

**INTERLOCAL AGREEMENT BETWEEN THE CITY OF DRIPPING SPRINGS,  
TEXAS; HAYS COUNTY, TEXAS; DRIPPING SPRINGS SKATEPARK, INC., AND  
THE DRIPPING SPRINGS COMMUNITY FOUNDATION FOR THE CONSTRUCTION  
OF DRIPPING SPRINGS REGIONAL SKATE PARK, TO BE CONSTRUCTED AT  
THE FOUNDERS MEMORIAL PARK, A PUBLIC PROPERTY OWNED BY THE CITY  
OF DRIPPING SPRINGS, TEXAS**

This Agreement is made and entered into by Hays County, a political subdivision of the State of Texas (“County”), the City of Dripping Springs, Texas, a general law municipality (“City”) under the authority of Chapter 791, of the Texas Government Code, the Dripping Springs Community Foundation (“Foundation”), and the Dripping Springs Skatepark, Inc.

For and in consideration of the mutual agreements herein exchanged, County, City, and Foundation hereby contract as follows:

**I. Purpose and Legal Authority.**

- 1.1 The purpose of this Agreement is to provide for the design and construction of various improvements at the Dripping Springs Regional Skate Park (hereinafter “the Skate Park”) property at Founders Memorial Park, used for park/recreation purposes and owned by the City. The Property is located within the corporate limits of the City of Dripping Springs. Legal descriptions of the Property are attached hereto as Exhibit “C.” Improvements to the Project are described in Exhibit “A,” attached hereto and incorporated herein by reference and referred in this Agreement as “the Project.” The proposed location of the Project improvements is depicted on the Site Plan attached as Exhibit “B.”
- 1.2 The City and County, as units of local government, are authorized by §791.011 of the Texas Government Code to contract with each other to perform certain governmental

functions and services. As defined in §791.003 of the Texas Government Code, such governmental functions and services include parks and recreation.

- 1.3 The County's obligations under this Agreement include, after the performance of certain conditions precedent as cited in Section VI of this Agreement, availability of sufficient funding for construction costs to complete the Skate Park improvements depicted in Exhibit "C." By and through this Agreement, as more particularly specified elsewhere in the Agreement, the Skate Park will serve the recreational needs of the County. The County's funding toward the Skate Park will enhance the Skate Park's utility as a public park and recreation area for the use and enjoyment of County citizens.
- 1.4 All of the duties and obligations of the County and the City under this Agreement shall be performed from lawfully available current revenues.
- 1.5 This Agreement has been approved by the Hays County Commissioners Court and the Dripping Springs City Council as required by §791.011 of the Texas Government Code.

## **II. Term; Expenditure.**

- 2.1 This Agreement is made for a term beginning on the 17<sup>th</sup> day of May 2022 ("Effective Date") and shall remain in effect until the construction of improvements identified in Exhibit "C" has been completed. However, the obligations of the Parties may extend beyond the Effective Date where such extension is indicated within this Agreement.
- 2.2 The Dripping Springs Skatepark, Inc. (Skatepark), its Designated Subcontractor in partnership with the Dripping Springs Community Foundation as its fiscal agent, shall expend funding it has received from sources other than the County prior to

expending County funds. Within (30) days of final payment to the contractor(s) for construction costs, any monies provided under this agreement and not expended by the Dripping Springs Community Foundation and no longer needed for the purposes described herein shall be returned to the County.

### **III. Dripping Springs Skatepark, Inc. and Dripping Springs Community Foundation**

#### **Duties -- General**

3.1 In consideration of County's obligations under this Agreement, the Dripping Springs Skatepark, Inc. and the Dripping Springs Community Foundation shall conduct its business under this Agreement as follows:

- a. For any County funds expended under this Agreement, the Dripping Springs Skatepark, Inc. and the Foundation, shall select a qualified designer and construction company and shall prepare construction contract(s) (whether one or more, the "Construction Contract"), and shall award contract(s) for construction and improvement of the Project. The Skatepark and the Foundation shall gather no less than three (3) quotes and choose the Lowest and Best vendor or contractor. "Lowest and best," for the purposes of this Section, shall mean a bid or offer providing the best value considering associated direct and indirect costs, including transport, maintenance, reliability, life cycle, warranties, and customer service after a sale. Alternatively, The Dripping Springs Skatepark, Inc. and the Foundation may procure a contractor via a Purchasing Cooperative authorized to issue skate park services in the State of Texas. It is the intent of the parties to select a contractor with a knowledge of the site, experience with projects of

similar size and scope in the area, and with positive referrals from other cities in the Central Texas area.

- b. In any Construction Contract executed for improvement of the Project, the Skatepark and the Foundation shall require payment, performance, and maintenance bonds, insurance, and all other terms and conditions that the City normally includes in a construction contract and in accordance with all applicable federal and state laws and city ordinances and in accordance with the license agreement between the City and the Skatepark;
- c. In any Construction Contract executed for improvement of the Project, the Foundation in cooperation with the Dripping Springs Skatepark, Inc., or its Designated Subcontractor, shall require five percent (5%) retainage by the Foundation on each payment to the Contractor;
- d. In any Construction Contract executed for improvement of the Project, state that Contractor is an independent contractor of the Foundation and the Skatepark.

3.2 The Foundation, Dripping Springs Skatepark, Inc., and the City shall review and approve plans and contracts prior to execution. The Foundation, the Dripping Springs Skatepark, Inc. and the City, shall review the construction plans and cost estimates prior to construction. No construction shall begin until the construction plans and cost estimates are approved by the City, approval which shall not be unreasonably withheld. Construction shall be done to City Standards. All construction shall be in accordance with the City regulations and requirements.

3.3 Following the award of any Construction Contract, Foundation, the Dripping Springs Skatepark, Inc. and the City, will oversee execution of the contract documents and

provide a notice to proceed to the Contractor only after any and all contingencies contained in the contract documents have been met.

- 3.4 In consideration of the County's obligations under this Agreement, the Foundation, the Dripping Springs Skatepark, Inc., and the City shall acknowledge County contributions to the Skate Park by including reference to Hays County on public signage and public literature that promotes and/or serves the Skate Park.
- 3.5 City shall operate the Skate Park as a public facility for the use and benefit of Hays County residents, with reasonable limitations on the time, place, and manner of the public's use.
- 3.6 City shall be solely responsible for costs related to the operation and maintenance of the Skate Park. County shall not be responsible for any costs related to operation and maintenance of the Skate Park, unless specified by a separate legal instrument expressly approved by the Hays County Commissioners Court.

#### **IV. Dripping Springs Community Foundation and Dripping Springs Skate Park LLC**

##### **Duties – Construction Phase of the Project.**

- 4.1 The Dripping Springs Skatepark, Inc. and the Foundation, with assistance from its Designated Subcontractor, shall monitor any contractor's compliance with all terms and conditions of the Construction Contract. The Dripping Springs Skatepark, Inc. and the Foundation shall notify the contractor, in writing of any deficiencies or defaults.
- 4.2 The Dripping Springs Skatepark, Inc. and the City shall inspect the work done by any contractor to verify the delivery of materials and completion of work as represented in each payment draw and in accordance with the City's ordinances.

- 4.3 The Dripping Springs Skatepark, Inc. shall review and approve payment draw requests and supporting documentation from its Designated Subcontractor.
- 4.4 For all payment draws except the final payment draw submitted by a contractor, the Dripping Springs Skatepark, Inc. and the Foundation, with assistance from its Designated Subcontractor, shall promptly pay the Contractor directly after its approval of the payment draws, less a 5% retainage and less any other amounts authorized to be withheld under the construction agreement. For the final payment draw submitted by Contractor, the Dripping Springs Skatepark, Inc. and the Foundation shall make final payment to Contractor only after release of retainage is authorized by the Foundation and the Dripping Springs Skatepark, Inc.
- 4.5 If the Project changes substantially from that described in Exhibit “A,” the Dripping Springs Skatepark, Inc. shall contact the Hays County Office of General Counsel in writing. Substantial changes to the Project must be reviewed and approved by the County Commissioners Court. If changes are not approved, the Skatepark, Inc. and the Foundation shall:
- (1) proceed with original Project as described in Exhibit “A;” or
  - (2) refund to County the estimated funds allocated to the portion of the Project that has changed.
- 4.6 Within sixty (60) days after Effective Date, the Dripping Springs Skatepark, Inc., and the Foundation shall submit to the County all records of expenditures related to the Project incurred as of the Effective Date.

## **V. County’s Rights and Duties.**

- 5.1 Subject to the conditions precedent cited in Article VI of this Agreement, County shall pay the Dripping Springs Community Foundation an amount not to exceed Six Hundred and Twenty-Four Thousand, Two Hundred and Fifty Dollars (\$624,250.00 USD), which are lawfully available current funds, for the construction of the Project, to be paid in lump sum within fifteen (15) business days of the Effective Date.
- 5.2 County shall, upon ten (10) days' written notice to the Foundation, have a right to inspect all receipts, invoices, proofs of purchase, and records of expenditures related to the Project. County's rights under this Section shall extend until ten (10) years after the termination date cited in Section 2.1, above. The County may utilize the records provided under this section to ensure any monies provided under this agreement have been expended by the City for the purposes described herein.

## **VI. Conditions Precedent.**

- 6.1 This Agreement shall become effective and binding on the City and the County upon approval by the Hays County Commissioners Court and the Dripping Springs City Council. It shall become binding on the Dripping Springs Skatepark, Inc., and the Dripping Springs Community Foundation after approved by the Foundation.
- 6.2 **Public Dedication of Park Improvements.** As a condition precedent to the provision of funding under this Agreement, the City shall provide a copy of a valid License Agreement allowing the Skate Park to be placed in the Founders Memorial Park which has been dedicated as Park Property in perpetuity to the County which shows that the Property associated with the Project is burdened with a public dedication in perpetuity, or its equivalent, that runs with the land and grants a right of access to the

public, with reasonable limitations on the time, place, and manner of the public's use ("Public Dedication").

## **VII. Amendments.**

- 7.1 This Agreement can be amended only by written approval of the Hays County Commissioners Court, the Dripping Springs City Council, the Dripping Springs Skatepark, Inc., and the Dripping Springs Community Foundation.

## **VIII. Authorization to Sign.**

- 8.1 The Hays County Judge is authorized to sign this Agreement on behalf of Hays County, Texas. The City Administrator is authorized to sign this Agreement on behalf of the City of Dripping Springs, Texas. The Dripping Springs Community Foundation Board President is authorized to sign this Agreement on behalf of the Dripping Springs Community Foundation. The Board President of the Dripping Springs Skatepark, Inc.

## **IX. Representations.**

- 9.1 City, County, the Skatepark, Inc. and the Foundation each make the following representations to each other as inducements to enter into this Agreement:
- a. That it has the legal authority to enter into this Agreement for the purposes stated herein and to perform the obligations it has undertaken hereunder;
  - b. That the meetings at which this Agreement and any amendments were approved were held in accordance with the Texas Open Meetings Act, Chapter 551, Texas Government Code, if required;
  - c. That it has been represented by legal counsel and has had legal counsel available to it for consultation prior to entering into this Agreement.

## **X. Severability.**

10.1 If any clause, sentence, paragraph, or article of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such determination shall not be deemed to impair, invalidate, or nullify the remainder of this Agreement if the Agreement can be given effect without the invalid portion. To this extent, the provisions of this Agreement are declared to be severable.

## **XI. Entire Agreement.**

11.1 This Agreement contains the entire agreement between the parties respecting the subject matter hereof, and supersedes all prior understandings and agreements between the parties regarding the specific improvements contemplated in this Agreement. This Agreement may not be modified or amended except by written agreement duly executed by City and County and approved in the manner provided in Section VII above.

## **XII. Interpretation**

12.1 The parties acknowledge and confirm that this Agreement has been entered into pursuant to the authority granted under the Interlocal Cooperation Act, which is codified as Chapter 791 of the Texas Government Code. All terms and provisions hereof are to be construed and interpreted consistently with that Act. This Agreement shall not be more strictly construed against either City or County.

## **XIII. Applicable Law and Venue**

13.1 This Agreement shall be construed in accordance with the laws of the State of Texas. All obligations hereunder are performable in Hays County, Texas, and venue for any action arising hereunder shall be in Hays County, Texas.

EXECUTED IN DUPLICATE ORIGINALS THIS \_\_\_\_\_ DAY OF \_\_\_\_\_  
2022.

**CITY OF DRIPPING SPRINGS, TEXAS**

**HAYS COUNTY, TEXAS**

\_\_\_\_\_  
**MICHELLE FISCHER**  
**CITY ADMINISTRATOR**

\_\_\_\_\_  
**RUBEN BECERRA**  
**HAYS COUNTY JUDGE**

**ATTEST:**

**ATTEST:**

\_\_\_\_\_  
**ANDREA CUNNINGHAM, TRMC**  
**CITY SECRETARY**

\_\_\_\_\_  
**ELAINE CARDENAS, MBA, PhD**  
**HAYS COUNTY CLERK**

**DRIPPING SPRINGS COMMUNITY FOUNDATION**

\_\_\_\_\_  
**Board President**

**ATTEST:**

\_\_\_\_\_  
**Board Secretary**

**DRIPPING SPRINGS SKATEPARK, INC.**

\_\_\_\_\_  
**Board President**

**ATTEST:**

\_\_\_\_\_  
**Board Secretary**

**Exhibit A**  
**The Project**

**Exhibit B**  
**Project Site Plan**

**Exhibit C**  
**The Property (Legal Descriptions)**