

EXHIBIT A

STATE OF TEXAS

COUNTY OF BEXAR

§ INTERLOCAL AGREEMENT FOR THE
§ OLD FREDERICKSBURG ROAD
§ UTILITY RELOCATION PROJECT

THIS INTERLOCAL AGREEMENT FOR THE OLD FREDERICKSBURG ROAD UTILITY RELOCATION PROJECT (hereafter referred to as “Agreement”) is effective as of the _____ day of _____, 2024 (hereafter referred to as “Effective Date”), and entered into by and between the **CITY OF FAIR OAKS RANCH**, a Texas Home Rule municipality (the “City”), and the **COUNTY OF BEXAR** (the “County”), a political subdivision of the State of Texas, acting by and through its elected officials, hereto duly authorized. City and County will be referred to herein individually as a “Party” or collectively as the “Parties.”

INTRODUCTION

- A. A portion of Old Fredericksburg Road is located in the northern part of the County between Ralph Fair Road (i.e., the southern-most point of the Project Area and Old Fredericksburg Road ties back into the Interstate IH10 frontage / access road (i.e., the northern-most point of the Project Area) (collectively, the “Roadway”), all of which is situated within the County’s right-of-way.
- B. County has plans to reconstruct the Roadway with numerous operational improvements including, without limitation, improving the drainage associated with the Roadway, a general depiction of which is shown on **Exhibit C**, a copy of which is attached to this Agreement or incorporated by reference herein and made a part hereof for all purposes (the “Project Area”).
- C. There is an existing raw water main structure (including its related fixtures, equipment, and other improvements) that is: (1) owned, controlled, and maintained by the City, and (2) located within the Project Area although the structure is not physically located in either the City’s own city limits or its extraterritorial jurisdiction (collectively, the “City Utility”).
- D. County has prepared or commissioned the preparation of an engineering design in connection with the proposed reconstruction of the Roadway (the “Engineering Design”) which will include, among other improvements, the need to dismantle/disassemble, relocate, and re-install the City Utility within the Project Area (collectively, the “CITY Utility Relocation Work”).
- E. The Engineering Design: (1) includes the Bexar County Public Works Specifications for the Project (i.e., known as the “**Old Fredericksburg Rd. Waterline Replacement Project**” (and referred to by City as “CIP# 21W”), a copy of such specifications being referred hereto as **Exhibit A** and incorporated herein may be located in digital format at “<https://www.fairoaksranchtx.org/DocumentCenter/View/5511/Construction-Standard-Specifications-for-Water-and-Sanitary-Sewer-Construction>,” and (2) recommends that County contract for the performance of the CITY Utility Relocation Work, which would include the dismantling/disassembly, removal, relocation, and re-installation of the existing City Utility to a new location also within the Project Area (collectively, the “Project”).
- F. Under Chapter 791, Texas Government Code, the commissioners court of a Texas county may contract with a governmental unit, including a Texas municipality, to jointly construct or maintain improvements for the purpose of providing streets, roads, drainage, and other governmental functions in which the contracting parties are mutually interested.

EXHIBIT A

G. City and County have agreed to incorporate the Project into their respective approved 2022-23 public works project budgets.

H. Since County does not have fee interest or easement rights in the land or parcels of land upon which the City Utility is currently installed and maintained, City is willing to grant County all necessary rights, licenses, and privileges in the affected parcels of land and improvements for the sole purpose of undertaking the City Utility Relocation Work and completing the Project.

I. Upon Substantial Completion (as that particular phrase is defined in Section 5.04 of this Agreement) of the City Utility Relocation Work, City will provide funding for all future maintenance and repair of the City Utility (i.e., post-Substantial Completion of the Project) within the Project Area.

J. City supports County's design and estimated cost assumptions associated with the City Utility Relocation Work and desires to enter into this Agreement with County in order to establish the rights and obligations of the Parties with regard to the final design, engineering, construction, operations, and maintenance of, as well as Project management for, the City Utility Relocation Work, and to establish the procedures for funding the City Utility Relocation Work, all in accordance with the applicable provisions contained in Chapter 791, Texas Government Code.

NOW, THEREFORE, in consideration of the mutual covenants and agreement stated herein, the receipt and sufficiency of which are hereby acknowledged, the Parties separately agree as follows:

ARTICLE 1

PURPOSE OF AGREEMENT; RETENTION OF CONTRACTOR; SCOPE OF CITY UTILITY RELOCATION WORK

- 1.01 The purpose of this Agreement is to establish the terms and conditions for: (a) performing, providing, and managing the labor, services, materials, and supplies associated with the City Utility Relocation Work and Project within the Project Area, including any construction disruption; and (b) funding the design, construction, and relocation costs associated with the City Utility Relocation Work and Project.
- 1.02 Immediately after tabulating all of the bids received for the City Utility Relocation Work, County will notify City, either digitally or in writing, of the name of the contractor selected by County for such work (the "Contractor") and the associated bid amount.
- 1.03 County exercise commercially reasonable efforts in order to enforce all of its rights and remedies against the Contractor in connection with the City Utility Relocation Work and any associated construction-related contracts.
- 1.04 Subject to City both requesting and receiving County's prior digital or written approval for such activity, County will allow City's elected officials and designated employees, contractors, and consultants to access the Project Area for the sole purpose of: (a) observing and inspecting the City Utility Relocation Work, (b) determining if all such work within the Project Area is in conformity with the applicable plans, specifications, and special provisions and is in good working order, and (c) verifying all quantities of necessary equipment, supplies, and materials which will be or already have been incorporated into or otherwise used in connection with any of the City Utility Relocation Work.

EXHIBIT A

All such City officials, employees, contractors, and consultant must comply with County's applicable health and safety requirements at all times when accessing the Project Area. County reserves the right to remove any individual who fails or refuses to comply with such requirements for any reason.

ARTICLE 2

TERM

- 2.01 Except as otherwise provided herein, this Agreement will commence upon the execution date of the last signatory Party to this document. The performance period for this Agreement will begin not later than fifteen (15) days after the last signatory approves this Agreement and will end upon completion of all required City Utility Relocation Work as contemplated under both this Agreement and any applicable Change Orders.
- 2.02 The duty and obligation to: (a) undertake and complete the City Utility Relocation Work, and (b) enforce any applicable representations, warranties, guarantees, and covenants are County's responsibilities and survives the expiration or early termination of this Agreement for a period of two (2) years after the effective date of such expiration or early termination.

ARTICLE 3

CITY'S FINANCIAL COMMITMENT; UTILITY RELOCATION CONTRIBUTION; ADDITIONAL FUNDING

- 3.01 In connection with the City Utility Relocation Work, City agrees to pay County the amount of **FIVE HUNDRED THIRTY-SEVEN THOUSAND FIVE HUNDRED SEVENTY-FIVE DOLLARS AND ZERO CENTS (\$537,575.00)** in connection therewith within ten (10) days after the Effective Date (hereafter referred to as the "Initial Utility Relocation Contribution"). City will make such contribution either by certified check or via wire transfer (per the fund transfer instructions provided by the County's Auditing Department).
- 3.02 If the bid for the Utility Relocation Work by the selected Contractor exceeds the Initial Utility Relocation Contribution, County will notify City, either digitally or in writing, of the overrun and will facilitate a meeting between the Contractor and City staff to discuss the reason for the overrun. If the City and Contractor agree that additional monies are required in excess of the Initial Utility Relocation Contribution, then: (a) County and Contractor must enter into a formal, written agreement (the "Initial Additional Funds Agreement") which, at a minimum, sets forth the amount of additional monies to be paid by City and added to the Initial Utility Relocation Contribution (the "Initial Additional Funds" which, when deposited with the Initial Utility Relocation Contribution, will be referred to herein as the "Revised Utility Relocation Contribution"), and (b) City will promptly (i) provide County with a complete and accurate copy of the Initial Additional Funds Agreement, and (ii) pay the Initial Additional Funds to County within 15 days after receiving notice of such amount, unless further time is required for City Council action on behalf of City to appropriate funds therefore.

If necessary, County will also facilitate a meeting between the Contractor and City, after the award of the construction contract between County and Contractor, to determine if it is possible to negotiate change orders with Contractor to mitigate the amount of the Initial Utility Relocation Contribution.

- 3.03 Change Orders. (a) By City. If change orders are requested, or otherwise required, by City

EXHIBIT A

or the City's designated consultant in connection with any City Utility Relocation Contribution for any City Utility Relocation Work under this Agreement (each, a "Proposed City Change Order"), City will make a change order request and City staff or City's designated consultant will prepare the Proposed City Change Order and submit it to County for further review and handling.

(b) By County. If County requires a change order that affects the City Utility Relocation Work (each, a "Proposed County Change Order"), County will prepare the Proposed County Change Order and submit it to City staff for City's review and approval. City staff will use good faith efforts in order to respond to each Proposed County Change Order within five (5) business days after City's staff's receipt of such document, or such additional period of time as may be reasonably necessary under the circumstances based on the complexity of the Proposed County Change Order; *provided, however*, in no event will City's deliberative process be allowed to jeopardize County's timely completion of the City Utility Relocation Work, as determined by County. City staff is under no obligation to approve of any Proposed County Change Orders, and in no event will City be responsible for costs or expenses under Proposed County Change Orders that are not approved by City staff, either digitally or in writing. If a Proposed County Change Order results in total costs exceeding the Initial Utility Relocation Contribution, County will send copies of invoices covering the additional amounts authorized by a Proposed County Change Order that was previously approved by City staff, and City must pay County the additional amounts in such change order within fifteen (15) days, unless further time is required for City Council action of City to appropriate the additional funds therefore.

- 3.04 Possible Refund or Partial Refund of the Utility Relocation Contribution. If the aggregate cost of both performing and completing the City Utility Relocation Work is less than either the Initial Utility Relocation Contribution or the Revised Utility Relocation Contribution, whichever is applicable, County agrees to refund the overpayment to City, by check, within thirty (30) days of determination of same by the Bexar County Commissioners Court or the County's Auditing Department, whichever has the appropriate authority. If City does not approve of the City Utility Relocation Work as outlined in the final construction documents, County must refund all of the Initial or Revised Utility Relocation Contribution, whichever is applicable, within thirty (30) days after County receives either digital or written notice of City's final rejection of such documents for any reason.]

ARTICLE 4 OBLIGATIONS OF COUNTY

- 4.01 Pursuant to this Agreement, County must perform and provide each of the following duties and obligations in connection with the City Utility Relocation Work:
- a. Generally manage the construction of the Project and associated City Utility Relocation Work (subject to the City's own or priority obligations and responsibilities contained in Article 5, below
 - b. {Intentionally omitted.}
 - c. Stage all construction and all necessary street closures during construction to minimize street closures.
 - d. Maintain the Project Area both within and in close proximity to the City Utility Relocation

EXHIBIT A

Work, using reasonable efforts in order to keep the area free and clear of trash, construction debris, and other materials, supplies and items (including, without limitation, construction-related vehicles and earth-moving equipment) so as to not unnecessarily impede roadway traffic or pollute, contaminate, trespass upon, or unnecessarily disturb the operation, use, or enjoyment of any tracts of land which are located adjacent to the City Utility Relocation Work; City will be solely responsible for the care, maintenance, clean-up, and associated operating expenses for such City Utility Relocation Work during the Project.

- e. Perform regular site maintenance of the Project Area in accordance with the applicable permit(s).
- f. Provide timely review and approval of final design and construction contract documents for the City Utility Relocation Work.
- g. Obtain warranties from third parties associated with all work, services, materials, and supplies performed or provided in connection with the City Utility Relocation Work, and promptly enforce each of those warranties on behalf of the Parties, if and when necessary or appropriate.

ARTICLE 5 **OBLIGATIONS OF CITY**

- 5.01 City agrees to accept full responsibility for inspection of the City Utility's relocation and acceptance of work performed as City-related work and Project-related tasks including, without limitation, coordination of and meetings that are associated with such work and tasks. [NOTE: Final construction documents for the Project and associated City Utility Relocation Work will be provided to City for its review and written approval.]
- 5.02 City must provide its own design professional for the City Utility Relocation Work whose duties must include providing detailed design documents and construction phase services, so long as there are no substantial changes to the final construction documents. [NOTE: County will allow the design professional to attend any meetings, inspect the City Utility Relocation Work (as permitted per §1.04), and participate in the Project as needed. If substantial changes are approved by City and County as contemplated under this Agreement, City's design professional will not provide the detailed design, revised permitting services, nor construction phase services for the modified design. All substantial changes in connection with the City Utility Relocation Work will be designed and signed and sealed by City's design professional. All applicable permit modifications will be developed and submitted to the appropriate agencies for review by County's design professional and all construction phase services associated with the City Utility Relocation Work will be performed or provided by County's design professional.]
- 5.03 City understands that delay of a response to any Request for Information by the Contractor regarding: (a) any portion of the City Utility Relocation Work, (b) the City Utility, (c) a Proposed City Change Order, or (d) a Proposed County Change Order, can cause delay in the City Utility Relocation Work. In such cases, City is responsible for promptly notifying and coordinating with the County Project Manager and Inspector, either digitally or in writing.
- 5.04 It is City's responsibility to provide approved scratch sheet and signed pay app to the County Project Manager in order for County to make payments to the Contractor in a timely manner.

EXHIBIT A

- 5.05 Following Substantial Completion of the City Utility Relocation Work, City will be responsible for all costs associated with operating and maintaining the City Utility in its new location. For the purposes of this Agreement, the phrase “Substantial Completion” means the date, certified by County, County’s design professional, and City (including City’s designated design professional, if any) that the Contractor has reached that stage of completion when City and County accept the City Utility Relocation Work and the operation of the City Utility (as relocated) for its intended purposes.

ARTICLE 6 **DESIGNATION OF REPRESENTATIVES**

- 6.01 City hereby appoints its Director of Public Works Department, or his/her designee, (hereafter referred to as “City Project Manager”), as its designated representative under this Agreement. The City Project Manager will be the County’s and Contractor’s primary point of contact for City in connection with: (a) any portion of the City Utility Relocation Work, (b) the City Utility, (c) a Proposed City Change Order, (d) a Proposed County Change Order, or (e) any questions or concerns about this Agreement, the Initial or Revised Utility Relocation Contribution, or any Initial Additional Funds.
- 6.02 County hereby appoints the Director of the Public Works Department, or his/her designee, (hereafter referred to as “County Project Manager”), as its designated representative under this Agreement. The County Project Manager will be the City’s primary point of contact for County in connection with: (a) any portion of the City Utility Relocation Work, (b) a Proposed County Change Order, or (c) any questions or concerns about this Agreement, the Initial or Revised Utility Relocation Contribution, or any Initial Additional Funds.

ARTICLE 7 **COUNTY’S RIGHTS UNDER THIRD PARTY CONTRACTS**

- 7.01 City agrees that County will have the authority to contract on behalf of the Parties for all labor, services, supplies, and materials which are necessary for the construction and completion of the City Utility Relocation Work.
- 7.02 Subject to any applicable confidentiality terms and conditions and the applicable provisions of Chapter 552, Texas Government Code, upon the County Project Manager’s receipt of any digital or written request, County will provide the City Project Manager with a fully-executed copy of each contract entered into by County in connection with any part of the City Utility Relocation Work.
- 7.03 In all labor, services, supply, and material-related contracts which have been entered into in connection with any of the City Utility Relocation Work and in which City has a financial obligation (either directly or indirectly), County will exercise reasonable efforts in order to include terms and conditions which reflect each of the following:
- a. With regard to insurance coverage, County will require all consultants, sub-consultants, contractors, subcontractors, and suppliers to maintain the insurance coverage limits set out in the written notice to City’s Risk Manager. Both City and County must be named as an additional insured on all applicable policies and will be entitled to make claims, to the extent of the City’s and County’s respect interests in the City Utility Relocation Work, under all

Exhibit A

insurance coverage. Prior to the commencement of any such work by any service provider, supplier, vendor, or contractor either under or in connection with this Agreement and the City Utility Relocation Work, County will, upon any digital or written request, provide City's Risk Manager with copies of the completed Certificates of Insurance, which Certificates must be completed by an agent authorized to bind the named underwriters and their companies to the coverage limits and termination provisions shown thereon.

City reserves the right to: (i) review the insurance requirements during the effective period of this Agreement, including any extension or renewal hereof, and (ii) modify the insurance coverage and their limits when deemed necessary and prudent by City's Risk Manager, based upon changes in applicable statutory law, court decisions, or specific circumstances regarding increased risk surrounding this Agreement. County will exercise reasonable efforts to prohibit or restrict any modifications by any such any service provider, supplier, vendor, or contractor (or its respective insurer or insurance underwriter) whereupon City may incur increased risks in connection with the City Utility Relocation Work.

- b. County will exercise reasonable efforts to require all applicable contractors, service providers, and suppliers including, without limitation, all of their respective, sub-consultants and subcontractors, to maintain statutory worker's compensation insurance for all of their employees, with a waiver of subrogation in favor of both City and County.
- c. County will also exercise reasonable efforts to in each of its contracts for labor, services, supplies, and materials that the contracting parties, along with all applicable sub-consultants and subcontractors, be required to indemnify and defend (upon any written request), the County, the City, their respective elected officials, employees, and agents, from and against any claim submitted or lawsuit filed by any third party in connection with any such labor, services, supplies, or materials, as allowed by applicable federal or Texas law.
- d. County will require all applicable consultants, sub-consultants, contractors, and subcontractors to provide all statutorily-required payment and performance bonds at no additional cost to the Parties. With respect to any applicable labor or services to be performed or provided in connection with any City Utility Relocation Work for which one or more performance bonds is not statutorily required, County will determine, in its sole discretion, on whether or not to require one or more performance bonds.
- e. County will also exercise reasonable efforts to state in all such agreements with third-parties addressed or referenced in this Article 7 that City is a third-party beneficiary to that particular agreement.

ARTICLE 8

PROJECT MANAGEMENT DURING CONSTRUCTION

- 8.01 County will manage, oversee, administer, and carry out all (or arrange for the management, oversight, administration, and completion) of the City Utility Relocation Work and related activities and services required for its completion to ensure that the Project is constructed, equipped, furnished, and completed with new materials in a good and workmanlike manner and in accordance with the terms of this Agreement and the applicable design and construction documents.
- 8.02 County will enforce substantial compliance with the terms of the agreements with the contractors

EXHIBIT A

and subcontractors and require that the City Utility Relocation Work continuously and diligently be performed to achieve Substantial Completion on or before the scheduled completion date set out in the proposed schedule for such work (the “Proposed Schedule”), a copy of such Proposed Schedule being attached hereto as **Exhibit B** and made a part hereof.

- 8.03 Upon approval of this Agreement by the governing bodies of the Parties, the Parties’ respective designated personnel will schedule a meeting to finalize the team structure and develop the procedures and processes necessary to coordinate design and construction in accordance with the standard business practices of those disciplines.
- 8.04 The County Project Manager will provide either a digital or written notice to the City Project Manager a minimum of ten (10) business days prior to the issuance of a Notice to Proceed for the start of construction on the City Utility Relocation Work. The County Project Manager will also provide the City Project Manager with either a digital or written notice a minimum of five (5) business days prior to any necessary street or sidewalk closures.
- 8.05 In addition to the general notice requirements contained in Article 17, below, County will promptly furnish the City Project Manager with copies of all legal notices received by County affecting any of the City Utility Relocation Work including, without limitation, notices from applicable governmental authorities having jurisdiction, and notices from any person or entity claiming default in any payment obligation and any other notice not of a routine nature. County will also give written notice under Article 17, herein, of any claim, suit, proceeding, or action that is initiated or threatened in connection with the City Utility Relocation Work or against City and/or County in connection with City Utility Relocation Work.
- 8.06 For any “Environmental Event” (as that particular phrase is defined in the second sentence of this Section 8.06) within the Project Area that is either caused by, or at the direction of, either any City or County employee, contractor, subcontractor, consultant, sub-consultant, agent, or representative, the Party which employed or retained the individual, firm, or business who caused the Environmental Event will be liable for paying any damage, cost, or expense associated with such. For the purposes of this Agreement, the phrase “Environmental Event” means any spill, discharge, leakage, pumpage, drainage, pourage, emission, emptying, injecting, dumping, disposing, or other release of a hazardous material (as that particular phrase is generally used or understood under any applicable federal or state law) which may cause a threat or actual injury to human health or the environment.
- 8.07 Within thirty (30) business days following Substantial Completion of the City Utility Relocation Work, County will:
- a. notify City, either digitally or in writing, of such Substantial Completion, whereupon City may inspect the completed City Utility Relocation Work to determine if such work has been completed in a satisfactory and workmanlike manner and substantially completed in accordance with the plans and specifications for such work;
 - b. submit copies of all permits and inspection reports associated with the City Utility Relocation Work and, if applicable, obtain a Final Acceptance Letter and submit a copy of each of these documents to the City Project Manager; and
 - c. submit “record” drawings to City of the completed City Utility Relocation Work, along with copies of all applicable warranties and operations documents.

EXHIBIT A

- 8.08 Both City and County will participate in a walk-through at the point of Substantial Completion of the City Utility Relocation Work to identify any punch list items. County will supervise and coordinate the completion of any applicable punch list items and warranty work. Designated representatives for both Parties will also be invited and allowed to participate in a final walk-through to determine whether all punch list items have been resolved.
- 8.09 For information purposes, County will provide the City Project Manager, as and when available, any updated or revised schedule for permitting, design, and construction of the City Utility Relocation Work. Upon any digital or written request by City, County will furnish City with copy of said schedule when revised from time to time throughout the duration of the work. County will exercise reasonable efforts to ensure that such schedule(s) establish(es) a date for the Substantial Completion of each phase, in sufficient detail, to allow City to monitor the progress of the construction of the City Utility Relocation Work.
- 8.10 Within one hundred eighty (180) days after final completion of the City Utility Relocation Work, County and City will work together, as necessary, or appropriate in order to prepare and deliver to the City Project Manager a final construction report which must set out the total costs incurred in connection with those portions of the City Utility Relocation Work for which both County and City made financial contributions.
- 8.11 County will maintain the books, records, and documents pertaining to those portions of the City Utility Relocation Work for which County and City have joint participation. City representatives will have access to and the right to examine same, upon reasonable, advance notice to the County Project Manager. County's books, records, and documents relating to the City Utility Relocation Work will be maintained separately from other County projects so that an examination by City representatives will be limited to the documents for such work.

ARTICLE 9 DEFAULT

- 9.01 In the event of a material breach of this Agreement, the non-breaching Party must give the breaching Party either digital or written notice of such breach (the "Notice of Default"). At a minimum, any such Notice of Default must set forth, in detail, the nature of the known or alleged breach. The Party receiving the notice of breach has thirty (30) days after its receipt of such notice to cure the breach. If the breach is not corrected to the reasonable satisfaction of the non-breaching Party by the end of the applicable thirty (30) day cure period, the non-breaching Party may immediately terminate this Agreement by giving a written notice of termination to the breaching Party and seek to recover damages not to exceed the amount paid by the non-breaching Party for the Project.

ARTICLE 10 EARLY TERMINATION FOR CONVENIENCE

- 10.01 Whenever either Party, in its sole discretion, deems it to be in that Party's best interest, it may terminate this Agreement early for convenience. Such termination will be effective thirty (30) days after the terminating Party delivers either a digital or written notice of early termination of convenience to the other Party. If the Agreement is terminated by a Party prior to completion of the construction of the City Utility Relocation Work, then after payment of any unpaid obligations for completed labor, services, supplies, and materials, County will refund to City any remaining portion

EXHIBIT A

of the Initial or Revised Utility Relocation Contribution, whichever is applicable. The Parties will have no additional liability to one another for any early termination under this Article 10.

ARTICLE 11 PRIOR AGREEMENTS SUPERSEDED

- 11.01 This Agreement, including the exhibits which are either attached hereto or incorporated herein by reference, constitute the entire agreement of the Parties regarding the subject matter of this Agreement and supersede all previous agreements and understandings, whether written or oral, relating to such subject matter.

ARTICLE 12 ASSIGNMENT OR TRANSFER OF INTEREST

- 12.01 Neither Party may assign its rights, privileges, and obligations under this Agreement, in whole or in part, without the prior written consent of the other Party. Any attempt to assign without such approval will be *void ab initio*.

ARTICLE 13 LEGAL CONSTRUCTION

- 13.01 In case any one or more of the provisions contained in this Agreement will, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalid, illegal, or unenforceable provision will not affect any other provision hereof and this Agreement must be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

ARTICLE 14 COMPLIANCE WITH LAWS AND ORDINANCES

- 14.01 Both Parties will comply with all applicable federal, Texas, and local laws and ordinances in connection with the City Utility Relocation Work and related labor and services performed, as well as materials and supplies provided, under this Agreement.

ARTICLE 15 TEXAS LAW TO APPLY; PROPER VENUE; NO ARBITRATION

- 15.01 This Agreement must be construed under and in accordance with the applicable laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Bexar County, Texas. Any lawsuit brought by one Party against another in connection with this Agreement, or any portion of either the (a) City Utility Relocation Work, or (b) the Initial or Revised Utility Relocation Contribution (whichever is applicable), must be filed in either a federal or state court which is situated in Bexar County, Texas. **Under no circumstances will any claim, dispute, allegation, or lawsuit of any kind or nature whatsoever between the Parties hereunder be either submitted to or resolved through arbitration.**

EXHIBIT A

ARTICLE 16 AMENDMENT

16.01 No amendment, modification, or alteration of the terms or conditions contained in this Agreement will be binding unless the same be in writing, dated subsequent to the date hereof, and be duly executed by the Parties.

ARTICLE 17 NOTICES

17.01 All notices required to be given under this Agreement must be in writing (except where digital notice is expressly permitted herein) and either be personally served against a written receipt therefore or given by certified mail or registered mail, return receipt requested, postage prepaid and addressed to the proper Party at the address which appears below, or at such other address as the Parties hereto may hereafter designate in accordance herewith, unless a provision of this Agreement designates another person or entity and provides a different business address for delivery. All notices given by mail will be deemed to have been given upon receipt and be deemed effective from such date.

If to County: Bexar County Judge
 Bexar County Commissioners Court
 100 Dolorosa, 10th Floor
 San Antonio, Texas 78205

With a copy to: Director of Public Works
 1948 Probandt Street
 San Antonio, Texas 78214

If to City: Scott Huizenga
 City of Fair Oaks Ranch
 7286 Dietz Elkhorn
 Fair Oaks Ranch, Texas 78015

ARTICLE 18 FORCE MAJEURE

18.01 Neither Party will be responsible to the other for any delay or lack of performance by such entity or any of its elected officials, agents or employees which result from acts beyond that entity's reasonable control, including, without limitation, acts of God, strikes or other labor disturbances or delays by federal or state officials in issuing necessary regulatory approvals and/or licenses (each, a "Force Majeure Event") but which were not caused by or arising out of the negligence or willful misconduct of the Party asserting inability to perform or delay in performance. In the event of any delay or failure excused by this Article 18: (a) the Party asserting or claiming a Force Majeure Event with respect to any of its respective duties or obligations under this Agreement, must give the other Party (i) prompt digital and written notice of the Force Majeure Event (which, at a minimum, must include a detailed description of such event to the extent then-known, and (ii) its known or estimated duration, and (b) the time of delivery or of performance will be extended for a reasonable time period to compensate for delay.

EXHIBIT A

ARTICLE 19 THIRD PARTY BENEFICIARY

19.01 City will be considered a third-party beneficiary under County's contract with the Contractor for any portion of the City Utility Relocation Work; *provided, however*, that prior to final completion of such work (including the delivery and installation of all applicable materials and supplies), City will not enforce any remedies against the Contractor without the prior written consent of County, which consent may be withheld if County reasonably believes that enforcement would have an adverse effect on final completion of the City Utility Relocation Work. Prior to final completion of the City Utility Relocation Work, City will reasonably cooperate with County, as well as its designated representatives, in the prosecution of any action against the Contractor regarding the City Utility Relocation Work done by the Contractor or its subcontractors which County may reasonably determine to be necessary, to the extent consistent with the terms of the Project Contract Documents.

ARTICLE 20 CURRENT FUNDS

20.01 Each Party will only be required to pay for the performance of the applicable governmental functions or services which are covered under this Agreement out of current revenues available to the paying Party.

ARTICLE 21 SUBCONTRACTOR'S INSURANCE REQUIREMENTS; TEXAS TORT CLAIMS ACT

21.01 In all contracts entered into by County in connection with any City Utility Relocation Work, County will exercise reasonable efforts in order to include provisions reflecting each of the following:

(a) With regard to insurance coverage during the construction phase of the City Utility Relocation Work, County will require all of its designated consultants, contractors, subcontractors, and suppliers to maintain the insurance coverage limits which are sufficient to compensate County and City for their respective interests such work with regard to any liability a third party may have due to the services, equipment, or materials provided for the City Utility Relocation Work. City must be named as an additional insured on all such policies which are maintained by such designated consultants, contractors, subcontractors, and suppliers which the County is also named as an additional insured. Upon any digital or written request by City, County will provide the City Project Manager with copies of the completed Certificates of Insurance, which Certificates must be completed by an agent authorized to bind the named underwriters and their companies to the coverage limits and termination provisions shown thereon. City reserves the right to review the insurance requirements during the effective period of this Agreement, and any extension or renewal hereof, and to modify insurance coverage and limits when deemed necessary and prudent by City's designated Risk Manager based upon changes in applicable statutory law or court decisions. County will not allow any modifications to the insurance coverage through which City may incur increased risks.

EXHIBIT A

(b) County will require all of its affected contractors and service providers to maintain statutory worker's compensation insurance for all of their employees with a waiver of subrogation in favor of both County and City.

(c) County will require the consultants, contractors, and any subcontractors to provide all statutorily required payment and performance bonds at no additional cost to the Parties. On services for which performance bonds are not statutorily required, County will, in its sole discretion, determine whether or not to require any performance bond.

21.02 As local government entities, both County and City are subject to and comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Texas Civil Practice and Remedies Code, Section 101.001, *et. seq.*, and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury, or death. Both Parties hereby separately state and confirm that it maintains adequate insurance to respond to any claims by third-parties or by their respective employees for personal injuries or property damage. **Both Parties hereby waive pursuant to this Agreement any subrogation rights it may have or acquire as against each other arising in the course of or during the term of this Agreement.**

ARTICLE 22

AGREEMENT AUTHORIZATION; MULTIPLE COUNTERPARTS

22.01 This Agreement was approved by Order of the Bexar County Commissioners Court, dated as of _____, 2024, authorizing the Bexar County Judge to sign this Agreement below on behalf of County.

22.02 This Agreement was approved by the Fair Oaks Ranch City Council on _____, 2024, authorizing the City Manager for City to sign this Agreement below on behalf of City.

22.03 This Agreement may be executed in separate identical counterparts by the Parties hereto and each counterpart, when so executed and delivered, shall constitute an original instrument and all such separate identical counterparts shall constitute but one and the same instrument.

[The remainder of this page will intentionally remain blank.]

EXHIBIT A

EXECUTED AS OF THIS _____ DAY OF _____, 2024.

CITY OF FAIR OAKS RANCH

COUNTY OF BEXAR

By: _____
SCOTT HUIZENGA
City Manager
Date: _____, 2024

By: _____
PETER SAKAI
County Judge
Date: _____, 2024

APPROVED AS TO LEGAL FORM ONLY:

PAUL JACKSON
Assistant Criminal District Attorney–Civil Division

APPROVED AS TO FINANCIAL CONTENT ONLY:

LEO CALDERA, CIA CGAP
County Auditor

DAVID SMITH
County Manager

APPROVED AS TO GENERAL CONTENT ONLY:

ART REINHARDT, P.E., CFM
Interim Director of Public Works/County Engineer

EXHIBIT A

Exhibit A

Specifications for the Old Fredericksburg Rd. City Utility Relocation Project

{The specifications may be inspected at

<https://www.fairoaksranchtx.org/DocumentCenter/View/5511/Construction-Standard-Specifications-for-Water-and-Sanitary-Sewer-Construction> }

EXHIBIT A

EXHIBIT B

Proposed Schedule for City Utility Relocation Work

Based on the Traffic Control Plans and proposed construction schedule prepared by the County's Design Engineer, water relocation will be performed during the following phases/steps unless the Contractor proposes revisions during construction:

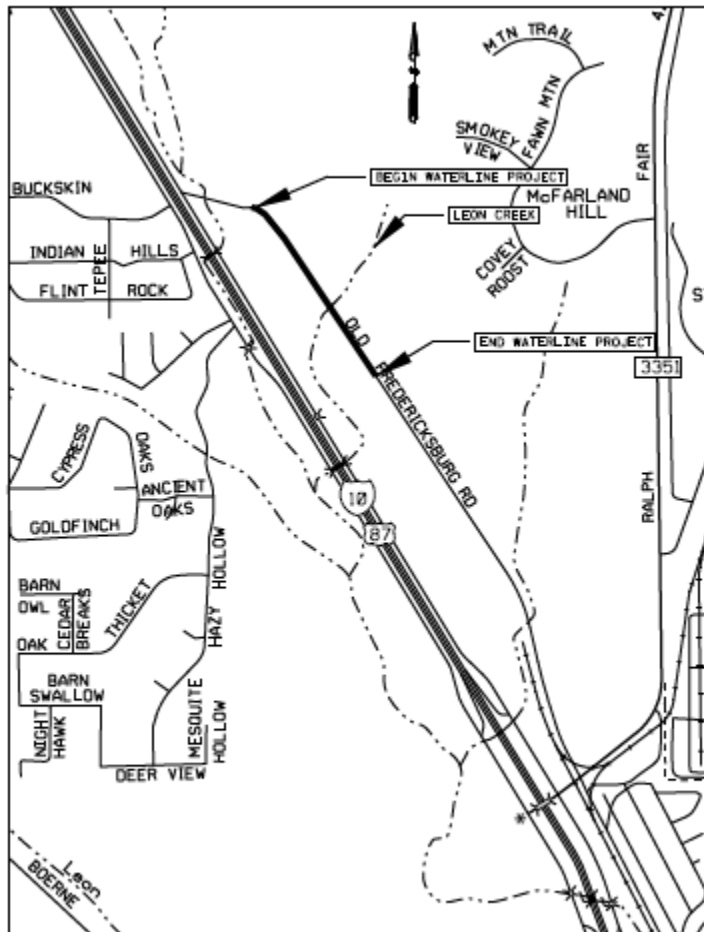
TCP Phase 1 Step 4: Culvert No.26 Construction

TCP Phase 4 Step 1: Construct Old Fredericksburg Road half section (East Bound Lanes)

TCP Phase 4 Step 2: Construct Old Fredericksburg Road half section (West Bound Lanes)

Exhibit C

General Depiction of the Project Area



NOT TO SCALE