



## FOUNDERS DAY FESTIVAL 2023

### Participation Agreement

This *Founders Day 2023 Participation Agreement* (“Agreement”) is for the performance of certain goods and/or services, as specified below:

1. **PARTIES:** This Agreement is hereby executed by and between the City of Dripping Springs, Texas, and Dripping Springs Lions Club (“Contractor”).
2. **DEFINITIONS:**
  - (a) **City:** The City of Dripping Springs, a Type-A General Law Municipality located in Hays County, Texas.
  - (b) **City Council:** The governing body of the City of Dripping Springs.
  - (c) **Event:** The Founders Day Festival, a civic celebration
  - (d) **Founders Day Commission:** A citizen advisory board of the City appointed by the City Council.
3. **DESCRIPTION:** Contractor is hereby engaged to provide The Mighty Thomas Carnival.
1. **SCOPE:** is Agreement applies to Contractor’s participation in the Event, which shall be conducted as more particularly described in Attachment “A”. This Agreement is performable at the 2023 Founders Day Festival at April 28-30, 2023.
2. **LOCATION:** This Agreement is fully performable in Dripping Springs, Texas. Lions Club will contract with the Mighty Thomas Carnival (MTC)- MTC will set up at the City Hall Property, Mercer Street Right of Way and DSISD Administration Property (more fully described in the Use Agreement between the City of Dripping Springs, the Dripping Springs Lions Club and the Dripping Springs Independent School District).
3. **CONSIDERATION:**
  - 3.1 In consideration of Contractor’s participation in the Event, the Contractor agrees to pay the City 25% of the profits.
  - 3.2 Such fee shall be due and payable by check payable at the party’s principal place of business no later than 5:00 p.m., May 12<sup>th</sup>, 2023.

Commented [LM1]: This seems early?

**4. SUPPLIES:**

**4.1** Contractor agrees to provide all supplies, tools, and equipment necessary for performance under this Agreement.

**5. DURATION:** This Agreement shall be in effect for no more than one year and shall be deemed terminated when all duties and obligations created herein are fully satisfied.

**6. TERMINATION:**

**6.1** This Agreement may be terminated by mutual consent of the parties.

**6.2** This Agreement may be terminated by either party without prejudice upon written notice to the other party via certified mail, return receipt requested, thirty (30) days prior to commencement of the Event.

**6.3** Termination shall release each party from all obligations of this Agreement, except as specified below.

**6.4** Termination of this Agreement, as provided above, shall not prohibit, or impair any claim by either party based upon any breach of this Agreement.

**6.5** The City shall determine if Contractor shall be relieved of Contractor's obligations to participate in the Event due to inclement weather.

**6.6** *Force Majeure:* In situations in which Contractor's participation in the Event is delayed, cancelled, or suspended due to acts of God, severe weather, natural disaster, state of public emergency, or strike, the terms of this Agreement are waived.

**7. SITE MAINTENANCE:**

**7.1** Contractor shall not perform waste or damage the site.

**7.2** Contractor shall exercise reasonable care and due diligence to avoid harming City premises upon which the Event occurs.

**7.3** Contractor shall restore or rehabilitate the site and the access to it at the termination of this Agreement. This requirement shall not apply to normal wear and compression on the grass.

**7.4** Contractor shall provide trash cans and remove all trash it generates from the Event.

**8. INDEPENDENT CONTRACTOR:** The Parties agree that Contractor is an independent contractor and is neither an agent nor an employee of the City. Contractor is solely responsible for directing and controlling Contractor's resources and staff in order to achieve the goals of this Agreement.

**9. SAFETY:** Contractor shall abide by all state, federal and local rules, and regulations. Contractor shall take all reasonable steps to ensure public safety and protection from fire damage.

**10. INSURANCE:**

**10.1 City Insurance:** As the Event’s primary sponsor and lead organizer, the City confirms that is has obtained liability coverage that applies to its streets and public areas, and covers the Event, generally.

**10.2 Contractor’s Insurance:** Contractor agrees to maintain general liability insurance to cover its own activities related to its performance under this Agreement. Contractor further agrees to name the City as an additional insured under Contractor’s general liability insurance and agrees to provide the City a copy of the certificate of general liability insurance.

**11. INDEMNIFICATION:** CONTRACTOR, CONTRACTOR’S AGENT’S AND/OR EMPLOYEES SHALL INDEMNIFY AND HOLD THE CITY, CITY’S AGENTS, EMPLOYEES, AND/OR VOLUNTEERS HARMLESS FOR ANY CLAIMS OR CAUSES OF ACTION STEMMING FROM THE CONTRACTOR’S PARTICIPATION AT THE EVENT, INCLUDING BUT NOT LIMITED TO PERSONAL INJURY AND LOST OR DAMAGE TO PROPERTY.

**12. RULES:** The Contractor shall adhere to all rules established for the Event by the Founders Day Commission.

**13. CONTROLLING LAW & VENUE:** Any and all disputes that may arise in relation to this Agreement shall be subject to the laws of the State of Texas. Venue for any disputes arising under this Agreement shall be in *Hays County, Texas*.

**14. NOTICES:** Any notice provided for by this Agreement and any other notice, demand, or communication which either party may wish to send to the other, shall be in writing and given by (a) hand delivery, (b) express overnight delivery service, or (c) registered or certified United States mail, return receipt requested. Notices shall be addressed to the party for whom such notice, demand or communication is intended at such party’s address as set forth below:

**To the City:**

City of Dripping Springs  
Attn: City Administrator  
PO Box 384  
Dripping Springs, TX 78620  
(512) 858-4725

**To the Contractor:**

DS Lions Club  
Attn: \_\_\_\_\_  
\_\_\_\_\_

**Commented [LM2]:** Is Lions Club contracting directly with the Carnival so we are not?

**15. ASSIGNMENT:** Neither party shall assign, sublet, or transfer any interest in this Agreement without written consent of the other Party. Nothing herein shall be construed as giving any rights or benefits hereunder to anyone other than the City and Contractor.

**16. BINDING ON SUCCESSORS:** This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and permitted assigns.

**17. SEVERABILITY:** Any provisions of the Agreement prohibited or unenforceable by law shall be ineffective without affecting any other provision of this Agreement or shall be deemed to be severed or modified to conform to such law, and the remaining provisions of this Agreement shall remain in force, provided that the purpose of this Agreement can be achieved. To the full extent, however, that the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement be deemed to be a valid and binding agreement enforceable in accordance with its terms.

**18. MERGER:** This instrument, and all Attachments affixed hereto, constitutes the entire Agreement between the City and Contractor. To the extent there are any conflicts between this Agreement and the attachments, this Agreement shall govern. This Agreement supersedes all other agreements, oral or written, made with respect to the Event.

**19. MODIFICATIONS:** All amendments or modifications to the Agreement must be in writing. No modification shall be effective until approved by both parties.

**20. COUNTERPARTS:** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, and all of such counterparts together shall constitute but one and the same instrument.

**BE IT HEREBY AGREED & APPROVED,** for good and valuable consideration, as described herein, the sufficiency of which is hereby acknowledged.

**CITY OF DRIPPING SPRINGS**

**DS Lions Club**

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

\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**ATTEST:**

\_\_\_\_\_  
Andrea Cunningham, City Secretary

Attachment A





