

STATE OF TEXAS § AGREEMENT BY AND BETWEEN COPPELL KID COUNTRY
§ PLAYGROUND ASSOCIATION AND THE CITY OF
COUNTY OF DALLAS § COPPELL, TEXAS FOR PLAYGROUND IMPROVEMENTS

This Agreement is entered into by and among the **COPPELL KID COUNTRY PLAYGROUND ASSOCIATION**, a Texas non-profit corporation registered to do business in Texas (hereinafter referred to as “**KID COUNTRY**”); and the **CITY OF COPPELL, TEXAS** (hereinafter called “**CITY**”);

W I T N E S S E T H:

WHEREAS, KID COUNTRY desires to restore, replace and improve the Kid Country Playground located at Andrew Brown Jr. Community Park East, 260 East Parkway Blvd., in Coppell, Texas (hereinafter, the “Playground”), and

WHEREAS, the **CITY** has determined that making a grant for the purpose of funding and improving the construction materials for the Playground to **KID COUNTRY** in accordance with this Agreement will benefit the **CITY** and the **CITY’s** inhabitants.

NOW, THEREFORE, in consideration of the mutual promises, covenants, obligations, and benefits contained in this Agreement, **CITY** and **KID COUNTRY** hereby agree as follows:

ARTICLE I
DEFINITIONS

1.1 “**CITY**” and “**KID COUNTRY**” shall have the meanings specified above.

1.2 “Agreement” shall mean this document as executed by and among the **CITY** and **KID COUNTRY**, which may be amended from time to time, pursuant to the provisions contained herein.

1.3 “Design Development and Construction Documents” shall mean the documents produced during the Design Development and Construction Phase of the proposal attached and incorporated herein as Exhibit “A”.

1.4 “Licensed Premise” shall mean that the portion of Andy Brown East depicted on Exhibit A and parking lot to Andy Brown East as depicted on Exhibit B.

1.5 “Playground Improvements” shall mean the restoration, replacement and improvements of the Playground in accordance with the Design Development and Construction Documents.

Singular and Plural: Words used herein in the singular, where the context so permits, also includes the plural and vice versa, unless otherwise specified.

ARTICLE II TERM

2.1 **Term:** The term of this Agreement shall commence on the last date of execution by all parties (the “Effective Date”), and continue until CITY’s acceptance of the Playground Improvements. Either party may terminate this Agreement by giving the other party thirty (30) days prior written notice.

ARTICLE III. REPRESENTATIONS

3.1 **City Authority.** CITY represents to KID COUNTRY that CITY, upon approval of the proper authority of the City Council of this Agreement, CITY has the authority to carry obligations contemplated by this Agreement.

3.2 **KID COUNTRY Standing and Authority.** KID COUNTRY represents to CITY that KID COUNTRY is an entity organized in the State of Texas who is authorized to do business in the State of Texas; that KID COUNTRY has the authority to enter into this Agreement and to perform the requirements of this Agreement; that KID COUNTRY’s performance under this Agreement shall not violate any applicable judgment, order, law or regulation; that KID COUNTRY’s performance under this Agreement shall not result in the creation of any claim against CITY for money or performance, any lien, charge, encumbrance or security interest upon any asset of CITY; and that KID COUNTRY has authority to enter into this Agreement.

3.3 **No Third Party Consents.** CITY and KID COUNTRY represent each to the others that the execution, delivery, and performance of this Agreement on its part does not require consent or approval of any person that has not been obtained except as provided herein.

3.4 **Continuing Cooperation.** CITY and KID COUNTRY represent each to the other that each shall make every reasonable effort to expedite the performance of the obligations under this Agreement and acknowledge that the successful performance of this Agreement requires the continued cooperation of each.

ARTICLE IV GRANT TO KID COUNTRY

4.1 **Grant.** CITY shall make a grant in the amount of Two Hundred and Seventy-Six Thousand Dollars (\$276,000.00) to KID COUNTRY to pay for the cost of materials and

construction elements for the Playground Improvements (hereinafter, “Grant Funds”) as outlined in the Design Development and Construction Documents.

4.2 The Grant Funds shall be payable to **KID COUNTRY** within thirty (30) days of the **CITY’s** approval and execution of this Agreement subject to the provision of this Agreement.

4.3 Any funds granted herein that are not used by **KID COUNTRY** for purchase of the materials and construction elements for the Playground Improvements within one hundred twenty (120) days of the City’s acceptance of the improvements shall be subject to the Recapture provision in Article VIII, and **KID COUNTRY** shall remit any such unused funds back to the City.

ARTICLE V LICENSE

5.1 **License.** **CITY** hereby grants **KID COUNTRY** a non-exclusive license for the purpose of allowing **KID COUNTRY** to use the Playground for the purpose of constructing the Playground Improvements. Said license shall terminate upon **CITY’s** approval and acceptance of the Playground Improvements. **KID COUNTRY** hereby agrees to, and shall, use the Playground Improvements as contemplated by this Agreement, and Licensee hereby represents to City that Licensee has a valid, written and properly executed contracts or release with any and all contractors, volunteers, and invitees whose services form the basis for **KID COUNTRY’s** license of the Playground, the terms of which contracts do not conflict with the terms of this Agreement.

5.2 **License fee.** **KID COUNTRY** shall not be required to pay a license fee for the license of the Playground.

5.3 **Premises Condition, Clean-up, and Repair.**

a. **CITY** shall provide (and **KID COUNTRY** accepts) the Playground “AS IS” with all defaults and conditions, including the concrete base and perimeter walks to be constructed by the City as detailed in Section 6.1 herein

b. **KID COUNTRY** shall, before City’s acceptance of the Playground Improvements, clean the Playground and remove all debris, including any temporary structures erected and unused construction materials, and restore the Playground to the reasonable satisfaction of the City. Clean-up shall include the parking lots and grass areas surrounding the Playground.

5.4 **Equipment.** **KID COUNTRY** shall provide any and all tents and equipment required for or the purpose of constructing the Playground Improvements at its own cost.

5.5 **Authority of City.**

b. In licensing the use of the Playground to **KID COUNTRY** for the purposes set forth herein, it is understood that the **CITY** does not relinquish the right to control the management thereof and to enforce appropriate rules and regulations. The decision of the **CITY'S** authorized representative as to the number of persons that can safely and freely move about in the Playground shall be final.

b. **CITY** and its authorized representatives shall have the right at all times to enter upon and have access to the Premises during the Permitted Use.

c. A duly authorized representative of the **CITY** shall be in attendance at the Playground during **KID COUNTRY'S** use. **KID COUNTRY** shall provide all of its representatives and working personnel to be admitted to any part of the Playground with distinctive, visual identification, which shall be made known to the **CITY** on the Effective Date.

5.6 **Compliance with all laws.** **KID COUNTRY** and its invitees shall comply with all applicable laws, and shall cause every person under its direction or control who is connected with the performance of any aspect of this Agreement to fully comply with all applicable laws, ordinances, and regulations of the City of Coppell.

ARTICLE VI OBLIGATIONS OF CITY

6.1 **CITY** shall be responsible for demolishing and removing the current playground, existing 'wood chip' surfacing and drainage systems that may impede construction. **CITY** will also be responsible for grading of the site to receive the new playground and installation of the subsurface drainage, in accordance with the Design Development and Construction Documents, at its own cost. Both **CITY** and **KID COUNTRY** desire to maintain the existing perimeter sidewalk, including the 'handprints' from the existing playground.

6.2 **CITY** shall provide written notice to **KID COUNTRY** notifying **KID COUNTRY** of the completion of the **CITY'S** obligations set forth in Section 6.1 herein.

6.3 **CITY** shall inspect the Playground Improvements upon completion of construction for compliance with the Design Development and Construction Documents.

6.4 **CITY** will be responsible for maintenance of the Playground after construction has been completed and accepted.

ARTICLE VII OBLIGATIONS OF KID COUNTRY

7.1 With the exception of the site preparation, drainage and related concrete foundations and perimeter walks to be constructed by the City as detailed in Section 6.1 herein, **KID COUNTRY** shall construct, or cause to be constructed, the Playground Improvements at the Playground in accordance with the Design Development and Construction Documents within twelve (12) months of the Effective Date of this Agreement.

7.2 **KID COUNTRY** shall provide **CITY** with ninety (90) days prior written notice of the date that construction of the Playground Improvements will commence.

7.3 **KID COUNTRY** shall proceed to completion of the installation of the new Playground within a four (4) week time-frame from start to finish.

7.4 **KID COUNTRY** shall use the Grant Funds granted in Article IV solely for the purchase or rental of equipment and purchase of construction materials for construction of the Playground Improvements.

7.5 Indemnification. CITY SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE CONSTRUCTION OF THE PLAYGROUND IMPROVEMENTS BY OR THROUGH KID COUNTRY PURSUANT TO THIS AGREEMENT. KID COUNTRY HEREBY WAIVES ALL CLAIMS AGAINST CITY, ITS OFFICERS, AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS "CITY") FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY OR BREACH OF CITY'S OBLIGATIONS HEREUNDER. KID COUNTRY AGREES TO INDEMNIFY AND SAVE HARMLESS CITY FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY TO THE EXTENT CAUSED BY THE KID COUNTRY'S NEGLIGENT PERFORMANCE UNDER THIS AGREEMENT OR BY REASON OF ANY NEGLIGENT ACT OR OMISSION ON THE PART OF KID COUNTRY, ITS OFFICERS, DIRECTORS, SERVANTS, AND EMPLOYEES, AND INVITEES (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO NEGLIGENCE OF THE CITY, IN WHOLE OR IN PART, IN WHICH CASE KID COUNTRY SHALL INDEMNIFY CITY ONLY TO THE EXTENT OR PROPORTION OF NEGLIGENCE ATTRIBUTED TO KID COUNTRY AS DETERMINED BY A COURT OR OTHER FORUM OF COMPETENT JURISDICTION). KID COUNTRY'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY KID COUNTRY UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

7.6 Audits and Records.

a. **KID COUNTRY** agrees that during the term hereof the **CITY** and its representatives may, during normal business hours and as often as deemed necessary, inspect, audit, examine and reproduce any and all of the **KID COUNTRY's** records relating to the services provided pursuant to this Agreement for a period of one year following the date of completion of services as determined by the **CITY** or date of termination if sooner. **KID COUNTRY** shall keep full, auditable and detailed accounts and exercise such cost controls as may be necessary for proper financial management

under this Agreement. The accounting and control systems shall be satisfactory to **CITY**. **CITY**, **CITY**'s accountants, **CITY**'s agents, or its authorized representative shall be afforded reasonable access, at reasonable times, to **KID COUNTRY**'s personnel and documents, such as, without limitation, time sheets, payroll burden calculations, insurance rates (worker's compensation and general liability) and the support thereof, insurance contracts, invoices, bills reimbursable expenses reports, records, books, daily logs, correspondence, instructions, record drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other records, drawings or data relating to the Playground Improvements performed in accordance with this Agreement. **KID COUNTRY** shall preserve these for a period of three (3) years after final payment, or for such longer period as may be required by law.

b. Within ten (10) days of City's acceptance of the completed Playground Improvements. **KID COUNTRY** shall provide the following documentation to the **CITY**:

1. Written invoices and receipts of payment for rental and purchase of any and all equipment and construction materials used for the construction of the Playground Improvements; and,
2. Provide a written affidavit of all paid invoices and receipts within thirty (30) days of acceptance.
3. Documentation in a form acceptable to the **CITY** showing any and all funds donated by any person to **KID COUNTRY** to be used for the construction of the Playground Improvements, including the name of the donor and specific dollar amount donated.

c. **KID COUNTRY** shall additionally provide any and all additional documentation to the **CITY** which may be reasonably requested to account for use of the funds granted herein.

7.7 Insurance.

a. **KID COUNTRY** shall during the term hereof maintain in full force and effect the following insurance policies:

Type of Insurance Policy	Amount of Insurance
1. Commercial General Liability to include coverage for: <ol style="list-style-type: none"> a) Premises/Operations b) Products/Completed Operations c) Independent Contractors d) Personal Liability e) Contractual Liability f) Rented Premises 	\$500,000 each occurrence, \$1,000,000 general aggregate; or \$1,000,000 combined single limits \$100,000

2. Business Auto Liability	\$500,000 combined single limit
3. Workers' Comp & Employers' Liability	Statutory Limits \$100,000 each accident (coverage for employees only)

b. All insurance and certificate(s) of insurance shall contain the following provisions: (1) name the **CITY**, its officers, agents and employees as additional insureds as to all applicable coverage; (2) provide for at least thirty (30) days prior written notice to the **CITY** for cancellation, non-renewal, or material change of the insurance; and (3) provide for a waiver of subrogation against the **CITY** for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance.

c. 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.

d. A certificate of insurance evidencing the required insurance shall be submitted at least ten (10) days prior to the date construction of the Playground Improvements begins.

7.8 **Release.** Kid Country shall provide written release from non-paid persons working or performing services or engage in demolition or construction on the licensed premises. All paid personal or entities shall provide general liability in accordance with workers compensation/certification of self insurance prior to commencement of work at the licensed premises as provided in Paragraph 7.7 of this Agreement.

ARTICLE VIII TERMINATION AND RECAPTURE

8.1 **Termination.** This Agreement shall terminate upon any one of the following:

- a. by mutual written agreement of the parties;
- b. Expiration Date;
- c. by either party in the event the other party breaches any of the terms or conditions of this Agreement and such breach is not cured within thirty (30) days after written notice thereof in accordance with this Agreement;
- d. by **CITY**, if **KID COUNTRY** suffers an Event of Bankruptcy or Insolvency prior to completion of the Playground Improvements;
- e. by **CITY**, if any Impositions, liens, claims, notice of breach to **KID COUNTRY** owed to the City, the **CITY** or the State of Texas by **KID COUNTRY** shall

become delinquent (provided, however **KID COUNTRY** retains the right to timely and properly protest and contest any such Impositions);

f. by either party, if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable.

8.2 **Recapture of Grant.** In the event the Agreement is terminated by **CITY** pursuant to Section 8.1 (C), (D), (E), or (G), **KID COUNTRY** shall immediately pay to the **CITY** an amount equal to one hundred percent (100%) of the Grant for the Playground Improvements set forth in Section 4.1 and any funds previously paid by the **CITY** to **KID COUNTRY**. The repayment obligation of **KID COUNTRY** set forth in this Section 8.2 hereof shall survive termination of this Agreement.

ARTICLE IX ASSIGNMENT

9.1 **Binding Effect.** All covenants and agreements contained herein by **CITY** shall bind their successors and assigns and shall inure to the benefit of **KID COUNTRY** and their successors and assigns.

9.2 **Assignments by CITY.** **CITY** may assign its rights and obligations under this Agreement to any governmental entity without prior consent of **KID COUNTRY**.

9.3 **KID COUNTRY** may not assign its rights and obligations under this Agreement.

9.4 **Exculpation of CITY.** **CITY** shall in no event be obligated to any third party, including any contractor, material man subcontractor or consultant of **KID COUNTRY**, for any work or services related to the construction of the Playground Improvements under this Agreement; and, **KID COUNTRY** shall take all commercial reasonable efforts to ensure that no liens or claims are filed against any park improvements; in the event that the **CITY** receives notice of such claims, liens or encumbrances shall constitute a breach of this Agreement and the Recapture provisions of Article VIII shall apply.

9.5 **No Waivers Implied.** No provision of this Agreement shall be deemed to have been waived by **CITY** unless such waiver is in writing and is approved by City Council in the form of a duly passed resolution.

ARTICLE X MISCELLANEOUS

10.1 **Conflict of Interest.** **KID COUNTRY** warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of **CITY**.

10.2 **Entire Agreement.** This written Agreement embodies the final and entire agreement between the parties hereto and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties.

10.3 **Exhibits.** The exhibits attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that if there is a conflict between an exhibit and a provision of this Agreement, the provision of this Agreement shall prevail over the exhibit.

10.4 **Amendments.** Except when the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by **CITY** and **KID COUNTRY**.

10.5 **Changes in Applicable Laws.** It is understood and agreed by the parties hereto that changes in local, state and federal rules, regulations or laws applicable to **CITY** and **KID COUNTRY's** services hereunder ("Applicable Laws") may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto and shall become a part hereof as of the effective date of the rule, regulation or law. No retroactive measures will be required for completed work or services performed in accordance with known Applicable Laws.

10.6 **Severability.** If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the charter, code, or ordinances of **CITY** or **CITY**, then and in that event it is the intent of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein. It is also the intent of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a similar clause or provision as may be possible, legal, valid and enforceable.

10.7 **Independent Contractors; No Agency.** It is expressly understood and agreed by all parties hereto that in performing their services hereunder, **KID COUNTRY** at no time will be acting as agent of the **CITY** and that all consultants or contractors engaged by **KID COUNTRY** shall be independent contractors of **KID COUNTRY**. The parties hereto understand and agree that **CITY** shall not be liable for any claims that may be asserted by any third party occurring in connection with services performed by **KID COUNTRY** under this Agreement unless any such claims are due to the fault of the **CITY**.

10.8 **Limit on Authority.** The parties hereto further understand and agree that no party has authority to bind the others or to hold out to third parties that it has the authority to bind the others.

10.9 **Legal Authority.** Each persons executing this Agreement on behalf of the **CITY** and **KID COUNTRY**, represents, warrants, assures and guarantees that he has full legal authority to (i) execute this Agreement on behalf of **CITY** and/or **KID COUNTRY**, respectfully, and (ii) to bind **CITY** and/or **KID COUNTRY** to all of the terms, conditions, provisions and obligations herein contained.

10.10 **Governing Law.** THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.

10.11 **Venue.** Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in Dallas County, Texas.

10.12 **Parties' Representations.** This Agreement has been jointly negotiated by the CITY and KID COUNTRY and shall not be construed against a party because that party may have primarily assumed responsibility for the drafting of this Agreement.

10.13 **Notice.** Any notice required to be sent under this Agreement shall be written and mailed with sufficient postage, sent by certified mail, return receipt requested, documented facsimile or delivered personally to an officer of the receiving party at the following addresses:

IF TO CITY: City of Coppell
255 Parkway Boulevard
P. O. Box 9478
Coppell, Texas 75019
Attn: Clay Phillips, City Manager

With copy to: Robert E. Hager, City Attorney
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201
FAX: (214) 965-0010

IF TO KID COUNTRY: KID COUNTRY
P.O. Box 1683
Coppell, Texas 75019
Attn: Jack Clark

10.14 **Captions.** All captions used herein are only for the convenience of reference and shall not be construed to have any effect or meaning as to the agreement between the parties hereto.

[SIGNATURE PAGE TO FOLLOW]

[THIS PORTION LEFT BLANK INTENTIONALLY]

EXECUTED this ____ day of _____, 2012.

CITY:

**CITY OF COPPELL, TEXAS,
A home rule municipality**

By: _____
Name: Karen Selbo Hunt
Title: Mayor

APPROVED AS TO FORM:

Robert E. Hager,
City Attorney

EXECUTED this ____ day of _____, 2012.

KID COUNTRY:

**COPPELL KID COUNTRY
PLAYGROUND ASSOCIATION,
a Texas non-profit corporation**

By: _____
Jack Clark,
President

EXHIBIT A
DESIGN DEVELOPMENT AND CONSTRUCTION DOCUMENT

[To be attached]