



SWIMMING POOL MANAGEMENT AND MAINTENANCE AGREEMENT

This Swimming Pool Management and Maintenance Agreement (the "Agreement") is made and entered into on this day of April 23, 2013 (the Effective Date) by and between SWIMSAFE POOL MANAGEMENT, INC. ("SSPM"), an Ohio Corporation, and CITY OF MASON ("Client").

PURPOSE OF AGREEMENT

SSPM is in the business of managing, operating and servicing community swimming pools and pool areas.

Client is a community, that owns and operates a community swimming pool (**Lou Eves Municipal Outdoor Pool**) and related fixtures, amenities and equipment (the "Pool") for its residents, homeowners and/or members and their guests (collectively, the "Members") and is seeking to retain SSPM to provide pool management, maintenance, operation and related services on its behalf at the Pool.

The purpose of this Agreement is to state the terms and conditions under which SSPM proposes to and will provide Client Pool management, maintenance, operation and other reasonably related services as defined within this Agreement (the "Services").

In consideration of the mutual covenants set forth below, the parties agree as follows:

1. PROPOSAL EXPIRATION OPTION

(a) This document is an offer by SSPM to Client to provide management, maintenance, operation and related services at Client's Pool. The parties agree that, until executed by Client and delivered to SSPM, SSPM shall have no obligation under this Agreement. This offer will lapse if not executed by the Client and returned to SSPM **by the 26th day of April, 2013**. By executing this Agreement (prior to any withdrawal by SSPM), Client agrees that the terms and provisions of this Agreement will become binding upon it and this Agreement will be in full effect for the Term as stated in Section 3(a).

2. COMPENSATION: PAYMENT SCHEDULE AND FEES

(a) Client shall pay SSPM a fee for the Services provided during the Term in an amount equal to \$155,500.00 and Client will pay this amount in accordance with the schedule set out in Exhibit "A."

(b) All SSPM invoices shall be paid in full by Client within thirty (30) days from the invoice date. SSPM shall invoice Client once per month for all services and expenses incurred during the month. Payment of fees for each month to be due on the first day of the month as set forth in exhibit "A". Time is of the essence in paying all invoices submitted by SSPM. If Client fails to pay in full any invoice within thirty (30) days from the invoice date an initial late charge of one point five percent (1.5%) of the invoice amount will be charged and any unpaid amounts will accrue interest at the annual percentage rate of ten percent (10%) until paid, or if any amounts remain unpaid after 30 days, SSPM may suspend services, cancel this contract, or terminate all Services immediately and pursue collection of all unpaid amounts. The remedies provided for in this paragraph are cumulative, in addition to any rights existing at law or equity, and shall not limit or create any obligation for election of same.

3. **TERM OF AGREEMENT**

(a) This Agreement shall commence on the 23rd day of April, 2013 and terminate on the 22nd day of April, 2014 (the "Term"). SSPM and Client may terminate this Agreement at any time by mutual written agreement upon such terms as shall be set forth in such termination.

4. **SCOPE OF SSPM SERVICES**

(a) SSPM shall provide Client management, maintenance, operation and related services as described in this section (the "Services"). The parties may mutually agree to amend or modify the Services during the Term or any Extended Period to include additional Services or exclude unnecessary Services by doing so in writing.

(b) Water Quality: Pool water will be maintained at the customary level of sanitation and chemistry by monitoring and maintaining the Pool's pH, alkalinity, calcium hardness and stabilizer within the following parameters:

1)	FREE CHLORINE	1.0 TO 5.0 PPM
2)	PH	7.2 TO 7.8
3)	TOTAL ALKALINITY	80 TO 120 PPM
4)	CALCIUM HARDNESS	150 TO 300 PPM
5)	CYANURIC ACID	LESSTHAN100 PPM

Pool water will be tested hourly, when the lifeguards are on duty, and the test results will be recorded in the Pool's daily log;

(c) **SWIM-SEASON SERVICES**

The Swim-Season will begin when the pool is open on the Saturday of Memorial day weekend of each year. During the Swim-Season, SSPM will reasonably maintain the Pool by completing the following Services: (a) maintain Water Quality of the Pool in accordance with all applicable governmental rules and regulations (b) skim water surface to remove floating matter as necessary, but at least once a day; (c) brush walls of swimming Pool, as needed; (d) clean

gutters or skimmers in the Pool; (e) vacuum entire Pool at least once weekly, and more if needed; (f) check pumps, strainers, and filters daily, and backwash and drain filter tanks regularly; (g) clean Pool, the Pool deck and fenced-in grounds, empty trash containers and place trash in Clients dumpsters for pickup on days designated by Client; (h) clean and maintain restrooms and replenish bathroom supplies; (i) clean and maintain guardroom, chemical room and pump room daily; (j) maintain and store in their location all safety and maintenance equipment; (k) organize and keep Pool furniture clean and orderly; (l) enforce Pool rules and regulations; (m) check and record filter pressure gauge readings and flow meter readings daily and take corrective measures as indicated; (n) all completed Swim Season Duties will be recorded daily in the Pool's log.

SUPERVISION. SSPM management personnel will inspect the Pool at least five (5) times each week on an unannounced basis during the full-time operation of the Pool. Additional inspections and/or visits to the Pool will be made by SSPM's management personnel as needed in order to assure Client's satisfaction.

SPECIAL EVENTS. SSPM will provide a 4th of July event with games and prizes for the City of Mason outdoor Pool, free of charge.

5. **CLIENT'S RESPONSIBILITIES AND OBLIGATIONS**

(a) **Cooperation:** In order for SSPM to provide the level and quality of Services under this Agreement as expected by Client, SSPM will expect the full cooperation of Client. Client therefore agrees to: 1) make available to SSPM personnel access to the Client's Pool facilities as necessary to provide Services; 2) respond to all reasonable requests of SSPM to facilitate performance of the Services; 3) provide good faith cooperation reasonably necessary for SSPM to perform the Services; and 4) comply with all governmental rules and regulations applicable to the Pool.

(b) Client will comply with or provide and maintain the following as the case may be: 1) an approved chemical circulation system to maintain Pool chemistry and Water Quality; 2) a working telephone at the Pool; 3) post all Pool rules and regulations in a conspicuous place and manner; 4) support SSPM in the enforcement of all Pool rules and regulations, which enforcement includes temporary or permanent expulsion from the Pool of any individual who fails to comply with a Pool rule or regulation; 5) deliver a copy of all Pool rules, regulations and guest policies to each Member; 6) all Pool enclosures, fences and gates adjacent to or comprising the Pool area pursuant to all applicable governmental rules and regulations; 7) three (3) sets of keys to all doors and gates; 8) shall provide and maintain the Pool and accessory structures in a safe and reasonable condition and shall foster a safe and cooperative working environment for SSPM's employees during and after regular Pool hours of operation; and 9) at Client's expense, all utilities, telephone service, water, trash collection and concession stand stock.

6. **SCHEDULE AND STAFFING**

(a) SSPM will provide a pool manager, lifeguards and other personnel as reasonably required to operate the Pool in accordance with the Pool schedules, hours of operation, and staffing requirements as shown on Exhibit "B." Client agrees to not open the Pool outside of the time periods as stated in Exhibit "B". Client further agrees to reimburse SSPM for all additional expenses SSPM incurs to operate or maintain the Pool due to or caused by Client allowing the use of the Pool outside the hours of operation as stated on Exhibit "B."

(b) **Amendment or Modification:** schedules, hours of operation, or staffing requirements may be amended or modified upon the mutual agreement of the parties. Any amendment or modification will be in writing, signed by both parties and attached as an addendum to this Agreement and incorporated into this Agreement with full affect. The parties agree that any amendment or modification will be in accordance with the additional fees or itemized fees as shown on Exhibit "A", if applicable, or at a mutually agreed to fee or charge taking into consideration SSPM's costs or expenses for implementing the amendments or modifications. Any additional fees or charges will be invoiced to Client as incurred on a monthly basis pursuant to Section 2 of this Agreement.

7. **POOL CLOSING**

(a) SSPM may close the Pool in an emergency, because of any failure or threatened failure of Pool equipment or for other unforeseen causes outside SSPM's control. The date on which the Pool is closed for any reason under this section will be the Pool Closing Date. The Pool may be closed by SSPM for the following:

(1) **Emergency Closing:** SSPM reserves the right to close the Pool if, in SSPM's personnel's reasonable belief, there is a threat to the safety or welfare of Members which may result from (without limitation): inclement weather, such as thunder, lightning, heavy rain or wind, or hazardous weather advisories, or contamination. SSPM personnel will reasonably attempt to contact Client's Representative if it is necessary to close the Pool early.

(2) **Breakdown and Repair of Pool:** In SSPM's best judgment, SSPM reserves the right to close the Pool due to a breakdown of the Pool including, without limitation, the Pool: 1) is inoperable for whatever reason; 2) requires repairs that must be performed during Pool hours of operation; 3) must be drained of water, or 4) requires Servicing after a Breakdown or Repair.

(b) In the event of a Pool Closing, the parties agree that there shall not be any cause for the amendment or modification of this Agreement and SSPM will not refund any amounts of compensation paid by Client because of a Pool Closing, except as allowed in Section C below.

(c) Should a time lapse of more than then fourteen (14) days from the Pool Closing Date be necessary to perform repairs and/or restore the Pool to normal operations, beginning on the fifteenth (15th) day, SSPM shall refund to Client A percent (0.5%) per day of the total Agreement compensation. If the Pool is not opened for normal operation within twenty-eight

(28) days after the Pool Closing Date the Client may cancel this Agreement by giving seven (7) days advance written notice to SSPM after the twenty-eighth (28th) day.

8. **SSPM PERSONNEL**

(a) All personnel who will work at the Pool under the terms of this Agreement shall be employees of SSPM, and not independent contractors. SSPM will pay the following for SSPM's employees:

1. Wages
2. Income tax withholdings
3. Social security withholdings
4. State unemployment insurance
5. Federal unemployment insurance
6. Workmen's Compensation insurance

(b) **Personnel Approval or Dismissal:** All personnel will be trained by SSPM in accordance with Client's requirements, and Client acknowledges that SSPM personnel are hired, trained and placed at the Pool in accordance with Client's needs and standards. Client may, in good faith, request the dismissal from employment at the Pool of any personnel that provides Services at the Pool; however, Client's request of dismissal must be reasonable. If Client wishes to exercise its right to request the dismissal any of SSPM's personnel, Client will give forty-eight (48) hours advance written notice to SSPM of its request, and will allow SSPM to independently determine the basis of Client's request.

(c) **Certification:** All lifeguards employed by SSPM shall have current American Red Cross Lifeguarding, CPR for the Professional Rescuer, and First Aid Certificates. Managers will have CPO (Certified Pool Operator) certificates. SSPM will maintain detailed training records for all SSPM personnel used on this assignment and will provide copies of same to Client upon request.

(d) **Identification:** Lifeguards and other personnel will wear identification at all times. Such identification shall be in the form of a swimsuit or t- shirt displaying SSPM's name and/or logo.

(e) **Authority:** To create a safe and enjoyable swimming experience, Lifeguards shall have the authority to discipline all individuals, including expulsion, who use the Pool and will do so within the Lifeguards' best judgment and sole discretion and will be consistent with all published and posted rules of the Pool and minimum safety standards. Client agrees to support Lifeguards in enforcing the Pool rules and regulations to provide a safe swimming environment.

(f) SSPM agrees that in hiring and supervising any employees to work at Client's facilities, it will comply with all Federal and State laws relating to employment, discrimination, whistleblowing, leave rights, veteran status, and retaliation, including without limitation the following: the Civil Rights Acts of 1964 and 1991; the Americans with Disabilities Act; the Age Discrimination in Employment Act; the Fair Labor Standards Act; the Patient Protection and

Affordable Care Act; the Immigration Reform and Control Act; the Immigration Act of 1990; Employee Retirement Income Security Act; National Labor Relations Act; and the common law. SSPM indemnifies and holds harmless Client for any actual or alleged violation of any such law, or rights protected by such laws, resulting from SSPM's actions.

9. **ADDITIONAL FACILITIES**

(a) Client acknowledges that neither the parking lot, playground, or any other property or facilities furnished by Client to its Members not under the direct supervisions of SSPM personnel shall be beyond the parties' intended scope of services to be provided by SSPM.

(b) In no event shall SSPM be liable to any party for any loss or claim arising from any injury or other event or occurrence which takes place in any area not directly supervised by SSPM personnel.

10. **REPAIRS AND EQUIPMENT**

(a) All repairs and equipment breakdowns will follow the City of Mason's established practice and policies.

11. **DAMAGES DUE TO VANDALISM, WEATHER, AND ACTS OF GOD**

(a) SSPM shall not be responsible for any vandalism or mischief, inclement weather or Acts of God which cause damage to the Pool or related facilities, and SSPM shall not be responsible for any additional expenses to restore Pool to working order. SSPM shall report any incidents of vandalism or mischief, or damages caused by inclement weather or Acts of God to Client's Representative prior to undertaking any repairs.

(b) In the event of vandalism or mischief, inclement weather, or Acts of God, SSPM personnel will take steps reasonably necessary to prevent damage to the Pool, but assumes no duty or responsibility for any failure to prevent damage and shall not be held responsible for any damages.

12. **CHEMICAL AND MAINTENANCE SUPPLIES**

(a) Client will provide Pool all necessary pool chemicals, which may include **chlorine tablets, liquid chlorine, muriatic acid, stabilizers, calcium chloride, soda ash, sodium bicarbonate,** and other chemicals needed for normal Pool operation and to maintain Water Quality in a safe and sanitary manner.

(b) Client will provide miscellaneous cleaning and operating supplies including **pool test equipment and reagents, restroom cleaning materials, toilet paper, paper towels, light bulbs, trash bags, pool cleaner, hand soap, sponges, mops, brooms, dust pan, commercial skimmer net, safety goggles, apron and rubber gloves.**

13. **CLIENT SAFETY AND MAINTENANCE EQUIPMENT**

Client shall provide, prior to Pre-Season or in a timely manner if requested by SSPM, at no cost to SSPM, the following equipment:

(a) **Safety Equipment**

Rescue tube (one per lifeguard)
Backboard with appropriate securing material (3 straps/head immobilizer) Lifeguard
Stands
Umbrella for Lifeguard Stand (one per stand)
Ring Buoy and Line
Shepherds Crook
Fiberglass Reach Pole
First aid kit (meeting OSHA standards)
Blood-borne pathogens kit
Fire extinguisher

(b) **Maintenance Equipment and Supplies**

12' - 24' extension pole
Commercial vacuum
Vacuum head
50' commercial 1-1/2" vacuum hose
clock
garden hoses deck squeegee trash
receptacles (with lids) flying insect
spray, etc. commercial grade leaf
blower

14. **INSURANCE**

(a) Client and SSPM shall maintain applicable insurance coverage through the Term of this Agreement and during all Extended Periods, and shall promptly provide upon the execution of this Agreement, certificates of insurance and amendatory endorsements or copies of the applicable policy language effecting coverage required herein, including acknowledgement by such insurance carriers that thirty (30) days advance written notice shall be given if any policy or coverage is to be changed or cancelled prior to its expiration date.

(b) SSPM shall provide the following:

- 1) Worker's compensation insurance covering all personnel SSPM employs to provide Services under the Agreement;
- 2) Comprehensive General Liability Insurance for bodily injury and property damage, including products-completed operations, personal injury and advertising injury, with coverage at least as broad as ISO Form CG 00 01 12 07, with limits no less than \$5,000,000 per occurrence;

- 3) Professional Liability Insurance in the amount of \$5,000,000 per claim or occurrence.
- 4) Claims-made coverage: If any of the required policies provide coverage on a claims-made basis: a) The retroactive date must be before the date of the commencement of services hereunder; b) Coverage must be maintained and evidence of insurance provided to Client for at least three (3) years after completion of work under this Agreement.
- 5) Additional insured: SSPM shall endorse the City of Mason, its officers, officials, employees and volunteers as Additional Insureds on the Commercial General Liability policy.
Primary Coverage: For any claims related to this Agreement, SSPM's insurance coverage shall be primary as respects the Client, its officers, officials, employees, and volunteers. Any insurance maintained by the Client, its officers, officials, employees, or volunteers shall be excess of SSPM's insurance and shall not contribute with it.

(c) The Client shall maintain the following:

- 1) Premises liability insurance; and
- 2) Comprehensive general liability insurance in the amount of \$1,000,000 each occurrence.

15. **INDEMNIFICATION**

(a) To the fullest extent permitted by law, the SSPM shall indemnify, defend and hold harmless the Client and its officers, directors, members, employees and agents from any and all claims, suits, actions, demands, judgments, court costs, attorney fees, and expenses for damages or injuries to person (including loss of life) and property occurring on or about the Pool or the Pool area and arising in whole or in part through or on account of any act of negligence or intentional act or omission by SSPM or its agents or employees.

16. **NOTICES**

All notices required or permitted under this Agreement shall be deemed given if delivered personally or if mailed by certified mail, return receipt requested, to the address set forth below. Delivery shall be deemed satisfactorily made if such notice is actually received by mail or private courier at such address. If a party changes such address, such party shall notify the other party of it by the notice procedures of this paragraph.

SSPM: **SWIMSAFE POOL MANAGEMENT, INC.**
 PO Box 8127
 West Chester, OH 45069-8127
 (513) 755-7075

Client: NAME: _____
 ADDRESS: _____
 TELEPHONE NO.: _____

Each party's designated representative for day-to-day operations and in case of emergencies shall be:

SSPM's Representatives:

Name: Cary Belyea
Phone No.: 513-755-7075

Client's Representative:

Name: _____


Address: _____

Phone No.: _____

17. ENTIRE AGREEMENT, MODIFICATION AND EFFECT

This agreement constitutes the entire agreement of the parties and supersedes all prior agreements, relationships or negotiations, written or oral. This Agreement may not be modified or amended unless the parties give mutual written consent. This Agreement shall be binding upon and inure to the benefit of SSPM and Client and to their respective successor and assigns.

18. GOVERNING LAW

This Agreement shall be construed and enforced in accordance with the laws of the State of Ohio.

19. SERVERABILITY

If a Court of competent jurisdiction invalidates or finds any one or more of the provisions of this Agreement is unenforceable it shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

20. CAPTIONS/ HEADINGS

The captions or headings of this Agreement are for convenience of reference only, and in no way define, describe, extend or limit the scope or intent of this Agreement or the meaning or intent of any provision hereof.

21. WAIVER

The failure of either party to enforce or require performance of any provision in the Agreement shall not operate as a waiver or affect the right of the party to enforce any provision

at a later date. Any delay or accommodation of SSPM in the collection of any amounts due under this Agreement, or any amendments or modifications, shall not be a waiver of SSPM's rights to demand payment of any amounts owed by Client under this Agreement.

22. **ATTORNEY'S FEES AND COLLECTION COSTS**

Should either party employ an attorney or third party or be required to institute legal action against the other party to enforce the terms of this Agreement or to collect fees owing pursuant hereto, said party shall be entitled, in addition to all other amounts, to recover it's cost of collections, reasonable attorney's fee, expenses and all costs of court.

EXHIBITS

Exhibit "A" - Fee Schedule

Exhibit "B" - Pool Schedule, Hours of Operation, Staffing and Pool Parties


CITY OF MASON

X


City of Mason

SWIMSAFE POOL MANAGEMENT

X


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EXHIBIT "A"
Proposed Fees and Payment Schedule

CITY OF MASON

April 23, 2013
Through
April 22, 2014

Month	Pool Management	Monthly Total
January		
February		
March		
April	\$ 5,000.00	\$ 5,000.00
May	\$ 15,500.00	\$ 15,500.00
June	\$ 40,000.00	\$ 40,000.00
July	\$ 40,000.00	\$ 40,000.00
August	\$ 40,000.00	\$ 40,000.00
September	\$ 15,000.00	\$ 15,000.00
October		
November		
TOTAL	\$155,500.00	\$155,500.00

EXHIBIT "B"

Pool Schedule, Hours of Operation, Staffing and Pool Parties

May 25, 2013 through September 2, 2012

Lou Eves Municipal Pool (Outdoor Pools)

Dates of operation: May 25-27; June 1-2; June 8-August 18; August 24-25; August 31-September 2

Hours of operation:

Monday-Friday 5:30 am-12:00 pm (swim team/lessons), 12:00 pm-8:00 pm (members)
Saturday and Sunday 12:00 pm-8:00 pm

Staffing:

- One (1) Pool manager or Assistant pool manager will be provided during all operating and staffing hours as specified below.
- Monday through Friday:
 - 5:30 am-9:00 am Three (3) lifeguards will be provided
 - 9:00 am-11:00 am Four (4) lifeguards will be provided
 - 11:00 am-8:00 pm Twelve (12) lifeguards will be provided
 - 8:00 pm-9:00 pm Four (4) lifeguards will be provided
- Saturday and Sunday:
 - 11:00 am-8:00 pm Twelve (12) lifeguards will be provided
 - 8:00 pm-9:00 pm Four (4) lifeguards will be provided
- Lifeguards will setup the pool starting at 11:00 am each day and then stay until 9:00 pm for cleaning, per the staffing numbers specified above.
- SSPM agrees to assist the City of Mason with the recruiting of qualified Lifeguards to work at the Mason Community Center (indoor pools).

After Hours Pool Party Fee Schedule/Structure

Pool parties will be provided by SSPM's lifeguards for Client and Client shall have the exclusive right to host and provide Pool parties at the Pool during the Term of this Agreement. All SSPM insurance shall apply to Pool parties.

The current rate for Pool parties is \$20.00 per hour per lifeguard.