

POOL MANAGEMENT COMPANY SERVICES AGREEMENT

THIS AGREEMENT dated this ____ day of _____, 2014, by and between the City of Warrensburg, (herein "City") and _____. (herein "Pool Management Company").

IN CONSIDERATION OF the performance of the services rendered under this Agreement and payment for such services, the parties agree to the following:

1. **Services** - As authorized by the City in writing, the Pool Management Company shall provide the City with management services of its pool facilities for the benefit of the City as set forth in the Proposal and Scope of Work submitted by Pool Management Company and accepted by City, and the Pool Management Company shall provide the City, as applicable, with the services, reports, specifications, and other work outlined. Pool Management Company agrees to provide all such services in a timely manner as established by the City in writing for each assigned project, or in the absence of the designation, within a reasonable time after receipt of City directives. Pool Management Company agrees to provide services by and through qualified personnel under standards and conditions generally accepted by professionals in the field or occupations for which services are provided. Services shall be provided based only upon the Scope of Services described or by any additional proposals provided to the Pool Management Company by the City or City's representative, or a written proposal for services which is approved by the City in writing. No work shall be performed nor shall compensation be paid for Pool Management Company work performed without a City approved written proposal for professional services. Proposals for additional services shall be in written form and shall be specifically responsive to the criteria provided by the City. All work performed by the Pool Management Company, based upon City approved proposals submitted by the Pool Management Company, shall be subject to the terms and conditions of this agreement unless otherwise specifically agreed upon by the City and Pool Management Company in writing. All proposals for work submitted by the Pool Management Company to the City for work shall at a minimum contain the following:

1.1 **Scope of Services** - Each proposal for services shall contain a detailed description of work to be performed by the Pool Management Company. When the City provides the Pool Management Company with a written and/or graphic request for proposal, the Pool Management Company's proposal shall be responsive to the request with the same or greater level of specificity required by the request for proposal. The Pool Management Company shall specifically identify services which are included as basic services and those services which are excluded from basic services in the proposal. Services which the Pool Management Company does not identify as excluded from basic services under the proposal and which are necessary for successful completion of the work in the judgment

of the City shall be presumed to be a part of basic services under the proposal. If a request for proposal requires the Pool Management Company to provide optional services, the Pool Management Company's proposal shall respond to the options requested, or provide reasons why the Pool Management Company cannot provide or respond to the request for optional services.

The initial scope of services is contained with the City's Request for Proposals, and Pool Management Company's response, which are attached to this Contract as an exhibit and incorporated into this Contract.

1.2 Time for Completion - Each proposal for services shall contain a detailed description of the estimated time to complete each task or item of work to be performed by the Pool Management Company under the proposal. When the City provides the Pool Management Company with a written and/or graphic request for proposal, the Pool Management Company's proposal shall be responsive to any request for estimated or maximum completion times for work with the same or greater level of specificity required by the request for proposal unless otherwise specified in a specific proposal.

Ongoing services shall be provided according to the approved initial scope of work for a period of twelve months from its execution by the City, with two twelve month renewal terms to occur unless the City shall deliver written notice to Pool Management Company of its intent to terminate services.

1.3 Compensation - Each proposal for services shall state the basis of compensation on either: (1) an hourly fee plus expense basis with a statement of a maximum compensation to be charged, or, (2) a lump sum payment of compensation for all work to be performed, or, (3) a payment based upon unit prices. Proposals for compensation for an hourly fee plus expense basis shall provide detailed time and expense estimates to support a maximum contract amount to be charged and shall be consistent with the hourly rates, unit prices and reimbursement rates made a part of this agreement by reference in paragraph two (2) below. When the City or City's representative requests the Pool Management Company to provide work on an hourly fee plus expense basis, the Pool Management Company's proposal shall be responsive to the request and shall not propose payment on another basis unless otherwise authorized. Unit price proposals shall identify and estimate the quantity of units as a part of the proposal when they can be identified and estimated, or as necessary in response to a particular request for proposal requesting such information. Each proposal for services shall also state a proposed payment schedule at a frequency no greater than monthly in such amounts as are consistent with amount of work to be performed and billed. Reimbursable expenses proposed shall be specifically identified and estimated as a part of the proposal with a statement of the maximum amount to be charged unless the City's request for proposal specifies otherwise.

1.4 **Signatures** - Pool Management Company proposals for services under this agreement shall be signed and dated by the Pool Management Company or an authorized representative of the Pool Management Company (as applicable), and shall be considered binding offers to contract open for acceptance by the City for an indefinite duration unless limited in the proposal or withdrawn prior to acceptance by the City. All proposals for services under this agreement shall be on forms approved by the City; use of the signature block shown in this agreement on a proposal for services shall be considered an adequate signature block. In the absence of a City provided form, the signature block shall contain a signature line for the City of Warrensburg by the its City Manager and a signature line for attestation by the City Clerk. In addition, the signature block shall contain a line for insertion of the date the proposal is approved by the City.

2. **Compensation** - In consideration for the Pool Management Company's provision of services under this agreement, the City agrees to compensate the Pool Management Company for services rendered in accordance with the compensation terms set forth in the approved scope of work. No increases in the rates and charges set forth in the proposal shall be permitted without the written authorization of the City. Payments shall be made within thirty (30) days of receipt of invoice by the City. Invoices shall be submitted periodically as mutually agreed upon by the City and Pool Management Company, or in the absence of such agreement, upon completion of the work constituting the task or project for which services are provided. Invoices for services on an hourly fee plus expense basis shall individually describe the task or project by name, show hours expended by classes of personnel in increments of not less than one-half hour and rates applied, as well as describe work performed during the invoice period; reimbursable expenses shall be itemized. Invoices for services performed on a unit price basis shall identify the task or project by name, identify and quantify units charged for services during the invoice period. Invoices for services on a lump sum basis shall identify the task or project by name and the invoiced amount. Periodic invoices shall not exceed the amounts permitted in the Pool Management Company's proposal approved by the City. When periodic requests for payment are made, they shall only reflect charges for work already complete. The City reserves the right to withhold payment for inadequately documented invoices until documented as required herein. The City further reserves the right to withhold payments for unperformed work or work not performed on a timely basis in accordance with the Pool Management Company's proposal when delays in performance of services are not attributable to the City, or as a result of a billing dispute between the City and Pool Management Company. No penalty shall be assessed to City for such amounts withheld until after any dispute is resolved in Pool Management Company's favor.

Pool Management Company shall retain all records of work and materials provided under this Contract, and shall provide access to this information to the City for inspection and audit at all times under the term of this Contract, and for a period of one year after completion of the

Contract period.

3. **City Responsibilities** - City agrees to furnish Pool Management Company with all current and available information for each task or project assigned to Pool Management Company, along with any information necessitated by changes in work or services initiated by the City which may effect services rendered hereunder. Pool Management Company shall notify City of all information it may require from City sufficiently in advance so as to avoid delay of the work to be completed by Pool Management Company.

4. **Coordination of Work and Work Product** - Pool Management Company shall coordinate all work with the City's designated representative for each task or project assigned to Pool Management Company and submit to the City's representative all work product in written or graphic form (and in electronic form if requested) as applicable or required. All reports, surveys, test data, memoranda, samples, specifications, and other documents or materials submitted by or to the City or created in performance of the services shall also be considered the property of the City. When available and requested by the City, work product shall be provided in electronic form at actual cost in media compatible for use with City software and equipment, and Adobe .pdf format shall be acceptable.

5. **General Insurance Requirements** - Pool Management Company shall purchase and maintain such insurance as will protect if from claims set forth below which may arise out of, or result from the Pool Management Company's work, whether such execution be by the Pool Management Company, any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone whose acts any of them may be liable:

5.1 **Workers Compensation** - Claims under workmen's compensation, disability benefit and other similar employee benefit acts in amounts required by law. In case any class of employees engaged in hazardous work under this Agreement is not protected under the workmen's compensation statute, the Pool Management Company shall provide adequate and suitable insurance for the protection of its employees not otherwise protected.

5.2 **Bodily Injury** - Claims for damages because of bodily injury, occupational sickness or disease, or death of employees in the amounts required by law.

5.3 **Personal Injury** - Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Pool Management Company, or (2) by any other person.

5.4 **Third Person Bodily Injury** - Claims for damages because of bodily injury, sickness or disease, or death of any person other than employees in the amount of at least \$403,139 per person and \$2,687,594 per occurrence, or such amounts as are annually listed as the governmental sovereign immunity waiver in section 537.610 RSMo, as annually adjusted.

5.5 **Automobile Coverage** - Claims for damages because of injuries to persons and property arising out of the operation of the following in the execution of projects:

- a) Pool Management Company's own automobiles and trucks,
- b) Hired automobiles and trucks, and
- c) Automobiles and trucks now owned by the Pool Management Company.

The insurance shall cover the use of the above mentioned automobiles and trucks during the term of this Agreement. The minimum amounts of such insurance shall be the same as required for Public Liability and Property Damage Insurance.

5.6 **Public Liability and Property Damage** - Claims for damages because of damage to any property, building, or structure on or adjacent to the City's premises, or the injury to or destruction of property resulting from the Pool Management Company's services in the amount of at least \$403,139 per person and \$2,687,594 per occurrence per occurrence, or such amounts as are annually listed as the governmental sovereign immunity waiver in section 537.610 RSMo, as annually adjusted.

Certificates of Insurance acceptable to the City shall be filed with the City prior to the commencement of any work assigned under this Agreement. These certificates shall contain a provision that coverage afforded under the policies will not be cancelled unless at least fifteen (15) days prior WRITTEN NOTICE has been given to the City, and shall name the City as an additional insured by endorsement.

6. **Indemnification** - Failure of Pool Management Company to obtain or maintain such insurance during this contract, or to provide proper proofs thereof upon request of the City, shall not diminish, waive or otherwise reduce the Pool Management Company's obligations to maintain such insurance coverage and Pool Management Company shall indemnify and hold the City and all its personnel harmless from and against any and all claims, damages, losses and expenses, including reasonable attorney's fees and litigation costs, arising out of or resulting from the performance of services, provided that any such claim, damage, loss or expenses, is caused in whole or in part by the negligent act, omission and or liability of the Pool Management Company, its agents or employees. Further, Pool Management Company shall hold City harmless from any failure by Pool Management Company to complete their work in compliance

with all applicable local, state and federal regulations.

7. **Delegation and Subcontracting** - Unless otherwise proposed and approved in the Pool Management Company's proposal for services, the Pool Management Company shall not delegate or subcontract any work to be performed by the Pool Management Company under this agreement to any other person, business or entity without the express advance written approval of the City for such delegation or subcontract work.

8. **Records and Samples** - To the extent not otherwise transferred to the City's possession, Pool Management Company agrees to retain and provide the City with reasonable access to all work product, records, papers and other documents involving transactions and work related to or performed under this agreement for a period of three (3) years after this agreement expires. When services involve testing or sampling, Pool Management Company agrees to either retain all test products or samples collected by or submitted to Pool Management Company, or return same to the City as mutually agreed upon. In absence of agreement, Pool Management Company shall not dispose of test samples or products without notice to or consent by the City or the City's representative.

9. **Additional Services** - No compensation shall be paid for any service rendered by the Pool Management Company considered an additional service beyond the scope of services approved by the City unless rendition of that service and expense thereof has been authorized in writing by the City in advance of performance of such service. Any additional services performed by the Pool Management Company prior to such authorization by the City shall be deemed a part of basic services for work performed under an City approved proposal for services governed by this agreement, whether enumerated in this agreement or not, for which the Pool Management Company shall be entitled to no additional compensation.

10. **City Authorization** -When the term City is used in this agreement, it shall mean the government of the City of Warrensburg, Missouri or the City of Warrensburg City Council, as the context requires. Authorization by the City shall mean written instruction from the City Council or the City Manager, or his designee. It is further understood and agreed that no person or party is authorized to bind the City to any proposed agreement for services under the auspices of this agreement without having obtained the prior approval of the City of Warrensburg City Council or City Manager, or his designee. In this regard, it is understood and agreed that the Pool Management Company shall not be entitled to rely upon verbal representations by any agent or employee of the City in deviation to the terms and conditions of this agreement, or as authorization for compensation for services except as may be approved by the City Council or City Manager in writing. When the term City's representative is used, it shall mean the City Manager or his designee as specified in writing.

11. **Period of Services and Termination** – The period of performance under this agreement shall be as specified in the proposal. The City may and reserves the right to terminate this agreement at any time with or without cause by giving the Pool Management Company written notice of termination. Upon receipt of such notice, Pool Management Company shall discontinue all services in connection with the performance of services authorized under this agreement or City approved proposal for services and City shall upon invoice remit payment for all authorized services completed up to the date of termination notice. Upon payment of this invoice, the Pool Management Company shall deliver any and all reports, test data, and other written instruments of providing service, whether complete or in progress. It is further agreed that if services are terminated the Pool Management Company shall be compensated for all services rendered through the date of termination not to exceed the amount authorized for services through the date of termination. If the City questions the extent of work on a final invoice, the Pool Management Company shall give the City the opportunity to review and evaluate all work upon which the invoice is based in the offices of the Pool Management Company prior to payment. This agreement or work performed under the provisions of this agreement may also be terminated by the Pool Management Company upon not less than thirty days written notice in the event the City shall substantially fail to perform in accordance with the terms and conditions of this agreement, through no fault of the Pool Management Company. In the event of termination by the Pool Management Company, the other provisions concerning termination contained in this paragraph shall be applicable.

12. **Governing Law** - This agreement shall be governed by the laws of the state of Missouri and it is agreed that this agreement is made in Johnson County, Missouri and that Johnson County, Missouri is proper venue for any action pertaining to the interpretation or enforcement of any provision within or services performed under this agreement.

13. **Certification of Lawful Presence / Work Authorization** - Pool Management Company will complete the required certifications of lawful presence and, if the contract is to exceed \$5,000.00, shall complete and return the Work Authorization Certification attached hereto. Pool Management Company shall indemnify and hold harmless the City and its officials, agents and employees from all costs and liabilities incurred as a result of Pool Management Company's failure, or failure of its employees, agents or Subcontractors, to comply with Section 285.530 RSMo regarding unauthorized aliens. Attached hereto are certifications of compliance required.

14. **Nature of Relationship** - Pool Management Company herein is an independent party and shall not act as an agent for the City, nor shall Pool Management Company be deemed to be an employee of the City for any purposes whatsoever. The Pool Management Company

shall not enter into any agreement or incur any obligations on the City's behalf or commit the City in any manner.

15. **Miscellaneous** - This agreement constitutes the entire agreement of the parties superseding all prior negotiations, written or verbal, and may only be amended by signed writing executed by the parties through their authorized representatives hereunder.

16. **Third Party Rights** – Nothing in this Contract, or any scope of work approved under it, will be considered to grant any right or benefit to any third party that is not a party to this Contract.

17. **Conflict of Interest** - Pool Management Company hereby covenants that at the time of the submission of any proposal and the execution of this Agreement it has no other contractual or employment relationships which would create any actual or perceived conflict of interest with the City. The Pool Management Company further agrees that during the term of this Agreement neither the Pool Management Company nor any of its employees shall acquire any other contractual relationships which create such a conflict. Pool Management Company shall complete the required Conflict of Interest Form attached hereto and shall have an affirmative duty to update said form if there are any changes to the answers provided therein during the term of this Agreement.

18. **Notices** – Any notice permitted or required to be delivered, will be considered delivered when mailed, postage prepaid, to the parties at the following addresses:

City: Director of Parks and Recreation
445 E. Gay Street
Warrensburg, MO 64093

Pool Management Company:

_____)

IN WITNESS WHEREOF, the parties have executed this agreement by their duly authorized signatories effective the date and year first-above written.

Pool Management Company

CITY OF WARRENSBURG, MISSOURI

[insert firm name below]

BY: _____

Position with firm: _____

DATE:

PARKS AND RECREATION

DODEE MATHEWS, DIRECTOR

DATE:

ATTEST:

Cindy Gabel, City Clerk

CERTIFICATION OF INDIVIDUAL BIDDER

Pursuant to Section 208.009 RSMo, any person applying for or receiving any grant, contract, loan, retirement, welfare, health benefit, post secondary education, scholarship, disability benefit, housing benefit or food assistance who is over 18 must verify their lawful presence in the United States. Please indicate compliance below. Note: A parent or guardian applying for a public benefit on behalf of a child who is citizen or permanent resident need not comply.

- ____ 1. I have provided a copy of documents showing citizenship or lawful presence in the United States. (Such proof may be a Missouri driver’s license, U.S. passport, birth certificate, or immigration documents). Note: If the applicant is an alien, verification of lawful presence must occur prior to receiving a public benefit.

- ____ 2. I do not have the above documents, but provide an affidavit (copy attached) which may allow for temporary 90 day qualification.

- ____ 3. I have provided a completed application for a birth certificate pending in the State of _____. Qualification shall terminate upon receipt of the birth certificate or determination that a birth certificate does not exist because I am not a United States citizen.

Applicant

Date
Printed Name

AFFIDAVIT
(Only Required for Individual Bidder Certification Option #2)

State of Missouri)
)SS.
County of _____)

I, the undersigned, being at least eighteen years of age, swear upon my oath that I am either a United States citizen or am classified by the United States government as being lawfully admitted for permanent residence.

Date

Signature

Social Security Number
or Other Federal I.D. Number

Printed Name

On the date above written _____ appeared before me and swore that the facts contained in the foregoing affidavit are true according to his/her best knowledge, information and belief.

Notary Public

My Commission Expires:

CONFLICT OF INTEREST FORM

PROJECT: _____

RESPONSIBLE CITY EMPLOYEE: _____

RESPONSIBLE OR SUPERVISING CITY CONSULTANT: _____

1. Have you or any employee or person holding an ownership interest in the company proposing to provide goods or services to the City of Warrensburg been involved in any of the following with the City of Warrensburg, its employees, elected officials or any responsible consultant identified above?

	Yes	No
Sale, purchase or exchange of property	_____	_____
Receiving or furnishing goods or services	_____	_____
Transfer or receipt of income, assets or funds	_____	_____
Maintenance of bank balances, book balances or other accounts for benefit of another?	_____	_____

2. Have you or any employee or person holding an ownership interest in the company proposing to provide goods or services to the City of Warrensburg been indebted to the City, any employee of the City or its elected officials or its responsible consultants in the last twenty-four months? If yes, explain.

3. List all business transactions or relationships that you or any employee or person holding an ownership interest in the company proposing to provide goods or services to the City of Warrensburg has had with any employee of the City, its elected official or its responsible consultants in the last twenty-four months.

4. List all gifts valued in excess of \$10.00 offered or accepted by any employee or person holding an ownership interest in the company proposing to provide goods or services to the City of Warrensburg either to or from any employee, elected official or its responsible consultants in the last twenty-four months.

By executing this disclosure form, the undersigned personally, and on behalf of the proposing business entity verifies that the information contained herein is truthful and accurate and will remain truthful and accurate throughout all business transactions with the City of Warrensburg.

by: _____

Date: _____

STATE OF MISSOURI)
)SS.
COUNTY OF JOHNSON)

On this ____ day of _____, 201__, before me, appeared _____, to me personally known, who being duly sworn, did swear that the matters contained herein are true to his/her best knowledge and belief.

IN WITNESS WHEREOF, I have placed my hand and notarial seal the day and year last above written.

NOTARY PUBLIC