

INTERIM POOL-OPERATION AGREEMENT

THIS INTERIM POOL-OPERATION AGREEMENT ("Agreement") is made this _____ day of _____, 20____ by and between the **CITY OF LYNDEN**, a Washington municipal corporation ("City"), and the **BELLINGHAM BAY SWIM TEAM**, a Washington nonprofit corporation ("BBST"). City and BBST may be referred to herein individually as "Party" or collectively as "Parties."

WHEREAS, City's agreement with the Whatcom Family YMCA to operate City's recreational facility located at 100 Drayton Street, Lynden, Washington ("Premises") will terminate on October 1, 2020; and

WHEREAS, City is in the process of selecting a long-term operator of the Premises, but desires to operate the Lynden Pool ("Pool") located on the Premises in the interim period in order to provide aquatic recreational services to the general public; and

WHEREAS, BBST desires to use the Pool and, in exchange for access to and the right to use the same, is agreeable to serving as the interim operator of the Pool on behalf of City until City secures a long-term operator; and

WHEREAS, City anticipates a start date of October 5, 2020 for interim operation of Pool for the benefit of the public;

WHEREAS, City and BBST are cognizant that this Agreement is entered into during an ongoing public health emergency posed by the COVID-19 global pandemic; and

WHEREAS, while the purpose of this Agreement is to establish the initial terms of the arrangement between the Parties, these terms will likely need to evolve in response to what is feasible and/or required under these unique public health circumstances and, consequently, the Parties understand that flexibility between them is crucial; and

WHEREAS, the foregoing recitals are a material part of this Agreement;

NOW THEREFORE, in consideration of the mutual promises contained herein, the Parties agree as follows:

1. SWIM TEAM USE. BBST shall enjoy full use and enjoyment of the Pool for its own swim related purposes at all hours it is not open to and being operated for use by individual members of the general public ("Community Users").

2. COMMUNITY USE. BBST shall operate the Pool on behalf of City for use by all Community Users as follows:

2.1. HOURS. BBST shall open the Pool to Community Users Monday through Friday, 8 a.m. to 12 p.m. These hours may be contracted or expanded from time to time depending upon community demand and capacity to accommodate the same.

- 2.2. SERVICES. BBST shall offer regularly scheduled 50-minute water aerobics classes to Community Users. BBST shall provide both an in-person and online mechanism by which said Community Users may be notified of and sign up for water aerobics lessons. Further, BBST shall provide expanded services, including without limitation lap-swimming and recreational swimming, to Community Users at such times as City deems feasible and desirable.
- 2.3. USER FEES. BBST may collect on behalf of City a facility admission fee of Five Dollars (\$5.00) cash per Community User per entry to Pool. Said fee receipts shall be delivered to City not less than weekly. The City may, at its discretion, waive the fee if certain criteria are met.
- 2.4. STAFFING. BBST shall provide the following staffing services during hours the Pool is open to Community Users ("Community Use Hours"):
- i. Lifeguards to supervise Community User swimming;
 - ii. Water aerobics instructors to conduct water aerobics lessons;
 - iii. Staff member(s) assigned to handle greeting and check-in/check-out of Community Users;
 - iv. Security staff responsible for opening and closing the Pool and Premises (note: this obligation shall apply equally to Community Use Hours and BBST swim team use hours); and
 - v. Staff member(s) responsible for daily monitoring Pool water quality and ensuring proper chlorination.
- 2.5. OTHER FACILITIES. BBST shall limit access to other facilities on the Premises to use of restrooms. Access to all other facilities by Community Users, including without limitation lockers and showers, shall be prohibited until further notice is received from City.
3. COVID-19 COMPLIANCE. BBST shall ensure that the Pool is at all times (whether being operated during Community Use Hours or BBST swim team use hours) operated in compliance with all applicable local, state and federal COVID-19 guidelines.
4. CUSTODIAL SERVICES. City shall supply custodial staff and services.

5. CARE OF PREMISES. BBST shall at all times keep and use the portions of the Premises under its operation in accordance with applicable state and local law, and in accordance with all directions, rules and regulations of the health officer, fire marshal, building inspector or other proper officer of City and/or Whatcom County. Further, BBST shall permit no waste, damage or injury to the portions of the Premises under its operation.
6. COMPENSATION AND EXPENSES. In exchange for BBST's use of the Pool for swim team use, BBST shall pay to City the sum of Five Thousand Dollars (\$5,000.00) per month, with the first month prorated, less monthly operating costs incurred by BBST. Each monthly payment shall be delivered to City by the seventh (7th) day of the following month and shall be accompanied by an accounting (for City review and approval) of all expenses deducted from each monthly payment. If the previous month's operating costs exceeded the amount of compensation due to City, BBST shall nevertheless deliver to City, within the above timeframe, an accounting of the previous month's expenses for City review and approval. City shall pay all monthly operating costs (including without limitation utilities charges, taxes, staffing expenses, custodial expenses and maintenance expenses) over Five Thousand Dollars (\$5,000.00) per month, up to a maximum total of Eleven Thousand Dollars (\$11,000.00) per month.
7. INSURANCE. BBST shall purchase, and maintain at its sole cost and expense, comprehensive general liability insurance covering personal injury and property damage in the minimum amount of Two Million Dollars (\$2,000,000.00) aggregate, insuring its operation of the Pool and other facilities on the Premises for BBST swim team use and all Community Users, placed with a reputable and financially strong insurance carrier approved by City. City shall be named as an additional insured on the insurance certificate for said insurance policy, which shall be provided to City prior to the re-opening of the Pool on October 5, 2020. BBST shall maintain an insurance policy in place, as herein described, for so long as this Agreement remains in effect, and shall obtain prior City approval of any changes in said policy or carrier. BBST's failure to comply with any part of these requirements shall be deemed a material breach of this Agreement.
8. HOLD HARMLESS. BBST shall indemnify and hold City, including its successors, assigns, officers, directors, employees, members and agents, harmless from and against any claim, demand, action, proceeding, loss, damage, suit, cost or expense, including but not limited to reasonable attorney's fees and costs, arising from or related in any manner to BBST's use and operation of the Premises, except to the extent caused by City's negligence.

9. DURATION AND TERMINATION WITHOUT CAUSE. This Agreement shall remain in place until terminated as provided herein. The Agreement may be terminated by either Party without cause at any time and for any reason by providing ten (10) business days' prior written notice of intent to terminate. In the event this Agreement is terminated, BBST shall vacate the Premises no later than the effective date of termination.
10. TERMINATION WITH CAUSE. In the event there is a material breach of this Agreement by BBST (for example only and not by way of limitation, if BBST fails to secure or maintain sufficient insurance coverage as required herein), then City may terminate this Agreement immediately upon providing prior written notice of termination to BBST. Upon receipt of said notice, BBST shall immediately and completely vacate the Premises.
11. VACATION OF PREMISES. Whenever the terms of this Agreement require BBST to vacate the Premises, BBST shall leave the Premises in the same condition as obtained at the outset of this Agreement, subject to City's responsibility to provide ordinary custodial services. Upon vacation, all personal property of BBST or its effects of any kind or description whatsoever left on or about the Premises after the Termination Date shall be at BBST's sole risk and City shall not be liable or responsible for any damage done to or loss of such personal property or effects.
12. NONWAIVER OF BREACH. Failure of either Party at any time to require performance of any provision of this Agreement shall not limit such Party's right to enforce such provision, nor shall any waiver of any breach of any provision of this Agreement constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself.
13. ATTORNEY'S FEES. The prevailing party in any action brought to enforce any terms and conditions of this Agreement shall be entitled to the recovery of its reasonable attorney's fees, costs and expenses.
14. GOVERNING LAW AND VENUE. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Venue shall be Whatcom County Superior Court.
15. SEVERABILITY. In case any one or more of the provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision herein, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

16. COUNTERPARTS. This Agreement may consist of two or more separately ratified counterparts, each of which shall constitute a duplicate original of this Agreement and all of which together will constitute a single Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date above written.

CITY OF LYNDEN

By: Scott Korthuis
Its: Mayor

BELLINGHAM BAY SWIM TEAM

By:
Its:

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this ____ day of _____, 20__, before me a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Scott Korthuis, the Mayor of the **CITY OF LYNDEN**, a Washington municipal corporation, who acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned and stated on oath that he/she was authorized to execute this instrument on behalf of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first written above.

Notary Public in and for the State of Washington
Residing at: _____
My commission expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this ____ day of _____, 20__, before me a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, the _____ of the **BELLINGHAM BAY SWIM TEAM**, a Washington nonprofit corporation, who acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned and stated on oath that he/she was authorized to execute this instrument on behalf of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first written above.

Notary Public in and for the State of Washington
Residing at: _____
My commission expires: _____