



CITY OF FAIR OAKS RANCH

CITY COUNCIL REGULAR MEETING

Thursday, June 03, 2021 at 6:30 PM

City Hall Council Chambers, 7286 Dietz Elkhorn, Fair Oaks Ranch

AGENDA

OPEN MEETING

Roll Call - Declaration of a Quorum.

Pledge of Allegiance

CITIZENS and GUEST FORUM

To address the Council, please sign the Attendance Roster located on the table at the entrance of the Council Chamber. In accordance with the Open Meetings Act, Council may not discuss or take action on any item which has not been posted on the agenda.

1. Citizens to be heard.

PRESENTATIONS

2. Introduction of new employees:

Police Officers: Hayden Griffiths and Iris Solis

IT Network Specialist: Jason MacDonald

Payroll & A/P Specialist: Amanda Sturgeon

Joanna Merrill, Director of Human Resources & Communications

CONSENT AGENDA

All of the following items are considered to be routine by the City Council, there will be no separate discussion on these items and will be enacted with one motion. Items may be removed by any Council Member by making such request prior to a motion and vote.

- [3.](#) Approval of the May 19, 2021 Special City Council meeting minutes.

Christina Picioccio, City Secretary

- [4.](#) Approval of the May 20, 2021 Regular City Council meeting minutes.

Christina Picioccio, City Secretary

CONSIDERATION/DISCUSSION ITEMS

5. Consideration and possible action authorizing the City Manager to sign an Assignment and Assumption of the Fair Oaks Ranch Golf & Country Club Water Supply Agreement and a Temporary Assignment and Assumption of the Fair Oaks Club Corp Effluent Disposal Agreement.

Tobin Maples, AICP, City Manager
Miranda A. Norfleet, Brownstein Hyatt Farber Schreck, LLP

6. Consideration and possible action adopting a Charter for a Utility Rate Advisory Panel and determining ways and means of seating said panel.

Sarah Buckelew, CPA, Finance Director
Angie Flores, Senior Manager, Raftelis
Sam Villegas, Director of Strategic Communication Services, Raftelis

7. Consideration and possible action regarding opportunities to provide multi-platform access and participation to In-Person City Council meetings.

Council Member Scott Parker, Place 5
Joanna Merrill, IPMA-SCP, Director of Human Resources & Communications
Dan Santee, City Attorney

REPORTS FROM STAFF/COMMITTEES/COUNCIL

8. Capital Improvements Advisory Committee Semi-Annual Reports.

John Merritt, Chairperson

9. 2021 Boards and Commissions Update.

Christina Picioccio, City Secretary

CONVENE INTO EXECUTIVE SESSION

Pursuant to Section 551.101 of the Open Meetings Act, Texas Gov't Code, a quorum of the governing body hereby convenes into closed session:

Sec. 551.071 (Consultation with Attorney) the City Council will meet in private consultation with legal counsel to seek the advice of its attorneys about pending or contemplated litigation, a settlement offer, and/or on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas conflicts with Chapter 551 of the Government Code; to wit:

10. To receive legal advice and to receive and deliberate an offer of settlement for claims made on behalf of a real property owner against the City's operation of well K-2.
11. Cause No. 2018-CI-00202; the City of Fair Oaks Ranch, Texas vs. Edward I. Hill, Robert E. Heckendorn, Craig M. Luitjen, Roger Fuentes, Wesley A. Pieper, Esther W. Hicks, William A. McDowell, Yolanda D. Ayala, PG Pfeiffer Ranches LLC, Maureen Pfeiffer Stevenson Family Trust.

12. To receive legal advice from Special Counsel and the City Attorney regarding the City's ground water rights.
13. Update on the pending police Administrative Hearing for a Report of Separation regarding former officer Richard Davila, and/or Richard J. Davila Jr. vs. City of Fair Oaks Ranch, Texas A/K/A City of Fair Oaks Ranch Cause No. 2021CI05780 (37th Judicial District, Bexar County, Texas), and other matters in connection therewith.

RECONVENE INTO OPEN SESSION

Discussion and possible action on items discussed in Executive Session.

ADJOURNMENT

Requests for City topic needing additional information/research; or, potential consideration for a future agenda

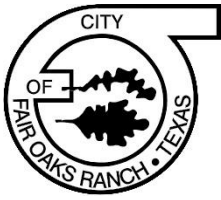
Signature of Agenda Approval: s/Tobin E. Maples

Tobin E. Maples, City Manager

I, Christina Picioccio, City Secretary, certify that the above Notice of Meeting was posted on the outside bulletin board at the Fair Oaks Ranch City Hall, 7286 Dietz Elkhorn, Fair Oaks Ranch, Texas, and on the city's website www.fairoaksranchtx.org, both places being convenient and readily accessible to the general public at all times.

As per Texas Government Code 551.045, said Notice was posted by 6:30 PM, May 31, 2021 and remained so posted continuously for at least 72 hours before said meeting was convened.

The Fair Oaks Ranch City Hall is wheelchair accessible at the side entrance of the building from the parking lot. Requests for special services must be received forty-eight (48) hours prior to the meeting time by calling the City Secretary's office at (210) 698-0900. Braille is not available. The City Council reserves the right to convene into Executive Session at any time regarding an issue on the agenda for which it is legally permissible; pursuant to Texas Government Code Chapter 551. Section 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices) and 551.087 (Economic Development).



CITY OF FAIR OAKS RANCH
CITY COUNCIL SPECIAL MEETING WORKSHOP
TRAINING

Wednesday, May 19, 2021 at 1:00 PM
 City Hall Council Chambers, 7286 Dietz Elkhorn, Fair Oaks Ranch

MINUTES

OPEN MEETING

Council Present: Mayor Maxton and Mayor Pro Tem Elizondo
 Council Members: Stroup, Koerner, Parker, and Muenchow
 Council Absent: Council Member Hartpence

With a quorum present, the meeting was called to order at 1:01 PM.

Mayor Maxton led the Pledge of Allegiance.

CITIZENS and GUEST FORUM

Citizens to be heard.

1. Seth Mitchell, resident, congratulated the new Council Members on their election. Mr. Mitchell encouraged the Council to feel empowered to do what they want and not be tied to the previous Council's decisions regarding the budget.

PURPOSE OF SPECIAL CALLED MEETING

2. **Conduct a City Council Utility Rate Orientation Workshop.**

Angie Flores, Senior Manager for Raftelis, presented to the Council a Utility Rate Orientation Workshop.

The Council took a brief recess at 2:13 PM.

Council reconvened at 2:22 PM

3. **Conduct a City Council Budget 101 Training.**

Sarah Buckelew, Finance Director, provided a Budget 101 Training to the Council.

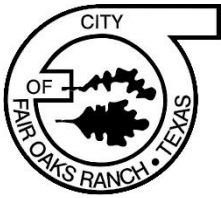
ADJOURNMENT

Mayor Maxton adjourned the meeting at 3:47 PM.

ATTEST:

Gregory C. Maxton, Mayor

Christina Picioccio, City Secretary



CITY OF FAIR OAKS RANCH
CITY COUNCIL REGULAR MEETING

Thursday, May 20, 2021 at 6:30 PM

City Hall Council Chambers - 7286 Dietz Elkhorn, Fair Oaks Ranch

MINUTES

OPEN MEETING

Council Present: Mayor Maxton and Mayor Pro Tem Elizondo

Council Members: Stroup, Koerner, Parker, and Muenchow

Council Absent: Council Member Hartpence

With a quorum present, the meeting was called to order at 6:30 PM with Mayor Maxton serving as the presiding officer.

The Pledge of Allegiance was led by former Mayor Manitzas

PRESENTATIONS

2. Former Mayor Manitzas swore in the newly elected officials: Gregory Maxton, Mayor; Emily Stroup, Council Member Place 1; Scott Parker, Council Member Place 5; and Chesley Muenchow, Council Member Place 6.

CITIZENS and GUEST FORUM

1. Citizens to be heard.

The City Secretary read the following letters into the record:

Snehal Patel sent the letter intending it to be read at the May 19, 2021 Special Council Workshop and asked that it still be read at this meeting. Former Council Member Patel wrote that she was pleased to see that high-level goals including her suggestion to reduce the M&O rate were included in the materials for the budget workshop. She asked that the surplus be returned to the people and applauded staff for presenting these options to the Council.

Debra Doyle asked the Council to explore alternate options for in-person attendance for Council meetings like ZOOM or live streaming to accommodate citizens unable to attend in person.

Sharon Brimhall wrote to ask for alternate manners for citizen participation in Council meetings. Ms. Brimhall asked for ZOOM meetings and having the audio posted the following day. Additionally, Ms. Brimhall stated that the Special Election should be held at City Hall to promote consistency and avoid the time it takes for election workers to check in at Van Raub.

In person speakers:

Christine Graham asked Council to consider ZOOM meetings again because they are better heard and understood due to the audio in the Chambers being less than favorable. The screen sharing was helpful to residents following along. She urged Council to continue streaming on ZOOM so that citizens could continue to be engaged in the democratic process as many residents are not yet comfortable leaving their homes due to COVID

PRESENTATIONS

3. The Citizen's Code of Conduct Advisory Committee (CCCAC) Chairperson Joe duMenil updated Council on the progress achieved by the CCCAC committee thus far.

CONSENT AGENDA

4. **Approval of the May 6, 2021 Regular City Council meeting minutes.**
5. **Approval of the May 11, 2021 Special City Council meeting minutes.**
6. **Approval of the Tree Preservation Plan for Front Gate Unit 7.**
7. **Approval of a Resolution ordering a Special Election to be held July 31, 2021 for the election of Council Member Place 3.**

Council Member Koerner requested that Item 7 be removed from the Consent Agenda for discussion.

MOTION: Made by Mayor Pro Tem Elizondo, seconded by Council Member Parker, to approve the Consent Agenda items 4, 5, and 6.

VOTE: 6-0; Motion Passed.

CONSIDERATION/DISCUSSION ITEMS

7. **Approval of a Resolution ordering a Special Election to be held July 31, 2021 for the election of Council Member Place 3.**

Christina Picioccio, City Secretary, answered questions from Council regarding the Special Election.

MOTION: Made by Mayor Pro Tem Elizondo, seconded by Council Member Koerner, to approve a Resolution ordering a Special Election to be held July 31, 2021 for the election of Council Member Place 3.

VOTE: 6-0; Motion Passed.

8. **Consideration and possible action electing a Council Member to serve as Mayor Pro-Tem at the first regular City Council meeting following each regular city election.**

MOTION: Made by Mayor Pro Tem Elizondo, seconded by Council Member Stroup, to elect Laura Koerner as Mayor Pro Tem.

VOTE: 6-0; Motion Passed.

CONVENE INTO EXECUTIVE SESSION

City Council did not convene into Executive Session regarding:

Sec. 551.071 (Consultation with Attorney) the City Council will meet in private consultation with legal counsel to seek the advice of its attorneys about pending or contemplated litigation, a settlement offer, and/or on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas conflicts with Chapter 551 of the Government Code; to wit:

9. To receive legal advice and to receive and deliberate an offer of settlement for claims made on behalf of a real property owner against the City's operation of well K-2.
10. Cause No. 2018-CI-00202; the City of Fair Oaks Ranch, Texas vs. Edward I. Hill, Robert E. Heckendorn, Craig M. Luitjen, Roger Fuentes, Wesley A. Pieper, Esther W. Hicks, William A. McDowell, Yolanda D. Ayala, PG Pfeiffer Ranches LLC, Maureen Pfeiffer Stevenson Family Trust.
11. To receive legal advice from Special Counsel and the City Attorney regarding the City's ground water rights.

RECONVENE INTO OPEN SESSION

N/A

ADJOURNMENT

Mayor Maxton adjourned the meeting at 7:12 PM

ATTEST:

Gregory C. Maxton, Mayor

Christina Picioccio, City Secretary



CITY COUNCIL CONSIDERATION ITEM
CITY OF FAIR OAKS RANCH, TEXAS
June 3, 2021

AGENDA TOPIC: Consideration and possible action authorizing the City Manager to sign an Assignment and Assumption of the Fair Oaks Ranch Golf & Country Club Water Supply Agreement and a Temporary Assignment and Assumption of the Fair Oaks Club Corp Effluent Disposal Agreement.

DATE: June 3, 2021

DEPARTMENT: Administration

PRESENTED BY: Tobin E. Maples, AICP, City Manager
 Miranda A. Norfleet, Brownstein Hyatt Farber Schreck, LLP

INTRODUCTION/BACKGROUND:

Fair Oaks Club Corp., a Texas corporation ("Assignor") and the City of Fair Oaks Ranch, Texas, a municipal corporation ("City") are parties to (i) that certain Effluent Disposal Agreement, dated effective as of June 20, 2003, as amended by that certain First Amendment to Effluent Disposal Agreement, dated effective as of February 22, 2019 ("Effluent Agreement"), and (ii) that certain City of Fair Oaks Ranch / Fair Oaks Ranch Golf & Country Club Water Supply Agreement, dated effective as of January 1, 2012 ("Potable Agreement").

Assignor, as Seller, and Fair Oaks Ranch Owner, LLC, a Delaware limited liability company (Attachment 1), as Buyer ("Assignee") entered into that certain Purchase and Sale Agreement, dated as of July 17, 2020 (the "PSA"), for, among other things, the purchase and sale of certain Real Properties (as defined in the PSA), as more particularly described in the PSA, including the contracted rights to purchase and receive water (as defined in the PSA) and (ii) that certain Master Lease Agreement, dated as of July 17, 2020 (the "MLA"), for, among other things, the lease back of the Real Properties (including the Water Rights) from Assignee to Assignor. Pursuant to the PSA and the MLA, Assignor will remain responsible for the day-to-day operations of the Real Properties (including the contracted rights to purchase and receive water).

POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:

The City's consent requested pursuant to this City Council Consideration Item will finalize the consummation of the transaction contemplated pursuant to the PSA and MLA with respect to Fair Oaks Ranch Golf & Country Club (the "Club"), which will enable the Club to continue its operations as San Antonio's premier family-oriented country club, known for its impeccable and personalized service, warm and friendly staff, full service facilities and amenities, and an active and vibrant membership community.

LONG-TERM FINANCIAL & BUDGETARY IMPACT:

The City's consent requested pursuant to this City Council Consideration Item will have no financial or budgetary impact, as the City's obligations under the Effluent Agreement and the Potable Agreement will remain unchanged.

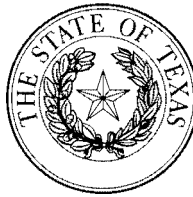
LEGAL ANALYSIS:

With respect to the Potable Agreement, the City's consent requested pursuant to this City Council Consideration Item is expressly permitted pursuant to the Potable Agreement and, with respect to the Effluent Agreement, the Effluent Agreement is silent with respect to assignment and assumption but there is no legal prohibition or other impediment to the City's consent requested pursuant to this City Council Consideration Item.

By way of background, the current Potable Agreement and the current Effluent Disposal Agreement are set to expire on December 31, 2021 and March 1, 2029 respectively. Discussions to renew the Potable Agreement will commence later this year subsequent to the City finalizing the ongoing rate study. With respect to the Temporary Assignment of the Effluent Agreement, the expiration date has been revised to December 31, 2021 in order to align with the expiration date of the Potable Agreement. This will ensue both agreements run parallel as we move forward and allow all parties to negotiate from a holistic approach.

RECOMMENDATION/PROPOSED MOTION:

I move to approve Assignor and Assignee request the City's consent to that certain Temporary Assignment and Assumption of the Effluent Agreement, attached hereto as Exhibit A, and to that certain Assignment and Assumption of the Potable Agreement, attached hereto as Exhibit B.



Ruth R. Hughs
Secretary of State

Office of the Secretary of State

July 28, 2020

Attn: CT CORPORATION SYSTEM

CT Corporation System
701 Brazos Street, Ste. 720
Austin, TX 78701 USA

RE: Fair Oaks Ranch Owner LLC
File Number: 803700961

It has been our pleasure to file the application for registration and issue the enclosed certificate of filing evidencing the authority of the foreign limited liability company (llc) to transact business in Texas.

Unless exempted, the foreign entity is subject to state tax laws, including franchise tax laws. Shortly, the Comptroller of Public Accounts will be contacting the entity at its registered office for information that will assist the Comptroller in setting up the franchise tax account for the foreign entity. Information about franchise tax, and contact information for the Comptroller's office, is available on their web site at <https://window.state.tx.us/taxinfo/franchise/index.html>.

The registered foreign entity is not required to file annual reports with the Secretary of State. An application for amended registration must be filed with the Secretary of State if the foreign entity changes its name, changes the purposes to be pursued in Texas, or changes the assumed name it elected to use on its application for registration. It is important for the foreign entity to continuously maintain a registered agent and office in Texas. Failure to maintain an agent or office or file a change to the information in Texas may result in the revocation of the entity's registration by the Secretary of State.

If we can be of further service at any time, please let us know.

Sincerely,

Corporations Section
Business & Public Filings Division
(512) 463-5555

Enclosure



Office of the Secretary of State

CERTIFICATE OF FILING OF

Fair Oaks Ranch Owner LLC
File Number: 803700961

The undersigned, as Secretary of State of Texas, hereby certifies that an Application for Registration for the above named Foreign Limited Liability Company (LLC) to transact business in this State has been received in this office and has been found to conform to the applicable provisions of law.

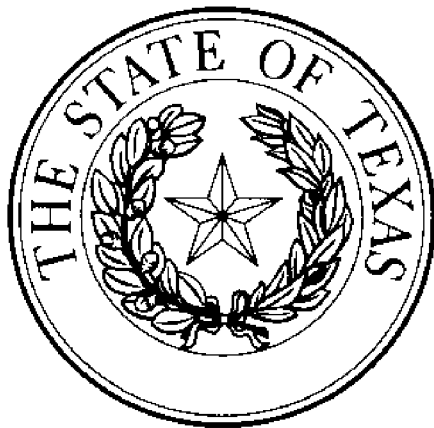
ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing the authority of the entity to transact business in this State from and after the effective date shown below for the purpose or purposes set forth in the application under the name of

Fair Oaks Ranch Owner LLC

The issuance of this certificate does not authorize the use of a name in this state in violation of the rights of another under the federal Trademark Act of 1946, the Texas trademark law, the Assumed Business or Professional Name Act, or the common law.

Dated: 07/24/2020

Effective: 07/24/2020



A handwritten signature in black ink, appearing to read "Ruth R. Hughs".

Ruth R. Hughs
Secretary of State

Form 304
(Revised 05/11)

Submit in duplicate to:
 Secretary of State
 P.O. Box 13697
 Austin, TX 78711-3697
 512 463-5555
 FAX: 512/463-5709
Filing Fee: \$750



**Application for
 Registration
 of a Foreign Limited
 Liability Company**

This space reserved for office use.

1. The entity is a foreign limited liability company. The name of the entity is:

Fair Oaks Ranch Owner LLC

Provide the full legal name of the entity as stated in the entity's formation document in its jurisdiction of formation.

2A. The name of the entity in its jurisdiction of formation does not contain the word "limited liability company" or "limited company" (or an abbreviation thereof). The name of the entity with the word or abbreviation that it elects to add for use in Texas is:

2B. The entity name is not available in Texas. The assumed name under which the entity will qualify and transact business in Texas is:

The assumed name must include an acceptable organizational identifier or an accepted abbreviation of one of these terms.

3. Its federal employer identification number is: _____

☒ Federal employer identification number information is not available at this time.

4. It is organized under the laws of: (set forth state or foreign country) Delaware

and the date of its formation in that jurisdiction is: 06/22/2020

mm/dd/yyyy

5. As of the date of filing, the undersigned certifies that the foreign limited liability company currently exists as a valid limited liability company under the laws of the jurisdiction of its formation.

6. The purpose or purposes of the limited liability company that it proposes to pursue in the transaction of business in Texas are set forth below.

Any lawful business or activity under the law of this state.

The entity also certifies that it is authorized to pursue such stated purpose or purposes in the state or country under which it is organized.

7. The date on which the foreign entity intends to transact business in Texas, or the date on which the foreign entity first transacted business in Texas is: 7/16/2020

mm/dd/yyyy

Late fees may apply (see instructions).

8. The principal office address of the limited liability company is:

9 West 57th St	New York	NY	US	10019
<i>Address</i>	<i>City</i>	<i>State</i>	<i>Country</i>	<i>Zip/Postal Code</i>

Complete item 9A or 9B, but not both. Complete item 9C.

☐ 9A. The registered agent is an organization (cannot be entity named above) by the name of:

C T Corporation System

OR

☐ 9B. The registered agent is an individual resident of the state whose name is:

First Name	M.I.	Last Name	Suffix
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9C. The business address of the registered agent and the registered office address is:

1999 Bryan St. Suite 900	Dallas	TX	75201-3136
Street Address	City	State	Zip Code

10. The entity hereby appoints the Secretary of State of Texas as its agent for service of process under the circumstances set forth in section 5.251 of the Texas Business Organizations Code.

11. The name and address of each governing person is:

NAME AND ADDRESS OF GOVERNING PERSON (Enter the name of either an individual or an organization, but not both.)					
IF INDIVIDUAL					
First Name	M.I.	Last Name	Suffix		
OR					
IF ORGANIZATION					
CCRE Holdings LLC					
Organization Name					
c/o Sculptor Real Estate, 9 West 57th Street	New York	NY	US	10019	
Street or Mailing Address	City	State	Country	Zip Code	

NAME AND ADDRESS OF GOVERNING PERSON (Enter the name of either an individual or an organization, but not both.)					
IF INDIVIDUAL					
Steven		Orbuch			
First Name	M.I.	Last Name	Suffix		
OR					
IF ORGANIZATION					
Organization Name					
c/o Sculptor Real Estate, 9 West 57th Street	New York	ny	us	10019	
Street or Mailing Address	City	State	Country	Zip Code	

NAME AND ADDRESS OF GOVERNING PERSON (Enter the name of either an individual or an organization, but not both.)					
IF INDIVIDUAL					
Nicholas		Hecker			
First Name	M.I.	Last Name	Suffix		
OR					
IF ORGANIZATION					
Organization Name					
c/o Sculptor Real Estate, 9 West 57th Street	New York	ny	us	10019	
Street or Mailing Address	City	State	Country	Zip Code	

Supplemental Provisions/Information

Text Area: [The attached addendum, if any, is incorporated herein by reference.]

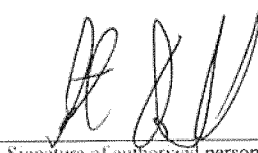
Effectiveness of Filing (Select either A, B, or C.)

- A. ☒ This document becomes effective when the document is filed by the secretary of state.
- B. ☐ This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____
- C. ☐ This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90th day after the date of signing is: _____
- The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: July 14, 2020



Signature of authorized person (see instructions)

Steven Orbuch

Printed or typed name of authorized person.

Print

Reset

EXHIBIT “A”**TEMPORARY ASSIGNMENT AND ASSUMPTION OF CITY OF FAIR OAKS RANCH
EFFLUENT DISPOSAL AGREEMENT**

THIS TEMPORARY ASSIGNMENT AND ASSUMPTION OF FAIR OAKS RANCH EFFLUENT DISPOSAL AGREEMENT (this “Agreement”) is entered into as of the ____ day of _____, 2020 (the “Effective Date”) by and among FAIR OAKS CLUB CORP., a Texas corporation (“Assignor”) and FAIR OAKS RANCH OWNER LLC, a Delaware limited liability company (“Assignee”).

RECITALS

A. Assignor and the City of Fair Oaks Ranch, Texas, a municipal corporation, are parties to that certain Effluent Disposal Agreement, dated effective as of June 20, 2003, as amended by that certain First Amendment to Effluent Disposal Agreement, dated effective as of February 22, 2019, a copy of which is attached hereto as Exhibit A and incorporated hereby for all purposes (as may be amended from time to time, the “EDA”).

B. Assignor, as Seller, and Assignee, as Buyer, entered into (i) that certain Purchase and Sale Agreement, dated as of July 17, 2020 (the “PSA”), for, among other things, the purchase and sale of certain Real Properties (as defined in the PSA), as more particularly described in the PSA, including the contracted right to receive water, and (ii) that certain Master Lease Agreement, dated as of July 17, 2020 (the “MLA”), for, among other things, the lease back of the Real Properties (including the contracted right to receive water) from Assignee to Assignor.

C. In accordance with the PSA, Assignor agreed to assign all of its right, title and interest in, to and under the EDA to Assignee, and Assignee agreed to accept such assignment and assume all of Assignor’s duties and obligations under the EDA, as more particularly set forth herein, subject to the terms and conditions of the MLA.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby mutually acknowledged, Assignor and Assignee hereby take the following actions and make the following agreements:

1. Recitals. The Recitals set forth above are hereby incorporated into and made a part of this Agreement.
2. Defined Terms. All capitalized terms used herein but not otherwise defined or modified herein have the meanings given to them in the EDA.
3. Assignment. Assignor hereby assigns, transfers, sets over and conveys to Assignee, its successors and assigns, the EDA together with all of Assignor’s right, title and interest in, to and under the EDA and hereby further grants and delegates to Assignee, its successors and assigns, all of the duties and obligations of Assignor under the EDA, for the period commencing on the Effective Date and continuing through December 31, 2021 or the earlier termination of the EDA

4. (the “Assignment Period”). Assignor hereby covenants and agrees to indemnify, protect, defend and hold Assignee harmless for, from and against all claims, damages, losses, suits, proceedings, costs and expenses (including, but not limited to, reasonable attorneys' fees) which first arose or accrued under the EDA prior to the Effective Date.

5. Assumption. Assignee hereby accepts the assignment of the EDA for the Assignment Period and hereby assumes and agrees to keep, perform and fulfill all of the terms, covenants, obligations and conditions required to be kept, performed or fulfilled by Assignor under the EDA that first arise or accrue during the Assignment Period, subject to the terms and conditions of the MLA.

6. Miscellaneous.

(a) This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Texas, without reference to the conflict of law provisions thereof.

(b) The headings of the sections and paragraphs of this Agreement have been included only for convenience, and shall not be deemed in any manner to modify or limit any of the provisions of this Agreement or be used in any manner in the interpretation of this Agreement.

(c) Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement or the application of such provision to any person or circumstance shall, to any extent, be invalid or unenforceable, then the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected by such invalidity or unenforceability.

(d) This Agreement will be binding upon and will inure to the benefit of the parties hereto and their successors and assigns.

(e) Each of Assignor and Assignee hereby agree to, at the request of the other party, execute and deliver such further instruments and take such other actions as the other party may reasonably request to more effectively consummate the matters contemplated by this Agreement.

(f) Each of Assignor and Assignee has full power and authority to enter into this Agreement. The person signing this Agreement on behalf of each of Assignor and Assignee is duly authorized to execute and deliver this Agreement.

(g) This Agreement may not be amended, except in writing, signed by Assignor and Assignee.

7. Counterparts; Electronic Delivery. This Agreement may be executed in any number of identical counterparts, each of which will be deemed an original, but all of which will together constitute one and the same instrument. Executed copies hereof may be delivered by

telecopier or e-mail and upon receipt will be deemed originals and binding upon the parties hereto, regardless of whether originals are delivered thereafter.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Agreement as of the Effective Date.

ASSIGNOR:

FAIR OAKS CLUB CORP.,
a Texas corporation

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, Assignor and Assignee have executed this Agreement as of the Effective Date.

ASSIGNEE:

FAIR OAKS RANCH OWNER LLC,
a Delaware limited liability company

By: _____

Name: Steven Orbuch

Title: Authorized Person

**CONSENT TO A LIMITED TEMPORARY ASSIGNMENT AND ASSUMPTION OF
CITY OF FAIR OAKS RANCH EFFLUENT DISPOSAL AGREEMENT**

The terms of the existing Effluent Disposal Agreement do not include the right to assign the agreement. While the City of Fair Oaks Ranch and Assignee negotiate terms and conditions of a new Effluent Disposal Agreement, the City provides this, its provisional consent for a limited temporary assignment as of [____], 2020 (the “Effective Date”), to the foregoing Assignment and Assumption of City of Fair Oaks Ranch Effluent Disposal Agreement (the “Assignment”). Such limited temporary assignment and assumption shall only be for such period of time necessary for Fair Oaks Ranch and Assignee to negotiate a revised Effluent Disposal Agreement. The existing agreement being temporarily assigned shall expire as of Friday, December 31, 2021 if a new agreement is not approved by the City Council before said date. The undersigned being the [_____] of the City of Fair Oaks Ranch, Texas (the “City”), hereby agrees to the Limited Temporary Assignment pursuant to the terms stated in this paragraph.

IN WITNESS WHEREOF, the City has caused this Consent to be executed by its duly authorized representative as of the date first set forth above.

CITY OF FAIR OAKS RANCH, TEXAS,
a municipal corporation

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

By: _____
Name: _____
Title: _____

EXHIBIT A

EDA

[Attached hereto.]

**FIRST AMENDMENT
TO
EFFLUENT DISPOSAL AGREEMENT**

This FIRST AMENDMENT TO EFFLUENT DISPOSAL AGREEMENT effective as of February 22, 2019, 2019 (this "First Amendment") is between the City of Fair Oaks Ranch, Texas, a political subdivision of the State of Texas (the "City"), and Fair Oaks Club Corp, a Texas Corporation (the "Club").

WHEREAS, the City has previously entered into an Effluent Disposal Agreement with the Club dated June 20, 2003 (the "Agreement"); and

WHEREAS, the Agreement currently does not contain a term; and

WHEREAS, the Texas Commission on Environmental Quality requires the Agreement to have a term.

NOW THEREFORE, in consideration for the mutual representations, warranties, covenants, and conditions exchanged herein, the City and the Club agree that the Agreement is amended to include the language provided for in Section 1 herein.

Section 1. Term. The term of the Agreement is for approximately ten years (10) from the effective date of the First Amendment and shall terminate on March 1, 2029.

In the event of a "Permit Loss" (as defined herein), the City may terminate this Agreement. The City shall provide the Club written notice of a Permit Loss within fifteen (15) days upon becoming aware that a Permit Loss may occur. In the event of a termination because of a Permit Loss, the effective date of termination of this Agreement shall be the same date that the termination of the permit by TCEQ becomes effective. The City shall use its best efforts to prevent the occurrence of a Permit Loss.

"Permit Loss" means the existing permit issued to the City by the Texas Commission on Environmental Quality ("TCEQ") for the operation of a wastewater recycling or treatment facility pursuant to which the City provides effluent to the Club under the Agreement is terminated unilaterally by TCEQ and the City does not have, and does not reasonably expect to receive, another permit that would allow the operation of the same or similar facility or the City otherwise loses its legal authority to provide effluent as provided for in the Agreement.

Upon the expiration of the Agreement and provided that the City has, or reasonably expects to receive, a permit that would allow the operation of a wastewater recycling or treatment facility, the City shall negotiate with the Club in good faith on a renewing or replacing the Agreement on substantially the same terms of the Agreement for a term that coincides with the term of the permit issued or expected to be issued to the City. During such negotiations this Agreement shall

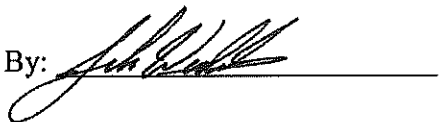
continue in effect beyond its scheduled expiration until such time that the extension or replacement is finalized and effective so as to avoid an interruption of service to the Club, unless during the negotiations and after the expiration of the term of the Agreement the City provides the Club fifteen (15) days written notice of intent to terminate but only after determining in good faith that the parties are unable to reach an agreement pursuant to the negotiation provisions above.

Section 2. Agreement Not Otherwise Amended. Except as set forth in this First Amendment the Agreement is not otherwise amended and remains in full force and effect.

Section 3. Governing Law. This First Amendment shall be construed in accordance with the laws of the State of Texas.

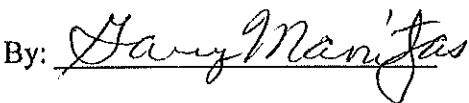
IN WITNESS WHEREOF, this Amendment has been executed as of the date first above written.

Fair Oaks Club Corp.

By: 

Date: 2-11-19

City of Fair Oaks Ranch

By: 

Date: 2-22-19

EFFLUENT DISPOSAL AGREEMENT

This Agreement is made and entered into this 20 day of June, 2003 by and between The City of Fair Oaks Ranch and Fair Oaks Club Corp.:

WHEREAS, The City of Fair Oaks Ranch (the City) and Fair Oaks Club Corp. (the Club) have contractual obligations for the utilization of effluent from the WWTP to irrigate the golf courses and whereas there is a desire to keep up this mutually beneficial relationship in the future, this agreement formalizes, updates, and clarifies those obligations; and

WHEREAS, The contract to purchase the Golf Course and Country Club, dated October 30, 1986 by and between Fair Oaks Country Club, Inc., as Seller, and Fair Oaks Club Corp., as Purchaser ("Contract of Sale"), stipulates in section 12.023 that "All effluent produced" from the WWTP will be delivered to the golf course storage ponds at no cost to the Club; and, the Club will accept and use all such effluent for irrigation of the golf course; and such contract obligation was assigned by Ralph E. Fair, Inc. to City in that certain Assignment between Ralph E. Fair, Inc. and the City of Fair Oaks Ranch dated 12 December, 1997.

WHEREAS, The City and the Club, on June 20, 2003, entered into an agreement for the financing and construction of a new 41 million gallon (approximate) effluent storage pond located adjacent to fairway No. 14 on the Blackjack golf course (Blackjack 14). The purpose of this pond being an additional irrigation water and emergency wet weather effluent storage facility.

NOW, THEREFORE, in consideration of the mutual benefits to be derived by each party and the community as a whole:

Definitions.

Waste Water Treatment Plant (WWTP): That Wastewater Recycling plant owned and operated by The City of Fair Oaks Ranch under Texas Commission on Environmental Quality (TCEQ) permit No. WQ0011867-001 and located at 29755 No Le Hae, Fair Oaks Ranch, Texas.

Fair Oaks Ranch Utilities: (FORU): The department of the City of Fair Oaks Ranch with the responsibility to operate and maintain the public water and wastewater systems of the city.

Storage Ponds: Compacted clay or synthetic lined ponds located on Fair Oaks Ranch golf course which were constructed to receive and store effluent for subsequent use as irrigation water for the golf course. The storage ponds are identified as: the pond on fairway No. 4 Live Oak Course (Live Oak # 4); the pond on fairway No. 13 Live Oak Course (Live Oak # 13); the pond on fairway No. 4 Blackjack course (Blackjack # 4); and the pond on fairway No. 14 Blackjack course (Blackjack # 14).

Effluent: Treated water discharged from the wastewater treatment plant.

Golf Course: That 280 (plus or minus) acres, including the areas for tees, fairways, greens, rough, ponds and appurtenances owned and operated by Fair Oaks Club Corp. and identified as Fair Oaks Ranch Golf Country Club.

Wet Weather Storage Facilities: Live Oak # 13 (The overflow pond) and the last 8.2 million gallons or twenty percent (20%) of storage capacity of Blackjack # 14.

Water Emergency: Any situation or occurrence where the amount of water being discharged from the WWTP exceeds the capacity of the effluent storage ponds or irrigation system. This includes treatment plant upsets or plant equipment failure and or malfunction that result in incomplete or partially treated wastewater being transferred to the effluent storage facilities.

Agreement: This Agreement shall amend the contractual obligations of both parties in Section 12.023 of the Contract of Sale.

All (100%) of the effluent produced from the WWTP shall be delivered by City to the Club's storage Ponds located on the golf course. The Effluent shall be used only for irrigation of said Golf Course in accordance with the applicable Texas Commission on Environmental Quality (TCEQ) rules and regulations.

The Effluent shall be delivered to the Storage Ponds at no charge or cost to Club.

The Club is hereby obligated to receive, store and utilize 100% of the Effluent for irrigation within the confines of the 280-acre Golf Course.

The golf course irrigation system and Storage Ponds are owned by Club and will be operated, controlled, and maintained by the Club. The Wet Weather Storage Facilities will be owned, operated and controlled by the Club, except that City shall control the storage level for Blackjack #14 to insure that up to twenty percent (20%) or 8.2 million gallons of emergency storage is available to City. Club will allow the City access to the Wet Weather Storage Facilities at all times. The chlorine injection equipment installed by the City for the irrigation system will be owned, operated, controlled and maintained by City.

By separate agreement, the Club and the City have agreed to build an additional Storage Pond on Blackjack # 14. This pond will be the primary effluent storage and irrigation pond for the Club and will be built to TCEQ specifications. This pond will function to store water and effluent for golf course irrigation and to provide emergency effluent storage at times when effluent volume exceeds irrigation needs. To meet these two objectives, the water level will be monitored to insure that up to twenty percent (20%) or 8.2 million gallons of emergency storage is available and controlled by the City. The remaining storage capacity is to be utilized and controlled by the Club. The City may, at its sole discretion, release some of its emergency storage capacity for use as irrigation storage.

The Club assumes ownership, responsibility and control of all irrigation water (including Effluent) upon delivery of the water to each Storage Pond. The City will exercise due diligence and maximum effort to always produce as high quality Effluent as possible under the City's operating policies and budgetary parameters. The Club will exercise due diligence and maximum effort to maintain the quality of the water received. The City will be responsible for producing Effluent that meets or exceeds TCEQ rules and regulations.

In the event of a Water Emergency the City and Club shall cooperate fully in all ways to remedy and or rectify the emergency as soon as possible. This cooperation shall include personnel, equipment, supplies and financial resources reasonably and legal available to each. The City recognizes its water quality obligation and responsibility and shall put forth maximum effort to achieve and maintain acceptable effluent water quality.

This Agreement in no way eliminates or modifies the Club's obligation to take and utilize 100% of the Effluent produced by and received from the WWTP. The City will be allowed to collect samples for water and soil analysis and install and maintain warning signs at the storage ponds as required by TCEQ regulations.

The Club and the City agree to discuss, amend or modify this Agreement as required for the renewal of the WWTP permit and to insure this beneficial use of the Effluent continues. Such amendments and modifications will not be unreasonably withheld by either party.

Compliance. In performing the services provided for in this Agreement, both parties shall comply with all applicable federal, state, county and city statutes, ordinances and regulations and shall be liable, according to responsibilities outlined above, for any consequences arising from failure to do so.

Notices. All notices under this Agreement shall be provided to City at the address below and to Club at the address below, Attention: General Manager; and to P.O. Box 819012, Dallas, Texas 75381-9012, Attention: General Counsel.

Miscellaneous. In case 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 any other provision, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. Neither Club nor City shall be required to perform any term, conditions, or covenant in this Agreement so long as such performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, or any other cause not reasonably within the control of Club or City and which by the exercise of due diligence of Club or City is unable, wholly or in part, to prevent or overcome. This Agreement and attachments embody the entire agreement and understanding of the parties relating to the subject matter hereof, is nonassignable, may not be amended except in writing signed by both parties, and supersedes any prior representations, agreements, and understandings, oral or written, if any, relating to such subject matter.

Special Provision: Should the Club cease operation for any reason whatsoever, Club will give City six (6) months written notice of such. If Club cannot give City six (6) months notice or fails to provide sufficient notice, City shall have the right to mandate that Club continue to control and operate the Club's effluent storage pond for up to six (6) months following receipt of such notice. If Club is unable to do so, City may operate the Club's effluent storage pond for up to six (6) months following the receipt of notice or until such time the new owner(s) and/or operator(s) of the Club or Storage Ponds are able to do so.

TO HAVE AND TO HOLD the above described Agreement between the City of Fair Oaks Ranch and Fair Oaks Club Corp., its successors and assigns, until this Agreement shall be cancelled as evidenced by a Certificate of Termination executed by the City of Fair Oaks Ranch and Fair Oaks Club Corp.

Agreed to this date by:

Club:

Fair Oaks Club Corp.

By: Jack T. Lupton
 Jack T. Lupton
 Senior Vice President
 Address: 3333 Golfing Green Drive
 Farmers Branch, Texas 75234
 Date: _____

City:

City of Fair Oaks Ranch

By: E.L. Gaubatz
 Printed Name: E.L. GAUBATZ
 Title: Mayor
 Address: 1286 Dietz Elkhorn
Fair Oaks Ranch TX 78015
 Date: June 20, 2003
 F.E.I. No.: _____

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EXHIBIT “B”**ASSIGNMENT AND ASSUMPTION OF CITY OF FAIR OAKS RANCH / FAIR OAKS RANCH GOLF & COUNTRY CLUB WATER SUPPLY AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT OF CITY OF FAIR OAKS RANCH / FAIR OAKS RANCH GOLF & COUNTRY CLUB WATER SUPPLY AGREEMENT (this “Agreement”) is entered into as of the ____ day of _____, 2021 (the “Effective Date”) by and among FAIR OAKS CLUB CORP., a Texas corporation (“Assignor”) and FAIR OAKS RANCH OWNER LLC, a Delaware limited liability company (“Assignee”).

RECITALS

A. Assignor and the City of Fair Oaks Ranch, Texas, a municipal corporation, are parties to that certain City of Fair Oaks Ranch / Fair Oaks Ranch Golf & Country Club Water Supply Agreement, dated as of January 1, 2012 (as may be amended from time to time, the “WSA”).

B. Assignor, as Seller, and Assignee, as Buyer, entered into (i) that certain Purchase and Sale Agreement, dated as of July 17, 2020 (the “PSA”), for, among other things, the purchase and sale of certain Real Properties (as defined in the PSA), as more particularly described in the PSA, including the contracted right to purchase water.

C. In accordance with the PSA, Assignor agreed to assign all of its right, title and interest in, to and under the WSA to Assignee, and Assignee agreed to accept such assignment and assume all of Assignor’s duties and obligations under the WSA, as more particularly set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby mutually acknowledged, Assignor and Assignee hereby take the following actions and make the following agreements:

1. Recitals. The Recitals set forth above are hereby incorporated into and made a part of this Agreement.

2. Defined Terms. All capitalized terms used herein but not otherwise defined or modified herein have the meanings given to them in the WSA.

3. Assignment. Assignor hereby assigns, transfers, sets over and conveys to Assignee, its successors and assigns, all of Assignor’s right, title and interest in, to and under the WSA and hereby further grants and delegates to Assignee, its successors and assigns, all of the duties and obligations of Assignor under the WAS, including without limitation all such duties and obligations incurred to date.

4. Assumption. Assignee hereby accepts the assignment of the WSA and hereby assumes and agrees to keep, perform and fulfill all of the terms, covenants, obligations and

conditions required to be kept, performed or fulfilled by Assignor under the WAS. Assignee hereby covenants and agrees to indemnify, defend, and hold harmless Assignor and Assignor's affiliates from any claims or damages arising from Assignee's breach of the foregoing covenant.

5. Miscellaneous.

(a) This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Texas, without reference to the conflict of law provisions thereof.

(b) The headings of the sections and paragraphs of this Agreement have been included only for convenience, and shall not be deemed in any manner to modify or limit any of the provisions of this Agreement or be used in any manner in the interpretation of this Agreement.

(c) Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement or the application of such provision to any person or circumstance shall, to any extent, be invalid or unenforceable, then the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected by such invalidity or unenforceability.

(d) This Agreement will be binding upon and will inure to the benefit of the parties hereto and their successors and assigns.

(e) This Agreement contains the sole and entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior representations and understandings, whether written or oral, of the parties with respect to the subject matter hereof.

(f) Assignor and Assignee agree to, at the request of the other party, execute and deliver such further instruments and take such other actions as the other party may reasonably request to more effectively consummate the matters contemplated by this Agreement.

(g) Each of Assignor and Assignee has full power and authority to enter into this Agreement. The person signing this Agreement on behalf of each of Assignor and Assignee is duly authorized to execute and deliver this Agreement.

(h) This Agreement may not be amended, except in writing, signed by Assignor and Assignee.

6. Counterparts; Electronic Delivery. This Agreement may be executed in any number of identical counterparts, each of which will be deemed an original, but all of which will together constitute one and the same instrument. Executed copies hereof may be delivered by telecopier or e-mail and upon receipt will be deemed originals and binding upon the parties hereto, regardless of whether originals are delivered thereafter.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Agreement as of the date first written above.

ASSIGNOR:

FAIR OAKS CLUB CORP.,
a Texas corporation

By: _____
Name: _____
Title: _____

[Additional signature appears on following page]

*[Signature Page to Assignment and Assumption of City of Fair Oaks Ranch/Fair Oaks Ranch
Golf & County Club Water Supply Agreement]*

ASSIGNEE:

FAIR OAKS RANCH OWNER LLC,
a Delaware limited liability company

By: _____

Name: _____

Title: _____

**CONSENT TO THE ASSIGNMENT AND ASSUMPTION OF CITY OF FAIR OAKS
RANCH/ FAIR OAKS RANCH GOLF & COUNTRY CLUB WATER SUPPLY
AGREEMENT**

Consent is hereby given as of [____], 2020 (the “Effective Date”), to the foregoing Assignment and Assumption of City of Fair Oaks Ranch/ Fair Oaks Ranch Golf & Country Club Water Supply Agreement (the “Assignment”). The undersigned being the [_____] of the City of Fair Oaks Ranch, Texas (the “City”), hereby agrees to the Assignment pursuant to the terms thereof.

IN WITNESS WHEREOF, the City has caused this Consent to be executed by its duly authorized representative as of the date first set forth above.

CITY OF FAIR OAKS RANCH, TEXAS,
a municipal corporation

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

By: _____
Name: _____
Title: _____

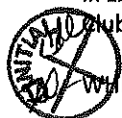
WSA

**CITY OF FAIR OAKS RANCH /FAIR OAKS RANCH GOLF & COUNTRY CLUB
WATER SUPPLY AGREEMENT**

This Water Supply Agreement ("Agreement") is made and entered into by and between Fair Oaks Club Corp., a Texas corporation, d/b/a Fair Oaks Ranch Golf & Country Club, its successors and assigns ("Owner") and the City Of Fair Oaks Ranch, Texas, a municipal corporation ("City") to be effective the first day of January, 2012.

RECITALS

WHEREAS, Owner owns a certain 280 +/- acre tract of real property (the "Property") more fully described in Exhibit "A" attached hereto and incorporated herein; and known as the Fair Oaks Ranch Golf and Country Club; and



WHEREAS, ^{at the Property} Owner is located in the corporate limits of the City; and

WHEREAS, the City has requested that Owner enter into this Agreement to memorialize certain agreements and commitments by the Owner with respect to its planned irrigation of the Property and the provision of potable water services to the Property; and

WHEREAS, Owner has requested that the City enter into this Agreement to memorialize certain agreements and commitments by the City with respect to the irrigation of the Property and the provision of potable water services to the Property; and

NOW, THEREFORE, in consideration of the mutual benefits and promises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Owner agree as follows:

I.

AUTHORITY AND TERM

A. Authority. The City's execution of this Agreement is authorized by The City Council of the City of Fair Oaks Ranch and constitutes a valid and binding obligation of the City. Owner's execution and performance of this Agreement constitutes a valid and binding obligation of the Owner. The City acknowledges that Owner is acting in reliance upon the City's performance of its obligations under this Agreement.

B. Term. This Agreement shall become enforceable upon execution by the City and Owner. This Agreement shall terminate on December 31, 2021 unless extended by mutual agreement of the parties.

II.

OBLIGATIONS OF THE PARTIES

For and in consideration of the mutual promises, covenants, obligations, and benefits described in this Water Supply Agreement, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, Owner and The City agree as follows:

A. Potable Water Service. The City of Fair Oaks Ranch will provide treated water from the City's Water Production, Storage, and Distribution system; as such system may be expanded or modified from time to time. The water to be delivered may be from any source or combination of sources that may be available to the City including, without limitation, water from Canyon Reservoir under the City's Western Canyon Water supply contract and or from the City's Trinity Aquifer well fields.

B. Extension of Water Lines. Owner will extend its water lines from their present locations to their take point at its sole expense and pay for any increase in size of all appurtenances necessary to provide water service to the Property. The system installation and/or modification will include an air gap between the potable supply and receiving storage reservoir. In addition, a reduced pressure principle backflow prevention assembly must be installed after the meter and maintained and inspected annually per Texas Commission on Environmental Quality (TCEQ) rules and requirements.

C. Water Service Capacity. The City agrees to reserve water service capacity to the Property for irrigation of a thirty-six (36) golf course. The City shall reserve 52 acre-feet (16,944,252 gallons) of water per calendar year (Annual Reservation). The City agrees to deliver the water to the Owner at such dates and times during the year as requested not to exceed the total amount of the Annual Reservation. The Owner agrees to comply with the authorized usages specifically set forth in Section 4.4, Development Within Participant's Service Area, found under Article IV of Agreement Between City of Fair Oaks Ranch, Texas and Guadalupe-Blanco River Authority entered into January 11, 2000, and such Section 4.4 is attached hereto and incorporated herein as Exhibit B.

D. Water Delivery Requirement. Owner agrees to pay for the Annual Reservation amount even if they cannot take the full Annual Reservation amount in a calendar year. Owner will abide by all TCEQ requirements of the City's wastewater permit and requirements of the Guadalupe Blanco River Authority (GBRA) water contract with the City. The Owner understands that those requirements shall control the City's ability to deliver water to the Property.

E. Water Replacement Charge. Upon execution of this Agreement, Owner shall pay to City of Fair Oaks Ranch a one-time charge ("Owner's Water Replacement Charge") equal to the product of Owner's water reservation (52 acre feet) times \$275, or Fourteen Thousand Three Hundred Dollars (\$14,300).

F. Billing. The City shall render bills to the Owner once each month for the charges for the Annual Reservation amount of water to be paid by Owner pursuant to this Agreement. The City shall, until further notice, render such bills on or before the 10th day of each month and such bill shall be due and payable at the City's office by the 20th day of each month or fifteen days after such bill is deposited into the United States mail, properly stamped, addressed and postmarked to, whichever is later. Owner will be billed for the Annual Reservation amount of water at an Annual Rate of Ninety-Nine Thousand Five Hundred Ninety Dollars and Seventy-Six Cents (\$99,590.76) divided by Twelve Months equals a Monthly Rate of Eight Thousand Two Hundred Ninety-Nine Dollars and Twenty-Three Cents (\$8,299.23). This rate may be adjusted annually for the Annual Reservation amount of water each January commencing in 2013 to cover actual, uncontrollable increases in cost to City; City shall provide Owner with written notice of rate increases at least sixty (60) days in advance of providing water to Owner. Owner shall make all payments in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts and shall make payment to the City of Fair Oaks Ranch at its office in the City of Fair Oaks Ranch, Texas, or at such other place as the City may from time to time designate by sixty (60) days written notice.

G. Delinquency in Payment. All amounts due and owing to the City by Owner shall, if not paid when due, bear interest at the maximum rate permitted by law, provided that such rate shall never be usurious. If any amount due and owing by Owner is placed with an attorney for collection by the City, Owner shall pay to the City, in addition to all other payments provided for by this Agreement, including interest, the City's collection expenses, including court costs and attorney's fees. Owner further agrees that the City may, at its option, discontinue taking some or all actions to fulfill its obligations under this Agreement until all amounts due and unpaid are paid in full with interest as herein specified.

H. Cooperation. The City agrees to reasonably cooperate with Owner in Owner's efforts to meet Owner's obligations set forth above and to assist Owner in preparing and entering into any and all instruments necessary to memorialize the future agreements of the parties.

I. Effluent Disposal Agreement. This Agreement does not modify the Effluent Disposal Agreement between the parties dated June 20, 2003.

V.

MISCELLANEOUS

A. Mutual Assistance. City and Owner 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.

B. Representations and Warranties. The City represents and warrants to Owner that this Agreement is within its authority, and that it is duly authorized and empowered to enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. Owner represents and warrants to City that it has the requisite authority to enter into this Agreement.

C. Default. If either the City or Owner should default in the performance of any obligations of this Agreement, the other party shall provide such defaulting party written notice of the default, and a minimum period of thirty (30) days to cure such default, prior to instituting an action for breach or pursuing any other remedy for default.

D. Entire Agreement. This Agreement contains the entire agreement between the parties. This Agreement may only be amended, altered or revoked by written instrument signed by the City and Owner.

E. Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns.

F. Assignment. Except as provided, Owner may not assign all or part of its rights and obligations under this Agreement to a third party without prior written approval of the City, which approval shall not be unreasonably withheld, conditioned or delayed.

G. Notice. Any notice and or statement required and permitted to be delivered shall be deemed delivered by actual delivery, facsimile with receipt of confirmation, or by depositing the same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses:

Owner: General Manager
Fair Oaks Ranch Golf & Country Club
7900 Fair Oaks Parkway
Fair Oaks Ranch, Texas 78015

CC: Fair Oaks Club Corp.
3030 LBJ Freeway, Suite 600
Dallas, Tx 75234

City: City Administrator
City of Fair Oaks Ranch
7286 Dietz Elkhorn
Fair Oaks Ranch, TX 78015



I. 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, however its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any party.

J. Applicable Law. This Agreement is made, and shall be construed and interpreted, under the laws of the State of Texas and venue shall lie in Kendall County, Texas.

K. Severability. In the event any provisions of this Agreement are illegal, invalid or unenforceable under present or future laws, and in that event, it is the intention of the parties that the remainder of this Agreement shall not be affected. It is also the intention of the parties of this Agreement that in lieu of each clause and 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.

L. 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.

M. No Joint Venture. It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The City, its past and future officers, elected officials, employees and agents do not assume any responsibilities or liabilities to any third party in connection with the development of the Property.

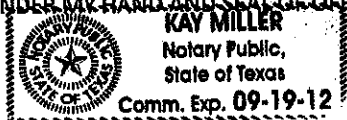
Fair Oaks Club Corp., a Texas corporation, d/b/a
Fair Oaks Ranch Golf & Country Club

Mandy Keiser
Signature
Secretary
Title

THE STATE OF TEXAS
COUNTY OF Dallas

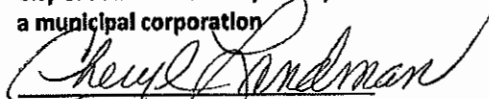
BEFORE ME, the undersigned, a Notary Public in and for said State, on this day personally appeared Mandy Keiser known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the Fair Oaks Club Corp. and that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 18th day of January, 2012.



Kay Miller
Notary Public

City of Fair Oaks Ranch, Texas,
a municipal corporation

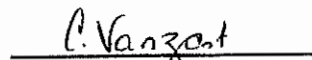

Cheryl Landman, Mayor

THE STATE OF TEXAS

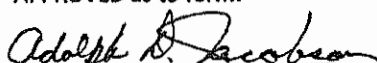
COUNTY OF BEXAR

BEFORE ME, the undersigned, a Notary Public in and for said State, on this day personally appeared Cheryl Landman known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the City of Fair Oaks Ranch, and that she executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 19 day of Jan., 2012.


Notary Public

APPROVED as to form:


Adolph Jacobson, City Attorney

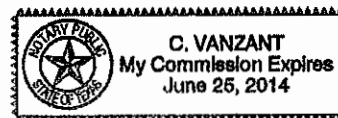


Exhibit "A" * Is the Fair Oaks Ranch Golf & Country Club (FORGCC) property description but is not included in this agenda packet.
Exhibit "B" * Is the section of the 2000 GBRA/CoFOR Agreement that is referenced in ILC of this document.

Exhibit "B"

(c) If the TNRCC does not enter an order granting, in whole, GBRA's Application to Amend the Canyon Certificate and containing the confirmation provisions required pursuant to subsection (b), above, before January 1, 2001, or if it enters such an order before January 1, 2001 but the order does not become final and not appealable before that date, then GBRA and Participant each shall have the right, on that date or at any time thereafter, but only for so long as no such final and not appealable order of the TNRCC exists, to terminate this Agreement by giving written notice of termination to the other party.

Section 4.4 Development Within Participant's Service Area.

Participant agrees that the supply of water to Participant under this Agreement for use on any lands shall be conditioned on compliance, in the design, construction and operation of any building, facility, development or other improvement on such lands or other use of or activities on such lands or the treatment, disposal or reuse of wastewater generated on such lands, with all federal, state and local laws, rules and regulations relating to (i) protection of the quality of groundwaters or surface waters; (ii) recharge of aquifers; or (iii) drainage and flood control. Participant further agrees that it will not supply any water supplied to Participant under this Agreement for use on any lands if and for so long as there is any material non-compliance, in the design, construction or operation of any building, facility, development or other improvement on such lands or other use of or activities on such lands or the treatment, disposal or reuse of wastewater generated on such lands, with any such laws, rules or regulations. At GBRA's request from time to time, Participant shall demonstrate to GBRA its compliance with the requirements of this Section 4.4. If Participant fails to comply with the requirements of this Section 4.4 with respect to Participant's supply of water for use on any lands, then GBRA shall provide Participant with written notice of such failure to comply, and Participant shall have 60 days thereafter to correct such non-compliance. If Participant fails to correct such non-compliance within such time, GBRA shall have available all remedies allowed by law.

ARTICLE V

CHARGES FOR WATER

Section 5.1 Participant's Required Monthly Water Purchase.

(a) Participant's Required Monthly Treated Water Purchase for each month during any calendar year shall be 1/12th of the Annual Commitment for that year. Participant agrees to pay GBRA each month for Participant's Required Monthly Treated Water Purchase, in accordance with paragraphs (1) and (3) of Section 5.2, below, whether or not such amount, or any of it, is taken by Participant.

(b) Participant's Required Monthly Raw Water Purchase for each month during any calendar year shall be 1/12th of the Raw Water Reservation. Participant agrees to pay GBRA each month for Participant's Required Monthly Raw Water Purchase, in accordance with paragraph (4) of Section 5.2, below, whether or not such amount, or any of it, is taken by Participant.



CITY COUNCIL CONSIDERATION ITEM
CITY OF FAIR OAKS RANCH, TEXAS
June 3, 2021

AGENDA TOPIC: Consideration and possible action adopting a Charter for a Utility Rate Advisory Panel and determining ways and means of seating said panel

DATE: June 3, 2021

DEPARTMENT: Finance & Utilities

PRESENTED BY: Sarah Buckelew, CPA, Finance Director
 Angie Flores, Senior Manager, Raftelis
 Sam Villegas, Director of Strategic Communication Services, Raftelis

INTRODUCTION/BACKGROUND:

The City of Fair Oaks Ranch hired Raftelis in early 2021 to conduct a rate study for the City's water, wastewater, and reuse rates. It's the first time the City has hired a consultant to complete this work. Rate studies are conducted as a best practice to ensure that the City's water utilities' financial health is maintained and that the City is well prepared to meet its future financial needs.

As part of the rate study process, the City is seeking to seat a volunteer advisory panel made up of a diverse group of community utility users that represent different interests. The panel will meet approximately five times during the rate study process to provide their input and community perspective.

The Mayor and City Council were asked to provide feedback on a charter for a utility rate advisory panel that would then be compiled and brought back to this meeting on June 3, 2021 for discussion and adoption. The Mayor and City Council are also being asked to discuss and determine the means and timing for seating the advisory panel.

Based on the discussion and determinations made by Mayor and Council, action should be taken to adopt the charter and establish the method and timing for seating the advisory panel.

Advisory Panel Charter Discussion:

The following are attached for City Council discussion and consideration:

- 1) Advisory panel charter in tracked changes mode showing all edits and discussion points provided by Mayor and Council in advance of this meeting.
- 2) Advisory panel charter "clean" copy with all proposed edits included.

Methods and Timing of seating the Advisory Panel:

Panel Diversity – recommendations from Raftelis

City Council asked that Raftelis and Staff make recommendations on the diversity makeup of the advisory panel. The following suggestions are being made for Council consideration:

- Utility customers only

- Geographical spread within the community (example: 4 from north, 4 from south, and 5 from the middle areas)
- Mix of large and small consumption users
- Mix of water only, sewer only, both services, and commercial users
- Mix demographics: Age and gender
- Mix of family households/non-family households
- Mix of Household income levels

Panel recruitment

City staff and Raftelis can create a general application that could be added to the City's website to help recruit volunteers. Council should discuss and determine the method and timing to determine how to seat the panel once applications are received.

POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:

The City believes strongly in listening to the community when making decisions that affect them.

LONG-TERM FINANCIAL & BUDGETARY IMPACT:

There is no financial impact for this agenda item.

LEGAL ANALYSIS:

No Legal analysis was required for this agenda item.

RECOMMENDATION/PROPOSED MOTION:

First Motion:

I move to adopt the Water/Wastewater/Reuse Rate Study Advisory Panel Charter as written, except for the following modifications...

Second Motion:

I move to approve the following method and timing for seating the Water/Wastewater/Reuse Rate Study Advisory Panel: ...

Fair Oaks Ranch Rate Study Advisory Panel Charter

DRAFT

Introduction and Background

The City of Fair Oaks Ranch hired Raftelis in early 2021 to conduct a rate study for the City's water, wastewater, and reuse rates. It's the first time the City has hired a consultant to complete this work. Rate studies are conducted as a best practice to ensure that the City's water utilities' financial health is maintained and that the City is well prepared to meet its future financial needs.

Rate Study Objectives

The objectives of the rate study include the completion of a water, wastewater and reuse cost of service and rate study (study). The study will include a communication plan, a financial planning policy review, development of a financial planning model, a retail cost of service analysis and the design of customized rate structures that meet the City's unique needs.

Rate Study Panel – Charge and Charter

The City believes strongly in listening to the community when making decisions that affect them. Therefore, as part of the rate study process, the City has assembled a volunteer advisory panel made up of a diverse group of community members that represent different interests. The panel will meet approximately five times during the rate study process to provide their input and community perspective.

Advisory Panel Purpose and Relationship to Fair Oaks Ranch City Council

The mission of the panel is to ***provide diverse perspectives that represent our community; to be consulted and to share input on the City's future rate structure(s) and rates for water, wastewater, and reuse.*** The panel has two overarching purposes:

- a. Provide views that represent the many types of customers affected by new rates
- b. Provide input on rate structure options and associated customer impacts

The panel is a consultative group, meaning that its purpose is to serve as a focus group that examines and gives feedback as the rate structures are developed.

Fair Oaks Ranch Rate Study Advisory Panel Charter – DRAFT

The Fair Oaks Ranch City Council is the policy and decision-maker, meaning that it will be made aware of the panel's input and how it was used in developing recommendations, but ultimately the City Council will decide what to implement.

Composition, Size, and Recruitment of the Panel

The panel will be made up of no more than 15, but not less than 12 members from the community, with each Council member and the Mayor selecting one or two individuals. The members selected by Council after receiving and reviewing applicants. This will allow for enough diversity of thought to have engaging discussions and ensure that there are members that represent different interests or perspectives within the population the City serves. It's important that no current or immediate past elected officials or candidates be members of the Panel to assure the conversations are not political.

Meeting Frequency and Duration

There will be five scheduled meetings from June/July to October/November, 2021. A schedule of meetings will be set once the panel is appointed and every effort will be made to set the meetings on dates and times that work for the group.

These meetings will be hosted during the week in the mornings or over lunch to enable broad participation. The tentative meeting schedule is shown below. Meetings will last no more than two hours.

Meeting	Tentative Date	Tentative Agenda
1	June/July, 2021	Introductions (City) Charter/Mission (Consultant) Water/wastewater/reuse system overview (City) Overview of current rates and rate history (Consultant)
2	July/August, 2021	Ratemaking 101 (Consultant) Group dialogue on Council's pricing objectives (consultant)
3	August/September, 2021	Cost of service review/future capital needs (Consultant) Preliminary revenue adjustments and rate structure options for wet weather events (Consultant)
4	September/October, 2021	Review and evaluate and rate structure and select preferred alternatives (consultant) Review Panel report to Council (Consultant)
5	October/November, 2021	Obtain input on communications about rate structure to larger community (Consultant)

Decision-Making Process and Role of the Facilitator

While the Panel will not be making any decisions for the City, their input will inform recommendations made for City Council adoption. The Panel is making no decisions related to the rate study, though it will hear information and provide input, in the form of questions and comments, into the Council's decisions. A consensus will be sought to reach agreement from the Panel on any recommendations to

Commented [SB1]: Mayor Maxton: This Charter also states that the Mayor and Council members will nominate one or two individuals for the Advisory panel. I believe the Mayor and Council could nominate individuals for the pool. I would also like to open this up for residents to apply, which are then also added to the pool. From there, a selection process for Council is made to identify the 12-15 members of the panel.

Commented [SB2]: Mayor Maxton: In applying to be on the panel, I would like to know from each applicant how they receive their water and wastewater services.

Commented [SB3]: Mayor Maxton: The Charter states no more than 15 members. I recommend that it also states no less than 12.

Commented [SB4]: Councilwoman Koerner

Commented [SB5]: Councilwoman Koerner

Commented [SB6]: Councilman Elizondo: Would this exclusion also apply to members of boards, commissions or committees appointed by council?

Commented [SB7]: Mayor Maxton: Five meetings are laid out as the schedule to occur between Jun-Oct. The schedule shows a meeting each month. I believe that the selection of individuals to serve on the Advisory panel will take more time than is scheduled and conducting the first meeting in Jun will be a challenge. It should take through the month of Jun to select the individuals to be on the Advisory panel and finalized by council at the first meeting in Jul. Given this, the first meeting could be set up in Jul. Five meetings could be conducted between Jul-Oct, but the schedule would need to be adjusted.

Commented [SB8]: Councilwoman Stroup: I would only suggest adjusting the meeting timeline to start the meetings in July.

Commented [SB9]: Councilwoman Koerner

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Commented [SB10]: Sarah Buckelew – to correspond with application wording

Commented [SB11]: Councilman Elizondo: Subject to change as circumstances warrant

Commented [SB12]: Date modifications by Councilwoman Koerner

Commented [SB13]: Councilwoman Stroup: I'm also curious if there is an option for the panel to disapprove of all options they are presented with and ask to go a different route, or must they provide a recommendation to council of some kind based on what they are presented with?

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Commented [SB14]: Carole Vanzant: Sentence does not seem to flow correctly

Commented [SB15]: Sarah Buckelew – edited to align with application wording

Fair Oaks Ranch Rate Study Advisory Panel Charter – DRAFT

put forth to the Council. A consensus process means general agreement from most is achieved, but it is not a majority vote. Elements of a consensus-based recommendation include:

- All parties agree with and support the recommendations publicly
- No party blocks, obstructs, or otherwise criticizes the recommendations
- Neutrality is considered support for consensus

Consensus can take many forms including:

- An unqualified “Yes!”
- I can accept the recommendation
- I can live with the recommendation
- I do not fully agree with the recommendation; however, I will not block it and I will support it.

A consultant from Raftelis will serve as facilitator of the Panel throughout its time together. As an impartial player in the process, the facilitator will set the agenda, establish clear context for all discussion, create an environment where all parties are comfortable, listen actively, evoke the creativity of the group, and ask appropriate questions. The facilitator will work to ensure that panel participants’ time is maximized and that all panel participants have an opportunity to participate fully and express their point of view.

The facilitator will be responsible for record keeping and documentation of the meetings. After each meeting, the facilitator will prepare a meeting summary that captures the discussion, the outcomes, and next steps. The panel will be asked to review each summary for inclusion in the final report.

Roles and Responsibilities of Panel Members:

Panel members will be expected to:

- Attend all meetings, as reasonably possible
- Review agenda and informational material between meetings
- Be respectful of others’ views and input
- Understand the time constraints of the fee setting process and respect the meeting times
- Provide thoughtful input on fee proposals, including perspective from other groups or people they represent
- Share information they learn with groups or people they represent
- Remain accessible to the study team for follow-up as needed

Panel participants will not send substitutes or proxies to meetings.

Responsibilities of City Staff and Consultant

Presentations, project reports and feedback opportunities will be provided by the City and the consultant at each meeting. Meeting agendas will be provided to panel participants at least four days in advance of a meeting.

Commented [SB16]: Mayor Maxton: For Raftelis in reporting the consensus of the Advisory panel, I would like the report to show Qual Yes, I can Accept, I can Live, I don’t agree, to get a full understanding of the acceptance of each item.

Commented [SB17]: Councilman Elizondo: Some may want to know what happens if they are unable to make a meeting due to unforeseen circumstances.

Commented [SB18]: Councilwoman Koerner

Commented [SB19]: Councilman Elizondo: What is the expectation here as far as how active they are to be in communicating about the study? Will they be included as a channel in the communications plan?

Commented [SB20]: Councilwoman Koerner

Fair Oaks Ranch Rate Study Advisory Panel Charter – DRAFT

The City and consultant will ensure no relevant topics are excluded from consideration within the rate study objectives provided in this charter. If questions arise during a panel meeting, City staff will do their best to answer those questions with available data at the next meeting.

Sarah Buckelew will be the point of contact for the panel participants. The Consultant will summarize the salient information gained during the Panel meetings and City staff will include it in City Council updates as appropriate.

The Consultant will develop a written draft report and include how Panel input was incorporated into the recommendations when presenting to City Council.

Advisory Panel Relationship and Duty to the Broader Public

Panel meetings can be open to the public so that the public can observe the Panel's work, however, we recommend that no public comment or questions be permitted during the meetings.

Opportunities for additional public input into the rate study process ~~can~~ will be provided through an alias email address (or form at website) to which residents can send ideas, questions, or concerns and through the Public Hearing process.

Commented [SB21]: Carole Vanzant: If council desires this method, the charter should state "...study process will be provided..." the word can leaves it open ended – I feel a charter should be explicit

Fair Oaks Ranch Rate Study

Advisory Panel Charter

DRAFT

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Fair Oaks Ranch Rate Study Advisory Panel Charter – DRAFT

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Fair Oaks Ranch Rate Study Advisory Panel Charter – DRAFT

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CITY COUNCIL CONSIDERATION ITEM

CITY OF FAIR OAKS RANCH, TEXAS

June 3, 2021

AGENDA TOPIC: Consideration and possible action regarding opportunities to provide multi-platform access and participation to In-Person City Council meetings.

DATE: June 3, 2021

DEPARTMENT: City Council

PRESENTED BY: Council Member Scott Parker, Place 5
Joanna Merrill, IPMA-SCP, Director of Human Resources & Communications
Dan Santee, City Attorney

INTRODUCTION/BACKGROUND:

This agenda item was requested by Council Member Parker. The purpose of the agenda item is to provide Council with an opportunity to discuss and frame a clear understanding and direction regarding service delivery expectations Council would like to see from a multi-platform solution. To initiate the discussion, staff has identified the following questions.

- Does Council desire an interactive multi-platform solution or a static recording without interaction capabilities for viewer's/listeners.
- Is there a specific platform that council is interested in having staff focus on?
 - Zoom + In-Person, Teleconference + In-Person, Video Conferencing Solutions, or Third-Party Vendor solutions, etc.
- Will this be a solution that staff is expected to implement from the ground up, or is Council open to engaging a third-party service provider?
 - If the expectation is for staff to implement from the ground up, what resources are Council willing to commit to the success of the initiative (monies for a third-party contract, additional FTE's, resources such as purchasing hardware/software/sound equipment, etc.)?
- Does Council desire a temporary solution or a permanent solution that will become standard operating procedure moving forward?
- Would this solution be utilized only for city Council meetings, or for all public meetings that the city conducts (P&Z, ZBOA, CIAC, etc.)?
- Does Council want to provide access to view meeting recordings on our city website once meetings are concluded?
- Depending on the solution has council considered how long the city would want to retain any video recordings? This may impact our record retention schedules and data storage capacity.
- Does Council want to form a communications committee to further vet options?
- Others...

In conjunction with the above, the City Manager requested a memorandum from the City Attorney summarizing what cities were permitted to do pre-COVID, what is currently allowed with the Texas Open Meetings Act (TOMA) waiver, and considerations regarding possible future implications. Further, the City Manager and City Attorney concur public disclosure of this information will be beneficial to the overarching discussion. Accordingly, the memorandum is attached and can be utilized to frame service delivery expectations.

POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:

- Meets Strategic Action Plan item 5.2.6 – Live Stream/Video Recording and website Posting (equipment)
- Will address opportunities to create an easily accessible platform for citizens to view and/or participate in council meetings.
- Will provide an opportunity to display professionalism and consistency throughout our City's communications strategies.

LONG-TERM FINANCIAL & BUDGETARY IMPACT:

No monies have been budgeted for this initiative. Direction provided today will allow staff to research options, potential costs, and timing.

LEGAL ANALYSIS:

TBD. Proposed solutions may need to be vetted to ensure compliance with the Texas Open Meetings Act.

RECOMMENDATION/PROPOSED MOTION:

I move to authorize the City Manager to develop options based on the following City Council direction:

- Insert directives here.
- “
- Etc.

DENTON NAVARRO ROCHA BERNAL & ZECH PC
ATTORNEY CLIENT PRIVILEGE
NOT A PUBLIC RECORD
MEMORANDUM TO CLIENT

TO: TOBIN MAPLES, CITY MANAGER

FROM: T. DANIEL SANTEE, CITY ATTORNEY'S OFFICE

SUBJECT: APPLICABILITY OF CERTAIN PROVISIONS OF THE TEXAS OPEN MEETINGS ACT

DATE: MAY 27, 2021

TEXAS OPEN MEETINGS ACT AND PUBLIC TESTIMONY

The Texas Open Meetings Act (TOMA) governs how a governmental body may conduct meetings. There are provisions for meetings using telephone, videoconference and the Internet. The Act provides that a governmental body may not conduct meetings subject to the Act by telephone or videoconference unless a statute expressly authorizes it to do so. Additionally, it provides that a governmental body must allow each member of the public who desires to address the body regarding an item on an agenda for an open meeting of the body to address the body regarding the item at the meeting before or during the body's consideration of the item.

I. EXECUTIVE SUMMARY

The TOMA is intended to regulate the holding of meetings of governing bodies. The focus of the majority of provisions is to guide and establish the conduct of governing bodies in holding public meetings. To the extent public participation is affected or impacted, the provisions provide minimum requirements for public testimony in open meetings.

Once the suspensions are lifted by the Governor, a governing body must follow the Act requirements for allowing participation remotely. If it holds an emergency meeting via telephone call, it must provide for two-way communications.

If the governing body holds a public meeting via videoconferencing, a quorum must be physically present at one public location. Sec. 551.127(b). A member or employee may participate remotely if the video and audio feed is broadcast live at the meeting and complies with minimum requirements set by the Department of Information Resources (DIR). Sec. 551.127(c). There must be two-way audio and video capability for each open public location. Sec. 551.127(h). The notice of a meeting to be held by videoconference call must specify as a location of the meeting the location where a quorum will be physically present and specify the intent to have a quorum present at that location. Sec. 551.127(e). The physical location of the presiding member must be open to the public and must be identified on the agenda. Sec. 551.127(e). Any speaker must be visible as well as audible and the minimum standards for audio and video signals at the meeting set by DIR must be met. Sec. 551.127(i). Each portion of a meeting held by

videoconference call that is required to be open to the public shall be visible and audible and if a problem occurs that causes a meeting to no longer be visible and audible to the public at that location, the meeting must be recessed until the problem is resolved. Sec. 551.127(f). The governing body is required to make at least an audio recording of the meeting and make it available to the public. Sec. 551.127(g). Without regard to whether any member of the governing body is participating remotely, a governing body may allow a member of the public to testify at a meeting from a remote location by videoconference call. Sec. 551.127(k).

Any public meetings that are live-streamed or broadcast over the Internet have no additional requirements that a participant be able to communicate with the governing body. Sec. 551.128(b). This is not mandatory for a home-rule municipality with a population of less than 50,000.

Additionally, for purposes of public testimony, the City Council can adopt reasonable rules regarding the public's right to address the body, including rules that limit the total amount of time that a member of the public may address the body on a given item. Sec. 551.007(c). These rules should also identify all boards and commissions to which they will apply. Sec. 551.001(3)(C) and (D).

The current suspension of rules is still in effect until the Governor's order expires. The suspensions include:

- those that require a quorum or a presiding officer to be physically present at the specified location of the meeting; provided, however, that a quorum still must participate in the telephonic or videoconference meeting;
- those that require physical posting of a notice; provided, however, that any online notice must include a toll-free dial-in number or a free-of-charge videoconference link, along with an electronic copy of any agenda packet;
- those that require the telephonic or videoconference meeting to be audible to members of the public who are physically present at the specified location of the meeting; provided, however, that the dial-in number or videoconference link provided in the notice must make the meeting audible to members of the public and allow for their two-way communication; and further provided that a recording of the meeting must be made available to the public;
- those that may be interpreted to require face-to-face interaction between members of the public and public officials; provided, however, that governmental bodies must offer alternative methods of communicating with their public officials.

II. GENERAL PROVISIONS

Telephonic Call Meetings

The Act authorizes governmental bodies to conduct meetings by telephone conference call under limited circumstances and subject to procedures that may include special requirements for notice, record-keeping and two-way communication between meeting locations. A governmental body may hold an open or closed meeting by telephone conference call if: (1) an emergency or public necessity exists within the meaning of Section 551.045 of this chapter; and (2) the convening at one location of a quorum of the governmental body is difficult or impossible; or (3) the meeting is held by an advisory board.

The emergency telephone meeting is subject to the notice requirements applicable to other meetings held under the Act. The open portions of the meeting are required to be audible to the public at the location

specified in the notice and must be recorded. The provision also requires the location of the meeting to be set up to provide two-way communication during the entire conference call and the identity of each party to the conference call to be clearly stated prior to speaking.

A governmental body may consult with its attorney by telephone conference call, videoconference call or communications over the Internet, unless the attorney is an employee of the governmental body.

Videoconference Call Meetings

The Act also authorizes governmental bodies to conduct meetings by videoconference call and, unlike with telephone meetings, does not limit that authority to emergency circumstances. Section 551.127 authorizes a member or employee of a governmental body to participate remotely in a meeting of the governmental body through a videoconference call if there is live video and audio feed of the remote participant that is broadcast live at the meeting and the feed complies with the other provisions of section 551.127. As a preliminary matter, a meeting held by videoconference call must meet the regular notice requirements of the Act. In addition, the Act authorizes a meeting by videoconference call only if a full quorum of the governmental body is physically present at one location of the meeting. In that instance, the notice must specify that location, as well as the intent to have a quorum present there.

The location where the presiding member is physically present must be open to the public during the open portions of the meeting.

Beyond notice and logistics, the Act specifies certain technical requirements. The meeting location where the quorum or presiding member is present as well as each remote location from which a member participates “shall have two-way audio and video communication with each other location during the entire meeting.” The Act requires that, while speaking, each participant’s face must be clearly visible and the voice audible to each other participant and to the members of the public in attendance at the location where the quorum or presiding member is present and any other location of the meeting that is open to the public. The Act additionally requires that each open portion of the meeting is to be visible and audible to the public at the meeting location where the quorum or presiding member is present and that at any time that the meeting is no longer visible and audible to the public, the meeting must be recessed until the problem is resolved. The meeting must be adjourned if the problem is not resolved in six hours. The Act tasks the Department of Information Resources to specify minimum standards for the audio and video signals required at a videoconference meeting and the quality of the signals at each location of the meeting must meet or exceed those standards.

Generally speaking, a remote participant “shall be counted as present at the meeting for all purposes.” However, if the audio or video communication is lost for any portion of the meeting, the remote participant is considered absent during that time. Should this occur, the governmental body may continue the meeting only as follows: (1) If the meeting is being held by a statewide body or one that extends into three or more counties, there must continue to be a quorum participating in the meeting. (2) If the meeting is held by another governmental body, a full quorum must remain physically present at the meeting location.

Section 551.127 also requires the governmental body to “make at least an audio recording of the meeting” and to make the recording available to the public. And section 551.127 expressly permits a governmental body to allow a member of the public to testify at a meeting from a remote location by videoconference call.

Meetings Broadcast over the Internet

Section 551.128 of the Act provides that with certain exceptions a governmental body has discretion to broadcast an open meeting over the Internet and sets out the requirements for a broadcast. The exceptions referred to in section 551.128(b-1) make the broadcast of open meetings over the Internet mandatory for a transit authority or department, an elected school district board of trustees for a school district with a student enrollment of 10,000 or more, an elected governing body of a home-rule municipality that has a population of 50,000 or more, and a county commissioners court in a county with a population of 125,000 or more.

A governmental body required to broadcast its open meetings over the Internet under section 551.128(b-1) must make a video and audio recording of “each regularly scheduled open meeting that is not a work session or a special called meeting” and must make the recording available not later than seven days after the date of the meeting. And the governmental body must maintain an archived recording of the meeting on the Internet “for not less than two years after the date the recording was first made available.” Subsection 551.128(b-1) further requires an elected school district board of trustees of a school district with an enrollment of 10,000 or more to make an audio or video recording of any work session or special called meeting at which the board of trustees “votes on any matter or allows public comment or testimony.” Subsection 551.128(b-2) provides that a governmental body is not required to establish a separate Internet site but may make the archived recording available “on an existing Internet site, including a publicly accessible videosharing or social networking site.” Similarly, section 472.036 of the Transportation Code requires a metropolitan planning organization that serves one or more counties with a population of 350,000 to broadcast over the Internet each open meeting held by the policy board of the metropolitan planning organization.

Certain junior college districts and general academic teaching institutions are required under sections 551.1281 and 551.1282 to broadcast their open meetings in the manner provided by section 551.128. An Internet broadcast does not substitute for conducting an in-person meeting but provides an additional way of disseminating the meeting. Outside of the Act, certain entities may have specific provisions imposing broadcasting requirements.

COVID Disaster Declaration Suspensions

Under the Executive Orders of the Governor during the COVID-19 Declared Disaster, several provisions of the Texas Open Meetings Act (TOMA) were suspended relating to telephonic conference and videoconference of public meetings and participation by the public. See **Exhibit A**. In response to public support for these more accessible options, new TOMA provisions have been proposed by H.B. 2683 and passed by the House.

Public meetings have been allowed to occur remotely with both governing body members and the public able to participate via video conference call or telephonic conference call. Any governing body member participating remotely instead of being physically present counts towards a quorum. Any meeting held in conformance with the TOMA and these limited suspensions are required to post any necessary information for participation in the meeting notice. The notice must include instructions for remote participation both for video conference call or telephonic conference call. The public must be allowed to speak at the meeting, whether remotely or in person, and can submit public comments in advance of the meeting that will be incorporated into the meeting record. The notice must include instructions on submitting written public comments as well.

At this point, several cities are using a hybrid meeting where the governing body is attending in person and the public is allowed to attend with limited in-person seating capacity and the meeting is available for remote participation via video conference call or telephonic conference call. Those attending remotely can speak on any item or public comments. While many of these meetings have been conducted successfully, some have had issues with public access, such as inadequate accommodation for the public to observe and participate or difficulty in providing consistent enforcement for individuals wishing to speak. This has led to numerous bills being filed this legislative session to amend the TOMA provisions to allow more relaxed standards for participation remotely.

Public Testimony

Added in the last legislative session by House Bill 2840, section 551.007 relates to the right of a member of the public to address certain governmental bodies. New section 551.007 requires a governmental body to “allow each member of the public who desires to address the body regarding an item on an agenda for an open meeting of the body to address the body regarding the item at the meeting before or during the body’s consideration of the item.” It also expressly authorizes a governmental body to “adopt reasonable rules regarding the public’s right to address the body . . . , including rules that limit the total amount of time that a member of the public may address the body on a given item.” A rule limiting the amount of time a member of the public may address the governmental body must provide for twice the allotted time for a member of the public who addresses a governmental body through a translator if the governmental body does not use simultaneous translation equipment. Lastly, section 551.007 states that a governmental body “may not prohibit public criticism of the governmental body, including criticism of any act, omission, policy, procedure, program, or service,” except criticism otherwise prohibited by law.

Exhibit A

STATUTORY PROVISIONS

§ 551.007. Public Testimony

(a) This section applies only to a governmental body described by Sections 551.001(3)(B)–(L).

(b) A governmental body shall allow each member of the public who desires to address the body regarding an item on an agenda for an open meeting of the body to address the body regarding the item at the meeting before or during the body's consideration of the item.

(c) A governmental body may adopt reasonable rules regarding the public's right to address the body under this section, including rules that limit the total amount of time that a member of the public may address the body on a given item.

(d) This subsection applies only if a governmental body does not use simultaneous translation equipment in a manner that allows the body to hear the translated public testimony simultaneously. A rule adopted under Subsection (c) that limits the amount of time that a member of the public may address the governmental body must provide that a member of the public who addresses the body through a translator must be given at least twice the amount of time as a member of the public who does not require the assistance of a translator in order to ensure that non-English speakers receive the same opportunity to address the body.

(e) A governmental body may not prohibit public criticism of the governmental body, including criticism of any act, omission, policy, procedure, program, or service. This subsection does not apply to public criticism that is otherwise prohibited by law.

§ 551.125. Other Governmental Body

(a) Except as otherwise provided by this subchapter, this chapter does not prohibit a governmental body from holding an open or closed meeting by telephone conference call.

(b) A meeting held by telephone conference call may be held only if:

- (1) an emergency or public necessity exists within the meaning of Section 551.045 of this chapter; and
- (2) the convening at one location of a quorum of the governmental body is difficult or impossible; or

- (3) the meeting is held by an advisory board.
- (c) The telephone conference call meeting is subject to the notice requirements applicable to other meetings.
- (d) The notice of the telephone conference call meeting must specify as the location of the meeting the location where meetings of the governmental body are usually held.
- (e) Each part of the telephone conference call meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting as the location of the meeting and shall be recorded. The recording shall be made available to the public.
- (f) The location designated in the notice as the location of the meeting shall provide two-way communication during the entire telephone conference call meeting and the identification of each party to the telephone conference call shall be clearly stated prior to speaking.

§ 551.127. Videoconference Call

- (a) Except as otherwise provided by this section, this chapter does not prohibit a governmental body from holding an open or closed meeting by videoconference call.
- (a-1) A member or employee of a governmental body may participate remotely in a meeting of the governmental body by means of a videoconference call if the video and audio feed of the member's or employee's participation, as applicable, is broadcast live at the meeting and complies with the provisions of this section.
- (a-2) A member of a governmental body who participates in a meeting as provided by Subsection (a-1) shall be counted as present at the meeting for all purposes.
- (a-3) A member of a governmental body who participates in a meeting by videoconference call shall be considered absent from any portion of the meeting during which audio or video communication with the member is lost or disconnected. The governmental body may continue the meeting only if a quorum of the body remains present at the meeting location or, if applicable, continues to participate in a meeting conducted under Subsection (c).
- (b) A meeting may be held by videoconference call only if a quorum of the governmental body is physically present at one location of the meeting, except

as provided by Subsection (c).

(c) A meeting of a state governmental body or a governmental body that extends into three or more counties may be held by videoconference call only if the member of the governmental body presiding over the meeting is physically present at one location of the meeting that is open to the public during the open portions of the meeting.

(d) A meeting held by videoconference call is subject to the notice requirements applicable to other meetings in addition to the notice requirements prescribed by this section.

(e) The notice of a meeting to be held by videoconference call must specify as a location of the meeting the location where a quorum of the governmental body will be physically present and specify the intent to have a quorum present at that location, except that the notice of a meeting to be held by videoconference call under Subsection (c) must specify as a location of the meeting the location where the member of the governmental body presiding over the meeting will be physically present and specify the intent to have the member of the governmental body presiding over the meeting present at that location. The location where the member of the governmental body presiding over the meeting is physically present shall be open to the public during the open portions of the meeting.

(f) Each portion of a meeting held by videoconference call that is required to be open to the public shall be visible and audible to the public at the location specified under Subsection (e). If a problem occurs that causes a meeting to no longer be visible and audible to the public at that location, the meeting must be recessed until the problem is resolved. If the problem is not resolved in six hours or less, the meeting must be adjourned.

(g) The governmental body shall make at least an audio recording of the meeting. The recording shall be made available to the public.

(h) The location specified under Subsection (e), and each remote location from which a member of the governmental body participates, shall have two-way audio and video communication with each other location during the entire meeting. The face of each participant in the videoconference call, while that participant is speaking, shall be clearly visible, and the voice audible, to each other participant and, during the open portion of the meeting, to the members

of the public in attendance at a location of the meeting that is open to the public.

(i) The Department of Information Resources by rule shall specify minimum standards for audio and video signals at a meeting held by videoconference call.

The quality of the audio and video signals perceptible at each location of the meeting must meet or exceed those standards.

(j) The audio and video signals perceptible by members of the public at each location of the meeting described by Subsection (h) must be of sufficient quality so that members of the public at each location can observe the demeanor and hear the voice of each participant in the open portion of the meeting.

(k) Without regard to whether a member of the governmental body is participating in a meeting from a remote location by videoconference call, a governmental body may allow a member of the public to testify at a meeting from a remote location by videoconference call.

§ 551.128. Internet Broadcast of Open Meeting

(a) In this section, “Internet” means the largest nonproprietary cooperative public computer network, popularly known as the Internet.

(b) Except as provided by Subsection (b-1) and subject to the requirements of this section, a governmental body may broadcast an open meeting over the Internet.

(b-1) A transit authority or department subject to Chapter 451, 452, 453, or 460, Transportation Code, an elected school district board of trustees for a school district that has a student enrollment of 10,000 or more, an elected governing body of a home-rule municipality that has a population of 50,000 or more, or a county commissioners court for a county that has a population of 125,000 or more shall:

(1) make a video and audio recording of reasonable quality of each:

(A) regularly scheduled open meeting that is not a work session or a special called meeting; and

(B) open meeting that is a work session or special called meeting if:

(i) the governmental body is an elected school district board of trustees for a school district that has a student enrollment of 10,000 or more; and

(ii) at the work session or special called meeting, the board of trustees votes on any matter or allows public comment or testimony;

and

(2) make available an archived copy of the video and audio recording of each meeting described by Subsection (1) on the Internet.

(b-2) A governmental body described by Subsection (b-1) may make available the archived recording of a meeting required by Subsection (b-1) on an existing Internet site, including a publicly accessible video-sharing or social networking site. The governmental body is not required to establish a separate Internet site and provide access to archived recordings of meetings from that site.

(b-3) A governmental body described by Subsection (b-1) that maintains an Internet site shall make available on that site, in a conspicuous manner:

(1) the archived recording of each meeting to which Subsection (b-1) applies; or

(2) an accessible link to the archived recording of each such meeting.

(b-4) A governmental body described by Subsection (b-1) shall:

(1) make the archived recording of each meeting to which Subsection (b-1) applies available on the Internet not later than seven days after the date the recording was made; and

(2) maintain the archived recording on the Internet for not less than two years after the date the recording was first made available.

(b-5) A governmental body described by Subsection (b-1) is exempt from the requirements of Subsections (b-2) and (b-4) if the governmental body's failure to make the required recording of a meeting available is the result of a catastrophe, as defined by Section 551.0411, or a technical breakdown.

Following a catastrophe or breakdown, a governmental body must make all reasonable efforts to make the required recording available in a timely manner.

(b-6) A governmental body described by Subsection (b-1) may broadcast a regularly scheduled open meeting of the body on television.

(c) Except as provided by Subsection (b-2), a governmental body that broadcasts a meeting over the Internet shall establish an Internet site and provide access to the broadcast from that site. The governmental body shall provide on the Internet site the same notice of the meeting that the governmental body is required to post under Subchapter C. The notice on the Internet must be posted within the time required for posting notice under Subchapter C.

Exhibit B

OPEN MEETING LAWS SUBJECT TO TEMPORARY SUSPENSION

Effective March 16, 2020, and subject to the following conditions, the following statutory provisions are temporarily suspended to the extent necessary to allow telephonic or videoconference meetings and to avoid congregate settings in physical locations:

- those that require a quorum or a presiding officer to be physically present at the specified location of the meeting; provided, however, that a quorum still must participate in the telephonic or videoconference meeting

- o TEX. GOV'T CODE § 551.122(b)
- o TEX. GOV'T CODE § 551.127(a-3), (b)–(c), (e), (h)–(i)
- o TEX. GOV'T CODE § 551.130(c)–(d), (i)
- o TEX. GOV'T CODE § 322.003(d), (e)(2)
- o TEX. GOV'T CODE § 845.007(f)(2)
- o TEX. GOV'T CODE § 855.007(f)(2)
- o TEX. CIV. PRAC. & REM. CODE § 74.102(f)
- o TEX. INS. CODE § 2151.057(d)(1)
- o TEX. LOCAL GOV'T CODE § 379B.0085(a)

- those that require physical posting of a notice; provided, however, that the online notice must include a toll-free dial-in number or a free-of-charge videoconference link, along with an electronic copy of any agenda packet

- o TEX. GOV'T CODE § 551.043(b)(2)–(3)
- o TEX. GOV'T CODE §§ 551.049–551.051

- those that require the telephonic or videoconference meeting to be audible to members of the public who are physically present at the specified location of the meeting; provided, however, that the dial-in number or videoconference link provided in the notice must make the meeting audible to members of the public and allow for their two-way communication; and further provided that a recording of the meeting must be made available to the public

- o TEX. GOV'T CODE § 551.121(f)(1)
- o TEX. GOV'T CODE § 551.122(d)
- o TEX. GOV'T CODE § 551.125(e)–(f)
- o TEX. GOV'T CODE § 551.126(d)(1)
- o TEX. GOV'T CODE § 551.127(f), (j)
- o TEX. GOV'T CODE § 551.130(e)–(f)
- o TEX. GOV'T CODE § 551.131(e)(1)
- o TEX. GOV'T CODE § 322.003(e)(3)
- o TEX. GOV'T CODE § 436.054(e)
- o TEX. GOV'T CODE § 845.007(f)(3)

- o TEX. GOV'T CODE § 855.007(f)(3)
- o TEX. AGRIC. CODE § 41.061(c)–(d)
- o TEX. AGRIC. CODE § 41.1565(c)–(d)
- o TEX. AGRIC. CODE § 41.205(d)–(e)
- o TEX. AGRIC. CODE § 62.0021(c)–(d)
- o TEX. EDUC. CODE § 66.08(h)(2)(B)
- o TEX. FAM. CODE § 264.504(e)
- o TEX. FIN. CODE § 11.106(c)(4)–(5)
- o TEX. FIN. CODE § 154.355(d)(2)–(3)
- o TEX. INS. CODE § 462.059(a)(1), (c)
- o TEX. INS. CODE § 463.059(d)
- o TEX. INS. CODE § 2151.057(e)
- o TEX. INS. CODE § 2210.1051(b)(2)–(3)
- o TEX. INS. CODE § 2211.0521(b)(2)–(3)
- o TEX. LOCAL GOV'T CODE § 379B.0085(b)(2)–(3)
- o TEX. SPEC. LOC. DIST. CODE § 9601.056(c)
- o TEX. TRANSP. CODE § 173.106(e)–(f)
- o TEX. TRANSP. CODE § 366.262(c)–(d)
- o TEX. TRANSP. CODE § 370.262(c)–(d)

• those that may be interpreted to require face-to-face interaction between members of the public and public officials; provided, however, that governmental bodies must offer alternative methods of communicating with their public officials.

- o TEX. GOV'T CODE § 551.007(b)
- o TEX. GOV'T CODE § 551.125(b)(1), (d)

These suspensions are in effect until terminated by the Office of the Governor, or until the March 13, 2020 disaster declaration is lifted or expires.

To: Honorable Mayor Gregory C. Maxton and City Council Members
City of Fair Oaks Ranch

**Capital Improvements Advisory Committee Semiannual Progress Report
March 30, 2021 Meeting**

Overview:

A Capital Improvements Plan is required by LGC § 395, Financing Capital Improvements Required by New Development in Municipalities, Counties and Certain other Local Governments; to identify capital improvements or facility expansions required by new service units projected; and to include a description of the service area and projection of changes in land uses, densities, intensities, and populations in the service area over a 10-year period. Since the City imposes an impact fee, a periodic review shall be performed at least every five years to determine the need of updating the plans and/or impact fees.

To partially pay for the extension of its Water and Waste Water systems attributable to new development, the City of Fair Oaks Ranch has opted to charge impact fees as allowed under Texas Local Government Code Title 12. Subtitle C. Chapter 395 (Code).

The Code requires the governing body (City) to appoint a Capital Improvements Advisory Committee (CIAC). The CIAC serves in an advisory capacity and is established to:

1. advise and assist the City in adopting land use assumptions;
2. review the capital improvements plan and file written comments;
3. monitor and evaluate implementation of the capital improvements plan;
4. file semiannual reports with respect to the progress of the capital improvements plan and report to the City any perceived inequities in implementing the plan or imposing the impact fee; and
5. advise the City of the need to update or revise the land use assumptions, capital improvements plan, and impact fee.

Progress Report:

The Capital Improvements Advisory Committee along with staff met at 2:00 PM on Tuesday March 30, 2021 to welcome and provide the history and overview of the CIAC to its newest members. City Attorney, Dan Santee, provided a presentation outlining the CIAC's role in financing capital improvements through impact fees. The City's CIAC, as appointed by the City Council, is composed of eight members of the community with at least four being members of the development, real estate or building industry as required by the Code. Committee members are: John Merritt, Chair, Harold Manning, Dana Green, Paul Mebane, Marcus Garcia, Ben Koerner, Arthur Waterman, and Chris Weigand. After a discussion amongst the membership, it has been recommended to assign designations to members as follows:

- John Merritt – Building Industry
- Harold Manning – Development Industry
- Dana Green – Development Industry
- Marcus Garcia – Development Industry
- Arthur Waterman – Building Industry
- Chris Weigand – Real Estate

Staff provided updates on city studies/projects including an elevated storage tank, a wastewater treatment plant, a stormwater utility and the Unified Development Code. Additionally, the CIAC received an overview of capital improvement projects, a contribution in aid review, and a update on land use assumptions.

The CIAC members expressed an interest in expanding their responsibilities to include other utilities such as roadway impact fees and would like Council to provide an opportunity to do so.

The next Semi Annual CIAC meeting is scheduled for Wednesday, September 22, 2021 at 9:00 A.M.

Signed: _____
John Merritt, CIAC Chairperson

Date: _____

To: Honorable Mayor Garry Manitzas and City Council Members
City of Fair Oaks Ranch

**Capital Improvements Advisory Committee Semiannual Progress Report
September 24, 2020 Meeting**

Overview:

A Capital Improvements Plan is required by LGC §395, Financing Capital Improvements Required by New Development in Municipalities, Counties and Certain other Local Governments; to identify capital improvement or facility expansions required by new service units projected; and to include a description of the service area and projection of changes in land uses, densities, intensities, and population in the service area over a 10-year period. Since the City imposes an impact fee, a periodic review shall be performed at least every five years to determine the need of updating the plans and/or impact fees.

Land use assumptions and projects to support proposed growth were evaluated and a Water and Wastewater Impact Fee report was prepared by Freese and Nichols dated March 2020. On March 5, 2020, City Council issued Ordinance No. 2020-04 that increased the Water Impact Fees per LUE Equivalent from \$5,400.00 to \$8,670.33 and Wastewater Impact Fees per LUE Equivalent from \$1,550.00 to \$6,068.64. By Ordinance No. 2016-03 the Council established that the Impact Fees in place at the date of recordation of a subdivision plat should apply to that development.

Progress Report:

The Capital Improvements Advisory Committee and Staff met at 9:00 AM on September 24, 2020 to review and evaluate the current land use assumptions and capital improvements plan. This report also includes the September 2019 through December 2019 report to Council. Which also included the recommendation to Council to adopt the maximum allowable Impact Fees as recommended by Freese & Nichols draft report dated December 12, 2019.

The March 25, 2020 Semi-Annual Meeting was cancelled due to the COVID-19 City's Plan of Action procedures effective March 20, 2020.

On July 31, 2020 John Merritt received the resignation of Monte McCormick, Resident Representative, from the CIAC effective as of July 31, 2020. Mr. McCormick has moved out of the area and is no longer a resident of Fair Oaks Ranch.

As reported to the CIAC the City Council new process for open positions effective June 4, 2020 went into effect and the sub-committee proceeded with the new process to fill the open positions and set term limits. Interviews were conducted and recommendations made by the subcommittee to the City Council.

As presented to the CIAC, Resolution 2020-17 lists the following qualified citizen volunteers are appointed to serve on the City of Fair Oaks Ranch Capital Improvement Advisory Committee, effective 10/1/2020:

Place 1	John Merritt (Building)	Term: 10/1/2020 - 9/30/2021
Place 2	Fran Driskell (Real Estate)	Term: 10/1/2020 - 9/30/2021
Place 3	Harold Manning (Development)	Term: 10/1/2020 - 9/30/2021
Place 4	Dana Green (Development)	Term: 10/1/2020 - 9/30/2022
Place 5	Paul Mebane	Term: 10/1/2020 - 9/30/2022

Place 6	Marcus Garcia	Term: 10/1/2020 - 9/30/2022
Place 7	Ben Koerner	Term: 10/1/2020 - 9/30/2023
Place 8	Arthur Waterman	Term: 10/1/2020 - 9/30/2023
Place 9	Chris Weigand	Term: 10/1/2020 - 9/30/2023

There are no recommendations to Council at this time.

The next LUA/CIP/Impact Fee CIAC Meeting is scheduled for Wednesday March 17, 2021 at 9:00 AM at which time the Committee will again review the status and appropriateness of the current Impact Fees and if there is justification for any update in the City's Land Use Assumptions and CIPs.

Signed: _____
John Merritt, CIAC Chairman

Date: _____