

Introduced by: Asst City Manager Chief Jackson

**AN ORDINANCE OF THE CITY OF BERKELEY, MISSOURI, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH MIDWEST POOL MANAGEMENT FOR LIFEGUARDING SERVICES ACCORDING TO BID #914**

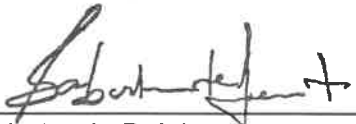
**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BERKELEY, MISSOURI, AS FOLLOWS:**

- Section 1.** That the City Manager is hereby authorized to enter into and execute an agreement with Midwest Pool Management for lifeguarding services for three years at Berkeley Pool according to #914.
- Section 2.** The agreement will be attached and hereby incorporated herein and made a part of this ordinance, as if fully set out herein.
- Section 3.** This Ordinance shall be in full force and effect from and after its passage.

1st Reading this 3<sup>rd</sup> day of October 2022

2nd Reading this 17<sup>th</sup> day of October 2022

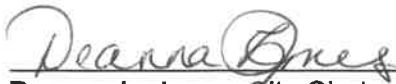
3rd Reading, PASSED and APPROVED, this 17<sup>th</sup> day of October 2022




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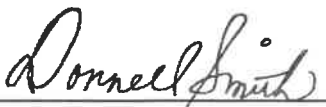
Babatunde Deinbo, Mayor

ATTEST:




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Deanna L. Jones, City Clerk




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Approved as to Form:  
Donnell Smith, City Attorney

Final Roll Call:

Councilwoman Verges	Aye <u>X</u> Nay ___ Absent ___ Abstain ___
Councilwoman Williams	Aye <u>X</u> Nay ___ Absent ___ Abstain ___
Councilman Hoskins	Aye ___ Nay ___ Absent <u>X</u> Abstain ___
Councilwoman Anthony	Aye <u>X</u> Nay ___ Absent ___ Abstain ___
Councilman Hindeleh	Aye <u>X</u> Nay ___ Absent ___ Abstain ___
Councilwoman-at-Large Crawford-Graham	Aye <u>X</u> Nay ___ Absent ___ Abstain ___
Mayor Deinbo	Aye <u>X</u> Nay ___ Absent ___ Abstain ___



# REPORT TO CITY COUNCIL

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To: Honorable Mayor of Berkeley and City Council  
From: Keith R. White, Street Superintendent  
Thru: Art Jackson, Police Chief/Interim City Manager  
Date: September 12, 2022  
Subject: Approval of *Bid # 914 – Life Guarding Services-Berkeley Pool*

A bid opening was held Wednesday, September 7, 2022 at 10:00 AM in the Berkeley Council Chambers for a 3-year contract for lifeguarding services for the Berkeley Pool.

There were three (3) companies that submitted a sealed bid. The results are as follows:

- **Midwest Pool Management**      156 Weldon Parkway      (314) 432-1313  
Maryland Heights, MO 63043  
[www.midwestpool.com](http://www.midwestpool.com)
  
- **PMI (Pool Management Inc.)**      5485 Bethelview Road, Ste. 360-305 (855) 794-6764  
Cumming, GA 30040  
[poolmanagementinc.com](http://poolmanagementinc.com)
  
- **USA Pools of Missouri**      4741 Central St. Ste. 250      (877) 248-1872  
Kansas City, MO 64112  
[www.usamanagement.com](http://www.usamanagement.com)

## RECOMMENDATION

I am recommending **Midwest Pool Management** for the *3 Year Contract for Lifeguarding Services-Berkeley Pool – Bid #914*. They listed details of lifeguarding services as well as pool maintenance services and were the most cost-effective bid. Please note that their bid provides for the Berkeley Pool to be open until August 13 instead of the end of September as stated in the bid. I find this reasonable and acceptable.

## SUPPORTING DOCUMENTS

Please find attached the Proposal 2022 Contract Agreement for **Midwest Pool Management**, and the bid results from the September 7, 2022 bid opening for Bid #914.

## IMPACT ON BUDGET

**\$138,810.00 (3 Year Cost)**

**Account: 02-50-6112**

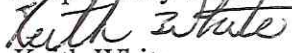
**Balance: \$0.00**

**RECOMMENDED CITY COUNCIL ACTION**

The Public Works Department is requesting the following actions from the City Council:

- A. Approval of the *3 Year Contract for Lifeguarding Services-Berkeley Pool – Bid #916* with **Midwest Pool Management** starting Monday, May 29, 2023 using Account 02-50-6112.

Respectfully Submitted,



Keith White

Street Superintendent



RFP # 914 2023-2025 LIFEGUARD SERVICES  
BERKELEY POOL  
CITY OF BERKELEY, MO  
SEPTEMBER 7, 2022

156 Weldon Parkway  
Maryland Heights, MO 63043

Office 314-432-1313

● Fax 314-897-6112

● [www.midwestpool.com](http://www.midwestpool.com)



MIDWEST  
POOL  
MANAGEMENT

## **APPROACH TO OPERATION**

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We are excited for the opportunity to provide the City of Berkeley a proposal for re-opening the Berkeley Pool for the 2023 season. We wanted to present a brief explanation to how we are approaching the submission of our proposal and the operations for the future seasons. We look forward to a more extensive conversation to walk through this approach. Please review our details below and we hope that you have a clear understanding of how we assembled our proposal.

1. The original bid request asked for the swimming season to go through September 30<sup>th</sup>. This is much longer than the typical municipal swimming season and will come at a much higher cost. Midwest Pool Management is the only pool management firm that has experience working with municipal pools in this area (please see References Tab for a list of cities we work with). We experience a significant decrease in pool patronage around the time that the high schools and colleges begin their year. Also, since the pool has not been open in a past couple of years, we have concerns about being able to staff the pool after mid-August, especially with the labor market issues all industries are experiencing. So, we propose to end the season on August 13<sup>th</sup>, 2023. We would like to start with that schedule and hope to expand the season in future years.
2. We included our contract as the bid form instead of using the bid form provided. We feel that our contract outlines our billing and cost structure in a format in line with how we typically approach a municipal contract. Our billing is separated into two parts: a Management Fee and a Not to Exceed Salary Budget. The Management Fee encompasses the fixed costs, such as insurance, opening, closing, chemicals, hiring, recruiting and our fee for services. The Salary Budget is a not to exceed amount for the open hours of pool operations. At the end of the season, we will reconcile the hours used and refund the City any portion of the Salary Budget that was not used. We also included hourly rates for any events or activities outside the open swim times, should there be opportunities for additional programming. It is important to note that the rates in the contract are not the actual rates paid to staff- they include payroll taxes, fees and worker's compensation.
3. The original bid request did not include any language about the maintenance, de-winterizing, chemicals and winterizing of the pool. Per our email request for additional information, we understand that those functions should be included in the pricing. Our contract provides additional detail of what those functions encompass. Should any of these items be removed from the scope, please let us know and we will make the appropriate pricing adjustments.
4. As I am sure you are aware, all industries are experiencing issues with labor shortages, increasing costs for supplies and services. In order to keep up with the demand of the labor force, we have increased our staff wages to compete with other industries that compete for the same labor force that we do. We have also only included pricing for the first 3 years requested and included a renewal option for the following years. We would love nothing more than to have a long-term relationship with the City of Berkeley, but with the variables in staffing, insurance, and supplies in our industry, we would like to propose negotiating the contract figures with the City for the future years as we approach them later. We feel we can be most competitive that way.

We thank you for the opportunity to provide you this proposal. We look forward to meeting with you to discuss in further detail.



## **INSURANCE REQUIREMENTS**

Contractor and subcontractors shall secure, pay the premiums for, and keep in force until the expiration of their contract adequate liability insurance and Worker's Compensation Insurance.

Certificate of insurance for Worker's Compensation and for liability shall be delivered to Berkeley or kept on file at Berkeley prior to start of contract. Any policy change shall be reported to Berkeley and certificate forwarded to Berkeley. By signing a contract generated by the RFP, the contractor understands that neither they nor their employees are covered by any Berkeley insurance policy. All copies of proof of insurance will be submitted to Berkeley along with the RFP. Contractors may send a copy of the required insurances with their proposal, but the work of the RFP cannot begin, nor contract executed until original insurance verification forms are on file at the Berkeley offices.

The following insurance coverage is required:

- Commercial General Liability: Minimum of \$150,000 per person and \$1,000,000 per occurrence.
- Worker's Compensation Insurance: Equal to or at least \$100,000 per employee.



**BIDDER'S COMPANY INFORMATION**

**FUEL CANOPY  
CITY OF BERKELEY, MISSOURI**

*Please print legibly, except where signature is required.*

Company Name: Midwest Pool Management of America, LTD

Company Address: 156 Weldon Parkway, Maryland Heights, MO 63043

Phone Number: (314) 432-1313

E-mail Address: cwithrow@midwestpool.com

Website: www.midwestpool.com

Authorized Officer:

Signature:

Title


## AFFIRMATIVE ACTION STATEMENT

### THE CITY OF BERKELEY, MISSOURI is an EQUAL EMPLOYMENT OPPORTUNITY EMPLOYER

We acknowledge that we will hire and develop qualified people, solely on merit and qualifications, without regard to race, color, creed, religion, sex, national origin, ancestry, handicaps or age.

While acknowledging an obligation to the community to reaffirm its Fair Employment Policy, we also reaffirm our support for the various Presidential Executive Orders and regulations of the Equal Employment Opportunity Commission. In addition, we support the applicable provisions contained in the Civil Rights Acts, the Equal Pay Law, the Age Discrimination and Employment Act and the Missouri Act against Discrimination. The regulations, acts, orders and laws provide that discrimination based on race, color, creed, religion, sex, national origin, ancestry, handicaps or age is prohibited.

Our policy can be implemented only through the efforts of everyone within the company. A simple statement is not enough without full support. It is hoped that through an Equal Opportunity Plan, a fair and equitable program might be practiced. Through such a plan, applicants and employees should feel they could become an active part of the company without fearing reprisals due to extraneous factors not related to merit or qualifications.

**Signed by:** Crissy Withrow 

**Position:** President

**Email:** cwithrow@midwestpool.com

**Telephone:** 314-432-1313

**Date:** 0 9 / 0 6 / 22

## AFFIRMATIVE ACTION/PRIME VENDOR QUESTIONNAIRE

Many of you will probably be compiling similar information for your yearly E.E.O. Reports. If this is the case, and you would prefer to wait and complete this form at that time, please feel free to do so. If you want to be placed on the prime vendor list prior to that time we can do so with a copy of your

### Affirmative Action Plan

1. Name and address of your organization: Midwest Pool Management of America, LTD
2. Name and position of person completing this report: Crissy Withrow, President
3. We do not wish to be on your prime vendor list and are returning this form incomplete:
4. Do you consider your organization to be an Equal Employment Opportunity Employer?  
Yes  No
5. Are you part of or a division of a larger parent organization? No If Yes, please give parent organization name and home office address:  

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6. How many employees were on the payroll last pay period? 1134
  - a. Full Time 25 Part Time 1109
7. How many women were on the payroll? Full Time 10 Part Time app. 550
8. How many minorities were on the payroll?
  - a. Full Time Male Minority employees: 1
  - b. Full Time Female Minority employees: 1
  - c. Part Time Male Minority employees: app. 175
  - d. Part Time Female Minority employees: app. 125
9. Does your organization include in its employment advertising a phrase similar to: "We are an Equal Employment Opportunity Employer"; or if your organization has not advertised recently, will similar phrase be included if advertising is undertaken in the future: Yes  - No
10. Does your organization or you parent organization have an Affirmative Action Plan?  
Yes  No  If yes, please supply a copy of the current plan.
11. Does your organization have a designated department or person to function in the Equal Opportunity Position? Yes  No  If yes, please supply the name, title, phone number and address for future correspondence.  

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*The City of Berkeley thank you for your cooperation in filling out this form.*

*City of Berkeley – Pool Lifeguard Services – 2022*

## **FEDERAL WORK AUTHORIZATION PROGRAM AFFIDAVIT**

Pursuant to Section 285.530 RSMo as a condition of the award of any contract in excess of five thousand dollars (\$5,000.00), the successful bidder shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection to the contracted services. Successful bidders shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection to the contracted services.

## **OSHA TRAINING REQUIREMENTS**

Missouri Law, 292.675 RSMO, Requires the awarded contractor and its subcontractor(s) to provide a ten-hour (10) Occupational Safety and Health Administration (OSHA) construction safety program (or a similar program approved by the Missouri department of labor and industrial relations as a qualified substitute) for their on-site employees (laborers, workmen, drivers, equipment operators, and craftsmen) who have not previously completed such a program and are directly engaged in actual construction of the improvement (or working at a nearby or adjacent facility used for construction of the improvement). the awarded contractor and its subcontractor(s) shall require all such employees to complete this ten-hour (10) program, pursuant to 292.675 RSMO, unless they hold documentation on their prior completion of said program; penalties for non-compliance include contractor forfeiture to the city of Berkeley in the amount of \$2,500, plus \$100 per contractor and subcontractor employee for each calendar day such employee is employed beyond the elapsed time-period for required program completion under 292.675 RSMO.

## **E-VERIFY**

E-Verify is a web-based system that allows enrolled employers to confirm the eligibility of their employees to work in the United States. E-Verify employers verify the identity and employment eligibility of newly hired employees by electronically matching information provided by employees on the Form I-9, Employment Eligibility Verification, against records available to the Social Security Administration (SSA) and the Department of Homeland Security (DHS). Bidders shall submit Form I-9 or all employees.

**WORK AUTHORIZATION AFFIDAVIT**

Comes now Crissy Withrow (Name) as President (Title) first being duly sworn, on my oath, affirm Midwest Pool Management of America, LTD (Company Name) is enrolled and will continue to participate in a Federal Work Authorization Program in respect to employees that will work in connection with the contracted services related to RFP #914 2023-2025 Lifeguard Services (Project Description) for the duration of the contract, if awarded, in accordance with RSMo Charter 285.530(2). I also affirm that Midwest Pool Management of America, LTD (Company Name) does not and will not knowingly employ a person who is an unauthorized alien in connection with the contract services related to the subject project for the duration of the contract, if awarded.

*In Affirmation thereof, the facts stated above are true and correct (The undersigned understands that Oise statements made in this filing are subject to the penalties provided under Section 570.040, RSMo).*

 Crissy Withrow  
Signature (Individual with Authority) Printed Name

9 / 6 / 22  
Date

9 / 6 / 22  
Date

I am commissioned as a Notary Public within the County of St. Louis  
State of Missouri and my commission expires on  
11-11 2025.

*Hannah Axt*



# **City of Berkeley Aquatic Center Management Agreement**

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

**WHEREAS**, the City owns The Berkeley Pool located at 6400 Evergreen, Berkeley, MO 63134; and

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

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

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

## **Section 1. Representations and Warranties of Midwest Pool Management.**

Midwest Pool Management hereby represents and warrants as follows:

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

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

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

### **2.1. Operations and Maintenance of Pools.**

- A. Midwest Pool Management shall provide for the operation of The Berkeley Pool from

Monday, May 29, 2023 – Sunday, August 13th, 2023 during the following hours:

Monday: Closed  
Tuesday – Sunday: 11 AM – 6 PM

**2.2 Spring Opening:** Access to the facility for this preparation work is to be coordinated with the City.

1. Set up, clean and prepare for usage of all movable equipment, including tables, chairs, lounges, umbrellas, lifeguard chairs, diving boards, etc.
2. Clean and inspect vacuum equipment
3. Inspect and prepare all hoses.
4. Check and clean all gutters and drains, including gutter covers.
5. Remove and store all plugs from plumbing.
6. Remove cover, clean and store.
7. Drain and clean pools.
8. Fill pools.
9. Install ladders, shade and umbrella tarps, place lifeguard chairs.
10. Check and test equipment, i.e. chemical feeders, etc. and report status to City's representative.
11. Check any diving boards and towers.
12. Check all pumps and motors to the filters and any attractions.
13. Circulate water through filtration system.
14. Furnish store and inject necessary chemicals for operation of the pools.
15. Backwash filters and inspect for any defects.
16. Clean pool area within the pool enclosure.
17. Be responsible for check out and handling of facility keys to staff.
18. Report to City all operating deficiencies.

### **2.3 Operation of The Berkeley Pool**

Midwest Pool Management will use reasonable care and diligence to provide the following services for the operation of The Berkeley Pool:

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

4. Vacuum pools. Each pool will be vacuumed entirely a minimum of one time a week and spot vacuumed on a daily basis to maintain a clean appearance and be free of all debris. Pools will be vacuumed before the public enters the pool.
5. Work with the City in handling complaints users may have, reporting all complaints to the City designated representative.
6. Conduct in-service training as per guidelines of Starguard Elite, Red Cross or equivalent.
7. Midwest Pool Management will retain a record of all problems brought to their attention. The City will review this log at weekly intervals. A daily log of communication will be kept in the manager's office for the managers and designated City personnel to review on a daily basis.
8. Keep detailed records of any pullouts where a lifeguard enters the water for a rescue, describing the circumstances surrounding the incident and denoting the specific location of the pull out.
9. Power wash or hose decks daily.
10. Maintain, backwash and operate the filter equipment in accordance with manufacturers' requirements.
11. Perform safety checklist daily.
12. Clean the facility, including: guard and manager office areas, bathhouse, all areas within the fencing, and restrooms. Cleaning to be completed outside of operational hours.
13. Maintain water chemistry tests and records as required by State and local Health Department and meet all requirements for such.
14. Clean the hair and lint strainers on all pumps and associated filtering devices to avoid a reduction in flow daily.
15. City will be responsible for front desk and concession staff.

#### **2.4 Fall Closing / Winterizing**

At the end of the swimming season, as herein specified or as extended by mutual agreement between the parties, the City will be responsible for winterizing and closing the pools and perform and furnish the following services:

- a. Inspect pumps and motors and exposed pool plumbing. Notify City of any deficiencies.
- b. Remove and store movable equipment.
- c. Drain and store hoses.
- d. Drain filtration system.
- e. Replace all plugs in plumbing.
- f. Backwash filters and inspect for any defects.
- g. Drain and re-lubricate chemical feeders.
- h. Leave all valves at appropriate settings.
- i. Clean outdoor restrooms, lifeguard room, pump room, breezeway entry, deck area, storage areas, etc.
- j. Drain all bathhouse plumbing and prepare with anti-freeze wherever necessary.
- k. Drain all plumbing, removing any debris. Includes drinking fountains.
- l. Drain appropriate pools.



- m. Remove hair and debris from hair and lint traps.
- n. Install pool cover.
- o. An end of season inspection shall be conducted immediately upon conclusion of the pool season, and a written report submitted to the Director of Parks and Recreation. The contractor shall perform reasonable inspections of all equipment and advise the owner of needed repairs and/or replacement of defective, worn, or damaged equipment in the year-end written report. At the City's request, the contractor shall provide specifications for the repairs and/or replacement and present to the City.
- p. Store all ladders, check diving boards and furniture.
- q. Return all keys to the City.

The cost of any necessary winterizing plugs will be borne by to the City.

## **2.5 Operational Supplies/Utilities**

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

## **2.6 Maintenance and Replacement of City Owned Equipment.**

Repairs and replacement of equipment needed during the season to continue the operation of The Berkeley Pool and to maintain health and safety standards shall be the responsibility of the City. At the City's request Midwest Pool Management shall advise and receive approval from the City to make repairs should the need arise. The City is responsible for the maintenance and replacement of the buildings, structures, utilities, and surrounding areas including shrubbery.

## **3. Personnel.**

### **Staffing levels:**

- 1 Manager or Lead Lifeguard
- 1 Additional Lifeguard

The City reserves the right to request to amend the hours of open swim operation as outlined in the paragraph above. All requests must be submitted in writing at least 2 weeks before event. Midwest Pool Management will approve requests based on staffing availability. The City will be invoiced for this time at the hourly rates outlined on Exhibit B.

Midwest Pool Management shall have the authority to temporarily close Berkeley Pool during inclement weather (heavy rain, high wind or lightning) and shall be prepared to reopen it when the weather permits. If Berkeley Pool is to be closed for the day, there

will be a mutual agreement by and between Midwest Pool Management and the City to close to the public. In a situation where staff safety is in jeopardy, facility will be closed until Midwest Pool Management and the City develop a safe re-opening plan.

Midwest Pool Management shall have necessary personnel available seven (7) days per week, twenty-four (24) hours per day to attend to any problems that may arise. Office hours are Monday through Friday, 8:30 AM – 5:00 PM. Problems occurring outside office hours will be addressed but may not be resolved.

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

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

#### **4. Method of Payment.**

A. Midwest Pool Management has submitted a firm management fee, which includes recruiting, hiring, training and supervising staff, general liability insurance, consumable first aid supplies (for first aid kits), test kits and reagents as well as maintenance operations including dewatering, start up, chemicals and winterizing. Management fee shall be paid monthly as outlined on Exhibit A.

B. Midwest Pool Management has submitted a "not-to-exceed" Salary Budget (as defined below) amount on Exhibit B of this agreement for staff salaries and associated payroll taxes for the open swim hours detailed in section 2.1 of this agreement at the staffing levels detailed in section 3 of this agreement. The Salary Budget shall be invoiced monthly as outlined on Exhibit B. Payroll records are available for review by the City per request. Salary budget will be recapped at the end of the season of each year and reconciled with actual hours worked at the rates outlined in Exhibit B.

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

## **5. Renewal Option**

Upon expiration of the 2023 contract, the City shall have the option to renew the contract, one year at a time, and pending approval of funding, for four (4) additional years under the proposed terms and conditions, provided there are minimal increases in the management fee and salary budget that are agreed upon by the City and Contractor. Contract will renew unless there is a notice given to Contractor or City of any intention not to renew by December 1 of the current contract year.

## **6. Licenses and Permits**

The City shall be responsible for obtaining and paying the costs of all necessary permits and licenses required by any applicable laws, rules and/or regulations necessary for the operation of the facility provided, however, Midwest Pool Management shall be responsible for obtaining a business license.

## **7. Health and Safety Standards**

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

The City shall have the ultimate authority and responsibility for compliance with the Virginia Graeme Baker Pool and Spa Safety Act and Americans with Disability Act compliance. Midwest Pool Management shall communicate with the City about any violations it observes under the Acts.

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

## **8. Services to be Provided by City**

The City will be responsible for the maintenance and replacement of the buildings, structures, utilities and surrounding areas including shrubbery, except policing for trash, waste, garbage and other debris.

City shall provide janitorial supplies (paper towels, soap, trash bags, toilet paper, cleaners and light bulbs) for the facility.

The City shall provide Midwest Pool Management four sets of keys for locks that access the facility.

## **9. Insurance:**

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

**9.1 Worker's Compensation Insurance.**

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

**9.2 Comprehensive General Liability Insurance.**

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

General Liability                \$1,000,000 each occurrence/\$2,000,000 Aggregate  
combined single limit bodily injury and property damage

The policy will include protection for the following hazards:

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

**9.3 Comprehensive Automobile Liability Insurance.**

Comprehensive Automobile Liability Insurance. MPM shall maintain Comprehensive Automobile Liability insurance coverage in amounts not less than the limits set forth below:

Automobile Liability                \$1,000,000 each accident combined single limit  
bodily injury and property damage

#### **9.4 Satisfactory Coverage.**

The insurance which Midwest Pool Management is required to obtain and maintain pursuant to this Section 8 shall be written by a company or companies licensed to do business in the State of Missouri. Insurance is to be placed with insurer with a Bests' rating of no less than an "A-" rating. Midwest Pool Management shall not allow any policies to be canceled or permit the policies to lapse during the Term of the Agreement.

#### **9.5 Indemnification.**

Midwest Pool Management shall, at its sole cost and expense, indemnify, hold harmless and protect the City, including its officers and employees, from and against any and all claims, damages, costs or expenses (including court costs and reasonable attorney's fees) for any claim arising out of Midwest Pool Management's negligent acts under this Agreement; provided, however, that this hold harmless and indemnification shall not apply where such claims, actions, damage, liability, or expenses result from any omission, fault, negligence, or misconduct on the part of the City, its agents, servants, employees, contractors, or licensees. Notwithstanding the foregoing, Midwest Pool Management's indemnity obligations are limited solely to the extent directly caused by Midwest Pool Management's fault or negligence. This provision is not intended and shall not create a duty on the part of Midwest Pool Management of America, LTD to indemnify, defend or hold harmless the City, its agents, and employees in connection with exposure, infection, and/or spread of COVID-19 or any other virus related injury or illness.

Except for Midwest Pool Management's negligent acts or omissions, the City agrees to the fullest extent permitted by law, to indemnify, defend and hold harmless Midwest Pool Management of America, its agents and employees, from and against any and all claims, damages, losses, suits and expenses attributable to bodily injury, sickness, death or damage to property, that arises out of, results from or is any way directly or indirectly caused by any physical or structural or health condition, situation, state or position of owner's swimming pool, its equipment and surrounding or adjacent property, or caused by any act, error or omission by the City or by anyone employed by it. This provision is not intended and shall not create a duty on the part of the City to indemnify, defend or hold harmless Midwest Pool Management of America, its agents, and employees in connection with exposure, infection, and/or spread of COVID-19 or any other virus related injury or illness.

#### **10. Independent Contractor**

Midwest Pool Management is retained by City only for the purposes of, and to the extent set forth in, this Contract, and the relationship of Midwest Pool Management with City under this Contract during the term of this Contract shall be that of an independent contractor and not an employee, partner, member, owner, officer, director or other agent of City. Midwest Pool Management agrees to devote sufficient time, effort, resources, ability, skill and attention as may be necessary for Midwest Pool

Management to perform the services required to be provided to City under this Contract, but performing such services subject to the provisions of this Contract, all applicable laws, rules, regulations governing the business of Midwest Pool Management and the work to be performed hereunder. Midwest Pool Management shall not be considered by reason of the provisions of this Contract or otherwise as being an employee of City. This Agreement will not be deemed to create a partnership, joint venture, agency or fiduciary relationship between the parties. Midwest Pool Management shall have no right to bind City to any agreement with any other person or entity and is not authorized to act for City in any manner except as expressly set forth in the Agreement.

## **11. Notices.**

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

### **Midwest Pool Management**

Attn: Crissy Withrow  
President

[cwithrow@midwestpool.com](mailto:cwithrow@midwestpool.com)

156 Weldon Parkway  
Maryland Heights, MO 63043  
Phone: (314) 432-1313  
Fax: (314) 432-0059

### **The City of Berkeley**

Attn: Public Works Department  
8425 Airport Road  
Berkeley, MO 63134

## **12. Nondisclosure.**

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

## **13. Changes.**

No change in this Contract shall be made except in writing prior to the change in work or terms being performed. Midwest Pool Management shall make any and all changes

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

#### **14. Termination.**

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

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

#### **15. Accounting.**

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

#### **16. Entire Agreement.**

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

#### **17. Severability.**

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

#### **18. Transferability.**

Neither City nor Midwest Pool Management shall assign any rights or duties under this

Contract without the prior written consent of the other party. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Contract. Nothing contained in this Article shall prevent Midwest Pool Management from employing independent contractors, associates, and subcontractors to assist in the performance of the Services.

**19. Satisfactory Performance.**

The City shall have the right to notify Midwest Pool Management of any performance by its employees that is detrimental to the best interest of the City, and Midwest Pool Management agrees to correct such performance within seven (7) days.

**20. Third Party Rights.**

Nothing in this Contract is intended to benefit any third party not a party to this Contract, and no provision of this Contract shall confer any rights upon any such third party.

**21. Venue.**

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

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

**CITY OF BERKELEY**

**MIDWEST POOL MANAGEMENT**

\_\_\_\_\_  
**By:** Nathan Mai-Lombardo  
City Manager

\_\_\_\_\_  
**By:** Crissy Withrow, President

**ATTEST:**

**ATTEST:**

\_\_\_\_\_  
**By:**  
**Name, Title**

\_\_\_\_\_  
**By:**  
**Name, Title**



**CITY OF BERKELEY BID  
PROPOSAL  
PART I "MANAGEMENT FEE"**

The undersigned, having examined and being familiar with the conditions affecting the service desired to be performed as outlined in the specifications and other contract documents relating to Berkeley Pool hereby proposes and agrees to perform everything required and to provide and furnish any and all labor, materials, chemicals, tools, and expendable equipment necessary to operate the Aquatic Center in a safe, healthy, sanitary and efficient manner, in strict accordance with aforementioned contract documents for the sum hereafter specified. The Contractor agrees to provide all items as listed in the accompanying specifications as part of the base bid "Management Fee".

Due	2023	2024	2025
April 15	\$ 4,000	\$ 4,000	\$ 4,000
May 15	\$ 9,000	\$ 9,750	\$ 10,500
June 15	\$ 9,000	\$ 9,750	\$ 10,500
July 15	\$ 9,000	\$ 9,750	\$ 10,500
August 15	\$ 9,000	\$ 9,750	\$ 10,500
Final Payment	\$ 2,360	\$ 3,250	\$ 4,200
<b>Total Management Fee Bid</b>	<b>\$ 42,360</b>	<b>\$ 46,250</b>	<b>\$ 50,200</b>

**CITY OF BERKELEY BID  
PROPOSAL  
PART II "SALARY BUDGET"**

The undersigned, having examined and being familiar with the conditions affecting the service desired to be performed as outlined in the specifications and other contract documents relating to Berkeley Pool hereby proposes and agrees to perform everything required and to provide and furnish any and all labor, including: managers, assistant managers, lifeguards to operate Berkeley Pool in a safe and efficient manner in strict accordance with aforementioned contract document for the sum hereafter specified.

**Not to Exceed Salary Budget**

Due	2023	2024	2025
May 15	\$ 10,000	\$ 10,334	\$ 10,667
June 15	\$ 10,000	\$ 10,333	\$ 10,666
July 15	\$ 10,000	\$ 10,333	\$ 10,666
August 15	\$ 5,975	\$ 6,015	\$ 6,060
Not to Exceed Salary Budget	\$35,975	\$37,015	\$38,060

**Billable Hourly Wages: These wages and not the rates paid to staff, they include payroll taxes, fees and worker's compensation costs.**

Position	2022	2023	2024
Manager	\$23.03	\$23.63	\$24.24
Assistant Manager	\$21.82	\$22.42	\$23.03
Lifeguard	\$18.79	\$19.39	\$19.98

**Note:** Staffing for events and private rentals will be negotiated on the number of staff needed depending on the list below:

- 1) The number of people in attendance for the rental
- 2) Which facilities are rented.