

STATE OF TEXAS

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COUNTY OF WILLIAMSON

FACILITY USE AGREEMENT

MSA THIS FACILITY USE AGREEMENT is made the 31 day of August, by and between the CITY OF GEORGETOWN, a Texas home-rule municipal corporation ("City") and the Georgetown SUMMER SWIM ASSOCIATION, a non-profit entity, herein called ("GEORGETOWN SUMMER SWIM ASSOCIATION"). For and in consideration of the mutual covenants and agreements herein contained, it is mutually agreed as follows:

1. **Use Area.** City hereby agrees to allow the use of the Williams Drive Pool, Village Pool and the Recreation Center Indoor Pool as shown in Exhibit "A" (the "Use Area").
2. **Use Term.** The initial term of this Use Agreement shall be for one year, beginning on **October 1, 2021** and ending on **September 30, 2022** (the "Initial Term"). Upon expiration of the Initial Term, the Use Agreement may be renewed, if the parties agree, for up to four (4) additional one (1) year terms on the same terms and conditions. Either party has the right to terminate this Use Agreement prior to the end of the Use Term, provided written notice is given at least ninety (90) days prior to the termination.
3. **Use of Property.** GEORGETOWN SUMMER SWIM ASSOCIATION will utilize the Use Area to hold recreational swim team practices, swim clinics and swim meets. No other designated activity of the Use Area shall be permitted without expressed written permission of the City. The City shall maintain rights of approval of activities allowed in the Use Area at all times. GEORGETOWN SUMMER SWIM ASSOCIATION occupation and utilization of the Use Area is nonexclusive. Any use of the Use Area requires the prior written approval of the City.
4. **Prohibited Use.** GEORGETOWN SUMMER SWIM ASSOCIATION may not use or permit any part of the Use Area to be used for:
 - (a) Any activity that is a nuisance or is offensive, noisy, or dangerous; or
 - (b) Any activity that violates any applicable law, regulation, ordinance, governmental order, or this Use Agreement.
5. **Non-Discrimination.** GEORGETOWN SUMMER SWIM ASSOCIATION will operate their swim program without discriminating against any person or class of persons on account of race, religion, color, gender, sexual orientations, sex, age, national origin, or disability.
6. **Meeting Space.** The City shall provide, at no cost, a meeting space at the Village Pool Meeting Room for a maximum of four meetings in a calendar year. Dates and meeting space will be determined at a later time and will be subject to availability.
7. **Improvements.** If GEORGETOWN SUMMER SWIM ASSOCIATION desires improvements for the Use Area, including any physical changes, whether temporary or

permanent, GEORGETOWN SUMMER SWIM ASSOCIATION must submit a written request to the City with a detailed description of proposed improvements along with detailed costs associated with the project. If approved, the City, will select a contractor to complete the work. GEORGETOWN SUMMER SWIM ASSOCIATION will not be allowed to pursue the improvements on their own. Additionally, GEORGETOWN SUMMER SWIM ASSOCIATION shall make full payment to the City to pay all costs of any improvements prior to the start of the project. Any capital improvements to the Use Area made on be-half of GEORGETOWN SUMMER SWIM ASSOCIATION shall immediately become property of the City.

8. **Responsibilities.** The City shall maintain Williams Drive, Village Pool and the Recreation Center Indoor Pool as presented in Exhibit "B" Responsibilities. GEORGETOWN SUMMER SWIM ASSOCIATION shall share the responsibilities with the City as outlined in Exhibit "B" Responsibilities.
9. **Fees.** Rental rates for the exclusive use of the Village Pool will be \$35 per hour and Williams Drive Pool will be \$45 per hour. Rental rates for non-exclusive use of only a lap lane or lanes at the Village Pool, the Williams Drive Pool, or the Recreation Center Indoor Pool will be invoiced at \$7 per lane, per hour. Rental rates for swim meets at the Recreation Center Indoor pool will be \$650 per meet. . The City shall track the hours of approved use and invoice on the first day of the following month for the prior month's usage. Fees include the cost of Lifeguard coverage which is required at all times in the use of any of the pools. Georgetown Summer Swim Association will be credited for cancelations by the City, as well as cancelations due to inclement weather provided that the City is notified of the inclement weather cancelation the following business day. All fees shall be paid in full to the City or disputed within thirty (30) days of the date of the invoice. Fees include the cost of Lifeguard coverage, which is required at all times in the use of any of the pools.
10. **Emergency Action Plan.** GEORGETOWN SUMMER SWIM ASSOCIATION shall provide the City with a written Emergency Action Plan to reflect the course of action to be taken in cases of injuries and/or weather-related emergencies. The plan should identify those responsible for initiating action and what steps should be taken to summon EMS or dismiss or evacuate participants and spectators if necessary.
11. **Insurance.** GEORGETOWN SUMMER SWIM ASSOCIATION will provide insurance written by companies licensed to conduct business in the State of Texas. GEORGETOWN SUMMER SWIM ASSOCIATION shall keep this policy in full force and effect during the term of this Use Agreement. Insurance in the amounts and types included on the attached as Exhibit "C" and incorporated by reference. The insurance policies will name the City, its officers, officials and employees as additional insureds. All insurance policies shall be subject to the examination and approval of the City for sufficiency as to content, form of protection, coverage and the insurance company providing coverage. GEORGETOWN SUMMER SWIM ASSOCIATION shall furnish a Certificate of Insurance to the City evidencing compliance with the required insurance requirements at the time GEORGETOWN SUMMER SWIM ASSOCIATION delivers the executed Use Agreement to the City. GEORGETOWN SUMMER SWIM ASSOCIATION agrees to provide a copy of any insurance policy on the City's request. All insurance policies shall provide that the insurance coverage shall not be canceled or materially changed without a

minimum of thirty (30) days' advance notice in writing to the City. GEORGETOWN SUMMER SWIM ASSOCIATION failure to comply with the insurance requirements in a timely manner shall be cause for termination of the Use Agreement.

12. **Indemnity.** THE CITY, ITS OFFICERS, OFFICIALS AND EMPLOYEES, SHALL NOT BE LIABLE TO GEORGETOWN SUMMER SWIM ASSOCIATION, ITS DIRECTORS, OFFICERS, OFFICIALS, EMPLOYEES, MEMBERS, CUSTOMERS, VOLUNTEERS, AGENTS OR REPRESENTATIVES, FOR ANY DAMAGE CAUSED BY NEGLIGENCE OF GEORGETOWN SUMMER SWIM ASSOCIATION, ITS DIRECTORS, OFFICERS, OFFICIALS, EMPLOYEES, MEMBERS, CUSTOMERS, VOLUNTEERS, AGENTS OR REPRESENTATIVES. GEORGETOWN SUMMER SWIM ASSOCIATION ASSUMES ALL LIABILITY AND RESPONSIBILITY FOR LOSS, DAMAGES, CLAIMS, INJURIES, LAWSUITS, JUDGMENTS OR CAUSES OF ACTION OF ANY TYPE, INCLUDING BUT NOT LIMITED TO ANY ACTION ARISING OUT OF THE USE AGREEMENT, GEORGETOWN SUMMER SWIM ASSOCIATION'S OPERATIONS OR ACTIVITIES, AND/OR THE SWIM TEAM. GEORGETOWN SUMMER SWIM ASSOCIATION RELEASES, FULLY INDEMNIFIES, HOLDS HARMLESS AND AGREES TO DEFEND THE CITY, ITS OFFICERS, OFFICIALS AND EMPLOYEES, FROM ANY AND ALL LIABILITY, LOSS DAMAGES, CLAIMS, INJURIES, LAWSUITS, JUDGMENTS OR CAUSES OF ACTION OF ANY TYPE, INCLUDING BUT NOT LIMITED TO ANY ACTION TAKEN AS A RESULT OF CONDUCTING SWIM TEAM PRACTICE, ARISING OUT OF THE USE AGREEMENT, AND/OR GEORGETOWN SUMMER SWIM ASSOCIATION'S OPERATIONS OR ACTIVITIES.

13. **Default.** GEORGETOWN SUMMER SWIM ASSOCIATION's violation of any provision of this Use Agreement shall constitute a default. GEORGETOWN SUMMER SWIM ASSOCIATION shall have thirty (30) days from the receipt of a notice of default to cure the default. If GEORGETOWN SUMMER SWIM ASSOCIATION fails to cure the default the City may immediately terminate this Use Agreement.

14. **Notices.** Notices or other correspondence concerning this Use Agreement shall be in writing and are effective when mailed, hand-delivered, or transmitted by facsimile or electronic transmission as follows:

To City:

City of Georgetown
ATTN: City Manager
808 Martin Luther King, Jr. St.
Georgetown, Texas 78626
Phone: 512.930.3723
Fax: 512.930.3622
Email: david.morgan@georgetown.org

To User:

Tricia Forth
Address: *2211 McCump St.*
Attn: TX 78626
Phone: *512-869-9477*
Fax: _____
E-mail: *triciaforth@gmail.com*

15. **Access by City.** The City may enter the User Area at any time for any purpose.

16. **Condition of Property.** GEORGETOWN SUMMER SWIM ASSOCIATION has inspected the Use Area and accepts the Use Area in its present condition "AS IS" unless expressly provided otherwise in this Use Agreement. The City has made no express or implied warranties as to the condition or permitted use of the Use Area. THE CITY SHALL NOT BE RESPONSIBLE FOR ANY LOSS OR DAMAGE TO PROPERTY STORED WITHIN THE USE AREA. All property of GEORGETOWN SUMMER SWIM ASSOCIATION, its customers, invitees, or licensees, kept or stored on the Use Area shall be so kept or stored at the risk of GEORGETOWN SUMMER SWIM ASSOCIATION only and GEORGETOWN SUMMER SWIM ASSOCIATION releases and agrees to indemnify the City and save it harmless from any claims arising out of any damage to the same including, without limitation, any subrogation claims by GEORGETOWN SUMMER SWIM ASSOCIATION's insurers. At the time this Use Agreement ends, GEORGETOWN SUMMER SWIM ASSOCIATION will surrender the Use Area in the same condition as when received, normal wear and tear excepted. GEORGETOWN SUMMER SWIM ASSOCIATION will not cause damage to the Use Area and will not cause or allow hazardous materials or environmental contaminants in the Use Area. If GEORGETOWN SUMMER SWIM ASSOCIATION leaves any personal property in the Use Area after expiration of a Use Term, the City may, at its sole option: (1) require GEORGETOWN SUMMER SWIM ASSOCIATION, at GEORGETOWN SUMMER SWIM ASSOCIATION's expense, to remove the personal property within thirty (30) days after written notice to GEORGETOWN SUMMER SWIM ASSOCIATION; or (2) retain such personal property as forfeited property after the thirty days have passed.
17. **Records.** GEORGETOWN SUMMER SWIM ASSOCIATION shall provide a complete copy of its Articles of Incorporation, Bylaws and/or other governing documents, and its rules and regulations for the swim program, with the executed Use Agreement. GEORGETOWN SUMMER SWIM ASSOCIATION shall provide the City an annual report of the number of swimmers registered in the programs operated by GEORGETOWN SUMMER SWIM ASSOCIATION.
18. **Entire Agreement.** This Use Agreement constitutes the sole and only agreement of the parties, and supersedes any prior understandings or written or oral agreements between the Parties, concerning the subject matter of this Use Agreement. There are no verbal or written representations, understandings, stipulations, agreements or promises pertaining to this Use Agreement that are not incorporated in this Use Agreement. If a provision of this Use Agreement shall be held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provision of this Use Agreement and this Use Agreement shall be construed and interpreted as if such invalid, illegal or unenforceable provisions had not been included. All exhibits referenced in this Use Agreement are attached and incorporated by reference for all purposes.
19. **Amendment.** This Use Agreement may not be modified or amended except in writing signed by the City and GEORGETOWN SUMMER SWIM ASSOCIATION.

20. **Applicable Law.** This Use Agreement shall be construed and interpreted in accordance with Texas law. The parties agree that this Use Agreement is performable in Williamson County, Texas.
21. **Non-Assignment.** GEORGETOWN SUMMER SWIM ASSOCIATION shall not assign or transfer any right or interest in the Use Agreement, in whole or in part, without prior written approval of the City. GEORGETOWN SUMMER SWIM ASSOCIATION shall not sublease or rent out facilities without prior written consent of the City. This Use Agreement shall bind the parties, and their respective legal representative, successors, and permitted assigns.
22. **No Third-Party Beneficiaries.** This Use Agreement shall not be construed as affording any rights or benefits to anyone other than the City and GEORGETOWN SUMMER SWIM ASSOCIATION.
23. **Waivers.** Notwithstanding any other provision in this Agreement, all GEORGETOWN SUMMER SWIM ASSOCIATION participants must sign the City's liability release form or they may not use the City's facilities.

EXECUTED this 31 day of August, 2021.

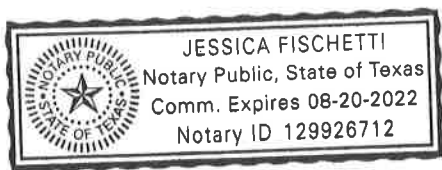
Georgetown Summer Swim Association

By: Tricia Forth
Name: Tricia Forth
Title: Board President

STATE OF TEXAS §
COUNTY OF Williamson §

ACKNOWLEDGMENT

This instrument was acknowledged before me on this the 31 day of August, 2021, by Tricia Forth, a person known to me in his capacity as Board President of the Georgetown Summer Swim Association, on behalf of the Georgetown Summer Swim Association.



Jessica Fischetti
Notary Public in and for the State of Texas

City of Georgetown, Texas

By: _____
Josh Schroeder, Mayor

ATTEST:

APPROVED AS TO FORM:

Robyn Densmore, City Secretary

Skye Masson, City Attorney

EXHIBIT A

Village Pool Facility



Williams Drive Pool



Recreation Center Indoor Pool



Recreation Center Event Room



EXHIBIT B Responsibilities

GEORGETOWN SUMMER SWIM ASSOCIATION shall be responsible for reporting necessary maintenance repairs to the City no later than the following workday.

The following chart outlines maintenance responsibilities.

Responsibilities:

TASK	GEORGETOWN SUMMER SWIM ASSOCIATION	PARD	COMMENT
Trash and Litter Pick-Up	X	X	User groups are responsible for picking up their trash and litter following their scheduled use.
Chemical Checks		X	
Backwashing		X	
Brushing Pool Walls/Bottom		X	
Empty Skimmer Baskets		X	
Clean and organize storage areas	X		User groups are responsible for organizing their storage areas following their scheduled use.
Insert and Remove Auto Vac/Aerator at Williams Drive		X	As needed
Insert and Remove Pool Cover Village	X		Georgetown Summer Swim Association will determine the need for covers based on weather.
Place Trash Cans on Curb for Pick-Up		X	
Plumbing Repair		X	
Parking Lot Maintenance		X	
Winterize facility		X	
Stock Janitorial Supplies		X	
Building Light Bulbs Replacement		X	PARD exterior only
Clean Restrooms	X	X	User groups are responsible for cleaning up after themselves following their scheduled use.
Pest Control (Building)		X	PARD exterior only
Electrical		X	
Time Clocks	X		Swim teams will be responsible for their own time clock needs.
Facility Signs		X	
Lifeguards		X	

EXHIBIT C

TYPE

Comprehensive General Liability
Including contractual liability,
premises/operations and personal
injury liability.

AMOUNT

Bodily Injury
\$250,000 per person
\$500,000 aggregate

Property Damage
\$100,000 per occurrence
\$100,000 aggregate