

ORDINANCE NO.

AN ORDINANCE APPROVING AND AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF AUSTIN, TEXAS SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2019 (WHISPER VALLEY PUBLIC IMPROVEMENT DISTRICT IMPROVEMENT AREA #1); APPROVING AND AUTHORIZING RELATED AGREEMENTS; APPROVING AND AUTHORIZING THE DISTRIBUTION OF A LIMITED OFFERING MEMORANDUM; AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. FINDINGS AND DETERMINATIONS.

The City Council finds and determines that:

- (A) Pursuant to Chapter 372 of the Texas Local Government Code (the “Act”), the City previously established the Whisper Valley Public Improvement District (the “District”) pursuant to Resolution No. 20100826-026, adopted by the City Council on August 26, 2010; and
- (B) On November 3, 2011, the City Council approved and accepted a Service and Assessment Plan (the “Original Service and Assessment Plan”) in conformity with the Act and levied assessments within the District; and
- (C) Pursuant to the Act, the City published notice of and held a public hearing on August 23, 2018 regarding the 2018 Addendum to the Original Service and Assessment Plan (the “2018 Addendum”), the Improvement Area #1 Assessment Roll (the “Improvement Area #1 Assessment Roll”), and the levy of special assessments against benefitted property located in Improvement Area #1 of the District (the “Improvement Area #1 Assessments”), and after hearing testimony at the public hearing, the City Council closed the public hearing and adopted Ordinance No. 20180823-073 (the “Assessment Ordinance”); and
- (D) In the Assessment Ordinance, the City Council approved and accepted the 2018 Addendum relating to the District (including the Improvement Area #1 Assessment Roll) and levied the Improvement Area #1 Assessments against the Improvement Area #1 Assessed Parcels (each term as defined in the 2019 Amended and Restated Service and Assessment Plan, defined below); and

- 32 (E) On February 7, 2019, the City Council ratified and confirmed the levy of the
33 Improvement Area #1 Assessments against the Improvement Area #1 Assessed
34 Parcels pursuant to Ordinance No. 20190207-002; and
- 35 (F) An amended and restated service and assessment plan (the “2019 Amended and
36 Restated Service and Assessment Plan”) consolidates and incorporates the
37 Original Service and Assessment Plan and the 2018 Addendum into a single plan
38 as part of the annual update to the Original Service and Assessment Plan and the
39 2018 Addendum and for the purposes of issuing the Bonds (defined below); and
- 40 (G) The 2019 Amended and Restated Service and Assessment Plan and the
41 Improvement Area #1 Assessment Rolls attached thereto reflect a reduction in
42 the Improvement Area #1 Assessments against the Improvement Area #1
43 Assessed Parcels; and
- 44 (H) The City is authorized by the Act to issue revenue bonds payable from the
45 Improvement Area #1 Bond Assessments (as defined in the 2019 Amended and
46 Restated Service and Assessment Plan), and other revenue received, for the
47 purposes of (i) paying the costs of the Improvement Area #1 Improvements
48 identified in the 2019 Amended and Restated Service and Assessment Plan, (ii)
49 establishing the other funds and accounts described in the Indenture (as defined
50 below) or as required in connection with the issuance of the bonds, and (iii)
51 paying the costs of issuing the bonds; and
- 52 (I) The City Council finds and determines that it is in the best interest of the City to
53 issue bonds to be designated City of Austin, Texas Special Assessment Revenue
54 Bonds, Series 2019 (Whisper Valley Public Improvement District Improvement
55 Area #1) (the “Bonds”), such series to be payable from and secured by the
56 Pledged Revenues, as defined in the Indenture; and
- 57 (J) The City Council finds that it should approve (i) the issuance of the Bonds to
58 finance the Improvement Area #1 Improvements (as defined in the 2019
59 Amended and Restated Service and Assessment Plan), (ii) the Indenture (as
60 defined below) securing the City’s bonds authorized by this Ordinance, (iii) the
61 Bond Purchase Agreement (as defined below) between the City and purchasers
62 of the Bonds, (iv) the Reimbursement Agreement (as defined below), (v) the First
63 Amendment to the Financing Agreement (as defined below), (vi) the Limited

Offering Memorandum (as defined below), and (vii) the Continuing Disclosure Agreement (as defined below) between the City and U.S. Bank National Association (the “Dissemination Agent” or “Trustee”); and

- (K) The meeting at which this Ordinance was considered was open to the public as required by law, and public notice of the time, place and purpose of the meeting was provided as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

PART 2. APPROVAL OF ISSUANCE OF BONDS AND INDENTURE OF TRUST.

- (A) The issuance of the Bonds in the principal amount \$_____ for the purpose of providing funds for (i) paying the costs of the Improvement Area #1 Improvements, (ii) establishing the funds and accounts described in the Indenture or as required in connection with the issuance of the Bonds, and (iii) paying the costs of issuing the Bonds, is authorized and approved.
- (B) The Bonds shall be issued and secured under the Indenture of Trust (the “Indenture”) dated as of April 1, 2019 between the City and the Trustee. The Indenture, in substantially the form attached as Exhibit A and incorporated for all purposes, is authorized and approved with such changes as are necessary. The Mayor or Mayor Pro Tem is authorized and directed to execute the Indenture.
- (C) The Bonds shall be dated, mature on the date or dates and in the principal or maturity amounts, bear interest, be subject to redemption and have the other terms and provisions set forth in the Indenture. The Bonds shall be in substantially the form set forth in the Indenture, with such changes as are necessary 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 such series, and shall never be payable from ad valorem taxes.

90 **PART 3. SALE OF BONDS; APPROVAL OF BOND PURCHASE AGREEMENT.**

91 The Bonds shall be sold to FMSbonds, Inc. (the “Underwriter”) pursuant to the terms
92 of sale in the Bond Purchase Agreement, dated this date, between the City and the
93 Underwriter, in substantially the form attached hereto as Exhibit B and incorporated for all
94 purposes, which terms of sale are declared to be in the best interest of the City. The Bond
95 Purchase Agreement is authorized and approved with such changes as are necessary, and
96 the Mayor, Mayor Pro Tem, City Manager, or Deputy City Manager is authorized and
97 directed to execute the Bond Purchase Agreement.

98 **PART 4. LIMITED OFFERING MEMORANDUM.**

99 The Preliminary Limited Offering Memorandum for the Bonds and any
100 supplement or amendment (the “Preliminary Limited Offering Memorandum”) and the
101 final Limited Offering Memorandum (the “Limited Offering Memorandum”) presented to
102 and considered at the meeting at which this Ordinance was considered are approved and
103 adopted with such changes as are necessary. The Mayor or Mayor Pro Tem is authorized
104 and directed to execute the Limited Offering Memorandum. The Limited Offering
105 Memorandum may be used by the Underwriter in the offering and sale of the Bonds. The
106 City Clerk is authorized and directed to maintain copies of the Preliminary Limited
107 Offering Memorandum, the Limited Offering Memorandum, and any supplement or
108 amendment. Notwithstanding the prior approval and delivery of the Preliminary Limited
109 Offering Memorandum in the offering of the Bonds, the Preliminary Limited Offering
110 Memorandum is hereby ratified, approved and confirmed. Notwithstanding the approval
111 and execution of the Preliminary Limited Offering Memorandum and the Limited
112 Offering Memorandum by the Mayor or Mayor Pro Tem, the Mayor, the Mayor Pro Tem,
113 and the City Council are not responsible for, and have no specific knowledge of, the
114 information contained in the Preliminary Limited Offering Memorandum or the Limited
115 Offering Memorandum pertaining to the Improvement Area #1 Projects (as defined in the
116 2019 Amended and Restated Service and Assessment Plan), the Developer (as defined
117 below) or its financial ability, any builders, any landowners, or the appraisal of the
118 property in the District.

119 **PART 5. 2019 AMENDED AND RESTATED SERVICE AND ASSESSMENT**
120 **PLAN.**

121 The Original Service and Assessment Plan and the 2018 Addendum are
122 amended and restated by consolidating and incorporating both documents into the 2019
123 Amended and Restated Service and Assessment Plan, attached as Exhibit C, which is
124 hereby accepted and approved pursuant to Section 372.013 of the Act.

125 **PART 6. CONTINUING DISCLOSURE AGREEMENT.**

126 The Continuing Disclosure Agreement of Issuer between the City and U.S.
127 Bank National Association, as Dissemination Agent, in substantially the form attached
128 hereto as Exhibit D and incorporated for all purposes, is authorized and approved with such
129 changes as are necessary. The City Manager, the Deputy City Manager, an Assistant City
130 Manager, or the Treasurer of the City is authorized and directed to execute the Continuing
131 Disclosure Agreement.

132 **PART 7. REIMBURSEMENT AGREEMENT.**

133 The Whisper Valley Public Improvement District Improvement Area #1
134 Reimbursement Agreement (the "Reimbursement Agreement") between the City and Club
135 Deal 120 Whisper Valley, Limited Partnership (the "Developer"), in substantially the form
136 attached as Exhibit E and incorporated for all purposes, is authorized and approved with
137 such changes as are necessary. The City Manager, the Deputy City Manager, an Assistant
138 City Manager, or the Treasurer of the City is authorized and directed to execute the
139 Reimbursement Agreement.

140 **PART 8. FIRST AMENDMENT TO THE FINANCING AGREEMENT.**

141 The First Amendment to the Whisper Valley Public Improvement District
142 Financing Agreement (the "First Amendment to the Financing Agreement") between the
143 City and the Developer, in substantially the form attached as Exhibit F and incorporated
144 for all purposes, is authorized and approved with such changes as are necessary. The City
145 Manager, the Deputy City Manager, an Assistant City Manager, or the Treasurer of the
146 City is authorized and directed to execute the First Amendment to the Financing
147 Agreement.

148 **PART 9. ADDITIONAL ACTIONS.**

149 The Mayor, the Mayor Pro Tem, the City Manager, the Deputy City Manager,
150 an Assistant City Manager, or the City Treasurer, and City Clerk are authorized and
151 directed to execute all certificates, agreements, notices, instruction letters, requisitions, and
152 other documents as are necessary in connection with the sale and issuance of the Bonds.

153 **PART 10. GOVERNING LAW.**

154 This Ordinance shall be construed and enforced in accordance with the laws of
155 the State of Texas and the United States of America.

156 **PART 11. SEVERABILITY.**

157 If any provision of this Ordinance or its application to any person or
158 circumstance is held to be invalid, the remainder of this Ordinance and the application of
159 the provision to other persons or circumstances shall be valid, and the City Council declares
160 that this Ordinance would have been enacted without the invalid provision.

161 **PART 12. INCORPORATION OF FINDINGS AND DETERMINATIONS.**

162 The findings and determinations of the City Council in Part 1 of this Ordinance
163 are incorporated for all purposes.

164 **PART 13. EFFECTIVE DATE.**

165 This Ordinance is passed on one reading as authorized by Texas Government Code
166 Section 1201.028, and shall be effective immediately upon its passage and adoption.
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PASSED AND APPROVED

_____, 2019 § _____
Steve Adler
Mayor

APPROVED: _____ **ATTEST:** _____
Anne L. Morgan Jannette S. Goodall
City Attorney City Clerk

DRAFT