

CITY OF LAGO VISTA, TEXAS

RESOLUTION NO. 21-1896

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGO VISTA, TEXAS ADOPTING A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF LAGO VISTA AND THE LAGO VISTA PROPERTY OWNERS' ASSOCIATION, INC.

WHEREAS, the City Council of the City of Lago Vista ("City Council") finds it to be in the public interest, and necessary to document clear responsibilities, obligations and legal limitations regarding use of public funds; and

WHEREAS, the City owns property within the Lago Vista Property Owner's Association (LVPOA) territory; and

WHEREAS, by virtue of its property ownership, the City is a member of the LVPOA; and

WHEREAS, to the extent allowed by law, the LVPOA has authority to assess and collect assessments on residential property within their territory; and

WHEREAS, the LVPOA has issued assessments on City-owned property; and

WHEREAS, the Texas Constitution prohibits the City from making gratuitous payments to individuals, associations, or corporations when the city does not receive adequate return consideration for its payments; and

WHEREAS, due to the limitations of the City's membership, the benefits conferred are extremely limited and virtually non-existent for the general public; and

WHEREAS, the Memorandum of Understanding will document the legal limitations regarding the LVPOA's authority to collect assessments from the City for any property the City owns with the LVPOA territory.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LAGO VISTA, TEXAS:


Section 1. The foregoing recitals are incorporated into this Resolution by reference as findings of fact as if expressly set forth herein.

Section 2. The City Council hereby adopts the Memorandum of Understanding attached to this Resolution as Exhibit "A".

Section 3. The meeting at which this Resolution was passed was open to the public, and public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551.

AND, IT IS SO RESOLVED.

PASSED AND APPROVED this 19th day of August 2021.



Ed Tidwell, Mayor

ATTEST:



Sandra Barton, City Secretary



On a motion by Councilmember Sullivan, seconded by Councilmember Weatherly, the above and foregoing instrument was passed and approved.

STATE OF TEXAS

COUNTY OF TRAVIS

**MEMORANDUM OF UNDERSTANDING BETWEEN
CITY OF LAGO VISTA, TEXAS AND
LAGO VISTA PROPERTY OWNERS' ASSOCIATION**

THIS MEMORANDUM OF UNDERSTANDING (this "MOU") is entered into as of the ____ day of _____, 2021, by and between the **CITY OF LAGO VISTA**, a Texas home rule municipal corporation with its principal offices being located at 5803 Thunderbird, Lago Vista, Texas 78645 (the "City" or "Lago Vista"), and **LAGO VISTA PROPERTY OWNERS' ASSOCIATION, INC.**, a Texas Non-Profit Corporation ("LVPOA" or the "Association") with its principal offices being located at 20503 Dawn Drive, Lago Vista, Texas 78645.

RECITALS

WHEREAS, the purpose of this MOU is to set forth certain commitments between the City and the Association with respect to Assessments, Fees, and Charges, as those terms are defined in the LVPOA Bylaws, charged to owners of property in a residential subdivision that requires membership in the Lago Vista Property Owners' Association, Inc.; and

WHEREAS, the Association has been organized for the purposes set forth in its Articles of Incorporation and shall have all the powers granted by the Texas Non-Profit Corporation; and

WHEREAS, in accordance with Section 5.01 of the Lago Vista Property Owners' Association Bylaws (hereinafter "the Bylaws") effective December 8, 2021, as amended October 19, 2016, every owner who acquires property in a residential subdivision shall be a member of the Association, making membership mandatory; and

WHEREAS, CITY owns multiple lots in residential subdivisions subject to the Association's Bylaws; and

WHEREAS, the residential properties owned by CITY are not being used for residential purposes; and

WHEREAS, in accordance with Article VI of the Bylaws, the Association shall have the right and authority to assess and collect Annual Assessments, Special Assessments, and other fees and charges from Owners as provided by the applicable Declarations of Reservations, Articles of Incorporation, the Bylaws and/or other dedicatory instruments to the extent allowed by law; and

WHEREAS, in accordance with Section 5.03 of the Bylaws, members shall have common rights of use and enjoyment in Common Properties and Amenities, subject to payment of all annual assessments, special assessments and other legally assessed fees and charges owed to the Association, as more fully described in Article VI, and for so long as they adhere to such rules and regulations as may be established by the Board; and

WHEREAS, in accordance with Section 5.03 of the Bylaws, where the Owner is a Corporation, such as the CITY, the Association Bylaws limit the common rights of use and enjoyment in Common Properties and Amenities to only one person designated in writing; and

WHEREAS, the CITY'S payment of any Assessments does not provide City-wide access to LVPOA parks or other special consideration, and thus no public benefit to the taxpayers of CITY; and

WHEREAS, CITY is not receiving any other benefits of membership for the payment of the Assessments; and

WHEREAS, Article III, section 52(a) and article XI, section 3 of the Texas Constitution prohibit municipalities from making "gratuitous payments to individuals, associations, or corporations"; and

WHEREAS, the assessments by the LVPOA, and the City's payment of these assessments is considered "gratuitous" as contemplated by these Constitutional provisions because CITY does not receive adequate return consideration for its payments; and

WHEREAS, the City Council of the CITY desires to authorize the Mayor to execute any MOU between the Parties as well as authorize the City Manager to take all steps necessary to effectuate the terms of the MOU; and

WHEREAS, the Board of Directors of the LVPOA desires to authorize the President of the Board to execute any MOU between the Parties as well as authorize the LVPOA General Manager to take all steps necessary to effectuate the terms of the MOU.

NOW, THEREFORE, this Memorandum of Understanding, when accepted by both parties shall constitute the entire agreement as to the scope of responsibilities of each party and the terms of the MOU.

The Parties does mutually agree as follows:

AGREEMENT, TERM AND TERMINATION

1. Agreement: The LVPOA acknowledges that CITY is prohibited by law from paying LVOPA assessments, fees, and other charges. LVOPA agrees to discontinue charging CITY any and all assessments, fees, and other charges otherwise due and owing to the LVPOA in accordance

with the LVPOA Bylaws. LVOPA further agrees to refund any assessments, fees, and other charges previously paid by CITY.

2. Term This MOU shall become effective on the date hereof and shall remain in full force and effect until the earlier of: (a) execution of an agreement providing CITY with adequate consideration for membership in the LVPOA, or (b) a date certain to be mutually determined by the Parties.

3. Termination. This MOU may be terminated by mutual agreement of the Parties. In the event of termination, each party waives any and all claims for reliance, consequential damages, and any other damages.

MISCELLANEOUS

4. Recitals. The recitals set forth above are, by this reference, incorporated into and deemed a part of this MOU.

5. Venue. The obligations of the parties to this MOU are performable in Travis County, Texas, and exclusive venue for any legal action in connection with this MOU shall lie in Travis County, Texas.

6. Governing Law. This MOU shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of Texas, without regard to conflicts of law or choice of law principals of Texas or any other state.

7. No Partnership, Joint Venture or Joint Enterprise. It is specifically understood that the relationship described in this MOU between the Association and the City is contractual in nature and is not to be construed to create an agency, partnership, joint enterprise or joint venture relationship between the Association and the City; nor shall one party be liable for any debts incurred by the other party in the conduct of such other party's business or function.

8. No Waiver of Immunity by City. Notwithstanding any provision of this MOU to the contrary, nothing in this MOU shall constitute a waiver by the City of any provisions of applicable law relating to any immunity or defense as may be available to the City on behalf of itself, its trustees, officers, employees, and agents.

9. Legal Construction. In case any one or more of the provisions contained in this MOU shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this MOU, and this MOU shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this MOU.

10. Captions and Headings. The captions and headings to the various provisions to this MOU are for convenience of reference only and shall not affect the construction of any provisions of this MOU.

11. Assignment. This MOU and the rights, duties, and obligations hereunder may not be transferred or assigned by either of the parties without the prior written consent of the other party.

12. Successors and Assigns. This MOU shall be binding upon and inure to the benefit of the parties and their respective successors and, except as otherwise provided in this MOU, their assigns.

13. Amendment; Waivers. This MOU may be amended or modified in whole or in part at any time only by an agreement in writing by the parties. No waiver of any term or provision of this Agreement shall be binding unless executed in writing by the party entitled to the benefit thereof.

14. Integration. This MOU and the agreements and documents referred to herein (including the exhibits and schedules hereto) and any provisions incorporated by reference contain the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings, whether written or oral, relating to the subject matter hereof. There are no other agreements, representations or warranties between or among the parties other than those set forth in this MOU and the agreements and documents referred to herein.

15. Notices. All notices, communications, invoices and reports required or permitted under this MOU shall be personally delivered or mailed to the respective parties as follows or to such other address as either party may subsequently specify in writing:

If to the City: City Manager
 City of Lago Vista
 5803 Thunderbird
 Lago Vista, Texas 78645

With a copy to: City Attorney
 City of Lago Vista
 5803 Thunderbird
 Lago Vista, Texas 78645


If to the Association: Cathy Petros, General Manager
 Lago Vista Property Owners' Association, Inc.
 20503 Dawn Drive
 Lago Vista, Texas 78645

With a copy to: *Add law firm info*
Attention:

16. Counterparts. This MOU may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

THIS MOU IS EXECUTED as of the ____ day of _____, 2021, by the Association signing by and through its Board President and the City, signing by and through its Mayor, duly authorized to execute same.

FOR CITY



Ed Tidwell, Mayor



ATTEST:



Sandra Barton, City Secretary

FOR LVPOA

Nash Wisdom, President