

STATE OF TEXAS §
 §
COUNTY OF WILLIAMSON §

FACILITY USE AGREEMENT

THIS FACILITY USE AGREEMENT is made the 21 day of August, 2021, by and between the CITY OF GEORGETOWN, a Texas home-rule municipal corporation ("City") and the Georgetown GTX SWIM LLC, herein called ("GTX SWIM LLC"). 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.** GTX SWIM LLC 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. GTX SWIM LLC 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.** GTX SWIM LLC 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.** GTX SWIM LLC will operate their swim program without discriminating against any person or class of persons on account of 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 GTX SWIM LLC desires improvements for the Use Area, including any physical changes, whether temporary or permanent, GTX SWIM LLC 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. GTX SWIM LLC will not be allowed to pursue the

improvements on their own. Additionally, GTX SWIM LLC shall make full payment to the City to pay all costs of any improvements prior to the start of the project. Any improvements to the Use Area made on behalf of GTX SWIM LLC 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. GTX SWIM LLC shall share the responsibilities with the City as outlined in Exhibit B Responsibilities.
9. **Fees.** Rental rates for 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 GTX SWIM LLC 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. GTX SWIM LLC will be credited for cancellations by the City, as well as cancellations due to inclement weather, provided that the City is notified of the inclement weather cancellation 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.** GTX SWIM LLC 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.** GTX SWIM LLC will provide insurance written by companies licensed to conduct business in the State of Texas. GTX SWIM LLC 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. GTX SWIM LLC shall furnish a Certificate of Insurance to the City evidencing compliance with the required insurance requirements at the time GTX SWIM LLC delivers the executed Use Agreement to the City. GTX SWIM LLC 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. GTX SWIM LLC 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 GTX SWIM LLC, ITS DIRECTORS, OFFICERS, OFFICIALS, EMPLOYEES, MEMBERS, CUSTOMERS, VOLUNTEERS, AGENTS OR REPRESENTATIVES, FOR ANY DAMAGE CAUSED BY NEGLIGENCE OF GTX SWIM LLC, ITS DIRECTORS, OFFICERS, OFFICIALS,**

EMPLOYEES, MEMBERS, CUSTOMERS, VOLUNTEERS, AGENTS OR REPRESENTATIVES. GTX SWIM LLC 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, GTX SWIM LLC'S OPERATIONS OR ACTIVITIES, AND/OR THE SWIM TEAM. GTX SWIM LLC 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 GTX SWIM LLC'S OPERATIONS OR ACTIVITIES.

13. **Default.** GTX SWIM LLC's violation of any provision of this Use Agreement shall constitute a default. GTX SWIM LLC shall have thirty (30) days from the receipt of a notice of default to cure the default. If GTX SWIM LLC 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:

David Houck
Address: 30405 Berry Creek Dr.
Georgetown, TX 78626
Phone: 512-819-4275
Fax: _____
E-mail: david.houck@gmail.com

15. **Access by City.** The City may enter the User Area at any time for any purpose.
16. **Condition of Property.** GTX SWIM LLC 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 GTX SWIM LLC, its customers, invitees, or licensees, kept or stored on the Use Area shall be so kept or stored at the risk of GTX SWIM LLC only and GTX SWIM LLC 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 GTX SWIM LLC'S insurers. At the time this Use Agreement ends, GTX SWIM LLC will surrender the Use Area in the same condition as when received, normal wear and tear excepted. GTX SWIM LLC will not cause damage to the Use Area and will not cause or allow hazardous materials or environmental contaminants in the Use Area. If GTX SWIM

LLC leaves any personal property in the Use Area after expiration of a Use Term, the City may, at its sole option: (1) require GTX SWIM LLC, at GTX SWIM LLC's expense, to remove the personal property within ten (10) days after written notice to GTX SWIM LLC; or (2) retain such personal property as forfeited property.

17. **Records.** GTX SWIM LLC 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. GTX SWIM LLC shall provide the City an annual report of the number of swimmers registered in the programs operated by GTX SWIM LLC.
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 GTX SWIM LLC.
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.** GTX SWIM LLC 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. GTX SWIM LLC 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 GTX SWIM LLC.
23. **Waivers.** Notwithstanding any other provision in this Agreement, all GTX SWIM LLC participants must sign the City's liability release form or they may not use the City's facilities.

EXECUTED this 27 day of August, 2021.

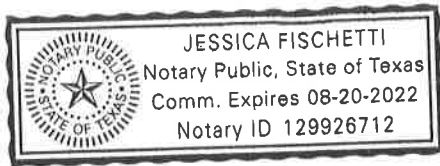
GTX Swim LLC

By: [Signature]
Name: DAVID HOUCK
Title: President

STATE OF TEXAS §
COUNTY OF Williamson §

ACKNOWLEDGMENT

This instrument was acknowledged before me on this the 27 day of August, 2021,
by David Houck, a person known to me in his capacity as
President of GTX Swim LLC, on behalf of GTX Swim LLC.



[Signature]
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



EXHIBIT B Responsibilities

GTX SWIM LLC 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	GTX SWIM LLC	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		GTX Swim LLC 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	
Install and Remove Backstroke Flags at Williams Drive	X		When public swim is in season.
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