

ORDINANCE NO. _____

AN ORDINANCE ACCEPTING AND APPROVING A SERVICE AND ASSESSMENT PLAN AND ASSESSMENT ROLL FOR THE CITY OF AUSTIN, TEXAS SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2013 (ESTANCIA HILL COUNTRY PUBLIC IMPROVEMENT DISTRICT); MAKING A FINDING OF SPECIAL BENEFIT TO THE PROPERTY IN THE DISTRICT; LEVYING SPECIAL ASSESSMENTS AGAINST PROPERTY WITHIN THE DISTRICT AND ESTABLISHING A LIEN ON SUCH PROPERTY; PROVIDING FOR PAYMENT OF THE ASSESSMENTS IN ACCORDANCE WITH CHAPTER 372, TEXAS LOCAL GOVERNMENT CODE PROVIDING FOR THE METHOD OF ASSESSMENT AND THE PAYMENT OF THE ASSESSMENTS, PROVIDING PENALTIES AND INTEREST ON DELINQUENT ASSESSMENTS, PROVIDING FOR SEVERABILITY, AND DECLARING AN EMERGENCY.

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

PART 1. FINDINGS:

- (A) A petition was submitted and filed with the City Clerk (City Clerk) of the City of Austin, Texas (City) pursuant to the Public Improvement District Assessment Act, Chapter 372, Texas Local Government Code (PID Act), requesting the creation of a public improvement district over a portion of the area of the City to be known as Estancia Hill Country Public Improvement District (District).
- (B) The petition contained the signatures of the owners of taxable property representing more than fifty percent of the appraised value of taxable real property liable for assessment within the District, as determined by the then current ad valorem tax rolls of the Travis Central Appraisal District and the signatures of property owners who own taxable real property that constitutes more than fifty percent of the area of all taxable property that are liable for assessment by the District.
- (C) On May 9, 2013, after due notice, the City Council of the City (the "City Council") held the public hearing in the manner required by law on the advisability of the public improvements and services described in the petition as required by Sec. 372.009 of the PID Act and made the findings required by Sec. 372.009(b) of the PID Act and, on June 6, 2013, by Resolution No. 20130606-054, authorized the District in accordance with its finding as to the advisability of the public improvement and services.

- 36 (D) On April 24, 2013, the City published notice of its authorization of the
37 District in the Austin American-Statesman, a newspaper of general
38 circulation in the City.
- 39 (F) Written protests of the District from any owners of record of property within
40 the District were filed with the City Clerk within 20 days after April; 24,
41 2013.
- 42 (G) City Council, pursuant to Section 372.016(b) of the PID Act, published
43 notice on June 10, 2013 in the Austin American-Statesman of a public
44 hearing in a newspaper of general circulation in the City and the
45 extraterritorial jurisdiction of the City to consider the proposed "Assessment
46 Roll" and the "Service and Assessment Plan" and the levy of the
47 "Assessments" on property in the District.
- 48 (H) The City Council, pursuant to Section 372.016(c) of the PID Act, caused the
49 mailing of the notice of the public hearing to consider the proposed
50 Assessment Roll and the Service and Assessment Plan and the levy of
51 Assessments on property in the District to the last known address of the
52 owners of the property liable for the Assessments.
- 53 (I) The City Council convened the hearing at 2:00 p.m. on June 20, 2013, at
54 which all persons who appeared, or requested to appear, in person or by their
55 attorney, were given the opportunity to contend for or contest the Plan, the
56 Assessment Roll, and each proposed assessment, and to offer testimony
57 pertinent to any issue presented on the amount of the Assessment, the
58 allocation of Costs, the purposes of the Assessment, the special benefits of
59 the Assessment, and the penalties and interest on annual installments and on
60 delinquent annual installments of the Assessment.
- 61 (J) The City Council finds and determines that the Assessment Roll and the
62 Service and Assessment Plan should be approved and that the Assessments
63 (as defined in the Service and Assessment Plan) should be levied as
64 provided in this Ordinance and the Service and Assessment Plan and
65 Assessment Roll.
- 66 (K) The City Council further finds that there were no written objections or
67 evidence submitted to the City Clerk in opposition to the Service and
68 Assessment Plan, the allocation of Costs, the Assessment Roll, and the levy
69 of Assessments.
- 70 (L) Prior to the issuance of bonds secured by the Assessments, the owners (the
71 "Landowners" or the "Assessed Parties") of 100% of the privately-owned

and taxable property located within the District, and who are the persons to be assessed pursuant to this Ordinance, will have executed and presented to the City Council for approval and acceptance a Landowner Agreement (Landowner Agreement) in the form and substance acceptable to the City, in which the Assessed Parties approve and accept the Service and Assessment Plan, approve the Assessment Roll, approve this Ordinance and approve the levy of the Assessments against their property located within the District, and agree to pay the Assessments when due and payable subject to the credits provided for herein and in the Service and Assessment Plan.

(M) The City Council closed the hearing, 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 PID Act.

(N) The apportionment of the Improvement Area #1 Public Improvements and the Annual Installment pursuant to the Service and Assessment Plan is fair and reasonable, reflects an accurate presentation of the special benefit each property will receive from the construction of the public improvements identified in the Service and Assessment Plan, and is hereby approved.

(O) The Service and Assessment Plan covers a period of at least five years and defines the annual indebtedness and projected costs for the Authorized Improvements.

(P) The Service and Assessment Plan apportions the cost of a public improvement to be assessed against property in the District and such apportionment is made on the basis of special benefits accruing to the property because of the improvement.

(Q) All of the real property in the District which is being assessed in the amounts shown in the Assessment Roll will be benefited by the services and improvements proposed to be provided through the District in the Service and Assessment Plan, and each parcel of real property will receive special benefits in each year equal to or greater than each annual Assessment and will receive special benefits during the term of the Assessments equal to or greater than the total amount assessed.

(R) The method of apportionment of the Improvement Area #1 Public Improvements and Annual Installment associated with the Initial Improvement Area #1 PID Bonds set forth in the Service and Assessment

Plan results in imposing equal shares of the Improvement Area #1 Public Improvements and Annual Installment associated with the Initial Improvement Area #1 PID Bonds on property similarly benefited, and results in a reasonable classification and formula for the apportionment of the costs of the improvements.

(S) The Service and Assessment Plan should be approved as the service plan and assessment plan for the District as described in Sections 372.013 and 372.014 of the PID Act.

(T) The Improvement Area #1 Assessment Roll in the form attached as Appendix A to the Service and Assessment Plan (Assessment Roll) should be approved as the assessment roll for the District.

(U) The provisions of the Service and Assessment Plan relating to due and delinquency dates for the Assessments, interest on Annual Installments, interest and penalties on delinquent Assessments and delinquent Annual Installments, and procedures in connection with the imposition and collection of Assessments should be approved and will expedite collection of the Assessments in a timely manner in order to provide the services and improvements needed and required for the area within the District.

(V) A written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public for the time required by law preceding this meeting, as required by the Open Meetings Act, Chapter 551, Texas Government Code, and that this meeting has been open to the public as required by law at all times during which this Ordinance and the subject matter hereof has been discussed, considered, and formally acted upon.

PART 2. TERMS.

Terms not otherwise defined herein are defined in the Service and Assessment Plan substantially in the form attached hereto as Exhibit A (Service and Assessment Plan).

PART 3. ASSESSMENT PLAN.

The Service and Assessment Plan substantially in the form attached to this Ordinance is hereby accepted and approved pursuant to the PID Act Sections 372.013 and 372.014 as the service plan and the assessment plan for the District.

PART 4. ASSESSMENT ROLL.

The Improvement Area #1 Assessment Roll is hereby accepted and approved pursuant to the PID Act Section 372.016 as the assessment roll of Improvement Area #1 of the District.

PART 5. LEVY AND PAYMENT OF SPECIAL ASSESSMENTS FOR COSTS OF IMPROVEMENT PROJECT.

(a) The City Council hereby levies an assessment on each tract of property located within Improvement Area #1 of the District, as shown and described on the Service and Assessment Plan and the Assessment Roll, in the respective amounts shown on the Improvement Area #1 Assessment Roll as a special assessment on the properties set forth in the Improvement Area #1 Assessment Roll.

(b) The levy of the Special Assessments related to Improvement Area #1 of the District shall be effective on the date of execution of this Ordinance levying assessments and strictly in accordance with the terms of the Service and Assessment Plan.

(c) The collection of the Special Assessments shall be as described in the Service and Assessment Plan.

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

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

(g) The Annual Installments for Assessed Properties shall be calculated pursuant to the terms of the Service and Assessment Plan.

PART 6. METHOD OF ASSESSMENT.

The method of apportioning the Actual Costs is as set forth in the Service and Assessment Plan.

PART 7. PENALTIES AND INTEREST ON DELINQUENT SPECIAL ASSESSMENTS.

Delinquent Special Assessments shall be subject to the penalties, interest, procedures, and foreclosure sales set forth in the Service and Assessment Plan. The

173 Special Assessments shall have lien priority as specified in the PID Act and the Service
174 and Assessment Plan.

175 **PART 8. PREPAYMENTS OF SPECIAL ASSESSMENTS.**

176 As provided in subsection 372.018(f) of the PID Act and in Section VI G. of the
177 Service and Assessment Plan, the owner (Owner) of any Assessed Property may prepay
178 the Special Assessments levied by this Ordinance.

179 **PART 9. LIEN PRIORITY.**

180 As provided in the Landowner Agreement, the City Council and the Landowners
181 intend for the obligations, covenants and burdens on the Landowners of Assessed
182 Property, including without limitation such Landowners' obligations related to payment
183 of the Special Assessments and the Annual Installments, to constitute a covenant running
184 with the land. The Special Assessments and the Annual Installments levied hereby shall
185 be binding upon the Owners, and their respective transferees, legal representatives, heirs,
186 devisees, successors and assigns in the same manner and for the same period as such
187 parties would be personally liable for the payment of ad valorem taxes under applicable
188 law. Special Assessments shall have lien priority as specified in the Service and
189 Assessment Plan and the PID Act.

190 **PART 10. APPOINTMENT OF ADMINISTRATOR AND COLLECTOR OF**
191 **ASSESSMENTS.**

192 (a) Appointment of Administrator.

193 The City Treasurer of the City or his designee is hereby appointed and
194 designated as the initial Administrator of the Service and Assessment Plan and of
195 the assessments levied by this Ordinance. The Administrator shall perform the
196 duties of the Administrator described in the Service and Assessment Plan and in
197 this Ordinance. The Administrator's fees, charges and expenses for providing such
198 service shall constitute an Annual Installment.

199 (b) Appointment of Temporary Collector.

200 The City Treasurer of the City or his designee is hereby appointed as the
201 temporary collector of the Special Assessments (the "Collector"). The Collector
202 shall serve in such capacity until such time as the City shall arrange for the
203 Collector's duties to be performed by any other qualified collection agent selected
204 by the City.

205 **PART 11. APPLICABILITY OF TAX CODE.**

To the extent not inconsistent with this Ordinance, and not inconsistent with the PID Act or the other laws governing public improvement districts, the provisions of the Texas Tax Code shall be applicable to the imposition and collection of Special Assessments by the City.

PART 12. SEVERABILITY.

If any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void, or invalid, the validity of the remaining portions of this Ordinance or the application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council that no portion hereof, or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness, or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

PART 13. EFFECTIVE DATE/EMERGENCY.

The Council finds that the adoption of this Ordinance to provide for special assessment pledged to the payment of the special assessment revenue bonds authorized at the meeting at which this Ordinance is considered constitutes an emergency. Because of this emergency, this Ordinance takes effect immediately on its passage for the immediate preservation of the public peace, health and safety.

PASSED AND APPROVED:

_____	§	_____
_____	§	_____
_____, 2013	§	_____
		Lee Leffingwell
		Mayor

APPROVED: _____	ATTEST: _____
Karen M. Kennard	Jannette S. Goodall
City Attorney	City Clerk

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EXHIBIT A

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SERVICE AND ASSESSMENT PLAN

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