

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

**AN ORDINANCE OF THE CITY OF NEW BRAUNFELS APPROVING A SERVICE AND ASSESSMENT PLAN FOR THE SOLMS LANDING PUBLIC IMPROVEMENT DISTRICT; MAKING A FINDING OF SPECIAL BENEFIT TO THE PROPERTY IN THE DISTRICT; LEVYING A SPECIAL ASSESSMENT AGAINST PROPERTY WITHIN IMPROVEMENT AREA #1 OF THE DISTRICT; ESTABLISHING A LIEN ON SUCH PROPERTY; APPROVING AN ASSESSMENT ROLL FOR THE DISTRICT; PROVIDING FOR PAYMENT OF THE SPECIAL ASSESSMENT IN ACCORDANCE WITH CHAPTER 372, TEXAS LOCAL GOVERNMENT CODE; PROVIDING FOR THE METHOD OF ASSESSMENT AND THE PAYMENT OF THE SPECIAL ASSESSMENT; PROVIDING FOR PENALTIES AND INTEREST ON DELINQUENT ASSESSMENTS; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR OTHER RELATED MATTERS**

**WHEREAS**, the Solms Landing Public Improvement District (the "District") was created on January 14, 2019 by Resolution No. 2019-R09 approved by the City Council (the "City Council") of the City of New Braunfels, Texas (the "City");

**WHEREAS**, the City Council amended the District pursuant to Resolution No. 2021-32 on April 12, 2021 for the sole purpose of increasing the cost of improvements in the District;

**WHEREAS**, by adoption of this Ordinance, the City Council is levying special assessments (the "Improvement Area #1 Assessments") on property within Improvement Area #1 (as defined in the Service and Assessment Plan attached hereto as EXHIBIT A) of the District ("Improvement Area #1") pursuant to Texas Local Government Code, Chapter 372 (the "PID Act");

**WHEREAS**, the City, pursuant to Section 372.016(b) of the PID Act, published notice on \_\_\_\_\_, 2021 in the *New Braunfels Herald-Zeitung*, a newspaper of general circulation in the City, of a public hearing to consider the proposed Improvement Area #1 Assessments to be levied against the property located in Improvement Area #1;

**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 10<sup>th</sup> day before the date of such hearing;

**WHEREAS**, the City Council convened the public hearing at the City Council meeting on November 8, 2021, 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 Service and Assessment Plan ("Service and Assessment Plan") and the Improvement Area #1 Assessment Roll (the "Improvement Area #1 Assessment Roll"), and to offer testimony pertinent to any issue presented on the amount of the Improvement Area #1 Assessments, the apportionment of the costs of the public improvements (the "Authorized Improvements"), the purpose of the Improvement Area #1

Assessments, the special benefits accruing to the property within Improvement Area #1 due to the Authorized Improvements, and the penalties and interest of annual installments and on delinquent annual installments of the Improvement Area #1 Assessments;

**WHEREAS**, the City Council finds and determines that the Improvement Area #1 Assessment Roll and the District's Service and Assessment Plan attached as EXHIBIT A hereto and which is incorporated herein for all purposes, should be approved and that the Improvement Area #1 Assessments (as described in the Service and Assessment Plan) should be levied as provided in this Ordinance and the Service and Assessment Plan and Improvement Area #1 Assessment Roll, as updated and amended from time to time;

**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 or the levy of the Improvement Area #1 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 Authorized Improvements and the Annual Installment 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 administrative services and construction of the Authorized Improvements identified in the Service and Assessment Plan and is hereby approved;

**WHEREAS**, 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 and administrative expenses;

**WHEREAS**, the Service and Assessment Plan apportions the cost of the Authorized Improvements and administrative expenses 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 Authorized Improvements;

**WHEREAS**, all of the real property in Improvement Area #1 which is being assessed in the amounts shown in the Improvement Area #1 Assessment Roll will be benefitted by the services and improvements proposed to be provided through the District in the 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 Improvement Area #1 Assessments equal to or greater than the total amount assessed;

**WHEREAS**, the method of apportionment of the cost of the Authorized Improvements and Annual Installments associated with the Authorized Improvements set forth in the Service and Assessment Plan results in imposing equal shares of the costs of the Authorized Improvements on

property similarly benefitted, and results in a reasonable classification and formula for apportionment of such costs;

**WHEREAS**, the 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 Improvement Area #1 Assessment Roll in the form attached as Exhibit F to the Service and Assessment Plan should be approved as the assessment roll for the District;

**WHEREAS**, the provisions of the Service and Assessment Plan relating to due and delinquency dates for the Improvement Area #1 Assessments and the Annual Installments, interest and penalties on delinquent Improvement Area #1 Assessments and Annual Installments and procedures in connection with the imposition and collection of the Improvement Area #1 Assessments should be approved and will expedite collection of the Improvement Area #1 Assessments in a timely manner in order to provide the services and improvements needed and required for the area within Improvement Area #1; and

**WHEREAS**, the 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 NEW BRAUNFELS 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 Service and Assessment Plan.

**Section 4. Assessment Plan.** The 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 Improvement Area #1 Assessment Roll attached as Exhibit F to the Service and Assessment Plan is hereby approved as the assessment roll of the District.

**Section 6. Levy and Payment of Assessments for Costs of Authorized Improvements.**  
(a) The City Council hereby levies the Improvement Area #1 Assessments on each tract of property located within Improvement Area #1, except for the Non-Benefitted Property, as shown

and described on the Service and Assessment Plan and the Improvement Area #1 Assessment Roll, in the respective amounts shown on the Improvement Area #1 Assessment Roll. There is further levied and assessed against each tract of property located within Improvement Area #1, except for the Non-Benefitted Property, having not paid the assessments in full, additional annual assessments for the administrative expenses, as described in the Service and Assessment Plan, which shall be part of the Improvement Area #1 Assessments and the Annual Installments. 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 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 Service and Assessment Plan.

(b) The levy of the Improvement Area #1 Assessments 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 Service and Assessment Plan and the PID Act.

(c) The collection of the Improvement Area #1 Assessments shall be as described in the Service and Assessment Plan and the PID Act.

(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 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 Installments 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 Actual Costs and the administrative expenses is set forth in the Service and Assessment Plan.

**Section 8. Penalties and Interest on Delinquent Special Assessments.** Delinquent Improvement Area #1 Assessments shall be subject to the penalties, interest, procedures, and foreclosure sales set forth in the Service and Assessment Plan and as allowed by law. The Improvement Area #1 Assessments shall each have lien priority as specified in the PID Act and the Service and Assessment Plan.

**Section 9. Prepayments of Special Assessments.** As provided in subsection 372.018(f) of the PID Act and Section VI.E of the Service and Assessment Plan, the owner of any Assessed Property (each, an "Owner") may prepay the Improvement Area #1 Assessments levied by this Ordinance.

**Section 10. Lien Priority.** (a) As provided in the Landowner Agreement dated \_\_\_\_\_, 2021 executed by and between the City, Solms Landing Development, LLC (the

“Developer”), and Chupik Solms Landing LLC (together with the Developer, the "Original Landowners"), which will be recorded in the Official Public Records of Comal County, Texas, the obligations, covenants and burdens on the Original Landowners of the Assessed Property, including without limitation, obligations related to payment of Improvement Area #1 Assessments and the Annual Installments, constitute a covenant running with the land. The Improvement Area #1 Assessments and the related Annual Collection Costs levied hereby (and each Annual Installment of such amounts) shall be binding upon the Original Landowners and each other Owner, 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. Improvement Area #1 Assessments and the Annual Installments shall have lien priority as specified in the Service and Assessment Plan and the PID Act.

(b) The Improvement Area #1 Assessments and the Annual Installments levied hereby shall be binding upon the Original Landowners, 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. Improvement Area #1 Assessments and the Annual Installments shall have lien priority as specified in the Service and Assessment Plan and the PID Act.

(c) The Improvement Area #1 Assessments and Annual Installments levied and assessed against the property within Improvement Area #1 as provided in this Ordinance and the Service and Assessment Plan, together with interest, reasonable attorney's fees and costs of collection, if incurred, are hereby declared to be and are made a lien upon each tract of property within Improvement Area #1 against which the same are levied and assessed, and a personal liability and charge against the real and true Owners of such tracts, 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 tracts 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) The P3Works, LLC is hereby appointed and designated as the Administrator of the Service and Assessment Plan and of Improvement Area #1 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 be part of the Annual Installment, as further described in the Service and Assessment Plan.

(b) The City will enter into an agreement, or amend an applicable agreement, with the Comal County Tax Assessor-Collector to collect Improvement Area #1 Assessments levied herein on behalf of the City.

**Section 12. Applicability of Tax Code.** To the extent not inconsistent with this Ordinance, 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 Improvement Area #1 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*.

[Signature Page Follows]

**PASSED AND APPROVED** on second reading this \_\_\_\_ day of \_\_\_\_\_, 2021.

ATTEST:     **THE CITY OF NEW BRAUNFELS, TEXAS**

By: \_\_\_\_\_  
City Secretary

By: \_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**EXHIBIT A**

**SERVICE AND ASSESSMENT PLAN FOR THE  
SOLMS LANDING PUBLIC IMPROVEMENT DISTRICT**