



STAFF REPORT

City Council

Meeting Date:

3/24/2026

Staff Report Number:

26-045-CC

Study Session:

Provide direction on possibilities for providing programming at the Belle Haven Pool

Recommendation

City staff recommends that City Council provide direction on possibilities for providing programming at the Belle Haven Pool. City staff will incorporate City Council's direction to prepare any necessary follow-up actions for City Council consideration and potential authorization during the fiscal year 2026-27 budget preparation and adoption process in June.

Policy Issues

Burgess Pool and Belle Haven Pool are operated through a public-private partnership with aquatics operator Menlo Swim and Sport (Operator). Some policy issues related to the public-private partnership that the City Council may wish to consider include the needs of residents for aquatics programs, the value of aquatics facilities and aquatics programs to the Menlo Park community, the cost and complexity of operating aquatics facilities, and the risks and challenges assumed by operators of aquatics facilities.

City Council provides policy direction to the city manager regarding services to the community; allocates resources to support city services; sets prioritization for the use of city resources to serve the community; authorizes the city manager to execute and amend agreements; and sets user fees and fees for services in the city's master fee schedule.

Background

The Operator has been providing contract aquatics services to the Menlo Park community since 2006. The City Council has discussed and provided direction related to the city's aquatics program on multiple occasions from 2022 to date. A timeline of aquatics-related activities from 2022-present is included with this report (Attachment A).

In February 2023 the City Council identified the Operator as the preferred operator of Belle Haven Pool and Burgess Pool at the end of a public request for proposals process. A five-year agreement was negotiated with the Operator and signed in October 2023, and the current agreement, included as Attachment B, runs until Sept. 30, 2028. New agreement provisions in 2023 included requirements to operate both the under-construction Belle Haven Pool and the Burgess Pool at a minimum of 63 hours per week year-round and gave the city control over Operator fees by including aquatics fees a part of the city's master fee schedule.

In January 2025, the Operator reached out to City staff, the Parks and Recreation Commission, and the City Council concerning significant and ongoing financial losses at the (then) recently opened Belle Haven Pool. After a number of attempts to address the financial losses through fee changes, temporary service reductions and proposed changes to the Operator's agreement, City Council authorized an amendment to the agreement on Sept. 30, 2025, and authorized an appropriation from the general fund of \$300,477 to restore hours at the Belle Haven Pool and restore and expand hours at the Burgess Pool for the remainder of the 2025-26 fiscal year (Attachment C). City staff were also directed to further develop the "hybrid model" proposed by the Operator, in which the city would provide programming at the Belle Haven Pool and the Operator would provide safety and Certified Pool operator services.

In October, November and December 2025, a Belle Haven Pool hybrid model task force (Task Force) was formed and met to solicit input from the Belle Haven community on desired programs at the Belle Haven Pool. City staff gave an update to the City Council Jan. 27 the Task Force's recommendations (Attachment D). Included with the report is feedback requested from individual Task Force members during the meetings as well as feedback from the public and Task Force members submitted prior to the staff report's publication.

Continuing engagement with Belle Haven Pool users and the Belle Haven community is a focus of staff and the Operator. Working group meetings of pool users at both aquatic facilities are part of the current agreement and will continue. The Hybrid Task Force meetings provided an open forum for discussing aquatics programming and facility issues focused on the Belle Haven Pool. The work of the Hybrid Task Force produced important information on community desires for aquatics programs. Staff would like the City Council's input on what form of engagement with Belle Haven residents should continue if the Hybrid Model is not selected as an option to explore.

On Feb. 24, City Council received the 2025 aquatics program annual report, an independent financial analysis of the aquatics program, and the preliminary results of the city-conducted aquatics community survey (Attachment E). Survey results suggest that respondents' priorities for aquatics programs are similar across neighborhoods. Belle Haven residents more strongly favor year-round and 7-day-per-week operating hours and accessible fees rates over Lap Swim, which was a stronger priority for respondents from other neighborhoods (Attachment F).

The Operator reports that attendance and participation at the Belle Haven Pool are both up when compared to the same figure for 2019, the last full operating year in Belle Haven. The Belle Haven Pool was open for seven full months in 2024 starting in late May. The Operator reports that city subsidized hours have reduced their losses at the Belle Haven Pool, but they continue to run a deficit. The Operator reports that their three largest revenue producing programs (swim school, summer camps and masters) have shown an enrollment decline citywide, and attributes the decline in enrollment to the increase in non-resident fees.

Since the contract amendment in September 2025, staff have received detailed bi-weekly invoices from the Operator which list the number of Operator staff and the hours worked for each aquatics center. Belle Haven Community Campus staff perform hourly checks of all building areas including the pool deck, which is used to confirm staffing levels.

Staff are also tracking closures of both aquatics facilities caused by mechanical issues. The closure log from January of 2025 to the present is included as Attachment G.

City staff have conducted extensive community engagement and outreach to solicit feedback and gain insight into community members' needs and desires for the city's aquatics programs. Information about community outreach efforts, including community survey results, aquatics working group notes, and Hybrid Task Force notes are available on the city's aquatics webpage (Attachment H).

Analysis

Several options exist for providing aquatics programming at Belle Haven Pool. Some have been previously considered by the City Council during the Sept. 9, 2025, study session (Attachment I). Given under every option are the costs the city will continue to bear for operating the Belle Haven Pool facility, including the costs of utilities, equipment replacement and repair, minor renovation projects, and supplies like pool chemicals – approximately \$0.325 million to \$0.5 million per year.

Cost share operating model – City supports off-season operating hours at Belle Haven Pool

In this model the city would continue to share the costs of providing full-service programming at Belle Haven Pool. The Operator would operate the pool and programming and would cover all the associated costs of providing 63 hours per week of full service during the eight weeks of the high-use summer season, and 30 hours per week of full service during the off-season (44 weeks per year). The city would directly compensate the Operator for an additional 33 hours per week of full service during the off-season at a rate of \$133 per hour. The Operator would collect and retain all revenue from aquatics user fees and apply it toward their cost of providing the additional hours of Certified Pool Operator (CPO) support. This model is the current operating model in place since the contract amendment approved by the City Council in September 2025. The City Council would need to approve the cost-sharing payments for the additional hours desired at Belle Haven Pool as part of the 2026-27 budget process.

The cost share model if continued would result in an estimated cost to the city of approximately \$193,000 per year for safety services such as lifeguards and lifeguard managers (\$133 per hour for 33 hours per week over 44 weeks). The amendment outlines a future annual increase of 4% beginning in October of each year if the city wants to keep the hours at 63 per week during the off season. The annual not-to-exceed amount increases to \$215,779 effective Oct. 1, and to \$224,410 effective Oct. 1, 2027

Hybrid operating model

In this model the Operator would provide full safety services at Belle Haven Pool, including certified lifeguards on deck, lifeguard management support, and CPO support. The city would be responsible for all programming (for example, swim lessons, swim teams, aqua fit), pool scheduling, customer service support and registration and supervisory oversight. The hybrid model includes costs for the Operator, city staff, and contract services.

The work of the Hybrid Task Force would be used as a starting point for Belle Haven Pool programming in this hybrid model. Services would be provided through a mix of contractor and city staffed programs. Many of the desired program components could be provided through contract service providers, but the swim lesson/swim school component poses challenges.

Swim lessons work best as a cohesive program progressing from “Baby and Me” classes for toddlers and new parents to swim lessons for children and adults, through to lessons for more advanced swimmers and then feeding into youth swim teams and adult master swimmer programs. Finding a contractor who could provide a suite of swim lessons at this comprehensive level desired by the Belle Haven community might prove difficult or costly. If staff were to develop city-led swim lessons, this would increase the costs for hourly staff needed.

These factors make estimating staff and contract services costs under the hybrid model difficult to predict. A rough estimate of the costs for safety services and staff (lifeguards, lifeguard managers, CPO support) provided by the Operator, and the addition of two full time City employees and 10-hour City employees at 20 hours per week (to supervise and coordinate with contract services providers and provide customer service at the pool) would be \$1,183,000. Contract services cost estimates are \$0.53 million per year, bringing the estimated total to \$1,713,000 per year.

If the City Council recommends this option, staff will prepare a more detailed budget including additional staffing needs and contract services costs for review and approval during the fiscal year 2026-27 budget process in June. Staff would begin to explore aquatics services providers for contracted swim classes. Staff estimate that it would take 80 hours of work to prepare this proposal.

City staff run services at Belle Haven Pool

The City Council could direct staff to explore running all the services at Belle Haven Pool, including programs, safety services (lifeguards) and CPO services. The city has not directly run operations at the former Belle Haven Pool since 2011, which at that point in time was a seasonal pool and not open year-round, and currently lacks the staff and resources to operate an aquatics program. Staff produced a rough order of magnitude estimate for the costs of operating the entire aquatics program in September 2023 when the Operator’s most recent agreement was approved (Attachment K). Large, ongoing appropriations would be necessary for the operation of a city-run program. The City would also incur new administrative costs for risk management, records management, necessary certifications for staff and for CPO services. Significant time and effort would be required to recruit, hire and train new staff. Time would be needed to create new job descriptions and approve changes to the salary schedule. The city would assume significant risk for safely operating the facility - risk currently assumed by the Operator. Changes in the current Operator agreement would have to be made and agreed to by the Operator.

City staff run services at Belle Haven Pool if implemented as proposed would result in an estimated cost of \$0.375 million to \$0.5 million per year for personnel for 2 to 3.5 full-time benefited employees, plus \$0.5 million to \$0.85 million for per year for 45-75 part-time, hourly non-benefited employees. Additional costs for administrative duties, risk management, and training are difficult to estimate. Staff would be responsible for the major components of the swim school and lifeguard training and contract services cost estimates are \$0.09 million bringing the estimated total to \$965,000 million to \$1,440,000 million per year.

Re-bid contractor-run services at Belle Haven Pool

Under this option the city could split the contracts for aquatics services by pool site and put the aquatics services for Belle Haven Pool out to bid. There are several challenges to this model. A public request for proposal (RFP) process might not elicit significant responses from qualified aquatics services providers – the city received three responses to the most recent RFP for aquatics services at both aquatic centers

when it was issued on the city's public bid portal in October 2022, and staff reached out directly to 21 regional aquatics operators at that time (Attachment J). Staff would need direction from the City Council on whether a potential new RFP would adhere to the same conditions as the previous RFP and whether the current Operator would be invited to respond to a potential new RFP. Changes to the current Operator agreement would have to be made and agreed to by the Operator. A new contractor for aquatics operations may experience similar difficulties in running the Belle Haven Pool and require similar financial support from the city in the future if the conditions that are creating financial difficulties for the current Operator are not tied to their provision of services.

Contractor-run services could be a net zero cost to the city or could require subsidies like the "cost share" model above. Staff time would be required to prepare an RFP and analyze responses. Contract negotiations with the current Operator would be necessary.

Aquatics study

If the City Council were to recommend issuing a new RFP for Belle Haven aquatics services or recommend staff-run options at the Belle Haven Pool, staff recommend that the city conduct an aquatics study and operational plan. This study would consider current and anticipated community demand for aquatics, equity in programming, national best practices, and the long-term financial implications of a city-run pool. An RFP for an aquatics study would need to be conducted. A representative example of an aquatics study is linked in Attachment L. After initial inquiries with qualified consultants staff estimate that an aquatics study could cost \$80,000.

Aquatics programming summary table			
Option short name	Description	Needs	Approx. cost
Cost share model	Current model. City supports extra off season hours provided by Operator for a fee.	Continued funding per contract.	\$215,779*
Hybrid model	Operator provides safety services and CPO. City staff provide programming through a combination of staff and contract services.	Additional staff and funds for contract services.	\$1,713,000
Staff run**	City staff run all aspects of Belle Haven Pool, including programming, safety, compliance, risk management.	Additional staff and funds for contract services. Time to recruit and train staff.	\$965,000 - \$1,440,000
Re-bid contract**	New contractor runs complete services at Belle Haven Pool.	RFP. Contract changes.	\$0 - \$TBD

*4% escalation per year for next two years of contract for additional hours at Belle Haven Pool. Year 2 cost shown, year 3 would be \$224,410. If additional Burgess hours are continued, costs would be \$416,620 and \$433,285

**Aquatics study recommended for "Re-bid contract" and "Staff run" options

Impact on City Resources

The City of Menlo Park fiscal year 2025-26 operating budget has sufficient resources allocated toward the city's costs to maintain the Belle Haven Pool programming under the current cost share operating model.

If City Council directs staff to pursue one or more of the other possibilities above, staff will conduct additional research and prepare more detailed costing. During the fiscal year 2026-27 budget development process, the City Council will need to consider impacts to the General Fund and the ability to provide higher levels of financial support to the aquatics program.

Environmental Review

This action is not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines §§15378 and 15061(b)(3) as it will not result in any direct or indirect physical change in the environment.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

- A. Timeline of aquatics-related activities, 2022-present
- B. Current agreement
- C. Hyperlink – Sept. 30, 2025, Staff Report #25-145-CC:
www.menlopark.gov/files/sharedassets/public/v/1/agendas-and-minutes/city-council/2025-meetings/20250930/i4-20250930-cc-aquatics-agree-amend.pdf
- D. Hyperlink – Jan. 27 Staff Report #26-013-CC.
www.menlopark.gov/files/sharedassets/public/v/2/agendas-and-minutes/city-council/2026-meetings/20260127/i3-20260127-cc-belle-haven-pool-hybrid-model-community-task-force.pdf
- E. Hyperlink – Feb. 24 Staff Report #26-027-CC:
www.menlopark.gov/files/sharedassets/public/v/1/agendas-and-minutes/city-council/2026-meetings/20260224/k5-20260224-cc-aquatics-annual-report.pdf
- F. City community aquatics survey results – summary charts
- G. Menlo Park pool closures due to mechanical issues January 2025 – March 2026
- H. Hyperlink – City of Menlo Park aquatics webpage: www.menlopark.gov/aquatics
- I. Hyperlink – Sept. 9, 2025, Staff Report #25-134-CC:
www.menlopark.gov/files/sharedassets/public/v/1/agendas-and-minutes/city-council/2025-meetings/20250909/j1-20250909-cc-aquatics-operations-direction.pdf
- J. Hyperlink – Oct. 11, 2022, Staff Report #22-191-CC:
www.menlopark.gov/files/sharedassets/public/v/3/agendas-and-minutes/city-council/2022-meetings/agendas/20221011-city-council-agenda-packet.pdf#page=112
- K. Hyperlink – Sept. 9, 2023, Staff Report #23-206-CC:
www.menlopark.gov/files/sharedassets/public/v/2/agendas-and-minutes/city-council/2023-meetings/agendas/20230912-city-council-regular-agenda-packet-w-pres.pdf#page=103

- L. Hyperlink – Milwaukee County Parks Aquatics Study, August 2025:
milwaukeecounty.legistar.com/View.ashx?M=F&ID=14607158&GUID=E7DDDCB4-8125-4D6A-AF84-FECA6EA7EBBE

Report prepared by:

Nick Szegda, Assistant Library and Community Services Director

Tricia Mullan, Library and Community Services Supervisor

Natalya Jones, Library and Community Services Manager

Ashley Dixon, Management Analyst

Timeline of notable activities related to aquatics, 2022-present*

Feb. 8, 2022

City Council directed staff to prepare a Request for Proposals (RFP) to be issued in autumn 2022 for an aquatics operator at Burgess Pool and the future Menlo Park Community Campus (MPCC) aquatics center (later named Belle Haven Pool).

City Council authorized the city manager to execute an amendment to the existing March 27, 2018, Agreement with Team Sheeper, Inc. (Operator) to extend the term of the agreement through August 31, 2023 or the opening of the new MPCC aquatics center, whichever came first.

Feb. 25, 2022

Operator gave the City notice that Operator was invoking its right under Section 3 of the Agreement to not automatically renew the Agreement and requesting an evaluation of the terms and conditions of the Agreement.

March 2, 2022

The City gave Operator notice that the City was invoking its right under Section 3 of the Agreement to not automatically renew the Agreement and requesting an evaluation of the terms and conditions of the Agreement. The City and Operator coordinated over the subsequent weeks to focus on various operational considerations including janitorial services, facility maintenance, and mechanical equipment replacements and repairs.

May 10, 2022

Operator provided the City written notice that they intended to terminate the Agreement effective Aug. 31, 2022 unless a new agreement was reached that included revised terms. Staff and Operator continued negotiations regarding the terms of the Agreement. City staff sent Operator proposed revised terms May 22, 2022.

May 26, 2022

Operator provided its further revised terms to the City, including: to exclude Burgess Pool from the upcoming RFP, to engage in a minimum five-year Agreement term, for the City to compensate Operator for lost revenue due to maintenance-related swim center closures, to eliminate revenue share from the Agreement, and for the City to pay the Operator a management fee to operate Burgess Pool. City staff and Operator subsequently met on three occasions to discuss each party's desired terms.

June 28, 2022

City Council directed staff to offer Operator a one-year extension of the Agreement with no other changes to the terms, and to proceed to issue the RFP for both swim centers, and to be open to further negotiations with Operator.

July 26, 2022

City Council authorized the city manager to execute an amendment to the Agreement with Operator to continue to operate Burgess Pool one additional year through Aug. 31, 2023.

Aug. 23, 2022

City Council reviewed an aquatics program analysis and provided direction to staff regarding desired elements of the RFP.

*Links to City Council staff reports and minutes are available at menlopark.gov/agendas

Oct. 11, 2022

City Council reviewed a draft RFP and process timeline and authorized staff to issue the RFP. The RFP was issued Oct. 24, 2022.

Feb. 14, 2023

City Council reviewed the three proposals that were received in response to the RFP and discussed preliminary considerations for selecting an aquatics operator for Burgess Pool and the future MPCC aquatics center.

Feb. 28, 2023

City Council identified the proposal submitted by Operator as the preferred proposal and directed City staff to enter negotiations with Operator for a draft aquatics operator agreement at Burgess Pool and the future MPCC aquatics center for future City Council review and authorization.

City Council created an Aquatics Ad Hoc Subcommittee to advise and City staff during the agreement negotiation process, and appointed Vice Mayor Taylor and City Councilmember Nash to the subcommittee.

March 9, March 31, April 6, April 19, May 3, May 17, July 10, July 28 and Sept. 6, 2023

The Aquatics Ad Hoc Subcommittee (Taylor/Nash) met with City staff to advise and support the agreement negotiation process. Representatives from Operator were invited to attend the July 10 and July 28 subcommittee meetings to discuss the subcommittee's vision for the aquatics program.

July 11, 2023

City Council authorized the city manager to execute an amendment to the existing professional services agreement with Operator for continued operation of Burgess Pool through Sept. 30, 2023. The amendment extended the existing Agreement's duration one additional month.

Sept. 12, 2023

City Council voted to authorize the city manager to execute a new Agreement with Team Sheeper, Inc. (Operator), to operate Burgess Pool and the future MPCC aquatics center for a term of five years, and subject to various revisions directed by City Council, and directed staff to finalize the Agreement.

Sept. 21, 2023

Mayor Wolosin requested that the authorization to execute the new aquatics operator Agreement be returned to the City Council for reconsideration, citing the City Council's direction not to require Operator to engage renter group SOLO Aquatics for services at the future MPCC aquatics center while requiring SOLO Aquatics services at Burgess Pool.

Sept. 26, 2023

City Council considered the request for reconsideration and took no action.

Oct. 1, 2023

The City and Operator entered into a new Agreement for operations of Belle Haven Pool and Burgess Pool.

Jan. 9, 2024

City Council held a public hearing to introduce and waive the first reading of an ordinance amending the City's master fee schedule to include aquatics fees. City Council provided feedback to revise the proposed aquatics fees to reevaluate how best to prioritize access for residents, direction not to reduce nonresident fees below the rates currently imposed, and to return with additional data on the aquatics operation.

Feb. 13, 2024

City Council voted to introduce an ordinance amending the City's master fee schedule to include aquatics fees with one revision and direction to staff.

Feb. 27, 2024

City Council amended the City's master fee schedule to include aquatics fees effective April 1, 2024; and directed that additional fee changes be presented to City Council for consideration by the end of calendar year 2024.

April 2, 2024

City Council reviewed the 2023 annual aquatics report prepared by the Operator; and the results of a citywide survey of Menlo Park residents about aquatics programs conducted by City staff during January-March 2024.

May 20, 2024

The Belle Haven Community Campus opened to the public, including Belle Haven Pool.

Nov. 19, 2024

City Council received an informational report containing updates on the aquatics user survey and next steps for potential aquatics user fee adjustments (Attachment G).

Jan. 22, 2025

The Parks and Recreation Commission (PRC) received a report concerning significant unsustainable financial losses at Belle Haven Pool which could result in a major service interruption in the City's aquatics program. The PRC recommended that City Council consider remedies to sustain the aquatics operation.

Jan. 29, 2025

The City Council's Belle Haven Community Campus Subcommittee (Taylor/Wise) reviewed the PRC's Jan. 22 recommendations. The Subcommittee expressed support for temporarily suspending the minimum hours requirement at Belle Haven Pool while preserving a seven-day-per-week schedule. The Subcommittee did not express support for increasing user fees for Menlo Park residents, but expressed support for increasing fees for non-residents. The Subcommittee expressed interest in potentially increasing lane rental fees to be consistent with higher rates charged in other jurisdictions, provided that outreach to current lane renters is conducted in advance of a potential increase. The Subcommittee expressed interest in potentially waiving Operator's annual revenue share payment in 2025. The Subcommittee also requested information on promotional activities that have been undertaken to increase attendance, and information on the minimum attendance levels needed at Belle Haven Pool to achieve a break-even financial state for the Operator. The Subcommittee requested that the recommendations do not create barriers for residents to use the pool.

Feb. 11, 2025

City Council received an informational report concerning the PRC's Jan. 22 recommendation and the Subcommittee's Jan. 29 feedback, including an update that staff had authorized

temporarily suspending enforcement of the minimum hours requirement at Belle Haven Pool through April 14, while retaining a seven-day per week schedule, minimum 32 hours per week, and at least two weekdays per week open by 10 a.m.

March 11, 2025

City Council held a public hearing to consider proposed changes to aquatics fees in the master fee schedule and a proposed amendment to the aquatics operator agreement. City Council provided feedback on proposed changes to user fees including resident fees, non-resident fees and lane renter fees; and a proposed amendment to the Operator agreement to adjust minimum operating hours at Belle Haven Pool and extend a waiver of the Operator's revenue share payment. City Council directed staff to return with additional information and proposals related to the above.

April 15, 2025

City Council held a public hearing to consider proposed changes to aquatics fees and a proposed amendment to the aquatics operator agreement (Attachment B). City Council discussed resident, non-resident, non-profit fee increases, financial analysis, subcontractor lane rental fee increases, and Belle Haven Pool hours. City Council directed staff to consider higher increases to non-resident fees, provide a list of mechanical issues impacting hours at both pools and city sponsored scholarships. City Council authorized the proposed increases to non-resident fees, and provided feedback to staff to bring back the remaining items at a future time when all five City Councilmembers would be present.

May 13, 2025

City Council held a public hearing to consider a proposed increase to subcontractor lane renter fees and a proposed amendment to the aquatics operator agreement. City Council received clarification on outreach efforts by the operator and city, and discussed City Council direction at previous meetings, and took no action related to the proposed fee increase or the proposed amendment.

May 19, 2025

Citing financial difficulties and a need to reduce operating costs, Operator notified the City that Operator was modifying the hours and operating schedule of Burgess Pool effective May 21 until June 8, 2025; and that Operator was reducing the operating hours of Belle Haven Pool below the requisite minimum 63 hours per week, effective May 27 until June 8, 2025.

May 21, 2025

The City issued a Notice of Default to Operator for failing to provide the requisite two weeks advance notice of any hours and operating schedule changes at either City pool, and for failing to operate Belle Haven Pool for the requisite minimum 63 hours per week. The City asked the Operator to cure the default conditions per the terms of the Agreement.

June 8, 2025

Operator resumed operating Belle Haven Pool the requisite minimum 63 hours per week.

June 17, 2025

Citing financial difficulties and a need to reduce operating costs, Operator notified the City of changes in operational hours at Burgess Pool to reduce open hours to the requisite minimum 63 hours per week effective Aug. 18, 2025.

Aug. 26, 2025

City Council adopted a resolution increasing most aquatics nonresident fees, reducing some aquatics resident fees, and replacing the lane renter fee with new resident and nonresident lane renter fees.

September 9, 2025 City Council reviewed conceptual options for sustaining and restoring operating hours at City-owned swim centers. Among other actions take, the City Council directed staff to further develop the concept of a potential future Belle Haven Pool “hybrid” operating model. Under the hybrid operating model, Menlo Swim and Sport staff would provide lifeguards and a certified pool operator (at a cost to the City), and the City would provide programming and program staff.

At the Sept. 23, 2025, aquatics working group meeting, City staff proposed a spin-off of the aquatics working group: a “Belle Haven Pool hybrid model task force” that would be comprised of Belle Haven neighborhood residents and stakeholders.

September 30, 2025 City Council authorized an amendment to the aquatics operator agreement to sustain and restore operating hours at City-owned swim centers. The authorization included an appropriation of \$300,477 from the General Fund unassigned fund for fiscal year 2025-26.

Oct. 14, 2025, Oct. 28, 2025, and Dec. 8, 2025 Belle Haven Pool hybrid model task force (Task Force) meetings. In November 2025, staff had individual conversations with Task Force members to confirm and refine desired pool programming that could be offered under the hybrid model.

January 27, 2026 City Council received an update on the Belle Haven Pool hybrid model community task force, including recommendations from the Task Force on desired programs at the Belle Haven Pool.

February 24, 2026 City Council received the 2025 aquatics program annual report, an independent financial analysis of the aquatics program, and the results of the City-conducted aquatics community survey.

AGREEMENT AMENDMENT

City Manager's Office
701 Laurel St., Menlo Park, CA 94025
tel 650-330-6620

ATTACHMENT B



Amendment #: 4257.1

AMENDMENT TO CITY OF MENLO PARK BURGESS AQUATICS CENTER AND MENLO PARK COMMUNITY CAMPUS AQUATICS CENTER POOL MANAGEMENT AND OPERATIONS AGREEMENT

THIS FIRST AMENDMENT ("Amendment") is made and entered into this 10/2/2025, by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "City," and TEAM SHEEPER, INC., a California S Corporation, hereinafter referred to as "Operator."

RECITALS

1. On September 12, 2023, the Menlo Park City Council approved the agreement titled "City of Menlo Park Burgess Aquatics Center and Menlo Park Community Campus Aquatics Center Pool Management and Operations Agreement" ("Agreement"), which was executed on October 1, 2023.
2. The parties wish to modify the terms of the original Agreement through the Agreement end date of September 30, 2028.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. This Amendment is effective through the Agreement end date of September 30, 2028, unless modified or extended by mutual written agreement of the parties.
2. Paragraph 1 of Section 4, subdivision J ("Operating Hours and Program Schedule), is hereby amended to read as follows:
 - 1) Operator shall operate Burgess Pool and MPCC Pool for public access year-round, seven days per week with the exception that Operator may elect to close either pool on the following major holidays, at Operator's discretion: New Year's Day, Martin Luther King, Jr. Day, Presidents Day, Easter Sunday, Veterans Day, Thanksgiving Day, and the week of December 24 through December 31 inclusive.
 - 1.1) During the period of time when the public schools that serve Menlo Park are on summer break (not to exceed 8 weeks total per year, with specific applicable dates to be mutually determined by City and Operator by April 30 of each year), the Operator shall operate both Burgess Pool and MPCC Pool no fewer than 63 hours per week.
 - 1.2) At all other times Operator may operate MPCC Pool for no fewer than 30 hours per week. Operator will continue to operate Burgess Pool no fewer than 63 hours per week.
 - 1.3) At City's request, Operator shall provide up to 33 additional hours per week of aquatics services at MPCC Pool. Operator's services shall include a minimum of two certified lifeguards, one lifeguard-certified manager, customer service personnel, and Certified Pool Operator support on duty at all times during the additional open hours. The schedule for any additional hours shall be subject to approval of the City Manager or designee. City shall notify Operator at least four weeks in advance of any changes to the schedule for any additional hours. City shall compensate Operator for any additional hours at a rate of \$133 per hour. The compensation rate will increase to \$138.32 per hour effective Oct. 1, 2026 and to \$143.85 per hour effective

Oct. 1, 2027. Operator shall submit invoices to the City on a monthly basis listing all billable hours. City shall remit payment to Operator within 21 days of receiving invoices.

1.4) At City's request, Operator shall provide up to 30 additional hours per week of aquatics services at Burgess Pool. Operator's services shall include a minimum of two certified lifeguards, one lifeguard-certified manager, customer service personnel, and Certified Pool Operator support on duty at all times during the additional open hours. The schedule for any additional hours shall be subject to approval by the City Manager or designee. City shall notify Operator at least four weeks in advance of any changes to the schedule for any additional hours. City shall compensate Operator for the additional hours at a rate of \$133 per hour. The compensation rate will increase to \$138.32 per hour effective Oct. 1, 2026 and to \$143.85 per hour effective Oct. 1, 2027.

Operator shall submit invoices to the City on a monthly basis listing all billable hours. City shall remit payment to Operator within 21 days of receiving invoices.

3. Section 10, REVENUE SHARE of the Agreement is hereby deleted during the term of this Amendment.
4. Paragraph 1 of Exhibit C.1. SCHEDULE TEMPLATE – HOURS OF OPERATION of the Agreement is hereby amended to read as follows:

1. HOURS OF OPERATION. Operator shall operate the Burgess Pool and the future MPCC aquatics center for public access year-round, as provided in Section 4(J)(1)-(1.4) of this Agreement. Burgess Pool and MPCC aquatics center shall be operated with comparable programs at both locations, with allowance for some variances to respond to hyperlocal needs and other unique considerations of each site and the neighborhoods in which they are located.

Except as modified by this Amendment, all other terms and conditions of Agreement No. 4257 remain the same.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

SIGNATURE PAGE TO FOLLOW

FOR FIRST PARTY:

DocuSigned by:
Tim Sheeper
09FDB12D95194EC...
Signature

Tim Sheeper
Printed name

90-0733980
Tax ID#

10/1/2025
Date

CEO/Owner
Title

APPROVED AS TO FORM:

DocuSigned by:
Nira F. Doherty
44FFE23C8E6B458...
Nira F. Doherty, City Attorney

10/1/2025
Date

FOR CITY OF MENLO PARK:

DocuSigned by:
Justin Murphy
8379C4D5DD3E486...
Justin I. C. Murphy, City Manager

10/2/2025
Date

ATTEST: Signed by:
Sarah Sandoval
E68A58E1D0FA492...
Sarah Sandoval, Deputy City Clerk, for:
Judi A. Herren, City Clerk

10/6/2025
Date

CITY OF MENLO PARK BURGESS AQUATICS CENTER AND MENLO PARK COMMUNITY CAMPUS AQUATICS CENTER POOL MANAGEMENT AND OPERATIONS AGREEMENT

THIS Agreement is entered into as of October 1, 2023 (the "Effective Date") between the CITY OF MENLO PARK, a municipal corporation ("City"), and Team Sheep, Inc. ("Operator"), also individually "Party" and collectively "Parties."

FOR AND IN CONSIDERATION of the mutual terms, covenants, and conditions herein, City hereby grants to Operator the exclusive right to manage and operate the Burgess Aquatics Center and Menlo Park Community Campus Aquatics Center, subject to the following terms and conditions.

1. RECITALS

- A. City owns two aquatics centers: Burgess Aquatics Center located at 501 Laurel St., Menlo Park, CA 94025, and Menlo Park Community Campus ("MPCC") Aquatics Center located at 100 Terminal Ave., Menlo Park, CA 94025; City anticipates opening the MPCC in late spring or early summer 2024.
- B. Operator is experienced in the management, operation, and supervision of swimming pools and swimming facilities.
- C. City desires to engage Operator to manage and operate the two aquatics centers and facilities.
- D. Team Sheep, Inc. is a California "S Corporation" that is in the business of operation and management of swimming pool facilities.
- E. The Parties desire to set forth in this Agreement the terms and conditions under which the Operator shall act as the operator and manager of the Burgess Aquatics Center and MPCC Aquatics Center and facilities.

Now, therefore, in consideration of the mutual covenants herein contained and other good and valuable consideration, the sufficiency of which is hereby acknowledged, City and Operator agree as follows:

2. PREMISES

The "Premises" as that term is used herein include the Burgess Aquatics Center ("Burgess Pool") and the Menlo Park Community Campus Aquatics Center ("MPCC Pool"), as more particularly described below:

- A. Burgess Pool, located at 501 Laurel St. in Menlo Park, CA, consists of the lap pool, instructional pool, toddler activity pool, pool deck, offices, restrooms, locker rooms, showers, lawn area, pool mechanical room, lobby, and all associated areas more particularly depicted and shown in Exhibit A, attached hereto and incorporated herein by this reference.
- B. MPCC Pool, is, as of the effective date of this agreement, under construction and upon completion will be located at 100 Terminal Ave. in Menlo Park, CA, and consists of the lap pool, instructional pool, splash pad, pool deck, outdoor seating areas, offices, restrooms, locker rooms, showers, pool mechanical room, and all associated areas more particularly depicted and shown in Exhibit B, attached hereto and incorporated herein by this reference.

3. TERM

Subject to all of the terms and conditions of this Agreement, Operator shall operate and manage the Premises for a term beginning on the Effective Date and ending on September 30, 2028 (the "Initial Term"), unless terminated earlier in accordance with the terms and conditions set forth herein. If not terminated as set forth hereinafter, Parties shall have an option to extend the term of this Agreement for an additional five (5) years (the "Extended Term") by giving mutual written notice of the exercise of such option not less than six (6) months prior to the expiration of the initial term. Thereafter, the Agreement shall continue on the same terms and conditions unless amended or terminated in accordance with the terms and conditions set forth herein.

4. SERVICES AND OPERATIONS BY OPERATOR

Except as otherwise provided herein, Operator shall direct, supervise, manage, and maintain the Premises, and develop and implement policies and procedures to facilitate the efficient operation of the Premises in compliance with this Agreement and all reasonable directions of the City, and in a manner that is comparable to or above the standard of care that is reasonable and acceptable for public pool and aquatics operators.

In addition to all requirements set forth in this Agreement, Operator shall be responsible for the following:

- A. Employees. Operator shall hire, administer, and manage employees for the Premises. Such employees shall be employed and retained by Operator in the Operator's sole discretion. The compensation and related expenses for such employees shall be solely paid for and borne by the Operator. All employees shall be employees of the Operator and shall not be City employees, contractors, or volunteers. Unless expressly provided in this Agreement, the City shall not interfere with or participate in the hiring, supervision or discipline of Operator employees or prospects.
- B. LiveScan. Pursuant to California Penal Code Section 11105.3, Operator employees who work with or have contact with minors (under the age of 18) will be required to be fingerprinted per California law as a condition of employment or as a condition of continued employment. As such, all such employees will be required to submit to a fingerprinting via LiveScan on initial employment and will receive updates regarding such LiveScan throughout the employment which will be paid for by Operator. Operator shall ensure that all non-employees (i.e., vendors, volunteers, etc.), who work with or have contact with minors to be fingerprinted at their own expense.
- C. Records. Operator shall keep or cause to be kept suitable books of control and account as provided in this Agreement according to the Financial Accounting Standards Board (FASB) Generally Accepted Accounting Principles (GAAP).

Operator shall keep true and accurate books and records showing all income and expenses and business transactions in connection with the Premises in separate records of account in a manner reasonably acceptable to City, and City shall have the right through its representatives, and at all reasonable times, including any time during the one year period following the termination of the Agreement, to inspect such books and records including profit and loss statements.

Operator shall pay the costs of all financial statements required by the City under this Agreement.

- D. Operator Operation Obligations. Except as specified in Section 9 – Expenses of Premises, Operator shall maintain or cause to be maintained the Premises and common areas thereof, external and internal, in good and clean condition and repair comparable to the industry standard found at other swimming pools and sports facilities in Northern California and the San Mateo County region, including but not limited to consistency with applicable state and local standards and regulations including but not limited to: California Code of Regulations Title 22; California Health and Safety Code, Division 104; California Building Code Title 24, Divisions I and II; and San Mateo County Environmental Health Services rules, regulations, and inspections. Operator shall be responsible for complying with the City-Owned Improvements and Equipment and Maintenance Schedule attached hereto and incorporated by reference herein as Exhibit F. Exhibit F – City-Owned Improvements and Equipment and Maintenance Schedule – may be modified from time to time by mutual written consent of the City Manager or their designee and Operator.
 - 1) Operator shall be responsible for the following maintenance obligations:
 - (a) Operator shall be responsible to maintain chemical rooms, provide daily aquatics inspections/maintenance and oversee the facility management.

- (b) Operator shall be responsible for providing incidental facility supplies such as, but not limited to office supplies, paper towels, trash and recycling receptacles, cleaning supplies, mats, carpeting.
 - (c) Operator shall maintain standard operating procedure manuals and maintenance records and logs, which records shall consist of daily pool and chemical log and checklists for routine maintenance and janitorial duties (daily, weekly, monthly, quarterly, bi-annually, and annually).
 - (d) If any maintenance or repair work requires immediate emergency attention, Operator may engage a preferred City vendor directly after obtaining consent from the City Staff Liaison or their designee to proceed with emergency maintenance and/or repair work, which consent will not be unreasonably withheld. Operator shall be reimbursed by the City for any costs incurred by Operator in addressing the immediate/emergency maintain/repair work. In the event that Operator's cannot make contact with City Staff Liaison or designee within 24 hours of first attempt to make contact, and as a result Operator cannot obtain authorization to make repairs in the time of an emergency, and the failure to act may result in serious and significant damage to the facilities or bodily injury, Operator in its reasonable discretion may, after notifying Menlo Park Police Dispatch of the time, place, and nature of the emergency, engage a preferred City vendor directly and without prior consent, and, in such circumstances, shall be reimbursed by the City for any reasonable costs incurred by Operator in addressing the immediate/emergency maintenance/repair work.
 - (e) If the Premises or equipment are damaged due to the willful misconduct or negligence of Operator, its employees, subcontractors, or program participants, Operator shall be responsible for any necessary repair or replacement of such damage at Operator's sole cost and expense.
 - (f) Operator shall not make, nor cause to be made, nor allow to be made, alterations or improvements to the Premises, without the prior written consent of City, not to be unreasonably delayed or withheld. All improvements or alterations constructed or installed shall be removed and the Premises restored to substantially the same condition existing prior to such construction or installation, upon the termination of this Agreement, unless the prior written approval of City is secured, allowing such improvements or alterations to remain in place, in which case, title thereto shall vest in City.
- E. Security. Operator shall establish and maintain procedures adequate to ensure the security of the premises including any merchandise, equipment and materials stored at the Premises.
 - F. Compliance with City's Obligations. Operator shall operate the Premises in compliance with all terms and conditions of any ground lease, space lease, mortgage, deed of trust, or other security instrument affecting the Premises, if any, of which Operator has knowledge. Operator shall not make any payments on account of any ground lease, space lease, mortgage, deed of trust, or other security instrument affecting the Premises, unless specifically instructed to do so by City.
 - G. Notice and Cooperation in Legal Proceedings. City and Operator shall each give prompt notice to the other of the commencement of any action, suit, or other legal proceeding against City or the Operator with respect to the operations of the Premises or otherwise affecting the Premises. Operator shall fully cooperate in connection with the prosecution or defense of all legal proceedings affecting the Premises.
 - H. Program Offerings. Operator shall work with City to enhance recreational program offerings at the Premises.
 - I. Lifeguards and Training.
 - 1) For both the MPCC Pool and Burgess Pool, Operator shall employ and ensure that at least two qualified lifeguards, possessing all required certifications and/or licenses, shall be on duty at all times people are in the water, per the Operator's approved Emergency Action Plan.

- 2) Operator shall ensure that lifeguards obtain training and maintain required licensing and certifications at all times during employment by Operator. Lifeguards shall meet or exceed the lifeguard certification standards set by the American Red Cross.
- 3) At least one lead/management staff member must be on duty and on the Premises at all operational times who shall have the experience and training to make operational decisions, support customer needs, manage customer issues and respond to incidents and emergencies.

J. Operating Hours and Program Schedule.

- 1) Operator shall operate Burgess Pool and MPCC Pool for public access year-round, seven days per week, no fewer than 63 hours per week at each location with the exception that Operator may elect to close either pool on the following major holidays, at Operator's discretion: New Year's Day, Martin Luther King, Jr. Day, Presidents Day, Easter Sunday, Veterans Day, Thanksgiving Day, and the week of December 24 through December 31 inclusive.
- 2) Operator shall operate Burgess Pool and MPCC Pool in a manner reasonably consistent with the hours and operating schedules for each pool more specifically set forth in Exhibit C – Schedule Template. Operator shall notify the City at least two weeks in advance of any changes to the hours and operating schedules.
- 3) Operator shall operate Burgess Pool and MPCC Pool programming which includes minimum hours of operation and a general description of programs. Said program descriptions shall be agreed upon by the City Manager and Operator no later than the effective date of this agreement, and shall be incorporated into this Agreement as Exhibit D. Any changes to the program schedule set forth in Exhibit D shall be approved by the City Manager or their designee prior to the Operator implementing any such programming changes. City reserves the right to request to meet and confer with Operator prior to Operator implementing any schedule changes, and Operator must comply with any such request to meet and confer with City staff. City shall not unreasonably withhold approval of such programming changes. Operator shall have the sole discretion to create its schedule in accordance with the hours of operation, general description of programs, and other applicable criteria set forth in this Agreement and its Exhibits.
- 4) The Parties specifically agree that Operator shall accommodate the SOLO swim team's use of Burgess Pool in accordance with the schedule and terms set forth in Exhibit G – SOLO Schedule and Terms.

K. Noise. Except in the event of an emergency, Operator shall not use any amplified sound, whistles, bullhorns, music, etc., before 8:00 a.m., and/or after 8:00 p.m. during any day of operation. Additionally, Operator shall be subject to the City's noise ordinance and regulations and shall not utilize any amplified sounds, whistles, bullhorns, music, etc. that violates said ordinance and regulations. In order to minimize impacts of major events on residents of the surrounding neighborhoods, Operator will notify the City at least 21 days in advance of all swimming meets or other large group events beyond normal operations to allow the City to notify the neighborhoods in advance of such events.

L. General Services. In addition to the above, Operator will be responsible for providing all services at the Premises including, at a minimum, the following services and activities:

- 1) Supervise and control the reservation process.
- 2) Collect and deposit all daily revenues, including, but not limited to, user fees, merchandise sales, facility rentals, lessons, tournaments, and gift certificate sales.
- 3) Accommodate City use of the Premises in a reasonable manner for non-traditional events including but not limited to permitted film activity, expositions, and conferences, on reasonable notice and as accommodated by Operator's current schedule.
- 4) Provide diverse swim programming as well as other recreational type activities that meet with the City's vision and priorities, including but not limited to the programming described in this Agreement and its Exhibits.

- 5) Attend meetings, as requested on reasonable notice, with the City to discuss and/or provide updates on matters related to the Premises.
 - 6) Work cooperatively and collaboratively with the City to provide a positive experience for all users.
 - 7) Clean and maintain the Premises in a manner such that it is attractive to guests and the public.
- M. Cooperation with Lender. If at any time during the Term, City enters into a financing agreement for either of the Pools or the Premises pursuant to which City grants one or more lenders a lien on the Premises or a security interest in some or all of the income generated by the Premises, Operator shall cooperate in all respects as reasonably necessary to consummate such financing and comply with the terms and conditions thereof. Without limiting the generality of the forgoing, Operator shall, if requested by City, (a) execute and deliver such documentation (e.g. estoppel certificate and/or lender consent and recognition agreement) as may be reasonably requested by the lender(s), (b) create and maintain such lockbox and/or disbursement accounts as may be required pursuant to the financing agreement, and (c) deposit funds into and disburse funds from such accounts in accordance with the requirements of the financing agreements. Under no circumstances shall the City, its lenders or other creditors place any lien, adverse claim, or other security interest against Operator assets nor shall Operator be required to execute any document that would create any lien, adverse claim, or other security interest against Operator assets.
- N. Suggestion/Complaint Procedures. Operator agrees to install, maintain and operate the following suggestions-complaint procedure for Premises. Operator shall post and keep posted on a bulletin board at or near the entrance to the Premises, the following notice:

“Your feedback is important. Any suggestions or complaints may be presented verbally to the manager on duty, or by dropping a written comment in the suggestion box, or by letter to [Operator’s postal address], or by sending an email to [Operator’s email address], or by calling [Operator’s phone number]. If you are not satisfied for any reason, your suggestion or complaint will be relayed in writing to the City Manager, 701 Laurel St., Menlo Park, CA 94025.”

Both City and Operator shall in good faith endeavor to respond positively and favorably to such suggestions and complaints in a timely manner.

- O. General Management Responsibilities. Operator shall provide such direction, supervision, professional management, and in-house consulting staff services as may be necessary or desirable to operate the Premises in a manner at least equal to that which is usual and customary in the operation of other properties of substantially comparable location, class, size, and standing, and Operator shall provide such services for the Premises as are consistent with the Premises’ size and facilities. Subject to any specified limitations set forth in this Agreement, Operator shall have control and discretion in the management and operation of the Premises and the provision of the services described in this Agreement.
- P. City Access to Premises. Operator shall provide City access to the Premises at reasonable hours and, except in the event of an emergency, on reasonable prior notice, to (a) inspect the Premises; (b) determine whether Operator is complying with all obligations under this Agreement; (c) post notices of nonresponsibility; and (d) make repairs or perform maintenance required of City by this Agreement, make repairs to any adjoining space or utility services, or make repairs, alterations, or improvements to any other portion of the Premises. All such work shall be done as promptly as reasonably possible, cause as little interference to Operator as reasonably possible and City shall restore all areas to their prior condition promptly after completion of the work. Subject to City’s undertakings in the previous sentence and except to the extent that Section 15’s liquidated damages provisions apply, Operator waives any damage claims for inconvenience to or interference with Operator’s business or loss of occupancy or quiet enjoyment of the Premises caused by City’s entry. At all times City shall have a key with which to unlock the doors in and to the Operator, excluding Operator’s vaults,

safes, and similar areas designated as secure areas in writing by Operator in advance. In an emergency, City shall have the right to use any means that City deems proper to open Operator's doors and enter the Premises. Entry to the Premises by City in an emergency shall not be construed as a forcible or unlawful entry. For purposes of clarity, nothing in this Section shall change, limit, or in any way diminish Operator's entitlement to liquidated damages under Section 15 of this Agreement.

5. RESIDENT USE, INCLUSION, ACCESS, AND ANTI-DISCRIMINATION

- A. Operator and City mutually affirm and commit to the principle and practice that City-owned pools and the programs provided at City-owned pools shall be oriented first and foremost toward full inclusion and access for all residents of Menlo Park, of all backgrounds, interests, abilities, and walks of life, and that City-owned pools and programs shall be operated in a manner that is deemed welcoming and inclusive for all Menlo Park residents, as measured in part by qualitative community feedback and quantitative community surveys to be administered annually by the City in partnership with Operator.
- B. Operator shall provide to City staff semi-annual visitor reports showing the residence addresses of all pool visitors during the report period, including all the aquatics programs in which each visitor participated, including programs provided by subcontractors, and all the dates on which each visitor used the pool, and the numbers of residents and non-residents actively using each program at Premises, and this information shall be provided by pool site. Operator and City mutually agree to a target of 2/3 (66.7%) or more pool visitors at each location being verified incorporated City of Menlo Park residents ("Resident Use Target"). City is responsible for verifying addresses as incorporated City of Menlo Park, using City's geographic information systems.
- C. Operator understands and agrees that it must comply with applicable civil rights laws and regulations, and the City requires compliance with civil rights statutes, including compliance nondiscrimination laws which prohibit discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, (g) Age, or (h) Gender identity and prohibit: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity.

6. LICENSING AND LEASING OF PREMISES

Operator may not license, lease, or sublease or grant any real property interest to another individual or without the prior written consent of the City Manager, which consent may require an allocation between the City and Operator of the gross revenue from such licensure. Any license agreement, lease, or sublease for use of the Premises shall be subject to the terms of this Agreement.

7. QUALIFIED PERSONNEL

Operator shall provide adequate qualified personnel to maintain safe and effective aquatics operations at Premises during all hours of operation, including:

- A. Employing personnel with the required qualifications and certifications appropriate for each position.
- B. Assigning sufficient qualified staffing to maintain safe and effective operations at City aquatics facilities.
- C. Maintaining reasonable evidence and documentation of its hiring practices, background checks, certifications, and training, including documentation of pre-service/employment orientation, on-the-job training, regular in-service training, and certification training for each employee.
- D. Seeking City approval prior to engaging or terminating the services of subcontractors or other parties not directly employed by Operator to deliver aquatics programs and/or services in City aquatics facilities.

- E. All persons employed or utilized in connection with the operation of the Premises, including relatives and minors, age of thirteen and above, with valid work permits and employed under the strict guidelines of California Child Labor laws, shall be adequately trained for such purposes, shall be courteous, shall be suitably and neatly attired so as to be recognizable as employees of Operator. Operator shall devote his/her own time and attention to the conduct of the services to be rendered on and from the Premises to the extent reasonably required to ensure such standards of operation called for in this Agreement. Operator acknowledges and agrees that Operator's employees will not be eligible for any City employee benefits and, to the extent Operator's employees otherwise would be eligible for any City employee benefits of any kind but for the express terms of this Agreement, Operator (on behalf of itself and its employees) hereby expressly declines to participate in such City employee benefits of any kind.
- F. Operator shall ensure that all employees who supervise minors meet the provisions of Public Resources Code, Section 5164, that Operator will require employees that have direct supervision over or conduct programs with minors, to be fingerprinted at Operator's expense, on initial employment. Operator will receive updates about Operator's employees via Livescan throughout the employment which will be paid for by Operator. Operator shall ensure that all non-employees (i.e., vendors, volunteers, etc.), who work with or have contact with minors to be fingerprinted at their own expense. Livescan fingerprinting service is available at the Menlo Park Police Department. Operator shall file with the City a certificate showing that within the last four years, every person employed in the Operator's programs with minors has been examined and has been found to be free of communicable tuberculosis, all in accordance with the provisions of Public Resources Code, Section 5164.

8. AQUATICS USER FEES

For purposes of this Section "aquatics user fees" includes but is not limited to fees, monies and/or remuneration paid by visitors, patrons, guests, facility renters, registrants, team members, and/or users of the Premises.

Effective no later than six (6) months after the effective date of this Agreement, Operator shall charge and impose aquatics user fees as set forth in the City of Menlo Park Master Fee Schedule, as it may be amended from time to time. Any desired changes to aquatics user fees, must be approved by amendment to the City's Master Fee Schedule prior to implementation. Until such a time as the City of Menlo Park Master Fee Schedule is updated to include aquatics user fees, Operator shall charge and impose user fees per the fee schedule and criteria set forth in Exhibit E – Aquatics User Fees.

Resident swim passes and/or swim memberships shall be valid at both aquatics center locations.

9. EXPENSES OF PREMISES

- A. Except as set forth in Section 4 of this Agreement, City shall be responsible for all expenses related to capital improvements and useful life of the Premises and approved by City. Such expenses shall include without limitation the following:
 - 1) City shall be responsible to maintain and repair City Owned Improvements and Equipment as that term is defined in and more specifically set forth in Exhibit F – City-Owned Improvements and Equipment and Maintenance Schedule.
 - 2) If in the course of operating the Premises, Operator identifies any City-owned equipment, facilities or portion thereof in need of maintenance or repair, Operator shall notify the City Staff Liaison or their designee as soon as possible and the City shall be responsible for performing the necessary maintenance or repair work without undue delay. If any maintenance or repair work requires immediate emergency attention, Operator may engage a preferred City contractor directly after obtaining consent from the City Staff Liaison or their designee. Operator shall be reimbursed by the City for any costs incurred

by Operator in addressing the immediate/emergency maintain/repair work. In the event that Operator's attempts to contact a City Staff Liaison or designee to authorize repairs in the time of an emergency are unsuccessful, and the failure to act may result in damage to the facilities or in bodily injury, Operator in its reasonable discretion may, after notifying Menlo Park Police Dispatch of the time, place, and nature of the emergency, engage a preferred City vendor directly and without prior consent, and, in such circumstances, shall be reimbursed by the City for any reasonable costs incurred by Operator in addressing the immediate/emergency maintain/repair work. If the Premises, facilities, or equipment are damaged due to the willful misconduct or negligence of Operator, its employees, subcontractors, or program participants, Operator is responsible for any necessary repair or replacement of such damage at Operator's sole cost and expense.

- 3) City shall provide and be billed directly for all necessary pool chemicals.
 - 4) City shall be responsible for environmental costs related to the storage of chemicals, hazardous materials, etc.
 - 5) City shall provide, without cost to Operator, all utilities necessary to operate the Premises for the purposes identified in this Agreement, including water, sewer, stormwater, electricity, gas, telephone, and internet. Operator shall modify operations to comply with any conservation requirements imposed by any utility operator. Operator shall consult with and obtain City approval prior to making any operational changes that would impact utility costs and regulatory compliance.
 - 6) City shall provide janitorial services at the Premises. The scope of janitorial services is more specifically described and set forth in Exhibit F – City-Owned Improvements and Equipment and Maintenance Schedule.
 - 7) Maintenance and service contracts for the Premises.
 - 8) Property/school/personal property/business/environmental taxes.
- B. In addition to Operator's maintenance obligations set forth in Section 4 of this Agreement, the City shall not be responsible for the following services and/or expenses, which expenses shall be the responsibility of Operator. Such expenses shall include without limitation the following:
- 1) Payroll (including taxes, fees, and benefits) and any other labor related costs and expenses, including without limitation full or part-time on-site personnel of Operator;
 - 2) Insurance – worker's compensation, property, employers liability, commercial general liability, and excess liability;
 - 3) Operator shall employ or contract for a Certified Pool Operator. Operator shall maintain standard operation procedure manuals and maintenance records and logs. These records will include: daily pool and chemical log and checklists for routine maintenance (daily, weekly, monthly, quarterly, biannually, and annually).
 - 4) Supplies, uniforms, equipment, materials used in the Premises for programming;
 - 5) Professional fees – direct out-of-pocket costs incurred for matters related to the operations of programming.

10. REVENUE SHARE

Operator shall annually pay to the City a percentage of Operator's annual gross revenues as more specifically set forth below. As used herein, "annual gross revenues" shall mean the annual gross revenue of the preceding calendar year earned by Operator before any deduction for costs, taxation, accounting, or other purposes, under Generally Accepted Accounting Principles. Annual gross revenues include any and all of Operator's income related to programs and operations that take place in whole or in part at Premises.

For purposes of this Section, "Resident-Based Annual Gross Revenues" shall mean all fees, monies, and/or remuneration paid by visitors, patrons, guests, facility renters, registrants, team members, and/or users of the Premises who are verified residents of incorporated City of Menlo Park.

For purposes of this Section, "Non-Resident-Based Annual Gross Revenues" shall mean all fees, monies and/or remuneration paid by visitors, patrons, guests, facility renters, registrants, team members, and/or users of the Premises who are not verified residents of incorporated City of Menlo Park.

Excepting the first 12 months of this Agreement's term, Operator shall annually pay to the City an amount equal to 1% of Operator's total Resident-Based Annual Gross Revenues and 1.35% of total Non-Resident-Based Annual Gross Revenues, or \$20,000, whichever is greater.

The annual revenue share shall be paid to the City by March 15 of each year for the preceding calendar year's annual gross revenues, not including Operator's annual gross revenues received prior to this Agreement's effective date.

11. COMMUNITY FEEDBACK

City will convene a "working group" of Menlo Park residents to informally meet with Operator and City staff on a regular basis regarding desired services and programs, concerns and suggestions, and general feedback about aquatics operations. The community working group will review the Operator's annual performance report, and community survey results. The community working group may, with the support of City staff, annually prepare a written assessment of the information presented in Operator's annual reports, and survey results, with any recommendations the community working group may have for the aquatics program. The working group's written assessment shall be provided to the City Council. The composition of the community working group will rotate occasionally in order to include and reach more participants.

12. TERMINATION

A. Termination for Convenience

- 1) Operator may terminate this Agreement for convenience and without cause with 120 days advance written notice to the other party, if notice is given on a date between July 1 and December 31 of any given year.
- 2) Operator may terminate this Agreement for convenience and without cause with 180 days advance written notice if notice is given on a date between January 1 and June 30 of any given year.
- 3) Termination by City for Cause. This Agreement may be terminated by City at any time during the term upon written notice to Operator for any of the causes set forth in this Section or for any Default as that term is defined and described in Section 25 of this Agreement. Such termination shall be effective no sooner than thirty (30) days after notice or upon such later date of termination as may be stated in City's notice.

The following shall constitute grounds for termination by City for cause: (1) If Operator fails to observe or perform any of its obligations under this Agreement, and such failure continues for thirty (30) days after written notice thereof has been given by City to Operator and operator fails to cure its failure to perform within said thirty (30) day period; (2) If Operator suspends or discontinues business; (3) If Operator Defaults, as that term is defined and described in Section 25 of this Agreement.

B. Upon termination of this Agreement for Cause,

- 1) Operator shall, after thirty (30) day notice or other period as set forth in Section 12.A(3) above, surrender possession of the Premises and all improvements and equipment thereon, including but not limited to, City-Owned Improvements and Equipment to City, and shall discontinue all services, unless the City directs otherwise.
- 2) City may take possession of the Premises as the agent and on account of Operator, and if it so elects may license or rent the whole or any part of the Premises for the balance or any part of the term of this Agreement and retain any license fees received and apply the same in payment on account of Operator. The performance of any or all of said acts by City shall not release Operator from the full and strict compliance with all of the terms, conditions and

covenants of this Agreement on Operator's part and Operator shall pay any deficiency that may exist. Notwithstanding the foregoing, Operator shall only pay or be liable for deficiencies caused by or Operator prior to City taking possession of the Premises.

- 3) Operator shall deliver to City any and all reports, estimates, summaries, financial documents, and such other information and materials as may have been accumulated or produced by Operator in performing work under this agreement at the time of termination, that are required to be produced to the City under this Agreement, whether completed or in process.

13. REPORTING AND AUDITING

- A. Separate Reporting for Each Aquatics Center. All obligations under this Section shall apply to the MPCC Pool and Burgess Pool, and Operator shall keep separate accounts, books, and records for each of the two pools and facilities comprising the Premises.
- B. Books and Records. Operator shall keep accounts, books, and records of the Premises relating to Operator's responsibilities, Premises income statements, Premises revenue, and Premises expenditures according to Generally Accepted Accounting Principles. Such accounts, books, and records shall be available for inspection with 5 days' notice at any time. Upon the effective date of any termination of this Agreement, copies of accounts, books, and records shall be made available to City for inspection.

Operator shall maintain all required records for three years following the creation of any such record.

- C. Reports and Reconciliation of Premises Accounts.
 - 1) Quarterly Financial Reports. Each quarter Operator will provide City with the following detailed reports
 - (a) Income Statements – quarterly income statements including current quarter and year-to-date actual financial P&L. Appropriate descriptions of any significant monthly or year-to-date variances of revenue, expenses, net income, and/or earnings before interest, taxes, depreciation, and amortization ("EBITDA").
 - (b) Premises Expenses – report of all expenses paid by Operator the previous quarter; a comparison of the current quarter and year-to-date account of actual expenses.
 - (c) Premises Revenue – report of all revenue collected each quarter
 - (d) Additional Reports – a written report describing any material changes in the Premises which occurred during the previous year or are anticipated to occur in the coming year; any material security incidents or material changes to security protocol; event recap and evaluation with suggested changes to protocols.
 - 2) Annual Program Performance Reports. Each quarter Operator will provide City with the following detailed program reports:
 - (a) Total program hours with detailed schedules of individual programs including lane hours, times of day, days of week, and by season.
 - (b) Participation statistics by program area including Menlo Park resident and non-resident use, as defined and described in Sections 4 and 5 of this Agreement and its related Exhibits.
 - 3) Annual Program Performance Reports. Operator shall provide annual performance reports to City no later than February 28 of each year. Operator will coordinate with City staff to present operator's annual performance report to City Council no later than March 31 of each year. Annual Program Performance Reports shall include the following:
 - (a) Community satisfaction survey results, as administered and compiled by City with input from Operator, and provided by City to Operator no later than January 10 of each year.
 - (b) User group feedback by program area.
 - (c) Pool schedule and allocation by program for previous year and projections to the upcoming year.

- (d) User fees collected by program area, including fees paid by Menlo Park residents and non-residents, as defined and described in Sections 5, 8, and 10 of this Agreement and its related Exhibits.
 - (e) Fee comparison to other public pools in the region.
 - (f) Annual audits and reviews demonstrating standards of care are met.
 - (g) Risk management documentation.
 - (h) Training certifications listed by staff member.
 - (i) Emergency Action Plan, as defined and described in Section 22 of this Agreement.
 - (j) Incident reports of any rescues, injuries, emergencies, criminal activity, accidents, or other events that occurred at Premises. Incident reports shall be provided to City staff contemporaneously as well as compiled in annual reports.
 - (k) Operator shall maintain reasonable evidence and documentation of this information and have these records accessible to the City at any time following 10 days written notice.
- 4) Annual Safety Report. Operator shall provide City with an annual safety report. Safety meetings and Premises safety drills shall be conducted and documented within the annual report.
 - 5) Periodic Reports. Operator shall furnish City reports regarding on-site physical inspections and operating reviews; and a current inventory of all property and equipment in connection with the Premises. The inventory shall be submitted to City no later than February 28 each calendar year.
- D. Third party review of financial records. City shall have the right to seek qualified independent financial review of Operator's profit and loss statement and operations related to Premises at any time. Any third party review performed by the City shall be at its sole expense. City may engage a qualified financial reviewer of its choosing and/or utilize City staff, assigns and/or contractors. Any such review commissioned by City shall be limited solely to financial related to Premises (that is, Burgess Pool and MPCC Pool) and shall not include Operator's business activities unrelated to Premises. Any such review commissioned by City shall not include the individual earnings or private identifying information of individual employees of Operator.
- E. Other Reports and Statements. Operator shall furnish to City, as promptly as practicable, such other reports, statements, and other information with respect to the operation of the Premises as City may reasonably request from time to time.
- 1) Contracts and Other Agreements. City shall maintain at the Premises one copy of all contracts, warranties, equipment leases, maintenance agreements, and all other agreements relating to the Premises. Duplicate copies, which may be in electronic form, of all such documents shall be forwarded by City to Operator immediately upon execution.
 - 2) Final Accounting. Operator shall deliver to City a final Profit and Loss statement for the Premises within 60 days of termination of this Agreement.
 - 3) Inspections. City and its representatives reserve the right to inspect the Operator's records identified in this contract from time to time relating to the Premises. Operator shall cooperate with City and its representatives in exercising such rights.
 - 4) Certification. Operator shall certify that each financial statement is true, correct, and complete in all material respects.

14. WAIVER OF CONSEQUENTIAL DAMAGES

City shall not be liable to Operator and Operator shall not be liable to City for any consequential damages incurred by either party due to the fault of the other, regardless of: the nature of this fault; or whether it was committed by City or Operator, their employees, agents, or subcontractors; or whether such liability arises in breach of contract or warranty, tort (including negligence), statute, or any other cause of action. Consequential damages include, but are not limited to, loss of use and loss of profit.

15. LIQUIDATED DAMAGES

Notwithstanding Section 14 (Waiver of Consequential Damages), in the event of (a) an unplanned and/or unforeseen closure of Burgess Pool and/or MPCC Pool lasting more than five (5) consecutive calendar days where such closure is caused by the failure of any City Owned Improvements and Equipment, or other items for which City is responsible, or (b) any planned Closure of Burgess Pool and/or MPCC Pool of five (5) consecutive days or more to allow the City to perform any repairs or maintenance that is the obligation of the City under this Agreement, or (c) any planned closure of Burgess Pool and/or MPCC Pool of five (5) consecutive calendar days or more to allow the City to perform capital improvements to City property, provided that at least forty-five (45) days advance written notice is provided to Operator of the date and nature of the capital improvements to be made ("Unplanned and/or Planned Closure"), the City shall compensate Operator for Liquidated Damages. Liquidated Damages shall be (1) an amount equal to 1/28 of Operator's total monthly gross payroll including payroll taxes from the previous year and corresponding month for each day of facility full closure after the fifth calendar day, if the closure occurs from September through May, or (2) If the closure occurs anytime from June 1 through August 31, the City shall compensate Operator an amount equal to 1/28 of Operators total monthly gross revenues from the previous year and corresponding month for each day of full facility closure after the fifth calendar day. For purposes of this Section, "1/28 of Operator's total monthly gross payroll from the previous year and month" shall mean 1/28 of the same month in the previous calendar year's gross payroll including payroll taxes from the previous year and corresponding month, paid solely for aquatics operations at the pool at which the failure of City Owned Improvements and Equipment has occurred ("Liquidated Damages"). Notwithstanding the foregoing, where Unplanned and/or Planned Closures exceed fifteen (15) days in any calendar year, City shall compensate Operator for Liquidated Damages regardless of whether any such fifteen days were consecutive calendar days. In no event shall City compensate Operator for Liquidated Damages in excess of 28 days.

In the event of unplanned and/or unforeseen simultaneous closures of both aquatics centers for more than five (5) consecutive business days, aquatics users who hold valid swim passes and/or swim memberships at the time of said closures shall be eligible to receive pro-rated refunds and/or account credits corresponding to the applicable membership/swim pass fees and the duration of said closures. Any such refunds and/or account credits shall be provided at Operator's sole expense.

Neither of the Parties shall hold the other responsible for damages or delay caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other, or the other's employees and agents.

16. INSURANCE

- A. Operator shall not commence work under this agreement until all insurance required under this Section has been obtained and such insurance has been approved by the City, with certificates of insurance evidencing the required coverage.
- B. There shall be a contractual liability endorsement extending the Operator's coverage to include the contractual liability assumed by the Operator pursuant to this agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the City, at the address shown in Section 9, of any pending cancellation of the policy. Operator shall notify City of any pending change to the policy. All certificates shall be filed with the City.
 - 1) Workers' compensation and employer's liability insurance: Operator shall have in effect during the entire life of this agreement workers' compensation and Employer's Liability Insurance providing full statutory coverage. In signing this agreement, the Operator makes the following certification, required by Section 18161 of the California Labor Code: "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-

insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this agreement."

- 2) Commercial General Liability ("CGL"): Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$3 million per occurrence. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.
 - 3) Worker's Compensation: As required by the State of California, with Statutory Limits and Employer's Liability Insurance with limits no less than \$1,000,000 per accident for bodily injury or disease. Operator shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective officials, officers, employees, agents, and representatives.
 - 4) Commercial Automobile Liability: For all of Operator's automobiles including owned, hired, and non-owned automobiles, Operator shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).
 - 5) Employment Practices (EPLI): Employment liability insurance reasonably consistent with the size and scope of the facility's operations.
 - 6) Causes of Loss - Special Form Property Insurance: Operator shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all Operator's insurable property, related to the allowed uses of the property under this contract or the premises in an amount to cover the replacement cost.
 - 7) Sexual Abuse & Molestation: Operator shall obtain and maintain a policy covering Sexual Abuse and Molestation with a limit no less than \$1,000,000 per occurrence or claim.
- C. City and its subsidiary agencies, and their officers, agents, employees and servants shall be named as additional insured on any such policies of Commercial General Liability and Automobile Liability Insurance, (but not for workers' compensation).
- D. In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, City, at its option, may, notwithstanding any other provision of this agreement to the contrary, immediately declare a material breach of this agreement and suspend all further work pursuant to this agreement.
- E. Before the execution of this agreement, any deductibles or self-insured retentions must be declared to and approved by City.

17. INDEMNIFICATION

To the fullest extent permitted by law, Operator shall defend (with legal counsel reasonably acceptable to City), indemnify and hold harmless City and its officers, agents, departments, officials, representatives and employees (collectively "Indemnitees") from and against any and all claims, loss, cost, damage, injury (including, without limitation, economic harm, injury to or death of an employee of Operator or its sub-Operators), expense and liability of every kind, nature and description that arise from or relate to (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses and fees of expert Operators or expert witnesses incurred in connection therewith and costs of investigation) that arise from or relate to, directly or indirectly, in whole or in part, from: (1) Operator's performance of Services under this Agreement, or any part thereof; (2) any negligent act or omission of Operator, any sub-Operator, anyone directly or indirectly employed by them, or anyone that they control; (3) any actual or alleged infringement of the patent rights, copyright, trade secret, trade name, trademark, service

mark or any other intellectual or proprietary right of any person or persons in consequence of the use by City, or any other Indemnatee, of articles or Services to be supplied in the performance of this Agreement; or (4) any breach of this Agreement (collectively "Liabilities"). Such obligations to defend, hold harmless and indemnify any Indemnatee shall not apply to the extent such Liabilities are caused by the negligence or willful misconduct of such Indemnatee, but shall apply to all other Liabilities. The foregoing shall be subject to the limitations of California Civil Code Section 2782.8 as to any design professional services performed by Operator and in particular the limitation on Operator's duty to defend whereby such duty only arises for claims relating to the negligence, recklessness or willful misconduct of Operator as well as the limitation on the cost to defend whereby Operator will only bear such cost in proportion to Operator's proportionate percentage of fault (except as otherwise provided in Section 2782.8). The foregoing indemnification provisions will not reduce or affect other rights or obligations which would otherwise exist in favor of the City and other Indemnitees. Operator shall place in any sub-consulting agreements and cause its sub-Operators to agree to indemnities and insurance obligations in favor of City and other Indemnitees in the exact form and substance of those contained in this Agreement.

To the fullest extent permitted by law, City shall defend (with legal counsel reasonably acceptable to Operator), indemnify and hold harmless Operator and its officers, agents, departments, officials, representatives and employees (collectively "Indemnitees") from and against any and all claims, loss, cost, damage, injury (including, without limitation, economic harm, injury to or death of an employee of City or its sub-contractors), expense and liability of every kind, nature and description that arise from or relate to (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses and fees of expert providers or expert witnesses incurred in connection therewith and costs of investigation) that arise from or relate to, directly or indirectly, in whole or in part, from: (1) City's performance of Services under this Agreement, or any part thereof; (2) any negligent act or omission of City, any sub-contractor, anyone directly or indirectly employed by them, or anyone that they control; (3) any actual or alleged infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other intellectual or proprietary right of any person or persons in consequence of the use by Operator, or any other Indemnatee, of articles or Services to be supplied in the performance of this Agreement; or (4) any breach of this Agreement (collectively "Liabilities"). Such obligations to defend, hold harmless and indemnify any Indemnatee shall not apply to the extent such Liabilities are caused by the negligence or willful misconduct of such Indemnatee, but shall apply to all other Liabilities. The foregoing shall be subject to the limitations of California Civil Code Section 2782.8 as to any design professional services performed by City and in particular the limitation on City's duty to defend whereby such duty only arises for claims relating to the negligence, recklessness or willful misconduct of City as well as the limitation on the cost to defend whereby City will only bear such cost in proportion to City's proportionate percentage of fault (except as otherwise provided in Section 2782.8). The foregoing indemnification provisions will not reduce or affect other rights or obligations which would otherwise exist in favor of the Operator and other Indemnitees. City shall place in any sub-consulting agreements and cause its sub-contractors to agree to indemnities and insurance obligations in favor of Operator and other Indemnitees in the exact form and substance of those contained in this Agreement.

18. PROMOTIONAL MATERIALS

- A. Operator may place advertising banners, sandwich boards, and/or other promotional signage on Premises, provided that authorization approval is provided in advance in writing by City Staff Liaison.
- B. Operator shall coordinate with City Staff Liaison to include aquatics programs and schedules on City promotional materials in formats and venues of the City's choosing.
- C. City reserves the right to place advertising banners, sandwich boards, and any other signage on Premises at City's discretion.

19. COMPLIANCE WITH LAWS

It shall be the responsibility of Operator to comply with all Local, State and Federal regulations and laws applicable to the work and services provided pursuant to this agreement.

20. HEALTH & SAFETY

Operator shall maintain health and safety standards and associated training records in a reasonable and acceptable manner for the Premises, participants, and its employees in compliance to City standards and applicable regulatory agencies. These standards include but are not limited to:

- A. Employee Injury and Illness Prevention Plan
- B. Hazardous Materials Communications and Business Plan
- C. Bloodborne Pathogens and Biohazardous Exposure Control Plan
- D. Hazard Communication (labeling & MSDS management)
- E. Hearing Conservation
- F. Lifting and Fall Prevention/Protection (Equipment)
- G. Electrical Safety Plan
- H. Lockout, Tagout Equipment Specific Procedures
- I. Emergency Action Planning/Drills
- J. First Aid/CPR/AED
- K. Heat Illness and Sun Protection
- L. Confined Spaces/Entry Equipment
- M. Chemical Storage/Spill Response/Cleanup
- N. Fire Extinguisher
- O. Personal Protective Equipment
- P. Recreational Waterborne Illnesses (RWI's)
- Q. Signage/Labeling
- R. Keeping up to date with all changes, additions, or amendments to the laws, regulations and codes related to pool operations and aquatics programs.

21. RISK MANAGEMENT

Operator shall take all appropriate and necessary steps to provide adequate risk management planning to minimize liability or negligence by Operator. Operator shall manage its risk by demonstrating proficiency in the following areas:

- A. Emergency Action Plan - staff training plan, drills conducted, emergency equipment and communication process.
- B. Facilities & Equipment - inspection, maintenance, and checklists.
- C. Supervision - quality, quantity, lesson plans and progression.
- D. Training - requirements and appropriate staff.
- E. Documentation - manuals, waivers, medical screening, skills screening, risk information provided to public, policies and evaluations.

22. EMERGENCY ACTION PLAN & PROCEDURES

Operator shall create and maintain emergency procedures and emergency action plans for the Premises. An Emergency Action Plan is required under Title 29 of Federal Regulations Sections 1910.38/.120/.156, and Title 8 California Code of Regulations, Sections 3220 and 3221. The Emergency Action Plan covers all employees and non-employees who may be exposed to hazards arising from emergency situations. It must contain information for all employees, including administration and line level employees, which shall use the plan in order to reduce the severity of emergency situations and minimize the risk to life and property. The Emergency Action Plan shall be updated at least annually and included in Operator's annual performance reports to City.

23. RELATIONSHIP OF PARTIES

- A. Representations and Warranties.

- 1) Operator's Authority. Operator represents and warrants that Operator has full power, authority, and legal right to execute, deliver, and perform this Agreement.
 - 2) City's Authority. City represents and warrants that City has full power, authority, and legal right to execute, deliver, and perform this Agreement.
- B. Operator as Independent Contractor. In taking any action pursuant to this Agreement, Operator shall be acting solely as an independent contractor and nothing in this Agreement, express or implied, shall be construed as creating a partnership, joint venture, employer-employee or principal-agent relationship between Operator and City, or any other relationship between the Parties hereto except that of property owner and independent contractor.
- C. Except as otherwise expressly limited by other provisions of this Agreement, Operator has and shall retain the right to exercise full control and supervision of the operation of the Premises, and full control over the employment, direction, compensation, and discharge of all persons assisting Operator in the operation of the facility under this Agreement. Operator shall be solely responsible for all matters, and shall be solely responsible for Operator's own acts and those of subordinates and employees. Neither Operator, nor any agent or employee of Operator, has authority to enter into contracts that bind the City or create obligations on the part of the City without the prior written authorization of the City. Nothing in the Agreement shall create any contractual relationship between City and subcontractor of Operator nor shall it create any obligation on the part of City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise required by law.
- D. No Partnership Formed. City is not, and shall not in any way or for any purpose become, an agent, partner, or joint venturer of Operator in its business or otherwise.
- E. Confidentiality. Except as necessary to enforce the terms of this Agreement, as reasonably required to perform the obligations and operations under this Agreement, or as otherwise required by law, Operator and City shall maintain the confidentiality of all matters pertaining to this Agreement and all operations and transactions relating to the Facility. Any information obtained by City pursuant to the provisions of this Agreement shall be treated as confidential, except in any proceedings between the Parties hereto, and except further that City may divulge such information to a lender and/or to any person as required by law. The City is subject to the California Public Records Act and if required by the California Public Records Act may disclose certain information. The Parties may disclose the terms of this Agreement: (i) to a court pursuant to subpoena or order; (ii) to taxing authorities or accounting professionals as necessary to comply with any statute; (iii) as otherwise required by law or in the performance of duties required under this Agreement; (iv) to prospective insurers; and (v) to any other person or entity upon written consent of the party adverse to them in this Agreement. Further, the Parties agree they will not make any statements or engage in any action or conduct which will damage or disparage the name, business, or reputation of the Parties, whether such disparagement is undertaken unilaterally or in response to questions or solicitations by others, except by compulsion or a court of competent jurisdiction.
- F. Conflict of Interest. Operator warrants and covenants that no official or employee of City nor any business entity in which an official or employee of City is interested; (1) has been employed or retained to solicit or aid in the procuring of this Agreement; (2) will be employed in the performance of this Agreement. In the event City determines that the employment of any such official, employee or business entity is not compatible with such official's or employee's duties as an official or employee of City, Operator, upon request of City, shall terminate such employment immediately. Nothing in this Section shall prohibit the City and Operator from cross-marketing or jointly marketing programs, classes, and other events with City departments.
- G. Non-Solicitation. City agrees that during the term and for a period of twelve (12) months following the expiration or termination of this Agreement, City shall not directly or indirectly solicit, hire, or offer to hire or employ any Operator Employee (as defined below) to work in or in connection with the Premises without Operator's approval which approval shall not be unreasonably withheld. "Operator Employee" means any management-level employee of

Operator involved in the management of the Premises (including without limitation the Premises manager).

24. ASSIGNMENT AND SUBLETTING

- A. The Parties recognize that a substantial inducement to City for entering into this Agreement is the professional reputation, experience and competence of Operator, and its members who submitted the Proposal, namely Tim Sheeper. Operator shall not voluntarily or by operation of law assign, transfer, sublet, or otherwise transfer or encumber all or any part of Operator's interest in the Agreement or in the Premises, without City's prior written consent, which may be granted or denied in City's discretion which shall not be unreasonably withheld. The merger of Operator with any other entity or the transfer of any controlling or managing ownership or beneficial interest in Operator, or the assignment of a substantial portion of the assets of Operator, whether or not located at the Premises, shall constitute an assignment hereunder. Nothing in this Agreement prohibits Operator from contracting for services at the Premises. Examples of these include but are not limited to, food concessionaire, instructors, training etc. Any limitations on the assignment or subletting in this Section 24 shall not apply in the event of the death, incapacity or marital dissolution of Tim Sheeper.
- B. If Operator desires to assign this Agreement or sublet any or all of the Premises, Operator shall give City written notice thereof with copies of all related documents and agreements associated with the assignment, including without limitation, the name and address of the proposed assignee, the nature of the business proposed to be carried on by the proposed assignee or subtenant, and such financial statements of any proposed assignee or subtenant as City may reasonably require not later than forty five (45) days prior to the anticipated effective date of the assignment or sublease. City shall have a period of thirty (30) days following receipt of such notice and all related documents and agreements to notify Operator in writing of City's approval or disapproval of the proposed assignment or sublease. If City fails to notify Operator in writing of such election, City shall be deemed to have disapproved such assignment or subletting.

25. DEFAULT

The occurrence of any one or more of the following events shall constitute a material default ("Default") of this Agreement by Operator:

- A. Except in the event of acts of God, accidents, local health orders, and/or disaster events beyond the control of the Operator, or the Operator's employees and agents, the abandonment, vacation, or discontinuance of operations at the Premises for more than three business days unless discontinuance of operations has been previously approved by the City in writing.
- B. The failure of Operator to make any payment required to be made by Operator hereunder, after fourteen (14) days' written notice from City of non-payment. The interest of Operator in the Agreement is assigned or transferred, passes to or devolves upon, by operation of law or otherwise, any other person, firm, or corporation without the prior written consent of the City, except as provided in Section 24 above.
- C. The failure to maintain the Premises and the improvements constructed thereon in a state of repair required by this Agreement, and in a clean, sanitary, and safe condition consistent with similar pools in Northern California, where such failure continues for more than fifteen (15) days after written notice from the City for correction thereof. Nothing herein shall prohibit the City from requiring that safety and health conditions shall be corrected in accordance with the requirements of the Uniform Building Code or Uniform Fire Code, as may be adopted by the City from time to time. The City acknowledges that it is responsible for certain equipment and maintenance at the Premises as more specifically set forth in Exhibit F, and any failings in areas of City's responsibility to maintain the Premises, as defined in Exhibit F, shall not constitute a default.
- D. Deterioration of service for any period which materially and adversely affects the operation or service required to be performed by Operator under the Agreement, including but not limited

to the specific terms and conditions set forth in Sections 4, 7, 16, 19, 20, 21 and 24 of this Agreement, and which is not corrected within thirty (30) days after written notice from the City for correction thereof. The failure of Operator to be in compliance with local, state and federal law, where such failure continues for more than fifteen (15) days after written notice from the City for correction thereof.

- E. The filing of a voluntary petition in bankruptcy by Operator, the adjudication of Operator as bankrupt, the appointment of any receiver of Operator's assets, the making of a general assignment for the benefit of creditors, and/or a petition or answer seeking a reorganization of Operator under the federal bankruptcy laws or any other federal or state laws.
- F. Operator's intentional misrepresentation of facts in its required forms, documents, and submittals required as part of this Agreement or in the submittals in the solicitation and selection of an Operator to perform the services under this Agreement.
- G. The filing of any lien or stop notice on account of Operator where such lien/notice is not removed or enjoined and/or a bond for satisfaction of such lien is not posted within ten (10) days.
- H. The failure of Operator to operate in the manner required by this Agreement, or Operator's breach of or default under any provision of this Agreement not otherwise specified above in this Section 25 (Default), where such failure or default continues for more than thirty (30) days after written notice from the City to correct the condition specified.

26. RESPONSIBILITY AND LIABILITY FOR SUB-CONSULTANTS AND/OR SUBCONTRACTORS

Approval of or by City shall not constitute nor be deemed a release of responsibility and liability of Operator or its sub-consultants and/or subcontractors for the accuracy and competency of the Operator's aquatics programs and work, nor shall its approval be deemed to be an assumption of such responsibility by City for any defect in services and/or programs by Operator or its sub-consultants and/or subcontractors.

27. ENTIRE AGREEMENT

This Agreement is intended by the Parties as the complete and final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence any prior or contemporaneous agreement. This Agreement specifically supersedes any prior written or oral agreements between the Parties with respect to the subject matter hereof. No amendment to this Agreement shall be enforceable unless in writing and signed by all parties.

28. AUTHORITY OF PARTIES/SIGNATORIES

Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

29. GOVERNING LAW

This Agreement shall be governed in accordance with the laws of the State of California. San Mateo County, California shall be the venue for all disputes arising from this Agreement and the Parties consent to the jurisdiction of the courts of the State of California.

30. SEVERABILITY

The provisions of this agreement are severable. If any portion of this agreement is held invalid by a court of competent jurisdiction, the remainder of the agreement shall remain in full force and effect unless amended or modified by the mutual consent of the parties.

31. NOTICES

All notices hereby required under this agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid or by overnight courier service.

Notices required to be given to City shall be addressed as follows:

City Manager
City of Menlo Park
701 Laurel St.
Menlo Park, CA 94025
650-330-6610
Email jicmurphy@menlopark.gov

Notices required to be given to Operator shall be addressed as follows:

Tim Sheepen
Team Sheepen, Inc.
501 Laurel St.
Menlo Park, CA 94025
Phone 650-504-1114
Email tim@teamsheepen.com

Provided that any Party may change such address by notice, in writing, to the other Party and thereafter notices shall be addressed and transmitted to the new address.

32. SIGNATURES

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers as of the date first set forth above.

SIGNATURE PAGE TO FOLLOW

CITY OF MENLO PARK

DocuSigned by:
Justin Murphy
By: 8379C4D5DD3E486...

Justin I.C. Murphy, City Manager

Approved as to Form:

DocuSigned by:
Nira F. Doherty
44FFE23C8E6B458...

City Attorney

Nira F. Doherty, City Attorney

ATTEST:

DocuSigned by:
Judi A. Herren
39280A20D0BE491...

Judi A. Herren, City Clerk

TEAM SHEEPER, INC

501 Laurel Street
Menlo Park, CA 94025

DocuSigned by:
Tim Sheeper
By: 09FDB12D95194EC...

Tim Sheeper, Chief Executive Officer

Approved as to Form:

DocuSigned by:
Albert Flor, Jr.
21D492A5C88C4D3...

Attorney for Team Sheeper

LIST OF EXHIBITS

- A. PREMISES – BURGESS POOL
- B. PREMISES – MPCC AQUATICS CENTER
- C. SCHEDULE TEMPLATE
- D. PROGRAM DESCRIPTIONS
- E. AQUATICS USER FEES
- F. CITY-OWNED IMPROVEMENTS AND EQUIPMENT AND MAINTENANCE SCHEDULE
- G. SOLO SCHEDULE AND TERMS

[illegible]

EXHIBIT B – PREMISES – MPCC AQUATICS CENTER

EXHIBIT B – PREMISES – MPCC AQUATICS CENTER

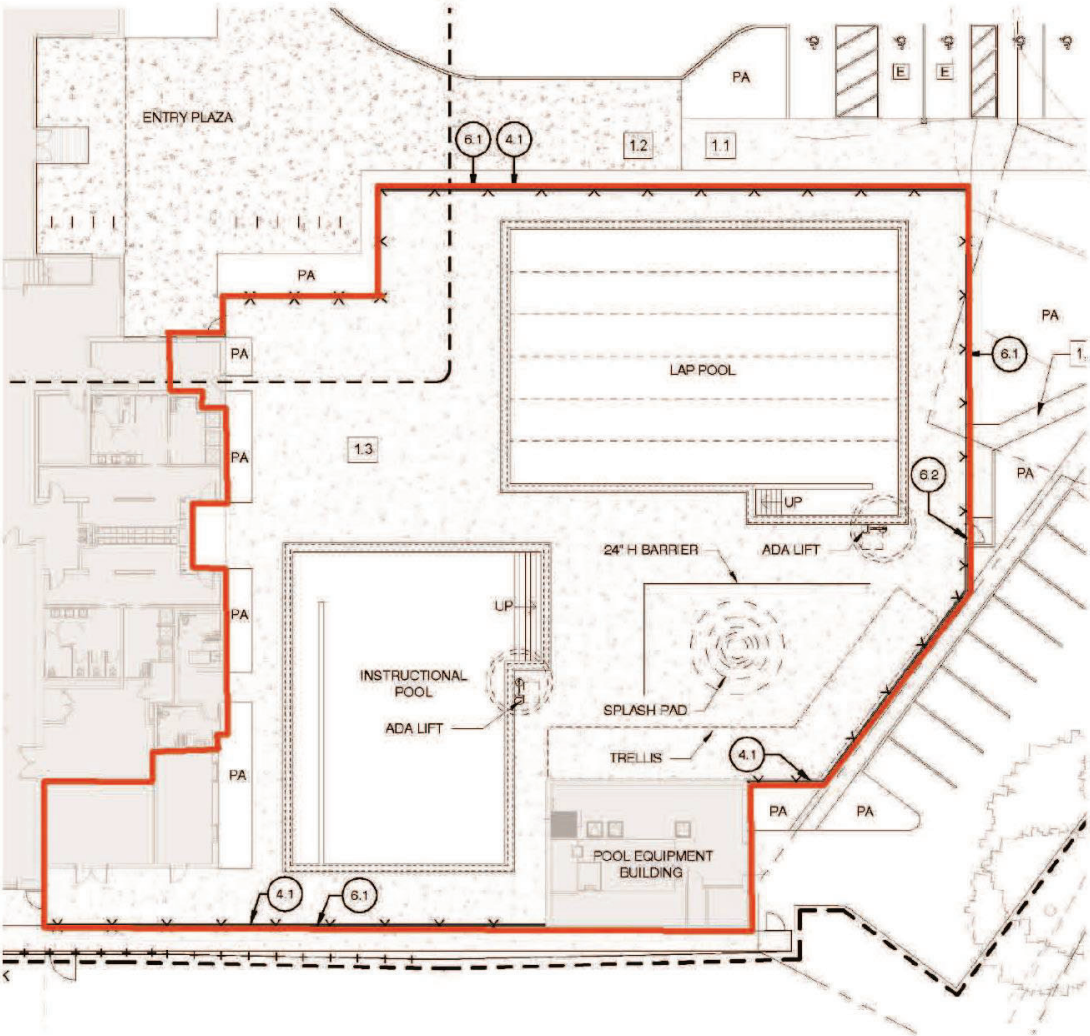


EXHIBIT C – SCHEDULE TEMPLATE

City and Operator agree that operating hours and schedules of aquatics programs may vary from season to season and/or from time to time as community needs and circumstances may change over time. The Parties agree that Operator shall notify the City at least two weeks in advance of any substantive changes to the hours and operating schedules.

1. HOURS OF OPERATION. Operator shall operate the Burgess Pool and the future MPCC aquatics center for public access year-round, seven days per week, no fewer than 63 hours per week at each location as calculated by average applied over the course of a full calendar year—with exceptions for closures to observe major holidays or to complete necessary maintenance or repair work. Burgess Pool and MPCC aquatics center shall be operated with comparable or equivalent operating schedules and programs at both locations, with allowance for some variances to respond to hyperlocal needs and other unique considerations of each site and the neighborhoods in which they are located.

Projected Hours of Operation at Burgess Aquatics Center and Menlo Park Community Campus Aquatics Center:

Season	Weekdays	Saturdays	Sundays
Summer	6am to 8pm	6am to 5pm	6am to 5pm
Non-Summer	6am to 8pm	6am to 4pm	7am to 4pm

2. AQUATICS SCHEDULE TEMPLATE. The Schedule Template shows proportions of lane space/lane hours for each activity for each pool during different seasons. The Schedule Template is intended to apply to both locations (Burgess Aquatics Center and Menlo Park Community Campus Aquatics Center), so that aquatics programs are comparable or equivalent at both locations, with allowance for some variances to respond to hyperlocal needs and other unique considerations of each site and the neighborhoods in which they are located. Including but not limited to:

- Family recreation/ Open swim
- Splash pad/ Baby pool
- Lap swim
- Swim instruction
- Water exercise/ Water wellness
- Masters adult swim
- Adult water polo
- Youth water polo
- Swim team
- Lifeguard instruction

AQUATICS SCHEDULE TEMPLATE

Program	Goal	Pool	Timing	Space	Season
Family Recreation/Open Swim	Max availability during summer, non-summer weekends/weekday evenings	Instructional	Mid day to closing in summer, non summer weekends and weekday evenings	Summer:3 to 6 lanes; Non summer: 2 to 4 lanes	Year round-although demand increases exponentially during summer
Splash Pad/Baby Pool	Summer and non-summer weekends/weekday evenings	Splash pad/baby pool	Mid day to closing in summer, non summer weekends and weekday evenings	Full	Late spring/Summer/Early fall
Lap Swim	Max availability during all business hours	Both	Opening to closing	Anywhere from 3 lanes to 14 lanes; expands and contracts sharing with other programming	Year round - sharing by season with water exercise, lessons, open swim in instructional pool
Swim Instruction	Priority usage with maximum engagement year round	Instructional	Mid morning, after school hours, weekend mornings	1 to 4 lanes	Year round - expanded in summer within swim camps
Water Exercise/Water Wellness	Serve large number of adults in deep and shallow water for vertical movement	Instructional	Early to mid morning	2 to 4 lanes	Year round sharing with lessons in summer
Masters Adult Swim	Serve large number of adult swimmers year round mostly daily mornings	Competition	Early mornings and some weekday noon	7 to 8 lanes	Year round always sharing with lap swim
Youth Swim Teams	Serve large number of youth swimmers year round on weekdays	Competition	After school hours on weekdays until closing	7 to 8 lanes	Year round sharing with lap swim, except none in August
Adult Water Polo	Serve large number of adult players	Competition	Early morning weekend hours	8 lanes	Year round sharing with Lap swimming all year
Youth Water Polo	Serve large number of youth players, beginner or intermediate	Competition	After school hours or weekday evenings	6-8 lanes	Year round may share with laps
Lifeguard Instruction	Train and develop pool lifeguards	Competition	Monthly on weekends	2 to 4 lanes	Year round shares with laps

Total Lanes Per Pool

Burgess Competition-11

Burgess Instructional-6

MPCC-Competition-6

MPCC Instructional-3

EXHIBIT D – PROGRAM DESCRIPTIONS

Program descriptions apply to all City-owned aquatics centers unless otherwise specified.

Lap Swim – Operator shall dedicate lanes to lap swimming in the performance pool and/or instructional pool seven days per week year-round with lifeguards on duty at all times. Operator may observe circle swimming when there are more than two swimmers per lane.

Open swim / Family recreational swim - Open swim shall be offered seven days per week during the summer season, and weekends during the off season. Instructional pool shall offer no fewer than two lanes dedicated to open swim 7 days per week during the summer season. The Burgess wading pool shall be open to the community every day during the summer season. The MPCC splash pad shall be open to the community every day during the summer season.

Youth Swim Lessons – Operator shall provide group and private lessons year-round to build water safety skills for young swimmers as young as 6 months old through adulthood. Curriculum will teach swimmers skills with clear progressions at each level, aiming to be safe swimmers with proper technique. By the end of the four main levels, students will have learned Freestyle, Backstroke, Breaststroke, and Butterfly, and will be able to swim 25 yards independently. Once students graduate from the Swim School, they have the available option to try out for the Bridge Youth Swim Team.

Adult Swim Lessons – Operator may provide group and private swim lessons for adults of varying ability levels from beginner to advanced for ages 19 and up. Adults come to swimming from vastly different backgrounds, strengths and looking to achieve different goals. Instructors will work with each student to reach their individual swim goals whether it is just to be water safe, or join a Masters team.

Water Babies Swim Lessons

Operator shall offer free introductory classes for young children aged 6 months to 18 months while being held in-water by a parent/caregiver under the supervision of a trained swim instructor. The purpose of the program is for families to bond and begin to understand the wonders of water.

Bridge Youth Program - The Bridge Swim Youth program is designed for beginner youth swimmers with limited to no swim team experience (Ages 5-10). Swim team practices will focus on competency in all 4 competitive strokes and working in a team/group environment. This program may feature some assistance from local high school swimmers.

Swim camp – Designed to help youth learn to swim and develop swim skills through daily, level-appropriate lessons from qualified swim instructors. A child's swim level is assessed on the first day of camp, and campers with similar abilities are grouped together. In addition to swim instruction, campers have daily swim-related workouts, free swim, time for land and camp games, crafts, and a snack.

Youth Lifeguard training – Youth lessons designed to teach aspiring lifeguards and swimmers how to save lives on land and in water. Learn rescue skills, communication skills, strength training and fitness.

Water Exercise - Aqua Fit classes use the natural resistive forces of water to strengthen both muscles and the cardiovascular system.

Water therapy – Operator shall provide daily structured therapy and water fitness classes, and ample time for unstructured/passive recreation time for the senior population to utilize the warm water instructional pool. Program to focus on strength and conditioning program for seniors and others working to improve their condition in conjunction with the on-site fitness center.

Community Days – Open house events in which residents are invited to experience the various aquatics programs and services offered. Events may include swim demonstrations, visits from professional swimmers, and free admission. Other features may include food, special programs, prize drawing, games, and related festivities. Community days to be produced at intervals of 6 months.

Masters Swim – Aimed at developing healthy competition and community. Welcomes swimmers of all abilities, age 18 and up, who are interested in regular structured workouts. Previous experience in competitive swimming is not necessary.

EXHIBIT E – AQUATICS USER FEES

1. **RESIDENT PRIORITIZATION.** Residents of incorporated Menlo Park receive priority access to City-owned aquatics facilities through discounted user fees. Non-resident fees typically are 135% of the corresponding resident fees unless otherwise indicated. Memberships include access to all City-owned aquatics facilities. Fees apply to all City-owned aquatics facilities. Operator shall provide to City staff semi-annual visitor reports showing the verified residence addresses of all pool visitors during the report period, including all the aquatics programs in which each visitor participated, and all the dates on which each visitor used the pool, and the verified numbers of residents and non-residents actively using each program at Premises, and this information shall be provided by pool site, and by each pool/aquatics feature within each site. Operator and City mutually agree to a target of 2/3 (66.7%) or more pool visitors shall be verified incorporated City of Menlo Park residents.

2. **AQUATICS USER FEES.** Effective no later than six (6) months after the effective date of this Agreement, Operator shall charge and impose aquatics user fees as set forth in the City of Menlo Park Master Fee Schedule. Resident swim passes and/or swim memberships shall be valid at both aquatics center locations. Until such a time as the City of Menlo Park Master Fee Schedule is updated to include aquatics users fees as set forth above, Operator shall charge and impose user fees per the following fee schedule:

Program	Monthly		Single / Drop in		Child	
	Resident	Non-resident	Resident	Non-resident	Resident	Non-resident
Laps	65	72	9	10	NA	NA
Open	NA	NA	9	10	5	6
Open/Family	NA	NA	28	32	NA	NA
Masters	109	119	20	22	NA	NA
Aquafit	75	83	20	22	NA	NA
Lessons Group	NA	NA	29	32	29	32
Lessons Private	NA	NA	79	84	79	84

3. **ANALYSIS OF COMPARABLE FEES IN OTHER AREA AQUATICS PROGRAMS.** Annually when considering fee increases, Operator and City shall jointly conduct a comparative analysis of user fees in other area aquatics programs. The comparative fee analysis shall include but not be limited to the following information: Pricing for Residents/Non Residents by program area; Employee compensation and rates. Operator and City mutually acknowledge and agree that:

- The high cost of living in the Menlo Park area can present challenges for prospective aquatics employees who desire to live and work in the Menlo Park area
- Competitive compensation is important to recruit and retain qualified staff to consistently deliver safe, effective, high-quality aquatics programs
- Aquatics user fees exist in a competitive marketplace with multiple options available to aquatics users
- Menlo Park desires to deliver a high-quality aquatics experience to users
- Maintaining affordability and accessibility to all Menlo Park residents is a top priority
- Operator shall reduce and/or remove barriers to entry for City residents who are most vulnerable, including children and families who reside in low-income households, seniors, and people with disabilities.
- Every Menlo Park resident child has meaningful access to effective water safety instruction at City aquatics centers regardless of their family's ability to pay user fees, and operator shall provide these services to individuals or families who cannot afford the market rate fees.

4. **MEANINGFUL ACCESS TO CITY-OWNED AQUATICS PROGRAMS.** Operator shall provide meaningful access to effective water safety instruction for Menlo Park resident children at City aquatics centers regardless of their family's ability to pay user fees. Operator shall continue to provide meaningful access to City-owned aquatics programs to income-qualified Menlo Park residents through fee-assisted user rates as noted elsewhere in this Exhibit. Operator shall provide quarterly reports to City detailing the numbers of Menlo Park residents who received fee assistance through this and other programs, the programs in which the residents

participated, and other relevant information as requested by City. With City's awareness and consent, Operator may form partnerships with charitable nonprofit organizations, seek grants, solicit donations, and undertake other appropriate efforts to offset Operator's costs related to providing fee-assisted aquatics programs.

EXHIBIT F – CITY-OWNED IMPROVEMENTS AND EQUIPMENT AND MAINTENANCE SCHEDULE

Parties shall be responsible for complying with the City-Owned Improvements and Equipment and Maintenance Schedule in this Exhibit. This Exhibit may be modified from time to time by mutual written consent of the City Manager or their designee and Operator.

1. DAILY MAINTENANCE. Maintenance tasks to be performed on a daily basis or as recommended by manufacturer. Responsibilities may be delegated to a qualified vendor.

Maintenance area	Detail/ task	Responsible Party
Remote Monitoring		
	Chlorine	City
	Acid	City
	CO2	City
General Daily		
	Activities	Operator
	Bather Load	Operator
	Weather	Operator
	Air Temp	Operator
	Water Clarity	Operator
Filter Console		
	Influent PSI	Operator
	Effluent PSI	Operator
	Pressure Differential	Operator
	Flow Rate	Operator
	Backwash	Operator
Chemical Controller Console		
	pH	Operator
	HRR/ORP	Operator
	Chlorine	Operator
	CO2	Operator
	Water temp	Operator
	Calibration	Operator
Palin Test		
	pH	Operator
	Free Chlorine	Operator
	Total Chlorine	Operator
	Combined Chlorine	Operator
	Total Alkalinity	Operator
	Calcium Hardness	Operator
	TDS	Operator
	Cyanuric Acid	Operator

Routine Maintenance		
	Backwash	Operator
	Pump Baskets	Operator
	Gutters Cleaned	Operator
	Controllers checked	Operator
	Covers	Operator
	Vacuum	Operator

2. WEEKLY MAINTENANCE. Maintenance tasks to be performed on a weekly basis or as recommended by manufacturer. Responsibilities may be delegated to a qualified vendor.

Maintenance area	Detail/ task	Responsible Party
Filtration System		
	Backwash System	Operator
	Review backwash performance for operation and efficiency	City
	Monitor and log filtration, influent & effluent pressure	Operator
	Monitor and log filtration flow rate	City
CO2 Room		
	Check LMI Pumps	Operator
	Ensure exhaust fan is functioning	Operator

3. MONTHLY MAINTENANCE. Maintenance tasks to be performed on a monthly basis or as recommended by manufacturer. Responsibilities may be delegated to a qualified vendor.

Maintenance area	Detail/ task	Responsible Party
Chemical Controller		
	Safety flow test	Operator
	Clean Sensors	Operator
	Clean chlorine injector	Operator
	Inspect chemical pump discharge tubing(replace if needed)	Operator
	Torque chemical pump head bolts and tubing fittings(per manufacturer recommendation)	Operator
	Controller Calibration	City
	Controller history downloaded	City
	Chemical evaluation - chemical balance	Operator
	Chemical corrections	Operator
CO2 Room		

Heater		
	Replace combustion air filter	City
Pool		
	Main Drain Covers	City
	Tile (clean/Repair/Replace)	City
	Coping	City
	Ladders (check, clean, replace)	City
	Railing (check, clean, replace)	City
	Gutter (check, clean, replace)	City
	Lights (Check/Replace)	City
On Deck		
	Lane lines (Check, repair, replace)	City
	Guard Stands (Check, repair, replace)	City
	Pool Cover (Check, repair, replace)	City
	Cover Reel (Check, repair, replace)	City
	Pennants (Check, repair, replace)	City
	Pennant cable and poles (Check, repair, replace)	City
	Starting Platforms (Check, repair, replace)	City
	ADA Chair - Check/lubricate (per manufactures recommendation)	City
	Portable ADA Chair	City

4. TWICE ANNUAL MAINTENANCE. Maintenance tasks to be performed on a twice annually basis or as recommended by manufacturer. Responsibilities may be delegated to a qualified vendor.

Maintenance area	Detail/ task	Responsible Party
Heater	Inspect and clean(per manufacturer recommendations)	City
Pumps	Lubricate bearings, grease fittings (per manufacturer recommendations)	City
Drains	Hydro flush sewer lines	City
Document Review	Review monthly maintenance items	City
	Review Safety Training Certifications	City
	Review Burgess Staff CPO certifications	City
Pool	Wading Pool Mushroom - check functioning	City

5. ANNUAL MAINTENANCE. Maintenance tasks to be performed on an annual basis or as recommended by manufacturer. Responsibilities may be delegated to a qualified vendor.

Maintenance area	Detail/ task	Responsible Party
Chemical Treatment	Two point controller calibration	City
Sand Filter	Drain Tanks, remove manway covers to inspect tank internal components	City
	Inspect media throughout the filters for proper consistency, contamination and flatness	City
	Install cleaned manway covers and replace manway gaskets	City
	Fill tanks and bleed air from the system	City
	Restart system and review for proper operation	City
Heaters (Lochinvar)	Log heater inlet, outlet and delta temperature	City
	Inspect flame and heat exchanger	City
	Disassemble heater, inspect and clean gas manifolds, upper cabinet and fans	City
	De-soot and/or clean heat exchanger and inspect for irregularities	City
	Clean and inspect the combustion chamber and inspect refractory materials for cracks or irregularities	City
	Clean burners and reinstall with new gaskets	City
	Test and set gas manifold pressures and combustion chamber air pressure	City
	Test and set inlet water and delta temperatures	City
	Inspect boost pump, bearing	City
	Vacuum debris from heat exchanger and wipe clean	City
	Reassemble heater with new insulation burner plate (as needed), air manifold gaskets, gas manifold gaskets, and burner gaskets	City
	Install new ignitor and flame rods and startup heater	City
	Perform combustion analysis to verify and adjust CO ₂ , NO, NO _x emissions	City
	Confirm seal on all internal gas manifold connections with leak detector	City
	Inspect flame condition following maintenance service	City
Pumps	Lubricate bearings, grease fittings (per manufacturer recommendations)	City
Drains	Hydro flush sewer lines	City
Document Review	Review monthly maintenance items	City
	Review Safety Training Certifications	City
	Review Burgess Staff CPO certifications	City
On Deck	Starting Platforms (tighten bolts)	City
Deck	Check for cracks and pitting	City

6. AS NEEDED / PER MANUFACTURER. Maintenance tasks to be performed on an as-needed basis or as recommended by manufacturer. Responsibilities may be delegated to a qualified vendor.

Maintenance area	Detail/ task	Responsible Party
POOL DECK AREA		
Signage	Updates? Check condition, replace if needed	Operator/City
Guard Stands	Check for safety	Operator/City
Lounge Chairs	Check for defects	Operator
Garbage Cans	Check for defects	Operator
Lockers	Check for defects/Repair	Operator
Benches	Check for defects/Repair	City
Water Fountain	Check for defects/Repair	City
Marketing Board	Check for defects/Repair	City
Portable ADA Chair	Check for defects/Repair	City
Sheds (2)	Check for defects/Repair	Operator
Picnic Benches	Operator	Operator
EQUIPMENT		
Tot Docs		Operator
Safety Equipment		City
Other instructional equipment		Operator
LAWN AREA		
Lawn		City
Irrigation		City
Electric Boxes		City
Picnic Benches		Operator

7. JANITORIAL SERVICES. City shall provide for janitorial services at Premises as follows.

Daily services	Weekly services	Monthly services
<u>Entry way, Restrooms, Locker Rooms</u> - Spot clean walls, partitions and doors - Clean and sanitize sinks and wipe dry - Pick up towels and debris from the floor	<u>Entry way, Restrooms, Locker Rooms</u> - Dust and spot clean ledges and partitions - Detail clean floor edges - Spot clean tiled walls from the waist down - Scrub shower walls and floors, rinse clean.	<u>Entry way, Restrooms, Locker Rooms</u> - Wipe clean all ventilation grills - Wipe clean all door jambs.

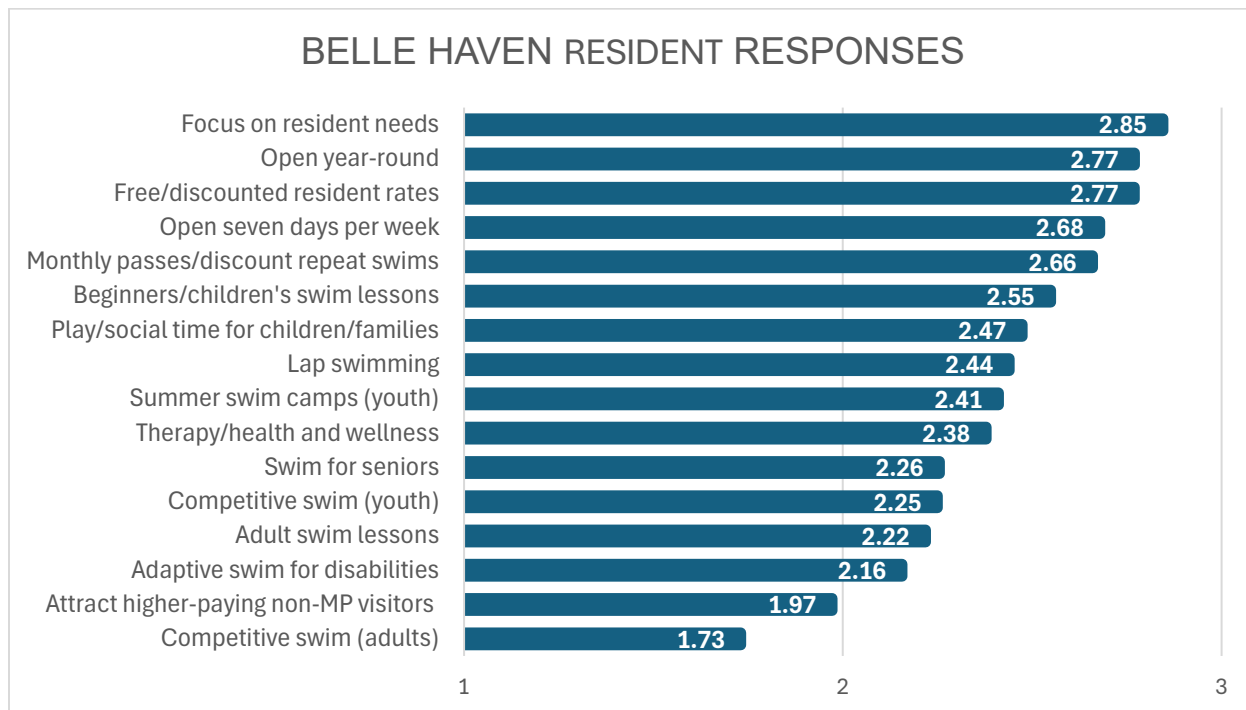
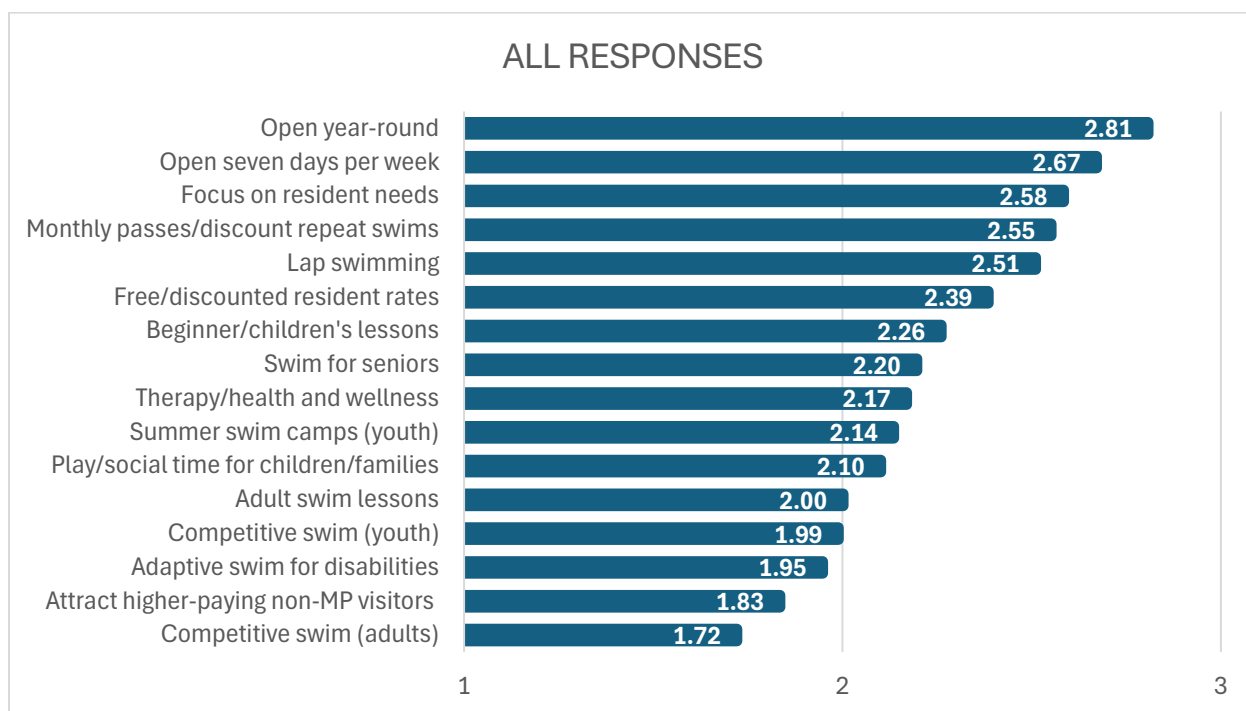
- Clean and polish the mirrors - Clean and sanitize the toilets and urinals - Remove mats, wet mop the floor using a germicidal (NABC) including entry way - Restock and soaps and paper disposables - Dispose of the waste and clean waste receptacles - Disinfect the floor traps - Spray shower walls and floors with disinfectant and rinse clean.		
<u>Janitorial Closet</u> - Maintain this area in a neat and orderly appearance - Empty all buckets, leaving no standing water - Rinse and hang all mops on mop hooks - Empty all debris.		
<u>Office (2x Weekly)</u> - Vacuum floors in office - Clean office glass inside and out.		

EXHIBIT G - SOLO SCHEDULE AND TERMS

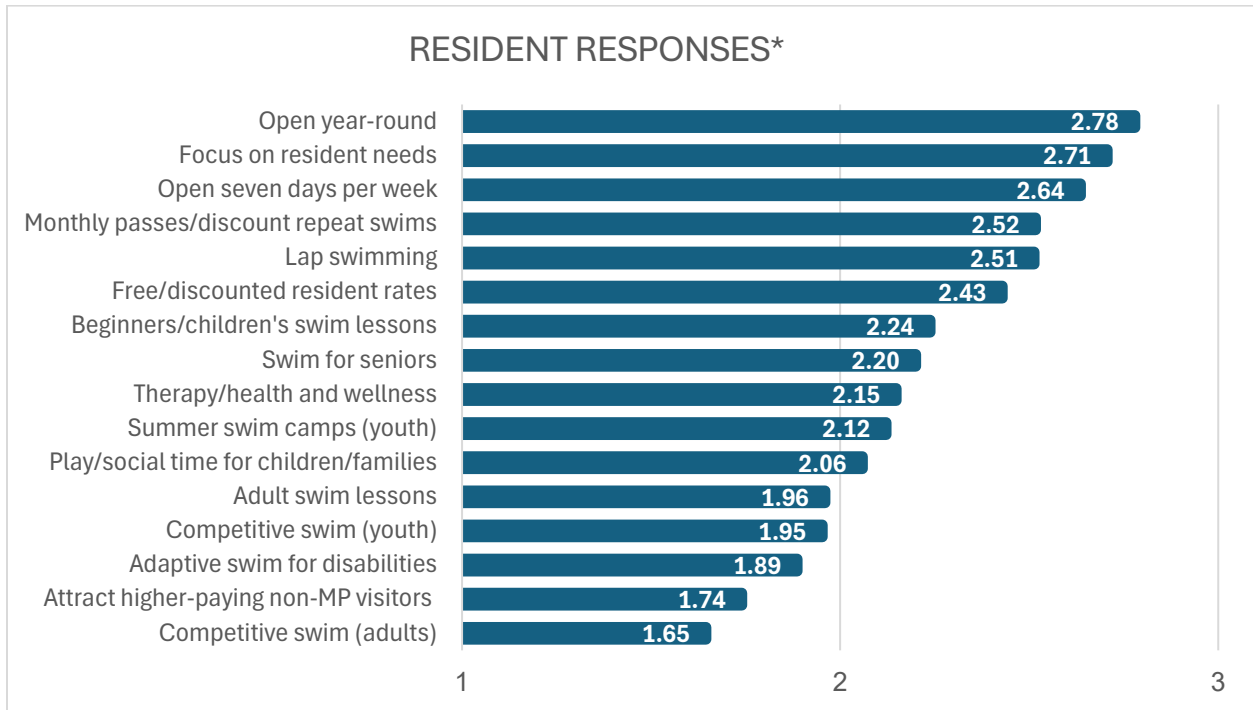
The SOLO Aquatics swim team ("SOLO") will be able to use Burgess Pool and MPCC Pool on the following minimum terms:

- a. Lane space will be provided from 4:00 to 5:30 p.m., Monday through Friday, eight (8) lanes in Burgess performance pool September 1st through May 31st.
- b. Lane space will be provided from 4:00 to 5:30 p.m., Monday through Friday, four (4) lanes in Burgess performance pool June 1st through August 31st. Additional lanes may be provided at current rental rates during summer if Operator agrees and open swim attendance allows.
- c. Rental rate will be \$14 per lane hour for the term of the Agreement, or as otherwise set by City Council in the City of Menlo Park Master Fee Schedule.
- d. SOLO may elect to opt out of any of the hours provided for herein with 30 days notice.
- e. SOLO will be billed thirty (30) days in advance and on a monthly basis. Any payment not received by Operator within fifteen (15) days of the due date shall be subject to a late payment penalty of five percent (5%) of the amount due.
- f. When the MPCC Pool is operational, youth swim team rental shall have the option to use the MPCC Pool at agreed upon rates and times.
- g. Youth swim team will have access lobby area of the Burgess Pool for marketing purposes to be approved by Operator in advance.
- h. SOLO shall provide proof of insurance listing the Operator and City as additional insureds.
- i. SOLO shall comply with all of the facilities policies and rules of conduct.
- j. SOLO may not allow any other organization or individual to use any of the privileges or services provided by the Operator.
- k. SOLO is responsible for the control and supervision of all participants in their program.
- l. If storage is provided for equipment at the request by SOLO, the Operator is not responsible for any damages or losses to the SOLO's equipment.
- m. The City and Operator reserve the right to close the pool(s) at any time for maintenance or any safety reason. Operator will make every attempt to give notice when possible and assist with informing the SOLO and its participants.
- n. Operator shall have the right to terminate its agreement with SOLO by written notice to the SOLO for any default or breach of any term or condition herein. SOLO will be provided not less than thirty (30) days notice and opportunity to cure any notice of default. Operator shall provide City with a copy of any notice of default provided to SOLO.
- o. City requires a written agreement on a form approved by the City Attorney between the two parties with a copy provided to the City no later than the commencement of the Term of the Agreement between the City and Operator; provided however, Operator shall not be considered in default of the terms and provisions of the Agreement if SOLO has refused to execute a written agreement with Operator on such form approved by the City Attorney.

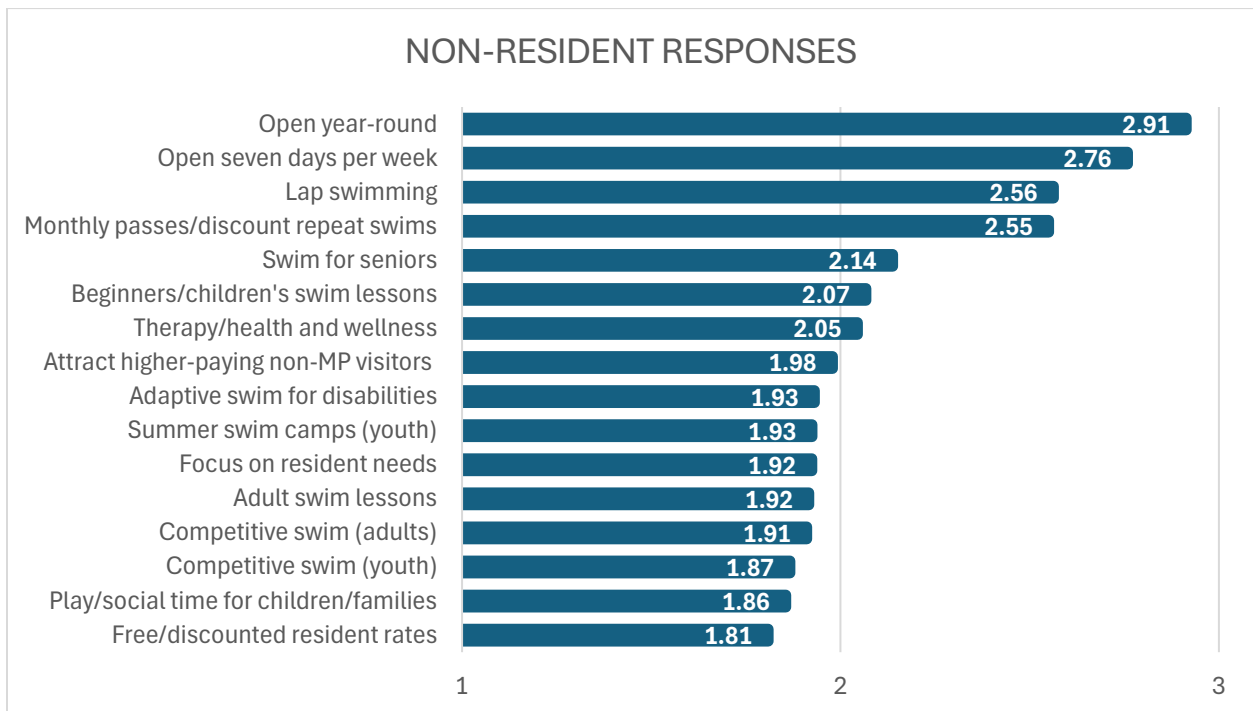
1 = Not important 2 = Somewhat important 3 = Very important



1 = Not important 2 = Somewhat important 3 = Very important



*Includes residents where their primary pool is likely Burgess Pool. Belle Haven resident responses are provided in a separate table.



Site	Pool	Start Date	Start Time	End Date	End Time	Closure or Low Temp	Issue
Belle Haven	Instructional/Recreational Pool	1/8/2025	11:00 AM	1/8/2025	3:00 PM	Closure	Circulation pump repair
Burgess	Instructional/Recreational Pool	2/4/2025	3:30 PM	2/4/2025	8:00 PM	Low Temp	
Burgess	Instructional/Recreational Pool	2/5/2025	6:00 AM	2/6/2025	11:00 AM	Low Temp	
Belle Haven	Both Pools	2/5/2025	10:00 AM	2/5/2025	3:00 PM	Closure	Pump replacement
Burgess	Instructional/Recreational Pool	2/20/2025	6:00 AM	3/23/2025	8:00 PM	Low Temp	No burners firing
Burgess	Locker Rooms	4/1/2025	10:00 AM	4/1/2025	5:00 PM	Other	No hot water, water heater replacement
Burgess	Performance Pool	4/3/2025	6:00 AM	4/3/2025	3:00 PM	Low Temp	
Burgess	Instructional/Recreational Pool	4/13/2025	10:00 AM	4/13/2025	2:45 PM	Low Temp	
Burgess	Both Pools	4/21/2025	9:00 AM	4/24/2025	3:30 PM	Rotating Lane Closure	Rust stain repairs
Burgess	Instructional/Recreational Pool	5/12/2025	9:00 AM	5/12/2025	4:45 PM	Low Temp	
Belle Haven	Performance Pool	6/19/2025	9:00 AM	6/30/2025	3:00 PM	Rotating Lane Closure	Retiling T's and +s
Belle Haven	Instructional/Recreational Pool	6/28/2025	9:30 AM	6/28/2025	10:00 AM	Closure	Chems
Belle Haven	Instructional/Recreational Pool	7/1/2025	9:00 AM	7/3/2025	7:00 PM	Low Temp	
Burgess	Performance Pool	8/14/2025	1:00 PM	8/14/2025	4:00 PM	Closure	Repair leaking diaphragms
Belle Haven	Both Pools	9/18/2025	10:00 AM	9/18/2025	10:30 AM	Closure	City of MP electrical testing
Burgess	Both Pools	9/25/2025	6:30 AM	9/25/2025	5:00 PM	Rotating Lane Closure	Pool light repairs
Burgess	Both Pools	10/21/2025	9:00 AM	10/21/2025	5:00 PM	Rotating Lane Closure	Pool light repairs
Burgess	Instructional/Recreational Pool	11/12/2025	6:00 AM	11/12/2025	8:45 AM	Closure	
Belle Haven	Instructional/Recreational Pool	11/16/2025	9:00 AM	11/16/2025	5:00 PM	Closure	
Belle Haven	Instructional/Recreational Pool	11/17/2025	9:00 AM	11/16/2025	10:00 AM	Closure	
Belle Haven	Both Pools	12/15/2025		12/23/2025		Other	Pool lights not working
Burgess	Instructional/Recreational Pool	12/16/2025	6:00 AM	12/16/2025	8:00 PM	Low Temp	
Belle Haven	Both Pools	12/16/2025	3:00 PM	12/16/2025	8:00 PM	Closure	Power outage due to acid leak
Burgess	Instructional/Recreational Pool	12/17/2025	6:00 AM	12/17/2025	10:30 AM	Low Temp	
Burgess	Performance Pool	12/17/2025	8:00 AM	12/17/2025	12:00 PM	Closure	Pool filter service
Belle Haven	Both Pools	12/17/2025	10:00 AM	12/17/2025	11:00 AM	Closure	Chems due to power outage
Belle Haven	Performance Pool	12/17/2025	11:00 AM	12/17/2025	1:00 PM	Closure	Chems due to power outage
Burgess	Instructional/Recreational Pool	12/18/2025	6:00 AM	12/19/2025	8:00 PM	Closure	Chems from Knorr visit on 12/17
Belle Haven	Performance Pool	12/18/2025	11:00 AM	12/21/2025	4:00 PM	Closure	Chems due to power outage
Belle Haven	Both Pools	12/22/2025	5:00 PM	12/22/2025	7:00 PM	Closure	No pool lights
Belle Haven	Both Pools	12/23/2025	5:00 PM	12/23/2025	7:00 PM	Closure	No pool lights
Burgess	Both Pools	1/2/2026	6:00 AM	1/2/2026	12:00 PM	Low Temp	
Belle Haven	Performance Pool	1/2/2026	10:00 AM	1/2/2026	7:00 PM	Closure	Chems due to power outage
Belle Haven	Performance Pool	1/12/2026	9:00 AM	1/14/2026	8:00 PM	Low Temp	
Burgess	Performance Pool	3/9/2026	all day	3/12/2026	all day	Closure	Circulation pump replacement