

**MEMORANDUM OF UNDERSTANDING BETWEEN
AIKEN-AUGUSTA SWIM LEAGUE
AND
AUGUSTA, GEORGIA**

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered into this _____ day of _____, 20_____, by and between AUGUSTA, GEORGIA ("Augusta"), a political subdivision of the State of Georgia and the Aiken-Augusta Swim League ("ASL"), known collectively as the "Parties," and clarifies the roles and responsibilities of the Parties regarding the use of the Augusta Aquatic Center.

WHEREAS, Augusta and ASL deem that it would be beneficial to both the Augusta taxpayers and local Augusta residents for ASL and Augusta to enter into a partnership and jointly provide certain programming and certain services at the Augusta Aquatic Center, 3157 Damascus Road, Augusta, GA 30909; and

WHEREAS, Augusta will continue and accept the responsibility to staff, develop, and implement sound programs for the best interest of this community; and

WHEREAS, ASL will continue to develop a professional swim program at the Augusta Aquatic Center, open and available to qualified youth participants;

NOW, THEREFORE, for and in consideration of the mutual promises and the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

I. GENERAL RESPONSIBILITIES OF ASL

1. ASL shall provide sufficient staff members for the delivery of its swim program.

i. "Staff," "staff members," and/or "members of staff" is hereby defined as individuals who are certified in CPR and First Aid and are employees of ASL.

ii. All staff members shall be subject to a background check, drug and alcohol testing, and any other pre-employment or employment guidelines set by Augusta for ASL, the Augusta Aquatic Center, and/or non-specific guidelines for operators and/or program facilitators of/at facilities owned by Augusta. ASL shall communicate to staff members all restrictions, obligations, and responsibilities of ASL and ASL's staff members.

2. ASL shall provide adequate staffing levels at the Aquatic Center during youth programming.

i. "Youth programming" are activities or events that are primarily designed, dedicated, or intended for persons 18 years of age or younger, or for groups of people that are likely to include persons 18 years of age or younger, such as swim lessons and/or swim practice.

ii. Adequate staffing levels during youth programming is at the sole discretion of the Director of the Parks and Recreation Department of Augusta, but at no time shall be less than one staff member per twenty persons 18 years of age or younger ("staff/youth ratio"). The Director of the Parks and Recreation Department of Augusta reserves the right to modify the staff/youth ratio at any time, for any reason or for no reason, for any particular event or programming, for a series of events or programming, or for all youth programming at the Augusta Aquatic Center and/or conducted by ASL.

iii. ASL shall not conduct youth programming with an insufficient staff/youth ratio. If at any time during a youth program the staff/youth ratio is not equal to 1/20 or greater, or not equal to what had been modified by the Director of the Parks and Recreation Department of Augusta or greater, ASL shall end the youth program immediately, taking into account the health and safety of participants, and may continue the program only when the staff/youth ratio complies with this subparagraph. For the purpose of this subparagraph, and in order to accurately determine the staff/youth ratio, lifeguards supervising the lap pool are counted towards the staff.

3. ASL shall be an organization incorporated by the State of Georgia, and at all times maintain good standing as such. ASL shall at all times be a tax-exempt organization under 501(c)(3) of the Internal Revenue Code. At the annual meeting, ASL shall provide the Director of the Parks and Recreation Department of Augusta proof of its good standing as an incorporated organization and its IRS tax filing for the previous financial year.

4. ASL shall meet with Augusta annually ("the annual meeting") to discuss operations and programs, as well as any changes, modifications, or amendments to this MOU and/or any fees that may need to be modified or implemented. The annual meeting shall be held no later than June 30 of the calendar year.

5. ASL agrees to indemnify and hold harmless Augusta and its employees and agents from and against any and all liabilities, claims, suits, demands, damages, losses and expenses, including attorneys' fees, arising out of or resulting from ASL's operation of the professional swim program or any other part of this MOU. ASL further agrees that the foregoing agreement to indemnify and hold harmless applies to any claims for damage or injury to itself and/or any individuals employed or retained by it in connection with any changes, additions, alterations, modifications and/or improvements made to the Augusta Aquatic Center, and hereby releases Augusta and its officers, employees, representatives and agents from liabilities, claims, suits, demands, damages, losses and expenses, including attorneys' fees in connection with the aforementioned.

6. ASL shall, at all times that this MOU is in effect, cause to be maintained in force and effect an insurance policy that will insure and indemnify Augusta against liability or financial loss resulting from injuries occurring to persons or property or occurring, as a

result of any negligent error, act or omission of ASL during the term of this MOU. ASL shall provide, at all times, Worker's Compensation insurance in accordance with the laws of the State of Georgia. Augusta will be named as an additional insured with respect to ASL's liabilities hereunder in insurance coverages. The policies shall be written by a responsible company(s), to be approved by Augusta, and shall be non-cancellable except on thirty (30) days' written notice to Augusta. The requirements contained herein, as well as City's review or acceptance of insurance maintained by ASL is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by ASL under this MOU:

- i. *Commercial General Liability* – Combined single limit of no less than \$1,000,000 each occurrence and \$2,000,000 aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.
- ii. *Additional Insured* – ASL agrees to endorse Augusta as an Additional Insured on the Commercial General Liability Insurance Policy. The Additional Insured shall read 'Augusta as its interest may appear'.
- iii. *Certificate of Insurance* – ASL agrees to provide Augusta a Certificate of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and in full force and effect. If ASL receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, ASL agrees to notify Augusta within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance.

7. ASL shall follow all safety guidelines set forth by Augusta. ASL shall immediately notify Augusta of any violation of law, including but not limited to trespass, burglary, theft, assault, and/or battery. ASL shall immediately notify Augusta in the event of any property damage to the Aquatic Center. ASL shall immediately notify Augusta in the event of any medical emergency, accident resulting in injury or property damage, or in the event of break-ins, property damage, emergencies, injuries, or incidents. An Augusta-issued incident report must be submitted immediately following any such incident.

8. ASL shall abide by all federal, state, and local laws.

II. GENERAL RESPONSIBILITIES OF AUGUSTA

1. Augusta shall provide utilities for the Augusta Aquatic Center, as well as provide repairs and technical and general maintenance. Augusta shall provide for trash collection and recycling from the existing refuse and recycling bins on the premises of the Aquatic Center. Augusta shall provide janitorial supplies for the Aquatic Center.

2. Augusta shall comply with all federal, state, and local laws, including, but not limited to, ensuring that the Augusta Aquatic Center complies with the Americans with Disabilities Act (ADA).
3. Augusta shall provide guidelines, manuals, or rules concerning any obligation or responsibility of ASL under this MOU.
4. Augusta shall be responsible for managing any and all improvements to the Augusta Aquatic Center, surrounding park space, or other property owned by Augusta regardless of funding source.
5. Augusta shall provide, at all times, contacts for persons within Augusta to ASL for ASL to perform its obligations and responsibilities under this MOU.
6. Augusta shall make the Augusta Aquatic Center available to ASL during regular hours of operation. Regular hours of operation are subject to change within reasonable notice at the discretion of the Director of the Parks and Recreation Department of Augusta.
7. Augusta shall give advance notice to ASL if for any reason a temporary reduction in service is necessary and/or not avoidable. Such service reductions may occur due to facility rentals, special events, safety concerns - included but not limited to shortage of staff, and maintenance concerns that require a facility closure. If possible and known at the time, the advance notice shall be given no less than one (1) week before the service reduction, or if the issue requires immediate attention, all reasonable effort shall be made by Augusta to notify ASL as soon as possible.

III. SPECIFIC RESPONSIBILITIES OF ASL

1. During the annual meeting, ASL shall provide the Augusta Aquatic Center with a written request for lane space and practice times. The request shall be based on the number of participants in the swim program, and shall take into consideration the public's need for swim space as well as other groups, teams and programs.
2. During the annual meeting, ASL shall provide the Augusta Aquatic Center with a list of planned swim meets with approximate dates for the following year. Any additions, deletions, or modifications to this list shall be made at least six (6) weeks before the intended date of the swim meet.
3. ASL shall pay a monthly usage fee for swim practice in the amount of \$4000 for the months of January through July and the months of September through December. There shall be no swim practice and therefore no monthly usage fee for the month of August.
 - i. ASL shall be charged monthly post-usage, and payment of such fees will be due within ten (10) days of the date of each invoice.

ii. These fees cover swim practice during regular hours of operation and the following additional items:

- One (1) Storage room, located on the second floor of the Augusta Aquatic Center,
- Four (4) Swimming pool equipment tote-masters, used to store practice items on the pool deck,
- Use of the conference room for the monthly board meeting of ASL if available.

iii. The monthly usage fee shall be prorated if the Augusta Aquatic Center is not available for more than 3 consecutive training days, or for more than 5 days in a given month, due to maintenance issues, other recreational activities preventing swim practice, or events of a similar nature. This prorated fee does not apply to Force Majeure events as defined in Section VI, Subsection 4. All prorated fees will be applied to the following month's fees as a statement credit.

4. ASL shall enter into and sign a lease agreement with Augusta for each planned swim meet no later than 8 weeks before the meet date.

i. In accordance with Augusta's facility rental policies, a non-refundable deposit payment is due on the date of the MOU, the remaining balance is due thirty (30) days prior to the event. The amount of the deposit is \$800 per full meet and \$500 for One-Day-Meets.

ii. The rental fee is \$8,000.00 per full meet (Friday-1/2 day and Saturday & Sunday-full days) and \$3,000 for One-Day-Meets.

iii. The rental fee includes all charges, fees and payments for the swim meet, and specifically covers the following items:

- Exclusive use of the Augusta Aquatic Center (lap pool, recreation pool, pool deck, meeting room, changing rooms, visitor / spectator gallery);
- Exclusive use of the concession room (when not used for concessions sales by Augusta);
- Fees for the usage of equipment such as timing systems (subject to availability);
- Fees for additional staff such as police officers and/or fire marshals; and
- Fees for Aquatic Center staff, including maintenance and cleaning staff.

5. ASL may make requests for material improvements of the Augusta Aquatic Center during the annual meeting. Any request shall be made in writing, and identify the needs, costs and potential benefit for ASL, the Augusta Aquatic Center, and/or Augusta.

6. As a member of the Augusta Aquatic Center community, ASL shall at all times follow all rules, regulations, and guidance in place. ASL, Augusta, the Augusta Aquatic Center, and the staff and members of those respective agencies shall treat each other as

partners, with respect, and with a mutual understanding of their commitment to providing the highest level of safety and service to the guests and visitors of the Augusta Aquatic Center.

IV. SPECIFIC RESPONSIBILITIES OF AUGUSTA

1. Augusta shall allocate swim lanes for swim practice to ASL under the principles laid out herein.

i. The Augusta Aquatic Center operates the lap pool in two modes, based on season. Between late March and early August, the lap pool will be operated as long course pool, with eight (8) 50-meter-lanes. Between early August and late March, the lap pool will be operated as short course pool, with eighteen (18) 25-meter-lanes. The exact dates shall be determined at the discretion of the Director of Parks & Recreation or a staff member authorized by the Director and are subject to change on an as-needed-basis.

ii. During the annual meeting, Augusta will receive the written request for lane space and practice times. Augusta shall make a candid and benevolent assessment of the needs laid out by ASL and shall consider the request made to the best of Augusta's ability, while also considering, balancing and providing public access to practice space, programming needs by Augusta, and other requests for lane space and practice times such as but not limited to local high schools, and other swim teams.

iii. Augusta shall notify ASL about the determination made and identify allocated swim lanes and practice times in writing.

iv. Under the terms of this MOU, ASL shall at a minimum be allocated swim lanes as follows:

- Short Course: Thirteen (13) lanes
- Long Course: Five (5) lanes

v. ASL shall be allowed the use of one (1) additional lane during both short course and long course setup, as long as that swim lane is not needed for public swim or programming by Augusta. Aquatic Center staff shall make sound and considerate judgement in determining that need.

2. During swim meets, Augusta shall provide the following services to ASL:

i. Augusta shall provide at a minimum one (1) facility maintenance staff and one (1) facility superintendent on site throughout the entirety of the swim meet. During the duration of the meet, the superintendent shall be available for all technical questions regarding the Augusta Aquatic Center. Maintenance staff shall assist with maintenance and cleaning inside and around the facility.

ii. Augusta shall provide for lifeguards, fire marshals and police officers to be present at the swim meet. The determination of required staffing levels are made at the discretion of the Director of Parks & Recreation, in conjunction with guidance through the Sheriff's Office, the Fire Department, and in observance of all applicable rules, policies, guidelines and laws.

iii. Augusta may choose to provide concession sales during certain times or all times of a swim meet at Augusta's discretion. Should Augusta choose to provide concession sales during a swim meet, ASL shall receive a statement credit of twenty-five (25) percent of the net concession sales revenue, usable towards payment for future rentals.

3. Augusta shall undertake any and all reasonable effort to maintain the Augusta Aquatic Center and to implement and maintain material improvements. In doing so, Augusta shall take into consideration the needs and requirements of the community and of the partners at the Augusta Aquatic Center, such as ASL. All improvements and maintenance are subject to availability of funding and follow Augusta's guidelines and procedural policies. No item, tool, utensil, equipment, and/or system shall be made part of the Augusta Aquatic Center without prior written approval of the Director of Parks & Recreation, or the appropriate Augusta approval authority.

V. GENERAL TERMS

1. The law of the State of Georgia shall govern the MOU between Augusta and ASL with regard to its interpretation and performance, and any other claims related to this MOU. All claims, disputes and other matters in question between Augusta and ASL arising out of or relating to the MOU, or the breach thereof, shall be decided in the Superior Court of Richmond County, Georgia. ASL, by executing this MOU, specifically consents to jurisdiction and venue in Richmond County and waives any right to contest the jurisdiction and venue in the Superior Court of Richmond County, Georgia.

2. ASL acknowledges that this contract and any changes to it by amendment, modification, change order or other similar document may have required or may require the legislative authorization of the Board of Commissioners and approval of the Mayor. Under Georgia law, ASL is deemed to possess knowledge concerning Augusta's ability to assume contractual obligations and the consequences of ASL's provision of goods or services to Augusta under an unauthorized contract, amendment, modification, change order or other similar document, including the possibility that ASL may be precluded from recovering payment for such unauthorized goods or services. Accordingly, ASL agrees that if it provides goods or services to Augusta under a contract that has not received proper legislative authorization or if ASL provides goods or services to Augusta in excess of any contractually authorized goods or services, as required by Augusta's Charter and Code, Augusta may withhold payment for any unauthorized goods or services provided by ASL. ASL assumes all risk of non-payment for the provision of any unauthorized goods or services to Augusta, and it waives all claims to payment or to

other remedies for the provision of any unauthorized goods or services to Augusta, however characterized, including, without limitation, all remedies at law or equity.

3. The terms of this MOU supersede any and all provisions of the Georgia Prompt Pay Act.

4. The term of this MOU shall terminate absolutely and without obligation on the part of Augusta each and every December 31st, unless terminated earlier in accordance with the termination provisions of the MOU. The term of this MOU shall begin on January 1, 2023 and terminate absolutely and without obligation on the part of Augusta on December 31, 2023, unless terminated earlier in accordance with the termination provisions of the MOU.

5. This MOU shall supersede any and all previously executed agreements between the parties.

6. This MOU constitutes the final agreement between the parties. It is the complete and exclusive expression of the parties' agreement on the matters contained in this MOU. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this MOU are expressly merged into and superseded by this MOU. The provisions of this MOU cannot be explained, supplemented or qualified through evidence of trade usage or a prior course of dealings. In entering into this MOU, neither party has relied upon any statement, representation, warranty or agreement of any other party except for those expressly contained in this MOU. There are no conditions precedent to the effectiveness of this MOU, other than any that are expressly stated in this MOU.

7. In the event that the terms and conditions of this MOU are not strictly enforced by either party, such non-enforcement will not act as or be deemed to act as a waiver or modification of this MOU, nor will such non-enforcement prevent such party from enforcing each and every term of this MOU thereafter.

8. If any term or provision of this MOU is held invalid or unenforceable, the remainder of this MOU will be considered valid and enforceable to the fullest extent permitted by law.

9. This relationship is intended solely for the mutual benefit of the parties hereto, and there is no intention, express or otherwise, to create any rights or interests for any party or person other than ASL and Augusta; without limiting the generality of the foregoing, no rights are intended to be created for any student, parent or guardian of any student, spouse, next of kin, employer, prospective employer, or any other third party.

10. Neither party, or its agents or employees, is an agent, employee, or servant of the other party.

11. Except as otherwise provided in this MOU, ASL may not transfer, sell, or otherwise contract with any other person or organization its obligations or responsibilities in this MOU without prior approval of Augusta.

VI. TERMINATION AND NOTICES

1. To the extent that it does not alter the scope of this MOU, Augusta may unilaterally order a temporary halt of the performance by ASL under this MOU upon written notice.
2. All notices, demands and requests which may be required to be given by the Lessor or the Lessee to the other shall be in writing and shall be deemed to have been properly given when postage sent prepaid by registered and certified mail (with return receipt requested) addressed as follows:

If intended for ASL: Aiken-Augusta Swim League
 P. O. Box 2896
 Augusta, GA 30901

If intended for Augusta:
 Office of the Mayor
 Attn: Hardie Davis, Jr.
 535 Telfair St. Suite 200
 Augusta, GA 30901

Copy:

Augusta Parks & Recreation Department
Director Maurice McDowell
2027 Lumpkin Road
Augusta, GA 30906

3. The parties may terminate this MOU in part or in whole upon sixty (60) days' written notice to the other party.
4. "Force Majeure Event" means any act or event that (a) prevents a party (the "Nonperforming Party") from performing its obligations or satisfying a condition to the other party's (the "Performing Party") obligations under this MOU, (b) is beyond the reasonable control of and not the fault of the Nonperforming Party, and (c) the Nonperforming Party has not, through commercially reasonable efforts, been able to avoid or overcome. If a Force Majeure Event occurs, the Nonperforming Party is excused from the performance thereby prevented and from satisfying any conditions precedent to the other party's performance that cannot be satisfied, in each case to the extent limited or prevented by the Force Majeure Event. When the Nonperforming Party is able to resume its performance or satisfy the conditions precedent to the other party's obligations, the Nonperforming Party shall immediately resume performance under this MOU. The relief offered by this paragraph is the exclusive remedy available to the Performing Party with respect to a Force Majeure Event. A Force Majeure Event includes, but is not limited to: epidemics, pandemics, declared national, state, local

states of emergency, hurricanes, tornadoes, floods, severe and unexpected acts of nature, or the availability of funds in the budget of Augusta.

IN WITNESS WHEREOF, the Parties state and affirm that they are duly authorized to bind the respected entities designated below as of the day and year indicated.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, a duly authorized representative of each party has executed this MOU as of the date(s) set forth below.

Aiken-Augusta Swim League

Augusta, Georgia

By: _____

By: _____

Name: _____

Name: Hardie Davis, Jr.

Title: _____

Title: Mayor

Date: _____

Date: _____

ATTEST: (SEAL)

By: _____

Name: Lena J. Bonner

Title: Clerk of the Commission

Date: _____