

THE STATE OF TEXAS

§

CITY OF DRIPPING SPRINGS

§

KNOW ALL BY THESE PRESENT:

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COUNTY OF HAYS

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**MAINTENANCE AND USE AGREEMENT
Sports & Recreation Park Adult Softball Fields**

THIS MAINTENANCE AND USE AGREEMENT (the “Agreement”) is entered into by and between the City of Dripping Springs, Hays County, Texas, (the “City”), a general law municipality organized and operating under the general laws of the state of Texas, and Dripping Springs Youth Sports Association, Inc. (“DSYSA”), a Texas non-profit corporation.

I. RECITALS

- A. DSYSA is a registered Texas non-profit corporation in good standing whose purpose is to provide to the youth of Dripping Springs and surrounding areas sports programs that encourage a healthy lifestyle, teamwork, leadership, sportsmanship, and volunteerism.
- B. On January 1, 1999, the City and DSYSA entered into an Agreement allowing DSYSA to use a portion of the City’s Founders Memorial Park (“Founders Park”) for youth athletic soccer programs. That Agreement expired on December 31, 2004.
- C. On January 1, 1999, the City and DSYSA entered into an Agreement allowing DSYSA to use a portion of the City’s Sports and Recreation Park (“Sports Park”) for youth athletic programs. This Agreement expired on December 31, 2008.
- D. On August 16, 2016, the City and DSYSA entered into an Agreement allowing DSYSA to use a portion of the City’s Sports and Recreation Park (“Sports Park”) and a portion of the City’s Founders Memorial Park (“Founders Park”) for youth athletic programs. This Agreement expired on March 31, 2016.
- E. DSYSA now desires to enter into a similar maintenance and use agreement with the City of Dripping Springs that allows DSYSA to maintain, use, and improve the adult softball fields locate at Sports and Recreation Park for its athletic programs as provided below.
- F. In September, 2016 the City and DSYSA entered into an Agreement allowing DSYSA to continue to use the fields, Concession Stand, and Restroom Facilities at Sports and Recreation Park for its youth athletic programs. This Agreement will expire in 2026.

- G. DSYSA also desires to improve and maintain the Adult Softball Fields to make them usable for their members and programs. These fields are not included in the current Agreement that will expire in 2026.
- H. The City desires to aid DSYSA and, accordingly, agrees to allow DSYSA to maintain and use the Adult Softball Fields on mutually agreed upon designated days of the week for its youth athletic programs as provided below.

II. AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants described herein, the parties hereto agree as follows:

- A. The City does hereby grant DSYSA “First Priority” to use those certain areas of land designated as Adult Softball Fields and more fully described in Exhibit “A”, attached hereto and incorporated for all purposes (the “Areas”). First Priority describes DSYSA’s right to reserve park Areas for DSYSA use *after* the City has reserved park Areas for City use and *before* members of the general public reserve park Areas for public use.
- B. Adult Softball Fields: The City does hereby grant DSYSA First Priority to use the Adult Softball Field Areas in accordance with the following:
 - 1. The use of the Adult Softball Field Areas shall be for DSYSA-sponsored sports events, including but not limited to, games, practices, tournaments, workshops, and related activities. All said activities, events, etc., shall be scheduled around any regularly City scheduled activities and uses of the Parks. The City and DSYSA will communicate and agree on a calendar of events for the months of March through August of every year.

The following days and times will be for the exclusive use by the City for the Softball Fields as shown in Exhibits “A”:

- 1. Wednesday and Thursday in the Spring (March – May) and Tuesday and Thursday in the Summer (June – September), 6pm-10pm

DSYSA will send field use schedules for the Adult Softball Fields. The schedules should be provided on or before February 1, May 1, August 1, and November 1 by email to the Parks & Community Services Director.

- 2. DSYSA is entitled to First Priority use. The City may allow public use of the Areas at all other times.
- 3. The City shall erect signage in the Areas informing the public of the days the fields are reserved for public use.
- 4. The City reserves the right to adapt the “Parks” for 210 water reuse. Should the City wish to move forward with 210 water reuse, the City will provide DSYSA

with 365 day notice and ongoing communication and coordination with DSYSA as to the location of those improvements.

5. The City reserves the right to repair, improve, relocate, or remove lighting at the “Parks” to follow Article 24.06 of the City of Dripping Springs Code of Ordinances. City will provide DSYSA with 180-day notice and ongoing communication and coordination with DSYSA as to the location and types of those lighting changes and the disruption in “Parks” access during the changes.
- C. As consideration for the granting of the use of the Adult Softball Fields & Area, DSYSA agrees, under its financial responsibility, to maintain the Adult Softball Fields:
1. Definition.
“Adult Softball Fields” means that portion of the Sports and Recreation Park consisting of Adult Softball Fields labeled as such and as shown in Exhibit “A”. “Portable Restrooms” are the restrooms provided by DSYSA at the Sports and Recreation Park pursuant to this Agreement.
 2. DSYSA will maintain the Adult Softball Areas which includes infields, outfielders’ soil and turf, dugouts, and scorekeeper booths. DSYSA shall be responsible for paying all utility services supplied to the Adult Softball Areas. DSYSA will reimburse the City for electrical utilities within 15 days upon receipt of invoice.
 3. DSYSA will improve the Adult Softball Fields as shown in Exhibit “A”. After execution of this Agreement, but prior to work being started, DSYSA will meet with the Maintenance Director and the Parks and Community Services Director to discuss the planned improvements. A plan for improvement and maintenance of these fields will be submitted to the City, the Parks and Recreation Commission, the Parks and Community Services Director and the Maintenance Director for review and approval within sixty (30) days of execution of this Agreement. Once approved, DSYSA will update the City on a monthly basis on the status of improvements. The schedule for the improvements will be coordinated between DSYSA and the City to ensure the least disruption at the Sports and Recreation Park. DSYSA will provide information related to the costs of the improvements and maintenance of the Adult Softball Fields as shown in Exhibit “A”.
 4. DSYSA will maintain the Areas. Maintenance shall include mowing the Areas at least once a month., except that the City will mow the Adult Softball Fields through September 30, 2022. After October 1, 2022, DSYSA will mow the Adult Softball Fields as well. DSYSA will provide the plan and schedule for the regular maintenance of the park Areas on an annual basis to the Parks and Community Services Director and the Maintenance Director. If additional maintenance occurs or any issue arises, DSYSA will inform the Parks and Community Services Director and Maintenance Director within seven (7) days in writing. DSYSA will provide information related to the costs of the regular and special maintenance of the Areas.

5. The City agrees to reimburse DSYSA up to \$1900 annually for the City's Parks & Community Services' programmatic usage of the Adult Softball Fields' electrical. DSYSA will submit an invoice for said reimbursement to the city no later than September 15 each year.
6. DSYSA will pay for minor and miscellaneous expenses for all DSYSA designated use Areas including the fields, bleachers, score towers, and scoreboards. Any major improvements exceeding \$1,000 must be approved first by the Parks & Recreation Commission and then City Council.
7. The City will ensure the maintenance and payment for the miscellaneous expenses for the rest of the Parks (e.g., playscape, trail, multi-use course, volleyball court, landscaping, picnic tables, benches, bar-b-que pits, wildscape garden area, signage, etc.).
8. DSYSA will be responsible for emptying the trashcans near the Adult Softball Fields into the larger roll off trashcans. The City will be responsible for emptying the larger roll off trashcans at the Adult Softball Fields into the dumpsters. The City is responsible for emptying the rest of the trashcans in the Parks in common amenity areas near the playgrounds.
9. DSYSA will pay for at least four (4) portable toilets near the Youth Baseball and Softball Fields and Adult Softball Fields at Sports Park during DSYSA's sports seasons.
10. DSYSA will be responsible for the security Adult Softball Fields except for when those fields are being used for non-DSYSA activities as authorized by the City. The City will be responsible for the security of the rest of the Parks and for DSYSA facilities that were authorized for use by the City for non-DSYSA activities.
11. The City currently carries and agrees to maintain Liability and Property coverage for the entire Parks and requires all parties to maintain Liability and Property coverage for their events and programs.
12. DSYSA and the City will agree to a water use schedule for the Areas that will become part of this agreement. Once the City and DSYSA agree to a water schedule, at no time can the schedule be changed or modified without prior written notification and agreement by both parties, unless required by watering restrictions or conservation requirements. Notification must be in writing and submitted seventy-two (72) hours in advance. Only those persons listed in this Agreement are authorized to operate the instrumentation/control boxes for the sprinkler systems or authorize a change in the watering schedule.

Authorized Representatives:

DSYSA President or delegate
City Parks & Community Services Director

13. Within ten (10) days of the effective date of the Agreement or within ten (10) days of the anniversary date of this Agreement, DSYSA will supply the City with yearly season schedules for use of the Fields by DSYSA. During a season, no Area shall be illuminated between 10:30 p.m. and sunrise, except to conclude a scheduled recreational or sporting event in progress that began prior to 9:30 p.m. DSYSA agrees to illuminate the fields only during a season unless otherwise authorized by the City. DSYSA will inform the City of any changes to season schedules throughout the year.

E. As additional consideration for the granting of the use of the Parks, DSYSA agrees, under its financial responsibility, to perform the following:

1. Construct or improve and maintain within the Areas in substantial accordance with the plans and specifications as approved by the City and outlined below and in the area listed in Exhibit "A" attached hereto.
2. Maintain safe and reliable equipment related to the Areas. Those that are not permanent improvements will be stored in a secure place when not in regular use.
3. Reseed, mow, and fertilize the Areas as needed in an environmentally and fiscally responsible manner.
4. DSYSA shall be responsible for litter control at the Parks, except during and immediately after City-sponsored activities. This task entails picking up litter off the grounds and around the Areas. Trash cans shall be provided at the Areas by DSYSA. Litter must be disposed of in dumpsters provided by the City.

F. It is understood and agreed between the parties that DSYSA must purchase and maintain its own liability insurance that provides the following:

- Statutory Workers Compensation insurance as required by state law.
- Commercial General Liability minimum limits of \$500,000 per occurrence for bodily injury, personal injury, and property damage.
- Automobile Liability with a minimum of \$500,000 Dollars combined single limit.

And that also names the City as an additional named insured. The insurance information shall be provided to the City at the time of execution of this Agreement.

1. It is specifically agreed that nothing herein is intended to convey any real property rights of the Areas to DSYSA.

2. The City assumes no responsibility for any property placed by DSYSA or any DSYSA member, agent, or guest, on any park or in any storage buildings or any part thereof, and the City is hereby expressly released and discharged from any and all liability for any loss, injury, or damage to persons or property that may be sustained by reason of the occupancy of said buildings under this Agreement.
3. DSYSA accepts the premises as-is. DSYSA may improve the condition of the athletic fields.
4. DSYSA will cooperate with the City to comply with all applicable laws (federal, state and local), including ordinances of the City of Dripping Springs. DSYSA agrees to abide by and conform with all rules and regulations from time to time adopted or prescribed by the City for the government and management of the Parks.
5. DSYSA COVENANTS AND AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY, ITS AGENTS, SERVANTS, AND EMPLOYERS, FROM AND AGAINST ANY AND ALL CLAIMS FOR DAMAGES OR INJURIES TO PERSONS OR PROPERTY ARISING OUT OF OR INCIDENT TO THEIR USE OF, OR THE USE AND OCCUPANCY OF, THE AREA BY DSYSA, AND DSYSA DOES HEREBY ASSUME ALL LIABILITY AND RESPONSIBILITY FOR INJURIES, CLAIMS OR SUITS FOR DAMAGES TO PERSONS OR PROPERTY WHATSOEVER KIND OR CHARACTER, WHETHER REAL OR ASSERTED, OCCURRING DURING THE TERM OF THIS AGREEMENT IN CONNECTION WITH THE USE OR OCCUPANCY OF THE PARKS BY DSYSA OR ITS AGENTS, SERVANTS, EMPLOYEES, CONTRACTORS OR SUBCONTRACTORS, MEMBERS, GUESTS OR INVITEES.
6. DSYSA shall not assign this Agreement, or any rights, obligations or entitlements created under this Agreement.
7. This Agreement embodies the entire agreement between the parties and may not be modified unless in writing, executed by all parties.
8. Either party may terminate this Agreement without cause upon the terminating party giving the non-terminating party one year (365 days) written notice.
9. Non-performance: This Agreement will automatically terminate if DSYSA fails to adequately respond and remedy any complaints or concerns from the City including not providing adequate documentation within thirty (30) days of a written request by the City. An extension may be granted by the City Administrator for an additional sixty (60) days upon request of DSYSA.
10. All notices 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. Five (5) days after being sent by certified mail in the United States mail, with postage prepaid to the recipient's address as stated in this Agreement.

Notice to DSYS:

Dripping Springs Youth Sports Association, Inc.
 Post Office Box 637
 Dripping Springs, TX 78620
 Attn: President

Notice to CITY:

City of Dripping Springs
 Attn: Parks and Community Services Director
 511 Mercer Street/P.O. Box 384
 Dripping Springs, TX 78620
 Attn: Parks & Community Services Director

Nothing contained herein shall be construed to restrict the transmission of routine communications between representatives of City and DSYS.

- 11. This Agreement shall be valid when signed both parties and for a period of four (4) years, unless terminated earlier as provided herein.
- 12. This Agreement shall be effective upon final signing by both parties.

IN WITNESS WHEREOF, CITY and DSYS have executed this Agreement on the dates indicated.

City of Dripping Springs:

Dripping Springs Youth Sports Association, Inc.:

by: _____
 Mayor Bill Foulds, Jr.

by: _____
 Michelle Ciacco, President

Date Signed: _____

Date Signed: _____

ATTEST:

ATTEST:

Andrea Cunningham, City Secretary

Exhibit "A"

Adult Softball Fields & Maintenance Scope

Upon execution of the Adult Softball Field Use Agreement DSYSA agrees to remove the top 2" of the Upper & Lower Adult Softball infield dirt (removal of existing weeds and compacted dirt) and replace with red baseball dirt (dirt and clay mix). DSYSA will also reset and replace the infield bases and mounds.

