

THE STATE OF TEXAS
COUNTY OF WALLER

**MEMORANDUM OF UNDERSTANDING BY AND BETWEEN THE
COUNTY OF WALLER, TEXAS AND WALLER COUNTY FAIR
ASSOCIATION FOR THE USE AND APPLICATION OF FUNDS**

This Memorandum of Understanding for the purchase, financing, and use (“MOU”) is entered into on the date of the last signature affixed hereto (“Effective Date”) by and between Waller County, Texas (“County”), a political subdivision of the State of Texas, and Waller County Fair Association (“WCFA”), a 501(c)(3) organization, (each referred to individually as “Party” and collectively as “Parties”).

WHEREAS, Waller County is a political subdivision of the State of Texas that is authorized by to enter into memoranda of understanding, with private entities.

WHEREAS, in entering into the Agreement, it is the intention of Waller County and WCFA that upon commencement of the term of this Agreement as herein stated, Waller County shall for the term of this Agreement provide funds as detailed herein to be applied to the property to be purchased and the use of said property,

WHEREAS, the County, acting by and through its Commissioners Court, agrees to contract with the Waller County Fair Association to provide twenty thousand dollars (\$20,000.00) for the purchase of a Kubota tractor to be used to further the public interest of education,

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained in the Contract, the Parties agree to the following terms and conditions:

SECTION 1. PURPOSE

- 1.1 Purpose: The purpose of this Contract is to establish the terms and conditions under which Waller County will provide to the Waller County Fair Association funds to purchase, finance, and use property, namely a Kubota tractor.

SECTION 2. TERM AND TERMINATION

- 2.1 Agreement Term: The term of this Contract shall begin on the Effective Date and shall end on September 30, 2026 (“Initial Term”). Upon expiration of the Initial Term, the Agreement may be renewed for additional (1) year periods by official action by the Waller County Commissioners Court.
- 2.2 Termination for Cause or Convenience: Either Party may terminate this Contract for cause or convenience by providing written notice to the other party at the address of the governing body contained within this Contract. The notice must state the reasons for such termination. The Contract shall continue in force for the 30 day notice period.
- 2.3 Notice of Termination: The terminating Party shall provide 30 days written notice of termination to the other Party as provided in Section 2.2
- 2.4 Possession After Termination: In the event of Termination and within 30 days

of termination by either party, WCFA shall return the tractor to the County. WCFA shall also repay the prorated amount of the provided funds as applied to the remaining time of the 1-year contractual period.

- 2.5 Reimbursement: WCFA agrees to reimburse any and all expenditures the County spends on the tractor in the event of a breach.

SECTION 3. OBLIGATIONS

- 3.1 Application of Funds: WCFA shall use all provided funds for the purchase and finance of one (1) Kubota tractor for use at the Waller County Fair Grounds.
- 3.2 Title/Ownership: Waller County and WCFA shall be named as the joint registered owners. Waller County shall own and hold title to the tractor.
- 3.3 Maintenance: WCFA shall maintain the tractor in good repair, and be responsible for any and all maintenance including but not limited to operational expenses, regular upkeep, fuel, oil, repairs, insurance claims, and warranty claims.
- 3.4 Insurance: WCFA shall purchase and keep current a comprehensive insurance policy for the tractor. Said policy must contain coverage including, but not limited to: damage, theft, liability, collision, medical expenses, and replacement costs. Waller County shall be the named beneficiary of any and all insurance policies insuring the tractor.
- 3.5 Documents: WCFA shall keep in its possession all documents related to the tractor including but not limited to: purchase, financing, insuring, warranty, maintenance, and use.
- 3.6 Access: WCFA shall, with twenty-four (24) hour notice, allow a representative from Waller County to inspect condition of the tractor and any and all documents related to the tractor as outlined in Section 3.5.
- 3.7 Operation: The tractor shall be operated in a safe and controlled manner by WCFA employees with sufficient licensure and training.
- 3.8 Damage/Loss: WCFA is responsible for any damage resulting in partial or complete loss to the tractor. In the result of damage, loss, or injury arising from the operation or use of the tractor, WCFA agrees to notify the County within twenty-four (24) hours in writing.

SECTION 4. USE OF TRACTOR

- 4.1 Location: Tractor shall remain and only be used at the parcel of land owned by the Waller County Fairgrounds Association, and located at 21988 FM 359, Hempstead, TX 77445.

- 4.2 Uses: The tractor shall be used to maintain the grounds at the Waller County Fairgrounds including but not limited to: mowing, shredding, moving, towing, loading and unloading, and maintaining facilities. The grounds and facilities will be maintained to remain in a condition suitable to support students who use the Fairgrounds for educational purposes.
- 4.3 Monthly Records: WCFA shall keep a record of engine hours in a log that shall be produced within twenty-four (24) hours upon request by Waller County. The engine hour log shall be updated on the final working day of each month or as soon as practical.
- 4.4 Storage: The Tractor must be stored in a covered area out of the elements when not in use. Tractor must be kept in a secured area inaccessible to the public.

SECTION 5. LIMITATION OF LIABILITY AND INDEMNIFICATION

- 5.1 Limitation of Liability: The County, shall bear no liability to WCFA for any claims, damages, or attorney's fees arising from or related to the intentional acts, negligence, wrongful acts, or omissions of County's or WCFA's officials or employees. Furthermore, the WCFA waives any and all claims against the County which it may now or hereafter have for any and all acts of negligence alleged in the performance or the administration of this Contract.
- 5.2 Assumption of the Risk: WCFA shall use the subject property at its own risk. The County shall not be liable for any damages to property or damages arising from personal injuries sustained by any agent, contractor, employee, patron, or representative of WCFA, or any other third party. WCFA assumes full responsibility for any property damage or injury which may occur to WCFA, its agents, contractors, employees, patrons, or representatives as a result of using the subject property.
- 5.3 INDEMNIFICATION: WALLER COUNTY FAIR ASSOCIATION AGREES TO DEFEND, HOLD HARMLESS, AND INDEMNIFY COUNTY, AND THEIR OFFICIALS, EMPLOYEES, AGENTS, INSURERS AND REPRESENTATIVES FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, DEMANDS, LOSSES, COSTS, ASSESSMENTS, AND EXPENSES, INCLUDING ATTORNEYS' FEES AND COURT COSTS (COLLECTIVELY, THE "LIABILITIES"), INCURRED OR SUFFERED BY COUNTY, AND THEIR OFFICIALS, EMPLOYEES, AGENTS, INSURERS AND REPRESENTATIVES THAT ARISE OUT OF OR RESULT FROM ANY CAUSE OR CLAIM OR ANY NEGLIGENT OR WRONGFUL ACT OR FAILURE TO ACT BY WALLER COUNTY FAIR ASSOCIATION OR ITS OFFICERS, EMPLOYEES, AGENTS, OR REPRESENTATIVES, OR ITS SUBCONTRACTORS OR ASSIGNS, FOR LIABILITIES THAT ARISE OR RESULT FROM THE ACTS OR OMISSIONS OF WALLER COUNTY FAIR ASSOCIATION IN ITS PERFORMANCE OF THIS AGREEMENT. THIS INDEMNITY SHALL NOT COVER ANY LIABILITIES, CLAIMS, DAMAGES, LOSSES, OR EXPENSES, INCLUDING ATTORNEYS' FEES CAUSED BY, OR RESULTING FROM, LIABILITIES THAT ARE SOLELY

ATTRIBUTABLE TO THE GROSS NEGLIGENT ACTS OR OMISSIONS OF COUNTY OR THEIR OFFICIALS, EMPLOYEES, AGENTS, OR REPRESENTATIVES OR ANY LEGAL ENTITY FOR WHOSE GROSS NEGLIGENT ACTION OR OMISSION COUNTY MAY BE LIABLE. IN NO EVENT SHALL COUNTY BE DEEMED TO HAVE WAIVED ANY IMMUNITY, DEFENSE OR LIABILITY CAP AVAILABLE TO IT BY LAW.

SECTION 6. INDEPENDENT CONTRACTOR

- 6.1 Independent Contract: Each Party has and retains the exclusive right of control over its employees and contractors assigned to perform services under this Contract. Neither Party has the authority to bind or otherwise obligate the other Party orally, in writing, or otherwise. Each Party providing services to the other Party pursuant to this Contract is providing services as an independent contractor. Nothing in this Contract creates an employer-employee relationship between the employees of one Party and the other Party.

SECTION 7. MISCELLANEOUS

- 7.1 Entire Agreement: This Contract embodies the complete agreement of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties and relating to matters in this Contract.
- 7.2 Amendments and Modifications: The Contract may not be modified, altered, or amended except by written instrument duly approved by the governing bodies of both Parties, and executed by both Parties.
- 7.3 Jurisdiction and Venue: This Contract is made in and shall be construed according to the laws of the State of Texas, without regard to its conflict of laws provisions. Venue of any court action(s) brought directly or indirectly by reason of this Contract shall be in a court of competent jurisdiction in Waller County, Texas. This Contract is made and is to be performed in Waller County, Texas.
- 7.4 Compliance with Law: The WCFA hereby agrees to comply with all federal, state, and local laws and ordinances applicable to the use of the subject property.
- 7.5 Severability: If any provision of this Contract is invalid, illegal, or unenforceable under any applicable statute, court decision, or rule of law, it is to that extent to be deemed omitted. In such event, there shall be substituted for such deleted provisions a provision as similar as possible in terms and in effect to such deleted provision that is valid, legal, or enforceable. The remainder of the agreement shall be valid and enforceable to the maximum extent possible.
- 7.6 Force Majeure: Each Party may be relieved of any obligation to the extent that its ability to perform its obligation is prevented or impaired by any cause generally recognized under Texas law as force majeure.
- 7.7 Titles Not Restrictive: The titles assigned to the various sections and paragraphs of this Contract are for convenience only. Titles shall not be considered

restrictive of the subject matter of any part of this Contract.

- 7.8 No Third-Party Beneficiaries: This Contract does not inure to the benefit of any third party, except permitted successor or assigns.
- 7.9 Authority to Sign: Signatories to this Contract represent and warrant that they have the authority to bind the respective parties.
- 7.10 Interpretation: In the event of any disputes over the meaning or application of this Agreement, it shall be interpreted fairly and reasonably, and neither more strongly for nor against either Party.
- 7.11 Rights and Remedies: No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. The County's failure to require strict performance of any provision of this Agreement does not waive or diminish the County's right thereafter to demand strict compliance with that or any other provision. The County's waiver or failure to exercise in any respect any right provided for in this agreement shall not be deemed a waiver of any further right under this agreement. The County and its employees, officers, and officials do not waive, modify, or alter to any extent any of their defenses, immunities, or remedies.
- 7.12 Notices: Any written notice required to be given under this Contract shall be in writing and shall be delivered by certified mail, return receipt requested. Notices shall be deemed received when the notice is deposited in the mail, enclosed in a wrapper with the proper postage paid. Any notice or certification to be provided pursuant to this Contract shall be delivered to the following persons, unless a substitute representative is designated in writing:

County:

Attn: County Judge
425 FM 1488, Suite 106
Hempstead, Texas 77445

WCFA:

Attn: Bobby Coursey, President
Address Line 1
Address Line 2

With a copy to:

Waller County Criminal District Attorney's Office
Attn: Uriel Tuck
645 12th St.
Hempstead, TX 77445

IN WITNESS WHEREOF, this Contract is executed by authority of the governing bodies of the respective Parties hereto.

For the County:

County Judge
Carbett “Trey” Duhon, III

Date

ATTEST:

County Clerk
Debbie Hollan

Date

APPROVED:

For the Waller County Fair Association:

Title: President
Name: Bobby Coursey

ATTEST:

Title:
Name: