

ORDINANCE NO. 2023-24

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS APPROVING AN AMENDED AND RESTATED SERVICE AND ASSESSMENT PLAN AND ASSESSMENT ROLL FOR AUTHORIZED IMPROVEMENTS FOR THE RABURN RESERVE PUBLIC IMPROVEMENT DISTRICT (THE “DISTRICT”); MAKING A FINDING OF SPECIAL BENEFIT TO CERTAIN PROPERTY IN THE DISTRICT; LEVYING 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

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WHEREAS, the City of Tomball, 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 corporate limits of the City to be known as the Raburn Reserve 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 Harris 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 is liable for assessment by the City; and

WHEREAS, the City Council approved the creation of the PID by Resolution approved on October 7, 2019 as amended on November 4, 2019 and December 7, 2020 to add additional land pursuant to notice and public hearings (collectively the "Creation Resolution") and published the Creation Resolution as authorized by the Act; and

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

WHEREAS, the District is to be developed in phases and assessments are anticipated to be levied in each development phase (each an “Improvement Area”); and

WHEREAS, On September 21, 2020, the City adopted an ordinance approving a Service and Assessment Plan and Assessment Roll for the Raburn Reserve Public Improvement District and levied assessments on property within Improvement Area #1 of the District (the “Original

Service and Assessment Plan”). The Ordinance also levied assessments against benefited properties within the District and established a lien on such properties; and

WHEREAS, On October 3, 2022, the City adopted an ordinance approving an Amended and Restated Service and Assessment Plan for the District and levied assessments on property within Improvement Area #2 of the District (the “First Amended Service and Assessment Plan); and

WHEREAS, the City now desires to levy assessments on property within Improvement Area #3 of the District and to approve an amendment to the First Amended and Restated Service and Assessment Plan to reflect the levy of assessments on such property (the “Second Amended and Restated Service and Assessment Plan” and together with the Original Assessment Plan and the First Amended and Restated Service and Assessment Plan, the “Amended and Restated Service and Assessment Plan”); and

WHEREAS, pursuant to Sections 372.013, 372.014, and 372.016 of the Act, the City Council has directed the preparation of a Preliminary Service and Assessment Plan for Authorized Improvements within Improvement Area #3 of the District (the “Service and Assessment Plan”) and an assessment roll for Improvement Area #3 of the District (the “Assessment Roll”) that states the assessment against each parcel of land within Improvement Area #3 of the District (the “Assessments”); and

WHEREAS, the City called a public hearing regarding the proposed levy of Assessments pursuant to the Preliminary Plan and the proposed Assessment Roll on property within Improvement Area #3 of the District, pursuant to Section 372.016 of the Act; and

WHEREAS, the City, pursuant to Section 372.016(b) of the Act, published notice in a newspaper of general circulation within the City to consider the proposed Amended and Restated Service and Assessment Plan for the District and the levy of the Assessments, as defined in the Amended and Restated Service and Assessment Plan, on property within Improvement Area #3 of 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 Amended and Restated Service and Assessment Plan and the Assessment Roll attached to the Service and Assessment Plan and the levy of Assessments on property within Improvement Area #3 of 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 6:00 p.m. on the 7th day of August, 2023, 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 Amended and Restated Service and Assessment Plan, the Assessment Roll, and the proposed Assessments, and to offer testimony pertinent to any issue presented on the amount of the Assessments, the allocation of the costs of the Improvement Area #3 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 developer of property within the District as described in the Amended and Restated Service and Assessment Plan for the District has commenced the construction and acquisition of the Improvement Area #3 Improvements within the District; and

WHEREAS, the City Council finds and determines that the Amended and Restated Service and Assessment Plan and Assessment Roll attached thereto should be approved and that the Assessments should be levied on property within Improvement Area #3 of the District as provided in this Ordinance and the Amended and Restated Service and Assessment Plan and 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 Amended and Restated Service and Assessment Plan, the allocation of the costs of the Improvement Area #3 Improvements, the Assessment Roll or 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 TOMBALL, TEXAS, THAT:

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

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 Amended and Restated Service and Assessment Plan attached hereto as Exhibit A.

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 Improvement Area #3 Improvements, and the Annual Collection Costs pursuant to the Amended and Restated Service and Assessment Plan is fair and reasonable, reflects an accurate presentation of the special benefit each property will receive from the Improvement Area #3 Improvements identified in the Amended and Restated Service and Assessment Plan, and is hereby approved;

(b) The 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 Improvement Area #3 Improvements;

(c) The Amended and Restated Service and Assessment Plan apportions the costs of the Improvement Area #3 Improvements to be assessed against each Assessed Property in Improvement Area #3 of the District and such apportionment is made on the basis of special benefits accruing to each Assessed Property within Improvement Area #3 of the District because of Improvement Area #3 Improvements.

(d) All of the real property within Improvement Area #3 of the District which is being assessed in the amounts shown in the Amended and Restated Service and Assessment Plan and Assessment Roll will be benefited by the Improvement Area #3 Improvements proposed to be provided through the District in the Amended and Restated Service and Assessment Plan, and each parcel of real property in Improvement Area #3 of 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 Improvement Area #3 Improvements and Annual Collection Costs set forth in the Amended and Restated Service and Assessment Plan results in imposing equal shares of the costs of the Improvement Area #3 Improvements and Administrative Expenses on property similarly benefited, and results in a reasonable classification and formula for the apportionment of the costs;

(f) The Amended and Restated 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 Act;

(g) The Assessment Roll in the form attached to the Amended and Restated Service and Assessment Plan should be approved as the assessment roll for Improvement Area #3 of the District;

(h) The provisions of the Amended and Restated Service and Assessment Plan relating to due and delinquency dates for the Assessments, interest on Improvement Area #3 Annual Installments, interest and penalties on delinquent Assessments and delinquent Improvement Area #3 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 Improvement Area #3 of 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 Amended and Restated Service and Assessment Plan is hereby accepted and approved pursuant to Sections 372.013 and 372.014 of the Act as a service plan and an assessment plan for the Improvement Area #3 within Improvement Area #3 of the District.

Section 5. Assessment Roll. The Assessment Roll is hereby accepted and approved pursuant to Section 372.016 of the Act as the assessment roll for the Improvement Area #3 Improvements within Improvement Area #3 of 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 Improvement Area #3 of the District, as shown and described in the Amended and Restated Service and Assessment Plan and the Assessment Roll, in the respective amounts shown on the Assessment Roll, as special assessments on the properties within Improvement Area #3 of the District as set forth in the Service and Assessment Plan and the Assessment Roll.

(b) The levy of the Assessments on property within Improvement Area #3 shall be effective on the date of execution of this Ordinance levying assessments and strictly in accordance with the terms of the Amended and Restated Service and Assessment Plan.

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

(d) Each Assessment may be pre-paid or paid in Annual Installments pursuant to the terms of the Amended and Restated Service and Assessment Plan.

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

(f) Each Improvement Area #3 Annual Installment shall be collected each year in the manner set forth in the Amended and Restated Service and Assessment Plan.

(g) The Annual Collection Costs for Assessed Properties in Improvement Area #3 of the District shall be calculated pursuant to the terms of the Amended and Restated Service and Assessment Plan.

Section 7. Method of Assessment. The method of apportioning the costs of the Improvement Area #3 Improvements is as set forth in the Amended and Restated 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 Amended and Restated 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 Amended and Restated Service and Assessment Plan, the owner (the "Owner") of any Assessed Property in Improvement Area #3 of the District 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 in Improvement Area #3 of the District, including without limitation such owner's obligations related to payment of the Assessments and the Improvement Area #3 Annual Installments, to constitute a covenant running with the land. The Assessments and the Improvement Area #3 Annual Installments levied hereby shall be binding upon the Assessed Property in Improvement Area #3 of the District and the owners of Assessed Properties in Improvement Area #3 of the District, 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 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 Annual Collection Cost

(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 Annual Collection Cost.

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 Amended and Restated Service and Assessment Plan shall be and become effective upon passage and execution thereof.

Section 15. Recordation. City staff shall cause the recordation of this Ordinance and the Amended and Restated Service and Assessment Plan in the real property records of Harris County in accordance with Section 372.013 of the Act.

[Signature Page Follows]

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 7TH DAY OF AUGUST 2023.

COUNCILMAN FORD _____
COUNCILMAN STOLL _____
COUNCILMAN DUNAGIN _____
COUNCILMAN TOWNSEND _____
COUNCILMAN PARR _____

Lori Klein Quinn, Mayor

ATTEST:

Tracylynn Garcia, City Secretary

SECOND READING:

READ, PASSED, APPROVED AND ORDAINED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 21ST DAY OF AUGUST 2023.

COUNCILMAN FORD _____
COUNCILMAN STOLL _____
COUNCILMAN DUNAGIN _____
COUNCILMAN TOWNSEND _____
COUNCILMAN PARR _____

Lori Klein-Quinn, Mayor

ATTEST:

Tracylynn Garcia, City Secretary