

**FIRST AMENDMENT
OF THE
WATER SUPPLY AGREEMENT**

This **FIRST AMENDMENT** (“Amendment”), of that 2008 Water Supply Agreement, is entered into, by and among, **OAK BEND FOREST, L.C.**, a Texas limited liability company, by its authorized representative (“Owner”) and the **CITY OF FAIR OAKS RANCH, TEXAS**, a Texas municipal corporation, by its authorized representative (“City”), as of the “Effective Date” (as defined herein). The Owner and the City may be, collectively, referred herein as “Parties,” or in the singular, as “Party”.

RECITALS

WHEREAS, City, a home-rule municipality, and Owner executed that 2008 Water Supply Agreement (“Agreement”) on September 2, 2008, for a certain tract of real property of approximately 149 acres (“Property”), located in the corporate limits of the City and within Comal County, Texas (“County”), which Property is owned by the Owner and is more fully described in **Exhibit A** attached hereto and incorporated herein for all purposes; and

WHEREAS, City and Owner executed the Agreement to memorialize certain agreements and commitments by the Owner with respect to its planned development of the Property and the provision of public water utility services to the Property; and

WHEREAS, the Property is currently undeveloped and Owner anticipates entering into a joint-venture with a residential developer to complete a detached, single-family residential development on the Property (“Project,” as further defined herein), which requires certain amendments to the Agreement, including, but not limited to, extending the term of the Agreement; and

WHEREAS, the City Council City (“Council”) finds that it is in the best interest of the City, and in furtherance of the general health, safety, and welfare of the public, to enter into the Amendment with Owner; and

WHEREAS, City and Owner now desire to amend the Agreement, as provided herein, by executing this Amendment.

NOW THEREFORE, in consideration of the agreements set forth herein and for other reciprocal good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and stipulated by the Parties, Owner and City agree as follows:

1. RECITALS; AUTHORITY; CONTROLLING EFFECT; TERM

Article I (Authority and Term) of the Agreement shall be amended and replaced in its entirety as follows:

A. **Recitals.** The recitals set forth above are hereby fully incorporated in and made a part of this Agreement as if set forth verbatim (which the Parties represent are true and correct and are bound thereby).

B. **Authority.** The City's execution of this Amendment is authorized by the Council and constitutes a valid and binding obligation of City. Owner's execution and performance of this Amendment constitutes a valid and binding obligation of Owner as the Owner proceeds with the development of the Project. The City acknowledges Owner is acting in reliance upon the City's performance of its obligations under this Amendment in making its decision to commit substantial resources and money to the development of the Project.

C. **Controlling Effect.** Unless otherwise stated herein, this Amendment (and the provisions hereof) shall amend and replace the referenced sections of the Agreement as of the Effective Date, and the provisions of this Amendment shall control for all purposes. Any provision of the Agreement that is not amended herein shall remain in full force and effect.

D. **Term.** This Amendment shall become enforceable upon the Effective Date and shall continue in full force and effect for fifteen (15) years beginning on the Effective Date ("Term," as may be amended or extended). Any other amendments or extensions of the Term shall be at the mutual written agreement of the Parties and approved by Council, (unless otherwise provided by law or pursuant to the provisions herein).

2. LAND USE PLAN; SINGLE-FAMILY LOTS

Article II (Land Use Plan) of the Agreement shall be amended and replaced in its entirety as follows:

A. **Oak Bend Estates Subdivision Project.**

i. Consistent with the existing general land uses that exist within the City, it is the intent of Owner to develop (or cause to be developed) detached, single-family residential Lots on the Property ("Project"). "Lot" or "Lots," as used herein, shall mean and refer to platted lots containing suitable sites for building detached, single-family residential homes.

ii. The Project (and the Property) is further described in the "Current Plat," recorded, under the Official Public Records of Comal County, Texas, as Document No. 201106015175. The Parties expressly acknowledge that the Current Plat will be amended or vacated (or otherwise revised) ("Final Plat") to adjust the total number of Lots, as

described in Section B of this Article.

B. **Lot Use Summarization.** As of the Effective Date, it is anticipated that the Project will include approximately 106 total Lots (single-family). The total number of Lots for the Project shall be in accordance with, and determined by, the Final Plat. However, notwithstanding any provision herein to the contrary, the Parties expressly acknowledge and agree that the total number of Lots for the Project will not exceed 110 Lots (single-family).

C. **Project Completion.** For purposes of this Amendment, the Project shall be deemed complete upon the date of the last Lot, of the Final Plat, receiving a building permit from the City (“Project Completion”).

D. **Established Rights.** The Parties acknowledge that the Agreement constitutes a permit in accordance with Chapter 245 of the Texas Local Government Code, and the Agreement (dated September 2, 2008) shall serve as a basis for vested rights for the Project. Vested rights letter, dated October 17, 2022, attached as **Exhibit B**. Additionally, the Parties further acknowledge and agree that the minimum lot size, as established in the Current Plat, shall be one (1) acre.

3. OBLIGATIONS OF THE PARTIES

The following sections of Article III (Obligations of the Parties) of the Agreement shall be amended and replaced in their entirety as follows. Sections not included shall remain as written in the Agreement.

D. **Water Service Capacity.** The City expressly agrees to reserve water service capacity in a sufficient amount to serve the Project on the Property up to 110 Living Unit Equivalents (“LUEs”). The City shall reserve 75 acre-feet of water to serve this Project development (Annual Reservation). The City shall provide an *initial* annual commitment (Capacity Reservation) of 15 acre-feet of water; provided, however, the annual commitment/Capacity Reservation may be increased in January of each calendar year up to a maximum total of 75 acre-feet.

F. **Contribution in Aid of Construction.** The Agreement estimated 130 potential residential customers (130 LUEs), and required the Owner pay \$1,669.58 times 130 for a total payment of \$217,045.40 (“Contribution in Aid of Construction”). The Contribution in Aid of Construction shall be paid in two (2) equal installments of \$108,522.70. The first installment has been paid by the Owner to the City. The second installment has not been paid and shall be due within thirty (30) days after the City has awarded a contract to construct the elevated storage tank. The amount of the second installment shall be reduced based on the total number of LUEs platted with the Final Plat in accordance with Agreement Article III, Section L. For purposes of clarity, for example, if the final number of LUEs is 106, the original Contribution in Aid of Construction should have been \$176,975.48. Since the Owner has already made the first installment payment of \$108,522.70, the second installment payment shall be \$68,452.78. The Contribution in Aid of Construction shall

be refunded to the Owner pro rata on a quarterly basis for each building permit issued and receipt by the City of the \$1,669.58 impact fee for such Lot until all fees pursuant to this section are paid to Owner by City.

G. **Water Reservation Fees.** On or about the 30th day after the date of execution of the Agreement, Owner began paying the City's monthly "Water Reservation Fee" (as customarily and ordinarily defined). Upon execution of this Amendment, Owner shall continue to pay the City the Water Reservation Fee in accordance with this Amendment. Such fee shall be the monthly rate the City pays for the reservation of an acre foot of water for that calendar year and shall be adjusted annually to be equal to the City's cost for the reservation of water necessary to provide for the development of the Project on the Property. This fee is equal to the product of 1/12th of the Annual Reservation times the City's "Firm Water Rate" (as customarily and ordinarily defined) in effect during that calendar month. The *initial* Owner's Water Reservation Fee will be \$625 per calendar month based on the current rate of \$100 per acre foot per calendar year and the Annual Reservation of 75 acre-feet per calendar year. The Owner shall continue to pay the Water Reservation Fee until such time as all of the 110 LUE's within the Property have been developed and connected to the City's Water system minus those LUE's which have been connected (water meter has been set for domestic use). The obligations, pursuant to this section, shall continue until Project Completion.

H. **Capacity Reservation Fees.** On or about the 30th day after the date of execution of the Agreement, Owner began paying the monthly Capacity Reservation fee. Upon execution of this Amendment, Owner shall continue to pay to the City the Capacity Reservation fee in accordance with this Amendment. Such fee shall be the monthly rate the City pays for Capacity Reservation of an acre foot of water for that calendar year and shall be adjusted annually to be equal to the City's cost for the reservation of water necessary to provide for the development of the Project on the Property. Such fee is equal to the product of 1/12th of the annual Capacity Reservation times the "Capacity Reservation Rate" (as customarily and ordinarily defined) in effect during that calendar month. The *initial* Owner's Capacity Reservation fee will be \$653.01 per calendar month based on the current rate of \$522.41 per acre-foot per calendar year and the Owner's Capacity Reservation of 15 acre- feet per calendar year. The Owner shall continue to pay the said Capacity Reservation Fee until such time as all of the 110 LUE's within the Property have been developed and connected to the City's Water system minus those LUE's which have been connected (water meter has been set for domestic use). The obligations, pursuant to this section, shall continue until Project Completion.

L. **Final Plat Fee Adjustment.** The City shall, upon approval of the Final Plat, recalculate and adjust all applicable fees and payments due hereunder by the Owner to the City, specifically, including the Contribution in Aid of Construction amount, the Water Reservation Fees, and the Capacity Reservation fees to reflect the total number of Applicable LUEs platted for the Project. In accordance with this section, the City shall provide written notice to the Owner of such updated fees and payments; provided, however, that such updated fees and payments shall take effect on

the date of the County recordation of the Final Plat and, as applicable, be reflected on the next applicable invoice, as described in Article III, Section I of the Agreement.

4. MISCELLANEOUS

The following sections of Article V (Miscellaneous) of the Agreement shall be amended and replaced in their entirety as follows. Sections of the Agreement not included below shall remain as written in the Agreement.

F. **Assignment.** Except as otherwise provided in this Article, the Owner may not assign all or part of its rights and obligations under this Amendment without the prior written consent of the City. However, no prior written consent and approval are required by the City for the following: (i) Owner's assignment of all or part of its rights and obligations under this Amendment to a newly-formed entity as a result of the Owner's joint venture with a residential developer (e.g., Sitterle Homes, Ltd., or similar developer), such entity being expected to be registered under the State of Texas as Oak Bend, LLC (or named substantially similar thereto); and (ii) Owner's assignment of all or part of its rights and obligations under this Amendment to an Owner Affiliate; provided, however, no such assignment by the Owner shall be enforceable against the City until the Owner has provided a written copy of any such assignment to the City, which copy shall be provided no later than fifteen (15) days after the effective date of the assignment. "Affiliate," as used in this Amendment, shall mean and refer to an entity that controls, is controlled by, or is under common control with the Owner and exists to make a profit. Any other assignment requires prior written approval of Council. Notwithstanding the foregoing, any and all assignments, pursuant to this section, shall be evidenced by documentation ensuring any such assignee assumes all liabilities and obligations under this Agreement. Upon such assignment and assumption, pursuant to this section, the assignor shall be relieved of all liabilities and obligations from and after such assignment and assumption. This section shall survive the termination of this Amendment.

5. GENERAL PROVISIONS

A. **Approval of Amendment.** The City has approved the execution and delivery of this Amendment, pursuant to its authority, under applicable laws, and the Owner represents and warrants that it has taken all necessary action to authorize its execution and delivery of this Amendment.

B. **Binding Effect.** This Amendment shall be binding upon and shall inure to the benefit of the Parties hereto and their successors and assigns.

C. **Counterparts.** Numerous copies of this Amendment may be executed by the handwritten signatures of the Parties hereto, either together or in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Handwritten

signatures on counterparts of this Amendment that are transmitted by email shall be deemed original effective for all purposes.

D. **Third-Party Beneficiaries.** It is expressly agreed by the parties that this Amendment is for the sole benefit of the Parties hereto and shall not be construed or deemed made for the benefit of any third party or parties.

E. **Authority.** The person(s) executing this Amendment on behalf of the respective Parties, represent, warrant, assure, and guarantee that they have full legal authority to (i) execute this Amendment on behalf of the respective Party, and (ii) to bind the respective Party to all of the terms, conditions, provisions, and obligation herein contained.

F. **Final Agreement.** This Amendment embodies the final and entire agreement among the Parties hereto and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of any such Parties.

[SIGNATURES ON THE FOLLOWING PAGES]

IN WITNESS HEREOF, the Parties hereto have caused this instrument to be duly executed as of _____, 2024, the Effective Date.

CITY:

CITY OF FAIR OAKS RANCH, TEXAS, a Texas home-rule municipality

By: _____
Scott M. Huizenga
City Manager

Date: _____

ATTEST:

By: _____
Christina Picioccio
City Secretary

Date: _____

ACKNOWLEDGEMENT

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on this _____ day of _____ 2024, by Scott M. Huizenga, City Manager of the City of Fair Oaks Ranch, Texas, on behalf of said home-rule municipality and Texas political subdivision.

Notary Public, State of Texas

My commission expires: _____

OWNER:

OAK BEND FOREST, L.C., a Texas limited liability company

By: _____
James M. Grona

Title: _____

Date: _____

ACKNOWLEDGEMENT

STATE OF TEXAS §
§
COUNTY OF _____ §

This instrument was acknowledged before me on this _____ day of _____ 2024, by James M. Grona, _____, of Oak Bend Forest, L.C., a Texas limited liability company, on behalf of said limited liability company.

Notary Public, State of Texas

My commission expires: _____

EXHIBIT A
**WATER SUPPLY AGREEMENT INCLUDING LEGAL DESCRIPTION OF
PROPERTY**

EXHIBIT B
VEST RIGHTS LETTER