

ORDINANCE NO.

AN ORDINANCE APPROVING AN AMENDED AND RESTATED SERVICE AND ASSESSMENT PLAN FOR THE CITY OF AUSTIN ESTANCIA HILL COUNTRY PUBLIC IMPROVEMENT DISTRICT; MAKING A FINDING OF SPECIAL BENEFIT TO THE PROPERTY IN THE DISTRICT; UPDATING THE IMPROVEMENT AREA #1 ASSESSMENT ROLL; ADOPTING THE IMPROVEMENT AREA #2 ASSESSMENT ROLL; LEVYING SPECIAL ASSESSMENTS AGAINST, AND ESTABLISHING A LIEN ON, PROPERTY IN IMPROVEMENT AREA #2; AND PROVIDING FOR THE METHOD AND PAYMENT OF THE ASSESSMENTS.

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

PART 1. FINDINGS AND DETERMINATIONS:

The City Council finds and determines that:

- (A) On June 6, 2013, the City Council adopted a resolution (the “Creation Resolution”) which provided for the creation of the Estancia Hill Country Public Improvement District (the “District”).
- (B) On June 20, 2013, and in connection with the Creation Resolution, the City Council approved and accepted a Service and Assessment Plan (the “Original Service and Assessment Plan”) in conformity with Chapter 372 of the Local Government Code (the “Act”) and levied assessments within Improvement Area #1 of the District (the “Improvement Area #1 Assessments”).
- (C) In connection with the levying of the Improvement Area #1 Assessments, the City Council authorized the issuance of the City of Austin, Texas Special Assessment Revenue Bonds, Series 2013 (Estancia Hill Country Public Improvement District) (the “2013 Improvement Area #1 Bonds”).
- (D) Pursuant to the terms of an Indenture of Trust dated June 1, 2013 securing the Improvement Area #1 Bonds (the “Original Indenture”), the City reserved the right to issue Additional Bonds (as defined in the Original Indenture).
- (E) On this date, the City Council, pursuant to Ordinance No. 20181213-093, authorized the issuance of the City of Austin, Texas Special Assessment Revenue Bonds, Series 2018 (Estancia Hill Country Public Improvement District Improvement Area #1) (the “2018 Improvement Area #1 Bonds”), which constitute Additional Bonds under the Original Indenture. Pursuant to the same Ordinance, the City Council authorized the amendment and restatement of the Original Indenture in its entirety to

accommodate the issuance of the 2018 Improvement Area #1 Bonds (the “Amended and Restated Indenture”).

- (F) Pursuant to Section 372.016(b) of the Act, the City Council published notice on December 2, 2018 in the *Austin American-Statesman*, a newspaper of general circulation in the City and the extraterritorial jurisdiction of the City, of a public hearing to consider amendments to the Original Service and Assessment Plan (the “2018 Amended and Restated Service and Assessment Plan”), the Improvement Area #2 Assessment Roll (together with the Improvement Area #1 Assessment Roll, the “Assessment Rolls”), and the levy of assessments on benefitted property in Improvement Area #2 (the “Improvement Area #2 Assessments” and, together with the Improvement Area #1 Assessments, the “Assessments”).
- (G) Pursuant to Section 372.016(c) of the Act, the City Council caused the mailing of notice of the public hearing to consider the 2018 Amended and Restated Service and Assessment Plan, the Improvement Area #2 Assessment Roll, and the levy of Improvement Area #2 Assessments on property in Improvement Area #2 to the last known addresses of the owners of the property liable for the Improvement Area #2 Assessments.
- (H) The City Council convened the public hearing at 4:00 p.m. on December 13, 2018, at which all persons, if any, who appeared, or requested to appear, in person or by their attorney, were given the opportunity to support or contest the 2018 Amended and Restated Service and Assessment Plan, the Improvement Area #2 Assessment Roll, and each proposed assessment, and to offer testimony pertinent to any issue presented on the amount of the Improvement Area #2 Assessments, the allocation of Improvement Area #2 costs, the purposes of the Improvement Area #2 Assessments, the special benefits conferred on Improvement Area #2 by the Improvement Area #2 Assessments, and the penalties and interest on annual installments and on delinquent annual installments of the Improvement Area #2 Assessments.
- (I) 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, if any, determined to proceed with the adoption of this Ordinance in conformity with the requirements of the Act.
- (J) The Assessment Rolls and the 2018 Amended and Restated Service and Assessment Plan, in substantially the form attached as Exhibit A and incorporated for all purposes, should be approved, and the Improvement Area #2 Assessments should be levied as provided in this Ordinance and the 2018 Amended and Restated Service and Assessment Plan and the Assessment Rolls.

- (K) There were no written objections or evidence submitted to the City Clerk in opposition to the 2018 Amended and Restated Service and Assessment Plan, the allocation of Improvement Area #2 costs, the Assessment Rolls, or the levy of the Improvement Area #2 Assessments.
- (L) The City Council determines that it is necessary to amend the Original Service and Assessment Plan to (1) update the assessment roll and the annual installments related to the Improvement Area #1 Assessments in order to incorporate the financial terms of the 2018 Improvement Area #1 Bonds into the Improvement Area #1 Assessment Roll and (2) incorporate the Improvement Area #2 Assessment Roll, the allocation of Improvement Area #2 costs, the purposes of the Improvement Area #2 Assessments, and the special benefits derived from the Improvement Area #2 Improvements.
- (M) Prior to the issuance of bonds secured by the Improvement Area #2 Assessments, the owners of 100% of the privately-owned and taxable property located within Improvement Area #2, who are the persons to be assessed pursuant to this Ordinance (the “Landowners”), will have executed and presented to the City Council for approval a Landowner Agreement in which the Landowners approve the 2018 Amended and Restated Service and Assessment Plan, approve the Improvement Area #2 Assessment Roll, approve the levy of the Improvement Area #2 Assessments against their property, agree to pay the Improvement Area #2 Assessments when due and payable, subject to the credits provided for in this Ordinance and in the 2018 Amended and Restated Service and Assessment Plan, and approve this Ordinance.
- (N) On this date, the City Council, pursuant to Ordinance No. 20181213-094, authorized the issuance of the City of Austin, Texas Special Assessment Revenue Bonds, Series 2018 (Estancia Hill Country Public Improvement District Improvement Area #2) (the “2018 Improvement Area #2 Bonds”), and the City Council, pursuant to the same Ordinance, authorized an indenture of trust securing the 2018 Improvement Area #2 Bonds (the “Indenture”).
- (O) The apportionment of the Improvement Area #1 Improvements, the Improvement Area #2 Improvements, and the Annual Installment (as defined the 2018 Amended and Restated Service and Assessment Plan), are each fair and reasonable and reflect an accurate representation of the special benefit each property will receive from the construction of the public improvements identified in the 2018 Amended and Restated Service and Assessment Plan.
- (P) The 2018 Amended and Restated Service and Assessment Plan covers a period of at least five years and defines the annual indebtedness and projected costs for the

Authorized Improvements (as defined in the 2018 Amended and Restated Service and Assessment Plan).

- (Q) The 2018 Amended and Restated Service and Assessment Plan apportions the costs of the Authorized Improvements to be assessed against certain property in the District, and the apportionment is made on the basis of the special benefits accruing to that property because of the Authorized Improvements.
- (R) All of the real property in the District which is being assessed in the amounts shown in the Assessment Rolls will benefit from the services and improvements proposed to be provided through the District in the 2018 Amended and Restated Service and Assessment Plan, and each parcel of real property will each year receive special benefits 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.
- (S) The method of apportionment of the costs of the Improvement Area #1 Improvements and the Annual Installments associated with the 2018 Improvement Area #1 Bonds set forth in the 2018 Amended and Restated Service and Assessment Plan results in imposing equal shares of such costs on property similarly benefited, and results in a reasonable classification and formula for the apportionment of the costs of the improvements.
- (T) The method of apportionment of the costs of the Improvement Area #2 Improvements and the Annual Installments associated with the Improvement Area #2 Bonds set forth in the 2018 Amended and Restated Service and Assessment Plan results in imposing equal shares of the costs of the Improvement Area #2 Improvements and the Annual Installments associated with the 2018 Improvement Area #2 Bonds on property similarly benefited, and results in a reasonable classification and formula for the apportionment of the costs of the improvements.
- (U) The 2018 Amended and Restated Service and Assessment Plan, in substantially the form attached as Exhibit A and incorporated for all purposes, should be approved as the service plan and assessment plan for the District, as described in Sections 372.013 and 372.014 of the Act.
- (V) The Improvement Area #1 Assessment Roll attached as Exhibit F-1 and the Improvement Area #2 Assessment Roll attached as Exhibit G-1 to the 2018 Amended and Restated Service and Assessment Plan should be approved as the Assessment Rolls for the District.
- (W) The provisions of the 2018 Amended and Restated Service and Assessment Plan relating to due dates and delinquency dates for the Assessments, interest on Annual

Installments, interest and penalties on delinquent Assessments and delinquent Annual Installments, and procedures for the imposition and collection of Assessments 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.

- (X) 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 of the Texas Government Code), and this meeting has been open to the public as required by law at all times during which this Ordinance has been discussed, considered, and acted upon.

PART 2. TERMS.

Terms not otherwise defined in this Ordinance are defined in the 2018 Amended and Restated Service and Assessment Plan.

PART 3. ASSESSMENT PLAN.

Pursuant to Sections 372.013 and 372.014 of the Act, the 2018 Amended and Restated Service and Assessment Plan, in substantially the form attached as Exhibit A, is accepted and approved, with such changes as are necessary, as the service plan and the assessment plan for the District.

PART 4. ASSESSMENT ROLLS.

Pursuant to Section 372.016 of the Act, the Improvement Area #1 Assessment Roll is accepted and updated as the assessment roll of Improvement Area #1 of the District, and the Improvement Area #2 Assessment Roll is accepted and approved as the assessment roll of Improvement Area #2 of the District.

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

- (A) The City Council levies an assessment on each tract of property located within Improvement Area #2 of the District, as described in the 2018 Amended and Restated Service and Assessment Plan and the Improvement Area #2 Assessment Roll, in the respective amounts shown on the Improvement Area #2 Assessment Roll, as a special assessment on the properties set forth in the Improvement Area #2 Assessment Roll.

- (B) The levy of the Assessments related to Improvement Area #2 District are effective on the date of execution of this Ordinance, and the Assessments shall be levied strictly in accordance with the terms of the 2018 Amended and Restated Service and Assessment Plan.
- (C) The collection of the Assessments shall be as described in the 2018 Amended and Restated Service and Assessment Plan.
- (D) Each Assessment may be paid in a lump sum or in Annual Installments pursuant to the terms of the 2018 Amended and Restated Service and Assessment Plan.
- (E) Each Assessment shall bear interest at the rate or rates specified in the 2018 Amended and Restated Service and Assessment Plan.
- (F) Each Annual Installment shall be collected each year in the manner set forth in the 2018 Amended and Restated Service and Assessment Plan.
- (G) The Annual Installments for Assessed Properties shall be calculated pursuant to the terms of the 2018 Amended and Restated Service and Assessment Plan.

PART 6. METHOD OF ASSESSMENT.

The method of apportioning the Improvement Area #1 Costs and the Improvement Area #2 Costs is as set forth in the 2018 Amended and Restated Service and Assessment Plan.

PART 7. PENALTIES AND INTEREST ON DELINQUENT ASSESSMENTS.

Delinquent Assessments shall be subject to the penalties, interest, procedures, and foreclosure sales set forth in the 2018 Amended and Restated Service and Assessment Plan. The Assessments shall have lien priority as set forth in the Act and the 2018 Amended and Restated Service and Assessment Plan.

PART 8. PREPAYMENTS OF ASSESSMENTS.

As set forth in subsection 372.018(f) of the Act and in Section VI(D) of the 2018 Amended and Restated Service and Assessment Plan, the Landowner of any Assessed Property may prepay the Assessments levied by this Ordinance.

PART 9. LIEN PRIORITY.

As provided in the Landowner Agreement, the City Council and the Landowners intend for the obligations, covenants and burdens on the Landowners of Assessed Property, including without limitation such Landowners' obligations related to payment of the

Assessments and the Annual Installments, to constitute a covenant running with the land. The Assessments and the Annual Installments levied hereby shall be binding on the Landowners, and their respective transferees, legal representatives, beneficiaries, successors and assigns in the same manner and for the same period as such parties would be personally liable for the payment of ad valorem taxes under applicable law. Assessments shall have lien priority as specified in the 2018 Amended and Restated Service and Assessment Plan and the Act.

PART 10. REIMBURSEMENT AGREEMENT.

The Reimbursement Agreement, in substantially the form attached as Exhibit B and incorporated for all purposes, is accepted and approved with such changes as are necessary. The Mayor is authorized and directed to execute the Reimbursement Agreement.

PART 11. APPOINTMENT OF ADMINISTRATOR AND COLLECTOR OF ASSESSMENTS.

(A) Appointment of Administrator.

The City Controller shall initially serve as the Administrator of the 2018 Amended and Restated Service and Assessment Plan and of the assessments levied by this Ordinance. The Administrator shall perform the duties of the Administrator described in the 2018 Amended and Restated Service and Assessment Plan and in this Ordinance. The Administrator's fees, charges and expenses for providing such service shall constitute an expense payable from the Annual Installments.

(B) Appointment of Collector.

Pursuant to the terms of an interlocal agreement between the City Controller's Office and Travis County, Travis County is appointed as the collector of the Assessments (the "Collector"). The Collector shall serve in this capacity until the City arranges for the Collector's duties to be performed by any other qualified collection agent selected by the City.

PART 12. APPLICABILITY OF TAX CODE.

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

PART 13. INCORPORATION OF FINDINGS AND DETERMINATIONS.

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

242 **PART 14. SEVERABILITY.**

243 If any provision of this Ordinance or its application to any person or circumstance is
244 held to be invalid, the remainder of this Ordinance and the application of the provision to
245 other persons or circumstance shall be valid, and the City Council declares that this
246 Ordinance would have been enacted without the invalid provision.

247 **PART 15. GOVERNING LAW.**

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

250 **PART 16. EFFECTIVE DATE.**

251 This Ordinance is passed on one reading as authorized by Texas Government Code
252 Section 1201.028, and shall be effective immediately upon its passage and adoption.

PASSED AND APPROVED:

_____, 2018

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Steve Adler
Mayor

APPROVED:

Anne L. Morgan
City Attorney

ATTEST:

Jannette S. Goodall
City Clerk

DRAFT

EXHIBIT A

2018 AMENDED AND RESTATED SERVICE AND ASSESSMENT PLAN

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EXHIBIT B
REIMBURSEMENT AGREEMENT

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