

REQUESTED BY: CITY MANAGER, BILL KOCHER

DATE OF FIRST READING: 12-17-2019 WAIVE RULES? YES ✓ NO

FINAL ACTION DATE: 1-7-2020 VOTE: ✓ YES NO

SUSPENSION OF TWO
READING RULE:

YES	NO
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DENISE LINGO
JENNIFER MOODY
ROBERT PARSONS
JUDY PETERSEN
JOE ROETTING
KISHA DOSA
CORDEL GEORGE
TOTALS

ADOPTION OF
RESOLUTION:

YES	NO
<u>✓</u>	<u> </u>
<u>✓</u>	<u> </u>
<u>✓</u>	<u> </u>
<u>✓</u>	<u> </u>
<u>ABSENT</u>	<u> </u>
<u>✓</u>	<u> </u>
<u>✓</u>	<u> </u>
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RESOLUTION NO. **19-1137**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE
AN AGREEMENT BETWEEN THE CITY OF MT. HEALTHY AND CINCINNATI
POOL MANAGEMENT**

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MT. HEALTHY,
STATE OF OHIO:

Section 1. That the City Manager is hereby authorized to execute an Agreement on
behalf of the City of Mt. Healthy between the City of Mt. Healthy and Cincinnati Pool
Management for operation of the Mt. Healthy City Pool under terms set forth in the form as
shown on Exhibit A attached.

Section 2. That this Resolution shall be in full force and effect from and after the
first date provided by law.

Passed this 7 day of JANUARY, 2020.

Karen Bittner
President of Council

Attest: Melanie B...
Clerk of Council

Approved this 7 day of JANUARY, 2020.

Samuel...
Mayor



SWIMMING POOL MANAGEMENT AGREEMENT

This Agreement, between **Cincinnati Pool Management** (the “Company”) and **City of Mt. Healthy** (the “Customer”), is to provide for the staffing, water chemistry maintenance and cleaning by the Company at the Customer’s pool located at Mt. Healthy in accordance with the specifications, conditions, and terms set forth herein. 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 November 1, 2019 for the 1 -year period extending from January 1 2020 through December 31, 2020.

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.

2. **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 significantly exceed the industry norm.

**Please see Section 5 for more details on personnel.*

3. **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 a requirement and not an extravagance, as pool accident judgments have been awarded for multi-millions.

The Company agrees to maintain, at a minimum, \$20 million liability insurance coverage for the length of this Agreement. The Company shall provide Customer with a copy of the appropriate declarations page for said comprehensive insurance package reflecting the minimum liability insurance coverage described herein, and naming Customer as an additional insured.

**Please see section 6 for more information on liability insurance*

4. **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 remain 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 positions, 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.

5. PERSONNEL.

- (a) 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.
- (b) All lifeguards employed by the Company shall have the minimum standard American Red Cross Basic Lifeguarding Certificates or Lifeguard Training Certificates, or the equivalent, as well as Professional Rescuer CPR, and then shall go through Company's proprietary lifeguard training and testing which provides knowledge and awareness well beyond the industry standard.
- (c) Company is solely responsible for selecting competent and qualified lifeguards for the safe operation of the Customer's swimming pool.
- (d) Personnel will be trained by the Company. Personnel not performing up to the standards of the Customer will be replaced by the Company within 12 hours.
- (e) Company is responsible for exercising control over the activities performed by the lifeguards. Lifeguards will be supervised by Company management personnel.
- (f) 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
- (g) 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.
- (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 frequently enough that the pool is always clean
- 5) Cleaning tiles around pool edge.
- 6) Backwashing filter system.
- 7) Checking and recording filter pressure gauge readings and flow meter
- 8) Cleaning bathhouse throughout the day
- 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.

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.

6. **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**.
- (b) **Worker's Compensation insurance** covering all persons engaged on behalf of the Company in the performance of the terms of this Agreement.

Company does hereby agree to hold harmless and indemnify Customer and its agents, representatives, and/or employees of and from all claims, demands, actions, liability, damages, judgments, or losses whatsoever arising out of or alleged to have arisen out of any acts, omissions, and/or negligence of Company or its employees, agents, contractors, or representatives. Such indemnifications shall include reasonable attorney's fees incurred in defending or opposing any such claims, demands, actions, liability, damages, judgments, or losses. 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.

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.

Except for the actions/activities for which the Company agrees to indemnify and hold harmless the Customer herein, 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, except for additional hours for which Company is contracted according to the terms of this Agreement.

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.

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

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

- (k) Inspect and re-supply water testing supplies.
- (l) Inspect underwater lights.
- (m) Perform requisite repair work as needed and authorized by Customer (see "Repair Work").
- (n) Remove, clean, and store Customer's pool cover at Customer's pool.
- (o) Drain and clean pool, if applicable.

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

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) 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) 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.

PRE-SEASON SWIM TEAM PRACTICE. At Customer's request, Company shall ready the pool for swim team practice earlier than the normal opening date. Customer shall give Company at least two (2) weeks prior notice. Company shall maintain the pool three (3) times per week during pre-

season swim team practice at no additional fee to Customer. Any additional maintenance visits required by the swim team will be contracted with Company separately from this Agreement.

8. **POOL OPERATION.** Company agrees to furnish certified lifeguards and other personnel as contracted herein to operate the pool on the following schedule:

DATES OF OPERATION:

The pool will be open on the following days:

May 29 through August 14, 2020

HOURS OF OPERATION:

The pool to be open during the following hours:

Saturday	12:00 p.m. to 7:00 p.m.
Sunday	1:00 p.m. to 7:00 p.m.
Monday	12:00 p.m. to 6:00 p.m.
Tuesday	1:00 p.m. to 7:00 p.m.
Wednesday	12:00 p.m. to 6:00 p.m.
Thursday	1:00 p.m. to 7:00 p.m.
Friday	12:00 p.m. to 6:00 p.m.

STAFFING:

- One (1) manager or assistant manager will be provided for all hours of operation including swim team and swim lessons.
- Six (6) lifeguards will be provided daily per operating schedule
- One (1) gate attendant will be provided daily per operating schedule

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.

SAFETY BREAK. Once every hour the pool will be cleared for a period of ten minutes. Safety Break will be taken at 10 minutes before the hour during the hours that the pool is open. During this break, lifeguards will not be on duty, the pool will be closed, and neither the lifeguards nor the Company shall be responsible for people using the pool during said break.

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 two times 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 Customer will notify Company on or before August 10 concerning post-Labor Day openings. The cost for post-Labor Day operation shall be billed to the Customer at the prevailing rate, which may change from year to year. The current cost is \$20.00 for each day (including days the pool is closed) from Labor Day through the final day the pool is open for swimming, plus \$16.00 per Lifeguard hour for time worked on or before September 18. The cost for Lifeguard hours worked after September 18 is currently \$29.00 per Lifeguard hour. Amount shall be payable to the Company on the initial day of post-Labor 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
- (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.

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>
At Pool	
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 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.

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

10. **CLOSING.** The pool will be considered closed to swimmers at end of the day on the last day of operation as specified in Section 8 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) Pump pool water to correct level.
- (b) Prepare pool and pool plumbing lines for freeze protection; Company agrees to use common and accepted winterization techniques. Company will repair any freeze damage at Company's expense, with the exception of damage due to circumstances beyond the Company's control. If a contractor is to be selected to

complete a repair under this warranty, only the Company has the right to choose a contractor.

- (c) Add anti-freeze to appropriate fixtures.
- (d) Drain pumps and hair/lint strainer.
- (e) Backwash and drain filter tanks.
- (f) Open all valves to appropriate settings.
- (g) Remove and store skimmer parts.
- (h) Remove and store all movable ladders, lifeguard chairs, and diving boards when required for closing pool.
- (i) Clean chemical feeders.
- (j) Drain and store hoses.
- (k) Lubricate filter system valves.
- (l) Add winterization chemicals to pool.
- (m) Install Customer's cover, if applicable.
- (n) Store pool furniture at Customer's pool.

11. **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.

12. **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 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).

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 \$125, the Company shall bill Customer.
- (d) Any work or equipment in excess of \$125 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.

13. **CHEMICALS AND 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

Trash receptacles

Pool poles

Water test kit

Pool vacuum hoses

Test kit reagents

Leaf eater

First Aid Kit

Rescue tubes

First Aid supplies

Ring buoys

Pool rules signs

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.

- (c) Additional chemicals or labor. If additional chemicals or labor are required to maintain or correct pool water chemistry due to a failure or breakdown of Customer's equipment, or loss of water due (leak) to a defect in Customer's pool or recirculation system, Company shall notify Customer of such breakdown or defect, and if Customer elects not to remedy problem within seven (7) days of notice, Customer shall pay as an additional charge the reasonable expense of all said additional chemicals and/or labor. Amount owed for chemicals and/or labor shall be paid by Customer within ten (10) days after invoicing by Company.

14. **OFF-SEASON SERVICE.** Commencing August 15, 2020, after the pool has closed for the season, the Company shall inspect the pool one (1) time a month to assure that it is in adequate off-season condition so that the pool may be appropriately filled and be ready for use the following season.

15. **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 Section 6 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 club or homeowner's association 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. Company shall be entitled to all fees paid for instruction provided by Company's employee(s).

16. **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.

17. **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.

18. **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.

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

20. **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 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.

21. **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.
- (b) Any notices required to be given to either party under this Agreement shall be sent by certified U.S. mail, return receipt requested, to the following individuals:

- (1) To Company:

- (2) To Customer:

City of Mt. Healthy
ATTN: William Kocher
7700 Perry Street
Mt. Healthy, Ohio 45231

Notice shall be given as of the date it is received by the notice recipient.

22. **PROPOSAL EXPIRATION OPTION.** This contract is voidable at the Company's option if not executed by the Customer and returned to the Company November 30, 2019.

23. **PAYMENTS.** The Company hereby proposes to perform the work and services set forth above for the price of **\$69,716** for Year One upon the specifications, conditions and terms as set forth herein. Payments by Customer to Company in Year One shall be made in accordance with the following schedule:

(a)	One percent (1%) upon signing of Agreement or the annual renewal date of this Agreement.	\$697.16
(b)	Nine percent (9%) on or before February 1 of each year.	\$6,274.44
(c)	Fifteen percent (15%) on or before May 1 of each year.	\$10,457.40
(d)	Twenty-four percent (24%) on or before June 1 of each year.	\$16,731.84
(e)	Twenty-six percent (26%) on or before July 1 of each year.	\$18,126.16
(f)	Twenty percent (20%) on or before August 1 of each year.	\$13,943.20
(g)	Five percent (5%) on or before September 10 of each year.	\$3,485.80

<u>TOTAL:</u>	<u>\$69,716</u>
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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.

24. CUSTOMER CONTACTS:

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 () _____

25. **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 September 30 of the current year. In the event Company desires not renew and extend this Agreement, Company shall provide Customer with written notice thereof on or before September 30 of the current year.

26. **GOVERNING LAW.** This Agreement shall be governed by the laws of the State of Ohio.

27. **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.

28. **TIME OF ESSENCE.** Time is of the essence of this Agreement.

29. **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.

30. **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.

31. **EXTENSIONS.** Unless other agreed to by Customer and Company in writing, the terms of this Agreement shall apply to all extensions and renewals hereof.

32. **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.

33. **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.

34. **COMPANY'S OPTION IN THE EVENT OF INCREASE IN COSTS.** The parties agree that, should any cost factor of the Company for providing services or products under this Agreement increase more than twenty percent (20%) in any contract year, Company may present a new Agreement to Customer on or before January 1 of the current contract year. Customer shall have 30 days from

the date of receipt of the new Agreement in which to accept or reject the new Agreement. If Customer accepts the new Agreement then the new Agreement shall supersede and replace this Agreement. In the event the Customer elects not to accept the new Agreement, this Agreement may be terminated at the sole option of the Company.

35. **COMPANY'S OPTION IN THE EVENT OF INCREASE IN INSURANCE PREMIUMS.** The parties agree that, should Company's annual insurance rate increase more than ten percent (10%) in any contract year, Company may present a new Agreement to Customer on or before January 1 of the current contract year, which new Agreement shall supersede and replace this Agreement. Customer shall have 30 days from the date of receipt of the new Agreement in which to accept or reject the new Agreement. In the event the Customer elects not to accept the new Agreement, this Agreement may be terminated at the sole option of the Company.

36. **COMPANY'S OPTION IN THE EVENT OF CHANGE IN LAWS.** If there is a change in local, state, or federal law which affects the cost of providing services under this Agreement, the Company may present a new Agreement 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 not to accept the new Agreement, this Agreement may be terminated at the sole option of the Company.

37. **COMPANY'S OPTION IN THE EVENT OF CHANGE OF SCHOOL SCHEDULE.** The parties agree, should there be any change in the school schedule which affects the cost of providing services under this Agreement, Company may present a new Agreement to Customer, which new Agreement shall supersede and replace this Agreement. Customer shall have 30 days from the date of receipt of the new Agreement in which to accept or reject the new Agreement. In the event the Customer elects not to accept the new Agreement, this Agreement may be terminated at the sole option of the Company.

38. **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.

Cincinnati Pool Management

By: _____

Officer

City of Mt. Healthy

By: _____

Title of Officer: _____

Attest: _____

Title of Officer: _____

Date: _____

