

**AGREEMENT BETWEEN
WILLIAMSON COUNTY, TEXAS
AND
FRIENDS OF BERRY SPRINGS PARK AND PRESERVE, INC.**

PREAMBLE

Williamson County, Texas, a political subdivision of the State of Texas (hereinafter referred to as the "County") and the Friends of Berry Springs Park and Preserve, Inc., a Texas non-profit corporation (hereinafter referred to as the "Friends"), each entity acting by and through duly authorized officers, enter into the following Agreement Between Williamson County, Texas and Friends of Berry Springs Park and Preserve, Inc. (hereinafter referred to as the "Agreement").

WHEREAS, the County, owns Berry Springs Park and Preserve (hereinafter referred to as the "Park"), which is operated by the Williamson County Parks Department and which is managed for the benefit of the people; and

WHEREAS, the Friends is a nonprofit organization, incorporated under the laws of the State of Texas to support the operations, maintenance and the educational programs thereof; and

WHEREAS, the main purpose of the Friends is to assist with the programs and projects of the Park and raise funds for the programs and projects of the Park, and the role of the Friends also includes the normal business and social activities of such an organization in the raising of its funds.

NOW THEREFORE, the parties hereto, intending to be legally bound hereby, agree as follows:

I. PURPOSES OF THE AGREEMENT

Jointly, the County and the Friends understand their purposes to be:

- A. To interpret the natural and cultural resources of the Park to the visiting public.
- B. To preserve and protect the natural and cultural resources of the Park.
- C. To provide for the enjoyment and safety of visitors.

II. ORGANIZATIONAL REQUIREMENTS:

The Friends agrees that it will use its best efforts, in good faith to observe and comply with the following requirements and will continue to do so during the entire term of this Agreement:

- A. That it is a corporation organized under the laws of the State of Texas; is in the process of attaining a non-profit status determination from the Internal Revenue Service; and will submit to County a valid determination letter upon receipt of same evidencing that it is an organization described in Section 501(c) (3) of the Internal Revenue Code of 1954, as amended, and that it will carry out the fiscal, business, legal, and tax responsibilities of a nonprofit 501(c) (3) corporation.
- B. That it will promptly notify the County of any change in its status under Subsection A.
- C. That it will comply with all applicable rules, regulations and laws now in effect including but not limited to County guidelines for nonprofit partners or which may be promulgated during the term of this Agreement by the County or by any municipality, county, state, or federal authority having jurisdiction.
- D. That it will observe all applicable local laws in localities in which it conducts activities, including obtaining solicitation permits if required.
- E. That it conducts fund raising appeals and other activities to achieve site goals as provided in the Friends' adopted bylaws and County guidelines as set out in Appendix A.
- F. That each new member of its board of directors will be given a notebook with copies of this Agreement, Articles of Incorporation, By-Laws, the most recent financial audit, and information on board membership.
- G. That the Friends will notify the County's Designee of all meetings of the Friends, its general membership, managing board, and committees in advance so that the County's Designee has ample opportunity to attend. The County's Designee shall also receive copies of the Articles of Incorporation and Bylaws of the Organization and any amendments to these documents.

III. FINANCIAL AND SOLICITATION ISSUES

The Friends represents and warrants that it meets the following requirements and will continue to do so during the entire term of this Agreement:

- A. That the Friends will solicit gifts of money or services for the Park only for those projects with written approval from the County and Friends Board of Directors.
- B. That the Friends will contribute all net profits or income as may be derived from its activities at or in the name of the Park for the purposes authorized in and in the manner prescribed in this Agreement and the Friends Bylaws.
- C. That the Friends will not engage in any activity for the private profit of any individual or organization.

- D. If the Friends desires to use park facilities for Concession or other related commercial purposes, the Friends must enter into a separate Concessionaire contract with the County, subject to all applicable County rules and regulations.
- E. That funds received and expended by the Friends from whatever source and whatever purposes shall be accounted for under a system of accounts and financial controls meeting accepted professional standards for non-profit charitable organizations.
- F. That the Friends will maintain, in good form, a record of all financial transactions relative to its activities under this Agreement, including but not limited to: purchase orders, invoices, receipts, canceled checks, bank statements, ledgers, income statements and transactions and the County may inspect those records at any time during normal operating hours and upon reasonable notice to the Friends.
- G. That all such records, reports, and files will be retained for a period of five (5) years.
- H. That upon termination of this Agreement, copies of all such records, reports, and files will be furnished to the County. The Friends recognizes that such records, reports and files may become subject to the Public Information Act once furnished to the County.

IV. RESPONSIBILITIES OF THE FRIENDS

The Friends represents and agrees that it will do the following during the term of this Agreement:

- A. That by October 1 of each year, the Friends and the County's Designee will jointly prepare a list of facility development and/or programming projects that it proposes to support in the following year.
- B. To become familiar with the current Operational Plan of the Park and ensure that projects proposed by the Friends will be consistent with the plan as of the effective date of this Memorandum of Agreement and the natural and/or historical setting of the Park.
- C. To submit all materials prepared for public distribution; including but not limited to individual promotional activities, brochures, or any other form of publicity or visual media to the County's Designee for formal review and written approval prior to its release.
- D. The Friends agree and acknowledge that it shall use due diligence in selecting members that will understand, respect and adhere to the values and mission of the Williamson County Parks Department, and that will abide by the terms set forth in this Agreement and all applicable rules and regulations adopted by the County. At any time during the term of this Agreement, County may require that the Friends conduct third party background checks, at its expense, on any of its members that provide on-site work or interaction with the public.

- E. The Friends agree to require third parties with whom the Friends enter into agreements to abide by the terms set forth in this Agreement herein and to abide by all applicable rules and regulations adopted by the County.
- F. To submit a park activity use request for any fundraising or membership activities to the County's Designee at least two months prior to the proposed activity date to obtain prior written approval from the County's Designee before beginning any such activity.
- G. That the proposed activities must be consistent with the operational plan of the Park.
- H. Submit an Annual Report each year no later than the 15th calendar day following County's Designee's request for such Annual Report, which includes the following information:
 - 1. Names, titles and mailing addresses of the group's officers and board members.
 - 2. Approximate number of members of the group.
 - 3. Description of donations by the group to the Park during the previous year, including cash, materials and services and showing percent of income used for administration.
 - 4. A list of any special events conducted by the group during the year.
 - 5. A completed IRS Form 990.
- I. Accomplish all activities under this Agreement in compliance with the rules governing the relationship between the County and nonprofit organizations, attached and incorporated herein for all purposes as Appendix A. The County reserves the right to amend said rules or adopt additional rules governing the relationship between the County and nonprofit organizations, as it deems necessary.

V. RESPONSIBILITIES OF THE COUNTY

The County represents and agrees that it will do the following during the term of this Agreement:

- A. Recognize the Friends as an authorized fundraising organization for the benefit of the Park, subject to Commissioners Court approval.
- B. That by October 1 of each year, the County's Designee and the Friends will jointly develop a list of proposed facility development and/or programming projects for which to pursue funding for consideration by the County and the Friends.
- C. Provide to the Friends a copy of the current Operational Plan of the Park and provide amendments, changes or revisions.
- D. To return all printed materials submitted to the County for approval within thirty days of receipt.

- E. The Friends may request that the County make available tours, interpretive events and inspections for individuals and groups, and the County's Designee may grant such requests whenever such activities do not infringe or detract from normal administration, visitor activities and services of the Park. The Friends shall request such tours and events through the County's Designee within a reasonable time period in advance of any requested tour or event.

VI. NATURE OF AGREEMENT

The Friends and the County expressly acknowledge that nothing in this Agreement is intended or should be construed to assign any control, management, direction, and policy over the Park to the Friends.

VII. GENERAL

- A. All obligations of the County hereunder are subject to the availability of funds and to such direction and instructions as may have been or are hereafter provided by the Commissioners Court.
- B. The parties shall work together to resolve any disputes, and if the parties are unable to resolve a dispute within thirty (30) days following the date in which one party sent written notice of the dispute to the other party, and if a party wishes to pursue the dispute, such dispute shall be addressed through non-binding mediation. A single mediator engaged in the practice of law, who is knowledgeable about subject matter of this Agreement, shall be selected by agreement of the parties and serve as the mediator. Any mediation under this Agreement shall be conducted in Williamson County, Texas. The mediator's fees shall be borne equally between the parties. Such non-binding mediation is a condition precedent to seeking redress in a court of competent jurisdiction. This provision shall survive the termination of the Agreement.
- C. Each party to this Agreement hereby agrees and acknowledges that venue and jurisdiction of any suit, right, or cause of action arising out of or in connection with this Agreement shall lie exclusively in Williamson County, Texas, and the parties hereto expressly consent and submit to such jurisdiction. Furthermore, except to the extent that this Agreement is governed by the laws of the United States, this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, excluding, however, its choice of law rules.
- D. Each party to this Agreement, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever.

- E. Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to County, its past or present officers, employees, or agents, nor to create any legal rights or claim on behalf of any third party. County does not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.
- F. INDEMNIFICATION - EMPLOYEE PERSONAL INJURY CLAIMS. TO THE FULLEST EXTENT PERMITTED BY LAW, FRIENDS SHALL INDEMNIFY, DEFEND (WITH COUNSEL OF COUNTY'S CHOOSING), AND HOLD HARMLESS COUNTY, AND COUNTY'S EMPLOYEES, AGENTS, REPRESENTATIVES, PARTNERS, OFFICERS, AND DIRECTORS (COLLECTIVELY, THE "INDEMNITEES") AND SHALL ASSUME ENTIRE RESPONSIBILITY AND LIABILITY (OTHER THAN AS A RESULT OF INDEMNITEES' GROSS NEGLIGENCE) FOR ANY CLAIM OR ACTION BASED ON OR ARISING OUT OF THE PERSONAL INJURY, OR DEATH, OF ANY EMPLOYEE OF FRIENDS, OR OF ANY SUBCONTRACTOR, OR OF ANY OTHER ENTITY FOR WHOSE ACTS THEY MAY BE LIABLE, WHICH OCCURRED OR WAS ALLEGED TO HAVE OCCURRED ON THE PROJECT SITE OR IN CONNECTION WITH THE PERFORMANCE OF THE WORK. FRIENDS HEREBY INDEMNIFIES THE INDEMNITEES EVEN TO THE EXTENT THAT SUCH PERSONAL INJURY WAS CAUSED OR ALLEGED TO HAVE BEEN CAUSED BY THE SOLE, COMPARATIVE OR CONCURRENT NEGLIGENCE OF THE STRICT LIABILITY OF ANY INDEMNIFIED PARTY. THIS INDEMNIFICATION SHALL NOT BE LIMITED TO DAMAGES, COMPENSATION, OR BENEFITS PAYABLE UNDER INSURANCE POLICIES, WORKERS COMPENSATION ACTS, DISABILITY BENEFITS ACTS, OR OTHER EMPLOYEES BENEFIT ACTS.

INDEMNIFICATION - OTHER THAN EMPLOYEE PERSONAL INJURY CLAIMS. TO THE FULLEST EXTENT PERMITTED BY LAW, FRIENDS SHALL INDEMNIFY, DEFEND (WITH COUNSEL OF COUNTY'S CHOOSING), AND HOLD HARMLESS COUNTY, AND COUNTY'S EMPLOYEES, AGENTS, REPRESENTATIVES, PARTNERS, OFFICERS, AND DIRECTORS (COLLECTIVELY, THE "INDEMNITEES") FROM AND AGAINST CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR ALLEGED TO BE RESULTING FROM THE PERFORMANCE OF THIS AGREEMENT OR THE WORK DESCRIBED HEREIN, TO THE EXTENT CAUSED BY THE NEGLIGENCE, ACTS, ERRORS, OR OMISSIONS OF FRIENDS OR ITS SUBCONTRACTORS, ANYONE EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED IN WHOLE OR IN PART BY A PARTY INDEMNIFIED HEREUNDER.

VIII. COUNTY DESIGNEE

- A. The County's Designee will be the Williamson County Parks and Recreation Director. The County's Designee will have full authority and responsibilities for such matters as are specifically referred to in this Agreement as capable of being performed by the County's

Designee. In the event of differences of opinion, which cannot be resolved by the Friends and the County's Designee, any of the parties may appeal in writing through normal supervisory channels to the County Commissioners Court.

- B. The Friends agrees that the County's Designee will be notified of all meetings of the Friends, its general membership, managing board, and committees at least twenty-four (24) hours in advance so that ample opportunity to attend is granted.

IX. NON-ASSIGNABILITY; SUCCESSORS AND PERMITTED ASSIGNS

This Agreement or any part hereof or the administration or performance of any activity or service performed by the Friends hereunder cannot be assigned or sublet, contracted away, or in any manner transferred without prior written consent and full approval by the County. This Agreement shall be binding upon and inure to the benefit of parties hereto and their permitted successors and assigns.

X. NON-DISCRIMINATION

- A. The Friends will not discriminate in its employment practices against any individual because of race, color, religious creed, ancestry, age, sex, national origin, or disability.
- B. The Friends will comply with the requirements of Chapter 21 of the Tex. Labor Code, and will not deny to any person because of his or her race, color, sex, religious creed, ancestry, national origin, or handicap or disability any of the accommodations, advantages, facilities, or privileges of the premises or made available in connection with activities conducted on the premises.
- C. The Friends will comply with all other applicable provisions of Chapter 21 of the Texas Labor Code.

XI. TERMINATION

Either party will have the right to terminate this Agreement at will upon three months' written notice to the other. If changes in state law or County policy render it necessary, the County may terminate the Agreement with ten (10) days' notice. Upon termination of this Agreement or upon dissolution of the Friends corporation, all assets of the Friends raised for the benefit of the Park or in connection with activities conducted on the premises will become the property of the County, if so desired by the County, without consideration therefor. Any such funds received by the County will be deposited in the County's account and will be used exclusively for the operation or development of the Park.

XII. NOTIFICATION AND COMMUNICATION

Written communication shall be addressed as follows:

If to the County:

Williamson County Judge
710 Main Street, Suite 101
Georgetown, Texas 78626

With copy to:

Williamson County Parks and Recreation Department
Attn: Director
219 Perry Mayfield
Leander, TX 78641

If to the Friends:

Friends of Berry Springs Park and Preserve, Inc.
Attn: Karen Schnell
1801 CR 152
Georgetown, TX 78626

XIII. TERM OF AGREEMENT

This Agreement takes effect upon the date of the last party's execution herein-below (hereinafter the "Effective Date") and shall continue for one year thereafter (hereinafter the "Initial Term"). Upon expiration of the Initial Term, this Agreement shall automatically renew for successive one-year terms until which time it is terminated by either party as provided herein.

XIV. CONSENT TO BREACH NOT WAIVER

No term or provision of this Agreement will be deemed waived and no breach excused, unless such waiver or consent is in writing and signed by an authorized representative of the County. Any consent by the State to or waiver of a breach by the Friends, whether express or implied, will not constitute a consent to or waiver of or excuse for any other different or subsequent breach.

XV. INTEGRATION

This Agreement sets forth the entire agreement and understanding among the parties relating to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings not specifically set forth herein. This Agreement may not be modified or changed other than by an agreement in writing executed by all of the parties hereto.

IN WITNESS WHEREOF, the parties have duly executed and delivered this Agreement, to be effective as of the Effective Date.

FRIENDS OF BERRY SPRINGS PARK AND PRESERVE, INC.

By: Karen Schnell

Printed Name: Karen Schnell

Title: President

Date: Feb 14, 2020

WILLIAMSON COUNTY, TEXAS

By: Bill Gravell, Jr.
Bill Gravell, Jr., County Judge

Date: February 25, 2020

Appendix A

Subject to state law and County's regulations and policies, and any changes that may occur in such state laws, regulations and policies, Friends shall comply with the following requirements:

A. General Provisions

Friends shall:

1. Adopt a conflict of interest policy that precludes board members from benefiting financially from any business decision of Friends;
2. publish an annual report each year and make it available to the general public; and
3. make its current IRS 990 return, its annual audit, and a copy of its application to the IRS for exempt status available to the general public upon request.

C. County Employee Involvement

1. No County employee shall hold a paid position with Friends, nor will any County employee receive direct personal benefits from Friends.
2. Friends may, however, reimburse County employees for legitimate, documented expenses.

D. Accounting and Reporting

1. The Friends shall adopt financial procedures that govern acceptance of and access to:
 - a. donor-restricted funds;
 - b. unrestricted funds; and
2. County employees shall not directly spend or obligate Friends' funds. Friends and its employees will control all expenditures.

Appendix B

County Nonprofit Partner Financial Report

Nonprofit Partner Name _____

Affiliated Site Name _____

Part I. INCOME

1. Monetary contributions, gifts and/or grants received _____
2. Revenue received from programs or services _____
3. Membership dues _____
4. Investment income _____
5. Special events or other fundraising activities
 - a. Gross revenue not included in line 1..... _____
 - b. Less expenses incurred _____
 - c. Net income from special events and fundraising (5a less 5b) _____
6. Sales
 - a. Gross sales of goods _____
 - b. Less cost of goods sold _____
 - c. Gross profit or loss from sales (6a less 6b) _____
7. Other income _____
8. Total Income (add 1,2,3,4,5c,6c,7)..... _____
9. Value of materials or supplies received..... _____

Part II. EXPENSES

10. Insurance and other fees paid _____
10. Administrative costs (supplies, postage, recognition items, etc.) _____

12. Benefits paid to/for members
13. Salaries or other compensation
14. Rent, utilities and maintenance costs
15. Other expenses
16. Total Expenses (add lines 10 through 15)
EXCESS/DEFICIT FOR YEAR (line 8 less line 16)

Part III. SERVICES PROVIDED TO SITE

17. Equipment purchases (please attach an itemized list)
18. Supplies and materials provided
19. Payments made on behalf of County.....
20. Other contributions to County.....
TOTAL CONTRIBUTIONS TO County

Part IV. BALANCE SHEET

21. Cash, savings and investments on hand
22. Land, buildings or other physical property owned
23. Other assets
24. Total assets (total of lines 21, 22, 23)
25. Total liabilities
NET ASSETS OR FUND BALANCES (line 19 less line 20)

The information provided above is accurate as of: _____
(date)

Attest: _____
(Name and title)