

USE AGREEMENT

Dr. Pound Farmstead Farmers Market Location

THIS 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 The Friends of the Pound House Foundation (“FPHF”) FPHF, a registered 501(c)3 Texas non-profit organization.

I. RECITALS

- A. The FPHF is a registered Texas non-profit in good standing whose purpose is to historical information regarding the City of Dripping Springs and the hill country; and
- B. The FPHF wishes to enter into a use agreement with the City to allow the Dripping Springs Farmers Market to use the grounds and restrooms of the FPHF to host their weekly event; and
- C. The FPHF site is located at 419-B Founders Park Road, Dripping Springs, TX 78620.
- D. The City and FPHF mutually desire to aid in the promotion of each other and, accordingly, agree to co-promote Farmers Market and Historical Farmstead in various marketing materials.

II. AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants described herein, the parties hereto agree as follows:

A. Duties of City

- a. After each Farmers Market, the City will cover restroom cleaning fees, as described below.
- b. The City will remove any trash generated during the event.
- c. The City agrees to reimburse the FPHF for the cost of electricity it uses during Market each Wednesday.
- d. The City agrees to provide Farmers Market staff to coordinate and run all operations of the weekly market.
- e. If requested, the City agrees to provide the FPHF an information dissemination location at no cost.

- f. The City agrees to manage vehicular traffic during market each week to minimize impact to old growth trees and landscape within the grounds.

B. Duties of The FPHF

- a. The FPHF agrees to allow The City to use the grounds within the fenced perimeter of The FPHF property each Wednesday between the hours of 12 p.m. to 8 p.m. The last week of September through the first week of November, has been reserved for the DS Pumpkin Fest use of the grounds. FPHF and the City will work together to allow for continued Market operations during this time.
- b. The FPHF agrees to not operate or allow the sale of concessions, additional vendors, or other entities/organizations within the grounds of the FPHF during Farmers Market days except for those days that occur during DS Pumpkin Fest.
- c. The FPHF agrees to permit use of their restrooms for the Farmers Market.
- d. The FPHF agrees that the grounds and restrooms are clear of debris and trash and in an operational order prior to each Farmers Market.
- e. The FPHF will permit the City at its own expense to purchase and install picnic tables that will serve the Farmers Market attendees for the term of the contract. The City retains ownership of the picnic tables and may remove them at any time including upon termination of this agreement or the City's use of the area.
- f. FPHF agrees to provide electricity for Farmers Market operations each Wednesday. FPHF will invoice the City monthly based on meter reads taken before and after each Market.

E. Fees and Payment

- a. The City will reimburse The FPHF for additional mowing services to accommodate the weekly event up to a total of \$1388 per fiscal year (October 1 – September 30). FPHF will invoice the City for payment and attach the service record. ~~LM1~~ Payment will be provided within thirty (30) days of receipt of an approved invoice.
- b. The City agrees to cover restroom cleaning fees for the FPHF follow each week that the Farmers Market occurs on site. The fees will be paid upon invoice by the cleaning service arranged by the City.

F. Access to Facilities

- a. The City is permitted access The FPHF on Farmers Market days from 12:00 p.m. – 8:00 p.m.

- b. To provide the safest operational standards and access by emergency response teams, no entrance to the grounds will be impeded by Farmers Market operations.
- c. If there is an emergency such as inclement weather or an unforeseen circumstance, the City may decide to cancel, delay, close, or relocate the market.

G. Term

The term of this Agreement shall be for one (1) year. The term may be extended by written agreement of both parties.

H. Miscellaneous

- a. The City will maintain its own liability coverage through Texas Municipal League Intergovernmental Risk Pool and will name the FPHF as an additional named insured and provide a copy of such policy prior to the beginning of the terms of this Use Agreement.
- b. It is specifically agreed that nothing herein is intended to convey any real property rights of the FPHF to The City other than the use described herein.
- c. The FPHF assumes no responsibility for any property placed by The City or any Farmers Market vendor, the FPHF is hereby expressly released and discharged from all liability for any loss, injury, or damage to persons or property that may be sustained by reason of the use of the Historical Farmstead and related facilities under this Agreement, unless such liability is the result of negligence caused by FPHF or its assigns and designees.
- d. The City accepts the premises as-is. The City may not change any part of the Historical Farmstead or layout of its related facilities unless it receives prior written approval from the FPHF board or designee for the proposed changes.
- e. The City will cooperate with the FPHF to comply with all applicable laws (federal, state, and local), including ordinances of the City. The City agrees to abide by and conform with all rules and regulations from time to time adopted or prescribed by the FPHF for the government and management of the facility and grounds.
- f. The City shall not assign this Agreement, or any rights, obligations or entitlements created under this Agreement to any other person or entity without prior written approval from the FPHF.
- g. Either party may terminate this Agreement without cause upon the terminating party giving the non-terminating party thirty (30) days written notice.
- h. This Agreement will automatically terminate if The City fails to adequately respond and remedy any complaints or concerns from the FPHF within thirty (30) days of a written request by the FPHF.

- i. The laws of the State of Texas shall govern any disputes or conflicts that arise under the terms of this Agreement. The venue for all legal actions involving this Agreement shall be Hays County.
- j. Entire Agreement: This document represents the entirety of the agreement between the City and the FPHF. No oral or other written contracts outside of this Agreement shall have any affect unless they are approved in writing by both parties and made a part of this Agreement.
- k. Amendments: This Agreement may be amended only by an instrument in writing signed by the City and the FPHF.
- l. Severability: The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person or circumstance shall ever be held by any agency or court of competent jurisdiction to be unenforceable, invalid, or unlawful for any reason, the remainder of this Agreement shall not be affected thereby.
- m. Mandatory Disclosures: Texas law requires that those contracting with the City make certain disclosures. Prior to the effective date of this Contract, the FPHF has submitted to the City a copy of the Conflict-of-Interest Questionnaire form (CIQ Form) approved by the Texas Ethics Commission (Texas Local Government Code Chapter 176). The Contractor must also fill out Form 1295, as required by the Texas Ethics Commission, and submit it to the City. The form may be found here: <https://www.ethics.state.tx.us/filinginfo/QuickFileAReport.php>.
- n. All notices in connection with this Agreement shall be in writing and shall be considered given as follows:

When delivered personally to the recipient's address as stated in this Agreement; or 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:

To the City:

City of Dripping Springs
Attn: City Administrator
511 Mercer Street
PO Box 384
Dripping Spring, TX 78620

**To Friends of the Pound House
Foundation:**

The Friends of the Pound House Foundation
Attn: Executive Director
419 – B Founders Park Rd.
PO Box 1150
Dripping Springs, TX 78620

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

- o. This Agreement shall be effective upon final signing by both parties.

IN WITNESS WHEREOF, The City of Dripping Springs and Dr. Pound FPHF have executed this Agreement on the dates indicated.

CITY OF DRIPPING SPRINGS:

DR. POUND FPHF:

Bill Foulds, Jr., Mayor

Jenny Pack, Executive Director

Date

Date

ATTEST:

Andrea Cunningham, City Secretary