

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF FARMERS BRANCH APPROVING A SERVICE AND ASSESSMENT PLAN AND ASSESSMENT ROLL FOR AUTHORIZED IMPROVEMENTS FOR THE MERCER CROSSING PUBLIC IMPROVEMENT DISTRICT; MAKING A FINDING OF SPECIAL BENEFIT TO CERTAIN PROPERTY IN THE CITY; LEVYING SPECIAL ASSESSMENTS AGAINST CERTAIN PROPERTY WITHIN THE CITY 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 Farmers Branch (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 of the City to be known as the Mercer Crossing Public Improvement District (the “PID”); 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 PID, as determined by the then current ad valorem tax rolls of the Dallas 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**, on February 14, 2017, after due notice, the City Council of the City (the “City Council”) held the public hearing in the manner required by law on the advisability of the Authorized 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 PID in accordance with its finding as to the advisability of certain public improvement projects (the “Authorized Improvements”); and

**WHEREAS**, on February 17, 2017, the City published notice of its authorization of the PID in a newspaper of general circulation in the City; and

**WHEREAS**, the developer of property within the PID as described in the Service and Assessment Plan for the PID attached hereto as Exhibit A (the “Service and Assessment Plan”) is ready to commence the construction and acquisition of the Authorized Improvements (as defined in the Service and Assessment Plan) within the PID; and

**WHEREAS**, the City wishes to levy assessments on the property within the PID for such Authorized Improvements (the “Assessments”); and

**WHEREAS**, the City, pursuant to Section 372.016(b) of the Act, published notice on February 17, 2017 in a newspaper of general circulation in the City to consider the proposed Service and Assessment Plan for the PID and the levy of the Assessments on property in the PID; 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 assessment roll (the "Assessment Roll") and the levy of Assessments on property in the PID to the address of the last known address of the owners of the property liable for the Assessments; and

**WHEREAS**, the City Council convened the hearing at 6:00 p.m. on the 1<sup>st</sup> day of March, 2017, 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 Roll, and each proposed Assessment, and to offer testimony pertinent to any issue presented on the amount of the Assessment, the allocation of the costs of the Authorized Improvements, the purposes of the Assessment, the special benefits of the Assessment, 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 Roll should be approved and that the Assessments (as defined in the Service and Assessment Plan) should be levied on property within the PID as provided in this Ordinance and the 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 Service and Assessment Plan, the allocation of the costs of the Authorized Improvements, the Assessment Roll 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 PID, 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 FARMERS BRANCH, 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 Authorized Improvements, and the Annual Collection Costs 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 Authorized 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 Authorized Improvements;
- c. The Service and Assessment Plan apportions the cost of the Authorized Improvements to be assessed against property in the PID and such apportionment is made on the basis of special benefits accruing to the property because of the Authorized Improvements.
- d. All of the real property in the PID which is being assessed in the amounts shown in the Service and Assessment Plan and Assessment Roll will be benefited by the Authorized Improvements proposed to be provided through the PID in the Service and Assessment Plan, and each parcel of real property in the PID will receive special benefits in each year equal to or great than each annual Assessment and 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 Authorized Improvement Costs and Annual Collection Costs set forth in the Mercer Crossing Service and Assessment Plan results in imposing equal shares of the costs of the Authorized Improvements and Annual Collection Costs on property similarly benefited, and results in a reasonable classification and formula for the apportionment of the Authorized Improvement Costs;
- f. The Mercer Crossing Service and Assessment Plan should be approved as the service plan and assessment plan for the PID, as described in Section 372.013 and 372.014 of the Act;
- g. The Assessment Roll in the form attached to the Service and Assessment Plan (the "Assessment Roll") should be approved as the assessment roll for the PID;
- h. The provisions of the Service and Assessment Plan relating to due and delinquency dates for the Assessments, interest of 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 PID; and
- i. A written notice of the date, hour, place and subject of this meeting of the City Council was posted as 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 Authorized Improvements within the PID.

Section 5. Assessment Roll. The Assessment Roll is hereby accepted and approved pursuant to the Act Section 372.016 as an assessment roll for Authorized Improvements with the PID.

Section 6. Levy and Payment of Special Assessment for Costs of Authorized Improvements.

- a. The City Council hereby levies an assessment on each tract of property located within the PID, as shown and described in the Service and Assessment Plan and the Assessment Roll, in the respective amounts shown on the Assessment Roll, as a special assessment on the properties within the PID as set forth in the Service and Assessment Plan and Assessment Roll.
- 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 paid in a lump sum or may be 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 Annual Collection Costs 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 Authorized Improvement Costs 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 372.108(b) 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.

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 Properties, 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 Parties, as 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. Appointment of Administrator and Collector of Assessments.

- a. Appointment of Administrator. Municap, Inc. is hereby appointed and designated as the initial Administrator of the Service and Assessment Plan and of the 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 City Council may replace the Administrator at any time. The Administrator’s fees, charges and expenses for providing such services shall constitute an Annual Collection Cost.
- b. Appointment of Collector. The City is hereby authorized to enter into an agreement and contract with any qualified collection agent selected by the City for the collection of the Assessments, 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 here, 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.

[Remainder of Page left Intentionally Blank]

**PASSED AND APPROVED this 1<sup>st</sup> day of March, 2017.**

---

Mayor, City of Farmers Branch

**ATTEST:**

---

City Secretary, City of Farmers Branch

**APPROVED AS TO FORM & LEGALITY:**

---

City Attorney, City of Farmers Branch

EXHIBIT A

SERVICE AND ASSESSMENT PLAN  
AND ASSESSMENT ROLL