



**AGENDA ITEM REQUEST FORM
CITY OF JOHNSON CITY, TEXAS
CITY COUNCIL**

ITEM NO. 12

MEETING DATE: **March 1, 2022**

AGENDA PLACEMENT:

- ☐ Ceremonial
- ☐ Consent
- ☒ Individual
- ☐ Closed Session

CAPTION:

Discussion of and action on a Swimming Pool Management Proposal and Agreement between The Pool Management Group – Aquatic Management of Austin and the City of Johnson City, Texas for the management and staffing (lifeguard) of the Community Park Pool, including, but not limited to, chemical and cleaning, insurances, and swimming lesson / event services, in an amount not to exceed Forty-Thousand Nine Hundred Forty Dollars and No Cents (\$40,940.00); and authorizing Mayor Rhonda Stell to execute said Proposal / Agreement on behalf of the City of Johnson City, Texas. (Staff)

STRATEGIC WORK PLAN:

- | | |
|--|--|
| <input checked="" type="checkbox"/> Not Applicable | <input type="checkbox"/> Goal 5: Improve Fire Safety |
| <input type="checkbox"/> Goal 1: Increase Housing Diversity | <input type="checkbox"/> Goal 6: Improve Streets |
| <input type="checkbox"/> Goal 2: Expand Quality Lodging | <input type="checkbox"/> Goal 7: Increase Publicity &
Promotion of the Community |
| <input type="checkbox"/> Goal 3: Improve Code Enforcement | <input type="checkbox"/> Goal 8: Increase Economic
Development Activities |
| <input type="checkbox"/> Goal 4: Improve Streetscaping &
Signage | |

EXECUTIVE SUMMARY:

City Staff desires to hire a pool management company to manage and staff the Community Park Pool throughout the year. The proposed Agreement includes the following:

1. Season opening and closing services;
2. Lifeguard (Qty. 2) staffing, including all payroll, payroll liabilities, uniforms, et cetera;
3. Pool chemical and cleaning services;
4. A robust insurance package;
5. Lifeguard training;
6. Swimming lessons; and

7. Special event staffing.

Essentially, the pool management company would manage, including the provision of their own supplies, everything within the pool facility. The main exception would be the mowing / trimming of grassy areas, which can be completed by Parks and Recreation Staff.

FINANCIAL:

\$40,940.00 per season. Budgeted funds would come from the following areas:

1. 01-080-6017 <i>Pool Subcontractors</i>	\$21,334.08
2. 01-080-6104 <i>Pool Chemicals</i>	\$15,145.37
3. 01-080-6113 <i>Uniforms</i>	\$ 2,500.00
4. 01-080-6114 Tools & Equipment	<u>\$ 1,960.55</u>
	\$40,940.00

ATTACHMENTS: Proposal / Agreement

SUGGESTED ACTION:

Motion to approve a Swimming Pool Management Proposal and Agreement between The Pool Management Group – Aquatic Management of Austin and the City of Johnson City, Texas for the management and staffing (lifeguard) of the Community Park Pool, including, but not limited to, chemical and cleaning, insurances, and swimming lesson / event services, in an amount not to exceed Forty-Thousand Nine Hundred Forty Dollars and No Cents (\$40,940.00); and authorizing Mayor Rhonda Stell to execute said Proposal / Agreement on behalf of the City of Johnson City, Texas.

PREPARED BY: City Staff



The Pool Management Group
Aquatic Management of Austin

Swimming Pool Management Proposal

for

Johnson City



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Aquatic Management of Austin & Our Parent Company

We're a proud partner of The Pool Management Group - the parent company of 17 swimming pool management companies located primarily in the mid-western, southeastern and southwestern United States.

Over the past 37 years, our parent company has established and replicated sound business practices for swimming pool management and operations. The Pool Management Group helps us succeed by providing broad and deep layers of support to our team:

- optimized operational processes
- backup personnel
- pool risk management strategies
- back-end business services
- liability insurance policies
- national buying power
- financial strength
- pool expertise and industry knowledge
- research and development in pool risk management, operations, and lifeguard training

We combine our local market presence and expertise, with the sophisticated operational and risk management strategies enabled by The Pool Management Group, to deliver unparalleled levels of safety, efficiency, and patron satisfaction.



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Value Added Services	Description
Advanced Lifeguard Training	Proprietary training is given to our lifeguards and goes beyond the standard lifeguard training. Training focuses on critical risks and dangers that many pool operators are not even aware of. Topics include advanced scanning techniques, lifeguard distractions, bodies disappearing underwater and more.
On-line Lifeguard Training	Through The Pool Management Group, our advanced training is administered on-line with custom video and audio learning. This proprietary on-line system has testing throughout to ensure lifeguards view and are tested on all material.
Summer Safety Campaign	Posters are placed at facilities (and information posted on-line) as part of our annual pool safety campaign aimed at pool patrons. The safety campaign is designed to increase awareness of pool hazards and prevent drowning.
Body on the Bottom Testing	Proprietary testing is completed at pools throughout the season to enhance lifeguards' ability to identify and save bodies underwater.
National Safety Advisors	Collectively, with The Pool Management Group family of companies, we contract with prominent safety advisors to ensure our water safety standards remains at high levels.
National Back Up Team	In the event of a need, Aquatic Management of Austin utilize the management or technician back up personnel available through The Pool Management Group. From President to critical technicians, our team is backed up in the event of injury or other emergency.
National Parts Sourcing	When local parts distributors do not carry a part needed to keep your pool up and running, Aquatic Management of Austin will utilize the support team at The Pool Management Group for a nationwide search to find the right part and order it promptly.
Up to Date Information	Through The Pool Management Group, important governmental decisions and water safety developments are monitored so we can provide accurate timely information.
Risk Management	Our safety and training standards increase safety and reduce risk at your pool. However, even at the safest pools, accidents can happen, so we carry Professional Liability Insurance with \$20 million of coverage.



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Pool owners and governing boards are open to substantial risks & liabilities. We provide unparalleled levels of patron safety and customer risk management.



Safety Advisory Board

Each year research findings shed new light on pool safety and The Pool Management Group's Safety Advisory Board acts to incorporate new processes that can help save a life throughout our processes and training. Our safety advisory board consists of key personnel from throughout The Pool Management Group Family and internationally known safety expert, Dr. Tom Griffiths. Dr. Tom Griffiths also acts as a consultant and advisor to us throughout the year.

Advanced Lifeguard Training Beyond the Standard

The fact is that our training and techniques address drowning risks of which many pool operators are not even aware. After completing our 3+ hours of Advanced Lifeguard Training series (this is training in addition to certifications), our lifeguards report feeling more confident, better trained, aware of situations they had never considered, and grateful for the knowledge. Proprietary new training developed in-house for the 2021 season addressed 1) the psychological aspects and techniques for staying focused as a lifeguard and 2) new scanning techniques to better identify swimmers in trouble. Other proprietary training topics include surface refraction / glare techniques, 'invisible bodies' training, Shallow Water Blackout Training and Body on the Bottom® Testing.

Proprietary On-line Training Platform

Our lifeguards now access our advanced lifeguard training through our on-line training platform. Material is presented in various forms: video demonstrations, graphs/illustrations, pictures, and voice over with text. This allows us to ensure that every lifeguard is receiving the same high quality training (even those hired late in the season) and, as important, we're ensuring that lifeguards are absorbing the material presented, thanks to periodic testing throughout the training.



Annual Pool Patron Safety Campaigns

We believe pool safety is greatest when everyone understands the risks associated with swimming pools and how to deal with those risks. Our 2021 safety campaign explained that it's impossible for a lifeguard to watch every person in the pool at all times and the only way to guarantee a child's safety is to be in the water with the child. We believe these safety campaigns are important contributors to creating a safe environment.



We lower your risk

Comprehensive Liability Insurance

Facilities that want the lowest financial risk choose us. Inadequate coverage can result in significant financial exposure to owners in the event of a swimming pool injury or death.

While our focus is on prevention, aquatic experts agree that accidents happen even at the best run pools. That's why our comprehensive insurance package includes General Liability, Professional Liability & Punitive coverage with \$20 million dollar limits. This large limit is a requirement, not an extravagance, as pool accident judgments have been awarded for multi-millions.

Financial Security

Small businesses are susceptible to cash flow instability and constraints, particularly in our seasonal businesses and in an economy where lending has become severely restricted. Through The Pool Management Group we receive financial support and security. Rest assured, we have the backing to keep your pool running well and open all season.

Emergency back-up: Management personnel & technician teams

Illnesses, accidents, and emergencies happen. For many organizations like ours the loss of key management personnel could result in severe disruption to pool operations. However, as our customer, you're protected. Our parent company provides us both management personnel and technician back up teams, ready for deployment as needed to keep your pool fully operational.



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Responsive and Easy

We know you want a quick response when you have a question or a pool issue. Being available 24 hours a day / 7 days a week means no wondering when you'll hear from us.

Repairs and Renovations

We have skilled repair technicians ready to dispatch at a moment's notice and renovation know-how for larger projects. We can take care of all of your pool needs.

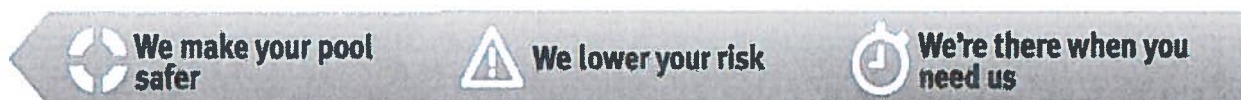
National diagnostic team and parts sourcing

We know that not having access to the right mechanical part is the number one reason pools are closed during the season. When needed, our national support team at The Pool Management Group steps in with help diagnosing issues and obtaining critical hard-to-find parts from reaching into warehouses at one of our Partner Companies to a multitude of vendors, we have you running as quickly as possible.

Information When You Need It

Our parent company monitors water quality education as well as legal decisions and keeps us up-to-date on developments, so we can respond rapidly to any changes needed at your pool. You can count on getting accurate timely information.

We're here to help minimize your financial risk, protect your pool investment, and ensure an enjoyable & safe swim season.

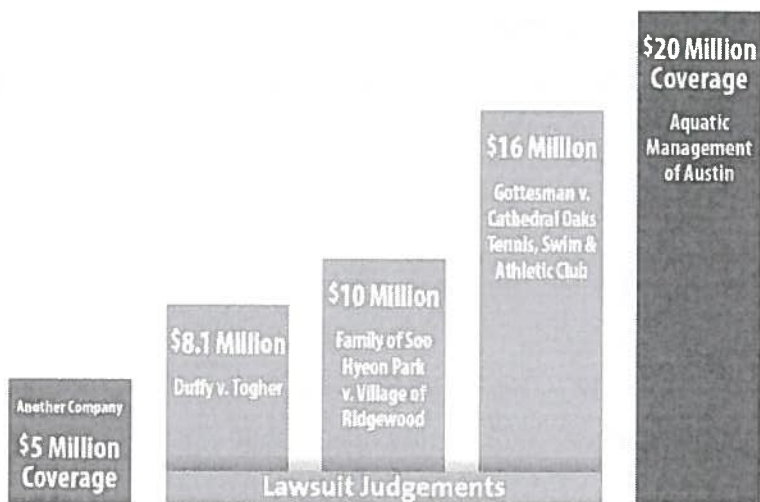


Liability Insurance Limits

Facilities that want the lowest financial risk choose us.

Our \$20 million coverage is the most comprehensive in the industry. Our focus is on prevention, but if an accident occurs at your pool, won't you want a company with adequate protection?

What's Your Risk?



The Pool Management Group
Aquatic Management of Austin



We make your pool safer



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Services Summary

We're able to offer you local, customer-focused swimming pool services, with the industry leadership, resources, and rewards of a national company.

1. DATES OF OPERATION.

The pool will be open on the following days:

June 1, 2022 through September 5, 2022.

2. HOURS OF OPERATION.

The pool to be open during the following hours during the Summer Season:

June 1 through August 16, 2022

Saturday	10:00 a.m. to 8:00 p.m.
Sunday	Closed
Monday	Closed
Tuesday	10:00 a.m. to 8:00 p.m.
Wednesday	10:00 a.m. to 8:00 p.m.
Thursday	10:00 a.m. to 8:00 p.m.
Friday	10:00 a.m. to 8:00 p.m.
Holidays	10:00 a.m. to 8:00 p.m.
May 26 Water Day	12:00 p.m. to 8:00 p.m.

The pool to be open during the following hours during the School Season:

August 17 through September 5, 2022

Saturday	10:00 a.m. to 8:00 p.m.
Sunday - Friday	Closed
Holidays	10:00 a.m. to 8:00 p.m.

3. STAFFING.

Two (2) Lifeguards will be on duty during all hours of operation specified in this Agreement.

Guarantees

- "Lifeguard Satisfaction" guarantee: In the event you are not satisfied with a lifeguard, we will replace him/her within 24 hours.
- "Smooth Start" guarantee: Your pool will be open and ready on the 1st day of operation as scheduled. Included: If your pool is not open for swimming on the first



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day of the season as specified, we will refund you 2% of your contract price for that day and each day thereafter that your pool is not open.

Pool Chemicals

- The cost of all chemicals to maintain your pool water is included in the contract price.
- Included: chlorine, pH, calcium hardness and alkalinity control chemicals.

Cleaning

- We deliver outstanding levels of cleanliness for your pools, pool decks, restrooms and pool furniture.

Insurance Package

- Included: Aquatic Management of Austin \$20 million in liability insurance. The package includes both Professional and General Liability with punitive damage coverage.

Spring Opening and Fall Closing

- Spring opening and fall closing processes are provided in the contract price.
- Included: "Smooth Start" guarantee. Pools will be swim ready at least one week before scheduled opening date.
- Included: All off-season Service

Safety and Prevention

- Our lifeguard training and techniques address drowning risks of which many pool operators are not aware.
- Included: Advanced lifeguarding safety techniques, in-season training and testing, integration of the latest key information on water safety.

Pool Patron Safety Campaigns

- Included: Flyers, posters, and on-line videos aimed at making your pool safer (In 2021 patrons we introduced to the message that the best way to keep children safe at the pool is to keep a close eye on their swimmers. In addition, a safer pool is a team effort with all key members of the pool including the lifeguard.

Cost:

- \$40,940



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Liability Insurance Explained

Liability insurance policies for high risk situations, like lifeguard staffing, can be complicated. Below we explain:

- **How primary policy and excess policy limits work**
- **Coverage is per event, not per pool**
- **The difference in Professional Liability and General Liability**
- **Punitive Damages coverage**
- **Excess Coverage “follows form” of the primary policy**

Aquatic safety experts agree that even at the best run pool accidents can happen, which is why liability insurance is such an important part of risk management.

Lawsuits resulting from swimming pool injuries and deaths have resulted in large multi-million dollar judgments (see enclosed chart). Medical bills alone, which are just one part of the damages, can run into the millions of dollars in a near-drowning. **These facts lead us to conclude that \$20 Million insurance limits and Professional Liability coverage are necessary.**

Professional Liability and General Liability Coverage

Potential exposures at swimming pools involve some events that would only be covered by Professional Liability Insurance and some events that would only be covered by General Liability Insurance. The distinction between the two policies is not a clear line. The important thing to know is that if a swimming pool management company only has General Liability coverage, and does not have Professional Liability coverage, there are exposures that are not covered by insurance.

While there are many possibilities, an example may be helpful:

If someone is injured at the pool there may be a claim resulting from that injury. This claim would fall under the General Liability policy. If, however, a lifeguard provided care and as a result of the care provided the person is injured further, this claim would fall under the Professional Liability policy.

Determining if a Policy Includes Professional Liability Coverage

Most General Liability insurance policies have an exclusion for Professional Liability exposures. When a policy includes coverage for Professional Liability exposures the exclusion clause is not in the policy. So, rather than stating in the positive that Professional



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Liability exposures are covered, a policy includes coverage for Professional Liability exposures if the policy does not include the exclusion clause.

Primary Policy and Excess Policy Limits

In a typical swimming pool management liability insurance policy there is a *Primary Liability policy* (GL Policy), which is usually \$1 million in coverage per claim. The *Primary Policy* is per occurrence, meaning there is \$1 million available for each claim up to the policy limit (such as \$3 Million). There may be an *Excess Policy* (sometimes called Umbrella Policy) on top of the *Primary Policy* to cover a judgment or settlement that is higher than the *Primary Policy* limit. The *Excess Policy* designates a total annual amount that is depleted as it is used. If the *Primary Policy* limit is exceeded in any year, then the excess coverage would pick up coverage for any other events, up to the amount of the excess coverage.

Primary Policy
+ Excess Policy
= TOTAL COVERAGE

So, if a company has a \$20 Million limit it will likely be a \$1 million dollar primary policy and \$19 million excess coverage.

\$ 1,000,000
+\$19,000,000
\$20,000,000

Another company may have a \$5 Million limit, which is likely a \$1 million dollar primary policy and \$4 million excess coverage.

\$1,000,000
+\$4,000,000
\$5,000,000

Here is how it works:

If there is a claim and judgment in the amount of \$5 million, then the primary policy pays \$1 million, and the excess policy pays \$4 million.

In the case of a company with \$20 Million limits, a \$5 Million judgment would leave \$15 million of excess coverage for that year (\$19 Million - \$4 Million, + another \$1 million in primary policy coverage). So, they would still have \$16 million available if there is a second claim.



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In the case of a company with \$5 Million limits, \$0 of excess coverage would remain for that year (\$4 Million - \$4 Million), but there would be another \$1 million in primary policy coverage. So, they would have \$1 million available if there is a second claim.

And, in the case of a company with less than \$5 Million limits, there would not be enough insurance coverage to cover the judgment.

Punitive Damages Coverage

Juries may provide for two types of payments for damages: actual damages and punitive damages. Punitive damages judgments are in addition to the judgment for actual damages.

Even when punitive damages are limited by state law, they can be extremely large. For instance, if state law limits punitive damages to two times (2x) actual damages, this can still be a very large number. Since cases exist where medical bills alone (included in actual damages) were over \$2 million, this “limited” punitive damages number could potentially be over \$4 million, with a total judgment of over \$6 million (actual damages + punitive damages).

As with Professional Liability, liability insurance policies often have an exclusion for punitive damages. When a policy includes coverage for punitive damages the exclusion clause is not in the policy. So, rather than stating in the positive that punitive damages are covered, a policy includes coverage for punitive damages if the policy does not contain the exclusion clause.

Excess Policies follow the form of the Primary Policy

The coverage provided by *Excess policies* is determined by the coverage that is provided by the *Primary Policy* (GL Policy). So, the language of the *Primary Policy* is what is important in determining what is covered and what is not covered, and the details of the coverage may not be spelled out in the *Excess Policies*.



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The Pool Management Group

Aquatic Management of Austin

SWIMMING POOL MANAGEMENT AGREEMENT

This Agreement, between **Aquatic Management of Austin** (the "Company") **Johnson City** (the "Customer"), is to provide for the staffing, water chemistry maintenance and cleaning by the Company at the Customer's pool located at 620 Nugent Ave, Johnson, City, TX 78636 in accordance with the specifications, conditions, and terms set forth herein and in Appendices attached to this Agreement. Company has no duties with regard to pool or facilities other than those explicitly stated herein.

1. **EFFECTIVE DATE.** This Agreement, when executed by both parties hereto, shall become effective on February 1st, 2022 for the 2022 Pool Year extending from January 1st, 2022 through December 31st, 2022.

2. **PROPOSAL EXPIRATION OPTION.** This contract is voidable at the Company's option if not executed by the Customer and returned to the Company by May 1st, 2022.

About Us

We're a local company that is part of The Pool Management Group family of companies. From advanced lifeguard training and testing, to our national back up team for key personnel, to industry thought leadership, our customers receive the rewards of a large national company combined with our local expertise.

As a result, we are able to provide high levels of quality, safety and risk reduction.

3. **PERSONNEL.** Company will provide pool staff, including lifeguards, for operation of Customer's pool. The Company will provide training and testing of the lifeguards working at Customer's facility that exceed the industry norm.

**Please see Exhibit B for more details on personnel.*

4. **INSURANCE/LIABILITY.** The company will maintain a comprehensive insurance package including General Liability, Professional Liability & Punitive coverage with \$20 million dollar limits. While this is a significant limit, Company asserts it is adequate and not an extravagance, as swimming pool pose substantial risk.

The company agrees to maintain, at a minimum, \$20 million liability insurance coverage for the length of this Agreement.

**Please see and initial Exhibit C for more information on the liability insurance.*

5. **VALUE ADDED SERVICES.** Service components well beyond the standard pool management services are provided as part of this Agreement.

Value Added Services	Description
Advanced Lifeguard Training	Proprietary training is given to our lifeguards and goes beyond the standard lifeguard training. Training focuses on critical risks and dangers that many pool operators are not even aware of. Topics include advanced scanning techniques, lifeguard distractions, bodies disappearing underwater and more.
On-line Lifeguard Training	Through The Pool Management Group, our advanced training is administered on-line with custom video and audio learning. This proprietary on-line system has testing throughout to ensure lifeguards view and are tested on all material.
Summer Safety Campaign	Posters are placed at facilities (and information posted on-line) as part of our annual pool safety campaign aimed at pool patrons. The safety campaign is designed to increase awareness of pool hazards and prevent drowning.
Body on the Bottom Testing	Proprietary testing is completed at pools throughout the season to enhance lifeguards' ability to identify and save bodies underwater.
National Safety Advisors	Collectively, with The Pool Management Group family of companies, we contract with prominent safety advisors to ensure our water safety standards remains at high levels.
National Back Up Team	In the event of a need, we will utilize back up personnel available through The Pool Management Group. From President to pool technician, our team is backed up in the event of injury or other emergency.
National Parts Sourcing	When local parts distributors do not carry a part needed to keep your pool up and running, we will utilize the support team at The Pool Management Group for a nationwide search to find the right part and order it promptly.
Up to Date Information	Through The Pool Management Group, important governmental decisions and water safety developments are monitored so we can provide accurate timely information.
Risk Reduction	Our safety and training standards increase safety and reduce risk at your pool. However, even at the safest pools, accidents can happen, so we carry Professional Liability Insurance with \$20 million of coverage.

6. **EXHIBITS.** The attached exhibits, which are material to and included as part of this Agreement, detail the following:

Exhibit A - DATES AND HOURS OF OPERATION AND STAFFING

Exhibit B – PERSONNEL

Exhibit C – INSURANCE AND LIABILITY

Exhibit D - OPERATIONAL PARAMETERS

Exhibit E - POOL MAINTENANCE AND REPAIRS

Exhibit F – OFF-SEASON SERVICE

Exhibit G - SWIMMING LESSONS

Exhibit H – CUSTOMER CONTACT INFORMATION

Exhibit I – TERMS AND CONDITIONS

Exhibit J – PAYMENT SCHEDULE

7. **FEF.** The Company hereby proposes to perform the work and services set forth in this document including all exhibits for the price of **\$40,940** upon the specifications, conditions and terms as set forth herein.

8. **ACCEPTANCE.** Acceptance of this Agreement by Customer and Company through signatures below will constitute a contract entered into in accordance with the specifications, terms and conditions and addenda attached hereto.

Aquatic Management of Austin

By: _____

Officer

Johnson City

By: _____

Title of Officer: _____

Attest: _____

Title of Officer: _____

Date: _____

Exhibit A

Dates and Hours of Operation and Staffing

1. DATES OF OPERATION.

The pool will be open on the following days:

June 1, 2022 through September 5, 2022.

2. HOURS OF OPERATION.

The pool to be open during the following hours during the Summer Season:

June 1 through August 16, 2022

Saturday 10:00 a.m. to 8:00 p.m.

Sunday Closed

Monday Closed

Tuesday 10:00 a.m. to 8:00 p.m.

Wednesday 10:00 a.m. to 8:00 p.m.

Thursday 10:00 a.m. to 8:00 p.m.

Friday 10:00 a.m. to 8:00 p.m.

Holidays 10:00 a.m. to 8:00 p.m.

May 26 Water Day 12:00 p.m. to 8:00 p.m.

The pool to be open during the following hours during the School Season:

August 17 through September 5, 2022

Saturday 10:00 a.m. to 8:00 p.m.

Sunday - Friday Closed

Holidays 10:00 a.m. to 8:00 p.m.

3. STAFFING.

- Two (2) Lifeguards will be provided at all times the pool is open, as listed above.

Once school resumes in August, staffing is subject to lifeguard availability due to school schedules, after-school activities and Federal Youth Labor Laws.

Customer agrees to indemnify and hold Company harmless for any claims arising from the use of the pool(s) other than during those times specified above, except when such claims are the result of acts of omission or negligence of the Company.

On days when attendance at the pool is very low, Company may reduce the number of lifeguards on duty to as few as one.

Company Initials: _____; Customer Initials: _____

Company employs international students who are in the U.S. working on J-1 Visas to staff Customer's pool in late summer when American students have gone back to school and are no longer available to work. Company's commitment to staff Customer's pool in August and September is dependent upon the availability of J-1 students. If J-1 students are not available to work at Customer's pool, the parties agree to a reduction in hours that the pool will be open, with a refund for unused lifeguard hours to be paid to Customer by Company.

SAFETY BREAK or ADULT SWIM. Customer shall notify Company as to whether they will have a Safety Break or an Adult Swim every hour.

Safety Break: Once every hour the pool will be completely cleared for a period of ten minutes. During this break, lifeguards will not be on duty, the pool will be closed, no one may use the pool and the lifeguards shall not be responsible for supervising the pool.

Adult Swim: Once every hour the pool will be cleared of all children for a period of ten minutes. During this break, lifeguards will not be on duty and only patrons who are 18 years old or older may use the pool. During Adult Swim the lifeguards shall not be responsible for supervising the pool or for anyone using the pool.

VANDALISM. Additional reasonable charges for cleanup required as the result of vandalism, and approved by the Customer, shall be paid by the Customer to the Company. Any vandalism shall be reported to the Customer's designated representative immediately upon discovery.

SUPERVISION. Company management personnel will inspect the pool at least twice each week during the full-time operation of the pool. Additional inspections and/or visits to the pool will be made by Company's management personnel as needed in order to assure Customer's satisfaction.

POST CLOSING DAY STAFFING. At the request of the Customer, the Company may, if staff is available, staff and maintain the pool and provide all necessary services to allow swimming with a Lifeguard on duty after the last day of operation specified above (Closing Day). The Customer will notify Company at least two (2) weeks in advance concerning post-Closing Day openings. The cost for post-Closing Day operation shall be billed to the Customer at the prevailing rate, which may change from year to year. The current cost is \$27.00 for each day (including days the pool is closed) from Closing Day through the final day the pool is open for swimming, plus \$27.00 per Lifeguard hour for time worked on or before September 18. The cost for Lifeguard hours worked after September 18 is currently \$36.00 per Lifeguard hour. Amount shall be payable to the Company on the initial day of post-Closing Day operation. This cost is to be extra to the contract in addition to the fees as provided hereinafter.

UNSUITABLE WEATHER. On rainy days, if the weather is still unsuitable for swimming at 6:00 p.m., the pool will be closed for the day. Additionally, if the weather is unsuitable for swimming before 6:00 p.m., the pool will be closed, with no refund due to the Customer. Weather unsuitable for swimming includes:

- (a) air temperature at or below 68 degrees Fahrenheit
- (b) heavy rain

Company Initials: _____; Customer Initials: _____

(c) severe weather

Company will work with Customer to reopen pool if weather becomes suitable for swimming early enough in the day.

AFTER-HOURS EVENTS. The Company will provide lifeguards for after-hours events subject to the following:

Lifeguard hours provided by the Company, other than those specified in this contract, shall be billed to the Customer at the prevailing rate of \$30 per hour.

Company shall provide no lifeguard beyond the hour of 11:00 PM.

For after-hours events, the Customer is not required to use Company lifeguards; however, Customer assumes full responsibility and liability for the pool in the event any individuals are within the pool area when the Company lifeguards are not scheduled to work. Customer agrees to indemnify and hold Company harmless for any and all claims for damages or injuries, or both arising from the use of the pool during hours other than those specified in this contract unless Company's lifeguards have been scheduled according to the policies set forth herein.

For after-hours events, for which the Company is to provide lifeguards, the Customer is responsible for giving the Company seven (7) days' prior written notice as to:

- (a) The time and date of the event.
- (b) The number of people who are scheduled to attend.
- (c) The general age group of the people scheduled to attend.
- (d) Whether alcoholic beverages will be permitted at the event.
- (e) Any special admission instructions.

The following scale shall be used to determine the number of lifeguards required at an after-hours event:

<u>Number of People Expected</u>	<u>Number of Lifeguards Required</u>
<u>At Pool</u>	
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 or more	5, plus one (1) more for each additional 25 people or portion thereof. Example: 153 attendees would require 7 lifeguards.

One additional lifeguard shall be required for any teenage event, college age event, or for any event involving alcoholic beverages. Customer agrees to provide one adult chaperone for each

Company Initials: _____; Customer Initials: _____

ten (10) people at a teenage or college age event. The Company will not schedule lifeguards for any fraternity parties.

Billing shall include any time spent cleaning up after use by any special group or party. The Customer shall make payment of fees to the Company within ten (10) days after billing by Company.

All Pool Party registrations fees shall be paid to Customer. Company will bill Customer for each lifeguard hour.

4. **WADING POOL.** Company has no duties with regard to the wading pool other than cleaning, maintaining water chemistry and backwashing filter.

Company Initials: _____; Customer Initials: _____

Exhibit B

Personnel

1. **PERSONNEL.** All Company personnel who will work at the Customer's pool in fulfilling the terms of this Agreement, including all lifeguards, shall be employed solely by the Company and be employees of the Company. No lifeguard shall be engaged by the Company as an "Independent Contractor" to fulfill the terms of this Agreement.

- (a) Company is solely responsible for selecting competent and qualified lifeguards for the safe operation of the Customer's swimming pool.
- (b) The Company agrees to pay the following for Company's employees, including all lifeguards:
 - Wages
 - Income tax withholdings
 - Social Security withholdings
 - State unemployment insurance
 - Federal unemployment insurance
 - Workmen's Compensation insurance
- (c) Personnel will be trained by the Company. Personnel not performing up to the standards of the Customer will be replaced by the Company within **24 hours**.
- (d) All lifeguards employed by the Company shall have American Red Cross Basic Lifeguarding Certificates or Lifeguard Training Certificates, or the equivalent, as well as Professional Rescuer CPR.
- (e) Lifeguards shall have the authority to discipline swimmers and any and all other persons within the pool facility within their best judgment and sole discretion consistent with the published and posted rules of the Customer and minimum safety standards as established herein. Customer agrees to support Company's lifeguards in enforcing the rules with Customer's patrons.
- (f) Company is responsible for exercising control over the activities performed by the lifeguards. Lifeguards will be supervised by Company management personnel. Company management personnel will visit the pool at least twice each week to check performance of lifeguards.
- (g) Whereas, Company will invest substantial resources to train and convey information concerning operational techniques and management procedures to its employees at Customer's facility and Customer acknowledges that such information and investment is a valuable asset of Company's business, Customer agrees not to hire or consult (without the prior written consent of Company) any employee or former employee of the Company for a period of one year from the date of expiration or cancellation of this agreement.

Company Initials: _____; Customer Initials: _____

- (h) Whereas, Company has responsibility for providing lifeguards, water chemistry maintenance and cleaning of Customer's swimming pool, various Company personnel will be responsible for the following duties:
- (1) Lifeguarding main pool.
 - (2) Checking water chemistry and recording readings every two (2) hours.
 - (3) Maintaining chemical balance of pool water.
 - (4) Vacuuming pool.
 - (5) Cleaning tiles around pool edge.
 - (6) Backwashing filter system.
 - (7) Checking and recording filter pressure gauge readings and flow meter readings daily. Taking corrective measures as indicated.
 - (8) Cleaning bathhouse daily.
 - (9) Cleaning swimming pool area.
 - (10) Emptying trash.
 - (11) Straightening deck furniture.
 - (12) Replenishing janitorial supplies in bathhouse.
 - (13) Enforcing rules of the Customer for safety and convenience of Customer's members.
 - (14) Assisting Customer in collecting guest fees and monitoring membership, as long as the task does not interfere with lifeguarding.

PRE-SEASON STAFF MEETING WITH STAFF. At Customer's request, Company's designated Pool Manager shall meet with Customer's representative prior to opening day. The Pool Manager and all lifeguards, as feasible, will meet with Customer's representative.

Company Initials: _____; Customer Initials: _____

Exhibit C

Insurance and Liability

1. **INSURANCE/LIABILITY.** The Company shall maintain and keep in full force the following coverage:

- (a) **Professional Liability Insurance and General Liability Insurance** in the amount of **\$20,000,000.00**.
- (b) **Worker's Compensation insurance** covering all persons engaged on behalf of the Company in the performance of the terms of this Agreement.

Company agrees to indemnify and hold Customer, its officers, committees, and agents harmless from and against any claims caused by or arising out of the acts, omissions and/or negligence of the Company or its employees. This indemnity does not require Company to indemnify Customer for Customer's own negligence.

Company agrees to supply copies of the certificates of insurance to the Customer verifying the above-mentioned insurance coverage. It is the responsibility of the Customer to provide all other insurance coverage.

Except due to acts of omission or negligence on the part of the Company or its employees, Company assumes no liability for damage or injury to persons or property arising from or caused by Acts of God. Except as to the employees of Company, Company assumes no liability for damage or injury to persons or property arising from or caused by physical or mental incapacity, physical or mental diminution, or intoxication from alcoholic or other substances, whether legal or illegal, nor for the acts of "Good Samaritan" by any employees of Company. The Company shall not be liable or responsible for any injuries or damages that arise at any time that is not within the hours of operation as stated in this Agreement.

Company shall not be held liable for any damages resulting from faulty equipment, mechanical failure, weather, flooding, or defective workmanship or design by others. Company accepts no responsibility for hydrostatic lifting. Any risks associated with draining the pool shall be solely the Customer's.

Further, the Company shall not be held liable for any personal effects of any person or persons utilizing the pool facilities.

The Customer shall maintain and keep in full force and effect the following coverage:

- (a) **Premises liability insurance.**
- (b) **Comprehensive general liability insurance** in the amount of **\$1,000,000.00** each accident and **\$1,000,000.00** each person.

2. **COMPANY'S INDEPENDENT CONTRACTOR STATUS.** Company is, and at all times shall be deemed to be, an independent contractor in the performance of services under this agreement. Company and its representatives are not, and shall not be considered or permitted to be, employees, agents, servants, joint venturers or partners of Customer.

Company Initials: _____; Customer Initials: _____

Exhibit D

Operational Parameters

1. **ACCESS AND UTILITIES**. The Customer will permit and maintain free access to the pool site and, upon signing Agreement, Customer will provide six (6) sets of keys to Company to open any and all locks required to operate the pool. Company shall keep and safeguard keys and release keys only to authorized personnel. Keys shall be returned to Customer in the event of termination of this Agreement.

Customer further agrees to furnish without cost to Company:

- (a) Water.
- (b) Electricity.
- (c) 110 volt electrical outlet in pump room.
- (d) Garbage pick-up service.
- (e) Lifeguard stand(s) and umbrella(s) for lifeguard stand(s).
- (f) Telephone.
- (g) A secure and cooperative working environment at Customer's pool.

2. **TELEPHONE**. Customer shall be responsible for providing an operational telephone (not a pay phone) accessible to Company's lifeguards at pool site. Consistent with health department regulations and for the safety of pool patrons the pool will only be open when the pool telephone is operational.

3. **OPENING**. Company agrees to make pool "ready to swim" by completing the following services, where applicable:

- (a) Order, store, and inject all necessary chemicals to establish proper levels for:
 - free chlorine
 - total alkalinity
 - pH
 - calcium hardness
 - cyanuric acid
- (b) Vacuum pool.
- (c) Clean pool enclosure area.
- (d) Inspect chemical feeders.
- (e) Inspect all filtration equipment.
- (f) Inspect flow meters, pressure gauges, and valves.
- (g) Remove pool furniture from storage, clean, set out around pool area.
- (h) Thoroughly clean bathhouse (If applicable)

Company Initials: _____; Customer Initials: _____

- (i) Inspect and re-supply water testing supplies.
- (j) Inspect underwater lights.
- (j) Perform requisite repair work as authorized by Customer (see "Repair Work").

PRE-SEASON SWIMMING POOL REVIEW MEETING. At the Customer's request, Company will walk-through with a representative of the Customer prior to opening to develop a list of items needed for operation of the pool and to review items identified by the Health Department as deficient from the previous year. Company shall stand ready, at the Customer's request, to perform repairs needed for compliance with Health Department regulations. The cost for any such repairs shall be additional to the price of this Agreement.

INITIAL TAKEOVER OF POOL BY COMPANY. Customer agrees pool will be clean and free of algae on the date of signing. If pool is not clean and free of algae, Customer agrees to pay reasonable additional charges for cleanup and chemical treatment of pool.

PERMIT. The Company will assist the Customer in obtaining Customer's Swimming Pool Operation Permit from the local Health Department.

The Company shall:

- (a) Clean and chemically balance pool to health department standards.
- (b) For the convenience of Customer, complete the Operating Permit Application and return it to the Health Department with the Permit Fee.
- (c) Schedule pre-season health department inspection and meet the health department inspector at Customer's pool to walk through the inspection with the health department inspector.

The Customer shall be responsible for:

- (a) Reimbursing Company for the actual Permit Fee required by the health department.
- (b) Complying with all health department regulations.

MINIMUM FACILITY STANDARDS. Customer agrees and acknowledges that it is the Customer's responsibility to maintain Customer's pool, equipment and associated facilities within established minimum standards. The rules and codes of the local health department having jurisdiction over Customer's pool, the National Electrical Code, and the Virginia Graeme Baker Pool and Spa Safety Act shall be included as minimum standards.

4. **EMERGENCY CLOSING OF POOL.** The Customer and/or Company may close the pool in an emergency situation, whether the emergency be caused by breakdown of equipment, or by other causes outside of the Company's control; this shall not require any change or adjustment in any of the provisions of this Agreement. Should a time lapse of more than five (5) days be necessary to perform repairs and/or restore pool to normal operations, the Company shall refund fifty percent (50%) of the daily operating cost from the fifth day on a pro-rated basis. For purposes of this section, the daily operating cost is to be computed at one percent (1%) of the total contract cost until such time as the pool is reopened for normal operation. If the pool

Company Initials: _____; Customer Initials: _____

is not reopened for normal operation within thirty (30) days, Customer may cancel this Agreement by written notice to Company.

5. **CLOSING**. The pool will be considered closed to swimmers at end of the day on the last day of operation as specified in Exhibit A and Company will close the pool as soon after that date as Company deems possible. The Company will complete the following services, where applicable:

- (a) Store pool furniture at Customer's pool.

Company Initials: _____; Customer Initials: _____

Exhibit E

Pool Maintenance and Repairs

1. POOL CHEMICALS.

Company agrees to supply, at its expense:

- (a) Chlorine and pH control chemicals throughout the period of this agreement.

2. WATER QUALITY. Company will be responsible for maintaining the following chemical levels of the swimming pool water within the tolerances of the local health department while pool is open to swimmers:

Free Chlorine	1.0 to 3.0 PPM
pH	7.2 to 7.8
Total Alkalinity	80 to 120 PPM
Calcium Hardness	200 to 300 PPM
Chlorine Stabilizer	less than 100 PPM

At no time will the water chemistry cause a failure of permission to operate the pool granted by the local health department. In the event the local health department revokes permission to operate the pool due to improper water chemistry, Customer shall be entitled to a partial refund of the contract price set forth herein computed by the following formula:

Number of days closed times the average daily portion of the contract price (total price divided by number of days pool is to be in operation as determined by this Agreement).

All of the foregoing notwithstanding however, the Company shall be excused from maintaining water quality as established herein and the Customer shall be entitled to no refund in the event of any Act of God, repairs, interference by Customer, together with any and all other reasons beyond the control of Company.

Any work performed by Company shall be subject to the conditions in the "Repair Work" provision of this Agreement.

3. REPAIR WORK. During the term of this Agreement, the Company recommends compliance with the Virginia Graeme Baker Pool and Spa Safety Act. The Company also recommends that Customer have its pool inspected annually by a licensed electrician and have all recommended electrical repairs completed by the inspecting electrician. During the term of this Agreement, the Company stands ready to perform any other installations or repairs needed to preserve Customer's pool aesthetics and/or to comply with State, Federal or local regulations, but Customer shall have the option of using its chosen contractor to perform any recommended repairs. The Customer agrees to indemnify, defend, and hold the Company harmless from all claims, injuries, damages, attorney's fees, and defense costs arising out of 1) repairs or renovations performed by any entity other than the Company, or 2) the failure of Customer to complete a) repair(s) or installations needed to comply with State, Federal or local regulations, or b) the above-described annual electrical inspection and recommended repair(s).

Company Initials: _____; Customer Initials: _____

Work will be billed as follows:

- (a) Any repairs required as the result of error or negligence by Company shall be paid for by Company with no cost to Customer. Additionally, Company shall reimburse Customer for volume of water lost as a result of error or negligence.
- (b) Company will perform minor repairs to the pool and recirculation system, as part of the service provided; however, the Customer shall pay for parts and/or materials.
- (c) For repair work or necessary equipment wherein the cost does not exceed \$175.00, the Company shall bill Customer.
- (d) Any work or equipment in excess of \$175.00 to be provided by the Company or Company's subcontractors will be provided and billed to Customer. Such work or equipment shall be provided only upon the authorization of the designated representative of Customer, or in the event the Customer elects not to have such work performed or equipment provided, Company may cancel this Agreement if said election interferes with the Company's ability to carry out its responsibilities under this Agreement.

4. **SUPPLIES.**

Company agrees to supply, at its expense:

- (a) Chlorine and pH control chemicals throughout the period of this agreement.
- (b) The following pool and janitorial supplies:
 - Soap
 - Disinfectant
 - Paper towels
 - Deodorizer
 - Toilet tissue
 - Correct size trash can liners for the pool area and bathrooms
 - Glass cleaner

Customer shall be responsible for providing, at no cost to Company, other equipment such as:

Water hoses	Life hooks
Pool vacuum heads	Pool rules signs
Pool poles	Trash receptacles
Pool vacuum hoses	Water test kit
Leaf eater	Test kit reagents
Rescue tubes	First Aid Kit
Ring buoys	First Aid supplies

Company Initials: _____; Customer Initials: _____

Blood Borne	Pool brushes
Pathogens Kit	Leaf skimmers
Light bulbs	Algaecides
Safety goggles	Algae brushes
Chemical resistant gloves	Lifeguard stand(s)
Mops	Umbrella for each lifeguard station
Brooms	Back board with three straps
Dust pan	Head immobilizers for use with Back board
Brushes	Clock
Buckets	
Sponges	

For Customer's convenience and for the efficient operation of the pool, Company will provide and invoice Customer for any of the items listed above that are not at the pool. Customer agrees to pay invoices for said supplies within thirty (30) days after invoicing.

ADDITIONAL CHEMICALS. If additional chemicals are required to maintain or correct pool water chemistry due to a failure or breakdown of Customer's equipment, or loss of water (leak) due to a defect in Customer's pool or recirculation system, which are not attributable to negligence of Company, Customer agrees to pay as an additional charge, the reasonable expense of all said additional chemicals.

Company Initials: _____; Customer Initials: _____

Exhibit F

Off Season Service

1. OFF-SEASON SERVICE.

The Company shall perform the following services at the Customer's pool during the off-season:

Uncovered Off-Season Service with Filter System Running – 1 visit per week during March, April and October, November, December, January and February.

- (a) Check chemicals and adjust as needed.
- (b) Vacuum as needed.
- (c) Clean skimmer baskets as needed.
- (d) Blow decks as needed.
- (e) Backwash filters & cleans strainer pots as needed.
- (f) Report any off-season vandalism to Customer.
- (g) Pool will be kept reasonably clean, but not up to Summer Season standards.

Company Initials: _____; Customer Initials: _____

Exhibit G

Swimming Lessons

1. **INSTRUCTIONS.** Swimming instruction may be provided by Company for Customer's members only. Instruction shall be given by a qualified individual, while not on duty as a lifeguard. Company shall have rights to swimming lessons at Customer's pool during the term of this Agreement. All Company insurance as described in Exhibit C shall apply to Company's swimming instructors.

Arrangements for any instruction shall be made between individual requesting instruction and the Company. Only a member of the Customer's municipality in good standing is eligible to receive instruction from Company on Customer's premises. Any resulting agreement shall be considered a contract between that individual and the Company; and Customer shall not be held liable for its enforcement nor for the collection of any fees due Company under the terms of that contract. After costs and payroll fees, Company shall split swim lesson profits with Customer.

Company Initials: _____; Customer Initials: _____

Exhibit H

Customer Contact Information

PRIMARY CONTACT:

Name _____
Title or Position: _____
Street _____
City _____ State _____ Zip _____
Telephone () _____
Email: _____

PRESIDENT:

Name _____
Street _____
City _____ State _____ Zip _____
Telephone () _____
Email: _____

TREASURER:

Name _____
Street _____
City _____ State _____ Zip _____
Telephone () _____
Email: _____

BILLING ADDRESS:

Name _____
Street _____
City _____ State _____ Zip _____

FACILITY INFORMATION:

Name _____
Street _____
City _____ State _____ Zip _____
Telephone () _____

Company Initials: _____; Customer Initials: _____

Exhibit I

Terms and Conditions

1. **CANCELLATION**. The Customer shall have the right to cancel this Agreement based on Company's non-performance of duties and responsibilities as follows:

- (a) Customer shall notify Company by certified mail of any problem regarding performance as detailed in this Agreement. Company shall have 48 hours following Company's receipt of notification to remedy stated violation of contract.
- (b) If Company fails to remedy violation and continues to not perform as detailed in this Agreement; Customer may terminate Agreement by providing five (5) days' written notice to Company by certified mail.
- (c) In the event that Customer terminates contract by procedure stated above, the Customer shall either be entitled to a refund for money paid in advance or shall be responsible for a balance owed to the Company. Refund to be computed as follows:

A daily portion of the contract price shall be computed by dividing the total contract price by the number of days pool was to be open to members as determined by this Agreement. This daily price shall be multiplied by the number of days pool was operated under this Agreement. That amount shall be subtracted from the total amount of contract price paid to Company by Customer as of termination date. The resulting figures shall either be the refund to which the Customer is entitled or remaining balance owed to Company.

- (d) Refund or balance owed shall be paid within five (5) business days after termination.

2. **MISCELLANEOUS**.

- (a) The Company may display a sign on the pool premises designating the responsibility to the Company for the quality of the pool and the performance of the pool staff.

3. **EXTENSION OF CONTRACT**. This Agreement shall automatically renew on the same terms and conditions herein at the contract amount in effect for the immediate preceding year, plus an amount not to exceed 5% thereof, at the sole option of Company. In the event that Customer desires not to renew and extend this Agreement as provided herein, Customer shall provide Company with written notice thereof on or before December 31st of the current year.

4. **GOVERNING LAW**. This Agreement shall be governed by the laws of the State of Texas.

5. **STRICT COMPLIANCE**. No failure of Company to exercise any power or right granted hereunder or to insist upon strict compliance by Customer with its obligations and duty hereunder shall constitute a waiver of Company's right to demand strict compliance with the provisions hereof at any time.

Company Initials: _____; Customer Initials: _____

6. **TIME OF ESSENCE.** Time is of the essence of this Agreement.
7. **ENTIRE AGREEMENT, MODIFICATION, BINDING EFFECT.** This Agreement constitutes the entire agreement of the parties and supersedes any prior agreements, understandings or negotiations, written or oral. This Agreement may not be modified or amended except in writing, signed by both parties hereto. This Agreement shall be binding upon and enure to the benefit of the Customer and Company and to their respective heirs, successors and assigns.
8. **RIGHTS CUMULATIVE.** All rights and powers under this Agreement shall be cumulative and, except as otherwise provided herein, shall be in addition to any and all other provided at law or in equity.
9. **EXTENSIONS.** Unless other agreed to by Customer and Company in writing, the terms of this Agreement shall apply to all extensions and renewals hereof.
10. **SEVERABILITY.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
11. **ATTORNEYS FEES.** In the event of any legal proceeding or arbitration between the parties, each party shall be responsible for paying its own attorney's fees.
12. **COMPANY'S OPTION IN THE EVENT OF CHANGE IN LAWS.** If there is a change in local, state, or federal law concerning any cost aspect relating to this proposal, the company may present a new contract amount to Customer, which new Contract shall supersede and replace this Agreement. Customer shall have 30 days from the date of receipt of the new contract in which to accept or reject the new contract. In the event the Customer elects to reject the new contract, this contract may be terminated at the sole option of the company.
13. **COMPANY'S OPTION IN THE EVENT OF INCREASE IN COSTS.** If there is an increase of ten percent (10%) or more in any cost aspect (including necessary increases in wages paid to pool staff) relating to this proposal, Company may present to Customer a reasonable increase in the price of this Agreement based solely on Company's additional cost of providing the services provided for herein. Customer may, at its sole option, choose to refuse to pay an increase in price. In the event the Customer elects not to pay the increase, this contract may be terminated with 10 days written notice to Customer at the sole option of the company.

Company Initials: _____; Customer Initials: _____

Exhibit J**Payment Schedule**

Payments by Customer to Company shall be made in accordance with the following schedule:

<u>Month</u>	<u>Management Payments</u>	<u>Off-Season Service Payments</u>	<u>Total Payments Due</u>
(a) One (1%) percent upon signing of Agreement	\$370		\$370
(b) Off-season Maintenance on or before January 1 of each year		\$600	\$600
(c) Nine (9%) percent plus off-season maintenance on or before February 1 of each year.	\$3,306	\$600	\$3,906
(d) Off-season Maintenance on or before March 1 of each year		\$600	\$600
(e) Off-season Maintenance on or before April 1 of each year		\$600	\$600
(f) Fifteen (15%) percent plus off-season maintenance on or before May 1 of each year	\$5,510		\$5,510
(g) Twenty-four (24%) percent on or before June 1 of each year	\$8,817		\$8,817
(h) Twenty-six (26%) percent on or before July 1 of each year	\$9,552		\$9,552
(i) Twenty (20%) percent on or before August 1 of each year	\$7,348		\$7,348
(j) Five (5%) percent plus off-season maintenance on or before September 1 of each year	\$1,837		\$1,837
(k) Off-season Maintenance on or before October 1 of each year		\$600	\$600

Company Initials: _____; Customer Initials: _____

(l) Off-season Maintenance on or before November 1 of each year		\$600	\$600
(m) Off-season Maintenance on or before December 1 of each year		\$600	\$600
TOTAL	\$36,740	\$4,200	\$40,940

Payments are due as indicated above. All payments as specified above, not made on or before ten (10) days after the due date shall be subject to delinquent payment fees of 1 1/2% per month, or any part of a month, of the amount due or any portion thereof. Payments for repairs, equipment or labor, not made on or before thirty (30) days after the due date shall be subject to delinquent payment fees of 1 1/2% per month, or any part of a month, of the amount due or any portion thereof. In the event payments are not received within ten (10) days from the due date for contract payments, and thirty (30) days from the due date for other payments, the Company shall have the right, at its option, and within its sole discretion to suspend, until all overdue payments are received, or terminate its services under this Agreement and in either case to withdraw and remove all personnel from Customer's pool facilities without any further or additional notice to Customer. During a period of suspension or after termination, control of the pool and premises will be surrendered to the Customer and, if operated, it is at the Customer's sole risk and liability. Customer agrees to indemnify and hold Company harmless for any claims arising from the use of the pool(s) during a period of suspension or after termination due to payment(s) not being received on time. Any such suspension or termination notwithstanding, Customer shall be fully responsible for all payments provided herein.

In the event that Company elects to pursue collection of any amounts due under this Agreement, Customer shall pay all said amounts, together with interest at the rate of 12% per annum from the date the same became due, together with any and all cost of collection, including and together with any and all reasonable litigation expenses, including reasonable attorneys fees.

Company Initials: _____; Customer Initials: _____

