

**ORDINANCE NO. 2021-97**

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF THE "CITY OF SAN MARCOS, TEXAS SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2022 (WHISPER SOUTH PUBLIC IMPROVEMENT DISTRICT PROJECT)"; APPROVING AND AUTHORIZING AN INDENTURE OF TRUST, A BOND PURCHASE AGREEMENT, AN OFFERING MEMORANDUM, A CONTINUING DISCLOSURE AGREEMENT, A LANDOWNER AGREEMENT, AGREEMENT REGARDING WAIVER OF RIGHT OF REDEMPTION AND WAIVER OF AGRICULTURAL VALUATION, FINANCING AGREEMENT, CONSTRUCTION, FUNDING, AND ACQUISITION AGREEMENT AND OTHER AGREEMENTS AND DOCUMENTS IN CONNECTION THEREWITH; MAKING FINDINGS WITH RESPECT TO THE ISSUANCE OF SUCH BONDS; PROVIDING FOR APPROVAL OF THIS ORDINANCE ON ONLY ONE READING AS AUTHORIZED BY STATE LAW; AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, the City of San Marcos, Texas (the "City"), pursuant to and in accordance with the terms, provisions and requirements of the Public Improvement District Assessment Act, Subchapter A of Chapter 372, Texas Local Government Code (the "PID Act"), has previously established the "Whisper South Public Improvement District South" (the "District"), pursuant to Resolution 2021-87R and Resolution 2021-91R adopted by the City Council of the City (the "Council") on May 4, 2021; and

**WHEREAS**, the authorization creating the District became effective upon publication of its authorization in the *San Marcos Daily Record*, a newspaper of general circulation in the City on June 30, 2021; and

**WHEREAS**, no written protests of the District from any owners of record of property within the District were filed with the City Clerk within 20 days after the date of publication of such notice; and

**WHEREAS**, pursuant to the PID Act, on November 26, 2021, the Council published notice of the assessment hearing in the *San Marcos Daily Record*, a newspaper of general circulation in the City, and held a public hearing on December 7, 2021, which remained open until December 15, 2021, regarding the levy of special assessments within the District, and on December 15, 2021, the Council adopted Ordinance No. 2021-\_\_\_\_ (the "Assessment Ordinance"); and

**WHEREAS**, in the Assessment Ordinance, the Council approved and accepted the initial Service and Assessment Plan (the "Service and Assessment Plan") relating to the District and levied the Assessments (as defined in the Service and Assessment Plan) in the District against the Assessment Roll (as defined and described in the Service and Assessment Plan); and

**WHEREAS**, the Council has found and determined that it is in the best interests of the City to issue its bonds to be designated "City of San Marcos, Texas Special Assessment Revenue Bonds, Series 2022 (Whisper South Public Improvement District South)" (the "Bonds"), such Bonds to be payable from and secured by the Pledged Revenues, as defined in the Indenture (defined below) and other assets pledged under the Indenture to the payment of the Bonds; and

**WHEREAS**, the City is authorized by the PID Act to issue the Bonds for the purpose of (i) paying a portion of the Actual Costs of the Public Improvements, (ii) paying Bond Issuance Costs, and (iii) funding the initial deposit to the Administrative Fund; and

**WHEREAS**, in connection with the issuance of the Bonds, the Public Improvements are located within the District, and the City has determined that the Public Improvements confer a special benefit on the District as provided in Section V.C. of the Service and Assessment Plan; and

**WHEREAS**, the Council has found and determined to approve (i) the issuance of the Bonds to finance the Public Improvements, (ii) the form, terms and provisions of the Indenture securing the Bonds authorized hereby, (iii) the form, terms and provisions of a Bond Purchase Agreement (defined below) between the City and the purchaser of the Bonds, (iv) a Landowner Agreement (defined below), (v) an Offering Memorandum (defined below), (vi) a Continuing Disclosure Agreement (defined below), (vii) an Agreement Regarding Waiver of Right of Redemption and Waiver of Agricultural Valuation (defined below), (viii) a Financing Agreement (defined below) and (ix) a Construction Funding Agreement (defined below); and

**WHEREAS**, the meeting at which this Ordinance is considered is open to the public as required by law, and the public notice of the time, place and purpose of said meeting was given as required by Chapter 551, Texas Government Code, as amended;

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, THAT:**

Section 1. Findings. The findings and determinations set forth in the preamble hereof are hereby incorporated by reference for all purposes as if set forth in full herein.

Section 2. Approval of Issuance of Bonds and Indenture.

(a) The issuance of the Bonds in the principal amount of \$14,000,000 for the purpose of (i) paying a portion of the Actual Costs of the Public Improvements, (ii) paying Bond Issuance Costs, and (iii) funding the initial deposit to the Administrative Fund is hereby authorized and approved.

(b) The Bonds shall be issued and secured under that certain Indenture of Trust (the "Indenture") dated as of January 19, 2022, between the City and UMB Bank, N.A., as trustee (the "Trustee"), with such changes as may be necessary or desirable to carry out the intent of this Ordinance and as approved by the Mayor or Mayor Pro Tem of the City, such approval to be evidenced by the execution and delivery of the Indenture, which Indenture is hereby approved in substantially final form attached hereto as **Exhibit A** and incorporated herein as a part hereof for all purposes. The Mayor or Mayor Pro Tem of the City is hereby authorized and directed to execute the Indenture and the City Clerk is hereby authorized and directed to attest such signature of the Mayor or Mayor Pro Tem.

(c) The Bonds shall be dated, shall mature on the date or dates and in the principal amount or amounts, shall bear interest, shall be subject to redemption and shall have such other

terms and provisions as set forth in the Indenture. The Bonds shall be in substantially the form set forth in the Indenture, with such insertions, omissions and modifications as may be required to conform the form of Bond to the actual terms of the Bonds. The Bonds shall be payable from and secured by the Pledged Revenues (as defined in the Indenture) and other assets of the Trust Estate (as defined in the Indenture) pledged to the Bonds, and shall never be payable from ad valorem taxes or any other funds or revenues of the City.

Section 3. Sale of Bonds; Approval of Bond Purchase Agreement. The Bonds shall be sold to FMSbonds, Inc. (the "Underwriter") at the price and on the terms and provisions set forth in that certain Bond Purchase Agreement (the "Bond Purchase Agreement"), dated the date hereof, between the City and the Underwriter, attached hereto as **Exhibit B** and incorporated herein as a part hereof for all purposes, which terms of sale are declared to be in the best interest of the City. The form, terms and provisions of the Bond Purchase Agreement are hereby authorized and approved with such changes as may be required to carry out the purpose of this Ordinance and approved by the City Manager, and the Mayor or Mayor Pro Tem of the City is hereby authorized and directed to execute and deliver the Bond Purchase Agreement. The Mayor's signature on the Bond Purchase Agreement may be attested by the City Clerk.

Section 4. Landowner Agreement and Notice of Assessments. The Landowner Agreement and Notice of Assessments substantially in the form attached hereto as **Exhibit C** is hereby approved and incorporated herein as a part hereof for all purposes and the City Manager of the City is hereby authorized and directed to execute and deliver such Landowner Agreement and Notice of Assessments with such changes as may be required to carry out the purpose of this Ordinance and approved by the City Manager, such approval to be evidenced by the execution thereof.

Section 5. Offering Memorandum. The form and substance of the Preliminary Limited Offering Memorandum for the Bonds and any addenda, supplement or amendment thereto and the final Limited Offering Memorandum (the "Offering Memorandum") presented to and considered at the meeting at which this Ordinance is considered are hereby in all respects approved and adopted. The Offering Memorandum, with such appropriate variations as shall be approved by the Mayor or Mayor Pro Tem of the City and the Underwriter, may be used by the Underwriter in the offering and sale of the Bonds. The Mayor or Mayor Pro Tem of the City is hereby authorized and directed to execute, and the City Clerk is hereby authorized and directed to attest, the Offering Memorandum. The City Clerk is hereby authorized and directed to include and maintain a copy of the Preliminary Limited Offering Memorandum and Offering Memorandum and any addenda, supplement or amendment thereto thus approved among the permanent records of this meeting. The use and distribution of the Preliminary Limited Offering Memorandum in the offering of the Bonds is hereby ratified, approved and confirmed. Notwithstanding the approval and delivery of such Preliminary Limited Offering Memorandum and Offering Memorandum by the Council, the Council is not responsible for and proclaims no specific knowledge of the information contained in the Preliminary Limited Offering Memorandum and Offering Memorandum pertaining to the Major Improvements, the Developer (as defined in the Offering Memorandum) or its financial ability, any builders, any landowners, or the appraisal of the property in the District.

Section 6. Continuing Disclosure Agreement. The Continuing Disclosure Agreement (the "Continuing Disclosure Agreement") between the City and UMB Bank, N.A., as dissemination agent, is

hereby authorized and approved in substantially final form attached hereto as **Exhibit D** and incorporated herein as a part hereof for all purposes and the City Manager of the City is hereby authorized and directed to execute and deliver such Continuing Disclosure Agreement with such changes as may be required to carry out the purpose of this Ordinance and approved by the City Manager, such approval to be evidenced by the execution thereof.

Section 7. Agreement Regarding Waiver of Right of Redemption and Waiver of Agricultural Valuation. The Agreement Regarding Waiver of Right of Redemption and Waiver of Agricultural Valuation (the "Redemption and Waiver Agreement") between the City, Harris Hill Residential Land Holdings, LTD. a Texas limited partnership, and Harris Hill Commercial Land Holdings, LTD., a Texas limited partnership, (each as defined in the Redemption and Waiver Agreement) and UMB Bank, N.A., as escrow agent, is hereby authorized and approved in substantially final form attached hereto as **Exhibit E** and incorporated herein as a part hereof for all purposes and the City Manager of the City is hereby authorized and directed to execute and deliver such Redemption and Waiver Agreement with such changes as may be required to carry out the purpose of this Ordinance and approved by the City Manager, such approval to be evidenced by the execution thereof.

Section 8. Financing Agreement. The Financing Agreement (the "Financing Agreement") between the City, Harris Hill Residential Land Holding, LTD, a Texas limited partnership and Harris Hill Commercial Land Holdings, LTD., a Texas limited partnership, (each as defined in the Financing Agreement) is hereby authorized and approved in substantially final form attached hereto as **Exhibit F** and incorporated herein as a part hereof for all purposes and the City Manager of the City is hereby authorized and directed to execute and deliver such Financing Agreement with such changes as may be required to carry out the purpose of this Ordinance and approved by the City Manager, such approval to be evidenced by the execution thereof.

Section 9. Construction, Funding, And Acquisition Agreement. The Whisper South Public Improvement District Construction, Funding, And Acquisition Agreement (the "Construction Funding Agreement") between the City, Harris Hill Residential Land Holdings, LTD. a Texas limited partnership, and Harris Hill Commercial Land Holdings, LTD., a Texas limited partnership, (each as defined in the Construction Funding Agreement), is hereby authorized and approved in substantially final form attached hereto as **Exhibit G** and incorporated herein as a part hereof for all purposes and the City Manager of the City is hereby authorized and directed to execute and deliver such Construction Funding Agreement with such changes as may be required to carry out the purpose of this Ordinance and approved by the City Manager, such approval to be evidenced by the execution thereof.

Section 10. Additional Actions. The Mayor, the Mayor Pro Tem, the City Manager and the City Clerk are hereby authorized and directed to take any and all actions on behalf of the City necessary or desirable to carry out the intent and purposes of this Ordinance and to issue the Bonds in accordance with the terms of this Ordinance. The Mayor, the Mayor Pro Tem, the City Manager and the City Clerk are hereby authorized and directed to execute and deliver any and all certificates, agreements, notices, instruction letters, requisitions, and other documents which may be necessary or advisable in connection with the sale, issuance and delivery of the Bonds and the carrying out of the purposes and intent of this Ordinance.

Section 11. Severability. If any Section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such Section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 12. Effective Date. This Ordinance is passed on one reading as authorized by Texas Government Code, Section 1201.028, and shall be effective immediately upon its passage and adoption.

*[Remainder of page left blank intentionally]*

PASSED, APPROVED AND EFFECTIVE this December 15, 2021.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Manager

(City Seal)

**EXHIBIT A**  
INDENTURE OF TRUST

**EXHIBIT B**

**BOND PURCHASE AGREEMENT**



**EXHIBIT C**

**LANDOWNER AGREEMENT AND NOTICE OF ASSESSMENTS**

**EXHIBIT D**

CONTINUING DISCLOSURE AGREEMENT

**EXHIBIT E**

AGREEMENT REGARDING WAIVER OF RIGHT OF REDEMPTION AND WAIVER OF  
AGRICULTURAL VALUATION

**EXHIBIT F**

FINANCING AGREEMENT

**EXHIBIT G**

**WHISPER SOUTH PUBLIC IMPROVEMENT DISTRICT CONSTRUCTION, FUNDING, AND  
ACQUISITION AGREEMENT**