

**FUNDING AGREEMENT BETWEEN  
HAYS COUNTY AND CITY OF DRIPPING SPRINGS**

STATE OF TEXAS

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COUNTY OF HAYS

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**SECTION I. PARTIES TO THE AGREEMENT**

This Agreement is made and entered into by and between Hays County, a political subdivision of the State of Texas, hereinafter referred to as “County” and the City of Dripping Springs (“City”). The parties named above (“The Parties”) have severally and collectively agreed and by execution hereof are bound to the mutual obligations and to the performances and accomplishment of the tasks hereinafter described.

**SECTION II. OVERVIEW**

**The Project**

The City submitted an application for receipt of Hays County Parks Funds, providing a Project Information Form (“PIF”) and proposing to establish and build a regional nature park in the City of Dripping Springs (“Project”).

The Parks and Open Space Advisory Commission (“POSAC”) reviewed the aforementioned PIF along with other parks and open space submittals and recommended that City receive up to three million five hundred and fifty thousand dollars (\$3,550,000 USD) for the fulfillment of its vision.

**Funding**

The estimated costs for design and construction needed for the regional nature park on the Property is approximately 7.5 Million Dollars (\$7,500,000 USD). Design and Construction activities are anticipated to include (but not be limited to) civil engineering, geotechnical, geological, architectural design, Mechanical, Electrical, and Plumbing and structural engineering, bidding, and construction. A Vision Plan has already been completed by RVI Planning, a firm chosen through the Request for Qualifications process. In addition, RVI Planning will complete construction plans at a cost of six hundred ninety-five and one hundred fifty dollars (\$695,150). The construction plan shall be immediately available upon submission of an invoice or invoices for the cost of the construction plans.

**Operations and Maintenance**

The City is generally obligated to operate and maintain the Project for the benefit of the public as provided in **Exhibit B**.

**Term**

2.1 Term. The term of this Agreement shall be for twenty-five (25) years (or as extended by written agreement of the parties) and shall commence on the Effective Date, and the Term shall expire on the Expiration Date (as may be extended by the Renewal Option, the “Term”). The Expiration Date means the last calendar day of the twenty fifth (25th) year after the Effective Date, unless this Agreement is either: (i) sooner terminated pursuant to any applicable provision hereof in which event such date of termination shall

be the “Expiration Date”; or (ii) extended by successive 5 year terms, in which event the last calendar day of the final Renewal Term shall be the “Expiration Date.”

2.2 Renewal Term. Subject to the terms and conditions of this Agreement and provided that (i) this Agreement is in full force and effect and (ii) no default exists on either the date of exercise or on the date of commencement of the Renewal Term, the Parties may agree to two (2) renewal options (each, a “Renewal Option”) to extend the Term of this Agreement for an additional term of five (5) years each (each, a “Renewal Term”) that commences at 12:00 a.m. on the day immediately following the expiration of the Term then in effect, and upon the same terms, conditions and covenants as are contained herein by approval of all the Parties governing boards (the “Renewal”) of such election no more than twenty-four (24) months and no less than six (6) months prior to the expiration of the Term then in effect.

### **SECTION III. COUNTY OBLIGATIONS**

#### **Design and Construction**

The total amount paid by the County under this Agreement shall be the sum of three million five hundred five thousand Dollars (\$3,550,000 USD). If the City has not spent monies provided under the terms of this agreement within five (5) years of the Effective Date, the remaining funds not issued to City by the County will remain in the County’s General Fund and will no longer be used for the funding of this Agreement. The County reserves the right to increase funding for the design and construction of the regional nature park in its sole discretion.

#### **Draw Requests**

The County’s Program Manager, Halff Associates (or successor), will collaborate with the City to identify the design and construction activities eligible for funds under this Agreement, but the construction plans as listed above shall be eligible for funds. The County shall pay the City in one or more disbursements, the funds needed to perform design and construction, after application for such funds is made by the City, with monitor subcontractors’ performance of design and construction services. Distribution of funds shall be made utilizing a draw request form provided by the County’s Program Manager. The form is attached as **Attachment C**.

#### **Additional Project Funding**

Subject to all aforementioned funding terms, additional funds for the City may be made available for expenditure after the City and its design team have estimated the total cost of the Project.

### **SECTION IV. OTHER OBLIGATIONS**

#### **Compliance with Laws**

The parties acknowledge that the funds expended under this Agreement are public funds that must be carefully monitored to ensure proper distribution under the County’s parks program. The City is obligated to comply with all local, State, and Federal laws in relation to the expenditure of funds paid under this Agreement.

#### **Recognition**

In consideration of the County’s obligations under this Agreement the City shall acknowledge County

contributions to the Project by including reference to Hays County on public signage and public literature that promotes or serves the Project.

**SECTION V. CONTRACTS**

The City may contract for the performances of the design and construction activities specified herein. Any such contracts shall be subject to: (1) competitive quotes; (2) selected based on the basis of the best qualifications among at least three candidates; or (3) through an open request for qualifications or proposals for the performance of work. The City may self-perform with its staff and volunteers any portion of the design and construction.

**SECTION VI. CONFLICT OF INTEREST**

No agent or employee of the City and no employee of the County, and no person who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Agreement shall participate in any decision relating to this Agreement which affects his or her personal pecuniary interest.

**SECTION VII. EQUAL OPPORTUNITY**

The City assures that no person shall, on the ground of race, creed, color, handicap, national origin, sex, political affiliation or beliefs, be excluded from, be denied the benefits of, or be subject to discrimination under any program or activity funded in whole or in part under this Agreement or otherwise under the City's control.

**SECTION VIII. RIGHT TO AUDIT**

At its sole discretion, the County may arrange for an independent audit of all funds received under and payments made pursuant to this Agreement by County Auditor staff, or a certified public accountant.

**SECTION IX. SEVERABILITY**

If any Section or provision of this Agreement is held to be invalid or void, the other Sections and provisions of this Agreement shall remain in full force and effect to the greatest extent as is possible, and all remaining Sections or provisions of this Agreement shall be construed so that they are as consistent with the parties' intents as possible.

**SECTION X. LIABILITY COVERAGE**

The City agrees that, during the performance of all terms and conditions of this Agreement, from the Effective Date until the County's acceptance of the City's Notice of Completion or until this Agreement is otherwise considered completed as a matter of law, the City shall, at its sole expense, provide and maintain Commercial General Liability coverage that meets or exceeds the industry standard for professional services providers in the City's fields of employment and for the type of services and construction activities that are being performed under this Agreement. Such liability coverage shall specifically name the County as co-insured. This liability coverage shall cover all perils arising from the activities of the City, its officers,

directors, employees, agents or sub-contractors, relative to this Agreement. The City shall be responsible for any deductibles stated in the policy. A true copy of each Certificate of Liability Coverage shall be provided to the County within seven (7) days of the new policy date at the following address:

Hays County Criminal District Attorney's Office - Civil Division  
111 E. San Antonio St., Suite 202  
San Marcos, TX 78666  
[tucker.furlow@co.hays.tx.us](mailto:tucker.furlow@co.hays.tx.us)

With Copy to:

Hays Countywide Operations  
101 Thermon Drive  
San Marcos, TX 78666  
[tammy.crumley@co.hays.tx.us](mailto:tammy.crumley@co.hays.tx.us)

Hays County Purchasing Office  
712 S. Stagecoach Trail, Ste. 1012  
San Marcos, TX 78666  
[stephanie.hunt@co.hays.tx.us](mailto:stephanie.hunt@co.hays.tx.us)

So long as this Agreement is in effect, the City shall not cause such liability coverage to be canceled nor permit such liability coverage to lapse. All coverage certificates shall include a clause to the effect that the policy shall not be canceled, reduced, restricted or otherwise limited until thirty (30) days after the County has received written notice as evidenced by a return receipt of registered or certified mail.

## **SECTION XII. MISCELLANEOUS**

12.1 Modification of Agreement. The terms and conditions of the Agreement may be modified at any time by the mutual consent of both parties. However, no amendment or modification to this Agreement is effective unless and until it is reduced to writing and signed by duly authorized representatives of both parties.

12.2 Written Notice. Unless otherwise specified, written notice will be deemed to have been duly delivered if delivered in person to the individuals listed below or if it is delivered or sent certified mail or email to the address below. Each party will have the right to change its address by at least thirty (30) calendar days written notice to the other party.

COUNTY:

Hays County Criminal District Attorney's Office - Civil Division  
111 E. San Antonio St., Suite 202  
San Marcos, TX 78666  
[tucker.furlow@co.hays.tx.us](mailto:tucker.furlow@co.hays.tx.us)

With Copy to:

Hays Countywide Operations  
101 Thermon Drive  
San Marcos, TX 78666

City of Dripping Springs  
Hays County

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[tammy.crumley@co.hays.tx.us](mailto:tammy.crumley@co.hays.tx.us)

Hays County Purchasing Office  
712 S. Stagecoach Trail, Ste. 1012  
San Marcos, TX 78666  
[stephanie.hunt@co.hays.tx.us](mailto:stephanie.hunt@co.hays.tx.us)

CITY:  
City Administrator  
511 Mercer Street  
Dripping Springs, Texas 78620  
[mfischer@cityofdrippingsprings.com](mailto:mfischer@cityofdrippingsprings.com)

With Copy to:  
Laura Mueller  
City Attorney  
511 Mercer Street  
Dripping Springs, Texas 78620  
[lmuller@cityofdrippingsprings.com](mailto:lmuller@cityofdrippingsprings.com)

12.3 Waiver. Failure of any party, at any time, to enforce a provision of this Agreement in no way constitutes a waiver of that provision, nor in anyway affects the validity of this Agreement, any part of this Agreement, or the right of the party thereafter to enforce each and every provision of this Agreement. No term of this Agreement will be deemed waived or breach excused unless such waiver is in writing and signed by the party claiming to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

12.4 Entire Agreement. It is understood this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises, or inducements contrary to the terms of this Agreement exist.

12.5 Choice of Law, Place of Performance and Jurisdiction. This Agreement is governed by the laws of the State of Texas. Performance of this Agreement is in Hays County, Texas. All suits, actions, claims and causes of action relating to the construction, validity, performance and enforcement of this Agreement shall be in the courts of Hays County, Texas.

12.6 Force Majeure.

a. Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, Acts of God, Government restrictions including wars, insurrections, natural disasters or other emergencies as declared by Federal, State or County agencies or departments, and/or any other cause beyond the reasonable control of the party whose performance is affected.

b. If performance of any obligation of either party hereunder is prevented or rendered impracticable or infeasible as discussed in the preceding paragraph, it is understood and agreed that there shall be no claim for damages against the obligated party for failure to perform its obligations under this Agreement.

12.7 Authority. Each party has full power and authority to enter into and perform under this Agreement,

and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement represent that they have authorization to sign on behalf of their respective entities.

12.8 Governmental Immunity and Release. County and the City both enjoy sovereign and governmental immunity, respectively. By entering into this Agreement, neither County nor the City consents to suit, the waiver of their respective immunity, the right to claim such exemptions or privileges as may be provided by law, or the waiver of limitation as to damages under the Texas Tort Claims Act.

12.9 Agreement Read. Each party acknowledges that it has read, understands, and intends to be bound by the terms and conditions of this Agreement.

12.10 Public Information Act. County and the City both acknowledge that the other is obligated to comply with the Public Information Act, Chapter 552, *Texas Government Code*, in responding to any request for public information pertaining to this Agreement.

12.12 Electronic Signatures; Multiple Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. This Agreement may be transmitted via facsimile or other similar electronic means, and execution by the undersigned by such means shall be deemed an original signature for all purposes and have the same force and effect as a manually signed original.

**WITNESS OUR HANDS EFFECTIVE THIS \_\_\_\_\_ OF \_\_\_\_\_, 2024 (the “Effective Date”).**

**Approved and accepted on behalf of the County of Hays.**

\_\_\_\_\_  
Judge Ruben Becerra Hays  
County Judge

**Approved and accepted on behalf of the City**

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Bill Foulds, Jr.  
Mayor, City of Dripping Springs