

ORDINANCE NO. 2021-95

AN ORDINANCE LEVYING SPECIAL ASSESSMENTS FOR, AND APPORTIONING THE COSTS OF, CERTAIN IMPROVEMENTS TO PROPERTY IN AND FOR THE WHISPER SOUTH PUBLIC IMPROVEMENT DISTRICT; FIXING A CHARGE AND LIEN AGAINST ALL PROPERTIES WITHIN THE DISTRICT, AND THE OWNERS THEREOF; PROVIDING FOR THE MANNER AND METHOD OF COLLECTION OF SUCH ASSESSMENTS; MAKING A FINDING OF SPECIAL BENEFIT TO PROPERTY IN THE DISTRICT AND THE REAL AND TRUE OWNERS THEREOF; APPROVING A SERVICE AND ASSESSMENT PLAN; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Subchapter A of Chapter 372 of the Texas Local Government Code (the "Act") allows for the creation of public improvement districts; and

WHEREAS, a petition was submitted and filed with the City Clerk (the "*City Clerk*") of the City of San Marcos, Texas (the "*City*") pursuant to the Act, requesting the creation of a public improvement district located within the corporate limits of the City to be known as Whisper South Public Improvement District (the "*District*" or "*PID*") to provide public improvements within the District to include the design, acquisition, and construction of public improvement projects authorized by Section 372.003(b) of the Act that are necessary for development of the District, which public improvements will include, but not be limited to, streets, roadway construction, water, wastewater, and drainage facilities and improvements, and other improvement projects; and

WHEREAS, the petition contained the signatures of the record owners of taxable real property representing more than 50% of the appraised value of the real property liable for assessments within the District, as determined by the then current ad valorem tax rolls of the Hays Central Appraisal District, and the signatures of record property owners who own taxable real property that constitutes more than 50% of the area of all taxable property that is liable for assessment by the District; and

WHEREAS, on May 4, 2021, after due notice, the City Council (the "*City Council*") of the City held the public hearing in the manner required by law on the advisability of the improvement projects described in the petition as required by Section 372.009 of the Act and on May 4, 2021 the City Council made the findings required by Section 372.009(b) of the Act and, by Resolution No. 2021-91R (the "*Creation Resolution*"), adopted by a majority of the members of the City Council, authorized the creation of the District in accordance with its finding as to the advisability of the improvement projects; and

WHEREAS, following the adoption of Creation Resolution, the City published notice of its authorization of the creation of the District in the *San Marcos Daily Record*, a newspaper of general circulation in the City; and

WHEREAS, no written protests regarding the creation 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 Act, the proposed assessment roll (the "*Assessment Roll*") and service and assessment plan were filed with the City Clerk; and

WHEREAS, the statutory notice of a public hearing was published on November 26, 2021, to consider the levy of the proposed assessments (the "*Assessments*") on real property within the District was published in the *San Marcos Daily Record*, a newspaper of general circulation in the City and was mailed to the last known address of the owners of the property liable for the Assessments; and

WHEREAS, after notice was provided as required by the Act, the City Council on December 7, 2021 and December 15, 2021, held a public hearing to consider the levy of the proposed Assessments on property within the District, at which any and all persons who appeared, or requested to appear, in person or by their attorney, were given the opportunity to contend for or contest the Assessment Rolls, and the proposed Assessments, and to offer testimony pertinent to any issue presented on the amount of the Assessments, the allocation of the Actual Costs of the authorized improvements to be undertaken for the benefit of property to be assessed within the District (the "*Authorized Improvements*" as more fully described in Section 3 herein), the purposes of the Assessments, the special benefits of the Authorized Improvements, and the penalties and interest on annual installments and on delinquent annual installments of the Assessments; and

WHEREAS, the City Council finds and determines that the Assessment Rolls and the Whisper South Public Improvement District Service and Assessment Plan, in a form substantially similar to the attached Exhibit A, which final form shall be approved by the City Manager (the "*Service and Assessment Plan*"), and which is incorporated herein for all purposes, should be approved and that the Assessments should be levied as provided in this Ordinance, the Service and Assessment Plan and the Assessment Rolls; and

WHEREAS, the City Council further finds that there were no written objections or evidence submitted to the City Clerk in opposition to the Service and Assessment Plan, the Actual Costs of the Authorized Improvements as described in the Service and Assessment Plan, the Assessment Rolls, and the levy of the Assessments; and

WHEREAS, in connection with the levy of the Assessments, concurrently herewith, the owners (the "*Landowners*") of the privately-owned and taxable property located within the District will execute a landowner agreement, wherein the Landowners, among other things, approves and accepts this Ordinance and the Service and Assessment Plan, including the

Assessment Rolls, consents to and accepts the levy of the Assessments against their property located within the District and agrees to pay the Assessments; and

WHEREAS, the City Council closed the hearing on December 15, 2021, and, after considering all written and documentary evidence presented at the hearing, including all written comments and statements filed with the City, determined to proceed with the adoption of this Ordinance in conformity with the requirements of the Act; 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:

Section 1. All matters stated in the preamble of this Ordinance are found to be true and correct and are incorporated into the body of this Ordinance as if copied in their entirety.

Section 2. The Service and Assessment Plan, attached hereto as Exhibit A has been presented to and reviewed by the City Council and the City Council hereby approves the Service and Assessment Plan and adopts the Service and Assessment Plan as the service plan and assessment plan for the District. All capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Service and Assessment Plan.

Section 3. The Authorized Improvements described in the preamble hereof include the improvements described in Section III.A. of the Service and Assessment Plan that will benefit and serve all of the property within the District (the "*Major Improvements*"), the improvements described in Section III.B. of the Service and Assessment Plan that will benefit and serve all of the property within Improvement Area #1 of the District, as described in the Service and Assessment Plan (the "*Improvement Area #1 Improvements*"), the improvements described in Section III.C. of the Service and Assessment Plan that will benefit and serve all of the property within Improvement Area #2 of the District, as described in the Service and Assessment Plan (the "*Improvement Area #2 Improvements*"), and the improvements described in Section III.D. of the Service and Assessment Plan that will benefit and serve all of the property within Improvement Area #3 of the District, as described in the Service and Assessment Plan (the "*Improvement Area #3 Improvements*"). The Major Improvements, Improvement Area #1 Improvements, Improvement Area #2 Improvements and Improvement Area #3 Improvements are referred to herein, collectively, as the "*Authorized Improvements*")

Section 4. The City Council hereby finds and determines upon the evidence presented in reference to the property located within the District that: (i) the enhancement and value to accrue to the District and the real and true owner or owners thereof by virtue of construction of the Authorized Improvements will be equal to or in excess of the amount of the cost of the proposed Authorized Improvements; (ii) that the apportionment of the costs of the Authorized Improvements and the Assessments here and below made are just and equitable and

produce substantial equality, considering the benefits received and the burdens imposed thereby, and result in imposing equal shares of the cost of the Authorized Improvements on property similarly benefitted, and are in accordance with the laws of the State of Texas; (iii) the property assessed is specially benefitted by means of the said Authorized Improvements in the District in relation to the costs of such improvements; (iv) all procedures that have taken place heretofore with reference to the Authorized Improvements and Assessments are in all respects regular, proper, and valid; and (v) all prerequisites to the fixing of the assessment liens against the properties within the District, and the personal liability of the real and true owner or owners thereof, whether correctly named herein or not, have been in all things regularly and duly performed in compliance with the Act and the proceedings of the City Council. The cost of said Authorized Improvements is hereby assessed and levied as a special assessment against such properties and the real and true owner or owners thereof in the amounts as described in Exhibits F, H and J of the Service and Assessment Plan attached hereto.

Section 5. There shall be and is hereby levied and assessed against the property within the District, and against the real and true owners thereof (whether such owners be correctly named or not), the sums of money as listed in Exhibits F, H and J of the Service and Assessment Plan attached hereto and made a part hereof shown for each of the respective parcels of property, and the assessed against the same, and the owners thereof.

Section 6. The sums assessed against property located within the District and the real and true owners or owner thereof, whether the owner or owners be named or correctly named, or the properties be correctly described therein or not, together with interest thereon at the rate per annum when required as set forth in the Service and Assessment Plan and with reasonable attorney's fees and all costs and expenses of collection, if incurred, are hereby declared to be and made a first and prior lien upon the respective parcels of property against which same are assessed from and after this date, and a personal liability and charge against the real and true owner or owners thereof, whether or not such owner or owners be correctly named herein, paramount and superior to all other liens, claims or titles except for lawful claims for state, county, school district, or municipality ad valorem taxes; and that the sum so assessed shall be payable to the City or its assigns in accordance with the Assessment Rolls attached as Exhibits F, H and J to the Service and Assessment Plan.

Section 7. (a) The levy of the Assessments shall be effective on the date of adoption of this Ordinance levying assessments and strictly in accordance with the terms of the Service and Assessment Plan.

(b) The apportionment of the costs of the Authorized Improvements to be assessed against the property within the District, shall be as set forth in the Service and Assessment Plan.

(c) Assessments and Annual Installments shall be collected, administered and may be reallocated, and the costs of improvements paid, as set forth in: (i) this Ordinance; (ii) the Service and Assessment Plan and (iii) any ordinance, resolution, bond indenture or agreement approved by the City Council.

(d) Each Assessment may be paid in a lump sum or may be paid in Annual Installments pursuant to the terms of the Service and Assessment Plan.

(e) Each Assessment shall accrue and bear interest at the rate or rates specified in the Service and Assessment Plan.

(f) Each Annual Installment shall be due and payable and shall be collected each year in the manner set forth in the Service and Assessment Plan.

(g) Assessments and the interest thereon shall be deposited as and when received by the City into a separate fund to be used to pay the costs incurred for the Authorized Improvements, including debt service on obligations issued to pay the costs of the Authorized Improvements, and the establishment of each such fund is hereby approved.

(h) The Annual Installments shall be reduced to equal the actual costs of repaying the related series of Bonds and actual Annual Collection Costs (as provided for in the definition of such term), taking into consideration any other available funds for these costs, such as interest income on account balances.

Section 8. This Ordinance incorporates by reference all provisions and requirements of the Act.

Section 9. If any section, article, paragraph, sentence, clause, phrase, or word in this Ordinance, or application thereof to any persons or circumstances is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance; and the City Council hereby declares it would have passed such remaining portion of this Ordinance, despite such invalidity, which remaining portions shall remain in full force and effect.

Section 10. This Ordinance shall take effect immediately from and after its passage and it is accordingly so ordained.

APPROVED ON First Reading on the 7th day of December, 2021.

PASSED, APPROVED AND ADOPTED on Second Reading on the 15th day of December, 2021.

ATTEST:

Mayor

City Clerk

[SEAL]

Exhibit A

WHISPER SOUTH PUBLIC IMPROVEMENT DISTRICT
SERVICE AND ASSESSMENT PLAN

(see attached)