



Board of Commissioners  
Regular Business Meeting  
910 N Gary Ave  
Premier Room

**February 27, 2023**  
**6:00pm**

- 1. Call To Order**
- 2. Roll Call – Pledge of Allegiance**
- 3. Listening Post**
- 4. Changes or Additions to the Agenda**
- 5. Consent Agenda**

All items listed are included in the Consent agenda. There will be no separate discussion of these items. Members of the public may petition in writing that an item be removed from the Consent Agenda.

  - A. Approval: Regular Minutes: February 13, 2023
- 6. Discussion Items**
  - A. Fountain View Fitness Annual Report
  - B. ADA Transition Plan Update
  - C. Meet us at the Park
  - D. Weekly Happenings
- 7. Action Items**
  - A. Approval: Lifeguard Services Agreement 2023-2025, Jeff Ellis Management, LLC
- 8. Closed Session**
  - A. Section 2(c)(1) Personnel Performance
- 9. Action pertaining to closed session**
- 10. Adjournment**



**Board of Commissioners**  
**Regular Meeting**  
**February 13, 2023**  
**6:00pm**

<b>Call to Order</b>	Commissioner Powers called the meeting to order at 6:00 pm.																
<b>Roll Call/Pledge of Allegiance</b>	<p>Present: Commissioners Sokolowski, Powers, Del Preto, and Bird. Commissioners Jaszka, Jeffery, and Gramann were absent.</p> <p>Staff: Executive Director Reuter, Deputy Director Rini, Directors Bachewicz and Hamilton, Superintendent Quinn, Supervisor Mondlock, and Coordinator Weigel.</p>																
<b>Public Hearing</b>	<p><b>Budget and Appropriations Ordinance</b></p> <p>Commissioner Sokolowski made a motion to move to Public Hearing at 6:00pm. Seconded by Commissioner Del Preto.</p> <p>Roll Call Vote:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%;">Commissioner Del Preto: Aye</td> <td style="width: 50%;">Commissioner Gramann: Absent</td> </tr> <tr> <td>Commissioner Jaszka: Absent</td> <td>Commissioner Powers: Aye</td> </tr> <tr> <td>Commissioner Jeffery: Absent</td> <td>Commissioner Sokolowski: Aye</td> </tr> <tr> <td>Commissioner Bird: Aye</td> <td></td> </tr> </table> <p>Motion Passes 4-0-3</p> <p>Director Rini addressed the Board regarding the 2023 Budget of \$19,262,460 and the District’s plan for expenditures for the coming year. The Budget and Appropriation Ordinance was put on display on December 5, 2022 and a public hearing notice also appeared in the <i>Daily Herald</i> on January 31, 2023.</p> <p>Public Comment: None</p> <p>Commissioner Sokolowski made a motion to adjourn from Public Hearing at 6:01 pm. Seconded by Commissioner Del Preto.</p> <p>Roll Call Vote:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%;">Commissioner Del Preto: Aye</td> <td style="width: 50%;">Commissioner Gramann: Absent</td> </tr> <tr> <td>Commissioner Jaszka: Absent</td> <td>Commissioner Powers: Aye</td> </tr> <tr> <td>Commissioner Jeffery: Absent</td> <td>Commissioner Sokolowski: Aye</td> </tr> <tr> <td>Commissioner Bird: Aye</td> <td></td> </tr> </table> <p>Motion Passes 4-0-3</p>	Commissioner Del Preto: Aye	Commissioner Gramann: Absent	Commissioner Jaszka: Absent	Commissioner Powers: Aye	Commissioner Jeffery: Absent	Commissioner Sokolowski: Aye	Commissioner Bird: Aye		Commissioner Del Preto: Aye	Commissioner Gramann: Absent	Commissioner Jaszka: Absent	Commissioner Powers: Aye	Commissioner Jeffery: Absent	Commissioner Sokolowski: Aye	Commissioner Bird: Aye	
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<b>Listening Post</b>	<p>Carol Stream Parks Foundation</p> <ul style="list-style-type: none"> <li>• Members Frank Parisi, Clem Malinowski, Todd Powell, Mike Ashby, and Pam Falco presented a check in the amount of \$3,000 for the Park District’s Youth Scholarship Fund.</li> </ul>																



	<ul style="list-style-type: none"> <li>Frank Parisi said the Foundation raised over \$6,000 last year; \$1,500 through the Bike Club. He confirmed the annual Duck Race would return this year in June. He also commented on the bike fix-it station installed near Ravanese Trail and thanked Commissioner Bird and his company for donating concrete work for the project. Commissioners voiced their appreciation and thanked the Foundation for coming.</li> </ul>								
<b>Changes to the Agenda</b>	None								
<b>Consent Agenda</b>	<p>Commissioner Bird made a motion to accept the consent agenda as presented. Seconded by Commissioner Del Preto.</p> <ul style="list-style-type: none"> <li>A. Approval: Regular Minutes: January 23, 2023</li> <li>B. Ratify: January 2023 Bills</li> <li>C. Ratify: 2022 Year End Treasurers Report</li> <li>D. Approval: Ordinance No. 566 Park District Surplus</li> </ul> <p>Voice Vote. All in favor. Motion Passes.</p> <p>Commissioner Sokolowski made a motion to approve the consent agenda as read. Seconded by Commissioner Bird.</p> <p>Roll Call Vote:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%;">Commissioner Del Preto: Aye</td> <td style="width: 50%;">Commissioner Gramann: Absent</td> </tr> <tr> <td>Commissioner Jaszka: Absent</td> <td>Commissioner Powers: Aye</td> </tr> <tr> <td>Commissioner Jeffery: Absent</td> <td>Commissioner Sokolowski: Aye</td> </tr> <tr> <td>Commissioner Bird: Aye</td> <td></td> </tr> </table> <p>Motion Passes 4-0-3</p>	Commissioner Del Preto: Aye	Commissioner Gramann: Absent	Commissioner Jaszka: Absent	Commissioner Powers: Aye	Commissioner Jeffery: Absent	Commissioner Sokolowski: Aye	Commissioner Bird: Aye	
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Commissioner Jeffery: Absent	Commissioner Sokolowski: Aye								
Commissioner Bird: Aye									
<b>Discussion Items</b>	<ul style="list-style-type: none"> <li>A. Concessions Annual Report</li> <li>B. Rentals Annual Report</li> <li>C. Community Needs Assessment – Update             <ul style="list-style-type: none"> <li>Director Rini shared an update to the working plan for the 2023 Community Needs Assessment. Staff is working with the Carol Stream Public Library (CSPL) to include the Community Needs Assessment in their quarterly newsletter. Using their mid-May distribution will significantly reduce our costs while allowing the survey to be delivered to 16,500 households in Carol Stream. Commissioners Powers and Sokolowski agreed partnering with the Library is a great idea.</li> </ul> </li> <li>D. Decennial Review Committee             <ul style="list-style-type: none"> <li>Director Rini suggested that appointments to the Decennial Review Committee be made at the May 22, 2023 Board meeting. She said there is a mandatory of three meetings and the first meeting needs to be held by June 10, 2023. The meetings will be open to the public. Commissioner Bird suggested inviting Foundation members to serve on the Committee.</li> </ul> </li> <li>E. Weekly Happenings</li> </ul>								

	<ul style="list-style-type: none"> <li>• Commissioner Sokolowski said he'd like to see AED's at all Park District fields and wants the District to be a trailblazer in regards to having AED's at all fields. He said that it will be a challenge, but it could save a life.</li> <li>• Commissioner Sokolowski questioned if the District had a Pickleball introduction class. Manager Kenny commented the sport was very popular; the District currently hosts open-Pickleball court time and is working on introducing a new class.</li> <li>• Commissioner Powers thanked senior management and all staff for strong financial performance shared in the 2022 yearend Treasure's Report.</li> </ul>
<p><b>Action Items</b></p>	<p>A. Approval: Ordinance No. 565, 2023 Budget and Appropriation in the amount of \$19,262,460 for the fiscal year January 1, 2023 to December 31, 2023 As required under state statute:</p> <ol style="list-style-type: none"> <li>The Board must annually adopt a Budget and Appropriation Ordinance.</li> <li>Staff placed the Budget and Appropriation Ordinance on public display on December 5, 2022 to fulfill the 30 day requirement.</li> <li>A notice of a <i>Public Hearing</i> for the Budget and Appropriation Ordinance appeared in the <i>Daily Herald</i> on January 31, 2023.</li> </ol> <p>Commissioner Bird made a motion to approve Ordinance No. 565, 2023 Budget and Appropriation Ordinance in the amount of \$19,262,460 for the fiscal year January 1, 2023 to December 31, 2023. Seconded by Commissioner Sokolowski.</p> <p>Roll Call Vote:          Commissioner Del Preto: Aye          Commissioner Jaszka: Absent          Commissioner Jeffery: Absent          Commissioner Bird: Aye          Commissioner Gramann: Absent          Commissioner Powers: Aye          Commissioner Sokolowski: Aye          Motion Passes 4-0-3</p> <p>B. Approval: Coral Cove Water Park Slide Restoration          The District issued the RFP (Request for Proposal) on January 18, 2023. Proposals were due on Friday, February 3, 2023. Four qualified contractors submitted proposals for the project. Lowest responsible bidder was IPS Waterslides, Inc. from Sandwich, IL.          Commissioner Del Preto made a motion to approve a proposal with IPS Waterslides, Inc. from Sandwich, IL for Coral Cove Water Park Slide Restoration in the amount of \$60,000. Seconded by Commissioner Bird.          Voice Vote. All in favor. Motion Passes.</p>
<p><b>Closed Session</b></p>	<p>Motion by Commissioner Sokolowski to enter into closed session at 7:42 pm to discuss Section 2(c)(1) Personnel Performance. Seconded by Commissioner Del Preto. Motion by</p>



	Commissioner Sokolowski to arise from closed session. Commissioner Bird seconded the motion. Arose from closed session at 7:49pm.
<b>Action Pertaining to Closed Session</b>	None.
<b>Adjournment</b>	Commissioner Sokolowski made a motion to adjourn the meeting. Seconded by Commissioner Bird. Voice Vote taken. Motion passed 4-0-3. Meeting adjourned at 7:50pm.

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President  
Tim Powers

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Secretary  
Jim Reuter

February 27, 2023  
Date

**To:** Board of Commissioners  
**From:** Renee Bachewicz, Director of Recreation  
**Date:** February 27, 2023  
**Discussion:** Fountain View Fitness Annual Report **Agenda Item # 6A**

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The Fountain View Fitness 2022 Annual Report will be presented.

**To:** Board of Commissioners

**From:** Shane Hamilton, Director of Parks & Facilities

**Date:** February 27, 2023

**Discussion:** ADA Transition Plan Update

**Agenda Item # 6B**

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The ADA Transition Plan provides detailed recommendations for accommodating guests with varying disabilities throughout the District's facilities, programs, and activities. It is our responsibility to provide equal and integrated access to all.

Previous updates were presented to the Board of Commissioners in January 2022. Since then, additional items were addressed per the ADA Transition Plan demonstrating the Park District's continued commitment to individuals with disabilities.

**To:** Board of Commissioners  
**From:** Jim Reuter, Executive Director  
**Date:** February 27, 2023  
**Discussion:** Meet us at the Park

**Agenda Item # 6C**

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Staff will begin planning the Meet us at the Park events for this coming summer.

- Which parks to visit this year?
  - Suggesting Cambridge Park and Volunteer Park.
- Planning on the fourth Monday in June and August.
  - June 26 and August 28 from 6-7 pm.
- We will invite the Carol Stream Police Department to join us with their ice cream cart.

Staff is asking if this is the direction the Board has in mind for the summer 2023 events.



**To:** Board of Commissioners  
**From:** Renee Bachewicz, Director of Recreation  
**Date:** February 27, 2023  
**Approval:** Lifeguard Services Agreement 2023-2025, Jeff Ellis Management, LLC **Agenda Item # 7A**

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### Issue

Should the Board make a motion to approve a Services Agreement with Jeff Ellis Management (JEM) LLC Orlando, Florida for contractual lifeguard services for the term of 2023-2025.

### Background/Reasoning

The Services Agreements for JEM Lifeguard Services for the Fountain View Indoor Pool and Coral Cove Water Park for the term of 2023-2025 have been finalized. Both corporate counsel and PDRMA attorneys have completed extensive reviews and their recommended changes have been incorporated into the agreements. The introduction of the EAVS “*Ellis Aquatic Vigilance Systems®*” is included in the agreements.

Pages 1 –22 of each agreement are the same language; the only exception is the early termination prorated payment amounts listed under Article XIII on page 14. These amounts are specific to each facilities equipment.

Exhibit A and beyond in each agreement are specific to each facility for services, deliverables, fees, and operating schedules.

The Carol Stream Park District has contracted JEM for lifeguard services since 2018 for the Fountain View Indoor Pool and Coral Cove Water Park, and are satisfied with their services and partnership. The 2023 Approved Budget includes the costs for lifeguard services for both facilities.

### Supporting Documents

Jeff Ellis Management Services Agreement, Fountain View Indoor Pool  
Jeff Ellis Management Services Agreement, Coral Cove Water Park

## Cost

### Fountain View Recreation Center

2023: \$404,585.52

2024: \$422,002.20

2025: \$431,025.36

GL: 20-5-60-70-570-700

### Coral Cove Water Park

2023: \$253,121.88

2024: \$263,128.68

2025: \$265,307.08

\*Should the State not grant a variance for the use of EAVS, an additional \$35,000 per season will be added for lifeguard costs (total amount included in the 2023 Park District budget).

GL: 20-5-60-70-570-754

The facility operating hours and dates will be reviewed annually, final facility schedules will be submitted to JEM each Fall, and pricing will be adjusted accordingly prior to the Park District's annual budget cycle.

## Public/Customer Impact

Continuing to utilize a contractual provider will ensure smooth operations for our aquatic facilities and allows the District to continue to provide programming and pool services.

## Recommendation

That the Board make a motion to approve the Services Agreement with Jeff Ellis Management (JEM) LLC Orlando, Florida for contractual lifeguard services for the term of 2023-2025.



**SERVICES AGREEMENT**

between

**JEFF ELLIS MANAGEMENT, LLC**

and

**CAROL STREAM PARK DISTRICT**

**FOUNTAIN VIEW INDOOR POOL**

dated as of

February 27, 2023

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## SERVICES AGREEMENT

**THIS SERVICES AGREEMENT** (the "**Agreement**"), dated as of February 27, 2023 (the "**Effective Date**"), is by and between **Jeff Ellis Management, LLC** a Florida limited liability company, with offices located at 500 Winderley Place Suite 116; Maitland, FL 32751 (the "**Service Provider**") and **Carol Stream Park District**, with offices located at 849 W. Lies Rd.; Carol Stream; IL 60188 (the "**Customer**").

WHEREAS, Customer owns certain aquatic facilities and desires to retain Service Provider to provide certain aquatic facility management services upon the terms and conditions hereinafter set forth, and Service Provider is willing to perform such services.

In consideration of the mutual covenants and agreements hereinafter set forth, the parties agree as follows:

### ARTICLE I DEFINITIONS

"**Action**" has the meaning set forth in **Section 11.01**.

"**Affiliate**" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"**Agreement**" has the meaning set forth in the preamble.

"**Change Order**" has the meaning set forth in **Section 5.02**.

"**Confidential Information**" means any information that is treated as confidential by a party, including, without limitation, trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing. Confidential Information shall not include information that: (a) is already known to the Receiving Party without restriction on use or disclosure prior to receipt of such information from the Disclosing Party; (b) is or becomes generally known by the public other than by breach of this Agreement by, or other wrongful act of, the Receiving Party; (c) is developed by the Receiving Party independently of, and without reference to, any Confidential Information of the Disclosing Party; or (d) is received by the Receiving Party from a third party who is not under any obligation to the Disclosing Party to maintain the confidentiality of such information.

"**Customer**" has the meaning set forth in the preamble.

"**Customer Contract Manager**" has the meaning set forth in **Section 4.01(a)**

**"Customer Equipment"** means including but not limited to any equipment, facilities, water attractions, pools, filtration systems on Customer property and used directly or indirectly in the provision of the Services.

**"Customer Materials"** any documents, data, know-how, methodologies, manuals, and other materials provided to Service Provider by Customer.

**"Deliverables"** means if applicable, all documents, work product and other materials that are delivered to Customer hereunder or prepared by or on behalf of Service Provider in the course of performing the Services, including any items identified as such in the Statement of Work (such as "The Comprehensive Aquatic Risk Management Program" manual published by Jeff Ellis & Associates, Inc.).

**"Disclosing Party"** means a party that discloses Confidential Information under this Agreement.

**"EAVS®"** refers to the Ellis Aquatic Vigilance System used and installed by Service Provider.

**"Force Majeure Event"** has the meaning set forth in **Section 17.01**.

**"Intellectual Property Rights"** means all (a) patents, patent disclosures and inventions (whether patentable or not), (b) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, (c) copyrights and copyrightable works (including computer programs), mask works, and rights in data and databases, (d) trade secrets, know-how and other confidential information, and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**"Law"** means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, declaration of pandemic or other state of emergency, other requirement or rule of law of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

**"Losses"** mean all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

**"Permitted Subcontractor"** has the meaning set forth in **Section 3.01(f)**.

**"Person"** means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other entity.

**"Pre-Existing Materials"** means the pre-existing materials specified in the Statement of Work, all documents, data, know-how, methodologies, manuals and other materials, provided by or used by Service Provider in connection with performing the Services, in each case developed

or acquired by the Service Provider prior to the commencement or independently of this Agreement.

"**Receiving Party**" means a party that receives or acquires Confidential Information directly or indirectly under this Agreement.

"**Service Provider**" has the meaning set forth in the preamble.

"**Service Provider Contract Manager**" has the meaning set forth in **Section 3.01(a)**.

"**Service Provider Equipment**" means any equipment provided by or on behalf of Service Provider and used directly or indirectly in the provision of the Services including "EAVS" Ellis Aquatic Vigilance System.

"**Service Provider Personnel**" means all employees and Permitted Subcontractors, if any, engaged by Service Provider to perform the Services.

"**Services**" mean any services to be provided by Service Provider under this agreement, as described in more detail in the Statement of Work, and Service Provider's obligations under this Agreement.

"**Statement of Work**" means each Statement of Work entered into by the parties and attached to this Agreement, substantially in the form of Exhibit A.

"**Term**" has the meaning set forth in **Article VI**.

## **ARTICLE II SERVICES**

**Section 2.01** Service Provider shall provide the Services to Customer as described in more detail in each Statement of Work, attached hereto as Exhibit A and incorporated herein by reference, and in accordance with the terms and conditions of this Agreement. Additional Statements of Work may be entered into under this Agreement for additional services upon the mutual agreement of the parties.

**Section 2.02** Each Statement of Work shall include the following information, if applicable:

- (a) a detailed description of the Services to be performed pursuant to the Statement of Work;
- (b) the date upon which the Services will commence and the term of such Statement of Work;
- (c) the names of the Service Provider Contract Manager;
- (d) the fees to be paid to Service Provider under the Statement of Work;
- (e) an operating schedule, if applicable;

(f) any other terms and conditions agreed upon by the parties in connection with the Services to be performed pursuant to such Statement of Work; and

(g) failure to include one or more of the following shall not be a breach of this agreement, and if this **Section 2.02** and the Statement of Work conflict, the Statement of Work shall control.

### **ARTICLE III SERVICE PROVIDER'S OBLIGATIONS**

**Section 3.01** The Service Provider shall:

(a) appoint: a Service Provider employee to serve as a primary contact with respect to this Agreement and who will have the authority to act on behalf of Service Provider in connection with matters pertaining to this Agreement (the "**Service Provider Contract Manager**"); and

(b) maintain the same Service Provider Contract Manager throughout the Term of this Agreement except for changes in such personnel due to:

(i) Customer's request pursuant to **Section 3.01(c)**; or

(ii) the resignation or termination of such personnel or other circumstances outside of Service Provider's reasonable control;

(c) upon the reasonable written request of Customer, promptly replace the Service Provider Contract Manager and any other Service Provider Personnel;

(d) before the date on which the Services are to start, obtain, and at all times during the Term of this Agreement maintain, all necessary licenses and consents and comply with all relevant Laws applicable to the provision of the Services;

(e) comply with, and ensure that all Service Provider Personnel comply with, all rules, regulations and policies of Customer that are communicated to Service Provider in writing, including building security procedures, general health and safety practices and procedures, and the Customer's drug and alcohol policies; and

(f) engage additional Persons needed to provide any Services to Customer (each such approved subcontractor or other third party, a "**Permitted Subcontractor**").

**Section 3.02** Service Provider is responsible for all Service Provider Personnel and for the payment of their compensation, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments and disability benefits.



**ARTICLE IV  
CUSTOMER'S OBLIGATIONS**

**Section 4.01** Customer shall:

(a) cooperate with Service Provider in all matters relating to the Services and appoint and, in its reasonable discretion, replace a Customer employee to serve as the primary contact with respect to this Agreement and who will have the authority to act on behalf of Customer with respect to matters pertaining to this Agreement (the "**Customer Contract Manager**");

(b) provide, subject to **Section 3.01(e)**, such access to Customer's premises, and such office accommodation and other facilities as may reasonably be requested by Service Provider and agreed with Customer in writing in advance, for the purposes of performing the Services;

(c) respond promptly to any Service Provider request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for Service Provider to perform Services in accordance with the requirements of this Agreement;

(d) provide such information as Service Provider may request, in order to carry out the Services, in a timely manner, and ensure that it is complete and accurate in all material respects;

(e) ensure that all Customer Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant legal or industry standards or requirements obtain and maintain all necessary licenses and consents and comply with all applicable Law in relation to the Services, before the date on which the Services are to start except in cases where the Service Provider is responsible for licenses or compliance with Law;

(f) keep, maintain, and ensure the Service Provider Equipment in good condition, and shall not dispose of or use Service Provider Equipment other than in accordance with Service Provider's written instructions or authorization.

**Section 4.02** If Service Provider's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants or employees outside of Service Provider's reasonable control, Service Provider shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.

**ARTICLE V  
CHANGE ORDERS**

**Section 5.01** If either party wishes to change the scope or performance of the Services, it shall submit details of the requested change to the other in writing. Service Provider shall, within a reasonable time after such request, provide a written estimate to Customer of:

(a) the likely time required to implement the change;

- (b) any necessary variations to the fees and other charges for the Services arising from the change;
- (c) the likely effect of the change on the Services; and
- (d) any other impact the change might have on the performance of this Agreement.

**Section 5.02** Promptly after receipt of the written estimate, the parties shall negotiate and agree in writing, and only in writing, on the terms of such change (a "**Change Order**"). Neither party shall be bound by any Change Order unless mutually agreed upon in writing in accordance with **Section 18.10**.

## **ARTICLE VI TERM**

This Agreement shall commence upon signing and shall continue from **January 1<sup>st</sup>, 2023 thru December 31<sup>st</sup>, 2025 for Indoor Pool**, unless sooner terminated pursuant to **Article XIII**. Upon such termination, Customer shall pay all outstanding invoices for Services completed through the effective date of cancellation.

In addition to any remedies that may be provided under this Agreement, Service Provider may terminate this Agreement within ten (10) days upon written notice to Customer, if Customer does not pay past due account balances within ten (10) days from the published written notice of a past due account.

In the event this Agreement is terminated by operation of law or otherwise prior to the expiration of its Term, then, in that event, all EAVS<sup>®</sup> operating equipment (hardware and software including but not limited to: Cameras, NVRs, Gig Switches, TV Monitors, Workstations, cables, etc....), finished documents, manuals, data, studies, surveys, drawings, maps, models and system reviews prepared by Service Provider shall be removed from the property. Service Provider maintains ownership of all EAVS<sup>®</sup> related equipment and materials. Customer must allow Service Provider access to retrieve any and all EAVS<sup>®</sup> items.

## **ARTICLE VII FEES AND EXPENSES; PAYMENT TERMS**

**Section 7.01** In consideration of the provision of the Services by the Service Provider to Customer under this Agreement, Customer shall pay the fees set forth in Exhibit B and the reimbursement of expenses pursuant to this **Article VII**.

**Section 7.02** Where the Services are provided on a time and materials basis:

- (a) the fees payable for the Services shall be calculated in accordance with Service Provider's hourly fee rates for the Service Provider Personnel set forth in Exhibit B;

(b) Service Provider shall issue invoices to Customer monthly in arrears for its fees for time for the immediately preceding month, calculated as provided in this **Section 7.02**, together with a detailed breakdown of any expenses for such month incurred in accordance with **Section 7.04**.

**Section 7.03** Where Services are provided for a fixed price, the total fees for the Services shall be the amount set out in Exhibit B. The total price shall be paid to Service Provider in installments, as set out in Exhibit B. At the end of a period specified in Exhibit B in respect of which an installment is due, Service Provider shall issue invoices to Customer for the fees that are then payable, together with a detailed breakdown of any expenses incurred in accordance with **Section 7.04**.

**Section 7.04** Customer agrees to reimburse Service Provider for all out-of-pocket expenses incurred by Service Provider in connection with the performance of the Services.

**Section 7.05** After conclusion of the term for Services as set forth in **Section 7.01**, Service Provider may increase its standard fee rates specified in the applicable Statement of Work upon written notice to Customer; *provided, that*:

- (a) Service Provider provides Customer written notice of such increase at least ninety (90) days prior to the effective date of such increase;
  - (b) such increases occur no more frequently than once per contract year of the Term;
- and
- (c) the amount of such increase shall not exceed five percent (5%).

**Section 7.06** Service Provider shall issue invoices to Customer only in accordance with the terms of this Section, and Customer shall pay all properly invoiced amounts due to Service Provider within fifteen (15) days after Customer's receipt of such invoice, except for any amounts disputed by Customer in good faith. All payments hereunder shall be in US dollars and made by check or wire transfer. Service Provider shall assess a 1.5% monthly finance charge on all past due account balances. In the event Customer does not pay past due account balances within ten (10) days from the published written notice of a past due account, Service Provider may suspend or terminate services provided to Customer upon twenty-four hours advance written notice to Customer.

**Section 7.07** In the event Customer has a reasonable dispute as to the time or expenses submitted or any portion of an invoice, Customer shall provide written notice of such dispute to Service Provider. The parties shall use reasonable efforts to quickly resolve any such disputes. If Service Provider disputes Customer's contention that appropriate grounds exist for withholding payments, it may suspend the performance of Services hereunder until settlement or resolution of the issue, without being in default of this Agreement.

**Section 7.08** In the event of a Minimum Wage increase passed by Federal, State, or Local government the labor amount found in Exhibit B will increase by the same percentage of the increase of the minimum wage using the following formula: ((New Rate minus Old Rate) divided by the Old Rate).

## **ARTICLE VIII INTELLECTUAL PROPERTY RIGHTS; OWNERSHIP**

**Section 8.01** Service Provider and its licensors and Affiliates are, and shall remain, the sole and exclusive owners of all right, title and interest in and to the Pre-Existing Materials, including all Intellectual Property Rights therein. Service Provider hereby grants Customer a limited, irrevocable, perpetual, fully paid-up, royalty-free, non-transferable (except in accordance with **Section 18.07**), non-sublicensable, worldwide license to use, perform, display, execute, reproduce, distribute, transmit, modify (including to create derivative works), import, make, have made, sell, offer to sell and otherwise exploit any Pre-Existing Materials to the extent incorporated in, combined with or otherwise necessary for the use of the Deliverables to the extent reasonably required in connection with Customer's receipt or use of the Services and Deliverables. All other rights in and to the Pre-Existing Materials are expressly reserved by Service Provider.

**Section 8.02** Customer and its licensors are, and shall remain, the sole and exclusive owner of all right, title and interest in and to the Customer Materials, including all Intellectual Property Rights therein. Service Provider shall have no right or license to use any Customer Materials except solely during the Term of the Agreement to the extent necessary to provide the Services to Customer. All other rights in and to the Client Materials are expressly reserved by Customer.

**Section 8.03** Any and all items including all Intellectual Property, hardware, software, switches, video recordings, voice recordings, or any other items as listed in **Exhibit A** related to the installation and use of the Ellis Aquatic Vigilance System (EAVS®) shall remain the property of the Service Provider.

## **ARTICLE IX CONFIDENTIAL INFORMATION**

**Section 9.01** The Receiving Party agrees:

(a) not to disclose or otherwise make available Confidential Information of the Disclosing Party to any third party without the prior written consent of the Disclosing Party; *provided, however*, that the Receiving Party may disclose the Confidential Information of the Disclosing Party to its and its Affiliates, and their officers, employees, consultants and legal advisors who have a "need to know", who have been apprised of this restriction and who are

themselves bound by nondisclosure obligations at least as restrictive as those set forth in this **Article IX**;

(b) to use the Confidential Information of the Disclosing Party only for the purposes of performing its obligations under the Agreement or, in the case of Customer, to make use of the Services and Deliverables; and

(c) to immediately notify the Disclosing Party in the event it becomes aware of any loss or disclosure of any of the Confidential Information of Disclosing Party.

**Section 9.02** If the Receiving Party becomes legally compelled to disclose any Confidential Information, the Receiving Party shall provide:

(a) prompt written notice of such requirement so that the Disclosing Party may seek, at its sole cost and expense, a protective order or other remedy; and

(b) reasonable assistance, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure.

(c) the contract and related information as may be required by the Illinois Freedom of Information Act (FOIA).

If, after providing such notice and assistance as required herein, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose no more than that portion of the Confidential Information which, on the advice of the Receiving Party's legal counsel, the Receiving Party is legally required to disclose and, upon the Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or agency that such Confidential Information will be afforded confidential treatment.

**Section 9.03** Nothing in this Agreement shall prevent either party from using any general methodologies or know-how contained in the unaided memory of such party's personnel or those of its Affiliates developed or disclosed under this Agreement, provided that in doing so it is not in breach of its obligations of confidentiality under this Section or using any Intellectual Property Rights of the other party or any of its Affiliates.

## **ARTICLE X REPRESENTATIONS AND WARRANTIES**

**Section 10.01** Each party represents and warrants to the other party that:

(a) it is duly organized, validly existing and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization, or chartering;

(b) rights and licenses granted hereunder and to perform its obligations hereunder;

(c) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action of the party; and

(d) when executed and delivered by such party, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

**Section 10.02** Service Provider represents and warrants to Customer that:

(a) it shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement;

(b) it is in compliance with, and shall perform the Services in compliance with, all applicable Laws;

(c) the Services and Deliverables will be in conformity in all material respects with all requirements or specifications stated in this Agreement and the applicable Statement of Work. In the event of Service Provider's breach of the foregoing warranty, Service Provider's sole and exclusive obligation and liability and Customer's sole and exclusive remedy shall be as follows:

(i) The Service Provider shall use reasonable efforts to cure such breach; *provided, that* if Service Provider cannot cure such breach within a reasonable time (but no more than 30 days) after Customer's written notice of such breach; Customer may, at its option, terminate the Agreement by serving written notice of termination in accordance with **Section 18.04**.

(ii) In the event the Agreement is terminated in accordance with this **Section 10.02(c)**, Service Provider shall within 30 days after the effective date of termination, refund to Customer any fees paid by the Customer as of the date of termination for such Service or Deliverable less a deduction equal to the fees for receipt or use of such Deliverables or Service up to and including the date of termination on a pro-rated basis.

(iii) The foregoing remedy shall not be available unless Customer provides written notice of such breach within 30 days after performance of such Service.

**Section 10.03** EXCEPT FOR THE EXPRESS WARRANTIES IN THIS AGREEMENT SERVICE PROVIDER HEREBY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE UNDER THIS AGREEMENT.

## ARTICLE XI INDEMNIFICATION

**Section 11.01** Service Provider shall defend, indemnify and hold harmless Customer and its officers, directors, employees, agents, commissioners, successors and permitted assigns (each, a "**Customer Indemnity**") from and against all Losses awarded against a Customer Indemnity arising out of or resulting from any third-party claim, suit, action or proceeding (each, an "**Action**") arising out of or resulting from:

(a) bodily injury, death of any person or damage to real or tangible, personal property resulting from the willful, fraudulent or grossly negligent acts or omissions of Service Provider or Service Provider Personnel in the performance of the Services; and

(b) Service Provider's material breach of any representation, warranty or obligation of Service Provider set forth in this **Section 10.01** or **Section 10.02** of this Agreement.

**Section 11.02** Customer shall defend, indemnify and hold harmless Service Provider and Service Provider's Affiliates and their officers, directors, employees, agents, successors and permitted assigns from and against all Losses awarded against Service Provider arising out of or resulting from any third-party Action arising out of or resulting from:

(a) bodily injury, death of any person or damage to real or tangible, personal property resulting from the grossly negligent or willful acts or omissions of Customer; and

(b) Customer's material breach of any representation, warranty or obligation of Customer set forth in this **Section 10.01** or **Section 10.02** of this Agreement.

**Section 11.03** The party seeking indemnification hereunder shall promptly notify the indemnifying party in writing of any Action and cooperate with the indemnifying party at the indemnifying party's sole cost and expense. The indemnifying party shall immediately take control of the defense and investigation of such Action and shall employ counsel of its choice to handle and defend the same, at the indemnifying party's sole cost and expense. The indemnifying party shall not settle any Action in a manner that adversely affects the rights of the indemnified party without the indemnified party's prior written consent, which shall not be unreasonably withheld or delayed. The indemnified party's failure to perform any obligations under this **Section 11.03** shall not relieve the indemnifying party of its obligations under this **Section 11.03** except to the extent that the indemnifying party can demonstrate that it has been materially prejudiced as a result of such failure. The indemnified party may participate in and observe the proceedings at its own cost and expense.

## **ARTICLE XII**

### **LIMITATION OF LIABILITY**

**Section 12.01** EXCEPT AS OTHERWISE PROVIDED IN **Section 12.02**, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**Section 12.02** Service Provider shall not be liable for the failure to perform its obligations under this agreement when such failure is caused by fire, explosion, water, Act of God, civil disturbance, sabotage, weather beyond the reasonable foreseeability of Service Provider, nor for personal property destroyed or damaged due to such cause. As well, Service Provider inability to perform its duties hereunder by reason of the closing of the pool due to the conditions, the failure of equipment, plumbing or piping or the violation of any law, regulation or ordinance by the Customer, which shall in no way be the responsibility or liability of Service Provider.

- a) Except in the event of willful conduct on the part of Service Provider, Service Provider shall not be held liable for any claims for loss of life, bodily injury, or damage to property arising from any incidents occurring at the Customer facility when Service Provider is not engaged in the performance of this agreement.
- b) Due to the swimming pool/spa repair and service work, Service Provider is not responsible for tangential component failures or unrelated problems that may occur subsequent to repair service calls. Service Provider will use due diligence in troubleshooting and repair procedures; however, Customer acknowledges that working with older components may exacerbate problematic conditions. Service Provider will not be held responsible for any unforeseeable leaks or cracks in existing piping or plumbing.
- c) Service Provider warrants that all material used in completing the repair or work set forth in the agreement will be of conform to reasonably acceptable commercial standards for their application and the work will be in a competent and reasonably professional manner. Equipment, parts, or accessories purchased by Service Provider for use in this repair or service is subject to the manufacturer's guarantee. Service Provider shall not be held responsible for any damages, including any loss of business or other consequential damages, arising out of the failure of any product or material. Service Provider warranty provided herein shall be limited to the original owner of the swimming pool/spa and is not transferable.
- d) Service Provider is not responsible for any vandalism or freeze/that damage that occurs in the off season.
- e) Requests for any changes or additions to this agreement by Customer shall not be enforceable against Service Provider unless they are agreed upon in writing by both parties and signed by a representative of Service Provider, with authority to sign such change or modification. All charges for changes or additions shall be due and payable by Customer at the completion of the work.



- f) Before any work will commence or any materials ordered; a signed and approved credit card authorization form or a signed and approved aquatic maintenance proposal must be on file with Service Provider.
- g) Service Provider shall not be responsible for any incidents, damages to persons or property or consequential damages arising, directly or indirectly from any chemical spills or exposure to harmful chemicals, caused by the failure or malfunction of any equipment, parts or accessories.
- h) Service Provider will not warranty any equipment or materials purchased by the Customer and will be installed and invoiced at a separate rate. Service Provider is not responsible for work performed by any other entity.
- i) Service Provider shall not be responsible for any incidents, damages to persons or property or consequential damages arising, directly or indirectly from any events or happenings outside of the water
- j) Service Provider shall not be responsible for any incidents, damages arising, directly or indirectly from any events or happenings inside water features which are not to be the result of negligence of Service Provider.
- k) Service Provider shall not be responsible for any incidents, damages to persons or property consequential damages arising. Directly or indirectly from any events or happenings occurring due to equipment failure or breakdown of facility's structures such as pool tiles, pool ladders, etc.

**Section 12.03** The exclusions and limitations in **Section 12.01** and **Section 12.02** shall not apply to:

- (a) damages or other liabilities arising out of or relating to a party's failure to comply with its obligations under **Article VIII** (Intellectual Property Rights; Ownership);
- (b) damages or other liabilities arising out of or relating to a party's failure to comply with its obligations under **Article IX** (Confidentiality);
- (c) Service Provider's indemnification obligations under **Section 11.01** (Indemnification);
- (d) Customer's indemnification obligations under **Section 11.02** (Indemnification);
- (e) damages or other liabilities arising out of or relating to a party's gross negligence, willful misconduct or intentional acts;
- (f) death or bodily injury or damage to real or tangible personal property resulting from a party's negligent acts or omissions;
- (g) damages or liabilities to the extent covered by a party's insurance; and

(h) a party's obligation to pay attorneys' fees and court costs in accordance with **Section 18.05**.

### **ARTICLE XIII TERMINATION; EFFECT OF TERMINATION**

Either party, in its sole discretion, may terminate this Agreement or any Statement of Work, in whole or in part, at any time without cause, by providing at least thirty (30) days' prior written notice to the other party. If the Agreement is terminated by Customer before the completion of the contract, the Customer will be responsible to pay Service Provider a pro-rated sum of Twenty-Four Thousand Dollars (\$24,000.00) for the facility. Pro-rated amounts will follow the schedule shown below:

- Termination occurring in 2023 – Customer will pay Service Provider \$24,000.00
- Termination occurring in 2024 – Customer will pay Service Provider \$16,000.00
- Termination occurring in 2025 – Customer will pay Service Provider \$8,000.00

**Section 13.01** Either party may terminate this Agreement, effective upon written notice to the other party (the "**Defaulting Party**"), if the Defaulting Party:

(a) materially breaches this Agreement, and such breach is incapable of cure, or with respect to a material breach capable of cure, the Defaulting Party does not cure such breach within thirty (30) days after receipt of written notice of such breach.

(b) (i) becomes insolvent or admits its inability to pay its debts generally as they become due; (ii) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within seven (7) business days or is not dismissed or vacated within forty-five (45) days after filing; (iii) is dissolved or liquidated or takes any corporate action for such purpose; (iv) makes a general assignment for the benefit of creditors; or (v) has a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

**Section 13.02** Upon expiration or termination of this Agreement for any reason:

(a) Service Provider shall (i) promptly deliver to Customer all Deliverables (whether complete or incomplete) for which Customer has paid, and all Customer Materials, (ii) promptly remove any Service Provider Equipment located at Customer's premises, (iii) provide reasonable cooperation and assistance to Customer upon Customer's written request and at Customer's expense in transitioning the Services to an alternate Service Provider, and (iv) on a pro rata basis, repay all fees and expenses paid in advance for any Services or Deliverables which have not been provided.

(b) Each party shall (i) return to the other party all documents and tangible materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information, (ii) permanently erase all of the other party's Confidential Information from its computer systems and (iii) certify in writing to the other party that it has complied with the requirements of this clause.

(c) In no event shall Customer be liable for any Service Provider Personnel termination costs arising from the expiration or termination of this Agreement.

**Section 13.03** The rights and obligations of the parties set forth in this **Section 13.03** and **Article I, Article VIII, Article IX, Article X, Article XII, Section 13.02, Article XIV, Article XV, and Article XVIII**, and any right or obligation of the parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.

## ARTICLE XIV

### INSURANCE

**Section 14.01** At all times during the Term of this Agreement, Service Provider shall procure and maintain, at its sole cost and expense, at least the following types and amounts of insurance coverage:

(a) Commercial General Liability with limits no less than \$3,000,000 per occurrence and \$5,000,000 in the aggregate, including bodily injury and property damage, which policy will include contractual liability coverage insuring the activities of Service Provider under this Agreement;

(b) Worker's Compensation with limits no less than the greater of (i) \$1,000,000 or (ii) the minimum amount required by applicable law; and

(c) Commercial Automobile Liability with limits no less than \$1,000,000 combined single limit.

**Section 14.02** All insurance policies required pursuant to this **Article XIV** shall:

(a) be issued by insurance companies reasonably acceptable to Customer with a Best's Rating of no less than A-VII;

(b) provide that such insurance carriers give Customer at least 30 days' prior written notice of cancellation or non-renewal of policy coverage; *provided that*, prior to such cancellation, the Service Provider shall have new insurance policies in place that meet the requirements of this **Article XIV**;

(c) waive any right of subrogation of the insurers against the Customer or any of its Affiliates;

(d) provide that such insurance be primary insurance and any similar insurance in the name of and/or for the benefit of Customer shall be excess and non-contributory; and

(e) name Customer and Customer's Affiliates, including, in each case, all successors and permitted assigns, as additional insureds.

**Section 14.03** Upon the written request of Customer, Service Provider shall provide Customer with copies of the certificates of insurance and policy endorsements for

all insurance coverage required by this **Article XIV**, and shall not do anything to invalidate such insurance. This **Article XIV** shall not be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations imposed under this Agreement (including but not limited to, any provisions requiring a party hereto to indemnify, defend and hold the other harmless under this Agreement).

## **ARTICLE XV NON-SOLICITATION**

**Section 15.01** During the Term of this Agreement, any Statement of Work, and for a period of twelve (12) months thereafter, neither party shall, directly or indirectly, in any manner solicit or induce for employment any person who performed any work under this Agreement or such Statement of Work who is then in the employment of the other party. A general advertisement or notice of a job listing or opening or other similar general publication of a job search or availability to fill employment positions, including on the internet, shall not be construed as a solicitation or inducement for the purposes of this **Section 15.01**, and the hiring of any such employees or independent contractor who freely responds thereto shall not be a breach of this **Section 15.01**.

**Section 15.02** If either Service Provider or Customer breaches **Section 15.01**, the breaching party shall, on demand, pay to the non-breaching party a sum equal to one year's basic salary or the annual fee that was payable by the claiming party to that employee, worker or independent contractor plus the recruitment costs incurred by the non-breaching party in replacing such person.

## **ARTICLE XVI NON-EXCLUSIVITY**

The Service Provider retains the right to perform the same or similar type of services for third parties during the Term of this Agreement.

## **ARTICLE XVII FORCE MAJEURE**

**Section 17.01** No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (hereunder for obligations for payment arising prior to the event or act of Force Majeure described below), when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation:

- (a) acts of God;
- (b) flood, fire or explosion;

- (c) war, invasion, riot or other civil unrest;
- (d) actions, embargoes or blockades in effect on or after the date of this Agreement;
- (e) national or regional emergency;
- (f) strikes, labor stoppages or slowdowns or other industrial disturbances;
- (g) pandemic or state of emergency declared by any government official;
- (h) compliance with any law or governmental order, rule, regulation or direction, or any action taken by a governmental or public authority, including but not limited to imposing an embargo, export or import restriction, quota or other restriction or prohibition, or failing to grant a necessary license or consent;
- (i) shortage of adequate power or telecommunications or transportation facilities; or
- (j) if the hours of the pool are reduced or closed by an Act of God or by government order, including but not limited to COVID restrictions or disease, then the usage of Service Provider's services and the pricing for those services shall be reduced from the labor cost at least proportionate to the reduction of pool usage or more;
- (k) any other event which is beyond the reasonable control of such party

(each of the foregoing, a "**Force Majeure Event**"). A party whose performance is affected by a Force Majeure Event shall give notice to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

**Section 17.02** During the Force Majeure Event, the non-affected party may similarly suspend its performance obligations until such time as the affected party resumes performance.

**Section 17.03** The non-affected party may terminate this Agreement or any affected Statement of Work if such failure or delay continues for a period of thirty (30) days or more and, if the non-affected party is Customer, receive a refund of any amounts paid to the Service Provider in advance for the affected Services. Unless this Agreement is terminated in accordance with this **Section 17.03**, the Term of this Agreement shall be automatically extended by a period equal to the period of suspension.

## **ARTICLE XVIII MISCELLANEOUS**

**Section 18.01** Each party shall, upon the reasonable request, and at the sole cost and expense, of the other party, promptly execute such documents and perform such acts as may be necessary to give full effect to the terms of this Agreement.

**Section 18.02** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

**Section 18.03** Neither party shall issue or release any announcement, statement, press release or other publicity or marketing materials relating to this Agreement, or otherwise use the other party's trademarks, service marks, trade names, logos, symbols or brand names, in each case, without the prior written consent of the other party, which shall not be unreasonably withheld or delayed.

**Section 18.04** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses indicated below (or at such other address for a party as shall be specified in a notice given in accordance with this **Section 18.04**).

If to Service Provider:

Jeff Ellis Management, LLC  
Attention: Jonathan Hartman  
PO Box 2160  
Windermere, FL 34786  
Facsimile: 407-868-9657

If to Customer:

Carol Stream Park District  
910 North Gary Ave.  
Carol Stream, IL 60188

**Section 18.05** For purposes of this Agreement, (a) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Sections, Schedules, Exhibits and Statements of Work refer to the Sections of, and Schedules, Exhibits and Statements of Work attached to this Agreement;

(y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Schedules, Exhibits and Statements of Work referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

**Section 18.06** This Agreement, together with all Schedules, Exhibits and Statements of Work and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any conflict between the terms and provisions of this Agreement and those of any Schedule, Exhibit or Statement of Work, the following order of precedence shall govern: (a) first, this Agreement, exclusive of its Exhibits and Schedules; (b) second, the applicable Statement of Work; and (c) third, any Exhibits and Schedules to this Agreement.

**Section 18.07** Neither party may assign, transfer or delegate any or all of its rights or obligations under this Agreement, without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed; *provided, that*, upon prior written notice to the other party, either party may assign the Agreement to an Affiliate of such party or to a successor of all or substantially all of the assets of such party through merger, reorganization, consolidation or acquisition. No assignment shall relieve the assigning party of any of its obligations hereunder. Any attempted assignment, transfer or other conveyance in violation of the foregoing shall be null and void. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

**Section 18.08** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement.

**Section 18.09** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

**Section 18.10** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise,

or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**Section 18.11** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to affect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**Section 18.12** This Agreement shall be governed by and construed in accordance with the internal laws of the State of Illinois without giving effect to any choice or conflict of law provision or rule (whether of the State of Illinois or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of Illinois. Any legal suit, action or proceeding arising out of or related to this Agreement or the Services provided hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of Illinois and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court.

**Section 18.13** Each party acknowledges that a breach by a party of **Article VIII** (Intellectual Property Rights; Ownership) or **Article IX** (Confidentiality) may cause the non-breaching party irreparable damages, for which an award of damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, the non-breaching party will be entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which the non-breaching party may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or in equity, subject to any express exclusions or limitations in this Agreement to the contrary.

**Section 18.14** In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either party hereto against the other party arising out of or related to this Agreement, the prevailing party shall be entitled to recover its actual attorneys' fees and court costs from the non-prevailing party.



**Section 18.15** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

**Section 18.16** This Agreement was formed in the County of Dupage, Illinois and jurisdiction for any and all litigation is agreed to take place in the County of Dupage, Illinois.

**Section 18.17** Service Provider shall comply with all employment rules, regulations, ordinances and laws whether Federal, State or Local including but not limited to wage, hour, hiring, Civil Rights, payroll taxes, and workers' compensation.

**Section 18.18** Service Provider shall supply appropriate language for signage related to the use of the Ellis Aquatic Vigilance System (EAVS®). Signage should be posted in areas which both patrons and employees of the facility can be notified. Language must include phrasing notifying individuals that both video and sound recordings are occurring throughout the aquatic facility and in the EAVS® monitoring room.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

**SERVICE PROVIDER**

**JEFF ELLIS MANAGEMENT, LLC**

By\_\_\_\_\_

Name: Jonathan Hartman

Title: VP of Finance/Business

Date:

**CUSTOMER**

**Carol Stream Park District**

By\_\_\_\_\_

Name:

Title:

Date:

## EXHIBIT A

### STATEMENT OF WORK: SERVICES AND DELIVERABLES

#### Scope

1. Service Provider agrees to provide Services and Deliverables to operate the aquatic facilities owned by the Customer at the following location(s):

Indoor Pool  
910 N Gary Ave.  
Carol Stream, IL 60188

2. Service Provider will perform the following professional aquatic facility management services for the Customer's aquatic facilities identified above:
  - a. Service Provider shall employ, train, assign, schedule, and supervise employees to safely operate said aquatic facility or facilities pursuant to the guidelines set forth in the "Comprehensive Aquatic Risk Management Program" manual that is published by Jeff Ellis & Associates, Inc. for the term of this Agreement.
  - b. Service Provider will administer, supervise and otherwise manage the daily operations of said aquatic facility or facilities for the term of this Agreement.
  - c. Service Provider will provide general cleaning, sanitation, organization, and maintenance of the locker rooms, lavatories, showers, pool decks, swimming pools, other aquatic facility equipment for said aquatic facility or facilities for the term of this Agreement.
    - i. Hourly and End of Day
      1. Check locker rooms and lavatories
        - a. Pick up trash/garbage on the floors and counter tops
        - b. Wipe excess water from counter tops
        - c. Empty garbage containers that are filled
        - d. Fill toilet paper and paper towel dispensers as needed
      - ii. End of Day
        1. Pool Deck
          - a. Pick up trash/garbage
          - b. Empty garbage containers that are filled
    - d. Service Provider will sanitize, place, and remove vacuum, and otherwise monitor water quality for all aquatic facility or facilities spas and swimming pools identified in Appendix A.

- e. Service Provider shall perform the following pre-opening tasks to prepare for daily operation of said aquatic facility or facilities:
    - i. Organize, sanitize, make ready and otherwise prepare the locker rooms, lavatories, and showers for daily operation.
    - ii. Organize, sanitize, make ready and otherwise prepare pool decks, and swimming pools for daily operation.
    - iii. Distribute, ready and position emergency rescue equipment for use.
  - f. Service Provider shall perform the following daily operational services for said aquatic facility or facilities:
    - i. Assign and schedule the aquatic facility manager and/or supervisor to provide management oversight for daily operation.
    - ii. Assign and schedule the lifeguards and/or attendants to provide general supervision for daily operations.
    - iii. Maintain general cleanliness of the aquatic facility premises during daily operation.
  - g. Service Provider shall perform the following closing tasks at the end of daily operation for said aquatic facility or facilities:
    - i. Collect and remove trash from all office trash receptacles.
    - ii. Collect and store emergency rescue equipment for future use on a daily basis.
    - iii. Organize, sanitize, make ready and otherwise prepare the locker rooms, lavatories, and showers for daily operation.
    - iv. Organize, sanitize, make ready and otherwise prepare pool decks, and swimming pools for daily operation.
3. Service Provider will provide, maintain and operate the following emergency rescue equipment for said aquatic facility or facilities:
- a. Automatic External Deliberator
  - b. Supplemental Oxygen Support Unit
  - c. Bag Valve Mask
  - d. Oral Suction Device
  - e. Seal Easy Mask(s)
  - f. Rescue Tube(s)

- g. Life Jacket(s)
- h. Spinal Management and Extrication Board

Customer will provide, the following equipment for said aquatic facility or facilities

- a. Chemical Testing Reagents
  - b. Spinal Management and Extrication Board
  - c. First Aid Supplies
  - d. Cleaning/Sanitation Supplies
  - e. Lifeguard Stand
4. Service Provider develop and Emergency Action Plan pursuant to the guidelines set forth in the “Comprehensive Aquatic Risk Management Program” manual published by Jeff Ellis & Associates, Inc. for said aquatic facility or facilities.

### **Operating Schedule**

1. Service Provider shall operate said aquatic facility or facilities according to the terms set forth in the operating schedule submitted and mutually agreed upon by the Service Provider and Customer as described in Exhibit C.
2. Service Provider reserves the right to temporarily close said aquatic facility or facilities for sanitation or biohazard incidents, weather or chemical emergencies, when ambient air temperatures fall below sixty-seven degrees Fahrenheit (67 ° F), or when safety of guests is compromised. Service Provider agrees to notify Customer when temporarily aquatic facility closings occur and provide an explanation for said closing. Customer agrees to re-open said aquatic facility or facilities when said hazard is rectified or eliminated.

## Ellis Aquatic Vigilance System (EAVS®)

### 1. Service Provider's Responsibilities

- Network Video Recorder (NVR)
- Analytic Cameras and Licenses
- Data Storage
- Customized CCTV Operators Room Workstations
- Adaptors
- Brackets
- Desktop Microphones
- Radios and Licenses
- CCTV Room Design to include TVs, HDMI cables, desktops, chairs, supplemental lighting, and radio connectivity
- Initial Operator and Instructor Training of EAVS®
- Credentialing of EAVS® trained personnel
- Implementation of EAP with EAVS®
- Zone Validation assistances after implementation EAVS®
- System Settings of Alarms and Rules

### 2. Customer's Responsibilities

- **Access to IDF rooms**
- **Assistance in adding an Internet Service line onto the property**
- Climate and humidity controlled EAVS® Control Room with electrical outlets as specified by Service Provider. **Damages to EAVS® system/devices which occur as a direct result of a verified mechanical failure of the HVAC system that serves the control room will result in a fee to the Customer of Five Thousand Dollars (\$5,000.00) or the replacement part of the equipment, whichever is less.**

**EXHIBIT B**

**SERVICE FEES**

<b>Carol Stream Park District- Indoor Pool</b>	<b>2023</b>
Service Provider's Management Fee	\$ 6,000.00
Insurance (General Liability)	\$ 17,000.00
Labor	\$ 370,585.52
Administrative	\$ 2,000.00
EAVS® Annual Fee	\$ 9,000.00
<b>Annual Agreement Total Cost</b>	<b>\$ 404,585.52</b>

<b>Carol Stream Park District- Indoor Pool</b>	<b>2024</b>
Service Provider's Management Fee	\$ 6,000.00
Insurance (General Liability)	\$ 18,500.00
Labor	\$ 386,502.20
Administrative	\$ 2,000.00
EAVS® Annual Fee	\$ 9,000.00
<b>Annual Agreement Total Cost</b>	<b>\$ 422,002.20</b>

<b>Carol Stream Park District- Indoor Pool</b>	<b>2025</b>
Service Provider's Management Fee	\$ 6,000.00
Insurance (General Liability)	\$ 20,000.00
Labor	\$ 394,025.36
Administrative	\$ 2,000.00
EAVS® Annual Fee	\$ 9,000.00
<b>Annual Agreement Total Cost</b>	<b>\$ 431,025.36</b>

2023 – 2025 Additional Labor Cost:

\$30.00/Hour for Manager  
\$25.00/Hour for Lifeguard

\*Only Managers and Lifeguards will be allocated for this facility related to Additional Labor Costs. Pricing in Service Fees includes the scheduled two week shut-down period and therefore shall not have any deduction for the shutdown period.

**Payment Schedule**  
**Carol Stream Park District-Indoor Pool**  
**2023 Season**

Amount Due on or before Jan. 1 <sup>st</sup> , 2023	Amount Due on or before Feb. 1 <sup>st</sup> , 2023	Amount Due on or before March 1 <sup>st</sup> , 2023	Amount Due on or before April 1 <sup>st</sup> , 2023
\$33,715.46	\$33,715.46	\$33,715.46	\$33,715.46
Amount Due on or before May 1 <sup>st</sup> , 2023	Amount Due on or before June 1 <sup>st</sup> , 2023	Amount Due on or before July 1 <sup>st</sup> , 2023	Amount Due on or before Aug. 1 <sup>st</sup> , 2023
\$33,715.46	\$33,715.46	\$33,715.46	\$33,715.46
Amount Due on or before Sept.1 <sup>st</sup> , 2023	Amount Due on or before Oct. 1 <sup>st</sup> , 2023	Amount Due on or before Nov. 1 <sup>st</sup> , 2023	Amount Due on or before Dec.1 <sup>st</sup> , 2023
\$33,715.46	\$33,715.46	\$33,715.46	\$33,715.46

**2024 Season**

Amount Due on or before Jan. 1 <sup>st</sup> , 2024	Amount Due on or before Feb. 1 <sup>st</sup> , 2024	Amount Due on or before March 1 <sup>st</sup> , 2024	Amount Due on or before April 1 <sup>st</sup> , 2024
\$35,166.85	\$35,166.85	\$35,166.85	\$35,166.85
Amount Due on or before May 1 <sup>st</sup> , 2024	Amount Due on or before June 1 <sup>st</sup> , 2024	Amount Due on or before July 1 <sup>st</sup> , 2024	Amount Due on or before Aug. 1 <sup>st</sup> , 2024
\$35,166.85	\$35,166.85	\$35,166.85	\$35,166.85
Amount Due on or before Sept.1 <sup>st</sup> , 2024	Amount Due on or before Oct. 1 <sup>st</sup> , 2024	Amount Due on or before Nov. 1 <sup>st</sup> , 2024	Amount Due on or before Dec.1 <sup>st</sup> , 2024
\$35,166.85	\$35,166.85	\$35,166.85	\$35,166.85



**2025 Season**

Amount Due on or before Jan. 1 <sup>st</sup> , 2025	Amount Due on or before Feb. 1 <sup>st</sup> , 2025	Amount Due on or before March 1 <sup>st</sup> , 2025	Amount Due on or before April 1 <sup>st</sup> , 2025
\$35,918.78	\$35,918.78	\$35,918.78	\$35,918.78
Amount Due on or before May 1 <sup>st</sup> , 2025	Amount Due on or before June 1 <sup>st</sup> , 2025	Amount Due on or before July 1 <sup>st</sup> , 2025	Amount Due on or before Aug. 1 <sup>st</sup> , 2025
\$35,918.78	\$35,918.78	\$35,918.78	\$35,918.78
Amount Due on or before Sept.1 <sup>st</sup> , 2025	Amount Due on or before Oct. 1 <sup>st</sup> , 2025	Amount Due on or before Nov. 1 <sup>st</sup> , 2025	Amount Due on or before Dec.1 <sup>st</sup> , 2025
\$35,918.78	\$35,918.78	\$35,918.78	\$35,918.78

Customer agrees to deliver above installment payments by check to Service Provider’s business address by the specified delivery dates as follows or by wire transfer:

**Jeff Ellis Management, LLC.**

Attention: Jonathan Hartman  
PO Box 2160  
Windermere, FL 34786  
(800) 742-8720

**EXHIBIT C**

**OPERATING CALENDAR**

The Service Provider agrees to operate and staff said aquatic facility or facilities pursuant to the terms specified by the following agreed upon operating schedule for Indoor Pool:

<b>2023 - 2025</b>	<b>Operating Dates</b>	<b>Operating Times</b>
January – December	Monday – Friday Saturday Sunday	5:00am-1:00pm/4:00pm-9:30pm 6:00am-5:00pm 7:00am-5:00pm
Holidays	New Year’s Day Easter Memorial Day Independence Day Labor Day Thanksgiving Day Christmas Eve Christmas New Year’s Eve	Closed Closed 8:00am-12:00pm 8:00am-12:00pm 8:00am-12:00pm 8:00am-12:00pm 8:00am-12:00pm Closed 8:00am-12:00pm

The Service Provider adds 30 minutes prior to opening and 30 minutes after closing for a total of one additional hour per operating day to the above operating schedule to allow its employees to complete pre-opening and post-closing responsibilities. Accordingly, on additional labor hours is factored into daily operating schedule shown above.

The Service Provider will execute normal closing procedures prior to leaving the facility.

Facility operating hours and dates will be reviewed annually, and final facility schedules will be submitted to JEM each Fall and pricing will be adjusted accordingly.



**SERVICES AGREEMENT**

between

**JEFF ELLIS MANAGEMENT, LLC**

and

**CAROL STREAM PARK DISTRICT**

**CORAL COVE WATERPARK**

dated as of

February 27, 2023

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## SERVICES AGREEMENT

**THIS SERVICES AGREEMENT** (the "**Agreement**"), dated as of February 27, 2023 (the "**Effective Date**"), is by and between **Jeff Ellis Management, LLC** a Florida limited liability company, with offices located at 500 Winderley Place Suite 116; Maitland, FL 32751 (the "**Service Provider**") and **Carol Stream Park District**, with offices located at 849 W. Lies Rd.; Carol Stream; IL 60188 (the "**Customer**").

WHEREAS, Customer owns certain aquatic facilities and desires to retain Service Provider to provide certain aquatic facility management services upon the terms and conditions hereinafter set forth, and Service Provider is willing to perform such services.

In consideration of the mutual covenants and agreements hereinafter set forth, the parties agree as follows:

### ARTICLE I DEFINITIONS

"**Action**" has the meaning set forth in **Section 11.01**.

"**Affiliate**" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"**Agreement**" has the meaning set forth in the preamble.

"**Change Order**" has the meaning set forth in **Section 5.02**.

"**Confidential Information**" means any information that is treated as confidential by a party, including, without limitation, trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing. Confidential Information shall not include information that: (a) is already known to the Receiving Party without restriction on use or disclosure prior to receipt of such information from the Disclosing Party; (b) is or becomes generally known by the public other than by breach of this Agreement by, or other wrongful act of, the Receiving Party; (c) is developed by the Receiving Party independently of, and without reference to, any Confidential Information of the Disclosing Party; or (d) is received by the Receiving Party from a third party who is not under any obligation to the Disclosing Party to maintain the confidentiality of such information.

"**Customer**" has the meaning set forth in the preamble.

"**Customer Contract Manager**" has the meaning set forth in **Section 4.01(a)**

**"Customer Equipment"** means including but not limited to any equipment, facilities, water attractions, pools, filtration systems on Customer property and used directly or indirectly in the provision of the Services.

**"Customer Materials"** any documents, data, know-how, methodologies, manuals, and other materials provided to Service Provider by Customer.

**"Deliverables"** means if applicable, all documents, work product and other materials that are delivered to Customer hereunder or prepared by or on behalf of Service Provider in the course of performing the Services, including any items identified as such in the Statement of Work (such as "The Comprehensive Aquatic Risk Management Program" manual published by Jeff Ellis & Associates, Inc.).

**"Disclosing Party"** means a party that discloses Confidential Information under this Agreement.

**"EAVS®"** refers to the Ellis Aquatic Vigilance System used and installed by Service Provider.

**"Force Majeure Event"** has the meaning set forth in **Section 17.01**.

**"Intellectual Property Rights"** means all (a) patents, patent disclosures and inventions (whether patentable or not), (b) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, (c) copyrights and copyrightable works (including computer programs), mask works, and rights in data and databases, (d) trade secrets, know-how and other confidential information, and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**"Law"** means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, declaration of pandemic or other state of emergency, other requirement or rule of law of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

**"Losses"** mean all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

**"Permitted Subcontractor"** has the meaning set forth in **Section 3.01(f)**.

**"Person"** means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other entity.

**"Pre-Existing Materials"** means the pre-existing materials specified in the Statement of Work, all documents, data, know-how, methodologies, manuals and other materials, provided by or used by Service Provider in connection with performing the Services, in each case developed

or acquired by the Service Provider prior to the commencement or independently of this Agreement.

"**Receiving Party**" means a party that receives or acquires Confidential Information directly or indirectly under this Agreement.

"**Service Provider**" has the meaning set forth in the preamble.

"**Service Provider Contract Manager**" has the meaning set forth in **Section 3.01(a)**.

"**Service Provider Equipment**" means any equipment provided by or on behalf of Service Provider and used directly or indirectly in the provision of the Services including "EAVS" Ellis Aquatic Vigilance System.

"**Service Provider Personnel**" means all employees and Permitted Subcontractors, if any, engaged by Service Provider to perform the Services.

"**Services**" mean any services to be provided by Service Provider under this agreement, as described in more detail in the Statement of Work, and Service Provider's obligations under this Agreement.

"**Statement of Work**" means each Statement of Work entered into by the parties and attached to this Agreement, substantially in the form of Exhibit A.

"**Term**" has the meaning set forth in **Article VI**.

## **ARTICLE II SERVICES**

**Section 2.01** Service Provider shall provide the Services to Customer as described in more detail in each Statement of Work, attached hereto as Exhibit A and incorporated herein by reference, and in accordance with the terms and conditions of this Agreement. Additional Statements of Work may be entered into under this Agreement for additional services upon the mutual agreement of the parties.

**Section 2.02** Each Statement of Work shall include the following information, if applicable:

- (a) a detailed description of the Services to be performed pursuant to the Statement of Work;
- (b) the date upon which the Services will commence and the term of such Statement of Work;
- (c) the names of the Service Provider Contract Manager;
- (d) the fees to be paid to Service Provider under the Statement of Work;
- (e) an operating schedule, if applicable;

(f) any other terms and conditions agreed upon by the parties in connection with the Services to be performed pursuant to such Statement of Work; and

(g) failure to include one or more of the following shall not be a breach of this agreement, and if this **Section 2.02** and the Statement of Work conflict, the Statement of Work shall control.

### **ARTICLE III SERVICE PROVIDER'S OBLIGATIONS**

**Section 3.01** The Service Provider shall:

(a) appoint: a Service Provider employee to serve as a primary contact with respect to this Agreement and who will have the authority to act on behalf of Service Provider in connection with matters pertaining to this Agreement (the "**Service Provider Contract Manager**"); and

(b) maintain the same Service Provider Contract Manager throughout the Term of this Agreement except for changes in such personnel due to:

(i) Customer's request pursuant to **Section 3.01(c)**; or

(ii) the resignation or termination of such personnel or other circumstances outside of Service Provider's reasonable control;

(c) upon the reasonable written request of Customer, promptly replace the Service Provider Contract Manager and any other Service Provider Personnel;

(d) before the date on which the Services are to start, obtain, and at all times during the Term of this Agreement maintain, all necessary licenses and consents and comply with all relevant Laws applicable to the provision of the Services;

(e) comply with, and ensure that all Service Provider Personnel comply with, all rules, regulations and policies of Customer that are communicated to Service Provider in writing, including building security procedures, general health and safety practices and procedures, and the Customer's drug and alcohol policies; and

(f) engage additional Persons needed to provide any Services to Customer (each such approved subcontractor or other third party, a "**Permitted Subcontractor**").

**Section 3.02** Service Provider is responsible for all Service Provider Personnel and for the payment of their compensation, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments and disability benefits.



**ARTICLE IV  
CUSTOMER'S OBLIGATIONS**

**Section 4.01** Customer shall:

(a) cooperate with Service Provider in all matters relating to the Services and appoint and, in its reasonable discretion, replace a Customer employee to serve as the primary contact with respect to this Agreement and who will have the authority to act on behalf of Customer with respect to matters pertaining to this Agreement (the "**Customer Contract Manager**");

(b) provide, subject to **Section 3.01(e)**, such access to Customer's premises, and such office accommodation and other facilities as may reasonably be requested by Service Provider and agreed with Customer in writing in advance, for the purposes of performing the Services;

(c) respond promptly to any Service Provider request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for Service Provider to perform Services in accordance with the requirements of this Agreement;

(d) provide such information as Service Provider may request, in order to carry out the Services, in a timely manner, and ensure that it is complete and accurate in all material respects;

(e) ensure that all Customer Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant legal or industry standards or requirements obtain and maintain all necessary licenses and consents and comply with all applicable Law in relation to the Services, before the date on which the Services are to start except in cases where the Service Provider is responsible for licenses or compliance with Law;

(f) keep, maintain and ensure the Service Provider Equipment in good condition, and shall not dispose of or use Service Provider Equipment other than in accordance with Service Provider's written instructions or authorization.

**Section 4.02** If Service Provider's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants or employees outside of Service Provider's reasonable control, Service Provider shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.

**ARTICLE V  
CHANGE ORDERS**

**Section 5.01** If either party wishes to change the scope or performance of the Services, it shall submit details of the requested change to the other in writing. Service Provider shall, within a reasonable time after such request, provide a written estimate to Customer of:

(a) the likely time required to implement the change;

- (b) any necessary variations to the fees and other charges for the Services arising from the change;
- (c) the likely effect of the change on the Services; and
- (d) any other impact the change might have on the performance of this Agreement.

**Section 5.02** Promptly after receipt of the written estimate, the parties shall negotiate and agree in writing, and only in writing, on the terms of such change (a "**Change Order**"). Neither party shall be bound by any Change Order unless mutually agreed upon in writing in accordance with **Section 18.10**.

## **ARTICLE VI TERM**

This Agreement shall commence upon signing and shall continue from **May 27<sup>th</sup>, 2023 thru September 1<sup>st</sup>, 2025 for Outdoor Pool**, unless sooner terminated pursuant to **Article XIII**. Upon such termination, Customer shall pay all outstanding invoices for Services completed through the effective date of cancellation.

In addition to any remedies that may be provided under this Agreement, Service Provider may terminate this Agreement within ten (10) days upon written notice to Customer, if Customer does not pay past due account balances within ten (10) days from the published written notice of a past due account.

In the event this Agreement is terminated by operation of law or otherwise prior to the expiration of its Term, then, in that event, all EAVS<sup>®</sup> operating equipment (hardware and software including but not limited to: Cameras, NVRs, Gig Switches, TV Monitors, Workstations, cables, etc....), finished documents, manuals, data, studies, surveys, drawings, maps, models and system reviews prepared by Service Provider shall be removed from the property. Service Provider maintains ownership of all EAVS<sup>®</sup> related equipment and materials. Customer must allow Service Provider access to retrieve any and all EAVS<sup>®</sup> items.

## **ARTICLE VII FEES AND EXPENSES; PAYMENT TERMS**

**Section 7.01** In consideration of the provision of the Services by the Service Provider to Customer under this Agreement, Customer shall pay the fees set forth in Exhibit B and the reimbursement of expenses pursuant to this **Article VII**.

**Section 7.02** Where the Services are provided on a time and materials basis:

- (a) the fees payable for the Services shall be calculated in accordance with Service Provider's hourly fee rates for the Service Provider Personnel set forth in Exhibit B;

(b) Service Provider shall issue invoices to Customer monthly in arrears for its fees for time for the immediately preceding month, calculated as provided in this **Section 7.02**, together with a detailed breakdown of any expenses for such month incurred in accordance with **Section 7.04**.

**Section 7.03** Where Services are provided for a fixed price, the total fees for the Services shall be the amount set out in Exhibit B. The total price shall be paid to Service Provider in installments, as set out in Exhibit B. At the end of a period specified in Exhibit B in respect of which an installment is due, Service Provider shall issue invoices to Customer for the fees that are then payable, together with a detailed breakdown of any expenses incurred in accordance with **Section 7.04**.

**Section 7.04** Customer agrees to reimburse Service Provider for all out-of-pocket expenses incurred by Service Provider in connection with the performance of the Services.

**Section 7.05** After conclusion of the term for Services as set forth in **Section 7.01**, Service Provider may increase its standard fee rates specified in the applicable Statement of Work upon written notice to Customer; *provided, that*:

- (a) Service Provider provides Customer written notice of such increase at least ninety (90) days prior to the effective date of such increase;
- (b) such increases occur no more frequently than once per contract year of the Term; and
- (c) the amount of such increase shall not exceed five percent (5%).

**Section 7.06** Service Provider shall issue invoices to Customer only in accordance with the terms of this Section, and Customer shall pay all properly invoiced amounts due to Service Provider within fifteen (15) days after Customer's receipt of such invoice, except for any amounts disputed by Customer in good faith. All payments hereunder shall be in US dollars and made by check or wire transfer. Service Provider shall assess a 1.5% monthly finance charge on all past due account balances. In the event Customer does not pay past due account balances within ten (10) days from the published written notice of a past due account, Service Provider may suspend or terminate services provided to Customer upon twenty-four hours advance written notice to Customer.

**Section 7.07** In the event Customer has a reasonable dispute as to the time or expenses submitted or any portion of an invoice, Customer shall provide written notice of such dispute to Service Provider. The parties shall use reasonable efforts to quickly resolve any such disputes. If Service Provider disputes Customer's contention that appropriate grounds exist for withholding payments, it may suspend the performance of Services hereunder until settlement or resolution of the issue, without being in default of this Agreement.

**Section 7.08** In the event of a Minimum Wage increase passed by Federal, State, or Local government the labor amount found in Exhibit B will increase by the same percentage of the increase of the minimum wage using the following formula: ((New Rate minus Old Rate) divided by the Old Rate).

## **ARTICLE VIII INTELLECTUAL PROPERTY RIGHTS; OWNERSHIP**

**Section 8.01** Service Provider and its licensors and Affiliates are, and shall remain, the sole and exclusive owners of all right, title and interest in and to the Pre-Existing Materials, including all Intellectual Property Rights therein. Service Provider hereby grants Customer a limited, irrevocable, perpetual, fully paid-up, royalty-free, non-transferable (except in accordance with **Section 18.07**), non-sublicensable, worldwide license to use, perform, display, execute, reproduce, distribute, transmit, modify (including to create derivative works), import, make, have made, sell, offer to sell and otherwise exploit any Pre-Existing Materials to the extent incorporated in, combined with or otherwise necessary for the use of the Deliverables to the extent reasonably required in connection with Customer's receipt or use of the Services and Deliverables. All other rights in and to the Pre-Existing Materials are expressly reserved by Service Provider.

**Section 8.02** Customer and its licensors are, and shall remain, the sole and exclusive owner of all right, title and interest in and to the Customer Materials, including all Intellectual Property Rights therein. Service Provider shall have no right or license to use any Customer Materials except solely during the Term of the Agreement to the extent necessary to provide the Services to Customer. All other rights in and to the Client Materials are expressly reserved by Customer.

**Section 8.03** Any and all items including all Intellectual Property, hardware, software, switches, video recordings, voice recordings, or any other items as listed in **Exhibit A** related to the installation and use of the Ellis Aquatic Vigilance System (EAVS®) shall remain the property of the Service Provider.

## **ARTICLE IX CONFIDENTIAL INFORMATION**

**Section 9.01** The Receiving Party agrees:

(a) not to disclose or otherwise make available Confidential Information of the Disclosing Party to any third party without the prior written consent of the Disclosing Party; *provided, however*, that the Receiving Party may disclose the Confidential Information of the Disclosing Party to its and its Affiliates, and their officers, employees, consultants and legal advisors who have a "need to know", who have been apprised of this restriction and who are themselves bound by nondisclosure obligations at least as restrictive as those set forth in this **Article IX**;

(b) to use the Confidential Information of the Disclosing Party only for the purposes of performing its obligations under the Agreement or, in the case of Customer, to make use of the Services and Deliverables; and

(c) to immediately notify the Disclosing Party in the event it becomes aware of any loss or disclosure of any of the Confidential Information of Disclosing Party.

**Section 9.02** If the Receiving Party becomes legally compelled to disclose any Confidential Information, the Receiving Party shall provide:

(a) prompt written notice of such requirement so that the Disclosing Party may seek, at its sole cost and expense, a protective order or other remedy; and

(b) reasonable assistance, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure.

(c) the contract and related information as may be required by the Illinois Freedom of Information Act (FOIA).

If, after providing such notice and assistance as required herein, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose no more than that portion of the Confidential Information which, on the advice of the Receiving Party's legal counsel, the Receiving Party is legally required to disclose and, upon the Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or agency that such Confidential Information will be afforded confidential treatment.

**Section 9.03** Nothing in this Agreement shall prevent either party from using any general methodologies or know-how contained in the unaided memory of such party's personnel or those of its Affiliates developed or disclosed under this Agreement, provided that in doing so it is not in breach of its obligations of confidentiality under this Section or using any Intellectual Property Rights of the other party or any of its Affiliates.

## **ARTICLE X REPRESENTATIONS AND WARRANTIES**

**Section 10.01** Each party represents and warrants to the other party that:

(a) it is duly organized, validly existing and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization, or chartering;

(b) rights and licenses granted hereunder and to perform its obligations hereunder;

(c) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action of the party; and

(d) when executed and delivered by such party, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

**Section 10.02** Service Provider represents and warrants to Customer that:

(a) it shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement;

(b) it is in compliance with, and shall perform the Services in compliance with, all applicable Laws;

(c) the Services and Deliverables will be in conformity in all material respects with all requirements or specifications stated in this Agreement and the applicable Statement of Work. In the event of Service Provider's breach of the foregoing warranty, Service Provider's sole and exclusive obligation and liability and Customer's sole and exclusive remedy shall be as follows:

(i) The Service Provider shall use reasonable efforts to cure such breach; *provided, that* if Service Provider cannot cure such breach within a reasonable time (but no more than 30 days) after Customer's written notice of such breach; Customer may, at its option, terminate the Agreement by serving written notice of termination in accordance with **Section 18.04**.

(ii) In the event the Agreement is terminated in accordance with this **Section 10.02(c)**, Service Provider shall within 30 days after the effective date of termination, refund to Customer any fees paid by the Customer as of the date of termination for such Service or Deliverable less a deduction equal to the fees for receipt or use of such Deliverables or Service up to and including the date of termination on a pro-rated basis.

(iii) The foregoing remedy shall not be available unless Customer provides written notice of such breach within 30 days after performance of such Service.

**Section 10.03** EXCEPT FOR THE EXPRESS WARRANTIES IN THIS AGREEMENT SERVICE PROVIDER HEREBY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE UNDER THIS AGREEMENT.

## ARTICLE XI INDEMNIFICATION

**Section 11.01** Service Provider shall defend, indemnify and hold harmless Customer and its officers, directors, employees, agents, commissioners, successors and permitted assigns (each, a "**Customer Indemnity**") from and against all Losses awarded against a Customer Indemnity arising out of or resulting from any third-party claim, suit, action or proceeding (each, an "**Action**") arising out of or resulting from:

(a) bodily injury, death of any person or damage to real or tangible, personal property resulting from the willful, fraudulent or grossly negligent acts or omissions of Service Provider or Service Provider Personnel in the performance of the Services; and

(b) Service Provider's material breach of any representation, warranty or obligation of Service Provider set forth in this **Section 10.01** or **Section 10.02** of this Agreement.

**Section 11.02** Customer shall defend, indemnify and hold harmless Service Provider and Service Provider's Affiliates and their officers, directors, employees, agents, successors and permitted assigns from and against all Losses awarded against Service Provider arising out of or resulting from any third-party Action arising out of or resulting from:

(a) bodily injury, death of any person or damage to real or tangible, personal property resulting from the grossly negligent or willful acts or omissions of Customer; and

(b) Customer's material breach of any representation, warranty or obligation of Customer set forth in this **Section 10.01** or **Section 10.02** of this Agreement.

**Section 11.03** The party seeking indemnification hereunder shall promptly notify the indemnifying party in writing of any Action and cooperate with the indemnifying party at the indemnifying party's sole cost and expense. The indemnifying party shall immediately take control of the defense and investigation of such Action and shall employ counsel of its choice to handle and defend the same, at the indemnifying party's sole cost and expense. The indemnifying party shall not settle any Action in a manner that adversely affects the rights of the indemnified party without the indemnified party's prior written consent, which shall not be unreasonably withheld or delayed. The indemnified party's failure to perform any obligations under this **Section 11.03** shall not relieve the indemnifying party of its obligations under this **Section 11.03** except to the extent that the indemnifying party can demonstrate that it has been materially prejudiced as a result of such failure. The indemnified party may participate in and observe the proceedings at its own cost and expense.

## ARTICLE XII LIMITATION OF LIABILITY

**Section 12.01** EXCEPT AS OTHERWISE PROVIDED IN **Section 12.02**, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**Section 12.02** Service Provider shall not be liable for the failure to perform its obligations under this agreement when such failure is caused by fire, explosion, water, Act of God, civil

disturbance, sabotage, weather beyond the reasonable foreseeability of Service Provider, nor for personal property destroyed or damaged due to such cause. As well, Service Provider inability to perform its duties hereunder by reason of the closing of the pool due to the conditions, the failure of equipment, plumbing or piping or the violation of any law, regulation or ordinance by the Customer, which shall in no way be the responsibility or liability of Service Provider.

- a) Except in the event of willful conduct on the part of Service Provider, Service Provider shall not be held liable for any claims for loss of life, bodily injury, or damage to property arising from any incidents occurring at the Customer facility when Service Provider is not engaged in the performance of this agreement.
- b) Due to the swimming pool/spa repair and service work, Service Provider is not responsible for tangential component failures or unrelated problems that may occur subsequent to repair service calls. Service Provider will use due diligence in troubleshooting and repair procedures; however, Customer acknowledges that working with older components may exacerbate problematic conditions. Service Provider will not be held responsible for any unforeseeable leaks or cracks in existing piping or plumbing.
- c) Service Provider warrants that all material used in completing the repair or work set forth in the agreement will be of conform to reasonably acceptable commercial standards for their application and the work will be in a competent and reasonably professional manner. Equipment, parts, or accessories purchased by Service Provider for use in this repair or service is subject to the manufacturer's guarantee. Service Provider shall not be held responsible for any damages, including any loss of business or other consequential damages, arising out of the failure of any product or material. Service Provider warranty provided herein shall be limited to the original owner of the swimming pool/spa and is not transferable.
- d) Service Provider is not responsible for any vandalism or freeze/that damage that occurs in the off season.
- e) Requests for any changes or additions to this agreement by Customer shall not be enforceable against Service Provider unless they are agreed upon in writing by both parties and signed by a representative of Service Provider, with authority to sign such change or modification. All charges for changes or additions shall be due and payable by Customer at the completion of the work.
- f) Before any work will commence or any materials ordered; a signed and approved credit card authorization form or a signed and approved aquatic maintenance proposal must be on file with Service Provider.



- g) Service Provider shall not be responsible for any incidents, damages to persons or property or consequential damages arising, directly or indirectly from any chemical spills or exposure to harmful chemicals, caused by the failure or malfunction of any equipment, parts or accessories.
- h) Service Provider will not warranty any equipment or materials purchased by the Customer and will be installed and invoiced at a separate rate. Service Provider is not responsible for work performed by any other entity.
- i) Service Provider shall not be responsible for any incidents, damages to persons or property or consequential damages arising, directly or indirectly from any events or happenings outside of the water
- j) Service Provider shall not be responsible for any incidents, damages arising, directly or indirectly from any events or happenings inside water features which are not to be the result of negligence of Service Provider.
- k) Service Provider shall not be responsible for any incidents, damages to persons or property consequential damages arising. Directly or indirectly from any events or happenings occurring due to equipment failure or breakdown of facility's structures such as pool tiles, pool ladders, etc.

**Section 12.03** The exclusions and limitations in **Section 12.01** and **Section 12.02** shall not apply to:

- (a) damages or other liabilities arising out of or relating to a party's failure to comply with its obligations under **Article VIII** (Intellectual Property Rights; Ownership);
- (b) damages or other liabilities arising out of or relating to a party's failure to comply with its obligations under **Article IX** (Confidentiality);
- (c) Service Provider's indemnification obligations under **Section 11.01** (Indemnification);
- (d) Customer's indemnification obligations under **Section 11.02** (Indemnification);
- (e) damages or other liabilities arising out of or relating to a party's gross negligence, willful misconduct or intentional acts;
- (f) death or bodily injury or damage to real or tangible personal property resulting from a party's negligent acts or omissions;
- (g) damages or liabilities to the extent covered by a party's insurance; and
- (h) a party's obligation to pay attorneys' fees and court costs in accordance with **Section 18.05**.

**ARTICLE XIII**  
**TERMINATION; EFFECT OF TERMINATION**

Either party, in its sole discretion, may terminate this Agreement or any Statement of Work, in whole or in part, at any time without cause, by providing at least thirty (30) days' prior written notice to the other party. Neither party is to terminate this Agreement during the summer season operations dates. Early termination of Agreement must be completed and made aware prior or after summer season operations dates. If the Agreement is terminated by Customer before the completion of the contract the Customer will be responsible to pay Service Provider a pro-rated sum of Thirty-Nine Thousand Dollars (\$39,000.00) for the outdoor facility. Pro-rated amounts will follow the schedule shown below:

- Termination occurring in 2023 – Customer will pay Service Provider \$39,000.00
- Termination occurring in 2024 – Customer will pay Service Provider \$26,000.00
- Termination occurring in 2025 – Customer will pay Service Provider \$13,000.00

**Section 13.01** Either party may terminate this Agreement, effective upon written notice to the other party (the "**Defaulting Party**"), if the Defaulting Party:

(a) materially breaches this Agreement, and such breach is incapable of cure, or with respect to a material breach capable of cure, the Defaulting Party does not cure such breach within thirty (30) days after receipt of written notice of such breach.

(b) (i) becomes insolvent or admits its inability to pay its debts generally as they become due; (ii) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within seven (7) business days or is not dismissed or vacated within forty-five (45) days after filing; (iii) is dissolved or liquidated or takes any corporate action for such purpose; (iv) makes a general assignment for the benefit of creditors; or (v) has a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

**Section 13.02** Upon expiration or termination of this Agreement for any reason:

(a) Service Provider shall (i) promptly deliver to Customer all Deliverables (whether complete or incomplete) for which Customer has paid, and all Customer Materials, (ii) promptly remove any Service Provider Equipment located at Customer's premises, (iii) provide reasonable cooperation and assistance to Customer upon Customer's written request and at Customer's expense in transitioning the Services to an alternate Service Provider, and (iv) on a pro rata basis, repay all fees and expenses paid in advance for any Services or Deliverables which have not been provided.

(b) Each party shall (i) return to the other party all documents and tangible materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information, (ii) permanently erase all of the other party's Confidential Information from its

computer systems and (iii) certify in writing to the other party that it has complied with the requirements of this clause.

(c) In no event shall Customer be liable for any Service Provider Personnel termination costs arising from the expiration or termination of this Agreement.

**Section 13.03** The rights and obligations of the parties set forth in this **Section 13.03** and **Article I, Article VIII, Article IX, Article X, Article XII, Section 13.02, Article XIV, Article XV, and Article XVIII**, and any right or obligation of the parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.

## **ARTICLE XIV INSURANCE**

**Section 14.01** At all times during the Term of this Agreement, Service Provider shall procure and maintain, at its sole cost and expense, at least the following types and amounts of insurance coverage:

(a) Commercial General Liability with limits no less than \$3,000,000 per occurrence and \$5,000,000 in the aggregate, including bodily injury and property damage, which policy will include contractual liability coverage insuring the activities of Service Provider under this Agreement;

(b) Worker's Compensation with limits no less than the greater of (i) \$1,000,000 or (ii) the minimum amount required by applicable law; and

(c) Commercial Automobile Liability with limits no less than \$1,000,000 combined single limit.

**Section 14.02** All insurance policies required pursuant to this **Article XIV** shall:

(a) be issued by insurance companies reasonably acceptable to Customer with a Best's Rating of no less than A-VII;

(b) provide that such insurance carriers give Customer at least 30 days' prior written notice of cancellation or non-renewal of policy coverage; *provided that*, prior to such cancellation, the Service Provider shall have new insurance policies in place that meet the requirements of this **Article XIV**;

(c) waive any right of subrogation of the insurers against the Customer or any of its Affiliates;

(d) provide that such insurance be primary insurance and any similar insurance in the name of and/or for the benefit of Customer shall be excess and non-contributory; and

(e) name Customer and Customer's Affiliates, including, in each case, all successors and permitted assigns, as additional insureds.

**Section 14.03** Upon the written request of Customer, Service Provider shall provide Customer with copies of the certificates of insurance and policy endorsements for all insurance coverage required by this **Article XIV**, and shall not do anything to invalidate such insurance. This **Article XIV** shall not be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations imposed under this Agreement (including but not limited to, any provisions requiring a party hereto to indemnify, defend and hold the other harmless under this Agreement).

**ARTICLE XV  
NON-SOLICITATION**

**Section 15.01** During the Term of this Agreement, any Statement of Work, and for a period of twelve (12) months thereafter, neither party shall, directly or indirectly, in any manner solicit or induce for employment any person who performed any work under this Agreement or such Statement of Work who is then in the employment of the other party. A general advertisement or notice of a job listing or opening or other similar general publication of a job search or availability to fill employment positions, including on the internet, shall not be construed as a solicitation or inducement for the purposes of this **Section 15.01**, and the hiring of any such employees or independent contractor who freely responds thereto shall not be a breach of this **Section 15.01**.

**Section 15.02** If either Service Provider or Customer breaches **Section 15.01**, the breaching party shall, on demand, pay to the non-breaching party a sum equal to one year's basic salary or the annual fee that was payable by the claiming party to that employee, worker or independent contractor plus the recruitment costs incurred by the non-breaching party in replacing such person.

**ARTICLE XVI  
NON-EXCLUSIVITY**

The Service Provider retains the right to perform the same or similar type of services for third parties during the Term of this Agreement.

**ARTICLE XVII  
FORCE MAJEURE**

**Section 17.01** No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (hereunder for obligations for payment arising prior to the event or act of Force Majeure described below), when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation:

- (a) acts of God;

- (b) flood, fire or explosion;
- (c) war, invasion, riot or other civil unrest;
- (d) actions, embargoes or blockades in effect on or after the date of this Agreement;
- (e) national or regional emergency;
- (f) strikes, labor stoppages or slowdowns or other industrial disturbances;
- (g) pandemic or state of emergency declared by any government official;
- (h) compliance with any law or governmental order, rule, regulation or direction, or any action taken by a governmental or public authority, including but not limited to imposing an embargo, export or import restriction, quota or other restriction or prohibition, or failing to grant a necessary license or consent;
- (i) shortage of adequate power or telecommunications or transportation facilities; or
- (j) if the hours of the pool are reduced or closed by an Act of God or by government order, including but not limited to COVID restrictions or disease, then the usage of Service Provider's services and the pricing for those services shall be reduced from the labor cost at least proportionate to the reduction of pool usage or more;
- (k) any other event which is beyond the reasonable control of such party

(each of the foregoing, a "**Force Majeure Event**"). A party whose performance is affected by a Force Majeure Event shall give notice to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

**Section 17.02** During the Force Majeure Event, the non-affected party may similarly suspend its performance obligations until such time as the affected party resumes performance.

**Section 17.03** The non-affected party may terminate this Agreement or any affected Statement of Work if such failure or delay continues for a period of thirty (30) days or more and, if the non-affected party is Customer, receive a refund of any amounts paid to the Service Provider in advance for the affected Services. Unless this Agreement is terminated in accordance with this **Section 17.03**, the Term of this Agreement shall be automatically extended by a period equal to the period of suspension.

## **ARTICLE XVIII MISCELLANEOUS**

**Section 18.01** Each party shall, upon the reasonable request, and at the sole cost and expense, of the other party, promptly execute such documents and perform such acts as may be necessary to give full effect to the terms of this Agreement.

**Section 18.02** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

**Section 18.03** Neither party shall issue or release any announcement, statement, press release or other publicity or marketing materials relating to this Agreement, or otherwise use the other party's trademarks, service marks, trade names, logos, symbols or brand names, in each case, without the prior written consent of the other party, which shall not be unreasonably withheld or delayed.

**Section 18.04** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses indicated below (or at such other address for a party as shall be specified in a notice given in accordance with this **Section 18.04**).

If to Service Provider:

Jeff Ellis Management, LLC  
Attention: Jonathan Hartman  
PO Box 2160  
Windermere, FL 34786  
Facsimile: 407-868-9657

If to Customer:

Carol Stream Park District  
910 North Gary Ave.  
Carol Stream, IL 60188

**Section 18.05** For purposes of this Agreement, (a) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Sections, Schedules, Exhibits and Statements of Work refer to the Sections of, and Schedules,

Exhibits and Statements of Work attached to this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Schedules, Exhibits and Statements of Work referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

**Section 18.06** This Agreement, together with all Schedules, Exhibits and Statements of Work and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any conflict between the terms and provisions of this Agreement and those of any Schedule, Exhibit or Statement of Work, the following order of precedence shall govern: (a) first, this Agreement, exclusive of its Exhibits and Schedules; (b) second, the applicable Statement of Work; and (c) third, any Exhibits and Schedules to this Agreement.

**Section 18.07** Neither party may assign, transfer or delegate any or all of its rights or obligations under this Agreement, without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed; *provided, that*, upon prior written notice to the other party, either party may assign the Agreement to an Affiliate of such party or to a successor of all or substantially all of the assets of such party through merger, reorganization, consolidation or acquisition. No assignment shall relieve the assigning party of any of its obligations hereunder. Any attempted assignment, transfer or other conveyance in violation of the foregoing shall be null and void. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

**Section 18.08** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement.

**Section 18.09** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

**Section 18.10** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a

waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**Section 18.11** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to affect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**Section 18.12** This Agreement shall be governed by and construed in accordance with the internal laws of the State of Illinois without giving effect to any choice or conflict of law provision or rule (whether of the State of Illinois or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of Illinois. Any legal suit, action or proceeding arising out of or related to this Agreement or the Services provided hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of Illinois and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court.

**Section 18.13** Each party acknowledges that a breach by a party of **Article VIII** (Intellectual Property Rights; Ownership) or **Article IX** (Confidentiality) may cause the non-breaching party irreparable damages, for which an award of damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, the non-breaching party will be entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which the non-breaching party may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or in equity, subject to any express exclusions or limitations in this Agreement to the contrary.

**Section 18.14** In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either party hereto against the other party arising out of or related to this Agreement, the prevailing party shall be entitled to recover its actual attorneys' fees and court costs from the non-prevailing party.

**Section 18.15** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic



transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

**Section 18.16** This Agreement was formed in the County of Dupage, Illinois and jurisdiction for any and all litigation is agreed to take place in the County of Dupage, Illinois.

**Section 18.17** Service Provider shall comply with all employment rules, regulations, ordinances, and laws whether Federal, State or Local including but not limited to wage, hour, hiring, Civil Rights, payroll taxes, and workers' compensation.

**Section 18.18** Service Provider shall supply appropriate language for signage related to the use of the Ellis Aquatic Vigilance System (EAVS®). Signage should be posted in areas which both patrons and employees of the facility can be notified. Language must include phrasing notifying individuals that both video and sound recordings are occurring throughout the aquatic facility and in the EAVS® monitoring room.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

**SERVICE PROVIDER**

**JEFF ELLIS MANAGEMENT, LLC**

By\_\_\_\_\_

Name: Jonathan Hartman

Title: VP of Finance/Business

Date:

**CUSTOMER**

**CAROL STREAM PARK DISTRICT**

By\_\_\_\_\_

Name:

Title:

Date:

## EXHIBIT A

### STATEMENT OF WORK: SERVICES AND DELIVERABLES

#### Scope

1. Service Provider agrees to provide Services and Deliverables to operate the aquatic facilities owned by the Customer at the following location(s):

Outdoor Pool  
849 W. Lies Rd  
Carol Stream, IL 60188

2. Service Provider will perform the following professional aquatic facility management services for the Customer's aquatic facilities identified above:
  - a. Service Provider shall employ, train, assign, schedule, and supervise employees to safely operate said aquatic facility or facilities pursuant to the guidelines set forth in the "Comprehensive Aquatic Risk Management Program" manual that is published by Jeff Ellis & Associates, Inc. for the term of this Agreement.
  - b. Service Provider will administer, supervise and otherwise manage the daily operations of said aquatic facility or facilities for the term of this Agreement.
  - c. Service Provider will provide general cleaning, sanitation, organization, and maintenance of the locker rooms, lavatories, showers, pool decks, water attractions, swimming pools, filtration rooms, pumps and other aquatic facility equipment for said aquatic facility or facilities for the term of this Agreement.
    - i. Hourly and End of Day
      1. Check locker rooms and lavatories
        - a. Pick up trash/garbage on the floors and counter tops
        - b. Wipe excess water from counter tops
        - c. Empty garbage containers that are filled
        - d. Fill toilet paper as needed
      2. Walk Pool Deck
        - a. Pick up trash/garbage
        - b. Empty garbage containers that are filled and take to dumpster. Carol Stream Park District is responsible for garbage containers in concession area.
  - d. Service Provider will sanitize, vacuum, operate filtration equipment and otherwise monitor water quality for all aquatic facility or facilities spas and swimming pools identified in Appendix A.

- e. Service Provider shall perform the following pre-opening tasks to prepare for daily operation of said aquatic facility or facilities:
  - i. Organize, sanitize, make ready and otherwise prepare the locker rooms, lavatories, and showers, and guard offices for daily operation.
  - ii. Organize, sanitize, make ready and otherwise prepare pool decks, furniture, water attractions, and swimming pools for daily operation.
  - iii. Distribute, ready and position emergency rescue equipment for use.
- f. Service Provider shall perform the following daily operational services for said aquatic facility or facilities:
  - i. Assign and schedule the aquatic facility manager and/or supervisor to provide management oversight for daily operation.
  - ii. Assign and schedule the lifeguards and/or attendants to provide general supervision for daily operations.
  - iii. Maintain general cleanliness of the aquatic facility premises during daily operation.
  - iv. Assist Customer with removal of trash from concessions area on an as needed basis.
- g. Service Provider shall perform the following closing tasks at the end of daily operation for said aquatic facility or facilities:
  - i. Collect and remove trash from all facility trash receptacles.
  - ii. Collect and store emergency rescue equipment for future use on a daily basis.
  - iii. Organize, sanitize, make ready and otherwise prepare the locker rooms, lavatories, and showers, and guard offices for daily operation.
  - iv. Organize, sanitize, make ready and otherwise prepare pool decks, furniture, water attractions, spas, and swimming pools for daily operation.

3. Service Provider and Customer will adhere to the following regarding pool maintenance:

- a. Due to the swimming pool/spa repair and service work, JEM is not responsible for tangential component failures or unrelated problems that may occur subsequent to

repair service calls. JEM will use due diligence in troubleshooting and repair procedures; however, Client acknowledges that working with older components may exacerbate problematic conditions. JEM will not be held responsible for any unforeseeable leaks or cracks in existing piping or plumbing.

- b. JEM warrants that all material used in completing the repair or work set forth in the agreement will be of conform to reasonably acceptable commercial standards for their application and the work will be in a competent and reasonably professional manner. Equipment, parts, or accessories purchased by JEM for use in this repair or service is subject to the manufacturer's guarantee. JEM shall not be held responsible for any damages, including any loss of business or other consequential damages, arising out of the failure of any product or material. JEM's warranty provided herein shall be limited to the original owner of the swimming pool/spa and is not transferable.
- c. JEM shall not be responsible for any damage to winter pool covers during storage.
- d. JEM shall not be responsible for any incidents, damages to persons or property or consequential damages arising, directly or indirectly from any chemical spills or exposure to harmful chemicals, caused by the failure or malfunction of any equipment, parts or accessories.
- e. Water Level: It is the customer's responsibility to maintain the water level. We cannot be responsible for any equipment damages or other issues that arise as the result of low water level in the pool.
- f. Inclement Weather: In the event of rain or freezing weather, we will perform a chemical and equipment check only on the pool, leaving out those items that require the use of a pole. No refunds will be given for such visits.
- g. Service Problems: If you are not completely satisfied with our service, please contact us immediately. We do not offer refunds or credits for problems that are brought to our attention at a later date, but we will make every effort to come out and correct any problems immediately when you bring such issues to our attention.
- h. Heavy Leaf Fall: During certain times of the year, due to leaf fall, it may be advisable for the homeowner to empty the skimmers and traps in between our visits. This will help to ensure that the equipment is not damaged due to lack of water flow.
- i. Freezing Weather: In the event of freezing weather, water circulation must be maintained continuously through the equipment to prevent freeze damage. It is also critically important during freezing weather to do whatever it takes to maintain the proper water level.

4. Service Provider will provide, maintain and operate the following emergency rescue equipment for said aquatic facility or facilities:

- a. Automatic External Deliberator
- b. Supplemental Oxygen Support Unit
- c. Bag Valve Mask
- d. Oral Suction Device
- e. Seal Easy Mask(s)
- f. Rescue Tube(s)
- g. Life Jacket(s)

Customer will provide, the following equipment for said aquatic facility or facilities

- a. Spinal Management and Extrication Board(s)
- b. First Aid Supplies
- c. Cleaning/Sanitation Supplies
- d. Lifeguard Stand(s)
- e. Lifeguard Umbrella(s)

5. Service Provider develop and Emergency Action Plan pursuant to the guidelines set forth in the “Comprehensive Aquatic Risk Management Program” manual published by Jeff Ellis & Associates, Inc. for said aquatic facility or facilities.

### **Operating Schedule**

- 1. Service Provider shall operate said aquatic facility or facilities according to the terms set forth in the operating schedule submitted and mutually agreed upon by the Service Provider and Customer as described in Exhibit C.
- 2. Service Provider reserves the right to temporarily close said aquatic facility or facilities for sanitation or biohazard incidents, weather or chemical emergencies, when ambient air temperatures fall below sixty-seven degrees Fahrenheit (67 ° F), or when safety of guests is compromised. Service Provider agrees to notify Customer when temporarily aquatic facility closings occur and provide an explanation for said closing. Customer agrees to re-open said aquatic facility or facilities when said hazard is rectified or eliminated.

## Ellis Aquatic Vigilance System (EAVS®)

### 1. Service Provider's Responsibilities

- Network Video Recorder (NVR)
- Analytic Cameras and Licenses
- Data Storage
- Customized CCTV Operators Room Workstations
- Adaptors
- Brackets
- Desktop Microphones
- Radios and Licenses
- CCTV Room Design to include TVs, HDMI cables, desktops, chairs, supplemental lighting, and radio connectivity
- Initial Operator and Instructor Training of EAVS®
- Credentialing of EAVS® trained personnel
- Implementation of EAP with EAVS®
- Zone Validation assistances after implementation EAVS®
- System Settings of Alarms and Rules

### 2. Customer's Responsibilities

- **Access to IDF rooms**
- **Assistance in adding an Internet Service line onto the property**
- Climate and humidity controlled EAVS® Control Room with electrical outlets as specified by Service Provider. **Damages to EAVS® system/devices which occur as a direct result of a verified mechanical failure of the HVAC system that serves the control room will result in a fee to the Customer of Five Thousand Dollars (\$5,000.00) or the replacement part of the equipment, whichever is less.**

**EXHIBIT B**

**SERVICE FEES**

**Carol Stream Park District-Outdoor Pool**

**2023**

Service Provider's Management Fee	\$ 12,000.00
Insurance (General Liability)	\$ 12,000.00
Labor	\$ 215,621.88
Administrative	\$ 1,500.00
EAVS® Annual Fee*	\$ 12,000.00
<b>Annual Consulting Agreement Total Cost</b>	<b>\$ 253,121.88</b>

**2024**

Service Provider's Management Fee	\$ 12,000.00
Insurance (General Liability)	\$ 13,000.00
Labor	\$ 224,628.68
Administrative	\$ 1,500.00
EAVS® Annual Fee*	\$ 12,000.00
<b>Annual Consulting Agreement Total Cost</b>	<b>\$ 263,128.68</b>

**2025**

Service Provider's Management Fee	\$ 12,000.00
Insurance (General Liability)	\$ 14,000.00
Labor	\$ 225,807.08
Administrative	\$ 1,500.00
EAVS® Annual Fee*	\$ 12,000.00
<b>Annual Consulting Agreement Total Cost</b>	<b>\$ 265,307.08</b>

2023 – 2025 Additional Labor Cost:

\$30.00/Hour for Manager

\$28.00/Hour for Supervisor

\$25.00/Hour for Lifeguard

\*Should the state not grant a variance for the use of EAVS®, Service Provider shall charge Customer an additional \$35,000.00 per season.

\*\*If Carol Stream Park District holds camps and/or full facility rentals outside of normal operating hours, the above additional labor costs will apply.



**Payment Schedule**  
**Carol Stream Park District-Outdoor Pool**  
**2023 Season**

Amount Due on or before May 1 <sup>st</sup> , 2023	Amount Due on or before June 1 <sup>st</sup> , 2023	Amount Due on or before July 1 <sup>st</sup> , 2023	Amount Due on or before Aug 1 <sup>st</sup> , 2023
\$ 63,280.47	\$ 63,280.47	\$ 63,280.47	\$ 63,280.47

**2024 Season**

Amount Due on or before May 1 <sup>st</sup> , 2024	Amount Due on or before June 1 <sup>st</sup> , 2024	Amount Due on or before July 1 <sup>st</sup> , 2024	Amount Due on or before Aug 1 <sup>st</sup> , 2024
\$ 65,782.17	\$ 65,782.17	\$ 65,782.17	\$ 65,782.17

**2025 Season**

Amount Due on or before May.1 <sup>st</sup> , 2025	Amount Due on or before June 1 <sup>st</sup> , 2025	Amount Due on or before July 1 <sup>st</sup> , 2025	Amount Due on or before Aug 1 <sup>st</sup> , 2025
\$ 66,326.77	\$ 66,326.77	\$ 66,326.77	\$ 66,326.77

Customer agrees to deliver above installment payments by check to Service Provider’s business address by the specified delivery dates as follows or by wire transfer:

**Jeff Ellis Management, LLC.**  
 Attention: Jonathan Hartman  
 PO Box 2160  
 Windermere, FL 34786  
 (800) 742-8720

**EXHIBIT C**

**OPERATING CALENDARS**

The Service Provider agrees to operate and staff said aquatic facility or facilities pursuant to the terms specified by the following agreed upon operating schedule for Outdoor Pool:

<b>2023</b>	<b>Operating Dates</b>	<b>Operating Times</b>
May 27 <sup>th</sup> – August 13 <sup>th</sup>	Monday – Saturday Sunday	11:00am-7:30pm 11:00am-6:30pm
August 14 <sup>th</sup> – September 4 <sup>th</sup>	Saturday Sunday	12:00pm-5:00pm 12:00pm-5:00pm
Holidays	Memorial Day 4 <sup>th</sup> of July Parade Independence Day Labor Day	12:00pm-5:00pm 1:00pm-5:00pm 12:00pm-5:00pm 12:00pm-5:00pm

<b>2024</b>	<b>Operating Dates</b>	<b>Operating Times</b>
May 25 <sup>th</sup> – August 11 <sup>th</sup>	Monday – Saturday Sunday	11:00am-7:30pm 11:00am-6:30pm
August 12 <sup>th</sup> – September 2 <sup>nd</sup>	Saturday Sunday	12:00pm-5:00pm 12:00pm-5:00pm
Holidays	Memorial Day 4 <sup>th</sup> of July Parade Independence Day Labor Day	12:00pm-5:00pm 1:00pm-5:00pm 12:00pm-5:00pm 12:00pm-5:00pm

<b>2025</b>	<b>Operating Dates</b>	<b>Operating Times</b>
May 24 <sup>th</sup> – August 10 <sup>th</sup>	Monday – Saturday Sunday	11:00am-7:30pm 11:00am-6:30pm
August 11 <sup>th</sup> – September 1 <sup>st</sup>	Saturday Sunday	12:00pm-5:00pm 12:00pm-5:00pm
Holidays	Memorial Day 4 <sup>th</sup> of July Parade Independence Day Labor Day	12:00pm-5:00pm 1:00pm-5:00pm 12:00pm-5:00pm 12:00pm-5:00pm

Operating Hours for 2023 – 2025 also include:

- Once A Month Late Night Fridays (June – August): 7:30pm-9:00pm
- Once A Month Early Open (June – August): 10:00am-11:00am
- Three Park District Events: 7:30pm-9:00pm

The Service Provider adds 30 minutes prior to opening and 30 minutes after closing for a total of one additional hour per operating day to the above operating schedule to allow its employees to complete pre-opening and post-closing responsibilities. Accordingly, on additional labor hours is factored into daily operating schedule shown above.

Facility operating hours and dates will be reviewed annually, and final facility schedules will be submitted to JEM each Fall and pricing will be adjusted accordingly.