

## **PARK IRRIGATION EXTENSION INSTALLATION AND USE AGREEMENT**

**WHEREAS**, the City of Dripping Springs, Texas (the “City”) is a General Law, Type-A municipality located in Hays County, Texas; and

**WHEREAS**, the Dripping Springs Youth Sports Association, Inc. (“DSYSA”) is a Texas non-profit corporation 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; and

**WHEREAS**, the City and DSYSA have entered into agreements since January 1, 1999 allowing DSYSA to use a portion of the City’s Founders Memorial Park (“Founders Park”) and Sports and Recreation Park (“Sports Park”) for youth athletic programs; and

**WHEREAS**, the City and DSYSA are currently parties to a ten-year Maintenance and Use Agreement dated June 15, 2017 providing for the maintenance and use of a portion of Founders Memorial Park and Sports Park (the “2017 Agreement”); and

**WHEREAS**, the City and DSYSA are currently parties to a four-year Maintenance and Use Agreement dated March 4, 2022 providing for the maintenance and use of Adult Softball Fields at Sports Park (the “2022 Agreement”); and

**WHEREAS**, pursuant to the 2017 Agreement, DSYSA maintains the portion of the Sports Park consisting of the Youth Baseball Field and the Youth Softball Field; and

**WHEREAS**, DSYSA currently uses potable water supplied by the Dripping Springs Water Supply Corporation to irrigate the lawns at Founders Park and Sports Park, subject to applicable water restrictions and variances, including the Youth Baseball Field and Youth Softball Fields pursuant to the 2017 Agreement; and

**WHEREAS**, the 2017 Agreement and 2022 Agreement contemplate the City’s adaptation of Sports Park for reclaimed effluent water (i.e., 210 water reuse);

**WHEREAS**, the City is converting the existing irrigation systems at Founders Park and Sports Park for use with reclaimed effluent water, which is available at a lower cost than potable water and is not subject to the same water restrictions as potable water supplied by the Dripping Springs Water Supply Corporation; and

**WHEREAS**, the City and DSYSA now desire to extend the converted Sports Park irrigation system to serve the Adult Softball Fields at Sports Park as depicted in Exhibit “A” to the 2022 Agreement (the “Irrigation Extension”); and

**WHEREAS**, the City agrees to pay for the capital cost of the Irrigation Extension; and

**WHEREAS**, the City agrees to supply reclaimed water for use in the Sports Park irrigation system, including the Irrigation Extension, and DSYSYA agrees to take delivery of a minimum amount of reclaimed water;

**WITNESSETH**, that the City and DSYSYA for the considerations stated herein mutually agree as follows:

- 1. Statement of Contribution.** The City agrees to procure and pay for the Irrigation Extension in full and final satisfaction of the City's obligation to reimburse DSYSYA for the City's Parks & Community Services' usage of the Adult Softball Fields pursuant to the 2022 Agreement and the City's obligation to contribute toward the water used for irrigation pursuant to the 2017 Agreement.
- 2. Notice of Adaptation.** The parties agree that, by entering into this Agreement, the City has provided adequate notice of its election to adapt Sports Park for 210 water reuse as contemplated under the 2017 Agreement and 2022 Agreement.
- 3. Reclaimed Water Supply:** Effective October 1, 2024, DSYSYA will be a customer of the City for the supply of reclaimed water for irrigation purposes during the term of this Agreement and subject to all terms and conditions applicable to the City's reclaimed water customers at rates customarily available to the City's reclaimed water customers in a category of service that, in the City's determination, most closely matches DSYSYA's irrigation use. Despite anything in this Agreement, DSYSYA's maximum liability for reuse water consumption will not exceed \$120,000 during the first year of this Agreement.
- 4. Minimum Water Taking:** Despite anything in this Agreement or any term or condition applicable to the City's reclaimed water customers, DSYSYA agrees that, during each calendar month after November 15, 2024, it will consume no less than the quantity of reclaimed water equal to 44,000 gallons multiplied by the number of days in the calendar month (the "Monthly Minimum Quantity"). If, for any reason, DSYSYA determines that it will be unable to comply with this provision in any calendar month, DSYSYA must notify the City's Utility Director in writing as soon as possible and work with the City to accommodate consumption of reclaimed water as necessary to maintain the City's total demonstrated firm reclaimed water demand.
- 5. Minimum Water Charge:** DSYSYA agrees to pay for the volume of reclaimed water represented by Monthly Minimum Quantity for each calendar month, or such greater amount of reclaimed water consumed by DSYSYA during the calendar month. DSYSYA will not be required to pay for more than the amount of reclaimed water consumed by DSYSYA during a calendar month if, due to circumstances beyond DSYSYA's control such as an interruption in water service or extreme rainfall, it would be unreasonable to consume the Monthly Minimum Quantity during the calendar month and DSYSYA complied with its duty to mitigate under section 4.
- 6. Minimum Water Expiry:** Sections 4 and 5 of this Agreement, and DSYSYA's obligation to consume and pay for the Monthly Minimum Quantity of reclaimed water, expire the calendar month after either of the following events:

- a. the in-service date of the City’s Southwest Regional Wastewater Treatment Plant, or
  - b. the City, acting reasonably, determines that the City’s total demonstrated firm reclaimed water demand minus the Monthly Minimum Quantity is sufficient to obtain the same quantity of beneficial reuse credits authorized under 30 Texas Administrative Code Chapters 222 and 309 as would have been obtained had the Monthly Minimum Quantity been consumed in accordance with section 4..
- 7. Annual Review:** The Parties agree to review this Agreement at least once per year to discuss potential amendments. As part of the annual review, the City will determine and advise DSYSA of the feasibility of decreasing or eliminating the Monthly Minimum Quantity to reflect the City’s total demonstrated firm reclaimed water demand.
- 8. Relationship of Parties:** It is understood by the parties that DSYSA is an independent contractor with respect to the City and not an employee of the City. City will not provide fringe benefits, including health insurance benefits, paid vacation, or any employee benefit, for the benefit of DSYSA. The City may contract with other individuals or firms for services of any kind.
- 9. Assignment:** DSYSA’s obligation under this Agreement may not be assigned or transferred to any other person, firm, or corporation without the prior written consent of City.
- 10. Notice:** All notice required or permitted under this Agreement shall be in writing and shall be delivered either in person or deposited in the United States mail, postage prepaid, addressed as follows:

**For the City:**

Attention: City Administrator  
 City of Dripping Springs City  
 P.O. Box 384  
 Dripping Springs, TX 78620

**For DSYSA:**

Attention: President  
 Dripping Springs Youth Sports Association, Inc.  
 PO Box 637  
 Dripping Springs, TX 78620

Either party may change such address from time to time by providing written notice to the other in the manner set forth above. Notice is deemed to have been received three (3) days after deposit in U.S. mail.

- 11. Entire Agreement:** This Agreement contains the entire Agreement of the parties and there are no other promises or conditions in any other Agreement whether oral or written. This Agreement supersedes and prior written agreements between the parties. If a conflict exists between this Agreement, and the 2017 Agreement or the 2022 Agreement, this Agreement shall prevail to the extent of the inconsistency.
- 12. Amendment:** This agreement may be modified or amended only if the amendment is made in writing and is signed by both parties.

**13. Severability:** If any provision of this Agreement shall be held to be invalid or unenforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

**14. Waiver of Contractual Right:** The failure of any party to enforce any provision of this Agreement shall not be construed as a waiver of that party's right to subsequently enforce and compel strict compliance with every provision of the Agreement.

**15. Applicable Law:** The laws of the State of Texas shall govern this Agreement.

**16. Governing Law and Venue:** This Agreement shall be construed under and in accordance with the laws of The State of Texas. The venue for any and all legal disputes arising under this Agreement shall be a court of competent jurisdiction located in Hays County, Texas. Despite anything to the contrary in this Agreement, no disputes arising out of or related to this Agreement shall be subject to arbitration or non-binding mediation unless both parties agree in writing to submit a specific dispute to arbitration or non-binding mediation after such dispute arises.

**17. Consequential Damages.** Neither party shall be liable to the other for loss of profits or revenue; loss of use or opportunity; loss of good will; cost of substitute facilities, goods, or services; cost of capital; or for any special, consequential, indirect, punitive, or exemplary damages.

*City of Dripping Springs*

*Dripping Springs Youth Sports Association, Inc.*

\_\_\_\_\_  
Michelle Fischer  
City Administrator

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Authorized Signatory

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date