

## INTERLOCAL AGREEMENT FOR USE OF CITY FUEL TANKS

Subject to enactment by the mayor of Dripping Springs, Texas (the “Mayor”), this Interlocal Agreement related to the use of fuel tanks at Ranch Park (the “Agreement”) is made and entered into between North Hays County Emergency Services District Number 1 (“ESD 1”), a political subdivision of the State of Texas organized and operating pursuant to Chapter 775 of the Health and Safety Code; Hays County Emergency Services District Number 6 (“ESD 6”), and Hays County Constable Precinct 4 (“Precinct 4”), all political subdivisions of the State of Texas, and the City of Dripping Springs, Texas (the “City”), a Texas general-law municipal corporation situated within Hays County, Texas. , . ESD 1, ESD 6, Precinct 4 (together, the “Emergency Service Providers”), and City may be referred to, collectively, as “the Parties” or “the Parties to this Agreement.”

### RECITALS

**WHEREAS**, the City desires to provide adequate emergency response services within its service area; and,

**WHEREAS**, the City finds that the public interest is benefitted if the Emergency Service Providers are authorized to access the City’s fuel tanks, as described herein, especially in the case of disaster response; and

**WHEREAS**, the City owns fuel tanks in Dripping Springs Ranch Park with physical address at 1042 Event Center Dr., Dripping Springs, Texas 78620 (the “Park”), that are available to provide fuel to the Parties; and

**WHEREAS**, the Emergency Service Providers are eligible entities under the Agreement and each desires to contract with the City on the terms described herein; and

**WHEREAS**, in accordance with the Agreement, the Parties recognize that any payments for the performance of governmental functions or services are from available current revenues, and

**WHEREAS**, the Parties agree that each Emergency Service Provider will pay the market price for all fuel obtained from the City’s fuel tanks;

**NOW, THEREFORE**, in consideration of the foregoing and the mutual promises and obligations of the Parties in this Agreement, the Parties agree as follows:

## **ARTICLE 1 PURPOSE**

The purpose of this Agreement is to set forth the terms and conditions under which the City shall provide access to the fuel tanks at the Dripping Springs Ranch Park and provide fuel to the Emergency Service Providers at a market rate, year-round, on a 24-hour-a-day basis.

## **ARTICLE 2 OBLIGATIONS AND FUNDING FROM THE CITY**

- 2.1** The City does not warrant the suitability, functioning, or availability of the fuel tanks at all times.
- 2.2** The City shall use best efforts to maintain the fuel tanks and necessary equipment in a manner that allows use by all Parties. The City shall promptly notify each Emergency Service Provider if an issue arises with the usability of the fuel tanks and the fuel.
- 2.3** In the event the City's Mayor enacts this Agreement, the fuel tanks shall be open to the Emergency Service Providers at all times unless there is an issue with function of the fuel tanks, availability of fuel, or access to the Ranch Park.
- 2.4** The City shall pay all costs to operate the fuel tanks from current revenues then available to the City. The City will update the fuel costs to the Emergency Service Providers each month and shall provide the cost sheet monthly to each Emergency Service Provider.
- 2.5** The City shall mutually, alongside the Emergency Service Providers, cooperate with the process of seeking any direct services or reimbursement warranted from the Federal Emergency Management Agency of the United States ("FEMA") and the State of Texas and State agencies where fuel use is related to a declared state of disaster.
- 2.6** The City shall maintain records to show the amount of fuel available, the cost of fuel, and all items related to use and maintenance of the fuel tanks.
- 2.7** To the extent applicable to the service, the City shall cooperate jointly with the Emergency Service Providers in good faith to provide records satisfactory to the Federal and State governments.
- 2.8** The City shall provide the minimal level of genuine liability coverage as required by State law and to name the Emergency Service Providers as additional named insureds for the purpose of this Agreement.

- 2.9** In the event of any cause of action or claim asserted against either the City or the Emergency Service Providers, the City shall provide the other Party prompt notice of such claim, dispute, or notice.
- 2.10** Thereafter, to the extent allowed by law, the City shall at its own expense, faithfully and completely defend and protect itself against any and all liabilities arising from this claim, cause of action, or notice.

### **ARTICLE 3**

#### **OBLIGATIONS OF THE EMERGENCY SERVICE PROVIDERS**

- 3.1** The Emergency Service Providers shall pay the market rate of the fuel measured at the time the fuel is dispensed. The market rate shall be the amount of the cost of the fuel to the City, plus ten percent for maintenance costs of the fuel tanks. Payment shall be made within thirty (30) days of receipt of an invoice from the City.
- 3.2** The intent of this Agreement is to provide a place for emergency vehicles to fuel at a reasonable cost, including fire equipment, constable vehicles, and emergency medical vehicles at all times including when a disaster or other emergency prevents the obtaining of fuel from other locations.
- 3.3** The Emergency Service Providers agree to mutually, alongside the City, cooperate with the process of seeking any direct services or reimbursement warranted from FEMA and the State of Texas and State agencies.
- 3.4** The Emergency Service Providers shall provide a contact person for all communications to the City in writing prior to using the fuel tanks. The Emergency Service Providers agree that they are knowledgeable in the use of the fuel tanks or shall seek out training from the City prior to use of the fuel tanks.
- 3.5** To the extent application to the service, the Emergency Service Providers shall cooperate jointly with the City in good faith to provide records satisfactory to the Federal and State governments.
- 3.6** In the event of any cause of action or claim asserted against an Emergency Service Provider relating to or arising out of this Agreement, the Party shall provide the other Parties prompt notice of such claim, dispute, or notice.
- 3.7** Thereafter, to the extent allowed by law, the Emergency Service Provider shall at its own expense, faithfully and completely defend and protect itself against any and all liabilities arising from this claim, cause of action, or notice.

Pursuant to §791.011(d)(3) of the Texas Government Code, the Parties agree that the funds being committed by all Parties under this Agreement shall be paid from current revenues available to all Parties, respectively.

#### **ARTICLE 4**

### **TERM AND TIME OF PERFORMANCE**

The effective date of this Agreement shall be the date last executed by the Parties, below (the "Effective Date"). This Agreement may be terminated at any time with thirty (30) days written notice to the other Parties.

#### **ARTICLE 5**

### **SUCCESSORS AND ASSIGNS**

The Parties, respectively, bind themselves, their successors, assigns and legal representatives to the other party to this Agreement and to the successors, assigns and legal representatives of the other party with respect to all covenants of this Agreement. No Party shall assign any interest in this Agreement without obtaining the prior written consent of all Parties, which shall not be unreasonably withheld.

#### **ARTICLE 6**

### **NOTICE**

Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests, or communications related to this Agreement shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the Parties at the addresses set forth below, or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith:

If to the ESD 1:

If to the City:

North Hays County Emergency Services District No. 1  
111 EMS Drive  
Attn: \_\_\_\_\_, President  
Dripping Springs, TX 78620  
Telephone: (512) 829-4356

City of Dripping Springs

Copy to: John J. Carlton  
The Carlton Law Firm, P.L.L.C.  
4301 Westbank Drive, Suite B-130  
Austin, Texas 78746

Telephone: (512) 614-0901  
Fax: (512) 900-2855  
Email: john@carltonlawaustin.com

Attn: Emergency Management  
Coordinator  
P.O. Box 384  
Dripping Springs, Texas 78620

If to the ESD 6:

If to the Hays County Constable,  
Precinct 4:

## ARTICLE 7 MISCELLANEOUS

**7.1** Entire Agreement. This Agreement represents the entire and integrated agreement between the Emergency Service Providers and the City with regard to the use of fuel tanks at Ranch Park and supersedes all prior negotiations, representations or agreements regarding the use of fuel tanks at Ranch Park, either written or oral.

**7.2** Lawful Authority. The execution and performance of this Agreement by the Emergency Service Providers and the City have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of the Emergency Service Providers and the City in accordance with its terms.

**7.3** Amendments. No amendment, modification or alteration of the terms of this Agreement shall be binding unless the same shall be in writing, dated subsequent to the Effective Date, and duly executed by the Parties hereto.

**7.4** Indemnification. It is understood and agreed between the Parties that the Parties, in executing this Agreement, and in performing their respective obligations, are acting independently, and not in any form of partnership or joint venture. **THE PARTIES ASSUME NO RESPONSIBILITIES OR LIABILITIES TO ANY THIRD PARTIES IN CONNECTION WITH THIS AGREEMENT.**

**7.5 Construction.** The captions and headings contained in this Agreement are solely for convenient reference and shall not be deemed to affect the meaning or interpretation of any provision or paragraph hereof. Should any provision in this Agreement be found or deemed to be invalid, this Agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Agreement are declared to be severable.

**7.6 Conflict with Applicable Law.** Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, ordinance or administrative, executive, or judicial regulation, order or decree, or amendment thereof, contrary to which the Parties have no legal right to contract. In such event, the affected provision or provisions of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements law, ordinance or administrative, executive, or judicial regulation, order or decree, or amendment thereof.

**7.7 No Waiver.** Waiver of any breach of any provision of this Agreement by the Parties shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.

**7.8 Public Information Act.** All Parties are governed by the Texas Public Information Act, Chapter 552 of the Texas Government Code. This Agreement and all written information generated under this Agreement may be subject to release under this Act.

**7.9 Additional Documents.** The Parties covenant and agree that they shall execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.

**7.10 Compliance with Laws.** In performing this Agreement, the City will comply with all local, state and federal laws.

**7.11 Counterparts.** This Agreement may be executed by the Parties in multiple originals or counterparts and each counterpart shall have the full force and effect of the entire Agreement.

**7.12 Right to Audit.** The Parties shall, upon five days' written notice to City, have a right to inspect all receipts, invoices, proofs of purchase, records of expenditures, and other relevant data related to this Agreement. Unless otherwise requested by City, a Party's inspection shall be performed between the hours of 8 a.m. and 5 p.m., Monday through Friday.

**7.13 Term and Termination:** This Agreement shall be in effect for two years from the Effective Date and shall automatically be renewed for periods of one year. Any Party may terminate this agreement by giving thirty (30) days' written notice to the other party.

**7.14 Applicable Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

**7.15** Venue: Venue over any dispute arising from this Agreement shall be in Hays County, Texas.

(AKNOWLEDGMENTS ON THE FOLLOWING PAGE)

This Agreement is hereby EXECUTED on this \_\_\_\_\_ day of January, 2022

**ESD 1:**

By: \_\_\_\_\_ Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Date: \_\_\_\_\_

**The City of Dripping Springs:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Bill Foulds  
Mayor, City of Dripping Springs

ATTEST:

\_\_\_\_\_  
Andrea Cunningham  
City Secretary, City of Dripping Springs

Date: \_\_\_\_\_

**ESD 1:**

By: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

Date: \_\_\_\_\_

**ESD 6:**

By: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

Date: \_\_\_\_\_