

## POOL USE AGREEMENT

This Pool Use Agreement, effective May 10, 2010, is between Jessica Turner d/b/a **Pflugerville Piranhas Swim Team** ("USER"), with principal offices at P.O. Box 2016 Pflugerville, TX. 78691 and the **City of Pflugerville** ("City"), a Texas home-rule municipality:

### Recitals

- A. USER is a youth swimming club organized to promote participation by residents of the City of Pflugerville and surrounding areas in competitive aquatic sports.
- B. The City owns and operates swimming pools and related facilities located at 700 Railroad Avenue, and 16804 Gower St, Pflugerville, Texas (the "Pool Facilities").
- C. USER desires to use the Pool Facilities to conduct swimming practices ("Practices") for persons who are members of USER and to hold competitive amateur aquatic sports competitions ("Meets") sponsored by USER.
- D. USER desires to use the Pool Facilities for Practices and Meets from May 10, 2010 through July 16, 2010 and has asked the City to allow it to use the Pool Facilities for these purposes. In consideration of this use, USER will pay the City fees according to Appendix "B", and leave the Pool Facilities and any appurtenant utilized by USER neat and clean after each use.
- E. City desires to encourage its residents to participate in competitive amateur aquatic sports by permitting the use of the Pool Facilities by USER and its members.
- F. This Agreement sets forth the agreements of the City and USER regarding this arrangement.

### Agreement

- 1. Term. The initial term of this Agreement is May 10, 2010 through July 16, 2010. Thereafter, this Agreement will be extended for additional 1-year terms unless either party provides notice of termination at least 30 days before the end of the current term.

2. Use of Pool Facilities.

- (a) USER may use the areas within the Pool Facilities which include the "Lane Area", "Deck", "Restrooms", "Grass Area" and "Concession Area", for Practices and Meets.
- (b) The "Beach Area" at Gilleland Pool may not be used by USER unless it is directly supervised by a Lifeguard, who is not responsible for supervising any other areas.
- (c) USER must keep the Pool Facilities in a neat and orderly condition and insure that the Pool Facilities are properly supervised during Meets and Practices in accordance with Section 5.
- (d) USER may not use the Pool Facilities for recreational swimming or unsupervised activities.
- (e) USER should limit the number of swimmers in the Lane Area to 80 at Gilleland and 40 at Windermere. The number of swimmers in a single lane should be no more than 10 at any given time.
- (f) USER may not permit any person who does not show proof of insurance through United States Swimming (or an equivalent sanctioned body) to participate in USER's Practices or Meets conducted at the Pool Facilities.
- (g) With the prior consent and knowledge of the Parks Director, or his designated representative, USER may enter the Pool Facilities to prepare for USER's previously scheduled use.
- (h) USER, its officers, agents, employees, or members, and persons participating in the activities conducted by the user must abide by United States Swimming (or an equivalent sanctioning body) safety standards and regulations.
- (i) USER must comply with the Parks Director's, or his designated representative's, reasonable requirements during a Practice or Meet. Parks Director, or his designated representative's, may, in his sole discretion, cancel or terminate any Practice, Meet or other activity that may directly or indirectly expose any participant or any other member

of the public to danger of death, disease, or injury of any kind or expose City to civil or criminal liability of any kind.

- (j) USER may not allow diving within the Pool Facilities unless the diving is supervised and sanctioned racing starts in the Lane Area that are monitored and supervised by a qualified Coach. USER acknowledges that City's Pool Facilities are non-diving facilities.

3. Schedule of Use.

- (a) Other than those dates and times shown on Exhibit "A", USER must schedule dates and times for use of the Authorized Areas in advance through the Parks Director, or his designated representative.
- (b) Activities and events sponsored by City will have priority over dates and times requested by USER for use of the Pool Facilities, including the dates and times on Exhibit "A".  
During School Year practices, three lanes will be used by the City until 8:00pm at the Gilleland Pool. During summer practices, three lanes will be used between 9:00am and 10:30am also at the Gilleland Pool. Home meets shall end by 1:00pm at the latest so that the pool may open for recreational swimming to the public.
- (c) Parking Lot usage will be limited to the front paved lot for all practices. Use of the back grass lot at Gilleland will be used for swim meets only when the grass is sufficiently dry as deemed so by the Parks Director, or his designated representative. USER will provide volunteers to assist with proper parking in that lot on swim meet days.

4. Risk Management Plans.

- (a) At least 30 days before USER may use the Authorized Areas, USER must submit the following: A Risk Management Plan for Practices; a Risk Management Plan for Meets attended by less than 500 people in the Authorized Area; and, a Risk Management Plan for Meets attended by 500 or more people in the Authorized Area.
- (b) The plans must be consistent with United States Swimming guidelines (or an equivalent sanctioning body) for risk management and address parking and security measures. The

plans for Meets must include a Safety Committee consisting of individuals who are on the Deck and easily recognizable as Safety Committee members.

- (c) Each plan must be reviewed and approved by the Parks Director, or his designated representative. USER may not use the Pool Facilities for a particular activity until the Risk Management Plan for that activity has been approved.

5. Supervision of Activities.

- (a) USER may not permit any persons in unsecured or unsupervised areas. No one may enter Authorized Areas unless properly authorized and qualified individuals are supervising these areas.
- (b) USER must provide sufficient numbers of properly trained and certified Personnel (e.g. Lifeguards and Coaches) to supervise and control the aquatic sports activities and all persons participating in and attending USER's programs that are conducted within the Authorized Areas and the Pool Facilities, including all persons in the Pool Facilities. The City will not provide lifeguards during practices. City Lifeguards will be provided during all meets.
- (c) Any Lifeguard must have current certifications from American Red Cross for Lifeguard, Cardio-Pulmonary Resuscitation for the Professional Rescuer and First Aid. Any Lifeguard supervising use of the pools for USER must also complete a City orientation course for emergency procedures, use of equipment and rescue skills, and provide documentation of current certifications to the City before performing any duties as a Lifeguard.
- (d) There must be at least 1 Lifeguard on-duty for every 50 swimmers within the Authorized Areas during Practices. There must also be 1 Lifeguard for every 8 "at-risk" or instructional swimmers within the Authorized Areas during Practices. "At-risk" or instructional swimmers include, but are not limited to, non-swimmers who require in-water assistance and supervision or who must be in the Beach Area of Gilleland Pool. If

Coaches are simultaneously serving as Lifeguards during Practices, there must be 1 Coach for every 25 swimmers or 8 “at-risk” or instructional swimmers within the Authorized Area.

- (e) A Lifeguard is considered on-duty only when on the deck and when the Lifeguard’s sole responsibility is to actively monitor all swimmers within the Deck, Lane Area and Beach Area when USER is using the Pool Facilities and when rescue equipment is readily available in case an emergency occurs.
- (f) A Coach must have a current license from United States Swimming or hold an equivalent license or certification from another training and certifying entity.
- (g) USER must provide City with lists of all Coaches, Lifeguards and other adults who will supervise USER Practices and Meets. The list must include documentation of any current licenses, qualifications and insurance for every individual.

6. Maintenance of Pool Facilities.

- (a) USER must keep all portions of the sidewalks, entries, doors, passages, vestibules, halls, corridors, and stairways of the Authorized Areas, and all access to utilities and equipment for Pool Facilities free of obstruction and those areas may not be used for any purpose other than ingress or egress to and from the Authorized Areas or utilities.
- (b) USER may not bring into the Pool Facilities any materials, substance, equipment, or object that is likely to endanger the life of, or cause injury to, any person or that is likely to provide a hazard to property. City may require the removal of any material, substance, equipment or object that the Parks Director, or his designated representative, determines is a danger or hazard to any person or property. USER may not install or operate any equipment, fixture, furniture, device, engine, motor or machinery within the Pool Facilities without the prior written consent of the Parks Director, or his designated representative.

- (c) USER must take all steps reasonable and necessary to preserve and protect the Pool Facilities and the equipment therein. USER may not make or allow anyone to make alterations of any kind to the Pool Facilities or to any equipment located herein.
- (d) USER must pay the cost of repair or replacement for any and all damage caused by, resulting from, or arising out of its use of the Pool Facilities. City must approve the repair or replacement of any damaged property or equipment before the repair or replacement occurs and will provide USER with a detailed account and bill upon completion of the necessary work. USER must pay the bill within 30 days of receipt.

7. Sales and Advertisements.

- (a) USER may not undertake any retail sales operations at the Pool Facilities and USER's events and activities may not be sponsored by or in any other way be associated with any commercial product or business, without the prior written consent of the Parks Director, or his designated representative.
- (b) All signs, banners, placards, displays and announcements must comply with the solicitation policies of the City. USER may not post, display or distribute or permit anyone to post, display or distribute any advertisement, message, pamphlet or literature at the Pool Facilities or on City property, without the prior written consent of the Parks Director or his designated representative.

8. Use Fee.

- (a) USER must pay City for the use of the Pool Facilities and the services incidental to such use at the rates in effect at the time of use or provision of service. Specified rates include charges for use of facilities, utilities, maintenance, equipment and related service of City personnel. Current rates are set forth in Exhibit "B" and are subject to change by city.
- (b) On or before each April 30 during the term of this Agreement, City will notify USER of the rates that will be in effect for the following fiscal year.

- (c) City will bill USER for use of the Pool Facilities at the end of each season and USER must pay City within 30 days, USER's right to use the Pool Facilities will cease until the bill is paid, and City may terminate this Agreement.
9. Control of Premises. By permitting USER to use the Pool Facilities for the purposes stated in this agreement, City does not relinquish custody or control of the Pool Facilities and specifically retains the right to enforce all laws, rules, and regulations applicable to the Pools. Representatives of City may enter the portions of the Pool Facilities being used by USER at any time in order to assure that USER's activities are in compliance with the terms of this Agreement.
10. Laws, Licenses and Taxes.
- (a) USER must comply with the applicable provisions of all state, federal and local laws and regulations; and rules and regulations of City that are related to USER's use of the Pool Facilities and its activities and programs conducted in the Pool Facilities.
- (b) The payment of any fee, excise or tax, and the procurement of any license or permits required for any USER activity or program is USER's sole responsibility.
- (c) USER is an independent contractor and not an employee of the City, under this Agreement.
11. Indemnification. USER must hold harmless City, and the officers, agents, and employees of City from any and all claims, demands, causes of action, and judgments for injury to or death of any person or damage to property that arises directly or indirectly from any intentional act or omission of USER or the officers, agents or employees of USER in the performance of this Agreement, or that arises directly or indirectly from an intentional act or omission of a person or official participating in USER Activities or programs or a person who is attending USER's activities or programs at the invitation of or with the permission of USER.
12. Insurance. USER must obtain a policy or policies of insurance from a Company that is authorized to do business in the State of Texas and is acceptable to the City Manager. The insurance must have limits of liability of at least \$500,000 per person for bodily injury or death and \$1,000,000

per occurrence and at least \$200,000 for property damage per occurrence, providing coverage for injury or death of any person (including the officers, agents and employees of City) and damage to property (including the Pool and other property of City) that may result during the course of any activity or program of USER that occurs on City property. City must be named as an additional insured on the policy or policies of insurance and USER must provide the Parks Director with a certificate of insurance that evidences the required coverage. The insurance may not be canceled without at least 30 days' notice to the City.

13. Termination.

- (a) This Agreement may be terminated by written agreement of the parties.
- (b) Anything in this Agreement to the contrary notwithstanding, this Agreement may be terminated by either party by delivery of at least 30 days' written notice to the other party at any time. If USER refuses or is unable to perform any act under this Agreement, or if USER is grossly negligent or fraudulent in the performance of its duties under this Agreement, this Agreement may be terminated by the City without 30 days' notice by written notice to USER, and the termination will be effective immediately upon delivery of the notice. USER must pay all outstanding fees upon termination of this Agreement.
- (c) If the Pool Facilities are destroyed or damaged to the extent that the performance of this Agreement is not possible, this Agreement will terminate and City will not be responsible for any loss or liability that may be incurred by or result to USER because of the termination.
- (d) If the City is in default of any obligation under this Agreement, USER must give written notice to the City and, unless the default is cured within 30 days after the date of the notice, USER may terminate this Agreement by giving the City 30-day written notice.

14. Notice. All notices required by this Agreement must be given by mail or delivery in person as indicated below:



Jessica Turner  
D/b/a/ Piranhas Aquatic Club  
Post Office Box 2016  
Pflugerville, Texas 78691-2016

CITY OF PFLUGERVILLE  
Parks and Recreation Director  
Post Office Box 589  
Pflugerville, Texas 78691-0589

The address of the person to be notified may be changed by providing at least 5 days written notice of the change.

15. Miscellaneous Provisions.

- (a) This Agreement may not be assigned by either party and any assignment by either party is null and void without the other party's prior written consent. The City may withhold consent for any reason.
- (b) This Agreement will be construed under the laws of the State of Texas, and all obligations of the parties are performable in Travis County, Texas.
- (c) This Agreement is binding upon and benefits the parties and their respective heirs, executors, administrators, legal representatives, successors and assigns.
- (d) If any of the provisions of this Agreement are held to be invalid, illegal or unenforceable in any respect, the invalidity, illegality or unenforceability will not affect any other provision and this Agreement will be construed as if the invalid, illegal or unenforceable provision was never contained in it.
- (e) This Agreement constitutes the only agreement of the parties and supersedes any prior understandings or written or oral agreements between the parties regarding the subject matter.

CITY OF PFLUGERVILLE

BY: Glenn Holzer  
Glenn Holzer, Parks and Recreation Director

ATTEST:

Katie Weiss  
Katie Weiss, Aquatics/Athletic Coordinator

Jessica Turner  
Jessica Turner, d/b/a, Piranhas Swim Team

**EXHIBIT "A"**  
**Dates and Times of Use**

Season Dates: May 10, 2010 – July 16, 2010

Practice Times: **During School Year**  
Monday – Friday 4:00pm – 8:30pm

**During Summer Vacation**  
**Gilleland**  
Tuesday – Friday 6:30am – 10:30am  
**Windermere**  
Mon, Tue, Thur 10:00am-11:30am

## **EXHIBIT "B"**

### **Rental Fees**

Practice	\$15 per hour
Dual Meets	\$40 per hour
Divisional/Invitational Meets	\$80 per hour