

THE STATE OF TEXAS                   X  
  X       KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF KENDALL                 X

This Interlocal Agreement (“ILA”) Between the **City of Fair Oaks Ranch**, a municipal corporation, situated in Kendall, Bexar and Comal Counties, Texas, acting by and through its City Manager, (hereinafter referred to as “City”), and the **Fair Oaks Ranch Municipal Development District** a political subdivision of the State of Texas (hereinafter referred to as the “MDD” or the “District”) acting by and through its President and in accordance with Texas Local Government Code Chapter 377, pursuant to authority granted under the Interlocal Cooperation Act, Chapter 791, Texas Government Code, as the same may be amended from time to time, to be effective as of the date on which the last Party signs this Agreement (the “Effective Date”). The City and the District are collectively referred to herein as the “Parties” and are each a “Party”.

**WITNESSETH:**

**WHEREAS**, Chapter 791 of the Texas Government Code, as amended, titled Interlocal Cooperation Contracts (“ILA”), authorizes contracts between political subdivisions for the performance of governmental functions and services; and,

**WHEREAS**, the Parties desire to enter into an ILA to maximize efficiency and minimize costs in the areas of fiscal, personnel, and professional services in the provision of economic development programs that mutually benefit the Parties and serve a public purpose; and,

**WHEREAS**, the Parties hereby find that it is in the best interest of the Parties for the City to provide fiscal, personnel, and professional services to the District under the terms stated herein.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements herein contained, the sufficiency of which are acknowledged, and subject to the terms and conditions hereinafter set forth, the Parties agree as follows:

**ARTICLE 1. PURPOSE**

The purpose of this ILA is to define the fiscal, personnel, and professional services to be provided by the City on behalf of MDD in the provision of economic development programs that mutually benefit the Parties and serve a public purpose. The employees and agents of each party performing under this agreement are representatives of that party and shall not be considered to be employees or agents of the other party, even if compensated for services by the other party for work performed.

**ARTICLE 2. TERM**

The initial term of this Agreement begins upon approval of the governing bodies of the Parties and execution by their respective designees and shall expire on September 30, 2022. The ILA shall automatically be renewed each year unless terminated as herein provided and each successive one year term shall begin October 1<sup>st</sup> and run concurrently with the fiscal year so long as the funds required hereunder are appropriated by the governing bodies of the Parties.

### **ARTICLE 3. SERVICES PROVIDED BY CITY**

The City is responsible for providing fiscal and additional staff support services to MDD. Such services are subject to the City and MDD mutually agreeing to a cost for each service.

#### **3.1 Direct Services**

The following direct services will be provided by the City to the MDD.

##### **3.1.1 Transaction Processing**

The City will provide financial management, accounting and purchasing services to and for MDD. The City will allow the MDD to utilize existing City contracts if determined to be beneficial to the MDD, agreed to by the vendor, and does not interfere with vendor's performance on existing City contracts. The Board assumes responsibility for the legal and proper expenditures of all Development Project Fund monies. All monies are budgeted and expended according to the latest approved budget and in conformance with the adopted Rules of Operation.

##### **3.1.2 Accounting**

The City shall maintain one or more separate accounts under the supervision of the Director of Finance for the City. The Director of Finance, in carrying out the requirements of this ILA, is responsible only in the capacity of a trust officer for the funds involved. The Director of Finance shall use generally accepted accounting procedures to satisfy their duties pursuant to this ILA. The City shall pay all invoices on a timely basis. The City shall receive all sales tax disbursements for MDD from the Texas Comptroller of Public Accounts.

##### **3.1.3 Finance**

The authorization of disbursements of funds to recipients of funding under contract with MDD will be made by the Board pursuant to the adopted Rules of Operation in the ILA specified by the action of the Board, so long as the MDD Development Project Fund has sufficient funds to accommodate all payment requests.

##### **3.1.4 Financial Reporting**

The City will provide an Investment Officer that will ensure compliance with the Public Funds Investment Act and also inform/report quarterly to the Board the status of MDD's investment portfolio and financial results.

##### **3.1.5 Annual Financial Statement Audit**

The City will manage the annual financial statement audit and compilation of the annual financial report.

##### **3.1.6 Compliance with the Open Meetings Act**

The Secretary of the Board shall record the meeting minutes of the Board and its committees, if required, and the City shall retain the records of the MDD, as well as

ensure all notices are posted and served as required by law.

#### 3.1.7 Advisory Services

The City shall provide advisory services to the MDD. City shall not be liable for any advisory services given, and the MDD is under no obligation to accept the advisory services provided by City.

#### 3.1.8 Records Management

The City shall maintain records of MDD activities in accordance with the same state-mandated records retention schedule that is followed by the City.

#### 3.1.9 Grant Application Processing

The City shall work with the MDD on identifying potential grant opportunities that align with the MDD's statutory purpose, policies and goals. If determined to be beneficial, the City may apply for such grants. The MDD will assist the City with obtaining any information necessary for the initial application and will supply any additional information in a timely manner. The City will coordinate with the Grant Requestor and assist in monitoring the application until a decision is made.

#### 3.1.10 Grant Administration

If a grant is approved, the City will be responsible for administering the grant and confirming all grant requirements are met. The City will supply any information to the MDD upon request. The MDD is the final authority for approval of grant disbursements.

#### 3.1.11 Meeting Facilities

The City shall provide meeting facilities for the MDD. In the event that a meeting is conducted outside of City facilities, the MDD will be responsible for the cost of the meeting site.

### 3.2 Indirect Services

#### 3.2.1 Administrative, Facilities & Supplies Overhead

Administrative Costs for City employees, facilities, and supplies shall be included in the annual budgets as approved by the MDD and City under the terms of the ILA.

## **ARTICLE 4. BILLING PROCEDURES AND PAYMENT**

The City shall submit invoices for the expenses and the cost of indirect services no more often than on a quarterly basis. The MDD shall process the invoices and shall pay the City no later than 30 days after the date the invoice is received. If circumstances warrant that the amount requires adjustment between budget cycles, a budget amendment agreed to by both parties will be executed. The rates for services to be performed each fiscal year shall be attached hereto as Exhibit A.

**ARTICLE 5. TERMINATION AND AMENDMENTS**

Either party may terminate this ILA in whole or in part hereto whenever such termination is found to be in the best interest of either party. Termination shall be effected by the conveyance of a written notification thereof to the other party at least ninety (90) days in advance of the effective date of the termination.

Either party can request an amendment to this ILA by giving thirty (30) days written notice. The amendment becomes effective only by the approval and signature of both parties.

In the event of termination, all costs incurred through the date of termination will be paid within thirty (30) days of request for reimbursement or payments.

**ARTICLE 6. ADMINISTRATION OF AGREEMENT**

All notices pursuant to this ILA shall be deemed given when, either delivered in person or deposited in the United States mail, postage prepaid, certified mail, return receipt requested addressed to the appropriate party at the following addresses:

If to the City: City Manager  
City of Fair Oaks Ranch  
7286 Dietz Elkhorn  
Fair Oaks Ranch, Texas 78015

If to MDD: President  
Fair Oaks Ranch Municipal Development District  
7286 Dietz Elkhorn  
Fair Oaks Ranch, TX 78015

**ARTICLE 7. DISPUTE RESOLUTION**

In the event that a dispute arises regarding the interpretation of the terms, duties, and responsibilities of the Parties under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, contract terms and applicable statutes and rules and make a determination of the dispute. The determination of the Dispute Board shall be final and binding on the parties solely to the extent of the disputed contract provision. Nothing herein shall limit or waive either Parties right to defend itself or seek relief in any manner allowed by law.

**ARTICLE 8. GOVERNING LAW AND AUTHORITY**

The laws of the State of Texas shall govern this ILA and all obligations hereunder of the parties are performable in Fair Oaks Ranch, Texas. Venue for any legal proceeding is Kendall County, Texas. Any applicable state or federal statute or rule will take precedence over any inconsistency in the Interlocal Agreement or in any statement of work issued under the Interlocal Agreement. The City Manager shall be the signature authority for the City, and the President shall be the

signature authority of the MDD. Each party may choose to delegate signature authority by amendment to this agreement and by mutual agreement of both parties.

#### **ARTICLE 9. NON-ASSIGNMENT**

This ILA shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives' successors and assigns. Neither the City nor MDD shall assign any duty of this ILA, excepting those already identified herein, without written consent of the other.

#### **ARTICLE 10. SEVERABILITY**

Should any provisions of this ILA for any reasons be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof.

#### **ARTICLE 11. ENTIRETY OF AGREEMENT**

This is the entire agreement between the parties and no modification of this ILA shall be of any force or effect, unless it is in writing signed by both parties. No official, employee, agent or representative of the City or MDD has any authority, either express or implied, to amend this ILA, except pursuant to such express authority as may be granted by the governing body of the City of Fair Oaks Ranch or MDD Board of Directors.

#### **ARTICLE 12. OFFICIALS NOT TO BENEFIT**

No public official of the governing body of the City or MDD who exercises any functions or responsibilities in the review or the approval of the undertaking or carrying out of any project hereunder, shall participate in any decision relating to the ILA which affects his/her personal interest, nor shall he/she have any personal or pecuniary interest direct or indirect in this ILA or proceeds thereof.

#### **ARTICLE 13. OWNERSHIP OF DOCUMENTS**

Copyright in all material created by City and paid for by MDD as part of this Agreement shall be the property of City. Both City and MDD may use these materials, and permit others to use them. This material includes, but is not limited to: books, computer programs, documents, films, pamphlets, reports, sound reproductions, studies, surveys, tapes, and/or training materials. Material which the City provides and uses to perform this Agreement but which is not created for or paid for by the MDD shall be owned by the City or such other party as determined by Copyright Law; however, for any such materials, City hereby grants (or, if necessary and to the extent reasonably possible, shall obtain and grant) a perpetual, unrestricted, royalty free, non-exclusive license to the MDD to use the material for MDD internal purposes.

#### **ARTICLE 14. GOVERNMENTAL FUNCTIONS; LIABILITY; NO WAIVER OF IMMUNITY OR DEFENSES**

Notwithstanding any provision to the contrary herein, this Agreement is a contract for and with respect to the performance of governmental functions by governmental entities.

1. The services provided for herein are governmental functions, and the Parties shall

be engaged in the conduct of a governmental function while providing and/or performing any service pursuant to this Agreement.

- 2. The relationship of the Parties shall, with respect to that part of any service or function undertaken as a result of or pursuant to this Agreement, be that of independent contractors.
- 3. Nothing contained herein shall be deemed or construed by the Parties, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship between the Parties.

Each Party shall have no liability whatsoever for the actions of, or failure to act by, any employees, agents, representatives, or assigns of the other Party in connection with the Agreement. Each Party covenants and agrees, to the extent permitted by law, that it shall be solely responsible, as between the Parties, for and with respect to any claim or cause of action arising out of or with respect to any act, omission, or failure to act by the participating Party or its respective employees, agents, representatives, or assigns, in connection therewith.

Each Party reserves and does not waive any defense available to it at law or in equity as to any claim or cause of action whatsoever that may arise or result from or in connection with this Agreement. This Agreement shall not be interpreted nor construed to give to any third party the right to any claim or cause of action, and no Party shall be held legally liable for any claim or cause of action arising pursuant to or in connection with this Agreement except as specifically provided herein or by law.

No participant waives or relinquishes any immunity or defense on behalf of itself, its trustees, councilmembers, officers, employees, and agents as a result of the execution of this Agreement and the performance of the covenants and agreements contained herein.

**ARTICLE 15. AGREEMENT**

**This ILA shall constitute the sole agreement between the City and MDD relating to the object of this ILA and correctly sets forth the complete rights, duties, and obligations of each party to the other as of its date. Any prior agreements, promises, negotiations or representations, verbal or otherwise, not expressly set forth in this ILA are of no force and effect.**

WITNESS our hands to this AGREEMENT this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**MDD**

**CITY**

\_\_\_\_\_  
President

\_\_\_\_\_  
Tobin E. Maples, AICP  
City Manager

EXHIBIT "A"  
Compensation

<u>Fiscal Year</u>	<u>Rate of Services</u>
2021-2022	\$30,150