

ORDINANCE NO. 1966

AN ORDINANCE LEVYING ASSESSMENTS FOR THE COST OF CERTAIN IMPROVEMENTS OR SERVICES PROVIDED IN THE AIRPORT/INDUSTRIAL PUBLIC IMPROVEMENT DISTRICT; FIXING CHARGES AND LIENS AGAINST THE PROPERTY IN THE DISTRICT AND AGAINST THE OWNERS THEREOF; PROVIDING FOR THE COLLECTION OF SUCH ASSESSMENTS; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TERRELL, TEXAS:

WHEREAS the City Council of the City of Terrell, Texas, (the "City") has heretofore directed that certain improvements or services (the "Improvements") shall be provided in the Airport/Industrial Public Improvement District, (the "District"); and

WHEREAS Chapter 372 of the Texas Local Government Code (the "Act") authorized the creation of the Airport/Industrial Public Improvement District; and

WHEREAS on June 4, 1996, the City Council passed Resolution No. 287 which authorized the creation of the District in accordance with its findings and pursuant to Chapter 372 of the Texas Local Government Code.

WHEREAS the District consists of an area along Airport Road and Industrial Blvd., such area being more particularly described on Exhibit "A" attached and shown on a map which is on file in the office of the City Secretary; and

WHEREAS the improvements to be provided are street and drainage improvements and utility relocations along Airport Road and Industrial Blvd.; and

WHEREAS the construction of such improvements in the District

began on July 28, 1997 and were completed on March 31, 1999; and

WHEREAS on April 20, 1999, the City Council passed Resolution No. 337 which accepted Project No. 96.07, Airport Road/Industrial Boulevard, with all improvements as defined in the contract; and

WHEREAS the cost of such improvements is \$4,400,000.00 to be apportioned between the City and the District on the basis of the City paying approximately eighty (80%) percent of the total costs of the improvements and the District paying approximately twenty (20%) percent of such total costs; and based on the final costs of construction, the costs to be assessed against properties located in the District shall be in the amount of \$1,000,000.00; and

WHEREAS the improvements are fully described in a service, improvement and assessment plan which was adopted by the City Council on August 14, 1997, and is on file in the office of the City Secretary; and

WHEREAS there are various tracts of property located in the District to be assessed and such tracts and the amount of the assessment to be levied against each tract are described on Exhibit "B" attached.

WHEREAS, the City Manager has filed with the City Secretary a proposed assessment roll and an estimate of the assessments against each parcel; and

WHEREAS, such proposed assessment roll was approved and adopted by the City Council of the City of Terrell and a time and place was fixed for a hearing, and the proper notice of the time, place and purpose of said hearing was given and said hearing was had and held at the time and place fixed therefor; to-wit, on the

14th day of August, 1997, at 7:00 p.m. in the Council Chambers in the City Hall, in the City of Terrell, Texas, and at such hearing, all protests and objections were made, and all desiring to be heard were given a full and fair opportunity to be heard, and the City Council, having fully considered all proper matters, is of the opinion that the assessments levied against each parcel are reasonable and consistent with the special benefits accruing to each property within the District.

I.

The City Council finds, from the evidence, that the assessments should be made and levied against the respective parcels of property in the District and against the owners of such property and that such assessments are substantially in proportion to the benefits accruing to the respective parcels of property by means of the services and improvements in the District for which such assessments are levied, and establish substantial justice and equality and uniformity among the owners of the respective properties and among all the parties concerned, considering the benefits received and burdens imposed, and further finds that in each case the property assessed is specially benefitted in enhanced value to said property by means of the services and improvements in the District, and further finds that the apportionment of the cost of the services and improvements in accordance with the law in force in this City and State and the proceedings of the City previously conducted with reference to the formation of the District and the imposition of the assessments or services and improvements are in all respects valid and regular.

II.

That based on the evidence, matters, testimony and objections considered at such hearing, the said City Council has determined that the property located in the District as hereinafter set out, will be enhanced in value and specially benefitted in an amount equal to the amount or in excess of the amount of the assessment against each such tract, and is hereinafter assessed against said property, and the real and true owners thereof.

III.

There shall be and there is hereby levied against each of the parcels of land described in Exhibit "B" a special assessment in the amount identified in said Exhibit "B", and such assessment hereby levied against each such tract of land shall be a first and prior lien on each of such parcels of land identified in Exhibit "B" superior to all other liens and claims, except liens or claims of state, county, school district or municipality ad valorem taxes, and shall be a personal liability of and charge against the owners of such property regardless of whether the owners are named in Exhibit "B". A further recital that the lien created on each parcel or land shall be effective from the date of the final passage of the ordinance until the assessment is paid in full and the City Attorney and administrative staff of the City are hereby authorized and directed to enforce the payment of such assessments in the same manner ad valorem tax liens against real property in the City are enforced by the City.

IV.

Where more than one person, firm, or corporation owns an interest in any property described in Exhibit "B", each person, firm, or corporation shall be personally liable for his, her or its prorata share of the total assessment against the property in proportion as his, her or its respective interest bears to the total ownership of the property; and no release shall be executed until the full assessment against such parcel shall have been paid in full.

v.

The term of payment for the assessment shall be ten (10) years at an interest rate of six (6%) percent per annum to be charged on the unpaid balance of the assessment. If the total balance of the amount of assessment is paid within six (6) months of the approval of this ordinance, the total amount of assessment shall be reduced by six (6%) percent and no interest shall be charged against the assessment.

Said payments shall be made in annual installments, the first of which will be payable on or before October 1, 1999, (the "First Payment Date"), and the remaining installments to be due and payable respectively on or before October 1st of each year thereafter. The unpaid balance of the assessment to bear interest from the first payment date (October 1, 1999) at the rate of six (6%) percent per annum payable annually. Installments shall be considered past due if not paid within ninety (90) days of each payment date and such past due payments shall bear interest at the same rate per annum until paid. Any owner of such property shall have the right to pay off the entire amount of such assessment, or

any installment thereof, before maturity by paying the assessment and accrued interest, if applicable, to date of said payment. If a default has occurred and is continuing with respect to the payment of any installment of the assessment due or the accrued interest therein when due, then the entire amount of said assessment, at the option of the City of Terrell, or its assigns, may be accelerated and become immediately due and payable and shall be collectible together with reasonable attorney's fees and all costs and expenses of collection if incurred. If default is made in the payment of any of the sums assessed against the property owner and their property, collection, including interest, costs and attorney's fees, shall be forced by suit in any court having jurisdiction or by lien foreclosure, or both.

VI.

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

VII.

The assessments levied are made and levied under and by virtue of the terms, powers and provisions of the Public Improvement District Assessment Act, Chapter 372 of the Texas Local Government Code.

VIII.

A copy of this Ordinance levying assessments along with Exhibits "A" and "B" shall be filed of record in the Real Property

Records of Kaufman County, Texas, so as to put on record notice of the existence of a lien against property for special assessments.

IX.

The provisions of this ordinance are severable. If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance.

X.

This ordinance shall take effect on June 15th, 1999.

PASSED AND APPROVED THIS 16TH day of March, 1999.

PASSED AND ADOPTED THIS 15th day of June, 1999.

HENRY C. MADGWICK SR., MAYOR

ATTEST:

JOHN ROUNSAVALL, CITY SECRETARY

APPROVED AS TO FORM:

MARY GAYLE RAMSEY, CITY ATTORNEY

STATE OF TEXAS

COUNTY OF KAUFMAN

This instrument was acknowledged before me this ____ day of _____, 1999, by HENRY C. MADGWICK SR.

Notary Public, State of Texas