

## **PROFESSIONAL SERVICES CONTRACT AND USE AGREEMENT**

This AGREEMENT is made and entered into this, the 19<sup>th</sup> day of July 2022 by and between the **City of Dripping Springs**, Texas, a municipal corporation (hereinafter referred to as “City”), and **Hell Country Productions, Inc**, a registered Non-Profit in the State of Texas (hereinafter referred to as “Contractor”).

**WHEREAS**, the City desires to offer independent Contractors to provide events and attractions in the parks; and

**WHEREAS**, the City finds that the contractor assumes all liability and shall be an independent Contractor as related to this agreement; and

**WHEREAS**, this agreement can be terminated without cause by either party giving thirty (30) days written notice to the other party; and

**WHEREAS**, the Contractor will provide and operate a Haunted House and Hayride (“attraction”) in Dripping Springs Ranch Park; and

**WHEREAS**, the Contractor will pay the City a park use fee equal to 40% of attraction ticket sales; and

**WHEREAS**, the City finds that it is in the best interest of the City and its residents to provide life-enriching, seasonal attractions and events at its parks.

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, the parties agree as follows:

### **1. Duties.**

#### **A. Duties of Contractor.**

- (1) Plans for the temporary set shall be submitted to City for review by September 1, 2022.
- (2) Build temporary set to serve as a Haunted House that adheres to approved specifications set forth by the City of Dripping Springs’ municipal codes and to obtain proper and necessary permits for event. If set is altered from original proposed/approved submission, Contractor must obtain further City approval in writing of alterations immediately before commencing construction.
- (3) Represent the City in a professional manner.
- (4) Communicate progress and goals with Dripping Springs Ranch Park Management.
- (5) Provide a safe environment for all attraction patrons by adhering to park rules as well as any rules or laws adopted by Hays County, the City of Dripping Springs, and the

State of Texas.

- (6) Engage in excellent communication and customer service while working well with the public.
- (7) Submit security plan for approval to City Emergency Management Coordinator. Providing proof of retained security during the hours of operation by September 1, 2022.
- (8) Work with City Emergency Management Coordinator and Dripping Springs Ranch Park Management to create an Emergency Action Plan for the attraction. Plan must be complete by September 16, 2022.
- (9) Provide and operate a Hayride that transports patrons from parking to the Haunted House. City Emergency Management Coordinator and Dripping Springs Ranch Park Management must approve the Hayride vehicle, related equipment, and path. Provide information related to these items to staff by September 1, 2022.
- (10) Address any complaints or concerns from attraction patrons, recording and submitting to Dripping Springs Ranch Park Management any incidents and accidents.
- (11) Contractor will provide volunteers/staffing that will direct attraction patrons to the correct location accommodating event parking. Staffing schedule shall be provided to the City by October 14, 2022.
- (12) Contractor will operate the attraction Friday, October 21 (7pm-10pm), Saturday, October 22 (7pm-11pm), and Sunday, October 23 (7pm-10pm); Friday, October 28 (7pm-10pm), Saturday, October 29 (7pm-11pm), and Sunday, October 30 (7pm-10pm) 2022. Flexibility to provide a "soft close" will be provided by on-site attraction staff and city staff to accommodate long lines and facilitate a positive attraction patron experience.
- (13) All outdoor lighting and signage shall be provided for review and approved prior to placement on site. Lighting and signage plan shall be submitted to the City by September 1, 2022.

#### **B. Duties of City.**

- (1) The City shall provide space inside Dripping Springs Ranch Park for the Contractor to construct and operate a Haunted House and to operate a Hayride. Space for construction and use shall commence at 9 a.m. on October 2, 2022. Removal shall be complete by 4 p.m. on November 6, 2022.
- (2) Dripping Springs Ranch Park staff shall provide customer service by staffing the Event Center Business Office during all hours of attraction operation, provide for the attraction ticket sales, and support attraction operations.
- (3) City shall provide a safe, clean, and well-kept location at Dripping Springs Ranch Park for hosting the attraction.

- (4) Dripping Springs Ranch Park Management will work with Contractor and with City Communications & Marketing Director on all print, internet, and social media advertisement and marketing. City Communications & Marketing Director will oversee and approve all advertising and media for the attraction.

- 2. Duration.** The term of this Agreement shall begin at execution of this Agreement and shall extend until all construction, removal, and payment has been made. Use of site shall commence on or about Sunday, October 2, 2022, and ending on Sunday, November 6, 2022.

This agreement can be terminated without cause by either party giving thirty (30) days written notice to the other party.

The City, at its sole discretion for any reason whatsoever, may cancel this agreement at any time and without prior notice if the City determines that the activity is not in the best interest of the City.

**3. Pay/Fees.**

- A.** All fees are subject to final approval by the City Council at the recommendation of the Parks and Community Services staff.
- B.** Contractor will pay a Use Fee equal to 40% of gross attraction ticket sale revenue to have exclusive use of the Expansion Event Room at Dripping Springs Ranch Park. City will pay Hays County Livestock Exposition 10% of the City's revenue for use of the Expansion Event Room.
- C.** City will pay the Contractor 60% of the gross attraction ticket sale revenue collected by city staff through ticket sales. Payment will be accompanied by an accurate system-generated report accounting of total sales no later than ten business days after the conclusion of the event and presence of Contractor on premises, November 14, 2022.

- 4. Notices.** Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

**To the City:**

City of Dripping Springs  
Attn: Event Center Manager  
PO Box 384  
Dripping Springs, TX 78620

**To the Contractor:**

Hell Country Productions, Inc.  
Attn: Aaron Sulser  
1032 Blue Ridge Dr.  
Dripping Springs, TX 78620

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service. Instructor or City may change the address for notices at any time with seven (7) days written notice to the other party.

## 5. General Provisions.

- A. Relationship of Parties:** It is understood by the parties that Contract Instructor 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 independent Contractor. The City may contract with other individuals or firms for entertainment services.
- B. Injuries/Insurance:** Contractor acknowledges the Contractor's obligation to obtain appropriate insurance coverage with the City named as an additional named insured. Required insurance in Attachment "A". Contractor waives the rights to recovery from City for any injuries that Contractor may sustain while performing services under this Agreement. Contractor is to provide a copy of insurance coverage to City at least ten (10) days prior to the end of any existing coverage period if Contractor uses the services of any of Contractor's employees for the provision of services to the City. The City shall be named as an additional named insured on the Insurance.
- C. Indemnification:** Contractor agrees to indemnify and hold City harmless from all claims, losses, expenses, fees, including attorney's fees, costs, and judgments that may be asserted against City that result from acts or omissions of Contractor.
- D. Assignment:** Contractor'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.
- E. Mandatory Disclosures:** Texas law requires that vendors make certain disclosures. Prior to the effective date of this Contract, the Contractor 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/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)
- F. Force Majeure** means acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind from the government of the United States or the State of Texas or military authority, insurrections, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, restraint of the government and the people, explosions, or other causes not reasonably within the control of the party claiming such inability. Neither CITY nor Instructor shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations hereunder by reasons for which it is not responsible as defined herein. However, notice of such impediment or delay in performance must be timely given, and all reasonable efforts undertaken to mitigate its effects.
- G. Entire Agreement:** The text herein and attachments noted above shall constitute the entire Agreement between the parties. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee.

**H. Effective Date:** This Agreement shall become effective commencing on the date of execution as indicated below.

**I. Severability:** If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

**J. Enforcement and Venue:** This Agreement shall be construed under and according to the laws of the State of Texas and venue for enforcement shall be in Hays County.

**K. 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.

**IN WITNESS WHEREOF,** the City of Dripping Springs has caused this Agreement to be signed and executed on its behalf by its Mayor and duly attested by its City Secretary, and Employee has signed and executed this Agreement, both in duplicate, the day and year first above written.

**CITY OF DRIPPING SPRINGS:**

**CONTRACTOR:**

\_\_\_\_\_  
Bill Foulds, Jr., Mayor

\_\_\_\_\_  
Aaron Sulser, Hell Country Productions, Inc

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**ATTEST:**

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

## ATTACHMENT "A"

### **CITY OF DRIPPING SPRINGS CONTRACTOR INSURANCE REQUIREMENTS:**

Firm providing goods, materials and services for the City of Dripping Springs shall, during the term of the contract with the City of Dripping Springs or any renewal or extension thereof, provide and maintain the types and amounts of insurance set forth herein. All insurance and certificate(s) of insurance shall contain the following provisions:

1. Name the City of Dripping Springs as additional named insured as to all applicable coverage.
2. Provide for at least thirty (30) days prior written notice to the City of Dripping Springs for cancellation, non-renewal, or material change of the insurance.
3. Provide for a waiver of subrogation against the City of Dripping Springs for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance.

**Insurance Company Qualification:** All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service.

**Certificate of Insurance:** Certificates of Insurance evidencing all of the required insurance coverages shall be submitted with the Firm's submission. Copies of any modifications, amendments, renewals, or terminations of any coverage shall be promptly submitted to the City. If the contract is extended by the City of Dripping Springs, certificates of insurance evidencing all of the required insurance coverages shall be provided to the City prior to the date the contract is extended.

### **Type of Contract and Amount of Insurance:**

- Statutory Workers Compensation insurance as required by state law.
- Commercial General Liability minimum limits of \$500,000 per occurrence for bodily injury, personal injury, and property damage.
- Automobile Liability with a minimum of \$500,000 Dollars combined single limit.