

draw from the proceeds of the PID Bonds, submit a Closing Disbursement Request to the City and the Trustee to be reimbursed for those Owner Expended Funds accrued to date and not previously reimbursed. Prior to disbursement of proceeds, the City will sign the Closing Disbursement Request and deliver said Closing Disbursement Request to the Trustee. At the closing of the PID Bonds, Owner shall be reimbursed an amount equal to the applicable Owner Expended Funds and such amount shall be transferred to the Trustee for distribution to the Owner or the Owner's designee.

(e) Notwithstanding the above subsections (c) through (e), for Authorized Improvements that have not been completed by Owner by the time the PID Bonds are issued, payments will be made to Owner periodically as construction progresses. The procedures for such progress payments are contained in this Section 4.02 and the Indenture. Such payments shall be made by Trustee on a monthly basis. The Construction Manager or its designee shall deliver to the City Construction Representative 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 subpart (b) or (c) below, as applicable and the City Construction Representative shall then have up to fifteen (15) calendar days to sign or disapprove the Certification for Payment. The City Construction Representative shall forward the executed Certification for Payment to the Finance Director who shall then have up to ten (10) calendar days to forward the same 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 quarterly reconciliation provided by the Construction Manager pursuant to Section 3.04(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 shall not be obligated to authorize payments of a Certification for Payment 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. Furthermore, notwithstanding anything contained herein to the contrary, in the event a subcontractor supplying labor or materials for the Authorized Improvements claims that the subcontractor has not been paid for such labor or materials, the City Construction Representative shall not be obligated to authorize payment of a Certification for Payment until such claim is resolved.

(f) During the construction phase for any Authorized Improvement to be funded by the PID Bonds pursuant to this Section 4.02, the Owner may submit a Certification for Payment of Actual Costs to be made by the Trustee in accordance with the Indenture on a monthly basis. Payments shall be made by the Trustee, in accordance with the Indenture, based on the Actual Cost of the construction completed and the receipt of a completed Certification for Payment. The City is not obligated to authorize any construction payment until such time that the City has approved the plans and specifications for all of the applicable Authorized Improvements. The items required for a construction payment are as follows:

(i) 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;

(ii) Waivers of liens for work on the applicable Authorized Improvements through the previous Certification for Payment, receipts for payment from the contractor and any subcontractors for the current Certification for Payment, and verification in a form acceptable to the City that any subcontractors have been paid; and

(iii) City inspection and approval of the constructed Authorized Improvement.

The City and the Owner hereby agree that as Certifications for Payment are made by Owner, processed by the City, and paid by the Trustee, any proceeds of PID Bonds contained in the Bond Improvement Account within the Project Fund shall be used to fund Certifications of Payment.

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

(i) The Owner shall have provided to the City an assignment of the warranties and guaranties, if applicable, for such Authorized Improvement and all documentation and information required by Article II of Chapter 41 of the Subdivision Ordinance; and

(ii) Before the final Certification for Payment is submitted to the City, the Project Engineer shall conduct a review for the City to confirm that such Authorized Improvement was constructed in accordance with the plans therefor and this Agreement 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 Finance Director. The Finance Director 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.

After the final Certification for Payment is submitted to the City, the City shall conduct a review to confirm that such Authorized Improvement was constructed in accordance with the plans therefor and this Agreement and to verify the Actual Cost of the Authorized Improvement specified in such Certification for Payment. The City agrees to conduct each such review in an expeditious manner after the Certification for Payment is submitted to the City and the Owner agrees to cooperate with the City in conducting each such review and to provide the City with such additional information and documentation as is reasonably necessary for the City to conclude each such review. Upon confirmation by the City that such Authorized Improvement has been constructed in accordance with the plans therefor and this Agreement, and verification and approval of the Actual Cost of such Authorized Improvement, the City shall within fifteen (15) calendar days thereafter accept such Authorized Improvement and an authorized representative of the City shall sign the Certification for Payment and forward the same to the Finance Director. The Finance Director shall then have up to fifteen (15) calendar days to forward the executed Certification for Payment to the Trustee for payment. In the event that PID Bonds are not issued, the City shall reimburse the Owner for the outstanding Actual Costs from Assessments or pay the Certification for Payment from Assessments pursuant to the terms of an Acquisition and Reimbursement Agreement.

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 authorize the issuance of the PID Bonds to pay for the Authorized Improvements. The City will use diligent, good faith efforts to authorize issuance of the PID Bonds on or before September 1, 2022, provided that Owner can reasonably demonstrate to the City and its financial advisors that (i) there is sufficient security for the PID Bonds, based upon the market conditions existing at the time of such proposed sale; (ii) the Owner is current on all taxes, assessments, fees and other monetary obligations to the City; (iii) the Owner is not in default (beyond any applicable notice and cure period) under this Agreement or any other agreement to which the Owner and the City are parties related to the Property; (iv) no outstanding PID Bonds are in default and no reserve funds have been drawn upon that have not been replenished; (v) the Administrator has certified that the specified portions of the costs of the Authorized Improvements to be paid from the proceeds of the PID Bonds are eligible to be paid with the proceeds of such PID Bonds; (vi) the City shall have obtained an Appraisal which demonstrates a 2 to 1 value to lien ratio to be calculated as set forth in the Indenture; and (vii) an engineering report reasonably satisfactory to the City must be provided; and (viii) the Owner is in compliance with any further conditions established by the City, its advisors, or the underwriter(s). The Authorized Improvements to be constructed and funded in connection with the PID Bonds are detailed on the chart attached hereto as Exhibit "D" and the Service and Assessment Plan.

(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 (if any) during the period of construction and not more than 12 months after the completion of construction of all Authorized Improvements covered 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 PID Bonds (iv) the Reserve Fund and the Administrative Fund (as defined in the Indenture), and (iv) any costs of issuance for the PID Bonds. 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 twenty (20) years from the issuance date of said PID Bonds.

(d) PID Bonds are not required to be issued under this Article V unless (1) the statutory requirements set forth in Chapter 372 of the Texas Local Government Code have been satisfied; (ii) the City shall receive at the time of issuance 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 approving opinion of the Attorney General of the State of Texas as required by the PID Act.

(e) If proceeds from PID Bonds are still available after all the Authorized Improvements are accepted by the City 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 for which reimbursements are not being received by the Owner from other public sources.

Section 5.02. Project Fund

(a) 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.

(b) As described in subparagraph (a) above, proceeds from the PID Bonds will be placed in the Bond Improvement Account within the Project Fund which will be held by the Trustee under the Indenture.

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

(a) The PID Bonds shall be finally authorized by the City Council and shall be issued in the denominations, shall mature and be prepaid, shall bear interest, and shall 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) shall contain provisions relating to the

withdrawal, application, and uses of the proceeds of the PID Bonds when and as issued and delivered and otherwise contain such terms and provisions as are mutually approved by the City and the Owner and consistent with this Agreement.

Section 5.04. Sale of PID Bonds.

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

ARTICLE VI. REPRESENTATIONS AND WARRANTIES

Section 6.01. Representations and Warranties of City.

The City makes the following representation and warranty for the benefit of the Owner:

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

Section 6.02. 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 the Owner is a limited liability company duly organized and validly existing under the laws of the State of Texas 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 duly and validly executed and delivered on behalf of the Owner.

(c) The Owner represents and warrants that this Agreement is a 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 a 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 Segment of the Authorized Improvements to be completed in accordance with this Agreement.

(e) The Owner covenants that it will not commit 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 Certifications for Payment.

(g) For a period of two years after the final Acceptance Date of the final phase of the Authorized Improvements, 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) Anti-Boycott Verification. The Owner hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Section 2271.002, Texas Government Code, and to the extent such Section does not contravene applicable State or Federal law. As used in the foregoing verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Owner understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Underwriter and exists to make a profit.

(i) Iran, Sudan and Foreign Terrorist Organizations. The Owner represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:

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

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable State or Federal law and excludes the Owner and its parent company, wholly- or majority-owned subsidiaries, and

other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Owner understands "affiliate" to mean any entity that controls, is controlled by, or is under common control with the Owner and exists to make a profit.

(j) Anti-Boycott Verification – Energy Companies. The Owner hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, and to the extent such Section is not inconsistent with a governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds. As used in the foregoing verification, "boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by the preceding statement in (A).

(k) Anti-Discrimination Verification – Firearm Entities and Firearm Trade Associations. The Owner hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association during the term of this Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code. As used in the foregoing verification, "discriminate against a firearm entity or firearm trade association" means: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; but does not include (a) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; or (b) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association.

(l) THE OWNER COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS CITY (AND THEIR ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES), INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES,

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

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

ARTICLE VII. DEFAULT AND REMEDIES

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

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

commenced to the reasonable satisfaction of the complaining Party within thirty (30) days of the receipt of such notice (or five (5) days in the case of a monetary default), subject, however, in the case of non-monetary default, to the terms and provisions of subparagraph (c). Upon a breach of this Agreement, the non-defaulting Party in any court of competent jurisdiction, by an action or proceeding at law or in equity, may seek damages. 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, pandemic, 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 any be specified in writing by any Party hereto to the other parties hereto. Each notice which shall be mailed or delivered in the manner described above shall be deemed sufficiently given, served, sent and received for all purpose at such time as it is received by the addressee (with return receipt, the delivery receipt or the affidavit of messenger being deemed conclusive evidence of such receipt) at the following addresses:

If to City: City of Kyle
Attn: City Manager
100 W. Center Street
Kyle, Texas 78640

With a copy to: The Knight Law Firm, LLP
Attn: Paige Saenz, City Attorney
223 W. Anderson, Suite A-105
Austin, Texas 78752
Facsimile: 512.323.5773

If to Owner: Kyle 57 Development, Inc.
Attn.: Garrett Martin, President
9111 Jollyville Road., Suite 111
Austin, Texas 78759

With a copy to: Winstead PC
Ross Martin, Esq.
500 Winstead Building
2728 N. Harwood Street
Dallas, Texas 75201

Section 8.02. Fee Arrangement.

(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), in accordance with the terms of that certain City of Kyle, Texas Deposit Agreement Proposed Public Improvement District Kyle 57 – PID Consultants dated effective September 7, 2021. If the City's costs and expenses are not fully paid prior to the Issue Date of the PID Bonds, the City shall submit to the Owner invoices and other supporting documentation evidencing the Initial City PID Costs and the Owner agrees that such costs and fees, as applicable, will be paid at the closing of the PID Bonds to the City or on behalf of the City from proceeds of the PID Bonds. In addition to any Initial City PID Costs paid by the Owner pursuant to the preceding sentences, all fees of legal counsel related to the issuance of the PID Bonds (including Owner's attorney fees), including fees for the preparation of customary bond documents and the obtaining of Attorney General approval for the PID Bonds, will be paid at closing from the proceeds of the PID Bonds. It is hereby acknowledged and agreed that fees for the City's Bond Counsel, Financial Advisor, Trustee, Trustee's Counsel, the Underwriter, and Underwriter's Counsel will be paid at the Issue Date of the PID Bonds.

(b) Pursuant to a separate agreement, the City may contract with a third party to serve as the Administrator and to administer the PID after Closing. The Annual Collection Costs shall be collected as part of and in the same manner as Annual Installments in the amounts set forth in the Service and Assessment Plan.

Section 8.03. Assignment.

(a) Subject to subparagraph (b) below, Owner may, in its sole and absolute discretion, with the prior written consent of the City Council (which consent will not be unreasonably withheld), assign this Agreement with respect to all or part of the Project from time to time to any party so long as the assignee has demonstrated to the City's satisfaction that the assignee has the financial, technical, and managerial capacity, the experience, and expertise to perform any duties or obligations so assigned and 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 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. Owner may, upon written notice to the City provided within thirty (30) days of such assignment, assign this Agreement to an affiliate or entity under common control of Owner without the consent of the City.

(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) Any sale of a portion of the Property or assignment of any right hereunder shall not be deemed a Transfer unless the conveyance or transfer instrument effecting such sale or assignment expressly states that the sale or assignment is deemed to be a Transfer.

Section 8.04. Term of Agreement.

This Agreement shall be effective upon the later of approval by the City Council and closing of the Property to Owner and shall terminate on the date on which the City and Owner discharge all of their obligations hereunder; provided, that, pursuant to Section 2.05 of this Agreement, if the Property has not closed to Owner and Assessments are not levied on or before September 1, 2022, 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 8.04 is a covenant running with the land and is binding on the Owner's successors and assigns. The Owner shall provide notice to the City within ten (10) days of closing of the Property.

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 shall apply:

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

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

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

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

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

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

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

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

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

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

Section 8.06. 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 shall 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 with regard to the subject matter hereof.

Section 8.11. Severability; Waiver.

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

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

Section 8.12. 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, Assessment Ordinance, PID Bond Ordinance, and Indenture.

Section 8.14. Exhibits

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

- Exhibit A - Definitions
- Exhibit B - Property
- Exhibit C - Draft of Service and Assessment Plan
- Exhibit D - Authorized Improvements
- Exhibit D-1 - Concept Plan
- Exhibit E - Form of Certification for Payment
- Exhibit F - Landowner Certificate Form
- Exhibit G - Closing Disbursement Request
- Exhibit H - Homebuyer Disclosure Program

[signature pages follow]

CITY: CITY OF KYLE, TEXAS

By: _____

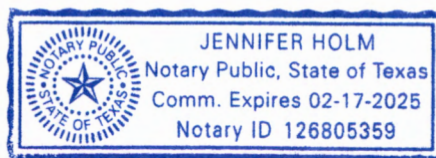
Travis Mitchell, Mayor

Date: 10/4/2021

THE STATE OF TEXAS

COUNTY OF HAYS

THIS INSTRUMENT is acknowledged before me on this 4th day of October, 2021, by Travis Mitchell, Mayor, of the City of Kyle, Texas, a municipal corporation, on behalf of that municipal corporation.



[SEAL]

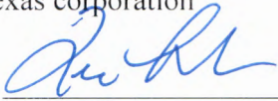
Jennifer Holm

Notary Public, State of Texas

My Commission Expires : 2/17/2025

[Signatures Continue on Next Page]

KYLE 57 DEVELOPMENT, INC.,
a Texas corporation

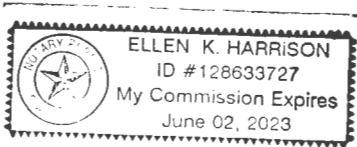
By: 
Terry LaGrone, Authorized Signatory
Date: 11-19-2021

THE STATE OF TEXAS

§
§
§

COUNTY OF TRAVIS

This instrument was executed before me on this 19th day of November,
2021, by Terry LaGrone, Authorized Signatory for Kyle 57 Development, Inc., a Texas
corporation, on behalf of said corporation.




NOTARY PUBLIC

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.

“Actual Costs” mean, with respect to Authorized Improvements, the actual costs paid or incurred by or on behalf of the Owner: (1) to plan, design, acquire, construct, install, and dedicate such improvements to the City, including the acquisition of necessary easements and other right-of-way; (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) for third-party professional consulting services including but not limited to, engineering, surveying, geotechnical, land planning, architectural, landscaping, legal, accounting, and appraisals; (5) of labor, materials, equipment, fixtures, payment and performance bonds and other construction security, and insurance premiums; and (6) to implement, administer, and manage the above-described activities, including a 4% construction management fee. 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 subsection (3), (4), and (6) above shall be excluded from the amount upon which the general contractor and construction management fees are calculated.

“Administrator” means the employee or designee of the City, including a third party designee whom the City designates by contract, who shall have the responsibilities provided for herein and in the Service and Assessment Plan.

“Annual Collection Costs” mean the actual or budgeted costs and expenses relating to collecting the Annual Installments, 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 Service and Assessment Plan and the PID Act with respect to the issuance and sale of PID Bonds, including continuing disclosure requirements; and (8) the paying agent/registrar and Trustee in connection with PID Bonds, including their respective legal counsel. Annual Collection Costs collected but not expended in any year shall be carried forward and applied to reduce Annual Collection Costs for subsequent years.

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

“Annual Installments” shall have the meaning given in the Service and Assessment Plan.

“Appraisal” means an appraisal of the Property prepared by a duly qualified, licensed appraiser in the State of Texas acceptable to the Owner and the City.

“Assessed Property” means for any year, any Parcel within the against which a Special Assessment is levied.

“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.

“Assessment Ordinance” means the ordinance adopted by the City Council approving the Service and Assessment Plan (or such amendments to the Service and Assessment Plan) and levying the Assessments, as required by Article II of this Agreement.

“Assessment Revenues” means the monies collected from Assessments, including supplemental assessments and reassessments, interest, expenses, or penalties on Assessments, prepayments, foreclosure proceeds, and proceeds from a guarantor, if any, of the Assessments.

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

“Authorized Improvement(s)” means individually or collectively any, each, and, or, all improvements which are included in the Service and Assessment Plan as such plan is amended and updated from time to time.

“Bond Issuance Costs” means the costs associated with issuing PID Bonds, including but not limited to attorney fees, financial advisory fees, consultant fees, appraisal fees, printing costs, publication costs, City costs, capitalized interest, reserve fund requirements, underwriter’s discount, fees charged by the Texas Attorney General, and any other cost or expense directly associated with the issuance of PID Bonds.

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

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

“City Construction Representative” means the employee or designee of the City carrying out the duties as described in this Agreement.

“City Council” means the duly elected governing body and council of the City.

“City Manager” means the City Manager of the City or his/her designee(s).

“Closing Disbursement Request” has the meaning given in Section 4.02(d) of this Agreement.

“Co-Owner” has the meaning given in Section 4.01 of this Agreement.

“Construction Manager” means initially the Owner, and thereafter subject to change in accordance with Section 3.03 of this Agreement.

“County” means Hays County, Texas.

“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 the recitals to this Agreement.

“Finance Director” means the Finance Director of the City or his/her designee.

“Financial Advisor” means RBC Capital Markets, LLC.

“Home Buyer Disclosure Program” means the disclosure program, administered by the PID Administrator as set forth in a document in the form of Exhibit “H” or another form agreed to by the City and the Owner(s) that establishes a mechanism to disclose to each End User the terms and conditions under which their lot is burdened by the District.

“Indenture” means that certain Indenture of Trust between the City and Trustee covering the PID Bonds for the Property, as it may be amended from time to time.

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

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

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

“Non-Benefitted Property” means Parcels within the boundaries of the District that accrue no special benefit from Authorized Improvements.

“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.

“Owner Expended Funds” means any qualified and permitted costs approved by the City (including, but not limited to any funds expended by Owner for cost of issuance fees) which shall, concurrently with the initial draw from the applicable PID Bonds, be paid to Owner.

“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.

“PUD” has the meaning given in the recitals of this Agreement.

“Phasing Plan” has the meaning given in Section 2.01(b).

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

“PID Bond Ordinance” means and refers to the ordinance or ordinances 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 the 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, which may include funds for any required reserves and amounts necessary to pay the Bond Issuance Costs, and to be secured by a pledge of the PID Bond Security pursuant to the authority granted in the PID Act, and as required by this Agreement for the purposes of (i) financing the costs of the Authorized Improvements and related costs, and (ii) reimbursing the Owner for Actual Costs paid prior to the issuance of and payment for the PID Bonds.

“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 as set forth in Section 2.03 hereof.

“Prepayment” means the payment of all or a portion of an Assessment before the due date of the final installment 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 Annual Installment.

“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.

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

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

“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 PUD.

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

“Service and Assessment Plan” or “SAP” means the Kyle 57 Public Improvement District Service and Assessment Plan (as such plan is amended 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. The Parties hereby acknowledge that the Service and Assessment Plan may be amended from time to time.

“State” means the State of Texas.

“Subdivision Improvements” means all streets, roads, sidewalks, drainage, water and wastewater lines and facilities, and all other infrastructure within the Property required to be constructed by the Owner under the Subdivision Ordinance and required for the development as proposed in the PUD. The term does not include the Authorized Improvements.

“Subdivision Ordinance” means Chapter 41 – Subdivisions, City of Kyle Code of Ordinances, as amended from time to time.

“Trustee” means the trustee under the Indenture, and any successor thereto permitted under the Indenture.

“Underwriter” means a qualified third party underwriter selected by the City.

Exhibit "B"

PROPERTY

Description of 57.260 acres of land in the Samuel Pharass Survey, A-360, Hays County, Texas; being a portion of that certain called 62.10 acre tract described in the deed dated September 2, 2003 from Mike Gossett, Special Administrator of the Estate of August Hessler, Jr. to S.T. Kyle, Ltd, of Record in Volume 2305, Page 674, Official Public Records of Hays County, Texas, said 62.10 acre tract being a portion of that certain called 79.5 acre tract of land described in a deed filed for Record June 19, 1914 from Mrs. Leoma Stephenson Nee Cocreham, et al to August Hessler of Record in Volume 66, Page 129, Deed Records of Hays County, Texas; said 57.260 acre tract of land, being more particularly described by metes and bounds as follows:

COMMENCING at a Texas Department of Transportation (TxDOT) Type I concrete Right-of-Way monument found in the Southeast Right-of-Way line of FM Highway No. 150, same being the Northwest line of Lot 53, Quail Meadows Subdivision, a subdivision of Record in Cabinet/Volume 7, Page 47, Plat Records of Hays County, Texas, said monument being 40-feet let of Engineer's centerline station 320+02.6;

THENCE South 46 degrees 07 minutes 22 seconds East, with the Southeast Right-of-Way line of said F.M. Highway No. 150, same being the Northwest line of said Lots 53 and 52, said Quail Meadow Subdivision, a distance of 115.15 feet to an iron rod with aluminum cap stamped "Pro-Tech" found for the North corner and POINT OF BEGINNING of the tract described herein, same being the North corner of said 62.10 acre tract, being in the Western line of said 79.5 acre tract, being the Southwestern corner of that certain 2.16 acre tract of land described in the Right-of-Way Deed filed for Record February 22, 1952 from Gus Hessler to the State of Texas Recorded in Volume 152, Page 236, Deed Records of Hays County, Texas, and being in the approximate common line of the said Samuel Pharass Survey and the Caleb W. Baker Survey;

THENCE continuing with the Southern Right-of-Way line of said F.M. Highway No. 150, same being the Southern line of said 2.16 acre tract, being the Northern line of said 62.10 acre tract, and the Northern line of the tract described herein, the following Two (2) courses and distances:

1. South 46 degrees 07 minutes 11 seconds East, a distance of 1,415.29 feet to a TxDOT Type I concrete Right-of-Way monument found at a point of curvature being 40-ft right of Engineer's centerline station 335+33.1, and

2. with the arc of a curve to the left, having a radius of 5,769.65 feet, an arc distance of 95.69 feet and a chord bearing South 46 degrees 34 minutes 52 seconds East, a distance of 95.68 feet to a 1/2-inch iron rod with plastic cap stamped "LAI" set for the most Northern East corner of the tract described herein, same being the North corner of a 4.847 acre tract remaining from said 62.10 acre tract, from which a TxDOT Type I concrete Right-of-Way monument found bears with the arc of said curve to the left, having a radius of 5,769.65 feet, an any distance of 258.58 feet and a chord bearing South 48 degrees 20 minutes 25 seconds East, a distance of 258.56 feet;

THENCE South 43 degrees 40 minutes 14 seconds West, leaving the Southern Right-of-Way line of said F.M. Highway No. 150 and crossing said 62.10 acre tract with the North line of said 4.847 acre remainder tract, a distance of 425.24 feet to a 1/2-inch iron rod with plastic cap stamped "LAI" set for a re-entrant corner of the tract described herein, same the being West corner of said 4.847 acre tract;

THENCE South 46 degrees 19 minutes 46 seconds East, continuing across said 62.10 acre tract with the South line of said 4.847 acre tract, a distance of 516.17 feet to a 1/2-inch iron rod with plastic cap stamped "LAI" set in the Southeast line of said 62.10 acre tract, same being the Northwest line of that certain 10.00 acre tract called "Exhibit A" vested into Robert C. Edge and described in the Amended Final Decree Confirming Commissioners' Report and Partitioning Property dated November 14, 2001, being Cause No. 7405 in the Probate Court of Hays County, Texas and filed for Record in Volume 2305, Page 645, Official

Public Records of Hays County, Texas, for the South corner of said 4.847 acre tract and being the most Southern East corner of the tract described herein, from which a 1/2-inch iron rod found in the Southern Right-of-Way line of said F.M. Highway No. 150 for the East corner of said 62.10 acre tract, same being the North corner of said 20.00 acre tract bears North 35 degrees 58 minutes 25 seconds East, a distance of 449.80 feet;

THENCE South 35 degrees 52 minutes 25 seconds West, with the Eastern line of said 62.10 acre tract, same being the Western line of said 10.00 acre tract, a distance of 507.33 feet to a fence corner post found for an angle point in the Eastern line of said 62.10 acre tract and of the tract described herein, same being the West corner of said 10.00 acre tract and being the North corner of that certain called 2.62 acre tract described in a deed dated August 19, 1971, from Gus Hessler, Jr., and Edwards Hessler to Alton E. Franke and Deanna K. Franke of Record in Volume 245, Page 347, Deed Records of Hays County, Texas;

THENCE South 52 degrees 54 minutes 07 seconds West, with the Eastern line of said 62.10 acre tract, same being the Western line of said 2.62 acre tract, a distance of 402.46 feet to a fence corner post found for the South corner of said 62.10 acre tract and of the tract described herein, same being the West corner of said 2.62 acre tract, and being in the North line of a called 1,932.67 acre tract described in the deed dated August 1, 1960, from A.W. Gregg and wife Robie Gregg, to Ky-Tex Properties, Inc. of Record in Volume 185, Page 391, Deed Records of Hays County, Texas;

THENCE with the fence Southwest line of said 62.10 acre tract, same being the Northeast line of said 1,938.67 acre tract, the following Six (6) courses and distances:

1. North 45 degrees 45 minutes 15 seconds West, a distance of 134.06 feet to a fence post found for an angle point,
2. North 46 degrees 24 minutes 58 seconds West, a distance of 710.71 feet to a 10-in live oak tree for an angle point,
3. North 47 degrees 04 minutes 36 seconds West, a distances of 179.70 feet to a fence post found for an angle point,
4. North 47 degrees 09 minutes 23 seconds West, a distance of 126.39 feet to a fence post found for an angle point,
5. North 46 degrees 10 minutes 02 seconds West, a distance of 430.76 feet to a fence post found for an angle point, and
6. North 45 degrees 58 minutes 42 seconds West, a distance of 436.29 feet to a 1/2-inch iron rod found near a fence corner post at the Western base of an old rock wall for the West corner of said 62.10 acre tract and of the tract described herein, same being the South corner of Lots 35 and 36, said Quail Meadows Subdivision;

THENCE with the Western line of said 62.10 acre tract and of the tract described herein, same being the Southeastern line of said Quail Meadows Subdivision, said line marked by an old fence, the following Three (3) courses and distances:

1. North 43 degrees 14 minutes 24 seconds East, a distance of 609.84 feet to a fence post found for an angle point,
2. North 42 degrees 48 minutes 32 seconds East, a distance of 252.56 feet to a fence post found for an angle point; and
3. North 43 degrees 08 minutes 51 seconds East, a distance of 467.67 feet to the POINT OF BEGINNING and containing 57.260 acres of land, more less.

Exhibit “C”

DRAFT OF SERVICE AND ASSESSMENT PLAN

[See Appendix C to the PLOM]

**FIRST AMENDMENT TO KYLE 57
PUBLIC IMPROVEMENT DISTRICT FINANCING AGREEMENT**

THIS FIRST AMENDMENT TO KYLE 57 PUBLIC IMPROVEMENT DISTRICT FINANCING AGREEMENT (“First Amendment”) is made and entered into by and between the **CITY OF KYLE, TEXAS**, a home rule municipal corporation, acting by and through its duly authorized representative (the “City”), and **KYLE 57 DEVELOPMENT, INC.**, a Texas corporation (the “Owner”), to be effective as of May 17, 2022 (the “Effective Date”).

RECITALS

WHEREAS, the Owner and the City are sometimes individually referred to as a “Party” and collectively as the “Parties”; and

WHEREAS, the City and the Owner previously entered into the Kyle 57 Public Improvement District Financing Agreement, effective as of October 4, 2021, as amended by the letter agreement, effective as of March 1, 2022 between the Owner and the City (the “Financing Agreement”) for the development of approximately 57.293 acres of land located within the corporate limits of the City in Hays County, Texas, as described by metes and bounds in Exhibit A attached hereto (the “Property”); and

WHEREAS, capitalized terms used in this First Amendment herein but not otherwise defined shall have the meanings assigned to them in the Financing Agreement; and

WHEREAS, the Parties desire to amend the Financing Agreement to increase the estimated costs of the Authorized Improvements from \$8,000,000 to \$9,000,000; and

WHEREAS, the Parties acknowledge and agree that, except to the extent amended by this First Amendment herein, all provisions and terms contained in the Financing Agreement shall remain in full force and effect; and

NOW, THEREFORE, for and in consideration of the mutual covenants of the Parties set forth in this First Amendment, and for good and valuable consideration the receipt and adequacy of which are acknowledged and agreed, the Parties agree as follows:

AGREEMENT

1. Defined Terms. All capitalized terms used in this First Amendment, to the extent not otherwise expressly defined herein, shall have the meanings assigned to them in the Financing Agreement.

2. Amendment to Section 2.01(f). The Parties agree to amend Section 2.01(f) of the Financing Agreement to read as follows:

(f) The District will fund no more than \$9,000,000 in Authorized Improvements, including Bond Issuance and financing costs.

3. Miscellaneous.

(a) This First Amendment amends the Financing Agreement in no other manner except as expressly set forth herein. Except as amended herein, the terms, provisions, agreements, covenants and conditions of the Financing Agreement shall continue in full force and effect. In the event of a conflict between this First Amendment and the Financing Agreement, the terms of this First Amendment shall control.

(b) This First Amendment together with the Financing Agreement shall constitute the entire agreement between the Parties and supersedes all prior agreements and understandings, whether oral or written, concerning the subject matter of this First Amendment and the Financing Agreement. This First Amendment and the Financing Agreement shall not be modified or amended except in writing signed by the Parties.

(c) If any provision of this First Amendment is determined by a court of competent jurisdiction to be unenforceable for any reason, then: (a) such unenforceable provision shall be deleted from this First Amendment; (b) the unenforceable provision shall, to the extent possible and upon mutual agreement of the Parties, be rewritten to be enforceable and to give effect to the intent of the Parties; and (c) the remainder of this First Amendment shall remain in full force and effect and shall be interpreted to give effect to the intent of the Parties.

(d) This First Amendment may be executed in one (1) or more counterparts, each of which when taken together shall constitute one and the same instrument.

(e) The City represents and warrants that the individual executing this First Amendment on behalf of the City has been duly authorized to do so. The Owner represents and warrants that the individual executing this First Amendment on behalf of Owner has been duly authorized to do so.

4. No Boycott of Israel.

To the extent this First Amendment constitutes a contract for goods or services for which a written verification statement is required, the Owner hereby verifies that it and its parent companies, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this First Amendment is a contract for goods or services, will not boycott Israel during the term of this First Amendment. The foregoing verification is made solely to comply with Section 2271.002, Texas Government Code, and to the extent such Section does not contravene applicable State or federal law. As used in the foregoing verification, 'boycott Israel' means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Owner understands 'affiliate' to mean an entity that controls, is controlled by, or is under common control with the Owner and exists to make a profit.

5. No Business With Sanctioned Countries.

The Owner represents that neither it nor any of its respective parent companies, wholly- or majority-owned subsidiaries, and other affiliates, if any, is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:

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

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable federal law and excludes the Owner and any of its respective parent companies, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Owner understands “affiliate” to mean any entity that controls, is controlled by, or is under common control with the Owner and exists to make a profit.

6. Verification Regarding Energy Company Boycotts.

To the extent this First Amendment constitutes a contract for goods or services for which a written verification statement is required under Section 2274.002 (as added by Senate Bill 13 in the 87th Texas Legislative Session), Texas Government Code, as amended, the Owner hereby verifies that it and its parent companies, wholly- or majority- owned subsidiaries, and other affiliates, if any, do not boycott energy companies and, will not boycott energy companies during the term of this First Amendment. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, as amended, to the extent Section 2274.002, Texas Government Code does not contravene applicable State or federal law. As used in the foregoing verification, “boycott energy companies” shall have the meaning assigned to the term “boycott energy company” in Section 809.001, Texas Government Code. The Owner understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Owner and exists to make a profit.

7. Verification Regarding Discrimination Against Firearm Entity or Trade Association.

To the extent this First Amendment constitutes a contract for goods or services for which a written verification statement is required under Section 2274.002 (as added by Senate Bill 19 in the 87th Texas Legislative Session, “SB 19”), Texas Government Code, as amended, the Owner hereby verifies that it and its parent companies, wholly- or majority- owned subsidiaries, and other affiliates, if any,

(1) do not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association; and

(2) will not discriminate during the term of this First Amendment against a firearm entity or firearm trade association.

The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, as amended, to the extent Section 2274.002, Texas Government Code does not contravene applicable State or federal law. As used in the foregoing verification, “discriminate against a firearm entity or firearm trade association” shall have the meaning assigned to such term in Section 2274.001(3) (as added by SB 19), Texas Government Code. The Owner understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Owner and exists to make a profit.

[Signature Page to Follow]

EXECUTED BY THE PARTIES TO BE EFFECTIVE ON THE EFFECTIVE DATE:

CITY OF KYLE, TEXAS

By: _____
Travis Mitchell, Mayor

STATE OF TEXAS

§

§

COUNTY OF HAYS

§

This instrument was acknowledged before me on the _____ day of May, 2022 by Travis Mitchell, Mayor of the City of Kyle, Texas on behalf of said City.

(SEAL)

Notary Public, State of Texas

Name printed or typed

Commission Expires: _____

OWNER:

KYLE 57 DEVELOPMENT, INC.,
a Texas corporation

By: _____
Name: Garrett S. Martin
Title: President

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the ____ day of May, 2022 by Garrett S. Martin, President of Kyle 57 Development, Inc., a Texas corporation, on behalf of said corporation.

Notary Public, State of Texas

EXHIBIT A PROPERTY DESCRIPTION

PROPERTY DESCRIPTION

BEING 57.293 ACRES OF LAND LOCATED IN THE SAMUEL PHARASS SURVEY, ABSTRACT 360 IN HAYS COUNTY, TEXAS AND BEING THE SAME LAND AS A CALLED 57.260 ACRE TRACT DESCRIBED IN A IN VOLUME 3416, PAGE 791, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS (O.P.R.H.C.T.), SAID 57.293 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS WITH ALL BEARINGS BASED ON THE TEXAS COORDINATE SYSTEM, SOUTH CENTRAL ZONE NAD83 4204.

BEGINNING at an iron rod with aluminum cap stamped "PRO TECH ENG." found on the southwesterly line of FM 150 for the east corner of Quail Meadows Subdivision, as recorded in Cabinet 7, Slide 47 of the Plat Records of Hays County, Texas, said point being the northeast corner of the herein described tract;

THENCE, with said southwesterly line of FM 150, the following courses and distances:

1. S46°07'35"E, for a distance of 1415.01 feet to a TxDOT Type 1 monument found for the beginning of a curve to the left;
2. with said curve to the left an arc length of 95.70 feet, said curve having a radius of 5769.65 feet, a central angle of 00°57'01", and having long chord which bears S46°31'52"E, for a distance of 95.70 feet to An iron rod with cap (unreadable) found for the north corner of a called 4.847 acre tract as described in Document No. 17041944, O.P.R.H.C.T.;

THENCE, with the line common to said 57.260 acre tract and said 4.847 acre tract, the following courses and distances:

1. S43°40'27"W, for a distance of 425.23 feet to an iron rod with cap stamped "LA" found for the westerly corner of said 4.847 acre tract;
2. S46°20'32"E, for a distance of 516.25 feet to a 1/2 inch iron rod found on the northwesterly line of a call 10.00 acre tract described in Document No. 19046058, O.P.R.H.C.T.;

THENCE, with the line common to said 57.260 acre tract and said 10.00 acre tract, S35°54'59"W, for a distance of 507.96 feet to a fence post found for a west corner of said 10.00 acre tract, said point also being the north corner of a called 2.62 acre tract described in Volume 245, Page 347, O.P.R.H.C.T., and being an angle point in the southeasterly line of said 57.260 acre tract;

THENCE, with the line common to said 57.260 acre tract and said 2.62 acre tract, S52°59'34"W, for a distance of 402.16 feet to a fence corner post found on the northeasterly line of a called 9.752 acre tract described in Volume 5322, Page 1 O.P.R.H.C.T., said point being the most westerly corner of said 2.62 acre tract and the most southerly corner of said 57.260 acre tract;

THENCE, with the line common to said 9.752 acre tract and said 57.260 acre tract, N45°49'57"W, for a distance of 134.08 feet to an iron rod with aluminum cap stamped "KENT McMILLAN" found for the north corner of said 9.752 acre tract, same being the east corner of a called 608.70 acre tract described in Document No. 17034180 O.P.R.H.C.T.;

THENCE, with the line common to said 57.260 acre tract and said 608.70 acre tract, the following courses and distances:

1. N46°33'10"W, for a distance of 1447.00 feet to a fence post found for angle point;
2. N45°43'45"W, for a distance of 436.59 feet to a 1/2 inch iron rod found for the south corner of said Quail Meadows Subdivision;

THENCE, with the southeasterly line of said subdivision and the northwesterly line of said 57.260 acre tract, the following courses and distances:

1. N43°14'17"E, for a distance of 609.84 feet to a 50d found stamped "PRO TECH ENG";
2. N42°48'25"E, for a distance of 252.56 feet to an iron rod set with cap stamped "ATWELL LLC";
3. N43°08'44"E, for a distance of 487.53 feet to the POINT OF BEGINNING and containing 57.293 acres of land, more or less.

DATED THIS THE 15th DAY OF NOVEMBER, 2020



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