

**TEXAS INTERLOCAL COOPERATION CONTRACT BETWEEN THE
UNIVERSITY OF TEXAS AND THE CITY OF PFLUGERVILLE FOR THE USE
OF CITY FACILITIES
GILLELAND CREEK POOL AND WINDERMERE POOL**

This Interlocal Agreement Between the University of Texas, and the City of Pflugerville regarding the use of city facilities – Gilleland Creek and Windermere pool for competitive swim team practices and programs (the “Agreement”) is entered into between the City of Pflugerville, a Texas municipal corporation (hereinafter “City”) acting by and through its City Council and the University of Texas, o/b/o Longhorn Aquatics, a USA recognized competitive swim team (hereinafter “University” or “Longhorn Aquatics”) pursuant to authority granted under the Interlocal Cooperation Act, Chapter 791, Texas Government Code, as the same may be amended from time to time, to be effective as of the date on which the last Party signs this Agreement (the “Effective Date”). The City and the University are collectively referred to herein as the “Parties” and are each a “Party”.

WITNESSETH:

WHEREAS, Chapter 791 of the Texas Government Code, as amended, titled Interlocal Cooperation Contracts, authorizes contracts between political subdivisions for the performance of governmental functions and services;

WHEREAS, City and University are each a politician subdivision of the State of Texas, with the authority to enter into this Agreement; and

WHEREAS, City and University desire to allow Longhorn Aquatics to use city facilities through the establishment of a schedule for such use and policies governing such use of City facilities for the University’s competitive team practices and programs; and

WHEREAS, without any intent to compromise each Party’s legislative prerogative, the Parties desire to enter into this Agreement to facilitate collaboration in the provision of funding for workforce recruitment and development as well as for economic development incentives; and

WHEREAS, the governing bodies of each of the Parties finds the functions and services described herein constitute a governmental function or service or function that each of the Parties are authorized to perform individually.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the sufficiency of which are acknowledged, and subject to the terms and conditions hereinafter set forth, the Parties agree as follows:

I. Purpose.

The Parties enter into this agreement for the purpose of coordinating efforts to allow the use of the facilities by Longhorn Aquatics for competitive swim team practices and programs offered by the University. It is the Parties intent to establish a schedule of use including meets and practices that will be compatible with

both Party's programs. To that end, the Parties enter into this Agreement to provide a schedule of use and associated fees as well as a policy for such use of the facilities by Longhorn Aquatics.

II. Schedule of Use

The schedule of use for this agreement is set forth on the attached **Exhibit A**, and as may be amended from time to time.

III. Fees for Use

The fees for the use set forth in Article II. are as set forth on the attached **Exhibit B**, and as may be amended from time to time.

IV. Use Policy

The policies for use of the City facilities pursuant to this agreement are as set forth in the attached **Exhibit C**, and as may be amended from time to time.

V. Binding Effect; Benefiting Parties

- 5.1 This Agreement shall bind and benefit the respective Parties and their legal successors, but shall not otherwise be assignable, in whole or in part, by either Party without first obtaining the written consent of the other Party.
- 5.2 This Agreement inures to the benefit of and obligates only the Parties. No term or provision of this Agreement shall benefit or obligate any person or entity not a Party to the Agreement. The Parties shall cooperate fully in opposing any attempt by any third person or entity to claim any benefit, protection, release, or other consideration under this Agreement.
- 5.3 Any financial obligations contemplated in this Agreement are from funds appropriated by the Parties in the current fiscal year budget for such public purpose and any future financial obligations contemplated in this Agreement are subject to the appropriation of those funds in future fiscal year budgets.

VI. Governmental Functions; Liability; No Waiver of Immunity or Defenses

- 6.1 Notwithstanding any provision to the contrary herein, this Agreement is a contract for and with respect to the performance of governmental functions by governmental entities.
- 6.2 The services provided for herein are governmental functions, and the Parties shall be engaged in the conduct of a governmental function while providing and/or performing any service pursuant to this Agreement.
- 6.3 The relationship of the Parties shall be that of independent contractors.
- 6.4 Nothing contained herein shall be deemed or construed by the Parties, or by any third party, as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationship between the Parties.

- 6.5 Each Party shall have no liability whatsoever for the actions of, or failure to act by, any employees, contractors, subcontractors, agents, representatives, or assigns of the other Party in connection with the Agreement, and the Parties covenants and agree, to the extent permitted by law, that each shall be solely responsible for, and with respect to any claim or cause of action arising out of or with respect to any act, omission, or failure to act by its respective employees, contractors, subcontractors, agents, representatives, or assigns, in connection with the Agreement.
- 6.6 Each Party reserves and does not waive any defense available to it at law or in equity as to any claim or cause of action whatsoever that may arise or result from or in connection with this Agreement. This Agreement shall not be interpreted nor construed to give to any third party the right to any claim or cause of action, and neither the City nor the College shall be held legally liable for any claim or cause of action arising pursuant to or in connection with this Agreement except as specifically provided herein or by law.
- 6.7 Neither Party waives or relinquishes any immunity or defense on behalf of itself, its trustees, councilmembers, officers, employees, and agents as a result of the execution of this Agreement and the performance of the covenants and agreements contained herein.

VII. Notices

- 7.1 All correspondence and communications concerning this Agreement shall be directed to:

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

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

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

- 7.2 Notices required hereunder shall be hand-delivered or sent by prepaid certified mail, return receipt requested.

VIII. Insurance and Indemnity

All Longhorn Aquatics staff and participants are registered and insured with USA Swimming. See Attachment "A" for coverage. University shall list the City as an additionally insured on the policy provided through USA Swimming. Longhorn Aquatics 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, City 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".

TO THE EXTENT AUTHORIZED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, UNIVERSITY AND LONGHORN AQUATICS 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 LONGHORN AQUATICS, ITS OFFICERS, EMPLOYEES OR AGENTS IN THE PERFORMANCE OF THIS AGREEMENT.

IX. Severability

- 9.1 If any provision of this Agreement shall be deemed void or invalid, such provision shall be severed from the remainder of this Agreement, which shall remain in force and effect to the extent that it does not destroy the benefit of the bargain.

X. Entire Agreement

- 10.1 This Agreement is the entire agreement between the City and the College as to the subject matter hereof and supersedes any prior understanding or written or oral agreement relative to the subject matter hereof. This Agreement may be amended only by written instrument duly approved and executed by both Parties in accordance with the formalities of this Agreement.

XI. Governing Law; Venue

- 11.1 All Parties agree that this Agreement shall be construed under the laws of the State of Texas, and obligations under the Agreement shall be performed in Travis County, Texas. In the event that any legal proceeding is brought to enforce this Agreement or any provision hereof, the same shall be brought in Travis County, Texas. The Parties agree to submit to the jurisdiction of said court.

XII. Term and Termination

- 12.1 This Agreement shall be effective as of the date on which the last Party signs this Agreement and shall remain in effect up to September 30, 2020. This Agreement may be renewed upon the agreement of the Parties. Either party may terminate this Agreement with or without cause and without penalty prior to the Termination Date by providing ninety (90) days written notice to the other party of its intent to terminate.


IN WITNESS WHEREOF, the Parties have executed this agreement as of the date set forth above.

THE UNIVERSITY OF TEXAS AT AUSTIN

CITY OF Pflugerville

By: Linda Shaunessy
Business Contracts Administrator

By: Sereniah Breland
City Manager

DocuSigned by:

D9E4716847F042B...
Signature

Signature

Date: 2020-01-30 | 17:59:39 PST

Date: _____

EXHIBIT A

1. **PREMISES, DATES, HOURS*:** The City agrees to allow Longhorn Aquatics, under fees provided for in Exhibit B, six lap lanes from September – May 24, eight lap lanes from May 25 – August in the City’s 25-meter pool at Gilleland Creek Pool and 4 lap lanes from May 25 – August at the City’s 25 yard pool at Windermere Pool on the following dates and hours of operation unless otherwise noted below, (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, Longhorn Aquatics 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 two lanes open at all times during lap swim time, unless agreed upon by both parties in advance. Number of swimmers per lane is at the discretion of Longhorn Aquatics.
 - 1.2. Allocation of pool usage during the summer season (May 25 – August) may be based on previous summer swim team participant totals. TXLA should provide the Pflugerville registrant number upon request.

USE COMMENCEMENT DATE: SEPTEMBER 1, 2019.

USE TERMINATION DATE: SEPTEMBER 30, 2020

DATES AND TIME TO BE DETERMINED AS NEEDED BY THE HEAD COACH AND AQUATICS SUPERVISORS.

2. **CHECKOUT:** Longhorn Aquatics agrees to clear the facility after rental dates.
3. **CLEAN-UP:** Longhorn Aquatics agrees to pick up and properly dispose of any refuse littering the area around the pool, personal items and swim team equipment during and following each use.

4. DAILY SWIM PRACTICES:

- 4.1 All swimmers should be supervised by Longhorn Aquatics employees or its designees before, during and after practice. As noted in the Use Policy attached as **Exhibit C**, 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.
- 4.2 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. Items left will be removed from the facility at the end of the week by City of Pflugerville Employees.
- 4.3 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 inside the Lifeguard Station.
- 4.4 Longhorn Aquatics’ meetings shall be held in the pool deck unless other prior arrangements have been made and approved.
- 4.5 Longhorn Aquatics is responsible for identifying program participants.
- 4.6 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.
- 4.7 Practice Days – All participants must depart facility by 8:00 p.m. All facility use is dictated by the availability of staff:

- 4.7.1.1 (Sept – April & August) Monday – Friday:
 - 4.7.1.1.1 Morning practices must not start before 6:00 a.m.
 - 4.7.1.1.2 Afternoon practices must not start before 4:30 p.m. and may not extend past 7:45 p.m.
- 4.7.1.2 (May – July) Monday – Friday:
 - 4.7.1.2.1 Morning practices must not start before 5:30 a.m.
 - 4.7.1.2.2 Afternoon practice may not occur more than 2 days a week
- 4.7.1.3 (Sept – May 24 & August) Saturday practices must not start before 7:30 a.m.
- 4.7.1.4 (May 25 – July) Saturday practices must not start before 6:30 a.m.

5. SWIM MEETS:

- 5.1 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.
- 5.2 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.
- 5.3 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.
- 5.4 Computers, telephones, copiers and other office equipment are for City use only, not for Longhorn Aquatics staff or their designees.
- 5.5 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.

EXHIBIT B

FEES TO BE PAID FOR USE:

1. Regular Daily Practice Fees for the dates and times outlined above shall be \$4 per lane, per hour.

Payment shall be based on the schedule provided at the beginning of each month. Longhorn Aquatics will provide the City with a monthly schedule detailing practice times. An updated calendar shall be submitted one week prior to the end of the month if any changes were made.

Additional practice times outside of those times outlined in Exhibit A shall be agreed upon by the parties in advance and shall be assessed at the same fees as outlined herein.

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 herein that is in effect at the time of the activity.
3. Swim Meet Fees (includes locker rooms and restrooms) shall be as follows:

Gilleland Creek Pool:

\$6 per lane, per hour (minimum of four (4) hours)

4. The City of Pflugerville will not collect any percentage of proceeds from concession items.
5. Due date for payments:
 - (i) Regular Daily Practice Fees shall be paid no later than 30 days following invoice date for the previous month.
 - (ii) 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.

EXHIBIT C

1. **CLOSURE, REPAIRS, REFUNDS:** The City reserves the right to close Gilleland Creek and Windermere Pool for necessary work or repair. **The City will not be contractually liable to find another facility if Gilleland or Windermere are not usable.** If no use of Gilleland Creek or Windermere Pool by Longhorn Aquatics 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 **Exhibit B**. 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).
2. **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.
3. **SCHEDULE CHANGES: All schedule changes must be made 24 hours in advance of the practice time.**
4. **CANCELLATION POLICY:**
 1. Any approved scheduled use of the facilities must be cancelled no later than 9:00 p.m. the day prior to such use for all morning practices or the fees set out in Exhibit B will be applied by the City.
 2. Any approved, scheduled use of the facilities must be cancelled no later than 2:00 p.m. the day of for all afternoon practices or any full day practice.
5. **WEATHER POLICY** – Practices are subject to cancellation during the following conditions:
 - a. 32 degrees or below (including wind chill/"feels like" temperature)
 - b. 35 degrees or below and precipitation
 - c. Severe weather
 - d. Additional cancellation for other weather occurrences are at the discretion of City staff.
6. **COLD WEATHER USE:**
 - a. Heater regulations: Pool will be kept at a minimum of 78 degrees. Any variations to this setting is at the discretion of City staff.
 - b. Approximate dates for heater and tarps usage is November 1st through March 31st. Final decision is at the discretion of City staff.
7. **TERMINATION:** In the event of a material failure by either 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 Longhorn Aquatics of a convicted felon or sex offender, shall be made in writing and delivered to the addresses listed in VII. Notices of this agreement.

Termination for use by Longhorn Aquatics 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.

8. **INSPECTION:** The City and Longhorn Aquatics agree to a joint inspection of the pool and associated facilities prior to its use by Longhorn Aquatics and upon Longhorn Aquatics final event or use. All personal items or supplies shall be removed from the facility by the agreed termination date.
9. **EQUIPMENT:** Fixed equipment (lane lines, attached swim platforms, etc.) is made available as is and Longhorn Aquatics shall bear the risks in using the equipment provided. To the extent authorized by the Constitution and laws of the State of Texas, Longhorn Aquatics shall reimburse the City in full for any damage to City equipment caused by Longhorn Aquatics. Other equipment (fins, kickboards, etc.) shall be provided by Longhorn Aquatics.
10. **TERMINATION/MOVE OUT, PERSONAL PROPERTY:** Longhorn Aquatics 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 Longhorn Aquatics' expense.
11. **ALTERATIONS:** Longhorn Aquatics 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 Longhorn Aquatics returning the facilities to their original condition unless otherwise requested by the City in its sole discretion.
12. **PARKING:** Parking shall be made available on first come, first served basis. Longhorn Aquatics shall have no right to reserve parking spaces.
13. **PROGRAM CONFLICT:** Longhorn Aquatics 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.
14. **REGISTERED PARTICIPANTS:** All of the Longhorn Aquatics' participants must be registered in the respective program.
15. **LIFEGUARDS:** The City shall have the right to monitor the use of Gilleland Creek Pool and Windermere through the appropriate staff. City will provide lifeguards during all users' activities.

- 16. 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.

- 17. AUTHORIZED CONTRACT ADMINISTRATOR:** The City's designated representative for the performance of this agreement shall be the City Manager or her designee.

Certificate Of Completion

Envelope Id: 478CA5AA32484DA097EA8C3DEEA89575	Status: Delivered
Subject: Signature request on Contract City of Pflugerville - Longhorn Aquatics	
Source Envelope:	
Document Pages: 11	Signatures: 1
Certificate Pages: 5	Initials: 0
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	UT Business Contracts
Time Zone: (UTC-06:00) Central Time (US & Canada)	1 University Station
	Austin, TX 78712
	vpcco.contracts@austin.utexas.edu
	IP Address: 199.188.157.82

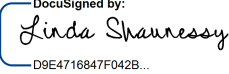
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Signer Events

Linda Shaunessy
lis236@eid.utexas.edu
Businesss Contracts Administrator
University of Texas at Austin
Security Level: Email, Account Authentication (None)

Signature

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Shane Mize
ShaneM@pflugervilletx.gov
Security Level: Email, Account Authentication (None)

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Accepted: 12/6/2019 5:05:15 PM
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Ann Nellis
an2623@eid.utexas.edu
Director
University of Texas at Austin
Security Level: Email, Account Authentication (None)


Using IP Address: 146.6.153.81

Sent: 1/30/2020 7:59:40 PM
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Completed: 1/31/2020 11:35:50 AM

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Status

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Status

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Witness Events

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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Certified Delivered	Security Checked	2/3/2020 12:39:11 PM

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Withdrawing your consent

If you agree to receive notices, disclosures, and documents from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices, disclosures, and documents only in email attachment or paper format. (Please note some transactions may not be conducted via email due to security requirements.) You must inform us of your decision to receive future notices, disclosures, or documents in email attachment or paper format and withdraw your consent to receive notices, disclosures, and documents electronically as described below.

To withdraw your consent with University of Texas at Austin

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

1. decline to sign a document from within the DocuSign signing interface, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
2. send an email to the document sender by replying to the DocuSign notice you received from dse@docusign.net and in the body of such request you must state that you are withdrawing your consent to do electronic business with us via DocuSign and include your email address, full name, and telephone number. We do not need any other information from you to withdraw consent. After withdrawing your consent, you can in the future once again agree to do electronic business with us.

Consequences of withdrawing your consent

If you elect to receive required notices, disclosures, and documents only in email attachment or paper format, it will slow the speed at which we can complete certain steps in transactions with you and in delivering services to you because we will need first to send the required notices, disclosures, or documents to you in email attachment or paper format, and then wait until we receive back from you your acknowledgment of your receipt of such email attachment or paper notices or disclosures.

How to contact University of Texas at Austin:

You can reply to the sender of your document by replying to the notice from dse@docusign.net for that specific transaction. For additional assistance with using DocuSign to conduct business with us you may contact us at rms@austin.utexas.edu.

For questions regarding transcripts, contact the Registrar's office at transcripts@austin.utexas.edu or <http://registrar.utexas.edu/students/transcripts>.

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Acknowledging your access and consent to receive materials electronically

In summary, to confirm to us that you can access this information electronically, which will be similar to other electronic notices, disclosures, and documents that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to email this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices, disclosures and documents exclusively in electronic format on the terms and conditions described above, please confirm your agreement by checking the box "I agree to use electronic records and signatures" on the DocuSign signing interface..

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