

ORDINANCE NO. 2018-__

AN AMENDED AND RESTATED ORDINANCE OF THE CITY OF SAN MARCOS APPROVING AN UPDATE TO THE SERVICE AND ASSESSMENT PLAN FOR THE TRACE PUBLIC IMPROVEMENT DISTRICT; MAKING A FINDING OF SPECIAL BENEFIT TO THE PROPERTY IN THE DISTRICT; LEVYING ADDITIONAL ASSESSMENTS AGAINST PROPERTY WITHIN THE DISTRICT; ESTABLISHING A LIEN ON SUCH PROPERTY; APPROVING AN UPDATED ASSESSMENT ROLL FOR THE DISTRICT; PROVIDING FOR PAYMENT OF THE ADDITIONAL ASSESSMENTS IN ACCORDANCE WITH CHAPTER 372, TEXAS LOCAL GOVERNMENT CODE; PROVIDING FOR THE METHOD OF ASSESSMENT AND THE PAYMENT OF THE ADDITIONAL ASSESSMENTS; PROVIDING FOR PENALTIES AND INTEREST ON DELINQUENT ASSESSMENTS; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR RELATED MATTERS

WHEREAS, the Trace Public Improvement District (the "District") was created on October 20, 2015 by Resolution No. 2015-145R approved by the City Council (the "City Council") of the City of San Marcos, Texas, (the "City") and on October 18, 2016, Ordinance No. 2016-42 levying assessments (the "Initial Assessments") on property within the District was approved by the City Council pursuant to Texas Local Government Code, Chapter 372 (the "PID Act");

WHEREAS, the City Council has determined that pursuant to the PID Act, additional assessments (the "Additional Assessments" and collectively with the Initial Assessments, the "Assessments") are necessary to be levied on property within the District relating to the total cost of the improvements in the District;

WHEREAS, after proper notice was given and a hearing was held, the City Council levied the Additional Assessments pursuant to Ordinance No. 2018-38 on October 16, 2018;

WHEREAS, after such levy, the City determined it was necessary to defer collection of such Additional Assessments until January of 2020;

WHEREAS, the City determined that the appraised value of taxable real property liable for the Additional Assessment is \$7,635,170 and the cost of the Public Improvements is \$24,881,329, pursuant to Section 372.0055 of the PID Act;

WHEREAS, such deferral is required to be included in an ordinance levying assessments pursuant to Section 372.017 of the PID Act;

WHEREAS, the City now desires to amend and restate Ordinance No. 2018-38 to provide for such deferral of collection of the Additional Assessments and further publish and mail the appropriate notices as if the Additional Assessments were being levied as of the date of this amendment and restatement;

WHEREAS, an update to the District's previously approved Service and Assessment Plan (the "Updated Service and Assessment Plan") has been determined to be necessary to levy the Additional Assessments;

WHEREAS, the City, pursuant to Section 372.016(b) of the PID Act, published notice on November 23, 2018 in the *San Marcos Daily Record*, a newspaper of general circulation in the City and within its extra-territorial jurisdiction where Public Improvements are to be undertaken, of a public hearing to consider the proposed Additional Assessments to be levied against the property located in the District;

WHEREAS, the City, pursuant to Section 372.016(c) of the PID Act, mailed the notice of the public hearing for the proposed special assessments to the last known address of the owners of the property liable for the special assessments before the 10th day before the date of such hearing;

WHEREAS, the City Council convened the public hearing at the City Council meeting on December 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 to contest the Updated Service and Assessment Plan, the Updated Assessment Roll, and each proposed Additional Assessment, and to offer testimony pertinent to any issue presented on the amount of the Additional Assessment, the apportionment of the costs of the public improvements, the purpose of the Additional Assessment, the special benefits accruing to the property within the District due to the public improvements, and the penalties and interest of annual installments and on delinquent annual installments of the Additional Assessment;

WHEREAS, the City Council finds and determines that the update to the Assessment Roll and the Updated Service and Assessment Plan attached as EXHIBIT A hereto and which is incorporated herein for all purposes, should be approved and that the Additional Assessments (as defined in the Updated Service and Assessment Plan) should be levied as provided in this Ordinance and the Updated Service and Assessment Plan and Updated Assessment Roll, as updated and amended;

WHEREAS, the City Council further finds that there were no written objections or evidence submitted to the City Secretary in opposition to the Updated Service and Assessment Plan or the levy of the Additional Assessments;

WHEREAS, the City Council closed the public hearing, and after considering all comments and 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;

WHEREAS, the apportionment of the cost of the Public Improvements and the Annual Installment pursuant to the Updated Service and Assessment Plan is fair and reasonable, reflects an accurate presentation of the special benefit each property will receive from the administrative services and construction of the Public Improvements identified in the Updated Service and Assessment Plan;

WHEREAS, the Updated Service and Assessment Plan covers a period of at least five years and defines the annual indebtedness and projected costs for the Public Improvements and Annual Collection Costs;

WHEREAS, the Updated Service and Assessment Plan apportions the cost of the Public Improvements and Annual Collection Costs 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 Public Improvements and Annual Collection Costs;

WHEREAS, all of the real property in the District which is being assessed in the amounts shown in the Updated Assessment Roll will be benefitted by the services and improvements proposed to be provided through the District in the Updated Service and Assessment Plan, and each parcel of such real property will receive special benefits in each year equal or greater than each Annual Installment and will receive special benefits during the term of the Assessments equal to or greater than the total amount assessed;

WHEREAS, the method of apportionment of the cost of the Public Improvements, Annual Collection Costs, and Annual Installments associated with the Public Improvements set forth in the Updated Service and Assessment Plan results in imposing equal shares of the costs of the Public Improvements and Annual Collection Costs on property similarly benefitted, and results in a reasonable classification and formula for apportionment of such costs;

WHEREAS, the Updated 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;

WHEREAS, the update to the Assessment Roll in the form attached as Appendix A to the Updated Service and Assessment Plan (the “Updated Assessment Roll”) should be approved as the assessment roll for the District;

WHEREAS, the provisions of the Updated Service and Assessment Plan relating to due and delinquency dates for the Assessments and the Annual Installments, interest and penalties on delinquent Assessments and Annual Installments and procedures in connection with the imposition and collection of the 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; and

WHEREAS, the Additional Assessments herein levied and assessed are made and levied under and by virtue of the terms, powers and provisions of the PID Act.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS THAT:

Section 1. Findings. The findings, determinations and recitations set out in the preambles of this Ordinance are found to be true and correct and they are hereby adopted by the City Council and made a part hereof for all purposes.

Section 2. Public Hearing. The action of the City Council holding and closing the public hearing in these proceedings is hereby ratified and confirmed. Further, the actions of City staff in preparing the notices described in the Recitals hereto, which were published, mailed and posted pursuant to the PID Act are hereby ratified and confirmed.

Section 3. Terms. Terms not otherwise defined herein are defined in the Updated Service and Assessment Plan.

Section 4. Assessment Plan. The Updated Service and Assessment Plan substantially in the form attached to this Ordinance is hereby accepted and approved pursuant to Sections 372.013 and 372.014 of the PID Act as the service and assessment plan for the District.

Section 5. Assessment Roll. The Updated Assessment Roll attached as Appendix A to the Updated Service and Assessment Plan is hereby approved as the assessment roll of the District.

Section 6. Levy and Payment of Assessments for Costs of Public Improvements. (a) The City Council hereby levies the Additional Assessment on each tract of property located within the District, except for the Non-Benefitted Property, as shown and described on the Updated Service and Assessment Plan and the Updated Assessment Roll, in the respective amounts shown on the Updated Assessment Roll. There is further levied and assessed against each tract of property located within the District, except for the Non-Benefitted Property, having not paid the assessments in full, additional annual assessments for the Annual Collection Costs, as described in the Updated Service and Assessment Plan, which shall be part of the Assessment and the Annual Installment. The amount of the Annual Installment shall be reviewed and determined annually by the City Council following the City Council's annual review of the Updated Service and Assessment Plan for the District. Pursuant to Section 372.015(d), the amount of assessment for each property owner may be adjusted following the annual review of the Updated Service and Assessment Plan.

(b) The levy of the Additional Assessments and the related Annual Collection Costs related to the District shall be effective on the date of adoption of this Ordinance levying assessments and strictly in accordance with the terms of the Updated Service and Assessment Plan and the PID Act.

(c) The collection of the Additional Assessments shall be as described in the Updated Service and Assessment Plan and the PID Act and collection shall begin by January of 2020.

(d) Each Assessment may be paid in a lump sum or may be paid in Annual Installments pursuant to the terms of the Updated Service and Assessment Plan.

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

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

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

Section 7. Method of Assessment. The method of apportioning the Actual Costs and the Annual Collection Costs is set forth in the Updated 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 Updated Service and Assessment Plan and as allowed by law.

Section 9. Prepayments of Assessments. As provided in subsection 372.018(f) of the PID Act and Section VI.F of the Updated Service and Assessment Plan, the owner (the “Owner”) of any Assessed Property may prepay the Initial Assessments or the Additional Assessments levied by this Ordinance.

Section 10. Lien Property. (a) As provided in the Landowner Agreement dated October 18, 2016 executed by and between the City and Highpointe Trace, LLC (“Original Landowner”) which was recorded as Instrument No. 17006517 in the Official Public Records of Hays County, Texas, the obligations, covenants and burdens on the Landowner of the Assessed Property, including without limitation, obligations related to payment of Assessments and the Annual Installments, constitute a covenant running with the land. The Additional Assessments and the related Annual Collection Cost levied hereby shall be binding upon the Landowner, 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 and the Annual Installments shall have lien priority as specified in the Updated Service and Assessment Plan and the PID Act.

(b) The Additional Assessments and Annual Installments thereof levied and assessed against the property within the District as provided in this Ordinance and the Updated Service and Assessment Plan, and the Initial Assessments together with interest, if incurred, are hereby declared to be and are made a lien upon each tract of property within the District against which the same are levied and assessed, and a personal liability and charge against the real and true owners of such lot, including the successors and assigns, whether such owners be named herein or not, and said liens shall be and constitute the first enforceable lien and claim against the lot on which such assessments are levied, and shall be a first and paramount lien thereon, superior to all other liens and claims except state, county, school district and municipal ad valorem taxes and any homestead rights that may apply.

Section 11. Appointment of Administrator and Collector of Assessments. (a) P3Works LLC is hereby appointed and designated as the Administrator of the Updated Service and Assessment Plan and of Assessments levied by this Ordinance. The Administrator shall perform the duties of the Administrator described in the Updated Service and Assessment Plan

and in this Ordinance. The Administrator's fees, charges and expenses for providing such service shall be part of the Annual Installment, as further described in the Updated Service and Assessment Plan.

(b) The City will enter into an agreement, or amend an applicable agreement, with the Hays County Tax Assessor-Collector to collect Additional Assessments levied herein and the Initial Assessments on behalf of the City.

Section 12. Applicability of Tax Code. To the extent not inconsistent with this Ordinance and Ordinance No. 2016-42, and not inconsistent with the PID Act or the other laws governing public improvement districts, the provisions of the Texas Tax Code governing enforcement of ad valorem tax liens (other than with respect to property subject to agriculture use valuation, including redemption rights following a tax sale) shall be applicable to the imposition and collection of Assessments by the City, and the Texas Tax Code shall otherwise be applicable to the extent provided by the PID Act.

Section 13. Severability. If any provision of this Ordinance or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

Section 14. Effective Date. This Ordinance shall take effect immediately from and after its passage in accordance with the provisions of the Tex. Loc. Gov't. Code, and it is accordingly so ordained.

Section 15. Open Meetings. It is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, *Chapt. 551, Tex. Gov't. Code*.

PASSED AND APPROVED on second reading this 12th day of December, 2018.

ATTEST:

THE CITY OF SAN MARCOS, TEXAS

By: _____
City Secretary

By: _____
City Manager

EXHIBIT A

**UPDATED SERVICE AND ASSESSMENT PLAN FOR THE
TRACE PUBLIC IMPROVEMENT DISTRICT**