

## **DONATION AGREEMENT**

This Agreement by and between the City of Dripping Springs, Texas, a Type A, general-law municipality incorporated pursuant to the laws of the State of Texas and located in Hays County, Texas, (“City”) and North Hays County Emergency Services District No. 1 (“District”), a political subdivision of the State of Texas organized and operating pursuant to Chapter 775 of the Health and Safety Code. Service Provider and District are sometimes referred to in this Agreement individually as a “Party” and collectively as the “Parties.”

### **RECITALS**

WHEREAS, the City is a general-law Type A municipality incorporated pursuant to the statutes of the State of Texas, and as such is authorized to provide funds, goods, and services for a public purpose to a community organization;

WHEREAS, the City has express authority to contract with other persons pursuant to Section 51.014 of the Texas Local Government Code;

WHEREAS the City acknowledges that the provision of resources to the District to respond to the COVID-19 Public Health Emergency is for a public purpose;

WHEREAS the City obtained funds for COVID-19-related expenses reimbursements;

WHEREAS the District purchased a Clorox Disinfecting Sprayer (“Sprayer”), more specifically described in the invoice in Attachment “A”, to assist in the District’s response to the COVID-19 Public Health Emergency within the District’s service boundaries; and

WHEREAS, the City wishes to provide to the District funds for the use of the Sprayer, a COVID-19-related expenditure.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties hereto, intending, to be legally bound, agrees as follows:

### **AGREEMENT**

#### **A. General Information.**

- 1) Within a reasonable period after the effective date of this Agreement, the City shall disperse to the District funds in an amount up to four thousand dollars (\$4,000) (the “Funds”) for the use of the District’s Sprayer as described in this Agreement.

- 2) District uses the Sprayer to respond to the COVID-19 Public Health Emergency and other appropriate situations within the District's service boundaries, which includes the residents of the City of Dripping Springs.

**B. Ownership and Maintenance of Sprayer**

- 1) The District owns the Sprayer and is responsible for its care and maintenance. District shall be responsible for any necessary costs of repairs to and maintenance of the Sprayer attributable to normal wear and tear resulting from the use of the Sprayer for its intended purpose, and District shall also be responsible for any repairs of the Sprayer not attributable to normal wear and tear resulting from the use of the Sprayer for its intended use.
- 2) City shall be responsible for any necessary costs of repairs to and maintenance of the Sprayer resulting from City use of the the Sprayer in ways other than its intended purpose by the manufacturer or this Agreement.
- 3) The District shall keep records of the use, operation, and maintenance of the Sprayer.
- 4) Except as permitted in this Sections B, C, and D of this Agreement, District agrees to not waste, sell, trade, transfer, give, or assign the Sprayer to any other organization or entity.

**C. Non-Exclusive Use of Sprayer**

Upon the City's request and based upon the Sprayer's availability, District will provide the City non-exclusive access to the Sprayer. At District's sole discretion, District may permit entities other than the District and City access and use of the Sprayer to assist in the response to the COVID-19 Public Health Emergency and other appropriate situations.

**D. Disposal of Sprayer**

Upon the City's written consent, which shall not be unreasonably withheld or delayed, the District may sell or otherwise dispose of the Sprayer in accordance with Section 775.0735 of the Texas Health and Safety Code Section and Chapter 263 of the Texas Local Government Code. The District cannot sell or otherwise dispose of the Sprayer until the current public health emergency is over or December 31, 2020, whichever is later.

**E. Notice and Contact Information**

All notices, certificates or other communications under this Agreement are sufficient or will be deemed given when postmarked, and mailed by US certified mail, return receipt requested, and addressed as follows:

If to the District at: North Hays County Emergency Services District No. 1  
111 EMS Drive,  
Dripping Springs, TX 78620  
info@northhayscountyesd1.org  
(512) 829-4356

If to the City at: City Administrator, Michelle Fischer  
PO Box 384,  
Dripping Springs, TX 78620  
mfischer@cityofdrippingsprings.com  
(512) 858-4725

**F. Effective Date**

This agreement takes effect upon the date it is signed by both Parties.

**G. Hold Harmless**

- 1) TO THE EXTENT PERMITTED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, CITY SHALL DEFEND AND HOLD HARMLESS DISTRICT AND ITS EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ALL COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES, EXPENSES OF INVESTIGATION AND LITIGATION, AND COURT COSTS), LIABILITIES, DAMAGES, CLAIMS, SUITS, JUDGMENTS, ACTIONS, AND CAUSES OF ACTIONS WHATSOEVER (COLLECTIVELY, "CLAIMS") RESULTING OR ARISING FROM THE CITY'S USE OF THE SPRAYER UNDER THIS AGREEMENT, TO THE EXTENT ARISING OUT OF ANY NEGLIGENT ACT OR OMISSION OR WILLFUL MISCONDUCT OF CITY, OR ITS AGENTS, EMPLOYEES OR CONTRACTORS. DISTRICT SHALL NOT BE RESPONSIBLE FOR THE ACTS OR OMISSIONS OF CITY'S EMPLOYEES OR PERSONNEL.
- 2) SIMILARLY, TO THE EXTENT PERMITTED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, DISTRICT SHALL DEFEND AND HOLD HARMLESS CITY AND ITS EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ALL CLAIMS, AS MORE PARTICULARLY DEFINED IN SECTION G.1., RESULTING OR ARISING FROM THE DISTRICT'S USE OF THE SPRAYER UNDER THIS AGREEMENT, TO THE EXTENT ARISING OUT OF ANY NEGLIGENT ACT OR OMISSION OR WILLFUL MISCONDUCT OF DISTRICT, OR ITS AGENTS, EMPLOYEES OR CONTRACTORS. CITY SHALL NOT BE RESPONSIBLE FOR THE ACTS OR OMISSIONS OF DISTRICT'S EMPLOYEES OR PERSONNEL.

- 3) NEITHER PARTY WILL BE RESPONSIBLE FOR CLAIMS ARISING OUT OF THE SOLE NEGLIGENCE OF THE OTHER PARTY. THE PAYMENT OF ANY AND ALL CIVIL OR OTHER LIABILITY, INCLUDING NEGLIGENCE, RESULTING FROM THE FURNISHING OF SERVICES UNDER THIS AGREEMENT IS THE RESPONSIBILITY OF THE INDIVIDUAL PARTY PERFORMING SUCH ACTS. THIS SHALL SPECIFICALLY INCLUDE, BUT NOT BE LIMITED TO, THE PAYMENT OF COURT COSTS, EXPENSES, AND ATTORNEYS' FEES RESULTING FROM ANY SUCH CLAIM OR LAWSUIT.
- 4) IT IS EXPRESSLY UNDERSTOOD THAT THE PARTIES DO NOT WAIVE, AND SHALL NOT BE DEEMED TO WAIVE, ANY IMMUNITY OR DEFENSE THAT WOULD OTHERWISE BE AVAILABLE TO IT AGAINST CLAIMS ARISING IN THE EXERCISE OF ITS GOVERNMENTAL POWERS AND FUNCTIONS, OR THAT MIGHT OTHERWISE BE AVAILABLE AT LAW OR IN EQUITY. THE PROVISIONS OF THIS SECTION WILL SURVIVE THE EXPIRATION OR EARLY TERMINATION OF THIS AGREEMENT.

#### **H. Transferability**

Except as may otherwise be expressly provided herein, the rights and obligations created by this Agreement may not be transferred or assigned to another party without the express written consent of the City and District.

#### **I. Governing Law**

The laws of the State of Texas shall govern any disputes or conflicts that arise under the terms of this Agreement. The venue for all legal actions involving this Agreement shall be Hays County.

#### **J. Entire Agreement**

This document represents the entirety of the agreement between the City and District. The Recitals above are true and correct and are incorporated herein. No oral or other written contracts outside of this Agreement shall have any affect unless they are approved in writing by the Parties and made a part of this Agreement.

#### **K. Captions**

The captions or headings in this Agreement are for convenience only and do not define, limit, or otherwise describe the scope or intent of any provision or section of this Agreement.

**L. Severability**

If any provision of this Agreement is found to be contrary to law by a court of competent jurisdiction, such provision shall be of no force or effect; but the remainder of this Agreement shall continue in full force and effect.

IN WITNESS WHEREOF, City and District have caused this Agreement to be executed by their duly authorized representatives.

Signed and effective this \_\_\_\_\_ day of November, 2020.

**ATTEST:**

**NORTH HAYS COUNTY EMERGENCY  
SERVICES DISTRICT NO. 1**

By: \_\_\_\_\_  
Robert Luddy  
Board Secretary

By: \_\_\_\_\_  
Geoffrey Tahuahua  
Board President

**CITY OF DRIPPING SPRINGS**

By: \_\_\_\_\_  
Michelle Fischer  
City Administrator



# INVOICE

010000389718282639747110000000003995000909203

North Hays County ESD 1  
Po Box 1604  
Dripping Springs, TX 78620-1604

Ship/Sold-To: 3897183  
North Hays County ESD 1  
111 Ems Dr  
Dripping Springs, TX 78620-2174

Bill-To: 3897182  
North Hays County ESD 1  
Po Box 1604  
Dripping Springs, TX 78620-1604

Invoice# 82639747	Invoice Date 09/09/20	Due Date 10/09/20	Invoice Total \$3995.00
Purchase Order# COVID19		Payment Terms Invoice Date + 30 days	
Customer DEA#		Customer State Reg#	
MTX Federal ID#		MTX D&B#	

LINE NO.	ITEM CODE	UNIT SIZE	DESCRIPTION	QTY ORDERED	QTY SHIPPED	COIC#	UNIT PRICE	EXT. PRICE	BOX NO.	SHIP FROM
<i>This is a backordered shipment for order 91864197 original invoice: 79970942</i>										
1	136-3554	EA	Sprayer Clorox Total360 Electro Clx1100 ITEM UNDER 12 MONTHS WARRANTY FROM INVOICE DATE. CASE GOOD ITEM MAY BE SHIPPED SEPARATELY.	1	1	W C	3,995.00	3,995.00	1	IN
<b>MERCHANDISE TOTAL</b>								<b>\$3,995.00</b>		
<b>INVOICE TOTAL</b>								<b>\$3,995.00</b>		

Please refer to back of paperwork for Terms of Sale and disclaimer or go to <http://www.henryschein.com/es-us/medical/legal/terms-conditions>. Each term is incorporated herein by reference.

Thank you for your order!

Ship To# 3897183	Bill To# 3897182	Invoice# 82639747	Invoice Date 09/09/20	Invoice Total \$3995.00	<b>CODE STATUS KEY</b> S-Special Schein Pricing B-Backordered, item will follow C-Case Good Item D-Discontinued, item no longer available F-Special Offer M-Item will ship directly from manufacturer NS-No Charge P-Prescription Drug Return Authorization Required *Item has Safety Data Sheet (SDS) H-Regulated item. May be shipped separately. S&E-Ship to E S&M-Ship from M to Ship to B with J T-Schedule Item U-temporarily Unavailable, please reorder W-Weight Item WH, MH, BC, DM-DSCSA CODE'S
Order# 91864197	Order Date 07/15/20	# of Boxes 1	PO# COVID19		

**Subscription Name/Address:**  
 111 Ems Dr  
 Dripping Springs, TX 78620-2174  
 (261) 397-4487

Please remit payment to: Henry Schein, Inc. Dept CH 10241 Palatine, IL 60055-0241 US