

THE STATE OF TEXAS

CITY OF DRIPPING SPRINGS

COUNTY OF HAYS

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KNOW ALL BY THESE PRESENT:

**MAINTENANCE AND USE AGREEMENT**  
**Founders Memorial Park and Sports & Recreation Park**

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 expires on March 31, 2016.
- E. DSYSA now desires to again enter into a long-term maintenance and use agreement with the City of Dripping Springs that allows DSYSA to maintain, use and improve the athletic fields of the Founders Park and Sports Park (collectively the "Parks") for its athletic programs as provided below.
- F. On June 18<sup>th</sup>, 2009, the City and DSYSA entered into an Agreement allowing DSYSA to use the Concession Stand and Restroom Facilities at Sports Park for youth athletic programs. This Agreement expired on April 14<sup>th</sup>, 2014.
- G. DSYSA now desires to again enter into a long-term maintenance and use agreement with the City of Dripping Springs that allows DSYSA to maintain, use and improve the Concession Stand and Restroom Facilities of Sports Park.

- H. The City desires to aid DSYSA and, accordingly, agrees to allow DSYSA to maintain and use a portion of the Parks 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 athletic fields in the Parks, and more fully described in Exhibit "A" and Exhibit "B", 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. The City does hereby grant DSYSA First Priority to use park Areas in accordance with the following:
1. DSYSA shall be permitted to place portable storage buildings in the Areas or nearby in the Parks, provided that there is no objection from the Texas Parks and Wildlife Department, or its successors ("TPWD"). If TPWD objects to the placement of storage buildings in the Parks, the City will use its best efforts to allow DSYSA to use the City's storage facilities in the Parks. The placement, design, and location of the storage buildings must be approved by the City in advance.
  2. The use of the 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 following 6 months in June and December of every year.
  3. DSYSA will not schedule activities other than repair or maintenance during the months of December and July, or a thirty (30) day period in close proximity to these two (2) months, without first obtaining City approval to allow for "turf rest".
  4. DSYSA is entitled to First Priority use. The City may allow public use of the Areas at all other times.
  5. Sunday shall be the one (1), twenty-four (24) hour period each week that two (2) fields at Sports Park and one (1) or two (2) fields at Founders Park will be open to the general public. This shall be a day for which the City has not scheduled City-sponsored activities, and to which DSYSA's First Priority use shall not apply. At Founders Park, there shall be an additional day that the one

(1) or two (2) fields will be open to the general public. The City Administrator (or the City Administrator's designee) must approve which days the fields will be available to the general public. The fields cannot be watered on these days.

6. DSYSA shall erect signage in the Areas informing the public of the days the fields are reserved for public use. The City Administrator (or the City Administrator's designee) must approve the location and content of the signs.
7. 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.
8. The City reserves the right to repair, improve, relocate, or remove lighting at the "Parks" to be in compliance with 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 Parks, DSYSA agrees, under its financial responsibility, to maintain the Parks:

1. Definition. "Youth Baseball and Softball Fields" means that portion of the Sports Park consisting of the Youth Baseball Field and the Youth Softball Field as shown in cross-hatching on the labeled aerial photograph attached and made a part hereof as Exhibit B.
2. DSYSA will maintain the Areas. DSYSA shall establish separate accounts and billing in the name of the DSYSA with providers of all utility services to the Areas, and in the case of water, gas, and electrical power shall provide for separate meters to reflect DSYSA's use of those services at the Areas. DSYSA shall be responsible for paying for all utility services supplied to the Areas.
3. DSYSA will maintain the Areas. Maintenance shall include mowing the Areas at least once a month.
4. The City will pay up to, but not to exceed, \$13,000.00 for the water used on the Areas and for the water used in the rest of the Sports Park.
5. DSYSA will pay for the miscellaneous expenses for all Areas.
6. The City will pay for the maintenance and 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.).

7. DSYSA will be responsible for emptying the trashcans near the Areas. The City will be responsible for emptying the rest of the trashcans in the Parks.
8. DSYSA will pay for at least two (2) portable toilets near the Youth Baseball and Softball Fields during DSYSA's sports seasons.
9. DSYSA will be responsible for the security of the Youth Baseball and 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.
10. The City currently carries and agrees to maintain Liability and Property insurance for the entire Parks and requires all parties to maintain Liability and Property insurance for their events.
11. The City will be responsible for the cost of materials for irrigation repairs on the Areas, and the DSYSA will be responsible for the cost of labor for irrigation repairs on the Areas.
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 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:**

<b>DSYSA</b>	President or delegate
<b>City</b>	Parks & Recreation Commission Designee

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 baseball and soccer. 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.
- D. The City does hereby grant DSYSA use of the Concession Stand and Restroom Facilities at Sports Park in accordance with the following terms:
1. In consideration of the City granting DSYSA the ability to temporarily occupy and operate the Concession Stand, and DSYSA paying for all utilities necessary

for operation and maintenance of the Concession Stand, no financial remuneration shall be exchanged between the parties. However, DSYSA agrees to follow the fee structure set below when subletting the facilities to non-profit groups as approved in writing in advance by the City:

Fifty dollars (\$50.00) per day, paid directly to the City.

2. DSYSA shall make the Concession Stand available for sublet by other non-profits, service organizations and any other group as recommended by the City when there is not a conflict with DSYSA activities.
3. Any group subletting the Concession Stand from DSYSA shall deposit with the City a check or money order made payable to the City in the amount of two hundred dollars (\$200.00) to be held by the City for application toward the expense of any cleaning or repair work that must be performed on the Concession Stand by the City as a result of such activities. If no cleaning or repairs are necessary, the City shall refund the deposit within fourteen (14) days of the cessation of the use term.
4. The City shall be responsible for the availability of water, wastewater, and electricity at the Concession Stand at City expense.
5. DSYSA shall be solely responsible for all equipment, supplies, food and wares necessary for operation of the Concession Stand. All appliances or equipment installed or affixed by DSYSA to the Concession Stand must be approved by the City in advance, be maintained by DSYSA, and becomes property of the City at the end of Agreement. All portable appliances or equipment brought into the Concession Stand by DSYSA shall be maintained by DSYSA and remain the property of DSYSA, and be subject to removal by DSYSA upon termination of this Agreement, or any subsequent extensions or renewals.
6. DSYSA shall not leave waste or damage to the Concession Stand. DSYSA shall exercise reasonable care and due diligence to avoid harming the Park grounds. DSYSA shall restore or rehabilitate the sites and the access to them at the termination of this Agreement. This requirement shall not apply to normal wear and compression on the grass.
7. DSYSA shall remove all trash it generates from the Parks by depositing it in a dumpster provided on site by the City, which shall regularly be emptied at City expense.
8. This Agreement shall not be construed as a grant by the City of an exclusive right to DSYSA to operate the Concession Stand. This Agreement shall not grant DSYSA a perpetual permit to use the Concession Stand or other aspects of the Park.
9. The City shall be solely responsible for all supplies necessary for the use and maintenance of the Restrooms Facilities. The City shall be responsible for

cleaning, use and maintenance of Restroom Facilities when the Concession Stand is not in use. DSYSA shall be responsible for cleaning, use and maintenance of Restroom Facilities when the Concession Stand is in use. DSYSA will perform a final cleaning and walkthrough of Restroom Facilities after the Concession Stand closes.

10. The City shall be responsible for major repairs to permanent fixtures for the Concession Stand and Restroom Facilities.

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 Exhibits "A" and "B" 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. Time allotted toward litter control must be a minimum of four (4) hours per month. 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:

1. DSYSA must purchase and maintain its own liability insurance, naming the City as an insured beneficiary.
2. The City shall provide at its expense, an annual contribution to the irrigation costs as specified in its city budget.
3. It is specifically agreed that nothing herein is intended to convey any real property rights of the Areas to DSYSA.
4. 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.

5. DSYSA accepts the premises as-is. DSYSA may change the type of athletic fields only after obtaining written approval from the City for the proposed changes.
6. 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.
7. 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.
8. DSYSA shall not assign this Agreement, or any rights, obligations or entitlements created under this Agreement.
9. This Agreement embodies the entire agreement between the parties and may not be modified unless in writing, executed by all parties.
10. Either party may terminate this Agreement without cause upon the terminating party giving the non-terminating party one year (365 days) written notice. The City shall not terminate this Agreement as it pertains to Sports Park to reassign the use rights to any other entity during the first ten (10) years after the effective date of this Agreement.
11. Non-performance: This Agreement will automatically terminate if DSYSA fails to adequately respond and remedy any complaints or concerns from the City 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.
12. 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 DSYSA:**

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

**Notice to CITY:**

City of Dripping Springs  
511 Mercer Street/P.O. Box 384  
Dripping Springs, TX 78620  
Attn: City Administrator

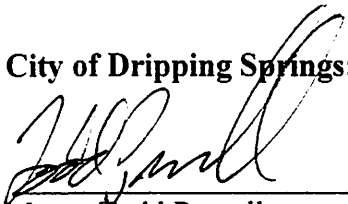
Nothing contained herein shall be construed to restrict the transmission of routine communications between representatives of City and DSYSA.

13. This Agreement shall be valid when signed both parties and for a period of ten (10) years, unless terminated earlier as provided herein.
14. This Agreement shall be effective upon final signing by both parties.

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

**City of Dripping Springs:**

by:

  
\_\_\_\_\_  
Mayor Todd Purcell

**Dripping Springs Youth Sports Association, Inc.:**

by:

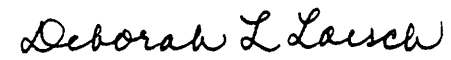
\_\_\_\_\_  
Scott Tomhave, President

Date Signed: June 13, 2017

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

**ATTEST:**



  
\_\_\_\_\_  
Deborah L. Loesch  
Deputy City Secretary

**ATTEST:**

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Post Office Box 637  
Dripping Springs, TX 78620  
Attn: President

**Notice to CITY:**

City of Dripping Springs  
511 Mercer Street/P.O. Box 384  
Dripping Springs, TX 78620  
Attn: City Administrator


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**City of Dripping Springs:**

by:

  
Mayor Todd Purcell

**Dripping Springs Youth Sports Association, Inc.:**

by:

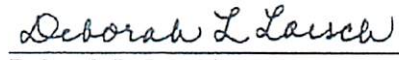
  
Scott Tomhave, President

Date Signed: June 13, 2017

Date Signed: June 15, 2017

**ATTEST:**



  
Deborah L. Loesch  
Deputy City Secretary

**ATTEST:**



**Exhibit "A"**  
Designated Athletic Fields in Founders Park





## Designated Athletic Fields in Sports Park

