

TOWNSHIP OF LOWER MACUNGIE
Lehigh County, Pennsylvania

RESOLUTION NO. 2023-24
(Duly Adopted April 20, 2023)

**RESOLUTION OF THE BOARD OF COMMISSIONERS OF LOWER MACUNGIE
TOWNSHIP, LEHIGH COUNTY APPROVING AN AGREEMENT WITH
EMMAUS AQUATIC CLUB**

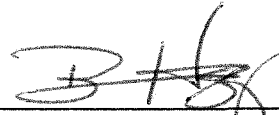
WHEREAS, the Board of Commissioners of Lower Macungie Township wishes to reopen the Lower Macungie Township pool ("Pool"); and

WHEREAS, Emmaus Aquatic Club is willing to manage the entire operation of the Pool for the 2023 season, in accordance with the terms of an agreement, attached hereto.

NOW THEREFORE, BE IT RESOLVED, that the Township Manager is authorized to enter into that certain Pool Management Agreement, attached hereto as Exhibit A, with the Emmaus Aquatic Club to reopen and manage the Pool; and


DULY ADOPTED this 20th day of April, 2023, by the Board of Commissioners of Lower Macungie Township, in lawful session duly assembled.

LOWER MACUNGIE TOWNSHIP
BOARD OF COMMISSIONERS

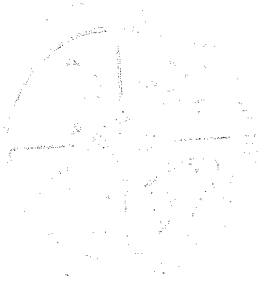


Brian P. Higgins, President

ATTEST:



Renea Flexer, Secretary



2023 POOL MANAGEMENT AGREEMENT

THIS POOL MANAGEMENT AGREEMENT (“Agreement”) is by and between **Emmaus Aquatic Club**, a Pennsylvania nonprofit corporation, with an address at 2546 Millrace Rd., Emmaus, PA 18049 (hereinafter referred to as “EMAC”): and

Township of Lower Macungie, (“Lower Macungie”), 3400 Brookside Road
Macungie, PA 18062

Days of Operation

Hours of Operation

Memorial Day Weekend (May 27 th -29 th)	12-8 pm
June 3 rd & 4 th , June 10 th - July 31 th	12-8 pm
August 1 st – 27 th , Labor Day Weekend (Sept. 2 nd – 4 th)	12-7 pm

NOW THEREFORE, EMAC and Lower Macungie for themselves and their successors and assigns, intending to be legally bound hereby, mutually covenant, promise, and agree to and with each other as follows:

1. EMAC will operate and manage Lower Macungie’s pool during the above described swimming season.
2. EMAC will be empowered to determine when weather, or other conditions, such as break-down of equipment or other factors outside of EMAC’s control, necessitate the temporary termination of the operation of the pool. If the EMAC supervisor on duty deems it unrealistic to re-open the pool for a minimum of 2 hours following a weather event (i.e. thunderstorm) or other factor that necessitates the shut-down of the pool, then the pool will remain closed for that day. EMAC will immediately notify Lower Macungie of any weather-related closings so that Lower Macungie can put a notice up on its website.
3. Lower Macungie will pay EMAC for services the total sum of: One Hundred Twenty One Thousand, Six Hundred Thirty and 00/100 Dollars (\$121,630.00), as follows:

To be paid on the following schedule:

• May 15	\$24,326.00
• June 15	\$24,326.00
• July 15	\$24,326.00
• Aug 15	\$24,326.00
• Sept 15	\$24,326.00

The above pricing is based on the current minimum wage and local prevailing wages. If the minimum wage increases through either state or federal legislation such that the increase applies during the term of this Agreement, the parties agree that the sum for EMAC’s services will increase in amount equal to the additional

cost to EMAC for the employees operating the pool. EMAC shall provide Lower Macungie with a detailed breakdown by employee of the number of hours and wages estimated at the new legal minimum wage and the payments set forth above adjusted as appropriate.

Note: The above prices do not include the cost of pool chemicals needed to operate the pool on a normal daily basis. EMAC will supply these chemicals, which will be invoiced separately from the above payments. Lower Macungie will pay such invoices on a net 30-day basis.

4. EMAC will furnish personnel for the purpose of operating the Lower Macungie Township pool. EMAC will be responsible for the payment of all employment taxes, Social Security taxes, any benefits and Workman's Compensation Insurance, and maintaining all payroll records. Lower Macungie will have no control over or responsibility for EMAC's employees.
5. EMAC will properly maintain and keep clean the entire pool to include the deck and lawn chair area; to keep the grass free of litter. The lifeguard duties are to include a pool skim twice daily, and as needed; cleaning the tiles every other day with a required log record, brush the pool floor as needed, and to monitor the pool and spa pools for cleanliness throughout the day. Any problems are to be reported to EMAC.
6. EMAC will schedule an appropriate amount of lifeguards to operate and manage the Township pool. Any safety related incident will be reported to Lower Macungie as soon as possible and no later than close of business on the day the incident occurs. EMAC will have a lifeguard on duty at all times the pool is open to the public.
7. EMAC, through a trained supervisor, will inspect the Township pool weekly throughout the period that the Township pool is in operation. A dated and signed report of the inspection will be provided to Lower Macungie upon request.
8. EMAC will provide water testing and daily logbooks to maintain records as specified by the Board of Health.
9. EMAC will contract and pay a private water-testing laboratory to test the pool water weekly where required. Copies of the reports are kept electronically by EMAC and will be available upon request.
10. EMAC will supervise and maintain proper discipline among all users of the Township pool and will take all necessary precautions for the safety of the users pursuant to the rules and regulations established by Lower Macungie.
11. EMAC will obtain comprehensive general liability insurance to cover itself and its employees with limits not less than \$10,000,000.00 for bodily injury and \$10,000,000.00 for property damage. EMAC will also obtain an employee liability policy with limits of not less than \$500,000. Lower Macungie will be added as an additional insured to EMAC's policies. EMAC will furnish proof to Lower

Macungie that insurance coverage has been obtained. EMAC will immediately notify Lower Macungie if EMAC's policies are cancelled or coverage is interrupted for any reason.

12. So long as Lower Macungie complies with its obligations to furnish a permit and the physical structure of the pool in accordance with the terms of this Agreement, EMAC will comply with all local ordinances and regulations and state laws and regulations regarding the operation of swimming pools.
13. EMAC will properly secure the Township Pool property at the end of each day of operation. EMAC shall have no obligation to safeguard the pool outside of the regular operating hours. EMAC shall not be liable or responsible for any Claims (as defined in Paragraph 19) that arise at any time that (a) are not within the hours of operation or (b) EMAC does not have lifeguards working as stated in this Agreement.
14. EMAC will secure approval from proper Lower Macungie representative when mechanical breakdown or vandalism necessitates terminating the operation of the pool for longer than one hour.
15. EMAC will notify Lower Macungie when, in its opinion, the repair, replacement, and/or rebuilding of any equipment or structure is necessary to ensure the continued operation of the Township pool or the safety of its users.
16. EMAC is a Pennsylvania nonprofit corporation and an independent contractor in all aspects in regard to operation and maintenance of the swim club.
17. In the event that Lower Macungie fails to make payments as required by the above schedule, EMAC may, at its discretion, terminate all services until payment is received. Lower Macungie agrees to pay EMAC interest at the rate of 1.0 percent per month, for each late payment. In the event that EMAC must file suit in any Court having jurisdiction to recover any sums due it from Lower Macungie, EMAC will be entitled to recover reasonable attorney's fees as well as the amount owed with interest.
18. Excluding EMAC's personnel, EMAC will be held harmless for any injuries incurred by any persons on swim club's property during hours when the Township Pool is not in operation.
19. EMAC agrees to indemnify, defend and hold Lower Macungie, its officers, directors, employees, affiliates, successors and assigns harmless from any loss, claim, damage, cost or expense, including but not limited to reasonable attorneys' fees and costs ("Claims"), that EMAC, its officers, directors, employees, affiliates, successors or assigns may incur arising out of or related to EMAC's performance under this Agreement, including without limitation as a result of EMAC's actual or alleged breach of any warranty or damage or injury to persons or property arising out of or related to the services provided hereunder, excluding however: (a) Claims for any personal injuries resulting from defects in design, construction, installation, placement, or state of repair of pool equipment and pool and deck surfaces such as,

but not limited to ladders, railings, diving boards, slides, and chairs, (b) Claims arising from or caused by Acts of God; (c) Claims with respect to the personal effects of any person or persons utilizing the pool facilities; (d) Claims arising from or caused by physical or mental capacity or physical or mental diminution of any person or persons utilizing the pool facilities; (e) Claims resulting from actions taken by any employee of EMAC that are protected by the Pennsylvania Good Samaritan act, 42 Pa.C.S.A. §8332; or (f) Claims excluded in accordance with Paragraph 13 of this Agreement. Notwithstanding the foregoing, EMAC is required to timely report to Lower Macungie any damage to or obvious defects in pool equipment.

20. EMAC will not be held responsible to open the Township pool on scheduled opening date in the event that winter damage, excessive vandalism, or mechanical breakdown prevents such opening.
21. Lower Macungie will obtain any and all permits necessary to operate the pool. In connection therewith, it is the responsibility of Lower Macungie to ensure that the pool is constructed and its equipment is adequate in order to operate in accordance with the terms of the permit.
22. Lower Macungie will be responsible for turning on and off of all utilities and for the paying of all utility bills. Lower Macungie shall be responsible for supplying sufficient water and continuous electricity to permit the swimming pool to operate in accordance with its permit.
23. Lower Macungie will furnish pool cleaning equipment, and parts and supplies necessary to operate the filtering system. In addition, Lower Macungie must furnish its own spine board, rescue tube and first aid kit, and AED. These items must meet Board of Health regulations.
24. Lower Macungie will be responsible for the repair, replacement, and/or the rebuilding of any equipment or structure. If the parties hereto mutually agree by separate agreement, EMAC will use a subcontractor to facilitate repairs.
25. Lower Macungie will be responsible for the collection and disposal of trash including providing adequate receptacles for trash.
26. Lower Macungie will designate certain representatives and provide addresses and phone numbers of representatives to EMAC so that EMAC may notify them in the event that repair, maintenance, operation, or discipline problems arise.
27. In the event that the operation of the pool must be temporarily suspended during the time when the pool would normally be in operation for any reason not the fault of EMAC, this Agreement will remain in full force and effect provided, however, that if the pool closed due to major equipment breakdown or by the order of any public authority, and such close-down continues for a period longer than fifteen days, then Lower Macungie will be entitled to reduce its payment to EMAC for each day beyond the fifteenth day that the pool is closed, on a pro-rata basis, to an amount equal to 50% of the outstanding contract price for the unexpired portion of the

Agreement's term. Notwithstanding the foregoing, if this Agreement is terminated as set forth in paragraph 1 above, EMAC shall only be paid through the date of termination.

28. Accounted for in this contract are 5 weather-related closings. Seventy percent of lifeguard fees for any weather-related closing above 5 days will be credited to the amount of the September LMT payment to EMAC.
29. This contract contains the entire agreement between the parties hereto and no additions, revisions supplements, and/or changes to the agreement between the parties will be valid unless reduced to writing and signed by the parties hereto. The terms of this Agreement will bind the parties hereto and their respective successors and assigns.
30. This agreement can be terminated by either party on 30-day notice without cause. In addition, either party may terminate for breach by the other party upon ten (10) days written notice with a right to cure. If the breach is not cured within the ten-day notice period, this Agreement shall automatically terminate. In the event that Lower Macungie elects to terminate this Agreement without cause in accordance with this paragraph, Lower Macungie will pay to EMAC an early termination fee in the amount equal to 50% of the outstanding contract price for the unexpired portion of the Agreement's term as set forth in paragraph 1. The early termination fee will be paid within 30 days after Lower Macungie provides notice of its exercise of the termination of this Agreement.
31. This Agreement and the rights of the parties hereunder shall be governed by and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, without regard to conflict of laws principles. In any dispute hereunder, the parties consent to sole jurisdiction in the Court of Common Pleas in and for Lehigh County, Pennsylvania.
32. EMAC will order and pay for 26 uniforms consisting of suit and shirt for females and shorts and shirt for males. The amount, not to exceed \$100 per lifeguard, will be reimbursed by LMT on or before _____.
33. Neither party may assign its rights or delegate its obligations under the Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. Any attempted assignment not in accordance with this Section shall be null and void.
34. All notices and other communications required shall be in writing via fax, overnight express mail, certified mail, return-receipt requested or in person to the parties at their addresses set forth above, or to such other address as either party may so designate at least 10 days prior to such notice or communication.

35. Neither party shall use the name, trade name, service marks, trademarks, trade dress or logo of the other in publicity releases, advertising or similar activities without the prior written consent of the other.
36. In the event that any one or more of the provisions contained in this Agreement shall be held to be unenforceable in any respect by a court of competent jurisdiction, such unenforceability shall not affect any other provisions but shall be construed as if such unenforceable provision had never been contained herein.
37. The failure or delay of either party to insist, in any one or more instances, upon the performance of any terms or conditions herein or to exercise any right or privilege herein, shall not be construed as a relinquishing of future performance or as a waiver of any of the same or similar rights or privileges in the future and the obligation of the other party with respect to such future rights or performance shall continue in full force and effect as if such failure or delay never occurred.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth below.

Township of Lower Macungie

By: _____
(representative) (title) (date)

EMMAUS AQUATIC CLUB

By: _____
(authorized representative) (title) (date)