

Pleasant Hill, Missouri Aquatic Center Management Agreement

THIS CONTRACT is made as of the ___ day of _____, by and between City of Pleasant Hill, located in Missouri, hereinafter called "*City*" and MIDWEST POOL MANAGEMENT OF AMERICA, LTD, a for-profit company, hereinafter called "*Midwest Pool Management*."

WHEREAS, City of Pleasant Hill owns Pleasant Hill City Pool located at 1300 E. Myrtle; and

WHEREAS, City desires to retain Midwest Pool Management to manage the operations of their aquatic facility; and

WHEREAS, Midwest Pool Management possesses the expertise and experience necessary to provide pool management services to the City.

NOW, THEREFORE, for and in consideration of mutual covenants herein contained, it is agreed as follows:

Section 1. Representations and Warranties of Midwest Pool Management.

Midwest Pool Management hereby represents and warrants as follows:

- a) Under this agreement, Midwest Pool Management will manage the operations of Pleasant Hill City Pool as per the scope of duties outlined in Section 2.
- b) Midwest Pool Management will coordinate its activities with the City designated representative in an effort to reduce duplication of services.
- c) Midwest Pool Management is a for-profit company, the principal purpose of which is the operations and management of aquatic facilities in the Midwest.
- d) Midwest Pool Management warrants and represents that its services provided under this Contract will at all times be performed and delivered in a competent, skillful and workmanlike manner and will in all respects be fit for their intended purposes.
- e) Midwest Pool Management warrants and represents that it is duly qualified to do business in Missouri and that it possesses all necessary statutory authority to transact business in the state.

Section 2. Services to be provided by Midwest Pool Management.

The Midwest Pool Management shall provide the following managerial and operational services:

2.1. Operations and Maintenance of Pools.

A. Midwest Pool Management shall provide for the operation of Pleasant Hill City Pool from May 29, 2021 – September 6, 2021 with the schedule as outlined below:

May 29 – August 22, 2021	12:00 pm – 5:00 pm	Open Swim Mondays, Wednesdays, Saturdays
	12:00 pm – 7:30 pm	Open Swim Tuesdays, Thursdays, Sundays
	9:00 am – 5:00 pm	Open Swim Fridays
	10:00 am – 11:30 am	Lap Swim Saturdays and Sundays
August 23 – September 6, 2021	3:00 pm – 8:00 pm	Open Swim on School Days
	12:00 pm – 5:00 pm	Weekends and Holidays
	10:00 am – 11:30 am	Lap Swim Saturdays and Sundays

2.2 Spring Opening:

City will be responsible for opening the pool at the beginning of the season. Should City request Midwest Pool Management to provide this function, additional cost may be presented to City for review and approval.

2.3 Operation of Pleasant Hill City Pool

Midwest Pool Management will use reasonable care and diligence to provide the following services for the operation of Pleasant Hill City Pool:

1. Enforce all rules and regulations stipulated by the City and suggest and advise with regard to additional rules and regulations for the operation of the pool.
2. Maintain any records as reasonably required by the City.
3. Furnish and supply necessary consumable first aid supplies adequate to the size and operation of Pleasant Hill City Pool. The First Aid Kit will carry supplies for a minimum of 50 persons and shall include: adhesive bandages, sterile pads, gauze pads, eye pads, tape, dressings, elastic bandage, antiseptic, ammonia inhalants, scissors, tweezers, latex gloves, clean wipes, eye wash, elastic gauze, large bandage patch. First aid kit will include a pocket mask with a one-way valve, and a bodily fluid exposure kit. Midwest Pool Management shall provide first responder first aid kits, including rubber gloves and pocket mask with one way valve, for all on-duty personnel. This proposal does not include non-consumable equipment, such as backboard, oxygen tank, AED or rescue tubes.
4. Vacuum pools. Each pool will be vacuumed entirely a minimum of one time a week and spot vacuumed on a daily basis to maintain a clean appearance and be free of all

- debris. Pools will be vacuumed before the public enters the pool.
5. Work with the City in handling complaints users may have, reporting all complaints to the City's designated representative.
 6. Conduct in-service training as per guidelines of StarGuard Elite, Red Cross Aquatics or equivalent.
 7. Midwest Pool Management will retain a record of all problems brought to their attention. The City will review this log at weekly intervals. A daily log of communication will be kept in the manager's office for the managers and designated City personnel to review on a daily basis.
 8. Power wash or hose decks daily.
 9. Maintain and operate the filter equipment in accordance with manufacturers' requirements.
 10. Perform safety checklist daily.
 11. Clean Pleasant Hill City Pool, including: guard and manager office areas, bathhouse, all areas within the fencing, and restrooms. Cleaning to be completed outside of operational hours.
 12. Maintain water chemistry tests and records as required by State and local Health Department.
 13. Maintain and backwash filter system per manufacturer's recommendations.
 14. Clean the hair and lint strainers on all pumps and associated filtering devices to avoid a reduction in flow daily.

2.4 Fall Closing / Winterizing

At the end of the swimming season The City will winterize and close pools. Should City request Midwest Pool Management to provide this function, additional cost may be presented to City for review and approval.

2.5 Operational Supplies

City shall furnish necessary pool chemicals, and consumable first-aid supplies as specified, for the pool operation during the season and shall provide janitorial supplies (paper towels, soap, trash bags, toilet paper, cleaners, light bulbs, etc.) for the facility.

2.6 Maintenance and Replacement of City Owned Equipment.

Repairs and replacement of equipment needed during the season to continue the operation of the pool and to maintain the health and safety standards shall be the responsibility of the City. At City's request, Manager shall advise and receive approval from the City to make repairs should the need arise. Repairs are by separate agreement and the cost of which will be invoiced to the City. The City agrees to pay Manager, within thirty (30) days after receiving invoices from Manager for all repairs, parts, materials, and labor authorized by the City.

City is responsible for providing the maintenance and safety equipment. This list is not all inclusive, but includes the following: Telescopic pole, vacuum head, pool brush, vacuum hose, shepherd's crook, throw line, leaf rake, skimmer net, deep end rope and

buoys, leaf master, ring buoy, and rescue tubes. In the event of changes to federal, local or state guidelines requiring additional materials, supplies or staffing (signage, cleaning materials, etc.) in response to pandemic or any other reason, City will be responsible for additional costs for operation. Manager will present pricing for City approval.

3.2. Personnel.

Schedule and Staff Levels:

May 29 – August 22, 2021:

12:00 pm – 5:00 pm Open Swim
Mondays, Wednesdays, Saturdays: 1 Manager/Head Guard, 5 Guards,
1 Front Desk

12:00 pm – 7:30 pm Open Swim
Tuesdays, Thursdays, Sundays: 1 Manager/Head Guard, 5 Guards,
1 Front Desk

9:00 am – 5:00 pm Open Swim
Fridays: 1 Manager/Head Guard, 5 Guards,
1 Front Desk

Lap Swim 10:00 am – 11:30 am
Saturdays and Sundays: 1 Manager/Head Guard, 2 Guards,
1 Front Desk

August 23 – September 6, 2021

3:00 pm – 8:00 pm Open Swim on
School Days: 1 Manager/Head Guard, 5 Guards,
1 Front Desk

12:00 pm – 5:00 pm Weekends
and Holidays: 1 Manager/Head Guard, 5 Guards,
1 Front Desk

Lap Swim 10:00 am – 11:30 am
Saturdays and Sundays: 1 Manager/Head Guard, 2 Guards,
1 Front Desk

The City reserves the right to amend the hours of open swim operation as outlined in the paragraph above. At the City's request Midwest Pool Management shall provide personnel for lifeguard services for amended open swim hours or other special programs and events as well as private rentals scheduled outside of public swim sessions not listed

in the paragraph above. The City will be invoiced for this time at the hourly rates outlined on Exhibit B.

Midwest Pool Management shall have the authority to temporarily close Pleasant Hill City Pool during inclement weather (heavy rain, high wind or lightning) and shall be prepared to reopen it when the weather permits. If Pleasant Hill City Pool is to be closed for the day, there will be a mutual agreement by and between Midwest Pool Management and the City to close to the public. Midwest Pool Management shall have necessary personnel available seven (7) days per week, twenty-four (24) hours per day to attend to any problems that may arise.

Midwest Pool Management shall furnish personnel for the operation of Pleasant Hill City Pool. All lifeguards will hold a minimum qualification of an advance lifeguard certificate from of Starguard Elite, Red Cross or equivalent. Said personnel will be furnished in a manner to operate Pleasant Hill City Pool in the safest manner possible. All personnel will be uniformly identified at all times. All personnel employed by the Midwest Pool Management in the performance of fulfilling a contract for the operation of Pleasant Hill City Pool shall be employees of Midwest Pool Management and not of the City. All personnel employed by Midwest Pool Management shall be paid in accordance with the minimum Federal Wage and Hour Laws.

Midwest Pool Management shall be responsible for the payment of all employment taxes, Social Security taxes worker's compensation insurance, and unemployment insurance related to the employment of said personnel. Midwest Pool Management shall give the City's residents first priority when hiring for all positions.

4. Method of Payment.

A. Midwest Pool Management has submitted a firm management fee, which includes all overhead and insurance costs required for the season, as outlined in the scope of services. The Management fee shall be invoiced per the schedule on Exhibit A.

B. Midwest Pool Management has submitted a "not-to-exceed" Salary Budget (as defined below) amount on Exhibit B of this agreement for staff salaries and associated payroll taxes for the open swim hours detailed in Section 2.1 of this agreement at the staffing levels detailed in Section 3 of this agreement. There is no additional staffing expense to the City except as requested by the City to provide staffing for special programming, private rentals or hours outside of the scope detailed in section. The Salary Budget shall be invoiced per the schedule on Exhibit B, with payroll records subject to review by the City. Salary budget will be recapped in September of each year and reconciled with actual hours worked at the rates outlined in Exhibit B.

5. Licenses and Permits

The City shall be responsible for obtaining and paying the costs of all necessary permits and licenses required by any applicable laws, rules and/or regulations (including the statutes of the State of Missouri and the ordinances of the City, necessary for the

operation of the facility provided, however, the Midwest Pool Management shall be responsible for obtaining a business license.

6. Health and Safety Standards

Midwest Pool Management shall meet all Local, State and Federal requirements as they relate to its operation. Midwest Pool Management shall be responsible for maintaining the condition of the pool water in conformity with the standards specified by the Health Department having jurisdiction.

Upon any change in Federal or State guidelines, which govern the Midwest Pool Management's operation and/or employees, Midwest Pool Management may present a new contract amount in writing to the City. The City has 30 days to accept or reject the new amount.

7. Services to be Provided by The City

The City is responsible for the maintenance and replacement of the buildings, structures, utilities, and surrounding areas including shrubbery. The City shall furnish water, telephone, electric, gas, trash service and pay for the same.

The City is responsible for compliance with the Virginia Graeme Baker Pool and Spa Safety Act and Americans with Disability Act compliance.

The City shall provide four (4) sets of keys for locks that access the pools, bathhouse and equipment areas.

8. Term:

This contract shall be effective upon approval and execution of this agreement on April 12, 2021 and shall terminate on December 31, 2021. Upon the expiration of this Agreement, the City shall have the option to renew this Agreement for successive one-year periods under the same terms and conditions provided that the City shall give written notice to Midwest Pool Management on or before October 1 of its intention not to renew. Any necessary adjustments in the Management Fee and Salary Budget shall be negotiated between the City and Midwest Pool Management, and agreed upon in writing, signed by both parties.

9. Insurance:

Midwest Pool Management shall procure and maintain, for the duration of the contract, insurance of the types and minimum amounts as follows and name the City as an additional named insured.

9.1 Worker's Compensation Insurance.

Midwest Pool Management shall procure and shall maintain during the Term of the

Agreement, Worker's Compensation Insurance for all of its employees to be engaged and perform work under the Agreement, and in case any such work is sublet, Midwest Pool Management shall require subcontractors similarly to provide Workers' Compensation Insurance for all such employees to be engaged in such work, unless such employees are covered by the protection afforded by Midwest Pool Management's Workers' Compensation Insurance. In the event any class of employees engaged in hazardous work under the Agreement is not protected under the Workers' Compensation statute, Midwest Pool Management shall provide, and shall cause subcontractor to provide, adequate Employer's Liability Insurance for the protection of its employees not otherwise protected.

9.2 Comprehensive General Liability Insurance.

Midwest Pool management shall carry commercial general liability which includes bodily injury and property damage. The policy will include protection for and subject to the minimum limits set forth below:

Combined single limit, bodily injury and property damage,
\$1,000,000 per occurrence
\$1,000,000 personal injury
\$2,000,000 general aggregate
\$2,000,000 products/completed operations aggregate

The policy will include protection for the following hazards:

- Premises and Operation
- Independent Contractor's Coverage
- Products and Completed Operations Liability Coverage
- Personal Injury Liability
- Broad Form Property Damage
- Contractual Liability

9.3 Comprehensive Automobile Liability Insurance.

Midwest Pool Management shall maintain Comprehensive Automobile Liability insurance coverage with a combined single limit of \$1,000,000.00.

9.4 Satisfactory Coverage.

The insurance which Midwest Pool Management is required to obtain and maintain pursuant to this Section 9 shall be written by a company or companies licensed to do business in the State of Missouri. Insurance is to be placed with insurer with a Bests' rating of no less than an "A" rating. Midwest Pool Management shall not allow any policies to be canceled or permit the policies to lapse during the Term of the Agreement.

9.5 Indemnification.

Midwest Pool Management shall, at its sole cost and expense, indemnify, hold harmless and protect the City, including its officers and employees, from and against any and all claims, damages, costs or expenses (including court costs and reasonable attorney's fees) for any claim arising out of Midwest Pool Management's negligent acts under this Agreement; provided, however, that this hold harmless and indemnification shall not apply where such claims, actions, damage, liability, or expenses result from any omission, fault, negligence, or misconduct on the part of the City, its agents, servants, employees, contractors, or licensees. Notwithstanding the foregoing, Midwest Pool Management's indemnity obligations are limited solely to the extent directly caused by Midwest Pool Management's fault or negligence and any claim arising from any sickness, illness, or death connected to or arising from any infectious or contagious disease is specifically excluded from all Contractor's indemnity and defense obligations.

Except for Midwest Pool Management's negligent acts or omissions, City agrees to the fullest extent permitted by law, to indemnify, defend and hold harmless Midwest Pool Management, its agents and employees, from and against any and all claims, damages, losses, suits and expenses attributable to bodily injury, sickness, death or damage to property, that arises out of, results from or is any way directly or indirectly caused by any physical or structural or health condition, situation, state or position of owner's swimming pool, its equipment and surrounding or adjacent property, or any contagious or infectious disease, or caused by any act, error or omission by City or by anyone employed by it.

10. Independent Contractor

Midwest Pool Management is retained by the City only for the purposes of, and to the extent set forth in, this Contract, and the relationship of Midwest Pool Management with the City under this Contract during the term of this Contract shall be that of an independent contractor and not an employee, partner, member, owner, officer, director or other agent of the City. Midwest Pool Management agrees to devote sufficient time, effort, resources, ability, skill and attention as may be necessary for Midwest Pool Management to perform the services required to be provided to The City under this Contract, but performing such services subject to the provisions of this Contract, all applicable laws, rules, regulations governing the business of Midwest Pool Management and the work to be performed hereunder. Midwest Pool Management shall not be considered by reason of the provisions of this Contract or otherwise as being an employee of The City. This Agreement will not be deemed to create a partnership, joint venture, agency or fiduciary relationship between the parties. Midwest Pool Management shall have no right to bind The City to any agreement with any other person or entity and is not authorized to act for The City in any manner except as expressly set forth in the Agreement.

11. Notices.

All notices required or permitted hereunder shall be in writing and shall be deemed

delivered when actually received or, if earlier, on the third day following deposit in a United States Postal Service post office or receptacle with proper postage affixed (certified mail, return receipt requested) addressed to the respective other part at the address described below or at such other address as the receiving party may have theretofore prescribed by notice to the sending party.

Midwest Pool Management

Attn: Crissy Withrow
Vice President
156 Weldon Parkway
Maryland Heights, MO 63043
cwithrow@midwestpool.com

City Of Pleasant Hill

Attn: Kristen Ayers
Assistant City Administrator
203 Paul Street
Pleasant Hill, MO 64080
kayers@pleasanthill.com

12. Nondisclosure.

Midwest Pool Management agrees that it will not divulge to third parties without the written consent of the City any information obtained from or through the City in connection with the performance of this Contract.

13. Changes.

No change in this Contract shall be made except in writing prior to the change in work or terms being performed. Midwest Pool Management shall make any and all changes in the Work without invalidating this Contract when specifically required to do so in writing by the City. Midwest Pool Management, prior to the commencement of such changed or revised work, shall submit promptly to the City, a written cost or credit proposal for such revised Work. No work or change shall be undertaken or compensated for without prior written authorization from the City.

14. Termination.

This Contract may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Contract. The non-performing party shall have fifteen calendar days from the date of the termination notice to cure or to submit a plan for cure acceptable to the other party. Subject to the provisions of paragraph 8.

Subject to the provisions of paragraph 8, the City shall have the right to terminate the

Contract at any time for any reason by giving Midwest Pool Management written notice to such effect. The City shall pay to Midwest Pool Management in full satisfaction and discharge of all amounts owing to Midwest Pool management under the Contract an amount equal to the cost of all Work performed by the Midwest Pool Management up to such termination date, less all amounts previously paid to the Midwest Pool Management on account of the Contract Price. Midwest Pool Management shall submit to the City its statement for the aforesaid amount, in such reasonable detail as the City shall request, within thirty (30) days after such date of termination. The City shall not be liable to Midwest pool Management for any damages on account of such termination for loss of anticipated future profits with respect to the remainder of the Work.

15. Accounting.

During the period of this Contract, Midwest Pool Management shall maintain books of accounts of its expenses and charges in connection with this Contract in accordance with generally accepted accounting principles and practices. The City shall at reasonable times have access to these books and accounts to the extent required to verify all invoices submitted hereunder by Midwest Pool Management.

16. Entire Agreement.

This contract contains all the agreements of the parties relating to the subject matter hereof and is the full and final expression of the agreement between the parties. Any oral representations or modifications concerning this instrument are of no force or effect excepting a subsequent modification in writing signed by all the parties hereto.

17. Severability.

All parties agree that should any provision of this contract be determined to be invalid or unenforceable, such determination shall not affect any other term of this contract, which shall continue in full force and effect.

18. Transferability.

Neither the City nor Midwest Pool Management shall assign any rights or duties under this Contract without the prior written consent of the other party. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Contract. Nothing contained in this Article shall prevent Midwest Pool Management from employing independent contractors, associates, and subcontractors to assist in the performance of the Services.

19. Satisfactory Performance.

The City shall have the right to notify Midwest Pool Management of any performance by its employees that is detrimental to the best interest of the City, and Midwest Pool Management agrees to correct such performance within twenty-four (24) hours.

20. Third Party Rights.

Nothing in this Contract is intended to benefit any third party not a party to this Contract,

and no provision of this Contract shall confer any rights upon any such third party.

21. Compliance with Applicable Laws and Regulations.

Midwest Pool Management shall comply with all applicable federal, state and local laws and regulations, as they relate to the operation of Pleasant Hill City Pool, including but not limited to the Department of Public Health, described in more detail in paragraph 6 of this Agreement.

22. Venue.

This Agreement shall be governed by the laws of the State of Missouri. Any legal action or proceedings relating to this Agreement shall be instituted only in Cass County.

IN WITNESS WHEREOF, the parties have made and executed this contract in multiple copies, each of which shall be an original.

THE CITY

MIDWEST POOL MANAGEMENT

By:

By: Crissy Withrow, Vice President

ATTEST:

ATTEST:

By:
Name, Title

By:
Name, Title

**PLEASANT HILL CITY POOL
POOL MANAGEMENT CONTRACT**

EXHIBIT A "MANAGEMENT FEE"

The Midwest Pool Management agrees to provide all items as listed in the accompanying specifications as part of the base bid "Management Fee".

	2021
April 15	\$3,000.
May 15	\$5,750.
June 15	\$5,750.
July 15	\$5,750.
August 15	\$5,750.
Final Payment	\$1,390.
Total Management Fee Bid	<u>\$27,390.</u>

Taxes. The Contract amount as stated above includes all sales taxes, excise taxes, and other taxes, for all materials and appliances subject to and upon which taxes are levied.

**PLEASANT HILL CITY POOL
POOL MANAGEMENT PROPOSAL**

EXHIBIT B "SALARY BUDGET"

MAXIMUM BASE SALARY \$88,090.00

2021

April 1	\$3,000
May 1	\$20,500
June 1	\$20,500
July 1	\$20,500
August 1	\$20,500
September 1	\$3,090

Maximum Salary Budget \$88,090.00

2021 STAFF RATES FOR RECREATION PROGRAMS / SPECIAL EVENTS NOT COVERED UNDER SECTION 3.2:

Manager	\$18.18	per hour
Asst Manager	\$16.96	per hour
Head Guard	\$15.15	per hour
Lifeguard	\$13.21	per hour
Front Desk	\$13.21	per hour

These rates are not the rates paid to staff. They include all applicable payroll taxes, work comp and fees.