

Exhibit A

MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF FAIR OAKS RANCH AND THE FAIR OAKS RANCH HOMEOWNERS ASSOCIATION

For Multiple Peace Tree Lightings, Decorations, and Hosting of a Veterans Day Event

THE STATE OF TEXAS §

§

COUNTIES OF BEXAR, COMAL, AND KENDALL §

This Understanding is entered into between the City of Fair Oaks Ranch, Texas (“CITY”) and, acting by and through its governing body, and the Fair Oaks Ranch Homeowners Association, Inc. (“FORHA”) acting by and through its governing body.

RECITALS

To protect and promote the interest of its citizens, the CITY agrees to allow FORHA to continue the tradition of using the oak tree located on city property (referred to as the Peace Tree) as a focal point for conducting a variety of patriotic observances, celebrations and a Veterans Day event. The scope includes the use of decorations and performance of landscape renovation and maintenance.

NOW, THEREFORE, the CITY and FORHA in consideration of the mutual covenants and agreements do mutually agree as follows:

DEFINITIONS

Decorations: U.S. lawn flags, special commemorative flags, military garden flags, lights, wreath, ribbons, spinners, and/or signage to define the celebration or event being commemorated.

MOU: Memorandum of Understanding

Peace Tree: Oak tree located on city property at 7899 Fair Oaks Parkway

LANDSCAPE AND LIGHTING MAINTENANCE/RENOVATION

A. Scope and Responsibilities - FORHA

1. CITY authorizes FORHA and its volunteers to enter onto the Property to maintain the landscape and lighting as follows:
 - a. Planting, trimming, and replacing bushes, flowers, and other vegetation around the Peace Tree and in the flower beds.
 - b. A general cleaning around the tree and power washing of curbs, benches, and stepping stones.
 - c. Providing a backflow preventer cover.
 - d. Placing or replacing lights.

Exhibit A

2. CITY authorizes FORHA to use third-party contractors to complete upgrades inclusive of:
 - a. Peace tree lights and associated electrical wiring and outside boxes.
 - b. Laying of mulch, rock, crushed granite or similar texture, curbing, and stepping stones around the tree.
 - c. Replacing sprinkle heads with drip irrigation by a licensed irrigator.
 - d. Contractors must:
 - Be approved by the CITY prior to commencement of work.
 - Provide Proof of insurance and indemnify the CITY as shown in **Exhibit 1**.
 - Secure applicable CITY permits (fee waived).
3. Securing approval by the City Manager or designee before commencement of work.

B. Scope and Responsibilities – CITY

1. Twice a year maintenance of the Peace Tree area no later than April 30 and October 30:
 - a. Laying of mulch around the tree and surrounding flower beds.
 - b. Tree and landscaping trimming.
 - c. Power-washing of benches, curbs, and stones.
2. Cost of water and electricity to the tree area.

ANNUAL FORHA COMMUNITY CELEBRATIONS

A. Scope and Responsibilities – FORHA

1. Providing a liaison to the CITY.
2. CITY authorizes FORHA to enter onto the Property for the placement and removal of decorations around the landscaped area of the tree up to four business days prior to and up to four business days after the following celebrations, contingent on the weather or city requirements. The respective related scopes of each celebration include:
 - a. Armed Forces Day (3rd Saturday of May)
 - Lighting of the Peace Tree Friday the day prior to Armed Forces Day ending Monday immediately following Armed Forces Day.
 - b. Memorial Day (Last Monday in May)
 - Lighting of the Peace Tree the day prior to Memorial Day ending Wednesday immediately following Memorial Day.
 - c. D-Day (June 6)
 - Lighting of the Peace Tree June 5 ending June 8.
 - d. Flag Day (June 14)
 - Lighting of the Peace Tree June 13 ending June 16.
 - e. USA Independence Day (July 4)
 - Lighting of the Peace Tree July 3 ending July 6.

Exhibit A

- f. Purple Heart Day (August 7)
 - Lighting of the Peace Tree August 6 ending August 9.
- g. Patriot Day (September 11)
 - Lighting of the Peace Tree September 10 ending September 13.
- h. Constitution Day (September 17)
 - Lighting of the Peace Tree September 16 ending September 19.
- i. Pearl Harbor Day (December 7)
 - Lighting of the Peace Tree December 6 ending December 9.

ANNUAL FORHA VETERANS DAY EVENT (November 11)

A. Scope and responsibilities – FORHA

1. CITY authorizes FORHA to enter onto the Property for hosting an annual Veterans Day event. The respective related scopes and responsibilities of the event include:
 - Providing a FORHA liaison to the CITY.
 - Lighting of Peace Tree, by a special guest, for the holiday season from November 11 through the first week of the next calendar year.
 - Placement of decorations around the landscaped area of the tree four business days prior to and four business days after Veterans Day.
 - Honor Guard presentation of the United States Flag and Texas Flag.
 - Pledge of Allegiance and singing of National Anthem.
 - Introduction of elected officials and honorary guest(s).
 - Brief speech by the FORHA Board President, Mayor of Fair Oaks Ranch, and/or guest(s).
 - Community Fellowship and Refreshments.
 - Overall planning including setting up before and cleaning after the event.
 - Event advertising through social media and the FORHA website.
 - Securing 3rd party authorizations as necessary to conduct the event including but not limited to approval from the Fair Oaks Ranch Golf and Country Club for the utilization of their parking lot.
 - Financial support for any costs associated with the event, inclusive of but not limited to lighting, extension/electrical cords, adapters, refreshments, and portable PA system.
 - For budgetary purposes coordination and scheduling of the event with the CITY not later than June 30th of each year.

B. Scope and responsibilities – CITY

- Providing a liaison to FORHA.
- Providing the Honor Guard.
- Providing portable safety lights, traffic cones, and police officers for traffic control.

Exhibit A

- Event advertising through social media and the CITY website.

TERMS AND OTHER CONDITIONS

The term of this MOU will be indefinite from the effective date hereof. It may be terminated and/or modified by (i) by the mutual agreement and consent of both CITY and FORHA; by either party, upon the failure of the other party to fulfill its obligations as set forth in this MOU; (ii) by either party, at will and without cause by providing written notice six (6) months prior to date of termination. Any oral or written representations or modifications concerning this MOU shall be of no force and effect excepting a subsequent modification in writing by both parties.

It is not the intent of this Understanding for the CITY to serve as the primary sponsor or owner of any of the annual celebrations and Veterans Day event unless the CITY agrees to such subsequent request from FORHA. It is understood that work performed by FORHA or their contractor and materials for the Peace Tree, the celebrations and the Veterans Day event are considered a donation from FORHA to the CITY.

The CITY does not waive any rights to promulgate policies, procedures, rules, directives, and orders for the lawful use of the property. CITY will always retain control and supervision over the use of its property and does not waive any rights regarding the lawful administration of police powers within its jurisdiction, inclusive of these events. A police officer of the CITY responding to a call for service or investigating suspicious activity at these events shall maintain complete discretion in the manner and means by which they conduct police activity daily and as they would on any property within Fair Oaks Ranch. Nothing herein may be read to imply that FORHA has the right to limit lawful discretionary police activity during any event, without first obtaining written permission from the CITY or pursuant to a lawful order of a court of competent jurisdiction.

Signed:

President of Fair Oaks Ranch Homeowners Association, Inc.

Date

City Manager, City of Fair Oaks Ranch, Texas

Date

Exhibit A

EXHIBIT 1

INSURANCE AND INDEMNITY PROVISIONS

Indemnification

FORHA AND CONTRACTORS AGREE TO INDEMNIFY AND HOLD THE CITY OF FAIR OAKS RANCH AND ALL OF ITS PRESENT, FUTURE AND FORMER AGENTS, EMPLOYEES, OFFICIALS AND REPRESENTATIVES HARMLESS IN THEIR OFFICIAL, INDIVIDUAL AND REPRESENTATIVE CAPACITIES FROM ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, JUDGMENTS, LIENS AND EXPENSES (INCLUDING ATTORNEY'S FEES, WHETHER CONTRACTUAL OR STATUTORY), COSTS AND DAMAGES (WHETHER COMMON LAW OR STATUTORY), COSTS AND DAMAGES (WHETHER COMMON LAW OR STATUTORY, AND WHETHER ACTUAL, PUNITIVE, CONSEQUENTIAL OR INCIDENTAL), OF ANY CONCEIVABLE CHARACTER, FOR INJURIES TO PERSONS (INCLUDING DEATH) OR TO PROPERTY (BOTH REAL AND PERSONAL) CREATED BY, ARISING FROM OR IN ANY MANNER RELATING TO THE WORK OR GOODS PERFORMED OR PROVIDED BY CONTRACTORS – EXPRESSLY INCLUDING THOSE ARISING THROUGH STRICT LIABILITY OR UNDER THE CONSTITUTIONS OF THE UNITED STATES.

Insurance Requirements

FORHA shall ensure adequate insurance coverage is received from Contractor(s) prior to performing work on city-owned property. FORHA and CITY shall both be listed as Certificate Holders. A copy of the insurance coverage shall be provided to the City.

Contractor(s) shall specifically endorse applicable insurance policies as follows:

1. The City of Fair Oaks Ranch and the Fair Oaks Ranch Homeowners Association shall be named as an additional insured with respect to General Liability and Automobile Liability **on a separate endorsement**.
2. A waiver of subrogation in favor of the City and FORHA shall be contained in the Workers Compensation and all liability policies and must be provided **on a separate endorsement**.
3. All insurance policies shall be endorsed to the effect that the City and FORHA will receive at least thirty (30) days' written notice prior to cancellation or non-renewal of the insurance.
4. All insurance policies, which name The City of Fair Oaks Ranch as an additional insured, must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance.