

ORDINANCE NO. 2014-10-___

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AMENDING ORDINANCE NO.2006-06-082 THAT ESTABLISHED A SINKING FUND FOR THE FUNDING OF OPERATION AND MAINTENANCE OBLIGATIONS UNDER THE OPERATION AND MAINTENANCE AGREEMENTS WITH THE UNITED STATES DEPARTMENT OF AGRICULTURE, NATURAL RESOURCES CONSERVATION SERVICE, ("NRCS") FOR CERTAIN FLOODWATER RETARDING STRUCTURES IN THE CITY OF MCKINNEY, COLLIN COUNTY, TEXAS, BY PROVIDING FOR THE INCLUSION OF FUTURE FUNDING OBLIGATIONS ASSOCIATED WITH OPERATION AND MAINTENANCE AGREEMENTS FOR ADDITIONAL FLOODWATER RETARDING STRUCTURES IN SAID SINKING FUND, AND BY PROVIDING FOR THE PERIODIC UPDATING OF COSTS ASSOCIATED WITH SAID SINKING FUND; PROVIDING FOR THE LEVYING AND COLLECTION OF A SUFFICIENT TAX TO PAY THE SUCH OBLIGATION; PLEDGING SUCH TAX FOR THE PAYMENT OF SAID AMOUNT; CONTAINING OTHER INCIDENTAL AND RELATED MATTERS; PROVIDING A SEVERABILITY CLAUSE; REPEALING ALL CONFLICTING ORDINANCES; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of McKinney, Texas ("City"), desires to receive financial assistance in the modification and repair of floodwater retarding structures within the City's corporate limits in exchange for the obligation to perform certain maintenance and operations on said structures, subject to the provisions of the Home Rule Charter of the City and the City's Code of Ordinances; and

WHEREAS, on or about June 20, 2006, the City Council of the City of McKinney, Texas ("City Council") approved the execution of that certain "Operation and Maintenance Agreement East Fork Above Lavon Watershed Collin County, Texas for rehabilitated structures 1A, 2B, 3C, 3D, 3E, 5A & 17" by and between the City, the United States Department of Agriculture, Natural Resources Conservation Service, ("NRCS") and the Collin County Soil and Water Conservation District ("District") (hereinafter "2006 Agreement"); and

WHEREAS, on or about June 20, 2006, the City Council also approved Ordinance No. 2006-06-082 that established a sinking fund for the funding of the City's operation and maintenance obligations under the 2006 Agreement because the City's obligations under the 2006 Agreement extended beyond the then current fiscal year for the respective defined program life of each floodwater retarding structure identified in the 2006 Agreement, which defined program life extended out as far as 100 years from the date of completion of the rehabilitation of each such flood retarding structure ("Sinking Fund"); and

WHEREAS, the City and the other parties to the 2006 Agreement acknowledged that, pursuant to the provisions contained in Article 11, Sections 5 and 7 of the Texas Constitution, the City may not enter into unfunded debt, *i.e.*, debt beyond the then current fiscal year, for any purpose without creating a sinking fund of at least two percent (2%) of the amount of such debt for the payment of said debt; and

WHEREAS, the City and the other parties to the 2006 Agreement further acknowledged that at the time long-term debt is created, the City must provide for the assessment and collection on an annual basis of a sufficient sum of money for payments which could accrue during any subsequent budget year; and

WHEREAS, the City is now contracting with the NRCS for the rehabilitation Flood Retarding Structure 2A that is situated in the City's corporate limits and is again entering into an operation and maintenance agreement for the long-term maintenance and operation of such flood retarding structure during its defined program life (the "2014 Agreement"); and

WHEREAS, the City anticipates there may be at least three other flood retarding structures within the City's corporate limits that may require rehabilitation in the near future which will also require a similar operation and maintenance obligation for the defined program life of such additional flood retarding structures; and

WHEREAS, the City now desires to amend and supersede Ordinance No. 2006-06-082 by and through the adoption of this Ordinance in order to allow the long-term funding obligation for the maintenance and operation of the NRCS lake 2A flood retarding structure to be included in the same Sinking Fund as the 2006 Agreement thereby increasing the amount of the Sinking Fund by the amount of the estimated operation and maintenance costs of the 2A flood retarding structure as set out in and determined by the 2014 Agreement; and

WHEREAS, the City also desires to amend and supersede Ordinance No. 2006-06-082 by and through the adoption of this Ordinance in order to allow the long-term funding obligation for the maintenance and operation of additional flood retarding structures that are rehabbed with the NRCS and for which additional flood retarding structures the City enters into one or more Operation and Maintenance Agreements with the NRCS at some future date to be included in the same Sinking Fund without the adoption of a new ordinance therefore thereby automatically increasing the amount of the Sinking Fund by the amount of the estimated operation and maintenance costs of such newly rehabbed flood retarding structure(s) as set out in and determined by such future agreement(s) and as specifically approved and directed by the City Council by resolution or ordinance (hereinafter referred to, whether one or more, as "Future Approved Agreement"); and

WHEREAS, the City further desires to amend and supersede Ordinance No. 2006-06-082 by and through the adoption of this Ordinance in order to allow the amount of the Sinking Fund to be increased or decreased in coordination with any estimated increases or decreases in the estimated costs of such operation and maintenance expenses as may be determined (a) through the periodic updating of the estimated operation and maintenance costs by and through the 2006 Agreement, the 2014 Agreement and any Future Approved Agreement (collectively "Agreements") and (b) by the completion of the defined program life associated with each flood retarding structure identified in the Agreements; and

WHEREAS, the City lastly desires to amend and supersede Ordinance No. 2006-06-082 by and through the adoption of this Ordinance in order to allow the Sinking Fund to remain in place until such time as the program life of the final flood retarding structure for which the City has assumed operation and maintenance responsibilities through the Agreements has terminated.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, THAT:

Section 1. All the above premises are hereby found to be true and correct factual and legislative determinations and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

- Section 2. From and after the effective date of this Ordinance, Ordinance No. 2006-06-082 is hereby amended and superseded in all things by this Ordinance.
- Section 3. From and after the effective date of this Ordinance, the City's Finance Director is hereby directed to create and maintain a Sinking Fund within the Stormwater Drainage Utility Fund for the payment of the long-term maintenance and operation debt for specified flood retarding structures created by the Agreements ("FRS Sinking Fund"). The FRS Sinking Fund shall consist of two percent (2%) of the estimated operation and maintenance costs of each covered flood retarding structure through the program life of each such flood retarding structure as defined in the Agreements (herein the "Obligation"). The estimated operation and maintenance cost for each of the flood retarding structures identified in the 2006 Agreement (NRCS lakes 1A, 2B, 3C, 3D, 3E, 5A & 17) and the 2014 Agreement (NRCS lake 2A) is hereby established as being \$3,500 per flood retarding structure per fiscal year ("Estimated Cost").
- Section 4. From and after the effective date of this Ordinance, the City's Finance Director is hereby directed to increase or decrease the FRS Sinking Fund for the payment of the long-term maintenance and operation debt for specified flood retarding structures created by the Agreements as such cost for operation and maintenance may be updated on request of the City and concurrence by the NRCS no more than one time every five years for each such agreement and as specifically directed by resolution or ordinance of the City Council.
- Section 5. From and after the effective date of this Ordinance, the City's Finance Director is hereby directed to increase the FRS Sinking Fund for the payment of the long-term maintenance and operation debt for specified flood retarding structures identified in any Future Approved Agreement without the adoption of a new ordinance amending the Sinking Fund or establishing a new sinking fund therefore, thereby automatically increasing the amount of the FRS Sinking Fund by the amount of the estimated operation and maintenance costs of such newly rehabbed flood retarding structure(s) as set out in and determined by such Future Approved Agreement subject to the approval of, and specific direction to that effect by, the City Council, whether by resolution or ordinance, to include such additional estimated operation and maintenance costs in the FRS Sinking Fund.
- Section 6. The proceeds placed into the FRS Sinking Fund, for the 2006-2007 fiscal year and the succeeding fiscal years, shall be from the City's ad valorem tax and there shall be annually assessed and collected in due time, form and manner, a direct and continuing ad valorem tax on all taxable property within the corporate limits of the City at a rate from year to year, within the limitations prescribed by law, on each one hundred dollars' valuation of taxable property as will be sufficient to provide funds to satisfy any obligations under the Agreements during any budget year. Such ad valorem tax shall be imposed during each year while there is a liability by reason of the terms, conditions, requirements and obligations imposed by the Agreements upon the City of McKinney, Texas, and the City shall compute and ascertain the rate and amount of ad valorem tax, based on the latest approved tax rolls of the said City, with full allowances being made for tax delinquencies and cost of tax collection, which will be sufficient to raise and produce the money required to pay any sums which may be or become due during any such year, in no instance to be less than two (2%) per cent of such obligation because of the obligation assumed in Sections 3 through 5 above. Said rate and amount of ad valorem tax is hereby ordered to be levied and is hereby levied against all taxable property in said City for each year while any liability exists by reason of the obligations undertaken under the Agreements, and said ad

valorem tax shall be assessed and collected each such year until all of the obligations herein incurred shall have been discharged and all liability hereunder discharged. (To the extent that the FRS Sinking Fund can be, and is actually, funded and maintained by and through the proceeds collected in conjunction with the Stormwater Utility Fee for each fiscal year while any liability exists by reason of the obligations undertaken under the Agreements, the FRS Sinking Fund may be funded by and through the proceeds collected in conjunction with the Stormwater Utility Fee.)

Section 7. The City's Finance Director shall keep and maintain all records relating to the FRS Sinking Fund and all such other related documentation and accounts.

Section 8. All ordinances, orders or resolutions heretofore passed and adopted by the City Council of the City of McKinney, Texas, are hereby repealed to the extent that said ordinances, orders or resolutions, or parts thereof, are in conflict herewith.

Section 9. If any section, article, paragraph, sentence, clause, phrase or word in this Ordinance is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance; and the City Council hereby declares it would have passed such remaining portions of this Ordinance despite such invalidity, and further declares that such remaining portions shall remain in full force and effect.

Section 10. This Ordinance shall take effect and be in full force from and after its passage.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS ON THE 21st DAY OF OCTOBER, 2014.

CITY OF MCKINNEY, TEXAS

BRIAN LOUGHMILLER
Mayor

CORRECTLY ENROLLED:

SANDY HART, TRMC, MMC
City Secretary
DENISE VICE
Assistant City Secretary

DATE: _____

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney