

FACILITIES USE AGREEMENT

This Christmas on Mercer Agreement ("Agreement") is made and entered into for the year 2020 by and between the CITY OF DRIPPING SPRINGS, TEXAS, a general law municipality ("CITY"), and the DRIPPING SPRINGS LIONS CLUB, a Texas nonprofit corporation ("LIONS CLUB"). In this Agreement, the CITY, and LIONS CLUB are sometimes individually referred to as a "Party", and collectively referred to as the "Parties".

RECITALS:

WHEREAS, each year the event named, Christmas on Mercer ("Christmas on Mercer"), is held in the City of Dripping Springs, Hays County, Texas; and

WHEREAS, CITY maintains the road, or streets known as Mercer Street and Old Fitzhugh Road, in the City (the "Streets"); and

WHEREAS, LIONS CLUB desires to participate in Christmas on Mercer, and to use the Streets for festival activities; and

WHEREAS, CITY and LIONS CLUB desire to participate and serve as sponsors to the events of Christmas on Mercer; and

WHEREAS, subject to the terms and conditions hereinafter stated, CITY agrees to allow LIONS CLUB to participate in Christmas on Mercer and use the Streets; and

WHEREAS, the Parties desire to enter into this Agreement to set forth in writing their respective rights, duties, and obligations.

NOW, THEREFORE, WITNESSETH:

That for and in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually agree as follows:

ARTICLE I. RECITALS

1.01 The foregoing recitals are incorporated into this Agreement by reference as if expressly set forth herein.

ARTICLE II. DEFINITIONS

2.01 Agreement means this binding legal contract between the Parties. The Agreement includes any exhibits, addenda, and/or amendments. Any inconsistencies or conflicts in the contract documents shall be resolved by giving preference in the following order:

- (a) This Agreement;
- (b) Exhibits.

2.02 City means the City of Dripping Springs, an incorporated municipality in Hays County, Texas.

2.03 Effective Date means the date upon which the binding signatures of all Parties to this Agreement are affixed.

2.04 Force Majeure means acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind from the government of the United States, the State of Texas, Hays County, or military authority, insurrections, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, restraint of the government and the people, explosions, or other causes not reasonably within the control of the party claiming such inability.

2.05 Lions Club means the Dripping Springs Lions Club, a Texas nonprofit corporation.

2.06 Triangle means the city owned property bordered by Highway 290, East Mercer Street, and Ranch Road 12.

2.07 Certain other capitalized terms have the meanings given in the Recitals or section of this Agreement where first used.

ARTICLE III. TERM

3.01 This Agreement shall be effective on the Effective Date, and shall remain in full force and effect until thirty (30) days after the event date, December 5, 2020.

ARTICLE IV. OBLIGATIONS

4.01 Obligations of CITY.

- (a) CITY agrees to allow LIONS CLUB the use of the CITY Streets for Christmas on Mercer activities.
- (b) CITY agrees to allow LIONS CLUB the use of the CITY Streets beginning on December 5, 2020 6:30 a.m., and remain on the premises until December 5, 2020, midnight.
- (c) CITY agrees to a partial street closure of Mercer Street from the intersection with US Highway 290 to the Mercer Street Bridge and a portion of Old Fitzhugh Road from Mercer Street to the driveway of the Stephenson Building at 101 Old Fitzhugh Road, beginning at 6:30 a.m., on the day of the event until 9:30 p.m., in accordance with the CITY's Traffic Control Plan.
- (d) CITY agrees to draft and publish public notices in the local newspaper regarding the road closures.
- (e) CITY agrees to draft and distribute public notice to the affected property owners in the

area prior to the events.

- (f) CITY agrees to prepare a minimum of two (2) press releases and community events postings to be released prior to the events and after the events as necessary.
- (g) CITY agrees to host and manage a section on the CITY's website for vendor applications, event schedules, sponsorship forms and information.
- (h) CITY agrees to assist in the solicitation of sponsorships for the event.
- (i) CITY shall review and approve all advertising related to the event prior to its placement, or printing.
- (j) The CITY confirms that it has obtained insurance through the Texas Municipal League Intergovernmental Risk Pool (TML-IRP) that covers its streets and public areas. Such insurance shall be made available to LIONS CLUB as a participant in the Christmas on Mercer events to the extent allowed by the policy and state law.
- (k) CITY agrees to provide and install road barricades, and t, as provided in Section 4.02, in areas in compliance with the CITY's Traffic Control Plan.
- (l) CITY agrees to provide Hays County Sheriffs deputies, at the CITY's expense, to guard and patrol the event areas, as necessary. The hours and number of deputies shall be determined by CITY staff.
- (m) CITY agrees to coordinate the attendance of Emergency Services personnel and Fire Department personnel for the event as well as provide an Incident Emergency Plan.
- (n) CITY agrees to allow Christmas holiday decorations, including a Christmas tree, to be erected by the PARTIES on the Triangle without permits or licenses from CITY.
- (o) CITY agrees to provide, or provide for the placement of, lights and light decorations for the Triangle that are the same or similar as those provided by the City during the 2019 event.
- (p) CITY agrees to set up the Christmas Tree at the Triangle on or before November 30, 2020.
- (q) CITY shall transport and erect barricades in compliance with the CITY's Traffic Control Plan at the direction of the CITY's Road Inspector
- (r) CITY agrees to provide trash cans for the event, at the CITY's expense, for the collection and disposal of municipal solid waste generated at the event.
- (s) CITY agrees to allow LIONS CLUB to store Christmas Tree in City Storage with the following conditions: Storage space may not exceed 240 square feet, the LIONS CLUB may access storage area only when accompanied by a CITY employee, the CITY is not

- responsible for any damage or loss of LIONS CLUB property.
- (t) CITY shall provide a roll-off dumpster for all trash accumulated during the event. Any necessary fees or payments for the dumpster and disposal of trash, if any, shall be paid by LIONS CLUB.
 - (u) CITY shall provide an area and time for the Cub Scouts to perform a Flag Retirement Ceremony.

4.02 Obligations of LIONS CLUB.

- (a) LIONS CLUB agrees to review and comply with all rules and regulations adopted by CITY regarding Christmas on Mercer.
- (b) LIONS CLUB shall take reasonable steps to ensure that waste is not performed upon the CITY's Property, and that any damage to the grounds is limited to reasonable wear and tear. Any destruction, damage or injury to CITY's property during the LIONS CLUB's use of the CITY's Property shall be repaired by the LIONS CLUB.
- (c) LIONS CLUB is obligated to remove and properly dispose of all litter, trash and refuse on the CITY's Property as a result of the event.
- (d) LIONS CLUB shall provide a Christmas tree at the Triangle and decorate the tree.
- (e) LIONS CLUB shall coordinate the tree lighting ceremony for the event.
- (f) LIONS CLUB may sell food, and coordinate other food vendor booths for the event.
- (g) LIONS CLUB shall ensure that all food vendors obtain the required permit(s) from the CITY.
- (h) LIONS CLUB shall produce and erect all sponsorship signage required. All signage shall be removed no later than twenty four (24) hours after the conclusion of the event.
- (i) LIONS CLUB shall provide CITY with advertisements for approval and review prior to placement or printing.
- (j) LIONS CLUB and CITY shall jointly produce and erect all advertisements related to Christmas on Mercer. All signage shall be removed no later than twenty four (24) hours after the conclusion of the event.
- (k) LIONS CLUB agrees to provide any such miscellaneous supplies as are deemed necessary for the event.
- (l) LIONS CLUB shall sell merchandise and coordinate merchandise vendor booths.

- (m) LIONS CLUB shall provide the CITY with twenty-five (25%) percent of the proceeds earned from merchandise vendor booth fees during the event. Such payment shall be made by LIONS CLUB to CITY no later than ten (10) days after the event in the form of a check, or money order.
- (n) LIONS CLUB shall pay the CITY twenty-five (25%) percent of the proceeds earned from food vendor booth fees during the event. Such payment shall be made no later than ten (10) days after the event and paid to the CITY in the form of a check, or money order.
- (o) CITY agrees to provide electricity for the event at CITY's expense. The LIONS CLUB agrees to remit to the CITY the electric fee charged to vendors (if any) to reimburse the CITY. Such payment shall be made by LIONS CLUB to CITY no later than thirty (30) days after the event in the form of a check, or money order.
- (p) LIONS CLUB shall contract for and coordinate the, Pony Rides, and Trackless Train Rides if such activities are allowed by the City.
- (q) LIONS CLUB is expressly authorized to enter into its arrangements with specific photographers to provide exclusive services for certain activities related to the event, such as photographs with a Santa Claus figure.
- (r) LIONS CLUB shall provide at least four (4) portable toilets and (4) handwashing stations for use at the event.
- (s) LIONS CLUB shall provide "Santa's Mailbox" and photo opportunity area.
- (t) LIONS CLUB shall manage its bank account and provide financial records to the CITY.
- (u) If the event is cancelled by the LIONS CLUB, the LIONS CLUB shall notify the CITY immediately upon making the decision to cancel the event. LIONS CLUB shall reimburse the CITY for actual expenses the CITY incurred prior to the cancellation of the event. Actual expenses shall include newspaper publication costs, other publication costs, and any other amounts paid to third parties in relation to Christmas on Mercer. Actual expenses to be reimbursed shall not include city staff time spent on assisting with Christmas on Mercer. The CITY shall mitigate any expenses related to a cancellation of the event and shall provide receipts to the LIONS CLUB upon request. LIONS CLUB shall pay the CITY within thirty (30) days of receiving the request for reimbursement from the CITY following cancellation of the event. Cancellation due to COVID-19 or force majeure shall not require reimbursement and will terminate the LIONS CLUB obligation to pay the CITY a percentage of booth fees.

ARTICLE V. NOTICES

5.01 All notices and other communications in connection with this Agreement shall be in writing

and shall be considered given as follows:

- (a) When delivered personally to the recipient's address as stated in this Agreement; or
- (b) Three (3) days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated in this Agreement.

Notice to CITY:

City of Dripping Springs
Attn: City Administrator
PO Box / 511 Mercer Street
Dripping Springs, TX 78620

Notice to LIONS CLUB:

Dripping Springs Lions Club
Attn: President
PO Box 53
Dripping Springs, TX 78620

Any address or name specified above may be changed by a notice given by the addressee to the other party in accordance with this Article V.

The inability to deliver because of changed address of which no notice was given, or the rejection or other refusal to accept any notice, demand or other communication, shall be deemed to be the receipt of the notice, demand or other communication as of the date of such inability to deliver or the rejection or refusal to accept.

Nothing contained herein shall be construed to restrict the transmission of routine communications between the Parties.

ARTICLE VI. TERMINATION & SUSPENSION

6.01 This Agreement may, by written notice given in the manner hereinafter provided, be terminated by:

- (a) Mutual written consent of the Parties prior to the event date; or
- (b) CITY if a default or breach shall be made by LIONS CLUB with respect to the due and timely performance of any of its covenants and agreements contained herein

6.02 No termination of this Agreement, whether pursuant to Section 6.01 above or otherwise, shall terminate or impair any claim by CITY against LIONS CLUB based upon any breach of this Agreement.

6.03 In the event CITY terminates under this section, the following shall apply: Upon CITY's delivery of the referenced notice to LIONS CLUB, LIONS CLUB shall discontinue all services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement. The Parties agree that LIONS CLUB shall be solely responsible for any payments due to any subcontractors.

ARTICLE VII. GENERAL PROVISIONS

7.01 Assignment. The Parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. This Agreement, any

part thereof, or any interest herein shall not be assigned by LIONS CLUB without the express written consent of the CITY.

7.02 Waiver. No covenant or condition of this Agreement may be waived without consent of the Parties. Forbearance or indulgence by the CITY shall not constitute a waiver of any covenant or condition to be performed pursuant to this Agreement.

7.03 Venue & Enforcement. This Agreement shall be enforceable in Dripping Springs, Texas, and if legal action is necessary by any of the Parties with respect to the enforcement of any or all of the terms or conditions of this Agreement, exclusive venue for same shall lie in *Hays County*, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the *State of Texas*.

7.04 Exclusive agreement. This document, and all appended documents, constitutes the entire Agreement between the Parties. This Agreement may only be amended or supplemented by mutual agreement of the Parties in writing.

7.05 Severability. The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The Parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

7.06 Force Majeure. Neither CITY or LIONS CLUB, shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations hereunder by reasons for which it is not responsible as defined herein. However, notice of such impediment or delay in performance must be timely provided and all reasonable efforts undertaken to mitigate its effects.

7.07 Multiple Counterparts. This Agreement may be executed in multiple counterparts, any one of which shall be considered an original of this document; and all of which, when taken together, shall constitute one and the same instrument.

7.08 Independent Status. LIONS CLUB is independent, and is not CITY's employee. LIONS CLUB's employees or subcontractors are not CITY's employees. This Agreement does not create a partnership, joint venture or agency, express or implied, nor any employer- employee, or borrowed servant relationship by and among the parties.

7.09 Indemnification. LIONS CLUB shall defend (at the option of CITY), indemnify, and hold CITY, their successors, assigns, officers, employees and elected officials harmless from and against all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorney's fees, and any and all other costs or fees arising out of, or incident to, concerning or resulting from the fault of LIONS CLUB or LIONS CLUB's agents, employees, subcontractors, invitees, guest

or trespasser in the performance of LIONS CLUB's obligations under this Agreement, no matter how, or to whom, such loss may occur. Attendees at the Christmas on Mercer event shall be deemed an invitee for purposes of this Section 7.09 indemnification. Nothing herein shall be deemed to limit the rights of CITY or LIONS CLUB (including, but not limited to the right to seek contribution) against any third party who may be liable for an indemnified claim.

7.10 Compliance with Laws & Ordinances. LIONS CLUB, its agents, employees and subcontractors shall use best efforts to comply with all applicable federal and state laws, the Ordinances of the City of Dripping Springs, as amended, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies.

7.11 Third Party Beneficiaries. For purposes of this Agreement, including its intended operation and effect, the Parties specifically agree that: (1) the Agreement only affects matters/disputes between the Parties to this Agreement, and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with the CITY or LIONS CLUB; and (2) the terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either the CITY or LIONS CLUB.

7.12 Governmental Immunity. Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to the CITY. The CITY does not waive, modify, or alter to any extent whatsoever the defense of governmental immunity pursuant to the laws of the state of Texas.

7.13 Standard of Care. LIONS CLUB represent that they employ or contract with trained, experienced and competent persons to perform all of the services, responsibilities and duties specified herein and that such services, responsibilities and duties shall be performed in a manner according to generally accepted industry practices.

7.14 Authority to Act. The Parties each represent and warrant that the signatories on this Agreement are authorized to execute this Agreement. Each party warrants that any action required to be taken in order for this Agreement to be binding on it has been duly and properly taken prior to the execution of this Agreement.

IN WITNESS WHEREOF, the Parties to these presents have executed this Agreement on the dates indicated.

CITY OF DRIPPING SPRINGS:

DRIPPING SPRINGS LIONS CLUB:

Bill Foulds, Jr., Mayor

Doug Marsh, President

Date

Date

ATTEST:

Andrea Cunningham, City Secretary