

ORDINANCE NO. 2020-__

AN ORDINANCE AUTHORIZING THE ISSUANCE OF THE "CITY OF SAN MARCOS, TEXAS SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2020 (WHISPER PUBLIC IMPROVEMENT DISTRICT)"; APPROVING AND AUTHORIZING AN INDENTURE OF TRUST, A BOND PURCHASE AGREEMENT, AN OFFERING MEMORANDUM, A CONTINUING DISCLOSURE AGREEMENT, A LANDOWNER 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 TEXAS GOVERNMENT CODE, SECTION 1201.028; 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 Public Improvement District" (the "District"), pursuant to Resolution No. 2014-149R adopted by the City Council of the City (the "Council") on October 21, 2014; 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; 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 May 8, 2020, 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 May 19, 2020, which remained open until June 2, 2020, regarding the levy of special assessments within the District, and on June 2, 2020, the Council adopted Ordinance No. 20_____ (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 Initial Assessments (as defined in the Service and Assessment Plan, the "Assessments") 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 2020 (Whisper Public Improvement District)" (the "Bonds"), such Bonds to be payable from and secured by the Pledged Revenues, as defined in the Indenture (defined below); and

WHEREAS, the City is authorized by the PID Act to issue the Bonds for the purpose of (i) paying or reimbursing all or a portion of the costs of the Major Improvements (as defined herein), (ii) paying a portion of the interest on the Bonds during and after the period of acquisition and construction of the Major Improvements, (iii) funding a reserve fund for payment of principal of and interest on the Bonds, (iv) paying a portion of the costs incidental to the organization of the District, and (v) paying the costs of issuance of the Bonds; and

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

WHEREAS, the Council has found and determined to approve (i) the issuance of the Bonds to finance the Major 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) an Offering Memorandum (defined below), (v) a Continuing Disclosure Agreement (defined below), and (vi) a Landowner 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 \$_____,000 for the purpose of (i) paying or reimbursing all or a portion of the costs of the Major Improvements (as defined herein), (ii) paying a portion of the interest on the Bonds during and after the period of acquisition and construction of the Major Improvements, (iii) funding a reserve fund for payment of principal of and interest on the Bonds, (iv) paying a portion of the costs incidental to the organization of the District, and (v) paying the costs of issuance of the Bonds, is hereby authorized and approved.

(b) The Bonds shall be issued and secured under that certain Indenture of Trust (the "Indenture") dated as of June 2, 2020, 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 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., 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 Conveyance of Right of Redemption and Waiver of Agricultural Valuation. The Agreement Regarding Conveyance of Right of Redemption and Waiver of Agricultural Valuation (the "Redemption and Waiver Agreement") between the City, Developer and UMB Bank, N.A., 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. 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 9. 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 10. 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.

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PASSED, APPROVED AND EFFECTIVE this June 2, 2020.

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 CONVEYANCE OF RIGHT OF REDEMPTION AND WAIVER OF
AGRICULTURAL VALUATION