

**DONATION AGREEMENT
BETWEEN THE CITY OF DRIPPING SPRINGS &
WILD BIRDS UNLIMITED OF DRIPPING SPRINGS**

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, (the “City”) and **Wild Birds Unlimited of Dripping springs** providing for the requirements for and process of conveying and accepting donations to the City.

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 accept donations for the benefit of the City; and

WHEREAS, the City is eligible under United States Internal Revenue Code Section 170(c)(1) to receive tax-deductible charitable contributions; and

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

WHEREAS, the City of Dripping Springs encourages the donation of charitable contributions to the City for the benefit of the City and its residents; and

WHEREAS, the City Council finds that this Agreement will ensure complete implementation of a Donation; and

WHEREAS, the City Council finds that the following provisions are reasonable and necessary for the acceptance of donations.

NOW THEREFORE, for and in consideration of the mutual covenants and obligations hereinafter set forth, and for other good and valuable consideration the City and Donor herein bargain, covenant, and agree with one another as follows:

A. Purpose

This Agreement serves as a statement or exchange of promises between the City and Donor. It is enacted to provide clear responsibilities and duties for the conveyance of a Donation by Donor and acceptance of a Donation by the City. The Agreement will ensure that each Donation accepted by the City is in the best interest of the City and its citizens.

B. Definitions

- (1) **Agreement:** a statement or exchange of promises between the City and any Donor.
- (2) **City:** the City of Dripping Springs, an incorporated Type A, general-law municipality located in Hays County, Texas.
- (3) **City Administrator:** the chief administrative officer of the City, or the officer’s designee.

- (4) **Donation:** any monetary or nonmonetary gift, grant, devise or bequest to the City. A monetary donation includes cash or a check, money order or other negotiable instrument. A nonmonetary donation includes real or personal property.
- (5) **Donor:** a person who gives a gift through a trust or charitable contribution.
- (6) **In-Kind:** payment or Donation made in the form of goods or services, rather than cash.
- (7) **Labor:** physical or mental exertion or productive activity that satisfies a City need.
- (8) **Land:** real property (i.e., real estate), including any fixtures or improvements upon and all water / mineral rights (unless expressly excluded).
- (9) **Materials:** Goods or products that satisfy a City need.
- (10) **Person:** a human individual, sole proprietorship, partnership, corporation, nonprofit corporation, foundation or unincorporated association, agency.
- (11) **Project:** an endeavor or undertaking for which a Donation is proposed, which is reasonably anticipated to benefit: (a) the City as an organization; (b) the citizenry, including residents, voters, and guests; or (c) the community at-large.
- (12) **Tax Deduction:** An expense, such as a charitable contribution, that can be deducted from one's taxable income.

C. Accounting for Donation

The City will account for this Donation through a mechanism determined by the City.

D. Tax-Deductible Contributions

- (1) Only upon completion and submission of a Donation Form to the City will Donor be eligible to receive a Tax Deduction for the Donation of a charitable contribution.
- (2) If the Donor does not complete and submit a Donation Form to the City, sign this Agreement, and complete the Donation, the City will not release any documents certifying the Donations.
- (3) Nothing in this Agreement shall be interpreted of imposing responsibility or accountability upon the City for the accuracy of the estimated value of the Donation received, unless the City expressly agrees in writing to participate in the approximation of value through: (1) a public auction, (2) competitive bidding, (3) receipts provided (retail or wholesale) documenting the Donor's actual costs, or (4) a commonly utilized and clearly established methodology of determining fair market value.
- (4) The City is relieved from any and all responsibility and liability for estimating or calculating the value of the Donation received.

E. Donation Amount

By signing this Agreement Donor is acknowledging that:

- (1) The amount of the Donation is valued at \$5,000 for the purchase of bird seed and bird feeders for Charro Ranch Park Bird Blind and Ranch Park Bird Blind; and
- (2) The Donation does not unnecessarily burden the City or unreasonably encumber the funds contributed.

F. Donation Completion

- (1) By signing this Agreement Donor agrees to:
 - a. Fully complete the Donation.
 - b. Complete the Donation within the timeframe specified under the Term of this Agreement.

- c. Fund the cost of completing the Donation and refund the City any amount of funds it has lost or expended in expectation of timely compliance of the Donation if a project is not timely completed.
 - d. Provide documentation specifically listing all gifts that the Donation will include.
 - e. Relieve the City from any and all responsibility for estimating or calculating the value of the Donation received.
- (2) If the City has received the Donation Form and a signed copy of this Agreement, the City agrees to release any and all documents certifying the Donation upon completion of the Donation.

G. City Duties

- (1) The City shall allow a sign to be placed at each bird blind to recognize Wild Birds Unlimited, and their sponsor Subaru. Each sign shall be approximately 8” x 10”.
- (2) The City shall have approval of the final sign size and design. The signs shall include the City of Dripping Springs Parks Logo.
- (3) The signs shall be designed generally as shown in Attachment “A”.

H. Contact Information

- (1) Donor will at all times maintain the following points of contact:

Donor: Wild Birds Unlimited of Dripping Springs
Phone: (512) 829-4782
Facsimile: n/a
Alternate Phone: n/a
E-Mail: wbudstx@gmail.com
Mailing Address: 333 E. Highway 290, Suite 405

- (2) The primary point of contact under this Agreement for the City shall be:

City Administrator: Michelle Fischer
Phone: (512) 858-4725
Facsimile: (512) 858-5646
Alternate Phone:
Email: mfischer@cityofdrippingsprings.com
Mailing Address: PO Box 984
Dripping Springs, Texas 78620-0384

I. Term

The term of this Agreement shall be for one (1) year unless otherwise agreed to in writing by both parties through an amendment to this Agreement.

J. Effective date

This agreement takes effect October 17, 2023 and upon receipt of donation acquisition funds.

K. Indemnification

DONOR AGREES TO INDEMNIFY AND HOLD THE CITY HARMLESS FROM ANY DAMAGES OCCURRING FROM THE ALLEGED NEGLIGENCE OF DONOR, HIS AGENTS, VOLUNTEERS, SERVANTS, AND EMPLOYEES.

L. 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 Donor.

M. 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.

N. Entire Agreement

This document represents the entirety of the agreement between the City and Donor. No oral or other written contracts outside of this Agreement shall have any affect unless they are approved in writing by both parties and made a part of this Agreement.

O. Other Documents

The City and Donor agree to execute such further documents, and to take such further acts, as may be necessary or required to carry out the terms of this Agreement.

P. Amendments

This Agreement may be amended only by an instrument in writing signed by the City and Donor.

Q. Severability

The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person or circumstance shall ever be held by any agency or court of competent jurisdiction to be unenforceable, invalid, or unlawful for any reason, the remainder of this Agreement shall not be affected thereby.

R. Third Party

Except as herein specifically and expressly provided, the terms and provisions of this Agreement are for the sole benefit of the City and Donor, and no third party whatsoever is intended to benefit here from other than the signage for Subaru.

S. Authorization

The City represents and warrants to, and covenants with Donor that:

(1) The execution, delivery, and performance of this Agreement by the executing officer have been duly authorized. This Agreement has been duly and validly executed and delivered by the executing officer on behalf of the City, and constitutes a valid and binding obligation, enforceable against the City in accordance with its terms.

(2) No consent or approval of any third party, including, without limitation, any governmental authority, is required in connection with the execution, delivery, or performance of this Agreement. The execution and delivery of this Agreement, and the performance of the obligations and consummation of the transactions contemplated herein do not and will not conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under any contract, indenture, mortgage, loan agreement, lease, joint venture or other agreement or instrument to which the City is a party or by which the City or any of its respective properties are bound, or result in any violation by it of any law, order, rule or regulation of any court or governmental agency or body. The City is not in material violation of any law, ordinance, governmental rule or regulation or court decree to which it may be subject, nor has it failed to obtain and maintain in full force and effect any license, permit, certificate, franchise or other governmental authorization necessary to the ownership of its respective property or to the conduct of its operations under this Agreement.

Executed this, the ____ day of _____ 2023.

City of Dripping Springs:

Donor:

by _____
Michelle Fischer, City Administrator

by _____
Wild Birds Unlimited of Dripping
Springs
Representative