

ORDINANCE NO. 20221201-006

AN ORDINANCE APPROVING AND AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF AUSTIN, TEXAS SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2022 (WHISPER VALLEY PUBLIC IMPROVEMENT DISTRICT IMPROVEMENT AREA #2) AND AUTHORIZING ALL RELATED DOCUMENTS AND FEES.

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 October 1, 2020 regarding the 2020 Amended and Restated Service and Assessment Plan (the “2020 Amended and Restated Service and Assessment Plan”), the Improvement Area #2 Assessment Roll (the “Improvement Area #2 Assessment Roll”), and the levy of special assessments against benefitted property located in Improvement Area #2 of the District, and after hearing testimony at the public hearing, the City Council closed the public hearing and adopted Ordinance No. 20201001-039 (the “Assessment Ordinance”); and
- (D) In the Assessment Ordinance, the City Council approved and accepted the 2020 Amended and Restated Service and Assessment Plan relating to the District (including the Improvement Area #2 Assessment Roll), which 2020

Amended and Restated Service and Assessment Plan amended and restated the Original Service and Assessment Plan and levied the Improvement Area #2 Assessments against the Improvement Area #2 Assessed Parcels (each term, as defined in the 2022 Amended and Restated Service and Assessment Plan (as defined below)); and

- (E) An amended and restated service and assessment plan (the “2022 Amended and Restated Service and Assessment Plan”) amends and restates the 2020 Amended and Restated Service and Assessment Plan for the purposes of issuing the Bonds (defined below) and updating the Improvement Area #2 Assessment Roll; and
- (F) The City is authorized by the Act to issue revenue bonds payable from the Improvement Area #2 Assessments (as defined in the 2022 Amended and Restated Service and Assessment Plan), and other revenue received, for the purposes of (i) paying the Actual Costs of the Improvement Area #2 Improvements identified in the 2022 Amended and Restated Service and Assessment Plan, (ii) funding a reserve fund for the Bonds, and (iii) paying the costs of issuance of the Bonds; and
- (G) The City Council finds and determines that it is in the best interest of the City to issue bonds to be designated City of Austin, Texas Special Assessment Revenue Bonds, Series 2022 (Whisper Valley Public Improvement District Improvement Area #2) (the “Bonds”), such series to be payable from and secured by the Pledged Revenues, as defined in the Indenture; and
- (H) The City Council finds that it should approve (i) the issuance of the Bonds to finance the Actual Costs of the Improvement Area #2 Improvements (as defined and identified in the 2022 Amended and Restated Service and Assessment Plan), (ii) the Indenture (as defined below) securing the City’s bonds authorized by this Ordinance, (iii) the Bond Purchase Agreement (as defined below) between the City and purchasers of the Bonds, (iv) the Limited Offering Memorandum (as defined below), (v) the 2022 Amended

61 and Restated Service and Assessment Plan, and (vi) the Continuing
62 Disclosure Agreement (as defined below) between the City and U.S. Bank
63 National Association (the “Trustee”) relating to the Bonds and the
64 Improvement Area #2 Assessments; and

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

69 **PART 2. APPROVAL OF ISSUANCE OF BONDS AND INDENTURE OF**
70 **TRUST**

- 71 (A) The issuance of the Bonds in the principal amount \$6,820,000 for the
72 purpose of providing funds for (i) paying the Actual Costs of the
73 Improvement Area #2 Improvements, (ii) funding a reserve fund for the
74 Bonds, and (iii) paying the costs of issuance of the Bonds, is authorized and
75 approved.
76
- 77 (B) The Bonds shall be issued and secured under the Indenture of Trust (the
78 “Indenture”) dated as of December 1, 2022, between the City and the
79 Trustee. The Indenture, in substantially the form attached as Exhibit A and
80 incorporated for all purposes, is authorized and approved with such changes
81 as are necessary. The Mayor or Mayor Pro Tem is authorized and directed to
82 execute the Indenture.
83
- 84 (C) The Bonds shall be dated, mature on the date or dates and in the principal or
85 maturity amounts, bear interest, be subject to redemption and have the other
86 terms and provisions set forth in the Indenture. The Bonds shall be in
87 substantially the form set forth in the Indenture, with such changes as are
88 necessary to conform the form of bond to the actual terms of the Bonds. The
89 Bonds shall be payable from and secured by the Pledged Revenues (as
90 defined in the Indenture) and other assets of the Trust Estate (as defined in
91 the Indenture) pledged to such series and shall never be payable from ad
92 valorem taxes.
93

94 **PART 3. SALE OF BONDS; APPROVAL AND BOND PURCHASE**
95 **AGREEMENT**

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

103 **PART 4. LIMITED OFFERING MEMORANDUM**

104 The Preliminary Limited Offering Memorandum for the Bonds and any
105 supplement or amendment (the “Preliminary Limited Offering Memorandum”) and the
106 final Limited Offering Memorandum (the “Limited Offering Memorandum”) presented
107 to and considered at the meeting at which this Ordinance was considered are approved
108 and adopted with such changes as are necessary. The Mayor or Mayor Pro Tem is
109 authorized and directed to execute the Limited Offering Memorandum. The Limited
110 Offering Memorandum may be used by the Underwriter in the offering and sale of the
111 Bonds. The City Clerk is authorized and directed to maintain copies of the Preliminary
112 Limited Offering Memorandum, the Limited Offering Memorandum, and any
113 supplement or amendment. Notwithstanding the prior approval and delivery of the
114 Preliminary Limited Offering Memorandum in the offering of the Bonds, the
115 Preliminary Limited Offering Memorandum is hereby ratified, approved and confirmed.
116 Notwithstanding the approval and execution of the Preliminary Limited Offering
117 Memorandum and the Limited Offering Memorandum by the Mayor or Mayor Pro Tem,
118 the Mayor, the Mayor Pro Tem, and the City Council are not responsible for, and have
119 no specific knowledge of, the information contained in the Preliminary Limited Offering
120 Memorandum or the Limited Offering Memorandum pertaining to the Project (as
121 defined in the Bond Purchase Agreement), the Landowner or its financial ability, any
122 builders, any landowners, or the appraisal of the property in the District.

123 **PART 5. 2022 AMENDED AND RESTATED SERVICE AND ASSESSMENT**
124 **PLAN**

125 The 2020 Amended and Restated Service and Assessment Plan is amended and
126 restated by the 2022 Amended and Restated Service and Assessment Plan, attached as
127 Exhibit C, which is hereby accepted and approved pursuant to Section 372.013 of the
128 Act.

130 **PART 6. CONTINUING DISCLOSURE AGREEMENT.**

131 That certain “City of Austin, Texas Special Assessment Revenue Bonds, Series
132 2022 (Whisper Valley Public Improvement District Improvement Area #2) Continuing
133 Disclosure Agreement of Issuer” (the “Continuing Disclosure Agreement”) between the
134 City, U.S. Bank National Association, as Dissemination Agent, and P3Works, LLC as the
135 Administrator, in substantially the form attached hereto as Exhibit D and incorporated for
136 all purposes, is authorized and approved with such changes as are necessary. The City
137 Manager, an Assistant City Manager, the Chief Financial Officer or the Treasurer of the
138 City is authorized and directed to execute the Continuing Disclosure Agreement.

139 **PART 7. ADDITIONAL ACTIONS.**

140 The Mayor, the Mayor Pro Tem, the City Manager, an Assistant City Manager,
141 the Chief Financial Officer, the City Treasurer and City Clerk are authorized and directed
142 to execute all certificates, agreements, notices, instruction letters, requisitions, and other
143 documents as are necessary in connection with the sale and issuance of the Bonds.
144

145 **PART 8. GOVERNING LAW.**

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147 This Ordinance shall be construed and enforced in accordance with the laws of
148 the State of Texas and the United States of America.
149

150 **PART 9. SEVERABILITY.**

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152 If any provision of this Ordinance or its application to any person or
153 circumstance is held to be invalid, the remainder of this Ordinance and the application of
154 the provision to other persons or circumstances shall be valid, and the City Council
155 declares that this Ordinance would have been enacted without the invalid provision.
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157 **PART 9. INCORPORATION OF FINDINGS AND DETERMINATIONS.**

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159 The findings and determinations of the City Council in Part 1 of this Ordinance
160 are incorporated for all purposes.
161
162

PART 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.

PASSED AND APPROVED

_____	§	_____
	§	
_____, 2022	§	Steve Adler
		Mayor