

USE AGREEMENT

Tiger Splash and City of Dripping Springs for Founders Memorial Park Pool

THIS USE AGREEMENT (the “Agreement”) is entered into by and between the City of Dripping Springs, Hays County, Texas, (the “City”), a general law municipality organized and operating under the general laws of the State of Texas, and Tiger Splash, a registered Texas non-profit organization.

I. RECITALS

- A. Tiger Splash is a registered Texas non-profit in good standing whose purpose is to provide the youth of Dripping Springs and surrounding areas swim programs that encourage confidence, positive self-esteem and good sportsmanship.
- B. Tiger Splash wishes to enter into a use agreement with the City to allow Tiger Splash to use Founders Memorial Park Pool (“Pool”) for Tiger Splash practices and swim meets.
- C. The City desires to aid Tiger Splash and, accordingly, agrees to allow Tiger Splash to use the Pool for their practices and swim meets.

II. AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants described herein, the parties hereto agree as follows:

A. Duties of Tiger Splash

- a. Tiger Splash will collect all Swim Team Registration fees.
- b. Tiger Splash will provide all equipment needed for Swim Meets including, but not limited to, timing systems, and will provide for set-up and take down.

B. Duties of the City

- a. The City will allow Tiger Splash to use the on-site storage shed at the pool for storing swim meet items.
- b. Tiger Splash shall not operate or allow the sale of concessions without City written approval, which shall be requested in advance of any sale, unless otherwise specifically authorized by this agreement.

- c. The City will allow Tiger Splash to sell coffee and breakfast tacos on Swim Meet Days: May 22, May 29, June 5, June 19, and June 26.
- d. The City will provide a minimum of 2 lifeguards at every swim practice and meet.

C. Fee splits and Payment

- a. Tiger Splash Meet Fees- 6 Hour Pool Rental rate at \$40/hr
- b. Tiger Splash Practice Fees- Tiger Splash will give the City a minimum of 30% of all Swim Team registration fees that are collected by Tiger Splash (189 swimmers who pay \$160.00 each = \$30,240 Gross). Estimated payment to the City will be a minimum of \$9072.00 to compensate the City for facility use, utilities and lifeguard staff for the swim season. (Normal hourly rental would yield an approximate rental revenue of \$13,230.00.). Payment to the City of the Practice Fees will occur by August 1, 2021.
- c. If Tiger Splash chooses to heat the pool for any practices or meets during the swim season, Tiger Splash will reimburse the City the current market rate per gallon of propane.

D. Access to Facilities

- a. Tiger Splash swim team is permitted access to Founders Memorial Park Pool during reserved times for swim team practices and meets. If a pre-scheduled practice or swim meet time is going to be utilized for a team social event that is not already documented in this agreement, the use change and supporting details must be communicated at least two weeks in advance, in writing to the Pool Manager to allow for proper staffing and accommodations.
- b. Tiger Splash is permitted to host social events outside the dates detailed in this Agreement. However, the organization will have to reserve and pay the associated rental fees at the current Fee Schedule Pool Rental rates and terms.
- c. In order to provide the safest operational standards, no more than 150 people can be in the facility at one time including swimmers, spectators and volunteers.
- d. A designated spectator area for families and guests is preferred. The designated location will be in an area that does not prevent ingress or egress around the pool and through the facility.
- e. Tiger Splash shall have access to the Pool for the following times on the following dates, Monday, May 3, 2021 – Wednesday, July 27, 2021, and contingent on the completion of pool repairs:
 - i. May 3, 2021 – May 27, 2021: Monday – Thursday, 5:00 p.m. – 8:00 p.m.

- ii. June 1, 2021 – July 15, 2021: Monday – Thursday, 6:00 p.m. – 9:00 p.m.
- iii. July 19, 2021 – July 27, 2021: Monday – Thursday, 6:30 p.m. – 9:00 p.m.
- iv. Five Meet Dates: Saturday, May 22, 2021, Saturday, May 29, 2021, Saturday, June 5, 2021, Saturday, June 19, 2021, and Saturday, June 26, 2021, 6:30 a.m. – 12:30 p.m.
- v. Tiger Splash may also have exclusive use of Founders Memorial Park Pavilion for a team social event during practice on July 15, 2021, 6:00 p.m. – 9:00 p.m.
- f. If there is an emergency such as inclement weather or an unforeseen circumstance, the City may decide to close the Pool or limit access to the Pool on one of these days. If that occurs, the City will work with Tiger Splash to reschedule and/or not charge Tiger Splash for that scheduled swim meet date.
- g. Tiger Splash will not have access to the pool Memorial Day, May 31, 2021, or Independence Day, July 4, 2021.

E. It is understood and agreed between the parties that:

- a. Tiger Splash will maintain its own liability insurance through Texas Amateur Athletic Federation (TAAF) and will name the City as an additional named insured and provide a copy of such policy prior to the beginning of the terms of this Use Agreement.
- b. It is specifically agreed that nothing herein is intended to convey any real property rights of the Pool to Tiger Splash.
- c. The City assumes no responsibility for any property placed by Tiger Splash or any Tiger Splash member, agent, or guest, at the Pool or in the storage facilities or any part thereof, and the City is hereby expressly released and discharged from any and all liability for any loss, injury, or damage to persons or property that may be sustained by reason of the use of the Pool and related facilities under this Agreement.
- d. Tiger Splash accepts the premises as-is. Tiger Splash may not change any part of the Pool or layout of its related facilities unless it receives prior written approval from the Founders Pool Manager or the Manager's designee for the proposed changes.
- e. Tiger Splash will cooperate with the City to comply with all applicable laws (federal, state, and local), including ordinances of the City. Tiger Splash agrees to abide by and conform with all rules and regulations from time to time adopted or prescribed by the City for the government and management of the Pool.

- F. TIGER SPLASH AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY, ITS AGENTS, SERVANTS, AND EMPLOYERS, FROM AND AGAINST ANY AND ALL CLAIMS FOR DAMAGES OR INJURIES TO PERSONS OR PROPERTY ARISING OUT OF OR INCIDENT TO THEIR USE OF, OR THE USE AND OCCUPANCY OF, THE POOL BY TIGER SPLASH, AND TIGER SPLASH DOES HEREBY ASSUME ALL LIABILITY AND RESPONSIBILITY FOR INJURIES, CLAIMS OR SUITS FOR DAMAGES TO PERSONS OR PROPERTY WHATSOEVER KIND OR CHARACTER, WHETHER REAL OR ASSERTED, OCCURRING DURING THE TERM OF THIS AGREEMENT IN CONNECTION WITH THE USE OR OCCUPANCY OF THE POOL BY TIGER SPLASH OR ITS AGENTS, SERVANTS, EMPLOYEES, CONTRACTORS OR SUBCONTRACTORS, MEMBERS, GUESTS OR INVITEES.
- g. Mandatory Disclosures: Texas law requires that vendors make certain disclosures. Prior to the effective date of this Contract, the Contractor must fill out Form 1295, as required by the Texas Ethics Commission, and submit it to the City. The form may be found here: <https://www.ethics.state.tx.us/filinginfo/QuickFileARepor.php>
- h. Tiger Splash shall not assign this Agreement, or any rights, obligations or entitlements created under this Agreement to any other person or entity.
- i. Either party may terminate this Agreement without cause upon the terminating party giving the non-terminating party thirty (30) days written notice.
- j. This Agreement will automatically terminate if Tiger Splash fails to adequately respond and remedy any complaints or concerns from the City within thirty (30) days of a written request by the City.
- k. All notices in connection with this Agreement shall be in writing and shall be considered given as follows:

When delivered personally to the recipient's address as stated in this Agreement; or Five (5) days after being sent by certified mail in the United States mail, with postage prepaid to the recipient's address as stated in this Agreement:

To the City:

City of Dripping Springs
Attn: City Administrator
PO Box 384
Dripping Spring, TX 78620

To Tiger Splash:

Tiger Splash
Attn: Vice - President
1521 Kemp Hills Dr.
Austin, TX 78737

Nothing contained herein shall be construed to restrict the transmission of routine communications between representatives of City and Tiger Splash.

- l. This Agreement shall be effective upon final signing by both parties.

IN WITNESS WHEREOF, The City of Dripping Springs and Tiger Splash have executed this Agreement on the dates indicated.

CITY OF DRIPPING SPRINGS:

TIGER SPLASH:

Bill Foulds Jr., Mayor

Mike Lemonds, President

Date

Date

ATTEST:

Andrea Cunningham, City Secretary

