

ORDINANCE NO. _____

AN ORDINANCE LEVYING SPECIAL ASSESSMENTS FOR, AND APPORTIONING THE COSTS OF, CERTAIN IMPROVEMENTS TO PROPERTY IN AND FOR THE HERITAGE PUBLIC IMPROVEMENT DISTRICT IMPROVEMENT AREA #1; FIXING A CHARGE AND LIEN AGAINST ALL PROPERTIES WITHIN IMPROVEMENT AREA #1 OF THE DISTRICT, AND THE OWNERS THEREOF; PROVIDING FOR THE MANNER AND METHOD OF COLLECTION OF SUCH ASSESSMENTS; PROVIDING FOR PENALTIES AND INTEREST ON DELINQUENT ASSESSMENTS; MAKING A FINDING OF SPECIAL BENEFIT TO PROPERTY IN THE DISTRICT AND THE REAL AND TRUE OWNERS THEREOF; APPROVING A SERVICE AND ASSESSMENT PLAN; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Subchapter A of Chapter 372 of the Texas Local Government Code (the "Act") allows for the creation of public improvement districts; and

WHEREAS, a petition was submitted and filed with the City Secretary (the "*City Secretary*") of the City on February 9, 2016 (the "*Original Petition*") pursuant to the Public Improvement District Assessment Act, Chapter 372, Texas Local Government Code, as amended (the "*PID Act*"), requesting the creation of a public improvement district located within the extraterritorial jurisdiction of the City to be known as Heritage Public Improvement District (the "*District*" or "*PID*") to provide public improvements within the District to include the design, acquisition, and construction of public improvement projects authorized by Section 372.003(b) of the PID Act that are necessary for development of the District, which public improvements will include, but not be limited to, roadway, wastewater, and drainage facilities and improvements, trail improvements and other improvement projects; and

WHEREAS, an amended and restated petition was submitted and filed with the City Secretary of the City on June 29, 2017 (the "*Amended and Restated Petition*") pursuant to the PID Act which amended, restated and replaced the Original Petition in its entirety, and requested the creation of the District to provide public improvements within the District to include the design, acquisition, and construction of public improvement projects authorized by Section 372.003(b) of the PID Act that are necessary for development of the District, which public improvements will include, but not be limited to, roadway, wastewater, and drainage facilities and improvements, trail improvements and other improvement projects; and

WHEREAS, the Amended and Restated Petition contained the signatures of the record owners of taxable real property representing more than 50% of the appraised value of the real property liable for assessments within the District, as determined by the then current ad valorem tax rolls of the Hays Central Appraisal District, and the signatures of record property owners who own taxable real property that constitutes more than 50% of the area of all taxable property that is liable for assessment within the District; and

WHEREAS, on October 17, 2017, the City Council (the "*City Council*") of the City approved an Annexation and Development Agreement between the City, SLF IV – Dripping Springs JV, L.P. ("*SLF*") and BobWhite Investments, LP ("*BobWhite*") (the "*Annexation and Development Agreement*") and authorized the full purpose annexation of property within the District pursuant to Ordinance No. 1803.91; and

WHEREAS, on November 14, 2017, after due notice, the City Council of the City held the public hearing in the manner required by law on the advisability of the improvement projects described in the Amended and Restated Petition as required by Section 372.009 of the PID Act and on November 14, 2017 the City Council made the findings required by Section 372.009(b) of the PID Act and, by Resolution No. 2017-74 (the "*Creation Resolution*"), adopted by a majority of the members of the City Council, authorized the creation of the District in accordance with its finding as to the advisability of the improvement projects; and

WHEREAS, following the adoption of Creation Resolution, on November 30, 2017, the City published notice of its authorization of the creation of the District in *The Dripping Springs Century News*, a newspaper of general circulation in the City; and

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

WHEREAS, the District is expected to be developed in phases beginning with an area designated as "Improvement Area #1" within the District ("*Improvement Area #1*"); and

WHEREAS, pursuant to the PID Act, the proposed "*Improvement Area #1 Assessment Roll*" and service and assessment plan were filed with the City Secretary; and

WHEREAS, pursuant to Section 372.016(b) of the Act, the statutory notice of a public hearing to be held by the City Council on June 6, 2023 was published on May 11, 2023, advising that the City Council would consider the levy of the proposed assessments (the "*Improvement Area #1 Assessments*") on real property within Improvement Area #1 of the District was published in *The Wimberley View* and *The Dripping Springs Century News*, each a newspaper of general circulation in the City; and

WHEREAS, the City Secretary, pursuant to Section 372.016(c) of the PID Act, mailed notice of the public hearing to consider the proposed Improvement Area #1 Assessment Roll and the Service and Assessment Plan (as defined herein) and the levy of the Improvement Area #1 Assessments on property within Improvement Area #1 of the District to the address of record at Hays Central Appraisal District, such address being the last known address of the owners of the property liable for the Improvement Area #1 Assessments; and

WHEREAS, after notice was provided as required by the PID Act, the City Council on June 6, 2023, held a public hearing to consider the levy of the proposed Improvement Area #1 Assessments on property within Improvement Area #1 of the District, at which any and all persons who appeared, or requested to appear, in person or by their attorney, were given the opportunity to contend for or contest the Improvement Area #1 Assessment Roll, and the proposed

Improvement Area #1 Assessments, and to offer testimony pertinent to any issue presented on the amount of the Improvement Area #1 Assessments, the allocation of the Actual Costs (as defined in the attached Service and Assessment Plan) of the authorized improvements to be undertaken for the benefit of all property to be assessed within Improvement Area #1 of the District (the "*Improvement Area #1 Authorized Improvements*"), the purposes of the Improvement Area #1 Assessments, the special benefits of the Improvement Area #1 Authorized Improvements, and the penalties and interest on annual installments and on delinquent annual installments of the Improvement Area #1 Assessments; and

WHEREAS, the City Council finds and determines that the Heritage Public Improvement District Service and Assessment Plan, which includes the Improvement Area #1 Assessment Roll, in a form substantially similar to the attached **Exhibit A**, which final form shall be approved by the City Administrator (the "*Service and Assessment Plan*"), and which is incorporated herein for all purposes, should be approved and that the Improvement Area #1 Assessments should be levied as provided in this Ordinance, the Service and Assessment Plan, and the Improvement Area #1 Assessment Roll; 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 Actual Costs of the Improvement Area #1 Authorized Improvements as described in the Service and Assessment Plan, the Improvement Area #1 Assessment Roll, or the levy of the Improvement Area #1 Assessments; and

WHEREAS, the City Council closed the public hearing on June 6, 2023, and, after considering all oral, 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; and

WHEREAS, the meeting at which this Ordinance is considered is open to the public as required by law, and the public notice of the time, place and purpose of said meeting was given as required by Chapter 551, Texas Government Code, as amended.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DRIPPING SPRINGS, TEXAS:

Section 1. All matters stated in the preamble of this Ordinance are found to be true and correct and are incorporated into the body of this Ordinance as if copied in their entirety.

Section 2. The action of the City Council holding and closing the public hearing in these proceedings is hereby ratified and confirmed.

Section 3. The Service and Assessment Plan attached to this Ordinance as **Exhibit A** has been presented to and reviewed by the City Council and the City Council hereby approves said Service and Assessment Plan and adopts the attached Service and Assessment Plan as the service plan and assessment plan for Improvement Area #1 within the District. All capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Service and Assessment Plan.

Section 4. The Improvement Area #1 Authorized Improvements described in the preamble of this Ordinance and in the Service and Assessment Plan include the improvements that will benefit and serve all of the property within Improvement Area #1 of the District (the "*Improvement Area #1 Improvements*") and Improvement Area #1's allocable share of Major Improvements (as defined in the Service and Assessment Plan) (the "*Improvement Area #1 Major Improvements*" and, together with the Improvement Area #1 Improvements, the "*Improvement Area #1 Projects*"). The Improvement Area #1 Improvements benefit and serve all of the property within Improvement Area #1 of the District and are set forth in Section III of the Service and Assessment Plan.

Section 5. The City Council hereby finds and determines upon the evidence presented in reference to the property located within Improvement Area #1 of the District that: (i) the enhancement and value to accrue to Improvement Area #1 of the District and the real and true owner or owners thereof by virtue of construction of the Improvement Area #1 Projects will be equal to or in excess of the amount of the cost of the proposed Improvement Area #1 Projects; (ii) that the apportionment of the costs of the Improvement Area #1 Projects and the Improvement Area #1 Assessments here and below made are just and equitable and produce substantial equality, considering the benefits received and the burdens imposed thereby, and result in imposing equal shares of the cost of the Improvement Area #1 Projects on property similarly benefitted, and are in accordance with the laws of the State of Texas; (iii) the property assessed is specially benefitted by means of the said Improvement Area #1 Projects in the District in relation to the costs of such improvements; (iv) all procedures that have taken place heretofore with reference to the Improvement Area #1 Projects and Improvement Area #1 Assessments are in all respects regular, proper, and valid; and (v) all prerequisites to the fixing of the assessment liens against the properties within Improvement Area #1 of the District, and the personal liability of the real and true owner or owners thereof, whether correctly named herein or not, have been in all things regularly and duly performed in compliance with the PID Act and the proceedings of the City Council. The cost of said Improvement Area #1 Projects is hereby assessed and levied as a special assessment against such properties and the real and true owner or owners thereof in the amounts as described in Exhibit F of the Service and Assessment Plan attached hereto.

Section 6. There shall be and is hereby levied and assessed against the property within Improvement Area #1 of the District, and against the real and true owners thereof (whether such owners be correctly named or not), the sums of money as listed in Exhibit F of the Service and Assessment Plan attached hereto and made a part hereof shown for each of the respective parcels of property, and the assessed against the same, and the owners thereof.

Section 7. The sums assessed against property located within Improvement Area #1 of the District and the real and true owners or owner thereof, whether the owner or owners be named or correctly named, or the properties be correctly described therein or not, together with interest thereon at the rate per annum when required as set forth in the Service and Assessment Plan and with reasonable attorney's fees and all costs and expenses of collection, if incurred, are hereby declared to be and made a first and prior lien upon the respective parcels of property against which same are assessed from and after this date, and a personal liability and charge against the real and true owner or owners thereof, whether or not such owner or owners be correctly named herein, paramount and superior to all other liens, claims or titles except for lawful claims for state, county,

school district, or municipality ad valorem taxes; and that the sum so assessed shall be payable to the City or its assigns in accordance with the Improvement Area #1 Assessment Roll attached as Exhibit F to the Service and Assessment Plan.

Section 8. (a) The levy of the Improvement Area #1 Assessments shall be effective on the date of adoption of this Ordinance levying assessments and strictly in accordance with the terms of the Service and Assessment Plan.

(b) The apportionment of the costs of the Improvement Area #1 Projects to be assessed against the property within Improvement Area #1 of the District, shall be as set forth in the Service and Assessment Plan.

(c) Improvement Area #1 Assessments and Annual Installments shall be collected, administered and may be reallocated, and the costs of improvements paid, as set forth in: (i) this Ordinance; (ii) the Service and Assessment Plan and (iii) any ordinance, resolution, bond indenture or agreement approved by the City Council.

(d) Each Improvement Area #1 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 Improvement Area #1 Assessment shall accrue and bear interest at the rate or rates specified in the Service and Assessment Plan.

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

(g) Improvement Area #1 Assessments and the interest thereon shall be deposited as and when received by the City into a separate fund to be used to pay the costs incurred for the Improvement Area #1 Projects, including debt service on obligations issued to pay the costs of the Improvement Area #1 Projects, and the establishment of each such fund is hereby approved.

(h) The Annual Installments shall be reduced to equal the actual costs of repaying the related series of bonds and actual Annual Collection Costs (as provided for in the definition of such term), taking into consideration any other available funds for these costs, such as interest income on account balances.

Section 9. This Ordinance incorporates by reference all provisions and requirements of the PID Act.

Section 10. If any section, article, paragraph, sentence, clause, phrase, or word in this Ordinance, or application thereof to any persons or circumstances is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance; and the City Council hereby declares it would have passed such remaining portion of this Ordinance, despite such invalidity, which remaining portions shall remain in full force and effect.

Section 11. This Ordinance shall take effect immediately from and after its passage and it is accordingly so ordained.

Section 12. The City Secretary is directed to cause a copy of this Ordinance, including the Service and Assessment Plan and/or the Improvement Area #1 Assessment Roll, to be filed with the Hays County Clerk, not later than the seventh day after the date the City Council adopts this ordinance approving the Service and Assessment Plan. The City Secretary is further directed to similarly file each Annual Service Plan Update approved by the City Council not later than the seventh day after the date that the City Council approves each Annual Service Plan Update (or as otherwise required by the PID Act).

Section 13. (a) P3Works, LLC is hereby appointed and designated as the initial Administrator of the Service and Assessment Plan and of Assessments levied by this Ordinance. 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 service shall constitute an Annual Collection Cost.

(b) The Hays County Tax Assessor-Collector is hereby appointed and designated as the collector of the Improvement Area #1 Assessments (the "*Collector*"). The Collector shall serve in such capacity unless and until replaced by subsequent action of the City Council.

PASSED AND APPROVED on _____, 2023.

CITY OF DRIPPING SPRINGS, TEXAS

Bill Foulds, Mayor

[CITY SEAL]

ATTEST:

Andrea Cunningham, City Secretary

APPROVED AS TO FORM

Laura Mueller, City Attorney

EXHIBIT A

**HERITAGE PUBLIC IMPROVEMENT DISTRICT
SERVICE AND ASSESSMENT PLAN**