

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS, CLOSING THE PUBLIC HEARING; ORDERING IMPROVEMENTS AND LEVYING ASSESSMENTS AGAINST VARIOUS PERSONS AND THEIR PROPERTY FOR THE PAYMENT OF A PART OF THE COST OF A PORTION OF THE FOLLOWING STREET IN THE CITY OF COLLEGE STATION, BRAZOS COUNTY, TEXAS, TO-WIT:

Longmire Drive- from its current termination at Graham Road to its southern termination at Cypress Meadows Subdivision-48' wide street from back of curb to back of curb with (2) – 6' wide sidewalks; as further described in Exhibit "A" attached hereto.

PROVIDING FOR THE TIME WHEN SUCH ASSESSMENTS BECOME DUE AND PAYABLE; STIPULATING THE RATE OF INTEREST AND FIXING A CHARGE AND LIEN AGAINST SAID PROPERTY, MAKING SAID CHARGE A PERSONAL LIABILITY OF THE PROPERTY OWNERS OWNING PROPERTY ABUTTING ON SAID STREETS, PROVIDING FOR THE COLLECTION THEREOF; AND PROVIDING A SEVERABILITY CLAUSE,

WHEREAS, heretofore, a resolution was duly adopted by the City Council, ordering the improvements, and determining the necessity of levying an assessment against the owners of property abutting upon the streets above named, as heretofore determined and approved; and,

WHEREAS, plans and specifications, prepared by Walton and Associates Consulting Engineers, Inc., for the construction of said improvements, and on file in the City Engineer's Office were approved and adopted by the City Council; and,

WHEREAS, competitive bids were taken for the construction of said improvements, and a contract was awarded by the City of College Station to Fuqua Construction, the lowest, responsible bidder; and,

WHEREAS, the Department of Public Works, prepared an estimate of costs, prepared a description of the streets to be improved; the names of the owners of property abutting said street to be improved; the legal description of the property abutting said streets to be improved; the number of feet of said properties abutting said streets to be improved; the amount, or amounts, per front foot proposed to be assessed against said owners, and the total, proposed assessment against said properties abutting the streets to be improved; and,

WHEREAS, thereafter the estimate was filed with the City Council, and, by them, examined and approved, and a resolution passed by the said Council, on the 22nd day of July, 2004, fixing a time and providing for a hearing to such owners, their agents or attorneys, at which hearing, said owners were to be heard as to the benefits of the said improvements as to their property, as to any error or invalidity in said proceedings, or to any matter or thing connected with said improvements; and,

WHEREAS, thereafter, the Department of Public Works of the City of College Station gave notice of public hearing to the property owners on said street, their agents and attorneys, by causing a notice of said hearing to be published in the newspaper of the City of College Station, Texas, The Eagle, a daily newspaper of general circulation in said City, three (3) times prior to said hearing, the first publication thereof appearing at least twenty-one (21) days prior to said hearing, to-wit: the 3rd day of August, 2004, and the City Engineer gave actual notice to said property owners, their agents and attorneys, by mailing a notice of the public hearing to them at their respective addresses, all in accordance with, and as required by, law; and,

WHEREAS, said hearing was held, at the time and place mentioned in said resolution and notice, to-wit: on the 26th day of August, 2004, at 7:00 o'clock p.m., in the Council Chamber of the City Hall of the City of College Station, Brazos County, Texas; and,

WHEREAS, at said public hearing, Bob Mosley, P.E., City Engineer, testified briefly as to the nature of the improvements to be constructed, and explained the method of apportioning the costs, and Jo Ann Sette, a licensed real estate broker and appraiser, testified that the improvements to be placed abutting the properties involved would, in each instance, increase the value of such property by more than the cost of such improvements to the property owners, and all the property owners, their agents or attorneys, or other persons desiring to contest the amounts of the proposed assessments; the lien and liability thereof; the special benefits accruing to abutting property owners by means of the improvements for which assessments were levied; the accuracy, sufficiency, regularity and validity of the proceedings and contract in connection with which such improvements and proposed assessments were made, and upon any other matter in connection with the improvements in question were heard, and all errors, inaccuracies, deficiencies and invalidities were, thereupon, corrected and rectified by the City Council to end that the amounts of said assessments were just and equal; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS:

PART 1: That the public hearing to consider the proposed assessments to be levied against abutting owners of the street, or portions thereof, as set forth in Part 3 hereof, be, and the same is hereby, closed, and all objections to the proposed assessments be, and the same are hereby, overruled.

PART 2: That the City Council hereby finds and determines, upon the evidence heard in reference to each and every parcel of property abutting upon the street hereinafter set out, that the enhancement in value to accrue to said property, and the real and true owners thereof, by virtue of the construction of said improvements in said portions of said street, will be in excess of the amount of the costs of said improvements proposed to be, and as herein assessed against said abutting properties and the real and true owners thereof; and finds that the apportionment of the costs of said improvements and the assessments herein below made are just and equitable and produce substantial equality, considering the benefits received and the burdens imposed thereby, and finds that all prerequisites to the fixing of the assessment liens against said abutting properties, as hereinafter described, and the personal liability of the real and true owners thereof, whether named, or correctly named, herein or not, have been in all things, regularly had and performed in compliance with the law and the proceedings of said City Council.

PART 3: That, in accordance with V.T.C.A. Transportation Code, Chapter 313, and the Charter of the City of College Station, and pursuant to the proceedings heretofore enacted by the City Council in reference to the above named improvements, there shall be, and is hereby, levied an assessment against the parcels of property, hereinafter mentioned, and against the real and true owners thereof (whether such owners shall be correctly named herein or not), the sums of money itemized and shown opposite the

description of the respective parcels of property and the several amounts assessed against the same, and the owners thereof, as far as such owners are known, being shown as follows:

IN ACCORDANCE WITH THE PAVING ASSESSMENT ROLL PREPARED BY THE DEPARTMENT OF PUBLIC WORKS OF THE CITY OF COLLEGE STATION, A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT "B" AND INCORPORATED BY REFERENCE AS PART OF THIS ORDINANCE.

PART 4: That, where more than one person, firm or corporation owns an interest in any property, above referred to, each said person, firm or corporation shall be personally liable only for its, his or her prorata of the total assessment against such property, in the proportion that its, his or her respective interest bears to the total ownership of such property, and its, his or her respective interest in such property may be released from the assessment lien upon payment of such proportionate sum.

PART 5: That the several sums above referred to, and assessed against the said parcels of property, and the owners thereof, and interest thereon at the rate of eight percent (8%) per annum, together with reasonable attorney's fees and costs of collection, if incurred, are hereby declared to be, and are made a lien upon the respective parcels of property against which the same are assessed, and a personal liability and charge against the real and true owners of such property whether such owners be named herein or not, and the said liens shall be, and constitute, the first enforceable lien and claim against the property on which such assessments are levied, and shall be a first and paramount lien thereof, superior to all other liens and claims, except State, County, School District and City ad valorem taxes.

PART 6: Provided, that upon proper execution of a Promissory Note and a Mechanic's and Materialman's Lien, on forms prescribed by the City of College Station, the sums so assessed against the abutting property and owners thereof, may be paid, in equal, monthly installments not to exceed thirty-six (36) months, as requested by owners; however, there shall be no monthly installment payment less than Ten Dollars (\$10.00) per month, the first payable on or before thirty (30) days from the acceptance of the improvements which the property abuts, and one (1) each month thereafter until the total amount is paid. Such note shall bear interest from date, at the rate of (5%) per annum, payable monthly with each installment, and shall provide that all past due principal and interest shall bear interest at the rate of eight percent (8%) per annum, from maturity until paid. Provided, however, that any owner shall have the right to pay the entire amount, or any installment thereof, before maturity by payment of principal

and accrued interest, and, further provided, that, if default shall be made in the payment of any installment of interest or principal, promptly as the same matures, then the entire amount of the assessment upon which such default is made shall, at the option of the City of College Station, or its assigns, be and become immediately due and payable, and shall be collectible, together with reasonable attorney's fees and costs of collection, if incurred.

PART 7: That, if default is made in the payment of any of the said sums hereby assessed against said property owners and their property, collection thereof shall be shall be enforced, either by the sale of the said property in the manner provided by law for sale of property for municipal ad valorem taxes, or, at the option of the said City, the payment of the said sums shall be enforced by suit in any court having jurisdiction.

PART 8: That, for the purpose of evidencing the several sums payable by said property owners, and the time and terms of payment, and to aid in the enforcement thereof, assignable certificates may be issued by the City of College Station upon the acceptance of the said work of improvement by the Director of Public Works of the City of College Station, which shall be executed by the Mayor, signing the same, or by his facsimile signature impressed thereon, attested by the City Secretary under the impress of the corporate seal, and shall be payable to the City of College Station, or its assigns, which certificate shall declare the said amounts and the time and terms of payment thereof, and the said rate of interest payable thereon, and shall contain the name of the owner and the description of his property by lot or block number or front feet thereof, or such description as may otherwise identify the same by reference to any other fact, and, if said property shall be owned by an estate, then the description thereof as so owned shall be sufficient.

And, the certificates shall further provide that, if default shall be made in the payment of an installment or principal or interest thereon, when due, then, at the option of the said City of College Station, being the holder and owner thereof, the whole of the said assessment shall, at once, become due and payable, and shall be collectible, with reasonable attorney's fees and costs, if incurred, plus eight percent (8%) interest thereon.

And, the certificates shall further set forth and evidence the said personal liability of the owner and the lien upon his premises, and shall provide that, if default shall be made in payment thereof, the same may be enforced, either by sale of the property by the City of College Station, as above recited, or by suit in any court having jurisdiction.

And, the certificates shall further recite that the proceedings with reference to making said improvements have been regularly had in compliance with the terms of the

applicable law, and that all prerequisites as to the fixing of the lien and claims of personal liability evidenced by such certificates have been performed, which recitals shall be evidence of the facts so recited, and no further proof thereof shall be required.

And, the said certificates shall also provide that the amounts payable thereunder shall be paid to the City of College Station, or other holder of said certificate, shall receipt, in writing, when paid in full, together with all costs of collection.

And, the said certificates shall further provide that the City of College Station shall exercise all legal power, when requested to do so by the holder of said certificate, to aid in the collection thereof, but the City of College Station shall, in nowise, be liable to the holder of said certificates, in any manner, for payment of the amount evidenced by the said certificates, or for any costs or expense in the premises, or for any failure of the said City Council, or any of its officers, in connection therewith.

Full power to make and levy reassessments, and to correct mistakes, errors, invalidities or irregularities, either in the assessments or in the certificates issued in evidence thereof, is, in accordance with the law in force in this City, vested in said City.

PART 9: All assessments levied are a personal liability and charge against the real and true owners of the premises described, notwithstanding such owners may not be named, or may be incorrectly named.

PART 10: That the assessments herein levied are made and levied under, and by virtue of, the terms, powers and provisions of V.T.C.A. Transportation Code, Chapter 313 and Article II, Section 11, of the Charter of the City of College Station, Texas, which is said law has been adopted as an alternative method for the construction of street improvements for the City of College Station, Texas.

PART 11: That the assessments so levied are for the improvements in the particular unit or district upon which the property described abuts, and the assessments for the improvements in one unit or district are, in nowise, related to or connected with the improvement in any other unit or district, and, in making assessments and in holding said hearing, the amounts assessed for improvement in one unit or district have been, in nowise, affected by any fact, in anywise, connected with the improvements or the assessments therefore in any other unit or district.

PART 12: That, it being the opinion of the City Council that the assessments levied in Section 3 of this Ordinance will be adequate for the City of College Station to finance said improvements, the contract previously awarded to Fuqua Construction, be, and the same is hereby, in all things, affirmed and ratified.

PART 13: That, should any portion of this Ordinance be declared void, it is the intention of, and hereby declared by the City Council, that the balance and remainder of such Ordinance, or any parts not void, shall remain in full force and effect as though separately passed and approved.

APPROVED:

RON SILVIA, Mayor

ATTEST:

Connie Hooks, City Secretary

APPROVED:



City Attorney