

**CHAPTER 377 PROJECT FUNDING AGREEMENT  
ECONOMIC DEVELOPMENT AGREEMENT  
BETWEEN THE CITY OF FAIR OAKS RANCH, TEXAS AND  
THE FAIR OAKS RANCH MUNICIPAL DEVELOPMENT DISTRICT**

This Chapter 377 Project Funding Agreement ("Agreement") is entered into between the City of Fair Oaks Ranch, Texas, a Texas home-rule municipal corporation, ("City") and the Fair Oaks Ranch Municipal Development District, a political subdivision of the State of Texas and City of Fair Oaks Ranch ("MDD"). The City and MDD may be referred to jointly herein as "the Parties" and individually as a "Party".

**RECITALS**

**WHEREAS**, in accordance with Chapter 377 of the Texas Local Government Code ("377"), the MDD may establish and provide for the administration of a program for making loans and grants of public money to promote state or local economic development, stimulate business and commercial activity, as well as recreational or community facilities in the MDD; and

**WHEREAS**, the City desires to construct a Gateway Monument at the intersection of Fair Oaks Parkway and Leslie Pfeiffer Drive; and

**WHEREAS**, the Gateway Monument will be constructed of masonry with decorative signage, metal beams, an arched metal element, stone columns, lighting, a concrete header curb and landscaping with natural vegetation; and

**WHEREAS**, the purpose of the project is to enhance the entryway into Fair Oaks Ranch with a welcoming and iconic Gateway Monument, promoting civic pride, enhancing community identity, and supporting economic growth within the City; and

**WHEREAS**, upon the completion of the Gateway Monument the MDD agrees to reimburse the City up to TWO HUNDRED TWENTY-FOUR THOUSAND EIGHT HUNDRED FORTY DOLLARS AND NO CENTS (\$224,840.00); and

**WHEREAS**, the Parties are executing and entering into this Agreement to set forth certain terms and obligations of the Parties with respect to such matters; and

**WHEREAS**, the Parties recognize that all agreements of the Parties hereto and all terms and provisions hereof are subject to the laws of the State of Texas and all rules, regulations and interpretations of any agency or subdivision thereof at any time governing the subject matters hereof; and

**WHEREAS**, the Parties agree that all conditions precedent for this Agreement to become a binding agreement have occurred and been complied with, including all requirements pursuant to the Texas Open Meetings Act and all public notices and hearings; if any, have been conducted in accordance with Texas law; and

**WHEREAS**, on the Effective Date, the commitments contained in this Agreement shall become

legally binding obligations of the Parties.

**NOW, THEREFORE**, in consideration of the mutual covenants, benefits and agreements described and contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and further described herein, the Parties agree as follows:

## **ARTICLE I RECITALS**

1. Recitals. The recitals set forth above are declared true and correct by the Parties and are hereby incorporated as part of this Agreement.

## **ARTICLE II AUTHORITY AND TERM**

1. Authority.

- (a) The MDD's execution of this Agreement is authorized by Chapter 377 of the Texas Local Government Code and constitutes a valid and binding obligation of the MDD. The MDD acknowledges that City is acting in reliance upon the MDD's performance of its obligations under this Agreement in making the decision to commit substantial resources and money to the completion of the Facility, hereinafter established. The MDD's execution of this agreement is authorized by any necessary action of the governing bodies of the District and City.
- (b) The City's execution of this Agreement is authorized by any necessary action by the governing body of the City and constitutes a valid and binding obligation of the City.

2. Term.

This Agreement will become enforceable upon the Effective Date and will terminate on the first to occur of:

- (a) The expiration of the Grant Term, as defined by Article III;
- (b) Upon actual receipt by City of the MDD's payment of the Maximum Grant Amount; or
- (c) Upon another termination event as provided for in Article VIII.

3. Purpose.

The purpose of this Agreement is to formalize the agreements between the City and the MDD for the grant of funds associated with the construction of a Gateway Monument. This

Agreement specifically states the covenants, representations of the Parties, and the incentives associated with City's commitment to abide by the terms of this Agreement, which has been approved by the bodies governing the MDD and the City as required by state law. It is expressly agreed that this Agreement constitutes a single transaction. A failure to perform any obligation by either Party may constitute a breach of the entire Agreement and terminate any further commitments by the nonbreaching Party unless an alternative penalty or remedy is provided for herein.

4. Administration of Agreement.

Upon the effective date, the MDD may designate, by Board action, the Treasurer and/or President to act as liaison and first point of contact for the City for purposes of this Agreement. Any proposed amendments to the Agreement shall still require the approval of the governing bodies of the MDD and City.

### **ARTICLE III**

#### **DEFINITIONS**

As used in this Agreement, the following terms shall have the meanings ascribed below. All undefined terms shall retain their usual and customary meaning as ascribed by common and ordinary usage.

*"Act of Default" or "Default"* means failure of either Party to timely, fully, and materially comply with one or more requirements, obligations, duties, terms, conditions or warranties, as stated in this Agreement.

*"City of Fair Oaks Ranch" or "City"* means the governing municipal corporation that is legally authorized to control the area that is within the city limits of the City of Fair Oaks Ranch, and the area that is within the City and/or Comal, Kendall and Bexar County, Texas.

*"Code"* means the Fair Oaks Ranch Code of Ordinances in effect as of the Effective Date.

*"Effective Date"* means the Effective Date described in Article IX.

*"Gateway Monument"* means the planned monument to be constructed at the intersection of Fair Oaks Parkway and Leslie Pfeiffer Drive that will include stone columns, decorative signage, metal beams, lighting, a concrete header curb, and landscaping with native vegetation.

*"Force Majeure"* means an event beyond the reasonable control of a Party obligated to perform an act or take some action under this Agreement including, but not limited to, acts of God, earthquake, fire, explosion, war, civil insurrection, acts of the public enemy, act of civil or military authority, sabotage, terrorism, floods, lightning, hurricanes, tornadoes, severe snow storms or utility disruption, strikes, and lockouts.

“*Grant Term*” means the period beginning on the Effective Date and ending on the date of termination as provided for in this Agreement

“*Maximum Grant Amount*” or “Maximum Total Amount of Grant Payment” means an amount not to exceed TWO HUNDRED TWENTY-FOUR THOUSAND EIGHT HUNDRED FORTY DOLLARS AND NO CENTS (\$224,840.00.)

“*Program*” means the economic development program established by the MDD by Resolution, or Order, as authorized by Chapter 377, Texas Local Government Code, for making loans and grants of public money to promote state or local economic development, stimulate business and commercial activity, as well as recreational or community facilities within the District.

“*Project*” means City’s planned development and construction of a Gateway Monument.

“*Property*” means that portion of land within the existing right of way generally located at the intersection of Fair Oaks Parkway and Leslie Pfeiffer drive.

“*Substantial Completion*” generally means that point in time when the entity or person overseeing the construction of the Gateway Monument provides possession to the City, and as more specifically defined in the construction documents for the Gateway Monument.

## **ARTICLE IV FACILITY**

**Description of the Gateway Monument.** Located at the intersection of Fair Oaks Parkway and Leslie Pfeiffer Drive, the Gateway Monument will be constructed to clearly identify the entrance into Fair Oaks Ranch and create a visual identity for the City’s entryway coming from Interstate Highway 10. The Gateway Monument will include stone columns, metal beams, decorative signage, lighting, a concrete header curb and landscaping with native vegetation. Collectively these elements will serve to beautify the area, promote civic pride, and make Fair Oaks Ranch more attractive to residents, businesses, and visitors.

## **ARTICLE V CITY’S OBLIGATIONS**

### **1. Required Reporting**

**Quarterly Progress Reports.** Beginning on the effective date, City shall deliver to MDD a report at each MDD Quarterly Meeting (unless such meeting is cancelled) until completion of the Gateway Monument and payment of the Grant. Each Quarterly Progress Report may include, but not necessarily be limited to, the following elements:

- a. construction schedule
- b. scope of work changes
- c. contract amendments
- d. risk and mitigations

## **2. Default.**

**a. Construction.** Failure to complete the construction of the Gateway Monument within THREE HUNDRED SIXTY-FIVE (365) days from the Effective Date, shall cause the automatic termination of this Agreement without the need for any further action by the MDD; and, the MDD shall have no obligation to make any Grant Payments to City. Enforcement of this section is subject to Force Majeure. In the event of unforeseeable third-party delays, which are not Force Majeure, and upon a reasonable showing by City that it has in good faith commenced and is diligently pursuing the correction, removal or abatement of such delays by using commercially reasonable efforts, the MDD may consent to and excuse any such delays.

**b. Force Majeure Events.** Should a Force Majeure event impact the scheduled completion of the Gateway Monument, the City shall notify the MDD as soon as possible after learning of the qualifying event. The notice should include a description of the event, the specific delay that has been caused by the event, associated documentation, and the amount of time the City is requesting to be added to the time for completion of the Gateway Monument as an Amendment to the Agreement. Said request will be considered by the MDD at a called or regular meeting of the Board.

**c. Reports and Information.** City's failure to timely and substantially comply with the reporting requirements of this Article may be considered a default; and, MDD shall be under no obligation to make any Grant Payment until such default is cured by compliance with such reporting requirements.

## **ARTICLE VI MDD'S OBLIGATION**

- 1. Grant Payments.** Provided City is in full compliance with the terms of this Agreement and is not in Default, upon receipt of a Notice of Substantial Completion as defined in the contract for construction for the Gateway Monument, a Grant Payment not to exceed TWO HUNDRED TWENTY-FOUR THOUSAND EIGHT HUNDRED FORTY DOLLARS AND NO CENTS (\$224,840.00) shall be made from MDD to City within thirty (30) days from date of Notice of Substantial Completion.
- 2. Source of Grant Payments.** Said Grant Payments shall be payable only from the MDD's Project Fund for its portion of all Sales Tax generated within the District received from the Comptroller, or any other lawfully appropriated funds held by the MDD for project purposes.
- 3. Maximum Total Amount of Grant Payment.** The maximum total amount of any Grant Payment authorized by this Agreement shall not exceed TWO HUNDRED TWENTY-FOUR THOUSAND EIGHT HUNDRED FORTY DOLLARS AND NO CENTS (\$224,840.00).
- 4. Designated Funds.** MDD will provide for the Grant Payment to be made pursuant to this Agreement by establishing a separate MDD fund, or a subaccount of any existing fund or account in the MDD treasury, into which the Maximum Grant funds will be deposited or otherwise designated during the Term of this Agreement (the "Designated Funds").

- 5. Grant does not create a Debt.** Amounts payable under this Agreement constitute economic development funds and do not create a debt of the MDD. Said funds are payable only after Notice of Substantial Completion as set forth herein is received.

## **ARTICLE VII COVENANTS AND DUTIES**

**1. City's Covenants and Duties.** City makes the covenants and warranties to the MDD and agrees to timely and fully perform the obligations and duties contained in Article V of this Agreement. Any false or substantially misleading statements contained herein or failure to timely and fully perform those obligations and duties within this Agreement shall be an act of Default by the City.

- (a) The execution of this Agreement has been duly authorized by the governing body of City, and the individual signing this Agreement is empowered to execute such Agreement and bind the entity. Said authorization, signing, and binding effect is not in contravention of any law, rule, regulation, or of the provisions of City Charter.
- (b) City shall timely and fully comply with all of the terms and conditions of this Agreement.
- (c) City agrees to obtain or cause to be obtained, all necessary permits and approvals from City and/or all other governmental agencies having jurisdiction over the construction of any improvements to the property.
- (d) City agrees to develop the Project in accordance with the ordinances, rules, and regulations in effect on the date the Project was designated, unless specified otherwise in this Agreement.
- (e) City agrees to commence and complete the Project in substantial accordance with the Agreement.
- (f) City shall cooperate with the MDD in providing all necessary information to assist them in complying with this Agreement.
- (g) In accordance with Texas Government Code section 2264.051 City certifies that it does not and will not knowingly employ an undocumented worker, as that term is defined in the section and will require the same of those constructing the Gateway Monument.
- (h) To the extent required by Texas Government Code Section 2270.002 City acknowledges it currently does not, and shall not during the term of this Agreement, "Boycott Israel" and will require the same of those constructing the Gateway Monument.

**2. MDD's Covenants and Duties.**

- (a) The MDD agrees to pay to City an amount, as specified below, not to exceed the Maximum Grant Amount from sources contemplated by this Agreement over a period not to exceed the Grant Term, subject to the conditions precedent that City has timely and fully complied with all applicable terms and conditions contained in this Agreement, and

the above designated Development Requirements are then satisfied. Further, MDD's obligation to pay City shall cease upon payment in full of the Maximum Grant Amount, or the expiration of this Agreement after the Grant Term, even if the Maximum Grant Amount has not been paid, or termination of this Agreement by MDD as provided herein, whichever occurs first.

(b) Failure by MDD to timely and substantially comply with its obligations hereunder shall be an Act of Default by MDD if uncured as provided for herein, and such uncured Act of Default will give City the right to the contracted amount then currently owing not already provided to City by MDD, subject the dispute resolution process established in Article IX.

(c) Subject to the terms and conditions as set forth above, MDD shall pay City the Maximum Grant Amount. Such payment is due to City as provided in Article VI. Failure by MDD to timely and fully comply with its obligations hereunder shall be an Act of Default.

## **ARTICLE VIII TERMINATION**

1. **Termination.** This Agreement shall terminate upon the earliest occurrence of any one or more of the following:

- (a) The written agreement of the Parties;
- (b) The Agreement's Expiration Date, 365 days from the Effective Date;
- (c) Default by City; or
- (d) Payment of the maximum funds contemplated herein.

## **ARTICLE IX DISPUTE RESOLUTION**

1. **Mediation.** If a dispute arises out of or relates to this Agreement or the breach thereof, the Parties shall first in good faith seek to resolve the dispute through negotiation between designated representatives of each respective Party. If such dispute cannot be settled through negotiation, the Parties agree to try in good faith to settle the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association before resorting to litigation. Notwithstanding the foregoing, any Party may seek immediate equitable relief, without attempting to settle a dispute through mediation, in any case where such Party is entitled to equitable relief by law, the terms of the Agreement, or otherwise. All costs of mediation shall be assessed equally between the Parties with each party bearing their own costs for attorneys' fees, experts, and other costs of mediation and any ensuing litigation.

## **ARTICLE X MISCELLANEOUS**

1. **MDD's Liability Limitations.** Should MDD fail to timely or substantially comply with any one or more of the requirements, obligations, duties, terms, conditions, or warranties of the Agreement, such failures shall be an Act of Default by MDD and MDD shall have ninety days to cure and remove the Default upon receipt of written notice to do so from City. City specifically agrees that MDD shall only be liable to City for the amount of the money payments then currently owing to City and shall not be liable to City for any alleged or actual incidental or consequential damages.
2. **Mutual Assistance.** The Parties will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.
3. **Effective Date.** This Agreement shall become effective on the date of execution by the last party.
4. **Representations and Warranties.** The MDD represents and warrants to City that this Agreement is within their authority, and that they are duly authorized and empowered to enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. City represents and warrants to the MDD that it has the requisite authority to enter into this Agreement.
5. **Independent Contractors.**
  - (a) It is expressly understood and agreed by all Parties hereto that in performing their services hereunder, City at no time will be acting as an agent of the MDD and that all consultants or contractors engaged by City respectively will be independent contractors of City; and nothing contained in this Agreement is intended by the Parties to create a partnership or joint venture between the Parties and any implication to the contrary is hereby expressly disavowed. The Parties hereto understand and agree that the MDD will not be liable for any claims that may be asserted by any third party occurring in connection with City respectively under this Agreement.
  - (b) By entering into this Agreement, the Parties do not waive, and shall not be deemed to have waived, any rights, immunities, or defenses either may have, including the defense of parties, and nothing contained herein shall ever be construed as a waiver of sovereign or official immunity by the City or MDD with such rights being expressly reserved to the fullest extent authorized by law and to the same extent which existed prior to the execution hereof.
  - (c) No employee of the City, or any board member, or agent of the MDD, or City Council member or agent of City shall be personally responsible for any liability arising under or growing out of this Agreement.
6. **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed delivered by actual delivery, facsimile with receipt confirmation, or by depositing the same in the United States Mail, postage prepaid and certified with return receipt requested, addressed to the Party at the address set forth below:



If intended for MDD:

MDD President  
City of Fair Oaks Ranch  
7286 Dietz Elkhorn  
Fair Oaks Ranch, TX 78006

If to the City:

City Manager  
City of Fair Oaks Ranch  
7286 Dietz Elkhorn  
Fair Oaks Ranch, TX 78006

Any Party may designate a different address at any time upon written notice to the other Parties.

7. **Governmental Records.** All invoices, records and other documents required for submission to the City pursuant to the terms of this Agreement are Governmental Records for the purposes of Texas Penal Code Section 37.10
8. **Governing Law.** The Agreement shall be governed by the laws of the State of Texas, and the venue for any action concerning this Agreement shall be in Kendall County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.
9. **Amendment.** This Agreement may be amended by mutual written agreement of the Parties, as approved by the governing bodies of MDD and the City.
10. **Legal Construction.** In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions of this Agreement, and it is the intention of the Parties to this Agreement that, in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid, or unenforceable.
11. **Interpretation.** Each of the Parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which Party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, whatever its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any Party.
12. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties that, in any manner, relates to the subject matter of this Agreement, except as provided for in any Exhibits attached hereto or duly approved amendments to this Agreement, as approved by governing bodies of MDD and the City.

13. **Paragraph Headings.** The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.

14. **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

15. **Exhibits.** Any Exhibits attached hereto are incorporated by reference for all purposes. Exhibits included:

Exhibit “A” Approved application for funding.

16. **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

17. **Employment of Undocumented Workers.** During the term of this Agreement, City agrees to not knowingly contract with any firm or individual for the construction of the Facility who employs any undocumented workers.

18. **Governmental Functions; Liability; No Waiver of Immunity or Defenses**

a. 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.

i. The services provided for herein are governmental functions, and the City and the MDD shall be engaged in the conduct of a governmental function while providing and/or performing any service pursuant to this Agreement.

ii. The relationship of the MDD and the City 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.

iii. 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.

b. The City shall have no liability whatsoever for the actions of, or failure to act by, any employees, agents, representatives, or assigns of the MDD in connection with the Agreement, and the MDD covenants and agrees, to the extent permitted by law, that the MDD shall be solely responsible, as between the MDD and the City, 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 MDD or its respective employees, agents, representatives, or assigns, in connection therewith.

c. The MDD shall have no liability whatsoever for the actions of, or failure to act by, any employees, agents, representatives, or assigns of the City in connection with the Agreement, and the City covenants and agrees, to the extent permitted by law, that the City shall be solely responsible, as between the MDD and the City, 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 City or its respective employees, agents, representatives, or assigns, in connection therewith.

d. 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 neither the City nor the MDD 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.

e. Neither Party 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.

19. **Additional Instruments.** The Parties agree and covenant to cooperate, negotiate in good faith, and to execute such other and further instruments and documents as may be reasonably required to fulfill the public purposes provided for and included within this Agreement.

20. **Severability.** If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws, it is the intention of the Parties that the remainder of this Agreement not be affected, and it is also the intention of the Parties that, in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid, or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid, or unenforceable.

**Executed** on this \_\_\_\_\_ day of \_\_\_\_\_ 2025.

**MDD**

By: \_\_\_\_\_  
Laura Koerner, President

**ATTEST:**

By: \_\_\_\_\_  
Board Secretary

**Executed** on this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

**CITY**

By: \_\_\_\_\_  
Scott M. Huizenga, City Manager

**ATTEST:**

By: \_\_\_\_\_  
Christina Picioccio, City Secretary