

**AGREEMENT BETWEEN THE CITY OF PFLUGERVILLE AND
THE UNIVERSITY OF TEXAS AT AUSTIN
on behalf of Longhorn Aquatics
FOR THE RENTAL OF THE GILLELAND CREEK POOL**

WHEREAS, the City of Pflugerville (“City”) owns and operates the Gilleland Creek Pool, located at 700 Railroad Ave, Pflugerville, TX.

WHEREAS, The University of Texas at Austin on behalf of Longhorn Aquatics (“Longhorn” or “Renter”) desires to use the Gilleland Creek Pool for its competitive swim team’s practices and programs;

WHEREAS, the City of Pflugerville has a non-competitive learn to swim program and it is the express intent of both parties that the two programs should not compete with each other. Specifically, Longhorn Aquatics agrees there will be no competition between the programs and Longhorn Aquatics shall not be permitted to have a non-competitive learn to swim program under this agreement.

WHEREAS, the parties agree and understand that the Gilleland Creek Pool often has customers and participants who are minors and children. Customers and participants also often leave valuables in the storage areas after changing into swimwear. As a result, the parties agree that Longhorn Aquatics shall not utilize any employee, agent, or coach who is a convicted felon or a registered sex offender, and shall not utilize any volunteer that is a registered sex offender or is required to register as a sex offender at the Gilleland Creek Pool.

NOW, THEREFORE, for and in consideration of the premises and mutual covenants hereinafter contained, the parties hereto agree with each other as follows as well as the clauses cited above:

This rental Agreement is for the use of Gilleland Creek Pool located at 700 Railroad Ave, Pflugerville, TX, by the Renters competitive swim team, and is made to be effective this January 14, 2013, by and between the City of Pflugerville (“City”), a Texas home-rule municipal corporation of the State of Texas, and The University of Texas at Austin on behalf of Longhorn Aquatics. This Agreement is entered into by and between the City and the Renter pursuant to the authority granted and in compliance with the provisions of the Interlocal Cooperation Act, Chapter 791, *Texas Government Code*.

- 1. PREMISES, DATES, HOURS*:** The City agrees to rent to Renter up to seven lap lanes in the City’s 25-meter pool at Gilleland Creek Pool on the following dates and hours of operation, (inclusive of daily set-up and close-down), provided, however, that if additional lap lanes are needed at a later date due to increased program participation, Renter will notify City of Pflugerville Parks and Recreation Staff of that need and the parties may negotiate additional lane usage at that time.

- 1.1. The Gilleland Creek Pool is to have one pool lane reserved at all times to accommodate City programming and fitness needs to the general public, unless agreed upon by both parties in advance.

RENTAL COMMENCEMENT DATE: JANUARY 14, 2013.

REGULAR DAILY PRACTICE RENTAL DAYS AND HOURS:

DAY OF WEEK	TIME
MONDAY	4:00 P.M -8:00 P.M.
TUESDAY	4:00 P.M.-8:00 P.M.
WEDNESDAY	4:00 P.M.-8:00 P.M
THURSDAY	4:00 P.M.-8:00 P.M.
FRIDAY	4:00 P.M.-8:00 P.M
SATURDAYS	8:00A.M.-11:00A.M.

RENTAL TERMINATION DATE: MAY 31, 2013

2. **CHECKOUT:** Renter agrees to clear the facility after rental dates.
3. **CLEAN-UP:** Renter agrees to pick up and properly dispose of any refuse littering the area around the pool during and following each use.
4. **FEES TO BE PAID BY RENTER:**

4.1 Regular Daily Practice Fees for the dates and times outlined above shall be \$30 per hour for up to seven lanes for up to 100 participants, or \$40 per hour for up to seven lanes once the program exceeds 100 participants. For the purposes of this Agreement, the number of participants shall be defined as the total number of non-scholarship swimmers enrolled in Longhorn Aquatics program held at the Gilleland Creek Pool. Payment shall be based on the number of non-scholarship swimmers at the beginning of each month. Longhorn Aquatics will provide the City with a roster of active swimmers, identifying each swimmer as a scholarship or non-scholarship participant. Scholarship swimmers shall not exceed 10% of the total roster without express written approval of the City. Additional practice times outside of those times outlined in Section 1 shall be agreed upon by the parties in advance and shall be assessed at the same fees as outlined in this section.

4.2 Daily Practice Fees do not include clinics, or any other non-swim meet fee-based activities held by Longhorn Aquatics at the Gilleland Creek Pool. Fees for such other additional activities shall be assessed at the same rate as established in Section 4.1 that is in effect at the time of the activity.

4.3 Swim Meet Fees (includes locker rooms and restrooms) shall be as follows:

4.3.1 Gilleland Creek Pool:

\$50 per hour (minimum of four (4) hours)

- 4.4 The City of Pflugerville will not collect any percentage of proceeds from concession items.
- 4.5 Due date for payments:
 - 4.5.1 Regular Daily Practice Fees shall be paid no later than the fifteenth (15th) of each month for the previous month.
 - 4.5.2 Fixed fees for swim meets shall be paid at least five (5) business days prior to the day of the event. Cancellation of a swim meet with less than five (5) business days notice shall be subject to a charge of one-half (1/2) of the Swim Meet Fee for that event.

5. DAILY SWIM PRACTICES:

- 5.1 All swimmers should be supervised by Longhorn Aquatics employees or its designees before, during and after practice. As noted above, Longhorn Aquatics shall not utilize any convicted felon or registered sex offender. Participants should wait in the pool area rather than the lobby when they are not in the water.
- 5.2 A Longhorn Aquatics employee or its designee shall check the pool area and locker rooms and assist with excessive trash, water, and personal items that the swimmers have left behind each day after practices are over.
- 5.3 Computers, telephones, copiers and other office equipment are for City use only, not for Longhorn Aquatics staff or their designees. No one other than City employees are allowed behind the front desk.
- 5.4 Renter's meetings shall be held in the pool deck unless other prior arrangements have been made and approved.
- 5.5 To help identify program participants to City of Pflugerville personnel, Longhorn Aquatics will issue identification to each program participant. Program participants will be required to show their identification to City of Pflugerville personnel upon entering the building for practices.
- 5.6 Program participants are only allowed usage of the Gilleland Creek Pool during designated practice times as outlined above. Any other usage of the facilities will be in accordance with City policies and fees.

6. SWIM MEETS:

- 6.1 Swim meet dates must be submitted for approval to the City of Pflugerville Parks and Recreation at least thirty (30) days in advance of the proposed date. Following approval, Longhorn Aquatics will fill out and turn in a City of Pflugerville Parks and Recreation facility use rental agreement before it will be entered into the City of Pflugerville Parks and Recreation calendar. All date or time changes must also have prior approval
- 6.2 All swimmers should be supervised by Longhorn Aquatics employees or its designees before, during and after the swim meet. Swimmers and families should wait in the pool area when they are not in the water.

- 6.3 A Longhorn Aquatics employee or its designee shall assist with checking the pool area and locker rooms, and help with excessive trash, water, and personal items that the swimmers have left behind.
- 6.4 Computers, telephones, copiers and other office equipment are for City use only, not for Longhorn Aquatics staff or their designees.
- 6.5 Concession sales will be the responsibility of Longhorn Aquatics or its designee and will be governed by the health laws of the State of Texas Health Department. A valid food handler's permit will be required to be obtained by the seller and shall be presented to the City prior to the swim meet. City shall not furnish concession area or supplies without prior approval.

7. CLOSURE, CANCELLATION, REFUND: The City reserves the right to close Gilleland Creek Pool for necessary work or repair. If no use of Gilleland Creek Pool by Renter has occurred due to the City failing to provide adequate facilities for five or more consecutive days, a prorated adjustment will be applied to the fees specified in section 4. The City shall not be financially liable for any instances of pool closure or non-availability that is beyond the control of the City (including weather, any other natural forces, or higher governmental orders or regulations).

8. DEPOSIT: Not Required

In the event this Agreement, and/or a swim meet is canceled by City for reason not attributable to Longhorn Aquatics or if canceled by Longhorn Aquatics for default of performance by City or Force Majeure, then within thirty (30) days after termination, City will reimburse Longhorn Aquatics for all advance payments paid by Longhorn Aquatics to City that were (a) not earned by City prior to termination, or (b) for goods or services that Longhorn Aquatics did not receive from City prior to termination.

9. TERMINATION: In the event of a material failure by a Contracting Party to perform its duties and obligations in accordance with the terms of this Contract, the other party may terminate this Contract upon ten (10) days' advance written notice of termination setting forth the nature of the material failure; provided that, the material failure is through no fault of the terminating party. The termination will not be effective if the material failure is fully cured prior to the end of the 10-day period.

Either party may terminate this agreement for convenience upon thirty (30) days written notice to the other party.

All terminations, with the exception of the use by Renter of a convicted felon or sex offender, shall be made in writing and delivered to the addresses listed in Section 23 of this agreement.

Termination for use by Renter of a convicted felon or sex offender may be immediate upon discovery and the City will provide written notice after such termination. Regardless of whether the City terminates the contract or not, the City shall have the prerogative to remove any individual found to be a convicted felon or sex offender and may prohibit such individual from returning to the property.

10. **INSPECTION:** The City and Renter agree to a joint inspection of the pool and associated facilities prior to its use by Renter and upon Renter's final event or use. All personal items or supplies shall be removed from the facility by the agreed termination date.
11. **EQUIPMENT:** Fixed equipment (lane lines, attached swim platforms, etc.) is made available as is and Renter shall bear the risks in using the equipment provided. To the extent authorized by the Constitution and laws of the State of Texas, the Renter shall reimburse the City in full for any damage to City equipment caused by Renter. Other equipment (fins, kickboards, etc.) shall be provided by Renter.
12. **TERMINATION/MOVE OUT, PERSONAL PROPERTY:** Renter agrees to remove all personal property (including supplies, equipment and personal belongings) within five (5) business days of the termination/move-out date. The City shall have no responsibilities for the safety or storage of such property and any such property not removed shall be deemed abandoned, subject to disposal at the City's sole discretion and at Renter's expense.
13. **ALTERATIONS:** Renter shall perform no alterations of the pool, grounds, or associated facilities without the express written approval of the City. Any approval of alterations shall be conditioned on the Renter returning the facilities to their original condition unless otherwise requested by the City in its sole discretion.
14. **PARKING:** Parking shall be made available on first come, first served basis. Renter shall have no right to reserve parking spaces.
15. **PROGRAM CONFLICT:** Renter shall not provide programs which duplicate or directly compete with programs provided by the City without express written consent from the City. Such programs include, but are not limited to, swimming classes or other water-based instructional classes offered by the City.
16. **REGISTERED PARTICIPANTS:** All of the Renter's participants must be registered in the respective program.
17. **LIFEGUARDS:** The City shall have the right to monitor the use of Gilleland Creek Pool through the appropriate staff. City will provide lifeguards during all users activities.
18. **CONVICTED FELONS:** No employee, agent, coach, of Longhorn Aquatics is allowed at the Gilleland Creek Pool if such person has been convicted of a felony within the last ten (10) years or if such person is a registered sex offender or is required to register as a sex offender. Longhorn Aquatics shall not utilize any volunteer that is a registered sex offender or is required to register as a sex offender. It shall be the sole responsibility of Longhorn Aquatics to cross-reference all volunteers with the Texas Sex Offender's Registry to ensure compliance with this Agreement.

Use of such individuals by Longhorn Aquatics is grounds for immediate termination of this agreement regardless of any other provision contained herein. Regardless of whether the City terminates the contract or not, the City shall have the prerogative to remove any

individual found to be in violation of this clause and may prohibit such individual from returning to the property.

- 19. **COMPLIANCE WITH LAWS AND ORDINANCES:** Renter agrees that the program will be in compliance with all applicable laws, ordinances, and permit requirements.
- 20. **INDEMNITY:** To the extent authorized by the Constitution and laws of the State of Texas, Renter shall indemnify and hold harmless the City, its officials, officers, employees and agents from and against all costs, expenses, damages, claims or liabilities from or in connection with, any negligent act for omission of Renter, its officers, employees or agents in the performance of this agreement.
- 21. **INSURANCE:** All Longhorn Aquatics staff and participants are registered and insured with USA Swimming. See Attachment "A" for coverage. Renter shall list the City as an additionally insured on the policy provided through USA Swimming. Renter shall be required to maintain such insurance to the equivalent of that attached as Attachment "A" during the term of this contract and any extensions.

It is the stated policy of Longhorn Aquatics not to acquire commercial general liability insurance for torts committed by employees of the Longhorn Aquatics who are acting within the scope of their employment. Rather, Contractor must look to the Texas Tort Claims Act for relief with respect to property damage, personal injury, and death proximately caused by the wrongful act or omission or negligence of Longhorn Aquatics or its employees, acting within the scope of their employment. The Longhorn Aquatics does not provide insurance coverage or accept liability for the intentional or negligent acts or omissions of individuals not employed by Longhorn Aquatics.

The University of Texas at Austin on behalf of its Longhorn Aquatics is self-insured. See Attachment "B".

- 22. **AUTHORIZED REPRESENTATIVE:** Renter warrants that the person executing this agreement is and has been fully authorized to bind Renter, and that Renter is familiar with and will abide by the policies of the City of Pflugerville and Gilleland Creek Pool. Any violations of policies may place Renter on record as ineligible for future use.
- 23. **NOTICES:** All notices, request, demands, and other communications, which are required or permitted under this Agreement shall be in writing and shall be given to the parties at the following addresses, unless otherwise specified in writing:

To the Renter:

**Longhorn Aquatics
Ann Nellis
University of Texas
Austin, Texas
Phone: (512) 471-7703**

To the City:

**City of Pflugerville Parks and Recreation
James Bowlin
City of Pflugerville
P. O. Box 589
Pflugerville, Texas 78691
Phone: (512) 990-6355
Fax: (512) 990-0932**

With copy to:
Kevin P. Hegarty
Vice President and Chief Financial Officer
The University of Texas at Austin
P.O.Box 8179
Austin, Texas, 78713-8179
Phone: 512-471-1422

- 24. ASSIGNMENT OF RIGHTS:** No right or interest in the Agreement shall be assigned and no obligation shall be delegated by the Renter without the prior written consent of the City. Any attempted assignment or delegation by the Renter shall be void unless made in conformity with this section. The Agreement is not intended to confer rights or benefits on any person, firm or entity not a party hereto, it being the intention of the parties that there be no third party beneficiaries to the Agreement.
- 25. AUTHORIZED CONTRACT ADMINISTRATOR:** The City's designated representative for the performance of this agreement shall be the City Manager or his designee.
- 26. INTERPRETATION:** Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any part.
- 27. JURISDICTION AND VENUE:** This Agreement is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, without regard to conflicts of laws principles. The City and the Renter agree that venue for any litigation arising from the Agreement shall be proper and lie in Travis County, Texas.
- 28. SEVERABILITY:** The invalidity, illegality, or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Agreement from being void should a provision which is the essence of the Agreement be determined to be void.
- 29. NO RECOURSE:** No recourse shall be had against any elected official, officer, employee or agent of the City for any claim base upon this Agreement.
- 30. INDEPENDENT OPERATOR:** This Agreement does not create and shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Renter's services are and shall remain throughout the term of this Agreement, those of an independent operator. The Renter agrees and understands that the Renter is not and shall not be entitled to any of the rights and privileges established for employees of the City.

31. LIMITATIONS. The parties hereto are aware of the possibility that there are or could be constitutional and statutory limitations on the ability of The University of Texas at Austin, a state agency, and the City of Pflugerville to enter into certain terms and conditions of this Agreement including, but not limited to, those relating to indemnification, warranties, limitations of damages, limitations of periods to bring legal action, waivers of remedies, dispute resolution, indemnities, and confidentiality. In any event, all of the provisions of this Agreement shall be valid and enforceable to the extent authorized by the laws and Constitution of the State of Texas. Neither the execution of this Agreement by University nor any other conduct, action or inaction of any representative of University constitutes or is intended to constitute a waiver of University's or the state's sovereign immunity to suit.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized person, all as of the day and year first above written.

THE UNIVERSITY OF TEXAS AT
AUSTIN

CITY OF Pflugerville

By: Debra Stevens
Business Contracts Administrator

By: Brandon Wade
City Manager

Signature

Signature

Date: _____

Date: _____

ATTACHMENT A

ATTACHMENT B
SUMMARY STATEMENT FOR THE UNIVERSITY OF TEXAS SYSTEM

References: Civil Practice and Remedies Code, Chapter 101
State of Texas General Appropriations Act,
Article V, Section 55

GENERAL LIABILITY

It is the stated policy of the State of Texas not to acquire commercial general liability insurance for torts committed by employees of the State who are acting within the scope of their employment. Rather, Chapter 101 of the Civil Practice and Remedies Code states that “a governmental unit in the state is liable for

- 1) property damage, personal injury, and death proximately caused by the wrongful act or omission or negligence of an employee acting within his scope of employment, if:
 - a) the property damage, personal injury, or death arises from the operation or use of a motor-driven vehicle or motor-driven equipment; and
 - b) the employee would be personally liable to the claimant according to Texas law; and
- 2) personal injury and death so caused by a condition or use of tangible personal or real property if the governmental unit would, where it a private person, be liable to the claimant according to Texas law.

Liability of the state government under this chapter is limited to money damages in a maximum amount of \$250,000 for each person and \$500,000 for each single occurrence for bodily injury or death and \$100,000 for each single occurrence for injury to or destruction of property.

Section 101 of the Code applies to actions against governmental units of the state and does not directly provide coverage for individuals as named defendants. However, a judgment under this section may prohibit further action against an employee.

One exception to the above stated policy of the state authorizes agencies and institutions of the state to acquire commercial automobile insurance for the use and benefit of its employees who operate state owned, motorized vehicles and special equipment.

WORKER’S COMPENSATION

Employees of The University of Texas System are provided Worker’s Compensation coverage under a self-insuring, self-managed program as authorized by V.A.C.S., Article 8309d, State of Texas.