

EXHIBIT A

FACILITY USAGE AGREEMENT FOR ASSOCIATION USE OF JONESBORO CITY POOL CENTER

SHARK WAVE AQUATICS TEAM (SWAT)

I. Term

- a) The term of this Agreement is for a period of (1) year commencing on the Effective Date.

II. Use of Facilities by SWAT

- 1) During the period of May 29th, 2023 to November 30, 2023 during the Term of this Agreement, SWAT shall have the right to use the CITY'S pool Facilities. All scheduled training time will be negotiated and scheduled with the Parks Department. Any other times must be approved by the Parks Department.
- 2) SWAT shall have the right to reserve the Facilities for swim meets two (2) Saturdays within the Primary Usage Period. The Facilities will be made available at 9:00 p.m. the night before a scheduled swim meet. Any reservations for swim meets or other events outside the Primary Usage Period must be approved by the Parks Director no later than 30 days prior to the requested reservation.
- 3) SWAT understands and agrees that at times weather and/or pool conditions may result in CITY denying the use of the Facility during the Primary Use Period. SWAT understands that the Parks Department has the authority to deny use of the Facilities, but CITY agrees that use will not be unreasonably denied.
- 4) CITY will make determinations on pool closures due to weather. Determination will be made as soon as possible and, if necessary, weather will be monitored beyond the determination times.
- 5) CITY shall at all times have the right to inspect the Facilities being used by SWAT and all SWAT sponsored activities related to the use of the Facilities.
- 6) CITY shall issue 2 key(s) to SWAT for use of the Facilities. The keys may not be reproduced or duplicated by SWAT. One key shall be issued to the Head Coach of SWAT and one key to the assistant coach/board president for use during the Primary Usage Period. SWAT agree to return said key to the CITY within two weeks after the conclusion of the term of the season. Upon failure to return said key a fee will be charged for the replacement of key and locks. SWAT will be charged a fee of \$25 for

each lock that has to be changed as a result of a key that is not returned to the CITY at the end of the season.

- 7) SWAT understands and agrees that, except as provided in Article III below, no CITY maintenance equipment will be used by SWAT during the Primary Usage Period or otherwise. SWAT will provide the equipment necessary to administer its own activities and events, and in doing so will keep equipment in the spaces designated by the CITY, unless prior written approval is given by the Parks Department. SWAT is solely responsible for their equipment and the CITY is not responsible for any loss or damage to SWAT equipment used and/or stored at the Facilities.
- 8) If SWAT should desire to use the CITY'S Facilities for additional meets, special events or programs outside the Primary Usage Period, SWAT shall complete an Application for Use of Facilities. Any and all additions outside the Primary Usage Period shall not be included in this Agreement, but shall require a separate written agreement between the parties. All dates and conditions of the additional meets or special programs shall be finalized and furnished to CITY no later than thirty (30) days prior to the date of the event.
- 9) At no time shall SWAT have access to or usage of the concession stand located in the Facilities. Any operation of the concession stand during the Primary Usage Period or any scheduled events will be done by the CITY.
- 10) SWAT shall have at least one certified lifeguard on deck at all times during the Primary Usage Period or any meets or special events sponsored by SWAT, or meet safety guidelines as outlined by USA Swimming and/or AAU Swimming
- 11) SWAT must enforce all pool rules for the Facilities during the Primary Usage Period or any meets or special events sponsored by SWAT. A copy of said rules can be obtained from the Parks Department.
- 12) SWAT shall maintain their own liability insurance for their program and provide a copy of said insurance policy to the Parks Department prior to the beginning of the Primary Usage Period.
- 13) SWAT shall place or display no advertisements of any kind on CITY Facilities without prior written approval of the Parks Department. This shall include any advertisement of SWAT activities or any sponsorships of any events held at the Facilities or otherwise. SWAT shall be allowed to sell sponsorships for said events with temporary signage at the approval of the Parks Department. SWAT shall at no time advertise for any programs that compete with CITY run programs at the Facilities.

III. Obligations of CITY

CITY agrees to:

- 1) Provide the following maintenance and repairs, to the best of its ability given staff and budget, in a manner generally equal to normal CITY maintenance and repair of similar CITY recreational facilities:
 - a) Maintain pool water quality.
 - b) Maintain all fences and gates.
 - c) Provide utilities.
 - d) Provide and maintain parking lots
 - e) Provide and maintain bleachers for scheduled swim meets.
 - f) Haul off trash that has been deposited in trash receptacles as needed and de-litter the grounds as needed.
 - g) Maintain structural integrity of concession stands, restrooms and Facilities including repair or replacements of damaged roofs, doors, and windows.
 - h) Maintain restroom facilities, including cleaning and stocking with toilet tissue.
 - i) Maintain and repair parking areas.

It is understood and agreed the CITY's obligations under this Agreement will be performed as soon as, and to the extent that, budgeted funds are available for performance of its obligations. If CITY is unable to fulfill its obligation due to budget constraints, SWAT may, but shall not be obligated to perform CITY's duties and shall be entitled to deduct the cost from the payments required to be made by SWAT to CITY under Article IV. In no event shall CITY be obligated to SWAT for any monetary damages.

IV. Obligations of SWAT

SWAT shall:

- 1) Pay an annual usage fee to the CITY in the amount of **\$4,000** and **50%** of the heating cost of the pool or up to 100% depending on negotiated schedules.
- 2) SWAT shall be prohibited from performing any maintenance to the Facilities without written permission from the City.
- 3) SWAT shall not make any permanent additions to the Facilities without written permission from the City. This includes but is not limited to signs, structures, concrete, and seating.
- 4) Schedule and meet with CITY Parks Department prior to the season to discuss schedule, and department guidelines.
- 5) SWAT is responsible for any of their items stolen or damaged, during the course of the year.

- 6) Request approval by the CITY for placement of any and all tents and trailers at the Facilities prior to placement.
- 7) Not discriminate against any person or persons because of race, color, religion, sex, disability or national origin.
- 8) Establish procedures to ensure individuals with criminal histories that include drug charges, assault charges and sexual assault charges are not permitted to coach in the SWAT program.
- 9) Not engage in any business on the Facility or do anything in connection therewith which shall be in violation of any existing state or federal law or municipal ordinances, or use the same in such manner as to constitute a nuisance. CITY reserves the right to exclude any individual or group from the Facility based on conduct, which it determines in its discretion to be objectionable or contrary to City interests. SWAT hereby consents to the exercise of such authority by City over its members, officials and agents.
- 10) SWAT agrees to be solely responsible for any and all damages related to and arising out of SWAT use of the Facilities during the term of the Agreement when the Facilities are being used by SWAT. This includes, but is not limited to, any and all persons associated with SWAT who use the Facilities during the terms of the Agreement. SWAT agrees to be solely responsible for all repairs and costs of repairs to the Facilities for any and all damages. Repair of damage to Facilities shall conform to City of Jonesboro Building Codes and require approval of the City Inspector. Nothing contained herein shall be construed to defeat or diminish SWAT right to seek recourse against those persons causing the damage.
- 11) Follow rules that have been established by the CITY Parks and Recreation Board and City Staff concerning conduct at CITY Facilities. Examples of rules may include but are not limited to:
 - a. No unauthorized Vehicles may be parked at Facilities during activities including but not limited to sidewalks and grassy areas.
 - b. No tobacco use (smoking or smokeless) in the Facilities or in the bleacher areas.
 - c. Participant and spectator parking only in parking lots.
 - d. No dogs, exception will be service dogs.
- 12) Activity initiated by SWAT Coach or director that occurs on premises that have been closed will result in a \$100.00 fee to SWAT.
- 13) Prior to the commencement of the Primary Usage Period, SWAT will provide to the CITY:
 - Current by-laws of SWAT
 - Proof of insurance and indemnification
 - List of current officers and board members of SWAT with addresses, phone

numbers and e-mail (if applicable). JETS agrees to notify CITY of any changes in board members.

- Financial review of expenditures and revenues with CITY parks director and Mayor from previous year report.

V. Default of SWAT

a) If SWAT defaults in the performance of any of the covenants, terms, conditions or provisions of this Agreement, and after written notice from CITY, SWAT fails to cure such default within thirty (30) days after receipt of such notice (or fails to cure with due diligence if the default is of such nature as to require more than 30 days), then CITY may, at its option (but shall not be required to do so), perform the same for the account of SWAT and any amount paid or expenses incurred by the CITY in the performance thereof shall be deemed additional fees and shall be due and payable with the other fees contained herein.

b) Additionally, if SWAT defaults in performance of this Agreement, and after written notice from CITY, SWAT fails to cure such default within thirty (30) days after receipt of such notice (or fails to cure with due diligence if the default is of such nature as to require more than 30 days), then CITY may terminate this Agreement.

VI. Default of CITY

a) If CITY defaults in the performance of any of the covenants, terms, conditions or provisions of this Agreement, and after written notice from SWAT, CITY fails to cure such default within thirty (30) days after receipt of such notice (or fails to cure with due diligence if the default is of such nature as to require more than 30 days), then SWAT may, at its option (but shall not be required to do so), perform the same for the account of CITY and any amount paid or expenses incurred by the SWAT in the performance thereof shall be deducted from the amounts required to be paid by SWAT to CITY under Article IV.

b) Additionally, if CITY defaults in performance of this Agreement, and after written notice from SWAT, CITY fails to cure such default within thirty (30) days after receipt of such notice (or fails to cure with due diligence if the default is of such nature as to require more than 30 days), then SWAT may terminate this Agreement.

VII. Assignability and Exclusivity

This Agreement is a privilege for the benefit of SWAT only and may not be assigned in whole or in part by SWAT to any other person or entity. Both parties understand that SWAT use of the Facilities is nonexclusive, except during the Primary Usage Period.

VIII. Notices

Unless otherwise provided herein, any notice, tender or delivery to be given hereunder by either party to the other may be effected by personal delivery with a signed receipt, in writing or by

registered or e-mail, or certified mail, postage prepaid, return receipt requested. Notice shall be effective upon signing the date of the signing of the receipt.

SWAT

By: _____
Name: _____
Title: _____

CITY:
Danny Kapales; Director
CITY OF JONESBORO
Parks and Recreation
3009 Dan Avenue
Jonesboro, AR 72401

Any such notice shall be effective upon receipt if delivered in person or upon actual deposit in an official receptacle of the United States Postal Service, if mailed as aforesaid.

IX. Miscellaneous Provisions.

- 1) No modification of this Agreement shall be effective unless it is made in writing and is signed by the authorized representatives of the parties hereto.
- 2) This Agreement shall be construed under and in accordance with the laws of the State of Arkansas and venue for any litigation concerning this Agreement shall be in Craighead County, Jonesboro, AR.
- 3) Nothing in this Agreement shall be construed to make the CITY or its respective agents or representatives liable in situations it is otherwise immune from liability.
- 4) In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- 5) Each party represents to the other that the individual signing this Agreement below has been duly authorized to do so by its respective governing body and that this Agreement is binding and enforceable as to each party.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year set forth below.

SHARK WAVES AQUATICS TEAM (SWAT)

By: _____
Name: _____
Title: _____
Date: _____

CITY OF JONESBORO

By: _____
Name: Harold Copenhaver
Title: MAYOR
Date: _____

ATTEST

April Leggett, City Clerk, BS, MSE, CAMC, CMC