

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS APPROVING A SERVICE AND ASSESSMENT PLAN AND ASSESSMENT ROLL FOR PHASE #1 IMPROVEMENTS AND PHASE #2 MAJOR IMPROVEMENTS FOR THE HEARTLAND TOWN CENTER PUBLIC IMPROVEMENT DISTRICT (THE "DISTRICT"); MAKING A FINDING OF SPECIAL BENEFIT TO CERTAIN PROPERTY IN THE DISTRICT; LEVYING SPECIAL ASSESSMENTS AGAINST CERTAIN PROPERTY WITHIN THE DISTRICT AND ESTABLISHING A LIEN ON SUCH PROPERTY; PROVIDING FOR PAYMENT OF THE ASSESSMENT IN ACCORDANCE WITH CHAPTER 372, TEXAS LOCAL GOVERNMENT CODE, AS AMENDED; PROVIDING FOR THE METHOD OF ASSESSMENT AND THE PAYMENT OF THE ASSESSMENTS; PROVIDING PENALTIES AND INTEREST ON DELINQUENT ASSESSMENTS; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Mesquite, Texas (the "City") received a petition meeting the requirements of Sec. 372.005 of the Public Improvement District Assessment Act (the "Act") requesting the creation of a public improvement district over a portion of the area within the extraterritorial jurisdiction of the City to be known as the Heartland Town Center Public Improvement District (the "District"); and

WHEREAS, 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 boundaries of the proposed District, as determined by the then current ad valorem tax rolls of the Kaufman County 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 is liable for assessment by the City; and

WHEREAS, on November 14, 2017, the City Council of the City (the "City Council") accepted the Petition and called a public hearing for December 18, 2017, on the advisability of the improvements; and

WHEREAS, notice of the hearing was mailed on November 21, 2017, to the property owners within the District and was published on November 22, 2017, in *The Dallas Morning News*, a newspaper of general circulation in the City, and was published on November 22, 2017, in the *Forney Messenger*, a newspaper of general circulation in the part of the extraterritorial jurisdiction of the City in which the District is located; and

WHEREAS, the owners of 100% of the property subject to assessment under the proposed District had actual knowledge of the public hearing to be held on December 18, 2017, have waived notice of such public hearing, and have consented to the creation of the proposed District; and

WHEREAS, the City Council opened and conducted such public hearing on the advisability of the improvements, and closed such hearing on December 18, 2017; and

WHEREAS, on December 18, 2017, after due notice, the City Council held the public hearing in the manner required by law on the advisability of certain public improvements described in the petition as required by Sec. 372.009 of the Act and made the findings required by Sec. 372.009(b) of the Act and, by Resolution adopted by a majority of the members of the City Council, authorized the District in accordance with its finding as to the advisability of certain public improvement projects and services; and

WHEREAS, on January 4, 2018, the City published notice of its authorization of the District in *The Dallas Morning News*, a newspaper of general circulation in the City, and on January 11, 2018, the City published notice of its authorization of the District in the *Forney Messenger*, a newspaper of general circulation in the part of the extraterritorial jurisdiction of the City in which the District is located; and

WHEREAS, no written protests of the District from any owners of record of property within the District were filed with the City within 20 days after publication; and

WHEREAS, the developer of property within the District as described in the Service and Assessment Plan for the District (the "Service and Assessment Plan") is ready to commence the construction and acquisition of the Phase #1 Improvements and the Phase #2 Major Improvements (as defined in the Service and Assessment Plan) within the District; and

WHEREAS, the City wishes to levy assessments on the property within the District for the Phase #1 Improvements and the Phase #2 Major Improvements as set forth in the Service and Assessment Plan; and

WHEREAS, the City, pursuant to Section 372.016(b) of the Act, published notice on August 2, 2018 in the Daily Commercial Record, a newspaper of general circulation in the City and on August 2, 2018 in the Forney Messenger, a newspaper of general circulation within the part of the extraterritorial jurisdiction of the City in which the District is located, to consider the proposed Service and Assessment Plan for the District and the levy of the Phase #1 Assessments and Phase #2 Major Improvement Assessments, as defined in the Service and Assessment Plan, (together, the "Assessments") on property in the District; and

WHEREAS, the City Council, pursuant to Section 372.016(c) of the Act, caused the mailing of notice of the public hearing to consider the proposed Service and Assessment Plan and the related Phase #1 Assessment Roll and Phase #2 Major Improvement Assessment Roll attached to the Service and Assessment Plan (together, the "Assessment Rolls") and the levy of Assessments on property in the District to the last known address of the owners of the property liable for the Assessments; and

WHEREAS, the City Council convened the public hearing at 7:00 p.m. on the 20th day of August, 2018 and continued such public hearing to September 4, 2018, at which all persons who appeared, or requested to appear, in person or by their attorney, were given the opportunity to contend for or contest the Service and Assessment Plan, the Assessment Rolls, and each proposed Assessment, and to offer testimony pertinent to any issue presented on the amount of the Assessments, the allocation of the costs of the Phase #1 Improvements and the Phase #2 Major Improvements, the purposes of the Assessments, the special benefits of the Assessments,

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 Service and Assessment Plan and Assessment Rolls attached thereto should be approved and that the Assessments should be levied on property within the District as provided in this Ordinance and the Service and Assessment Plan and Assessment Rolls; and

WHEREAS, the City Council further finds that there were no written objections or evidence submitted to the City Secretary in opposition to the Service and Assessment Plan, the allocation of the costs of the Phase #1 Improvements and the Phase #2 Major Improvements, the Assessment Rolls and the levy of Assessments; and

WHEREAS, 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 District, determined to proceed with the adoption of this Ordinance in conformity with the requirements of the Act.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, THAT:

Section 1. Findings. The findings and determinations set forth in the preambles hereto are hereby incorporated by reference for all purposes.

Section 2. Terms. Terms not otherwise defined herein are defined in the Service and Assessment Plan attached hereto as Exhibit A. (the "Service and Assessment Plan").

Section 3. Findings. The findings and determinations set forth in the preambles are hereby incorporated by reference for all purposes. The City Council hereby finds, determined and orders, as follows:

- a. The apportionment of the Costs of the Phase #1 Improvements and the Phase #2 Major Improvements, and the Administrative Expenses 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 Phase #1 Improvements and the Phase #2 Major Improvements identified in Service and Assessment Plan, and is hereby approved;
- b. The Service and Assessment Plan covers a period of at least five years and defines the annual indebtedness and projected costs for the Phase #1 Improvements and the Phase #2 Major Improvements;
- c. The Service and Assessment Plan apportions the costs of the Phase #1 Improvements and the Phase #2 Major Improvements to be assessed against each Assessed Property (as defined in the Service and Assessment Plan) in the District and such apportionment is made on the basis of special benefits accruing to each Assessed Property because of the Phase #1 Improvements and the Phase #2 Major Improvements.

- d. All of the real property in the District which is being assessed in the amounts shown in the Service and Assessment Plan and Assessment Roll will be benefited by the Phase #1 Improvements and the Phase #2 Major Improvements proposed to be provided through the District in the Service and Assessment Plan, and each parcel of real property in the District will receive special benefits during the term of the Assessments equal to or greater than the total amount assessed;
- e. The method of apportionment of the costs of the Phase #1 Improvements and the Phase #2 Major Improvements and Administrative Expenses set forth in the Service and Assessment Plan results in imposing equal shares of the costs of the Phase #1 Improvements and the Phase #2 Major Improvements and Administrative Expenses on property similarly benefited, and results in a reasonable classification and formula for the apportionment of the Costs;
- f. The Service and Assessment Plan should be approved as the service plan and assessment plan for the District, as described in Section 372.013 and 372.014 of the Act;
- g. The Assessment Rolls in the forms attached to the Service and Assessment Plan should be approved as the assessment rolls for the District;
- h. 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 improvements needed and required for the area within the District; and
- i. 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, as amended, 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.

Section 4. Assessment Plan. The Service and Assessment Plan is hereby accepted and approved pursuant to the Act Sections 372.013 and 372.014 as a service plan and an assessment plan for the Phase #1 Improvements and the Phase #2 Major Improvements within the District.

Section 5. Assessment Roll. The Assessment Rolls are hereby accepted and approved pursuant to the Act Section 372.016 as the assessment rolls for the Phase #1 Improvements and the Phase #2 Major Improvements within the District.

Section 6. Levy and Payment of Assessments for Costs of Authorized Improvements.

- a. The City Council hereby levies Assessments on each Assessed Property located within the District, as shown and described in the Service and Assessment Plan and the Assessment Rolls, in the respective amounts shown on the Assessment Rolls, as special assessments on the properties within the District as set forth in the Service and Assessment Plan and the Assessment Rolls.
- b. The levy of the Assessments 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 Assessments shall be as described in the Service and Assessment Plan.
- d. Each Assessment may be pre-paid or paid in Annual Installments pursuant to the terms of the Service and Assessment Plan.
- e. Each 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 Administrative Expenses for Assessed Properties shall be calculated pursuant to the terms of the Service and Assessment Plan.

Section 7. Method of Assessment. The method of apportioning the costs of the Phase #1 Improvements and the Phase #2 Major Improvements is as set forth in the Service and Assessment Plan.

Section 8. Penalties and Interest on Delinquent Assessments. Delinquent Assessments shall be subject to the penalties, interest, procedures and foreclosure sales set forth in the Service and Assessment Plan. The Assessments shall have lien priority as specified in the Act and the Service and Assessment Plan.

Section 9. Prepayments of Assessments. As provided in Section 372.018(f) of the Act and in the Service and Assessment Plan, the owner (the "Owner") of any Assessed Property may prepay the Assessments levied by this Ordinance, as set forth in the Service and Assessment Plan.

Section 10. Lien Priority. As provided in the Act, the City Council and owners of the Assessed Property intend for the obligations, covenants and burdens on the owners of Assessed Property, including without limitation such owner's 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 upon the Assessed Property, and the owners of assessed properties, and their respective transferees, legal representatives, heirs, devisees, 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 Service and Assessment Plan and the Act.

Section 11. Administrator and Collector of Assessments.

- a. Administrator. The City shall administer the Service and Assessment Plan and the Assessments levied by this Ordinance. The City has appointed a third-party administrator (the "Administrator") to administer the Service and Assessment Plan and the Assessments. The Administrator shall perform the duties of the Administrator described in the Service and Assessment Plan and in this Ordinance. The Administrator's fees, charges and expenses for providing such services shall constitute an Administrative Expense.
- b. Collector. The City may collect the assessments or may, by future action, appoint a third-party collector of the Assessments. The City is hereby authorized to enter into an agreement with a third-party for the collection of the Assessments. The City may also contract with any other qualified collection agent selected by the City or may collect the Assessments on its own behalf. The costs of such collection contracts shall constitute an Administrative Expense.

Section 12. Applicability of Tax Code. To the extent not inconsistent with this Ordinance and 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.

Section 13. 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.

Section 14. Effective Date. This Ordinance shall take effect, and the levy of the Assessments, and the provisions and terms of the Service and Assessment Plan shall be and become effective upon passage and execution thereof.

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PASSED AND APPROVED this 4th day of September, 2018.

Stan Pickett
Mayor, City of Mesquite

ATTEST:

City Secretary, City of Mesquite

APPROVED AS TO FORM:



City Attorney, City of Mesquite

EXHIBIT A

SERVICE AND ASSESSMENT PLAN
AND ASSESSMENT ROLL

(to be presented at the meeting)