

**AGREEMENT WITH KILLER WHALES SWIM TEAM
FOR USE OF MERIDIAN COMMUNITY SWIMMING POOL**

This AGREEMENT WITH KILLER WHALES SWIM TEAM FOR USE OF MERIDIAN COMMUNITY SWIMMING POOL ("Agreement") is made this 16 day of May, 2022 ("Effective Date"), by and between the City of Meridian, a municipal corporation organized under the laws of the State of Idaho ("City") and the Meridian Killer Whales Swim Team, Inc., a non-profit corporation organized under the laws of the State of Idaho ("Team") (collectively, "Parties").

WHEREAS, City operates the Meridian Community Swimming Pool and related facilities, located at 213 E. Franklin Road, in Meridian, Idaho (the "Pool"), for the benefit of its patrons and for the purpose of encouraging its patrons to learn to swim both recreationally and competitively;

WHEREAS, Team offers and operates a swim team; and

WHEREAS, the Parties desire to enter into an agreement whereby Team can use the Pool for its swim team's practice and to host swim meets;

NOW, THEREFORE, for and in consideration of the covenants and agreements herein contained and for other good and valuable consideration, including the above recitals, it is hereby agreed by and between the Parties as follows:

I. TERM. The term of this Agreement shall be June 6, 2022 through July 16, 2022.

II. RIGHTS AND RESPONSIBILITIES OF CITY. During the term of this Agreement, City shall have the following responsibilities and obligations.

- A. **Use of Pool.** City shall provide Team use of the Pool from 7:00 a.m. to 9:00 a.m., Monday through Friday, subject to City's right to staff the Pool office and conduct business, including business with the public other than use of the swimming pool (*e.g.*, swimming lesson registrations).
- B. **Lifeguards.** City shall provide two (2) certified lifeguards for all Team swim practices and swim meets, at Team's sole expense, as set forth below.
- C. **Operation of Pool.** City shall be responsible for operation and maintenance of the Pool and its related systems. Team acknowledges that City's obligation to maintain the Pool may result in periods where Team's use of the Pool may be prohibited or restricted.
- D. **Equipment storage.** City shall provide an area for storage of Team's equipment.

III. RIGHTS AND RESPONSIBILITIES OF TEAM. During the term of this Agreement, Team shall have the following responsibilities and obligations.

- A. **Safety and regulations.** All use of the Pool by Team shall comply in all respects with this Agreement, with City's rules and regulations for use of Pool, and with City's safety and operating procedures at the Pool. At all times, Team shall follow all directions of the

Pool Manager, pursuant to guidelines established by City. This provision shall apply to Team and each and all of Team's employees, volunteers, guests, invitees, and agents at all Team practices, meets, meetings, and social gatherings occurring at Pool.

- B. Swim practices.** Team shall be entitled to the use of the Pool only for scheduled swim practices and swim meets, as scheduled with the Pool Manager, during the term of and subject to the provisions of this Agreement. Any other use of the Pool by Team shall require payment of City's standard rental fee for the use of the Pool.
- C. Documentation.** Prior to allowing any swimmer to enter the water at the Pool, Team shall provide the following documents to City:
1. One liability release form, attached hereto as *Exhibit A*, signed by each prospective swimmer, including their parent or legal guardian if the swimmer is under the age of eighteen (18), and a liability release form for any Team member, coach, or other person who may or does enter the water during any Team swim practice session.
 2. Proof of membership and certification of all of Team's coaches who are USA Swimming members, and have successfully completed the current year's Safety Training for Swim Coaches' training program, including Head-first Entries and Racing Start Safety.
 3. A list of all swimmers who are certified to perform a shallow racing start in four feet (4') of water, pursuant to USA Swimming rules. If this list changes during the term of this Agreement, Team shall promptly provide City with an updated list. Team shall prohibit any swimmer from diving or making any racing start, whether from blocks or from the side of the pool, whether at practice or at a swim meet, in any area where the depth of the pool is four foot (4') less, unless such swimmer has current racing start certification under USA Swimming rules. Team shall ensure that all swimmers understand that starting or diving in the four-foot (4') section is only allowed at Pool at Team practice or swim meets.
 4. Proof of insurance demonstrating coverage pursuant to the following provisions:
 - a. Team shall purchase and maintain in force throughout the term of this Agreement a policy of general liability insurance covering the activities of Team pursuant or in the course of activities related to this Agreement, having a combined single limit of not less than one million dollars (\$1,000,000) per person and per occurrence and property damage liability insurance with a limit of not less than one million dollars (\$1,000,000) per accident or occurrence.
 - b. Team shall purchase and maintain in force throughout the term of this Agreement workers' compensation insurance on any and all persons in Team's employ, in the minimum amount(s) as required by Idaho law.
 - c. All policies of insurance provided for herein shall be issued by insurance companies rated A, Class VI, or better in Best's Key Rating Guide and qualified to do business in the State of Idaho. All insurance required to be furnished by Team name City as an additional insured. Team shall deliver proof of such

insurance within fourteen (14) days of execution of this Agreement. Failure of Team to renew or replace such insurance at least thirty (30) days prior to the expiration date of any policy required by this Agreement shall constitute a material default under the terms of this Agreement.

- D. **Compliance with policy terms.** Team shall not do or permit to be done any act or thing at the Pool which would (a) jeopardize or be in conflict with insurance policies required by this Agreement; (b) increase the rate of any insurance applicable to the Pool to an amount higher than it otherwise would be for the typical use of the Pool; or (c) subject City to any liability or responsibility for injury to any person or persons or to property by reason of any activity undertaken during Team's use of the Pool.
- E. **Coaches CPR-certified.** All of Team's coaches shall be certified in cardiopulmonary resuscitation ("CPR"). Team shall allow absolutely no swimming in the Pool unless a CPR-certified swim coach, provided by Team, is present at all times.
- F. **Payment for lifeguards.** Within thirty (30) days of City's invoice, Team shall pay City for lifeguards in the amount of each lifeguard's fully loaded hourly rate, to include each lifeguard's hourly gross wages plus the cost of City payroll benefits and taxes. City shall provide Team with a list of the lifeguards' fully loaded hourly rates.
- G. **Equipment storage.** Team shall be responsible for providing, storing, securing, maintaining, and repairing Team's equipment. Team shall store equipment at the Pool only in the area designated for same by City, and only during the term of this Agreement, with the exception of the Team's lane line reel, which may be stored at Pool year-round, at the direction and election of City's Pool Manager. Team acknowledges that storing equipment at Pool carries risks, some of which may be unknown, and agrees to assume all known and unknown risks of such activity.
- H. **No office use.** Team shall ensure that no one, other than authorized employees of City, enters the Pool office unless expressly permitted by City's Pool Manager.
- I. **Swim meets.** Team may host up to three (3) swim meets at the Pool, on dates and at times as previously approved by City's pool manager. All swim meets shall be subject to the following conditions:
 - 1. Team shall pay City a set fee of one thousand two hundred dollars (\$1,200.00) per swim meet. Payments to City for Pool rental shall be made by Team within seven (7) days of scheduling the swim meet.
 - 2. Team shall collect from all swim teams participating in any swim meet at the Pool proof of insurance in the amount set forth in section III.C.4, above, and shall provide such proof to the Pool Manager prior to the meet. Further, Team shall communicate to all teams participating in any swim meet at the Pool that any no swimmer may dive or making any racing start, whether from the starting blocks or from the side of the pool, in any area where the depth of the pool is four foot (4') or less, unless such swimmer has current racing start certification under USA Swimming rules. Team shall ensure that any individuals at swim meets, including, but not limited to, swim meet participants, spectators, judges, and coaches follow all safety and operating procedures at the Pool.

3. Only Pool staff, coaches, swimmers who are participating in the meet, judges, and timers shall be allowed on deck and/or in the locker rooms, from the beginning of the meet to the end of the meet. All spectators, including non-competing Team members, shall remain on the exterior of the fence throughout the meet.

- J. **Indemnification.** Team specifically indemnifies City and holds City harmless from any loss, liability, claim, judgment, or action for damages or injury to Team, to Team's personal property or equipment, and to Team's employees, volunteers, agents, guests, invitees, or members arising out of or resulting from the condition of the Pool or any lack of maintenance or repair thereon and not caused by or arising out of the tortious conduct of City or its employees. Team further agrees to indemnify and hold City harmless from any loss, liability, claim or action from damages or injuries to persons or property in any way arising out of or resulting from the use and occupancy of the Pool by Team or by Team's employees, volunteers, agents, guests, invitees, or members and not caused by or arising out of the tortious conduct of City or its employees. Team's indemnification of City as set forth in this provision shall specifically include all claims, actions, judgments for damages, injury to persons and/or property, damages, losses and expenses, including City's reasonable attorney fees arising out of, or as a result of, any swimmer's dive or racing start, regardless of the actions of City. If any claim, suit or action is filed against City for any loss or claim described in this paragraph, Team, at City's option, shall defend City and assume all costs, including attorney's fees, associated with the defense or resolution thereof, or indemnify City for all such costs and fees incurred by City in the defense or resolution thereof.
- K. **Exterior displays.** Team shall not install, display, or use permanent or temporary exterior lighting, amplifiers, speakers, signs, flags, or other devices or medium which may be heard or seen outside the Pool, unless first specifically approved, in writing, by the Pool Manager. Such approval shall include a time limit, and may be revoked at any time, at Pool Manager's sole election.

IV. GENERAL TERMS.

- A. **Default or breach; cure; termination.** If Team is in breach or default of any of the terms, covenants or conditions of this Agreement and Team fails or refuses to cure such breach or default within ten (10) days of City's written notice thereof, this Agreement, and all rights of Team in and to Pool, at City's option, may be deemed terminated and forfeited without further notice or demand. In the event of any default or breach of this Agreement and Team's failure or refusal to cure, City may bar Team's access to the Pool, without prejudice to any and all other rights and remedies City may have. In the event of a termination by City, with or without cause, any fees due to City by Team under the terms of this Agreement through the time of termination shall remain payable by Team to City. The rights, privileges, elections and remedies of City set forth in this Agreement or allowed by law or equity are cumulative, and the enforcement by City of a specific remedy shall not constitute an election of remedies and/or a waiver of other available remedies.
- B. **Force Majeure.** In the event of damage to the Pool or unsafe conditions due to a Force Majeure, this Agreement shall be terminated upon mailing of notice by City. "Force Majeure" shall mean a cause or event that is not reasonably foreseeable or otherwise

caused by or under the control of either Party, including acts of God, pandemic, fire, flood, vandalism, accident, governmental act, threat to human health or safety, or other like events that are beyond the reasonable anticipation or control of the Parties.

- C. Notices.** Day-to-day, informal communication with the Pool Manager shall occur by email or phone. All other notices to be provided under this Agreement shall be in writing and addressed as follows:

If to Team:

Meridian Killer Whales Swim Team, Inc.
Attn: Lynlee S. Richards
4025 N. Cecina Place
Meridian ID 83646

If to City:

City Clerk, City of Meridian
33 East Broadway Avenue
Meridian, Idaho 83642

Notices shall be either personally delivered or sent by U.S. mail, postage prepaid. Notice shall be deemed to have been given upon deposit in the U.S. mail, or upon personal delivery to the party above specified.

- D. No assignment.** Team shall not, without first obtaining City's consent; (a) subcontract, sell, sublet, assign, mortgage, or transfer this Agreement or any interest herein; (b) allow the use or occupancy of the Pool by anyone other than Team. No assignment shall relieve Team of any liability under this Agreement, unless City consents in writing to accept such assignment as a whole or partial novation.
- E. Public venue.** Team acknowledges that the Pool is a public place. To this end, all Team activities at Pool shall be appropriate for all ages, values, and sensibilities. Hosted activities, staff attire, decorations, signage, and entertainment shall not include language and/or behavior that is profane, obscene, violent, or discriminatory; shall not promote, foster, or perpetuate discrimination on the basis of race, creed, color, age, religion, gender, sexual orientation, or national origin; shall not include defamatory or personal attacks, threats to any person or organization, or content that promotes, fosters, perpetuates, or incites conduct in violation of any federal, state or local law; content that violates a known legal ownership interest, such as a copyright, of any party; or any content that contains or perpetuates a message that Landlord deems to be inappropriate or not in the best interest of the City of Meridian.
- F. Nondiscrimination.** Both Parties warrant and agree that there shall be no discrimination against any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry, in the course of Team's use, occupancy, or enjoyment of the Pool.
- G. Attorney fees.** In the event of any litigation between the Parties concerning this Agreement, the unsuccessful party in such litigation shall fully reimburse the prevailing party for all reasonable costs and expenses, including reasonable attorney's fees, incurred in such litigation.
- H. Applicable law; nonappropriation.** This Agreement shall be governed by and construed in accordance with the statutes and constitution of the State of Idaho, including, without limitation, Article VIII, Section 3, of the Idaho Constitution. Team acknowledges that City is a governmental entity, and the validity of this agreement is based upon the availability of public funding under the authority of its statutory mandate.

Notwithstanding anything in this agreement to the contrary, City's obligations under this Agreement are subject to and dependent upon appropriations being made by Meridian City Council for such purpose.

- I. Compliance with laws.** Throughout the course of this Agreement, Team and each and all of Team's employees, volunteers, guests, invitees, and agents shall comply with any and all applicable federal, state, and local laws.
- J. Severability.** If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement shall not be affected.
- K. Exhibits.** All exhibits to this Agreement are incorporated by reference and made a part of hereof as if the exhibits were set forth in their entirety herein.
- L. Entire agreement.** This Agreement contains the entire agreement of the Parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith. No verbal or written inducements to execute this Agreement have been made to Team. In entering into this Agreement, Team relies upon no statement, fact, promise or representation, whether express or implied, written or oral, not specifically set forth herein in writing. This Agreement may not be amended, modified, altered, or changed in any respect whatsoever, except by further agreement in writing duly executed by the Parties.
- M. Warranty of authority.** Each party to this Agreement represents and warrants that the execution, delivery, and performance of this Agreement has been duly authorized by all necessary action of such party and upon execution shall be a valid and binding obligation upon the Parties.
- N. City Council approval required.** The validity of this Lease shall be expressly conditioned upon City Council action approving same.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the Effective Date first above written.

TEAM:

Meridian Killer Whales Swim Team, Inc.

Janae Vorhes
By: Janae Vorhes
Its: President

CITY OF MERIDIAN:

BY: _____ Attest: _____
Robert E. Simison, Mayor Chris Johnson, City Clerk

EXHIBIT A

LIABILITY RELEASE FORM



Meridian Parks and Recreation Department LIABILITY RELEASE FORM

In consideration of my/my child's use of the Meridian Community Swimming Pool and related facilities, located at 213 E. Franklin Road, in Meridian, Idaho (the "Pool"), I acknowledge and understand that each and all of the following terms and conditions will apply to such use:

INITIAL My/my child's use of and participation in activities conducted at the Pool is conditioned at all times upon my/my child following all applicable rules, regulations, laws, and City of Meridian policies.

INITIAL I acknowledge that my/my child's use of the Pool carries risks, some of which are unknown, and with that knowledge do assume all known and unknown risks and hazards of such use.

INITIAL I acknowledge that the Pool is provided for this use on an as-is basis. Prior to participating in or allowing my child to participate in any class, practice session, clinic, meet, competition, or any other activity at the Pool, I will inspect the Pool facilities and equipment, and if anything is deemed unsafe or beyond my/my child's capability, I/my child will not participate in such activities or otherwise use the Pool.

INITIAL I assume sole responsibility for any and all injuries or damage caused by, incurred by, or related to my/my child's use of the Pool that is not attributable to the tortious conduct of the City of Meridian or its employees.

INITIAL I release from liability, and indemnify and hold harmless the City of Meridian and its employees, agents, and officers, for any injury, death, property loss, theft, or property damage in connection with, at, or in any way arising out of, my/my child's use of the Pool that is not attributable to the tortious conduct of the City of Meridian or its employees.

INITIAL I acknowledge that activities undertaken at the Pool will include physical activity, contact with others, slippery surfaces, diving in shallow water, noise, and other hazards, some of which are unknown, and that I bear sole responsibility for verifying that such activities are appropriate for my/my child's physical and mental condition.

INITIAL I understand that the City of Meridian provides and will provide no insurance or benefit coverage of any kind for injury, death, property loss, theft, or property damage resulting from or related to my/my child's use of the Pool.

INITIAL I have had time to read and understand all of the above conditions and terms. My signature below signifies that I consent to these terms on behalf of myself/my child and wish to use the Pool pursuant to these terms and conditions. I understand that by signing this agreement, I cannot later bring a claim against the City of Meridian or its employees.

Signature: _____ Print name: _____

Date: _____ Phone: _____ E-mail: _____

Check one:

☐ Pool user is 18 or older

☐ Pool user is under 18; parent/guardian is signing. Pool user name: _____