

THE STATE OF TEXAS

BID # S10-L23988

COUNTY OF HARRIS

ORDINANCE # 2012-0162

CONTRACT # 4600011362

I. PARTIES

1.0 ADDRESS:

THIS AGREEMENT FOR SWIMMING POOL MAINTENANCE SERVICES ("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a Texas Home-Rule City and **COMMERCIAL CHEMICAL PRODUCTS, INC., D/B/A POOLSURE**, a corporation doing business in Texas.

The initial addresses of the parties, which one party may change by giving written notice to the other party, are as follows:

City

City Purchasing Agent for Director(s)
of Various Department(s)
City of Houston
P.O. Box 1562
Houston, Texas 77251

Contractor

Commercial Chemical Products, Inc.,
d/b/a Poolsure
1707 Townhurst
Houston, Texas 77043
Phone: 713.683.6436
Fax: 713.683.6490

The Parties agree as follows:

2.0 TABLE OF CONTENTS:

2.1 This Agreement consists of the following sections:

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3.0 PARTS INCORPORATED:

3.1 The above described sections and exhibits are incorporated into this Agreement.

4.0 CONTROLLING PARTS:

4.1 If a conflict among the sections or exhibits arises the Exhibits control over the Sections.

5.0 DEFINITIONS:

5.1 Certain terms used in this Agreement are defined in Exhibit "A."

6.0 SIGNATURES:

6.1 The Parties have executed this Agreement in multiple copies, each of which is an original.

ATTEST/SEAL (if a corporation):

COMMERCIAL CHEMICAL PRODUCTS, INC.

WITNESS (if not a corporation):

D/B/A POOLSURE

By: Rita Walsh

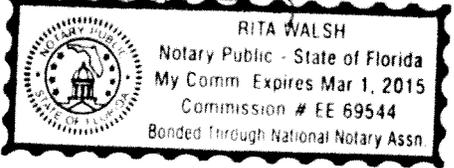
By: K-P. Boyer

Name: Rita Walsh

Name: Kevin R. Boyer

Title:

Title: COO



Federal Tax ID Number: 76-0591704

ATTEST/SEAL:

[Signature]
City Secretary

CITY OF HOUSTON, TEXAS
Signed by:
[Signature]

Mayor [Signature]

APPROVED:

[Signature]
City Purchasing Agent

COUNTERSIGNED BY:

[Signature]
City Controller [Signature]

DATE COUNTERSIGNED:

3-5-12

This Contract has been reviewed as to form by the undersigned legal assistant and has been found to meet established Legal Department criteria. The Legal Department has not reviewed the content of these documents.

February 13, 2012
Date

[Signature]
Legal Assistant

II. DUTIES OF CONTRACTOR

1.0 SCOPE OF SERVICES:

- 1.1 In consideration of the payments specified in this Agreement, Contractor shall provide all labor, material, equipment, transportation and supervision necessary to perform the services described in Exhibits "B," "BB," and BB-1 through BB-4.

2.0 INDEMNITY AND RELEASE:

2.1 RELEASE

PRIME CONTRACTOR/SUPPLIER AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE CITY) FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

2.2 INDEMNIFICATION:

PRIME CONTRACTOR/SUPPLIER AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY "THE CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEY'S FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

2.2.1 PRIME CONTRACTOR/SUPPLIERS AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 2.1-2.3, "PRIME CONTRACTOR/SUPPLIER") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

2.2.2 THE CITY'S AND PRIME CONTRACTOR/SUPPLIER'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER PRIME CONTRACTOR/SUPPLIER IS IMMUNE FROM LIABILITY OR NOT; AND

2.2.3 THE CITY'S AND PRIME CONTRACTOR/SUPPLIER'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER PRIME CONTRACTOR/SUPPLIER IS IMMUNE FROM LIABILITY OR NOT.

2.2.4 PRIME CONTRACTOR/SUPPLIER SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. PRIME CONTRACTOR/SUPPLIER'S INDEMNIFICATION IS LIMITED TO \$500,000.00 PER OCCURRENCE. PRIME CONTRACTOR/SUPPLIER SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

2.3 INDEMNIFICATION:

CONTRACTOR SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY THE CITY TO THE SAME EXTENT

AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE CITY.

3.0 INDEMNIFICATION PROCEDURES:

3.1 Notice of Claims. If the City or Prime Contractor/Supplier receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 10 days. The notice must include the following:

3.1.1 a description of the indemnification event in reasonable detail,

3.1.2 the basis on which indemnification may be due, and

3.1.3 the anticipated amount of the indemnified loss.

3.2 This notice does not stop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10 day period, it does not waive any right to indemnification except to the extent that Prime Contractor/Supplier is prejudiced, suffers loss, or incurs expense because of the delay.

3.3 Defense of Claims

3.3.1 Assumption of Defense. Prime Contractor/Supplier may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Prime Contractor/Supplier shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Prime Contractor/Supplier must advise the City as to whether or not it will defend the claim. If Prime Contractor/Supplier does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

3.3.2 Continued Participation. If Prime Contractor/Supplier elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Prime Contractor/Supplier may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Prime Contractor/Supplier does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

4.0 INSURANCE:

4.1 Contractor shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Agreement. All policies except Professional Liability and Workers' Compensation must name the City as an additional insured. The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition Best's Key Rating Guide. Contractor shall maintain the following insurance coverage in the following amounts:

4.1.1 Commercial General Liability insurance including Contractual Liability insurance:
\$500,000 per occurrence; \$1,000,000 aggregate

- 4.1.2 Workers' Compensation including Broad Form All States endorsement:
Statutory amount
- 4.1.3 Automobile Liability insurance
\$1,000,000 combined single limit per occurrence
Defense costs are excluded from the face amount of the policy.
Aggregate Limits are per 12-month policy period unless otherwise indicated.
- 4.1.4 Employer's Liability
Bodily injury by accident \$100,000 (each accident)
Bodily injury by disease \$100,000 (policy limit)
Bodily injury by disease \$100,000 (each employee)
- 4.2 All insurance policies must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City, Contractor shall give written notice to the Director if any of its insurance policies are cancelled, materially changed or non-renewed. Within the 30 day period, Contractor shall provide other suitable policies in lieu of those about to be canceled, materially changed, or non-renewed so as to maintain in effect the required coverage. If Contractor does not comply with this requirement, the Director, at his or sole discretion, may:
 - 4.2.1 immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default, or
 - 4.2.2 purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Agreement.

5.0 WARRANTIES:

- 5.1 Contractor represents and warrants that it shall perform all work in a good and workmanlike manner, meeting the standards of quality prevailing in Harris County, Texas for work of this kind. Contractor shall perform all work using trained and skilled persons having substantial experience performing the work required under this Agreement.
- 5.2 With respect to any parts and goods furnished by it, Contractor warrants:
 - 5.2.1 that all items are free of defects in title, material, and workmanship,
 - 5.2.2 that each item meets or exceeds the manufacturer's specifications and requirements for the equipment, structure, or other improvement in which the item is installed,
 - 5.2.3 that each replacement item is new in accordance with original equipment manufacturers' specifications, and of a quality at least as good as the quality of the item which it replaces (when the replaced item was new), and
 - 5.2.4 that no item or its use infringes any patent, copyright, or proprietary right.

6.0 LICENSES AND PERMITS:

- 6.1 Contractor shall obtain and pay for all licenses, permits, and certificates required by any statute, ordinance, rule, or regulation.

7.0 COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE:

- 7.1 Contractor shall comply with the City's Equal Employment Opportunity Ordinance as set out in Exhibit "C."

8.0 MWBE COMPLIANCE:

- 8.1 Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least 11% of the value of this Agreement to MWBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Office of Business Opportunity ("OBO"), and will comply with them.
- 8.2 Contractor shall require written subcontracts with all MWBE subcontractors and shall submit all disputes with MWBEs to binding arbitration to be conducted in Houston, Texas if directed to do so by the OBO Director. MWBE subcontracts must contain the terms set out in Exhibit "DD-1."

9.0 DRUG ABUSE DETECTION AND DETERRENCE:

- 9.1 It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.
- 9.2 Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):
 - 9.2.1 a copy of its drug-free workplace policy,
 - 9.2.2 the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "E," together with a written designation of all safety impact positions and,
 - 9.2.3 if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "F."
- 9.3 If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "G." Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.
- 9.4 Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.
- 9.5 Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

10.0 ENVIRONMENTAL LAWS:

- 10.1 Contractor shall comply with all rules, regulations, statutes, or orders of the Environmental Protection Agency ("EPA"), the Texas Commission on Environmental Quality ("TCEQ"), and any other governmental agency with the authority to promulgate environmental rules and regulations ("Environmental Laws"). Contractor shall promptly reimburse the City for any fines or penalties levied against the City because of Contractor's failure to comply.

- 10.2 Contractor shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to, or from the site except in strict compliance with the Environmental Regulations. "Hazardous Materials" means any substances, materials, or wastes that are or become regulated as hazardous or toxic substances under any applicable federal, state, or local laws, regulations, ordinances, or orders. Contractor shall not deposit oil, gasoline, grease, lubricants or any ignitable or hazardous liquids, materials, or substances in the City's storm sewer system or sanitary sewer system or elsewhere on City Property in violation of the Environmental Laws.

11.0 CONTRACTOR'S PERFORMANCE:

- 11.1 Contractor shall make citizen satisfaction a priority in providing services under this Agreement. Contractor shall train its employees to be customer service-oriented and to positively and politely interact with citizens when performing contract services. Contractor's employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of service to the public. If, in the Director's opinion, Contractor is not interacting in a positive and polite manner with citizens, he or she shall direct Contractor to take all remedial steps to conform to these standards.

12.0 PAYMENT OF EMPLOYEES AND SUBCONTRACTORS:

- 12.1 Contractor shall make timely payments in accordance with applicable state and federal law to all persons and entities supplying labor, materials or equipment for the performance of this Agreement including Contractor's employees.
- 12.2 Failure of Contractor to pay it's employees as required by law shall constitute a default under this contract for which the Contractor and it's surety shall be liable on Contractor's performance bond if Contractor fails to cure the default as provided under this Agreement.
- 12.3 Contractor shall defend and indemnify the City from any claims or liability arising out of Contractor's failure to pay its subcontractors as required by law. Contractor shall submit disputes relating to payment of M/WBE subcontractors to arbitration in the same manner as any other disputes under the M/WBE subcontract.

13.0 CONTRACTOR PAY OR PLAY PROGRAM:

- 13.1 The requirement and terms of the City of Houston Pay or Play Policy, as set out in Executive Order 1-7, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order 1-7 and shall comply with its terms and conditions as they are set out at the time of City Council approval of this Agreement. Exhibit "I".
- 13.2 The Pay or Play Program for various departments will be administered by the City of Houston Affirmative Action Division's designee and for a Department specific contract; the Department's designated contract administrator will administer the Pay or Play Program.

III. DUTIES OF CITY

1.0 PAYMENT TERMS:

- 1.1 The City shall pay and Contractor shall accept fees at the unit prices provided in Exhibit H for all services rendered and the Deliverables furnished by Contractor. The fees must only be paid from Allocated Funds, as provided below.
- 1.2 Any quantities of services or Deliverables shown in any part of this contract or its exhibits are estimated only and are not any guarantee that the City will not purchase more or less of those

services or Deliverables. The City will pay only for the services or Deliverables actually ordered and only at the unit prices set out.

2.0 TAXES:

2.1 The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Contractor's invoices to the City must not contain assessments of any of these taxes. The Director will furnish the City's exemption certificate and federal tax identification number to Contractor if requested.

3.0 METHOD OF PAYMENT:

3.1 The City shall pay Contractor on the basis of invoices submitted by Contractor and approved by the Director, showing the specific tasks completed in the preceding month and the corresponding prices. The City shall make payments to Contractor at its address for notices within 30 days of receipt of an approved invoice.

4.0 METHOD OF PAYMENT - DISPUTED PAYMENTS:

4.1 If the City disputes any items in an invoice Contractor submits for any reason, including lack of supporting documentation, the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall promptly notify Contractor of the dispute and request remedial action. After the dispute is settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

5.0 LIMIT OF APPROPRIATION:

5.1 The City's duty to pay money to Contractor under this Agreement is limited in its entirety by the provisions of this Section.

5.2 In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of **\$45,000.00** to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

5.3 The City makes a Supplemental Allocation by issuing to Contractor a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS

By the signature below, the City Controller certifies that, upon the request of the responsible director, the supplemental sum set out below has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.

\$ _____

5.4 The Original Allocation plus all supplemental allocations are the Allocated Funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Contractor must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Contractor's only remedy is suspension or

termination of its performance under this Agreement and it has no other remedy in law or in equity against the City and no right to damages of any kind.

6.0 CHANGES:

6.1 At any time during the Agreement Term, the City Purchasing Agent or Director may issue a Change Order to increase or decrease the scope of services or change plans and specifications, as he or she may find necessary to accomplish the general purposes of this Agreement. Contractor shall furnish the services or deliverables in the Change Order in accordance with the requirements of this Agreement plus any special provisions, specifications, or special instructions issued to execute the extra work.

6.2 The City Purchasing Agent or Director will issue the Change Order in substantially the following form:

CHANGE ORDER

TO: [Name of Contractor]
FROM: City of Houston, Texas (the "City")
DATE: [Date of Notice]
SUBJECT: Change Order under the Agreement between the City and [Name of Contractor] countersigned by the City Controller on [Date of countersignature of the Agreement]

Subject to all terms and conditions of the Agreement, the City requests that Contractor provide the following:

[Here describe the additions to or changes to the equipment or services and the Change Order Charges applicable to each.]

Signed:
[Signature of City Purchasing Agent or Director]

6.3 The City Purchasing Agent or Director may issue more than one Change Order, subject to the following limitations:

6.3.1 Council expressly authorizes the City Purchasing Agent or Director to approve a Change Order of up to \$50,000. A Change Order of more than \$50,000 over the approved contract amount must be approved by the City Council.

6.3.2 If a Change Order describes items that Contractor is otherwise required to provide under this Agreement, the City is not obligated to pay any additional money to Contractor.

6.3.3 The Total of all Change Orders issued under this section may not increase the Original Agreement amount by more than 25%.

6.4 Whenever Contractor receives a Change Order, Contractor shall furnish all material, equipment, and personnel necessary to perform the work described in the Change Order. Contractor shall complete the work within the time prescribed. If no time for completion is prescribed, Contractor shall complete the work within a reasonable time. If the work described in any Change Order causes an unavoidable delay in any other work Contractor is required to perform under this Agreement, Contractor may request a time extension for the completion of the work. The City Purchasing Agent's or Director's decision regarding a time extension is final.

6.5 A product or service provided under a Change Order is subject to inspection, acceptance, or rejection in the same manner as the work described in the Original Agreement, and is subject to

the terms and conditions of the Original Agreement as if it had originally been a part of the Agreement.

6.6 Change Orders are subject to the Allocated Funds provisions of this Agreement.

IV. TERM AND TERMINATION

1.0 **CONTRACT TERM:**

1.1 This Agreement is effective on the Countersignature Date and expires three (3) years after the date specified in the Notice to Proceed unless sooner terminated according to the terms of this Agreement.

2.0 **NOTICE TO PROCEED:**

2.1 Contractor shall begin performance under this Agreement on the date specified in a Notice to Proceed from the City Purchasing Agent.

3.0 **RENEWALS:**

3.1 Upon expiration of the Initial Term, and so long as the City makes sufficient supplemental allocations, this Agreement will be automatically renewed for two successive one-year terms on the same terms and conditions. If the Director of the City Department elects not to renew this Agreement, the City Purchasing shall notify Contractor in writing of non-renewal at least 30 days before the expiration of the then-current term.

4.0 **TIME EXTENSIONS:**

4.1 If the Department requests an extension of time to complete its performance, then the City Purchasing Agent may, in his or her sole discretion, extend the time so long as the extension does not exceed 90 days. The extension must be in writing but does not require amendment of this Agreement. Contractor is not entitled to damages for delay(s) regardless of the cause of the delay(s).

5.0 **TERMINATION FOR CONVENIENCE BY THE CITY:**

5.1 The City Purchasing Agent or Director may terminate this Agreement at any time by giving 30 days written notice to Contractor. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future.

5.2 On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the services performed under this Agreement up to the termination date. The City shall then pay the fees to Contractor for services actually performed, but not already paid for, in the same manner as prescribed in Section III unless the fees exceed the allocated funds remaining under this Agreement.

5.3 TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONTRACTOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

6.0 TERMINATION FOR CAUSE BY CITY:

- 6.1 If Contractor defaults under this Agreement, the City Purchasing Agent or Director may either terminate this Agreement or allow Contractor to cure the default as provided below. The City's right to terminate this Agreement for Contractor's default is cumulative of all rights and remedies which exist now or in the future. Default by Contractor occurs if:
 - 6.1.1 Contractor fails to perform any of its duties under this Agreement;
 - 6.1.2 Contractor becomes insolvent;
 - 6.1.3 all or a substantial part of Contractor's assets are assigned for the benefit of its creditors; (or)
 - 6.1.4 a receiver or trustee is appointed for Contractor.
- 6.2 If a default occurs, the City Purchasing Agent or Director may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The City Purchasing Agent or Director at his or her sole option, may extend the termination date to a later date. If the City Purchasing Agent or Director allows Contractor to cure the default and Contractor does so to the City Purchasing Agent's or Director's satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then the City Purchasing Agent or Director may terminate this Agreement on the termination date, at no further obligation of the City.
- 6.3 To effect final termination, the City Purchasing Agent or Director must notify Contractor in writing. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

7.0 TERMINATION FOR CAUSE BY CONTRACTOR:

- 7.1 Contractor may terminate its performance under this Agreement only if the City defaults and fails to cure the default after receiving written notice of it. Default by the City occurs if the City fails to perform one or more of its material duties under this Agreement. If a default occurs and Contractor wishes to terminate the Agreement, then Contractor must deliver a written notice to the Director describing the default and the proposed termination date.
- 7.2 The date must be at least 30 days after the Director receives notice. Contractor, at its sole option, may extend the proposed termination date to a later date. If the City cures the default before the proposed termination date, then the proposed termination is ineffective. If the City does not cure the default before the proposed termination date, then Contractor may terminate its performance under this Agreement on the termination date.

8.0 REMOVAL OF CONTRACTOR OWNED EQUIPMENT AND MATERIALS:

- 8.1 Upon expiration, or termination of this Agreement, Contractor is permitted ten (10) days within which to remove contractor-owned material and equipment from the City's premises. The City shall make such material and equipment readily available to Contractor. The time period may be extended upon approval by the Director. The City reserves the right to deny any extension of time.

V. MISCELLANEOUS

1.0 INDEPENDENT CONTRACTOR:

- 1.1 Contractor shall perform its obligations under this Agreement as an independent contractor and not as an employee of the City.

2.0 FORCE MAJEURE:

- 2.1 Timely performance by both parties is essential to this Agreement. However, neither party is liable for delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by Force Majeure. Force Majeure means fires, floods, explosions, and other acts of God, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority.
- 2.2 This relief is not applicable unless the affected party does the following:
- 2.2.1 uses due diligence to remove the Force Majeure as quickly as possible; and
- 2.2.2 provides the other party with prompt written notice of the cause and its anticipated effect.
- 2.3 The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance does not constitute a default or breach of this Agreement by the City.
- 2.4 If the Force Majeure continues for more than 30 days, the City Purchasing Agent or Director may terminate this Agreement by giving 30 days' written notice to Contractor. This termination is not a default or breach of this Agreement. CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT AT THE TIME OF THE TERMINATION.

3.0 SEVERABILITY:

- 3.1 If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

4.0 ENTIRE AGREEMENT:

- 4.1 This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind exist between the Parties regarding this Agreement.

5.0 WRITTEN AMENDMENT:

- 5.1 Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance duly adopted by the City Council) and Contractor. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

6.0 APPLICABLE LAWS:

- 6.1 This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.

6.2 Venue for any litigation relating to this Agreement is Harris County, Texas.

7.0 NOTICES:

7.1 All notices to either party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in Section I of this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

8.0 NON-WAIVER:

8.1 If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

8.2 An approval by the Director, or by any other employee or agent of the City, of any part of Contractor's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The Director is not authorized to vary the terms of this Agreement.

9.0 INSPECTIONS AND AUDITS:

9.1 City representatives may perform, or have performed, (1) audits of Contractor's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least 4 years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

10.0 ENFORCEMENT:

10.1 The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Contractor shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Contractor's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

11.0 AMBIGUITIES:

11.1 If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

12.0 SURVIVAL:

12.1 Contractor shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, the indemnity provisions.

13.0 PARTIES IN INTEREST:

13.1 This Agreement does not bestow any rights upon any third party, but binds and benefits the City and Contractor only.

14.0 SUCCESSORS AND ASSIGNS:

14.1 This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the following paragraph. This Agreement does not create any personal liability on the part of any officer or agent of the City.

15.0 BUSINESS STRUCTURE AND ASSIGNMENTS:

15.1 Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the City Purchasing Agent's or Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest under Section 9.406 (c) of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

15.2 Contractor shall not delegate any portion of its performance under this Agreement without the City Purchasing Agent's or Director's prior written consent.

16.0 REMEDIES CUMULATIVE:

16.1 Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

17.0 CONTRACTOR DEBT:

17.1 If Contractor, at any time during the term of this agreement, incurs a debt, as the word is defined in Section 15-122 of the Houston City Code of Ordinances, it shall immediately notify the City Controller in writing. If the City Controller becomes aware that Contractor has incurred a debt, she shall immediately notify contractor in writing. If Contractor does not pay the debt within 30 days of either such notification, the City Controller may deduct funds in an amount equal to the debt from any payments owed to Contractor under this agreement, and Contractor waives any recourse therefor.

EXHIBIT "A" **DEFINITIONS**

As used in this Agreement, the following terms have the meanings set out below:

"Agreement" means this contract between the Parties, including all exhibits, change orders, and any written amendments authorized by City Council and Contractor.

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"City Purchasing Agent" is defined as the person or duly authorized successor, authorized in writing to act for the City. The term includes, except as otherwise provided in this Contract, the authorized representative of the City Purchasing Agent acting within the limits of delegated authority.

"Contractor Administrator" means the representative of the Department who is responsible for the administration for the Contract.

"Contract Award Notice" means the official notification substantiated by the Notice to Proceed issued by the City Purchasing Agent to the Contractor.

"Contract Charges" means charges that accrue during a given month as defined in Article III.

"Contract Term" is defined in Article IV.

"Contractor" is defined in the preamble of this Agreement and includes its successors and assigns.

"Countersignature Date" means the date this agreement is countersigned by the City Controller.

"Director" mean the Directors/Chiefs of each of the Departments or the City Purchasing Agent for the City, or the person he or she designates.

"Effective Date" is defined as date contract is countersigned by the City Controller.

"Governing Body" means the Mayor and City Council of the City of Houston.

"Hazardous Materials" is defined in Article II (Environmental Laws).

"Notice to Proceed" means a written communication from the City Purchasing Agent to Contractor instructing Contractor to begin performance.

"Parties" mean all the entities set out in the Preamble who are bound by this Agreement.

EXHIBIT "B"
SCOPE OF WORK

1.0 SERVICES TO BE PROVIDED:

- 1.1 The Contractor agrees to provide labor, supervision, delivery and dispensing of chemicals, cleanup, supplies/materials, installation and maintenance, and repairs to equipment necessary for the safe operations of monitoring systems, controllers and chemical feed systems, hose/tubing/fittings, tanks, chlorine and acid pumps chemical dispensing equipment to the Parks and Recreation Department's swimming pools and wading pools. The services shall include, but not be limited to, those requirements covered through local, State, and national codes that pertain to commercial pools.
- 1.2 The Contractor shall furnish water testing and monitoring of chemicals to maintain chemical balance of chlorine, acid, stabilizer, sodium bicarbonate, and other chemicals (Article 8.0) in order to achieve water quality of proper pH and chlorine content.
- 1.3 Contractor shall monitor and provide full-service maintenance of control systems related to chemical feed systems installed at each pool.
- 1.4 Contractor shall visit each pool site at a minimum of once per week to replenish chemicals (as needed), check water balance, monitor automated equipment, and make adjustments or repairs (where necessary) to ensure the provision of proper water quality.
- 1.5 Contractor shall be "on call" to correct chemical imbalances identified by the Parks and Recreation Department's personnel within four (4) hours upon notification. Emergency calls made to Contractor (and all such calls) shall be made at no additional cost to the City. Non-emergency calls shall be handled within (8) business hours of contact to the Contractor, and all such calls shall be made at no additional cost to the City.
- 1.6 The work shall be issued by telephone, e-mail, or facsimile for request of emergency or non-emergency work orders, by the Parks and Recreation Department's designated representative. The "Request for Work Order" shall include an assignment of work and any other instructions.
- 1.7 Contract time period shall be for a (36) thirty-six month period, with (2) one-year options.

2.0 CITY'S RESPONSIBILITIES (PARKS AND RECREATION PERSONNEL):

- 2.1 Inspect facilities, and test and log pool water chemistry at least once per day (or per local codes).
- 2.2 Maintain a chlorine residual and pH level of the pool water to meet state, county, and city health requirements.
- 2.3 Treat pool water with necessary chemicals to maintain proper level of sanitation, pH, alkalinity, calcium hardness, and stabilizers.
- 2.4 Maintain and operate circulation and filtration systems in compliance with Texas Department of Health (TDH) codes.
- 2.5 Maintain proper water levels in pools to (TDH) codes.
- 2.6 Inspect, clean, and maintain all pool tile, gutter systems, hair and lint traps, chemical and pump rooms, and skimmer baskets.

- 2.7 Notify the Contractor by telephone, facsimile, or e-mail on any chemical imbalance or obvious visual problems with tanks, drums or chemical control system.
- 2.8 Notify the Contractor when the controllers, feeders and/or feed lines need to be disconnected and reconnected within thirty (30) days from the start and end dates of the "Parks-to-Standard" (Renovation) program.
- 2.9 Maintain necessary Material Safety Data Sheets (MSDS) sheets at the pools.
- 2.10 Maintain log sheets of chemical levels, and duties completed for each trip.

3.0 MAINTENANCE:

- 3.1 The Contractor shall (during the term of this contract) maintain all dispensing equipment and provide pool chemicals, as needed. Maintenance shall include, but not be limited to: a) adding and controlling the necessary chemicals to the pools to ensure water quality meets or exceeds the City and (TDH) requirements for public pools; and b) perform preventative maintenance and maintain the monitoring, controller system(s), and related chemical equipment supporting chemical dispensing into the City's pools.
- 3.2 The Contractor shall notify the Parks and Recreation Department's designated representative by telephone, e-mail or facsimile when equipment monitoring or controllers are removed from any pool location for maintenance or service. Contractor shall provide the following information: "where removed," "date/time," "destination location," "work performed on equipment," and "when returned to the pool." The log for City pool visits shall be kept by the Contractor and shall be attached to monthly invoices for payment.

4.0 WATER CONSERVATION:

- 4.1 Contractor shall immediately notify the Parks and Recreation Department's designated representative of any identifiable water leakage.

5.0 SUBCONTRACTORS:

- 5.1 Before contract is awarded, the Contractor shall submit a list of all subcontractors and its suppliers recommended to the City.

6.0 LOCATION OF POOL FACILITIES: (*) indicates regional pool:

NORTHWEST QUADRANT

Pool Location	Address	Phone #	Water Capacity	People Capacity
Agnes Moffitt *	10645 Hammerly	713-468-5666	522,000	400
Independence Heights	603 East 35 th	713-862-1284	131,785	125
Lincoln City	1048 Grenshaw	713-447-2525	243,975	250
Love	1000 West 12th	713-861-5999	171,762	250
Memorial	6402 Amot	713-862-1426	238,000	300
Oak Forest	1400 Dubarry	713-681-5039	130,000	125
G. Schwartz	8203 Vogue	713-973-6310	167,823	250
West Gray	1475 W. Gray	713-284-1973	77,000	130
H. Stude	1031 Stude	713-862-5762	190,000	250
T.C. Jester *	4205 T. C. Jester	713-686-6800	522,000	400

SOUTHWEST QUADRANT

Pool Location	Address	Phone #	Water Capacity	People Capacity
Emancipation	3018 Dowling	713-522-2122	220,780	250
Landsale	8201 Roos	713-774-0826	165,000	250
Alief	11903 Bellaire	713-498-7701	118,125	250
Sunnyside	3502 Bellfort	713-734-0757	167,823	250
Westbury	10605 Mullins	713-723-2192	165,000	250
Sharpstown*	6600 Harbortown	713-776-3310	619,735	400
Windsor Village	1441 Croquet	713-721-8301	243,975	250
Yellowstone	6900 Lasalette	713-748-0449	130,000	125

SOUTHEAST QUADRANT

Pool Location	Address	Phone #	Water Capacity	People Capacity
Beverly Hills	9800 Kingspoint	713-944-6014	243,975	250
Cloverland	11800 Scott	713-734-8948	243,975	300
Dezavala	7521 Avenue H	713-923-7220	229,110	300
Eastwood	5000 Harrisburg	713-923-8058	149,601	250
MacGregor	5225 Calhoun	713-748-0317	229,110	300
Mason	541 South 75th	713-921-3726	220,781	250
Reveille	7700 Oak Vista	713-645-6544	65,000	75
Sagemont	11507 Hughes	713-922-2312	65,000	75
Wilson Memorial	100 Gilpin	713-941-8842	229,940	250

NORTHEAST QUADRANT

Pool Location	Address	Phone #	Water Capacity	People Capacity
Clinton	203 Mississippi	713-675-9336	130,000	125
Denver Harbor	1020 Gazin	713-673-7140	229,110	300
Finnigan	4900 Providence	713-673-7311	238,000	300
Greenwood	602 Braesford	713-455-5165	65,000	75
Hobart Taylor	8100 Kenton	713-673-3774	243,975	250
Moody	3201 Fulton	713-227-8834	165,000	250
Northline	6911 Nording	713-691-1063	65,000	75
Judson Robinson, Sr.	1422 Ledwicke	713-672-8958	170,857	250
Tidwell*	9720 Spaudling	713-633-1618	522,000	400
Tuffly	3200 Russell	713-674-3367	172,972	250

7.0 WADING POOLS:

- 7.1 All wading pools shall have separate monitoring and control system related to chemical feed systems installed at each pool.
- 7.2 Provisions in the invoice shall be made by the Contractor to include an extra body of water (wading pools).

8.0 CHEMICALS:

- 8.1 The Contractor shall furnish all necessary pool chemicals to treat pool water, and to maintain proper balance at all times within the City, county, and state health department regulations and requirements. The City shall be charged for the actual amount of chemicals used.

- 8.2 Calcium Hypochlorite, "HTH"
 - 8.2.1 Ingredients: Calcium Hypochlorite 65%
 - 8.2.2 35% inert ingredients (includes 5% moisture)
 - 8.2.3 Form: Granular
- 8.3 Hydrochloric Acid 31.5%
 - 8.3.1 Alternate Name: Muriatic Acid
 - 8.3.2 Form: Liquid
- 8.4 Characteristics:
 - 8.4.1 Boiling Point: 340 degree C, 644 degree F (@760 mmHg)
 - 8.4.2 Vapor Pressure: (mm Hg), 0.3 (20 degree C)
 - 8.4.3 Specific Gravity: 1.290 – 1.350

- 8.5 12.5% Sodium Hypochlorite:
 - 8.5.1 Ingredients:
 - 8.5.1.1 Sodium Hypochlorite 12.5% by weight
 - 8.5.1.2 Sodium Hydroxide 0.5% by Weight
 - 8.5.1.3 Sodium Chloride 5-13% by Weight
 - 8.5.1.4 Ph 12.5-13.5

- 8.5.2 Product to be Benzene Free:
 - 8.5.2.1 Sample random testing shall be performed at no charge to the City, and not charged before shipment has been made to a facility. This testing shall be done on a semi-annual basis and with a department designee present. Test samples shall be given to a designee for delivery to a lab, and shall be paid for by the Contractor.

8.6 <u>Chemicals:</u>	<u>Estimated Yearly Qtys:</u>
8.6.1 Sodium Hypochlorite (Liquid)	375,000 gallons
8.6.2 Hydrochloric Acid (Liquid)	12,000 gallons
8.6.3 Soda Ash (25lb-50lb Bags)	6,000 pounds
8.6.4 Baking Soda/Sodium Bicarbonate	18,000 pounds
8.6.5 Calcium Hypochlor. (Granular)	72,000 pounds
8.6.6 Sulfuric Acid, Pool Acid (Liquid)	37,500 gallons
8.6.7 Sodium Thioulfate Penta Hydrate	12,000 pounds

9.0 CHEMICAL DELIVERY AND ON-SITE SERVICE (SAFETY AND REGULATIONS):

- 9.1 Contractor shall be responsible for all dispensing and servicing of chemicals to the sites.
- 9.2 Contractor shall be responsible for all spills and violations of delivery to sites, and for all dispensing of chemicals.
- 9.3 Vehicles and services used shall be in complete compliance **with applicable safety** requirements and regulations. This includes, but is not limited to, standards established by the United States Department of Transportation including the Federal Motor Vehicle Safety Standards (FMVSS), the **Occupational Safety and Health Administration (OSHA)**, the **Environmental Protection Agency (EPA)**, International Fire Codes, City of Houston Fire Codes, Texas Department of Transportation, and the Texas Environmental Commission of Quality (TECQ)--as related to transportation and dispensing of chemicals.
- 9.4 All chemicals shall be dispensed through a cam-locking system to prevent leakage of chemicals and spillage to facilities, patrons and Contractor personnel.

9.5 Dispensing of chemicals shall be safeguarded by pumping air through lines to alleviate standing/remaining chemicals in lines, between the tank and quick adapter/cap.

10.0 YEARLY PRE-SEASONAL PREVENTIVE MAINTENANCE (PM) TO CONTROLLERS, TANKS, AND CHEMICAL FEED SYSTEMS (REFERENCE FEE SCHEDULE SECTION NO. 1, 3, 4 and 5):

- 10.1 Maintenance schedule shall be followed on all controllers and chemical feed systems, in order to lessen potential equipment failures. The Contractor shall perform maintenance as needed.
- 10.2 The scope of the preventative maintenance shall include monitoring and servicing of controllers, hose/tubing/fittings, and chlorine and acid pumps at each pool site. Services shall include an inspection at least once a month by a certified manufacture(s) representative. If the technician identifies that preventative maintenance repairs are required, the technician may perform those repairs at that time, if parts are readily available. If parts are not available, the technician shall report to the Contractor's dispatch office that the repairs are required so that repairs can be performed after the report. At the time of chemical delivery, the Contractor's delivery person shall visually inspect the units (to include feed lines), and shall inform the Contractor's dispatch office on those units requiring all repairs. Monitoring, controllers, and chemical feed systems that require repairs shall be repaired by a certified technician of the manufacturers' installed equipment, using certified manufacturers repair parts after the initial report--no exceptions. After-market and/or inferior repair parts shall not be accepted by the City, unless written permission is issued by the Parks and Recreation Department's designated representative.
- 10.3 All monitoring, controllers, and chemical feed systems installed at the Parks and Recreation Department's facilities shall be repaired after the first notification is received by the Park and Recreation Department's designee.
- 10.4 The Contractor's "Seasonal and Preventive Maintenance Schedule" shall begin on March 1 and conclude by April 15 for the controllers, chemical feed systems, and chemical tanks. The Contractor shall provide a copy of their overhaul and preventative maintenance schedule to the Parks and Recreation Department designee, located at 6200 Wheeler, Recreation and Wellness Building No. 3, Houston, Texas, 77023.
- 10.5 New equipment covered under this contract (or if approved by the Parks and Recreation Department's designated representative if installed by the Contractor) shall become the property of the City, upon termination of this contract.
- 10.6 Yearly maintenance of the monitoring system shall include the following:
- 10.6.1 All labor costs shall be included in fees.
 - 10.6.2 Replacement of feed tubes, chemical pumps, motors, and roller heads.
 - 10.6.3 All work shall be performed within 60 calendar days starting from the date listed on 10.4, and approved by the Park and Recreation Department designee.
 - 10.6.4 *Perform preventative maintenance checkup of electronic monitoring/controller systems for damage and/or replacement.*
 - 10.6.5 Warranty all replacement equipment and workmanship for a 12-month period.
 - 10.6.6 Check for leaks, sample flow cells, functionality of relays, pH electrodes (or) electrode and fuse replacement, as needed.

- 10.6.7 Provide detailed reports for each site, detailing the completed tests for what was performed and/or replaced.
- 10.6.8 Inspect, repair and/or replace leaking tanks and lines. Before tanks are replaced, a written notice shall be approved by the City department's designee.
- 10.6.9 Contractor shall provide electronic monitoring system that measures the rate of water flow, and information attainable by electronic display.

11.0 PARKS TO STANDARD PROGRAM (OR) CLOSING OF FACILITIES:

- 11.1 Contractor shall be required to perform services under the City's "Parks to Standard Program," upon written notification from the City department's designee.
- 11.2 Disconnect the chemical feed systems from the monitoring and controllers, when a pool is closed for renovation under the "Parks to Standard Program."
- 11.3 Re-install the chemical feed systems to the monitoring and controllers, once the pool has been turned back over to the City.

12.0 CHEMICAL TANKS:

- 12.1 Anytime during the term of the contract, and due to a tank failure to hold chlorine, acids, and chemicals, the Contractor shall identify those tanks that require immediate replacement (within 24 hours after the failure of the tanks), or when notified that the tank is about to fail by a City department's designee. Contractor shall warrant and monitor the safety of tanks for the entire contract term. All tanks and equipment installed shall become City property, upon installation of units.
- 12.2 The Parks and Recreation Department's designated representative shall elect to conduct a market survey to determine if the pricing for replacement tanks are fair and reasonable. If the Parks and Recreation Department's designated representative deems that the pricing under this contract for the replacement of tanks are not reasonable, the City shall elect to purchase and install replacement tanks "off Contract" and through the City's informal/formal purchasing procedures. **The contract shall meet all Federal, State and local laws, as it relates to storage and dispensing into tanks.**
- 12.3 Reference Tank Manufactures as per the following:
 - 12.3.1 Poly Processing Company
 - 12.3.2 Snyder Industries
- 12.5 New tanks shall follow all International Fire Codes, City of Houston Fire Codes, EPA, OSHA, TECQ, ASTM D 1998 and NSF Certified to NSF/ANSI 61.
- 12.6 All installation of tanks shall include labor, parts and materials needed for the operation of tanks (including disconnections and reconnections).

13.0 INTERIOR PRIMARY TANKS:

- 13.1 Contractor shall be responsible for the removal and proper disposal of all chlorine and acid tanks, and its contents.
- 13.2 No tank shall be removed and/or replaced under this contract unless the Parks and Recreation Department's designee has approved the replacement in writing.

- 13.3 Contractor shall replace tanks with the same size or larger, and that tanks shall be UV-stabilized, have a specific gravity of 1.9 minimum and be constructed of cross-linked, high-density polyethylene (HDXLPE).
- 13.4 All flexible connections are required to preserve warranty; this allows for expansion/contraction and reduces vibration stress.
- 13.5 Tanks shall be durable, chemical-resistant and corrosion-resistant to both, chlorine and acid.
- 13.6 Tanks shall be seamless and be in a one-piece design.
- 13.7 Tanks shall have access holes no larger than 10" (inch) maximum openings, with threaded lids (manways).
- 13.8 Tanks shall have UV and oxidation linings.
- 13.9 Tanks shall have liquid level gauges with a reverse float-type system (Exhibit BB-1).
- 13.10 Tanks shall have a top discharge system with a locking quick adapter and ball valves.

14.0 INTERIOR SECONDARY CONTAINMENT TANKS:

- 14.1 Secondary containment shall be 110% capacity of the primary tank. There shall be no recontamination of the primary tank.
- 14.2 Specific gravity of tanks shall be no less than 1.9.
- 14.3 Tanks shall be made of the same density and structure as the primary unit.
- 14.4 All tanks shall be seamless and shall be a one-piece design.
- 14.5 Tanks shall be durable and be chemical-resistant and corrosion-resistant to both, chlorine and acid.
- 14.6 All tanks shall become property of the City upon contract termination, extensions, and/or cancellation of the contract.
- 14.7 Contractor shall be responsible for the removal and proper disposal of any tank replaced.
- 14.8 If necessary, Contractor shall ensure: a) that tanks are replaced with the same size or larger tanks; b) that tanks shall be UV-stabilized; c) that tanks have specific gravity of 1.9 minimum; and d) that tanks be constructed of cross-linked, high-density polyethylene (HDXLPE) with oxidation-resistant liner.
- 14.9 Tanks shall have the capability for an overflow release.

15.0 VENT TRAP SCRUBBER FOR PRIMARY TANKS (ACID ONLY):

- 15.1 Vent trap shall be scrubbed 99% of the HTL vapors.
- 15.2 The principle of operations is that vapors from a closed system are neutralized in a solution prior to venting to the atmosphere. These vapors are generated or displaced as the tank is filled or undergoes thermal expansion and evaporation from ambient heating. The vapors enter the trap through a sparger that releases the vapors below the liquid level in the trap.

16.0 EXTERIOR TANKS (BLEACH AND ACID):

- 16.1 Contractor shall be responsible for the removal and proper disposal of chlorine and acid tanks, and its contents.
- 16.2 Contractor shall ensure: a) that tanks are replaced with the same size or larger tanks; b) that tanks are UV-stabilized; c) that tanks have a specific gravity of 1.9 minimum; and d) that tanks be constructed of cross-linked and high-density polyethylene (HDXLPE). **Tanks shall have double-wall containment with primary and secondary tanks combined into one unit.**
- 16.3 Contractor shall not replace tanks under this contract unless the City department's designee has approved the replacement, in writing.
- 16.4 All flexible connections are required to preserve warranty; this allows for expansion/contraction and reduces vibration stress.
- 16.5 Tanks shall be durable and be chemical-resistant and corrosion-resistant both, to chlorine and acids.
- 16.6 Tanks shall be seamless and be of a one-piece design.
- 16.7 Tanks shall have UV and oxidation linings.
- 16.8 Tanks shall have liquid level gauges with a reverse float-type system (Exhibit BB-2).
- 16.9 Tanks shall have a top discharge system with a locking quick adapter and ball valves.

17.0 TANK CONNECTION:

- 17.1 Tanks shall have flexible connections required for preserving the warranty; this allows expansion/contraction and reduces vibration stress.
- 17.2 Tanks shall have all tank fittings, tubing and pipe shall be durable, and be chemically and corrosion resistant.
- 17.3 Top discharge system shall have a locking quick adapter, ball valves, support brackets and locking manways (bolted to tanks), as per Exhibit BB-1.
- 17.4 **All dispensing connections outside of facility shall be secure, and have a locking mechanism or locking box to prevent vandalism.**
- 17.5 Any exterior dispensing connections outside of facilities shall be buried 12 inches below grade.

18.0 PARTS COVERED:

- 18.1 The Parks and Recreation Department owns Aquasol chemical controller systems and related equipment located at all aquatic facilities (Article 6.0). The Contractor shall remove controller systems, chemical pumps, hose/tubing/fittings and tanks, as per the City department's designee. These systems shall be removed under the contract at no cost to the Parks and Recreation Department.
- 18.2 Contractor shall provide controller systems and its related equipment. All tubing and plumbing exposed shall be insulated to prevent leakage of chemicals on electrical systems

and authorized personnel. All tubing and plumbing shall be secured and mounted to prevent damage/injury by persons entering the facilities.

18.3 The below-referenced manufacturers for monitoring systems, chemical feed pumps, and related equipment shall be approved by the City department's designee:

18.3.1 ACU-TROL -- PROGRAMMABLE CONTROLLER - MODEL NO. AK110 OR APPROVED EQUAL.

18.3.2 CHEMTROL -- PROGRAMMABLE CONTROLLER - MODEL NO. PC2000 OR APPROVED EQUAL.

18.3.3 SIEMENS -- "STRANTROL" IMPACT AQUATIC MANAGEMENT SYSTEM.

19.0 SPECIFICATIONS FOR CHEMICAL CONTROLLER SYSTEMS SHALL CONTAIN:

19.1 "ORP control" of sanitizer and/or oxidizer activity (24 hours/7 days per week) monitoring of response, and alerts to the operator(s) in case of a probe failure.

19.2 "pH control" with choice of acid or base feed (24 hours/7 days per week) monitoring of response, and alerts to the operator(s) in case of a probe failure.

19.3 Programmable shock treatment and chemical savings cycles:

- 19.3.1 Proportional feed
- 19.3.2 Feeder "ON and OFF" times
- 19.3.3 Mixing times/cycle times
- 19.3.4 Overfeed lockout times
- 19.3.5 pH and ORP set points
- 19.3.6 pH calibration
- 19.3.7 ORP calibration
- 19.3.8 Temp calibration
- 19.3.9 Acid/Base feed
- 19.3.10 4-pager (or) cell-phone numbers, and/or voice-mail message
- 19.3.11 2 passwords
- 19.3.12 Alarm

19.4 Saturation Index for water balance.

19.5 Automatic data logging for up to 999 tests.

19.6 Full screen menus in English and Spanish.

19.7 Screen display in "United States" units.

19.8 Compatible with all common sanitizers, oxidizers, and automated chloramines treatment (A.C.T.) program.

19.9 Sanitizer concentration displayed in parts per million, or mg/.

19.10 Programmable heater control.

19.11 Conductivity/total dissolved solids (TDS) control with auto-fill capability for salt generators.

- 19.12 Remote computer operations and graphic data display, ethernet and internet communications.
- 19.13 Communication to building management systems.
- 19.14 **Minimum five (5) year manufacturer's warranty.**
- 19.15 One four (4) hour operator's class on complete operation of systems (to be held) within 14 days, after completion of installation of all monitoring and operational systems.
- 19.16 Remote computer operation and graphic data display (using a windows software format).
 - 19.16.1 Bi-Directional Control:
 - 19.16.1.1 Shall have the ability to have real time control of remote equipment from the convenience of any computer with internet capability.
 - 19.16.1.2 Shall allow real time control of any equipment that is directly connected to the controller such as pumps, heaters, motors, etc.
 - 19.16.1.3 Shall allows control of all internet controller parameter in real time.
 - 19.16.1.4 Shall have lockout ability preventing anyone from manually changing the controller while it is accessed from the internet.
- 19.17 Twenty-four (24) hours and seven (7) days per week monitoring of response, which alerts the operators in case of a probe failure.
- 19.19 Four (4) sets of operator's manuals.
- 19.20 Four (4) sets of technical manuals.
- 19.21 Tubing and hoses shall be of No. 5 (size) or as defined by manufacturers' specifications.
- 19.22 Thirty (30) day data recording at two (2)-hour intervals.
- 19.23 Electrical services for all systems matching what is currently at facilities.
- 19.24 Flow cell with built-in flow switch to disable feeding in "no-flow" conditions.
- 19.25 Flow cell sampling port.
- 19.26 Chemical injection ports.
- 19.27 Data management server capabilities:
 - 19.27.1 Ability to view multiple pools on a single web page.
 - 19.27.2 Ability to record data from multiple pools.
 - 19.27.3 Ability to record and report relay on time.
 - 19.27.4 Ability to allow the City Parks and Recreation Department to select report frequency.

- 19.27.5 Ability to track in Excel format.
- 19.27.6 Ability to select one day, one week or a defined period of time parameters to review all data. All charts shall be refreshed to select the time changes.
- 19.27.7 Ability to change parameters on demand, remotely, and on-site.
- 19.28 Controllers shall have the following accessories for installation per location of pools, relays, feed tube, fuses, roller, assembly, connector, tube housing assembly, main circuit board, gear motor, faceplate, pH electrode, ORP electrode, sample flow cell, flow cell fittings, and mounting panel.
- 19.29 Acid pumps shall have the following accessories for installation per location of pools, feed tube, roller assembly, tube housing assembly, gear motor, safety pressure switch, chemical suction lines, chemical injection lines, and all tube fittings and connectors.
- 19.30 **All replacement of swimming pool monitoring system shall have written approval by the City department's designee. All units that are being replaced are to remain the City property and be left at site for the City department designee's disposal.**

20.0 DELIVERIES OF CHEMICALS TO POOLS:

- 20.1 The Contractor shall (upon completion of repairs) leave completion slips detailing the "by whom," "what," and "date/time" on tasks that were completed, before notifying the Parks and Recreation Department's designated representative by e-mail or facsimile within (4) four hours after service completion.
- 20.2 The Contractor shall (upon delivery) log and detail the present volume prior to dispensing, and leave completion slips detailing the "by whom," "what," and "time/date" that the tasks were completed, before notifying the Parks and Recreation Department's designated representative by e-mail or facsimile within (12) hours after service completion.
- 20.3 In the event a partial (less than full capacity of a tank) delivery of chemicals is made to a site, the Contractor shall be responsible for assuring that the balance quantity is delivered the same day prior to closing, or by 12:00 p.m. the next day. Expected capacity is defined as 95% of full volume of a tank, plus or minus (levels) before chemical dispensing.
- 20.4 The Contractor shall e-mail a weekly chemical delivery schedule for that upcoming week by 8:00 a.m. on Mondays. Where holidays occur, the Contractor shall e-mail the schedule on the last business day before 12:00 p.m. All deliveries made from Memorial Day through Labor Day (peak-season) shall be made as follows: Each delivery accompanied by a two (2) part delivery ticket which shall be signed by the Contractor's driver and the Parks and Recreation department personnel (if applicable) at the time of delivery. Operational hours are Tuesday through Sunday (1:00 p.m. to 8:00 p.m.).
- 20.5 All deliveries from October 1 through April 1 shall be required to deliver between normal business hours. No deliveries shall be made after sunset. At the time of delivery, the Contractor's driver shall leave a two-part delivery ticket (signed by the driver) in the drop box or drop pouch, located in the facility's pool office.

21.0 SITE CLEANUP:

- 21.1 Contractor shall clean the worksite occupied free of all rubbish, debris, and all work areas shall be left in a neat, orderly, and presentable condition. The disposal of all rubbish and debris generated as a result of the Contractor's work under this contract shall be the responsibility of the Contractor.

- 21.2 All debris/rubbish shall be considered the property of the Contractor, who then shall dispose of it in a manner consistent with the applicable municipal, state, and federal laws.
- 21.3 Once the work and/or services have been completed and ready for inspection, the Contractor shall notify the City's designated Parks and Recreation department's representative in writing and/or e-mail. The designated Parks and Recreation department's representative shall make the necessary inspections and to see if work has been properly performed and completed, in accordance with all terms of this Contract. If so, the work shall be accepted and approved for invoicing.
- 21.4 At any time, the Parks and Recreation Department's designated representative shall enter the worksite to inspect the work and anything else associated with that work.

22.0 TECHNICAL LITERATURE:

- 22.1 The Parks and Recreation Department shall review product literature/specification sheets from the Contractor. Technical literature shall be provided with the bid submittal, but is not required. However, the City reserves the right to request literature or clarifications after bid submittal, as needed.

23.0 DAMAGE TO CITY AND CITY PROPERTY:

- 23.1 Damages to facility interior and exterior by the Contractor shall result in an assessment of liquidated damages. The City's competitive bid process shall be used to determine the dollar amount the Contractor shall pay, and for work to be performed.

24.0 INVOICING:

- 24.1 Contractor shall submit monthly invoices by the tenth (10th) calendar day of each month, and for all invoices from the previous month. The Contractor shall submit one original invoice to "Accounts Payable" and another copy to the director's designee. All invoices shall be original invoices or certified original invoices on the Contractor's company stationery, with the original signed by an authorized agent of the Contractor. The invoice number shall not be duplicated during the term of the contract period.
- 24.2 Each invoice shall detail the following information:
 - 24.2.1 City Contract No. and Ordinance No.
 - 24.2.2 Copy of Work Order.
 - 24.2.3 Ordering Department and Facility Name, and address where services were performed.
 - 24.2.4 Date(s) and time(s) services performed.
 - 24.2.5 Parts or components repaired or replaced, Manufacturer Model/Part Nos. installed, detailed net unit pricing, percentage markup/discount and total cost per line item. (Contractor shall attach a photocopy of the supplier's invoice for each part having an individual cost of \$5.00 or more.)
 - 24.2.6 Total Invoice cost.
- 24.3 All unit prices for labor and parts shall be listed and easily identified against the quoted contract pricing.
- 24.4 Contractor shall mail invoices to: Parks & Recreation Department
Attn: Accounts Payable
2999 S. Wayside
Houston, Texas 77023

25.0 RAQ GOODS INDEX PRICE ADJUSTMENTS:

25.1 The Contractor shall request a price increase or decrease annually based on the previous twelve (12) months average of their direct cost, based on the raw goods index for chlorine and caustic changes, as it applies to pool chemicals under this contract. Price increases shall not exceed 10% annually. Request for price increases or decreases shall include monthly raw index and caustic changes, initial cost for chlorine and caustic chemicals at the time the contract was awarded or increase approved, and justification for the Contractor's request for an increase or decrease.

26.0 ADDITIONS & DELETIONS:

26.1 The City, by written notice from the City Purchasing Agent to the Contractor, at any time during the term of this contract, may add or delete like or similar equipment, locations and/or services to the list of equipment, locations and/or services to be performed. Any such written notice shall take effect on the date stated in the notice from the City. Equipment, locations and/or services added shall be subject to the contract services and charges or rates as an item already specified in the Fee Schedule. In the event the additional equipment, locations and/or service is not identical to any item already under contract, the charges therefore shall then be the Contractor's normal and customary charges or rates for the equipment, locations, and/or services classified in the Fee Schedule.

26.2 The Director of the Parks and Recreation Department shall choose to remove pools from service when a pool requires closure for repairs. In this situation, the Parks and Recreation Department's designate representative shall give the Contractor (30) days written notice to remove the pool from service. If the pool is shutdown for the period beginning and ending a monthly billing period, the Parks and Recreation Department shall not be invoiced for that monthly maintenance.

26.3 At the time of pool reopening, and if the pool reopens after the monthly billing period, partial service in a month shall be charged for the entire month's service. This allows the Contractor to recoup the additional cost of startup chemicals when the pool is reopened.

27.0 ESTIMATED QUANTITIES NOT GUARANTEED:

27.1 The estimated quantities specified herein are not a guarantee of actual quantities, as the City does not guarantee any particular quantity of swimming pool maintenance services during the term of this contract. The quantities may vary depending upon the actual needs of the user Department. The quantities specified herein are good faith estimates of usage during the term of this contract. Therefore, the City shall not be liable for any contractual Agreements/obligations the Contractor enters in to based on the City purchasing/requirements of all the quantities specified herein.

28.0 PERFORMANCE BONDS:

28.1 Contractor shall furnish and maintain throughout the contract term a "Performance Bond" in the amount of **10%** of the amount of the contract award. Contractor shall renew this bond for each renewal year of this contract in an amount equal to the contract amount for the applicable renewal term. The Bond shall be conditioned upon Contractor's full and timely performance of this contract, and shall be issued by a corporate surety authorized to write Surety Bonds in the State of Texas, and be in the form set out in Exhibit J "Performance Bond."

29.0 **WARRANTY OF SERVICES:**

- a) *Definitions:* "Acceptance" as used in this clause, means the act of an authorized representative of the City by which the City assumes for itself, approval of specific services as partial or complete performance of the contract.

"Correction" as used in this clause, means the elimination of a defect.

- b) Notwithstanding inspection and acceptance by the City or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this contract. **The City shall give written notice of any defect or nonconformance to the Contractor within a 60-month period after installation of equipment or from the date of acceptance by the City. All tank(s), monitoring systems, workmanship, materials, controllers, chemical feed Systems, connections and vent traps shall be provided).** This notice shall state either (1) that the Contractor shall correct or re-perform any defective or non-conforming services at no additional cost to the City, or (2) that the City does not require correction or re-performance.
- c) If the Contractor is required to correct or re-perform, it shall be at no cost to the City, and any services corrected or re-performed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or re-perform, the City may, by contract or otherwise, correct or replace with similar services and charge to the Contractor the cost occasioned to the City thereby, or make an equitable adjustment in the contract price.
- d) If the City does not require correction or re-performance, the City shall make an equitable adjustment in the contract price.

30.0 **INTERLOCAL AGREEMENT:**

- 30.1 Under the same terms and conditions hereunder, the contract may be expanded to other government entities through inter-local Agreements between the City of Houston and the respective government entity that encompass all or part of the products/services provided under this contract. Separate contracts shall be drawn to reflect the needs of each participating entity.

EXHIBIT "BB"
SCOPE OF WORK

FOR SWIMMING POOL MAINTENANCE SERVICES
AT THE 1475 W. GREY LOCATION
FOR THE GENERAL SERVICES DEPARTMENT

1.0 SERVICES TO BE PROVIDED:

- 1.1 Contractor shall provide two operation and maintenance manuals, and equipment specifications for repaired/replaced equipment.
- 1.2 Contractor must respond to all General Services Department (GSD) requests at the West Gray Multi-Service Center, 24 hours a day and seven (7) days a week within four (4) hours from receipt of a call, and from a designated City representative.
- 1.3 Upon each visit, the Contractor shall sign in/out at the foyer/lobby's front desk, located at the West Gray Multipurpose Center.
- 1.4 In addition to the Scope of Work Section B, Contractor shall repair all mechanical and heating systems/pool equipment at the West Gray Multi-Service Center at the request and approval of the GSD Property Manager or his/her designated representative. Contractor shall not execute mechanical repairs at the request of the Parks and Recreation Department unless authorized by a GSD-approved representative.
- 1.5 Contractor shall perform diagnostic services, suggest preventative maintenance procedures, and execute approved repairs and new replacement services (with labor) at the West Gray Multi-Service Center on all pool equipment including, but not limited to, pool motors, pool pumps, pool heaters, backwash equipment, pipe leaks, nozzles and valves.
- 1.6 Contractor shall repair or replace all defective equipment as needed at the West Gray Service Multi-Service Center, and shall follow all standards and procedures as required by the manufacturer.
- 1.7 Replacement parts shall be charged as cost plus markup, as listed in the contract's Fee Schedule.
- 1.8 All work shall require authorization from a General Services Department (GSD) Property Manager before the Contractor is cleared to perform proposed work.
- 1.9 Contractor shall provide a report on conditions of equipment and water chemical levels after each repair visit to the GSD Property Manager.
- 1.10 Cost of parts, materials, and labor used in the performance of this contract shall be charged to the department. All components shall be listed individually along with its cost plus markup. The Contractor shall provide (along with their invoices for parts and components) a copy of its supplier's invoice(s).
- 1.11 All mechanical equipment, installation and workmanship shall adhere to all City of Houston Fire and Hazardous Material Codes, and shall meet EPA, OSHA, TCEQ, and ASTM national standards. All installations and equipment used to make repairs shall meet or exceed the design specifications of the existing equipment.

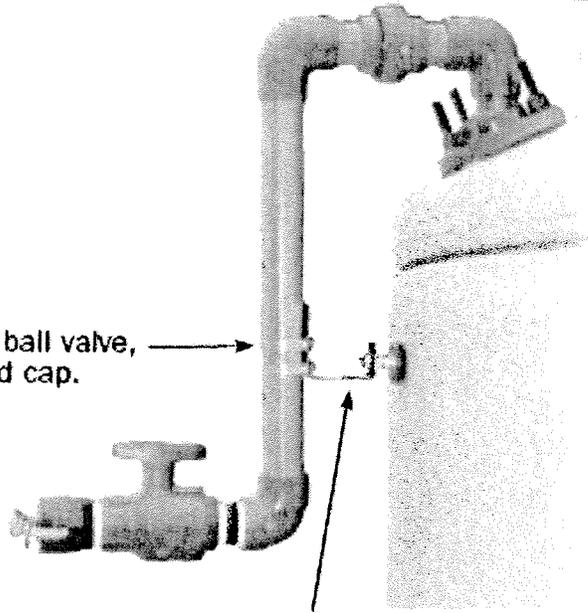
2.0 INVOICING:

- 2.1 Bill shall be broken out for all work as it relates to GSD's portion of the contract. (GSD will provide this information.)
- 2.2 Contractor shall supply the following invoice information:
 - 2.2.1 City Contract and Ordinance Numbers.
 - 2.2.2 Copy of the Work Order.
 - 2.2.3 Ordering Department, Facility Name, and address where services were performed.
 - 2.2.4 Date(s) and time(s) that services were performed.
 - 2.2.5 Parts or components repaired or replaced, Manufacturer Model/Part Nos. installed, detailed net unit pricing, percentage markup/discount, and total cost per line item.
 - 2.2.6 Contractor shall attach a photocopy of the supplier's invoice(s) for each part having an individual cost of \$5.00 or more.
 - 2.2.7 Total invoice cost.
- 2.3 All unit prices for labor and parts shall be listed and easily identified against the quoted contract pricing (Fee Schedule).
- 2.4 Contractor shall mail invoices to:
 - COH General Services Department
 - Accounts Payable
 - P.O Box 61189
 - Houston, Texas 77208-1189

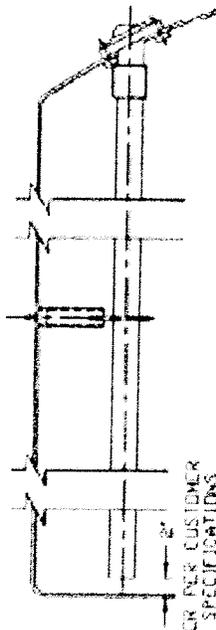
EXHIBIT BB-1

Top Fill / Top Discharge Assemblies

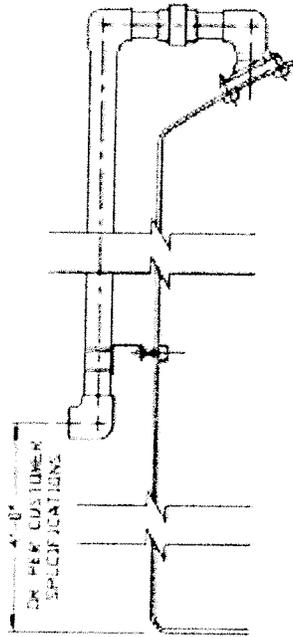
Fill line with optional ball valve,
quick adapter and cap.



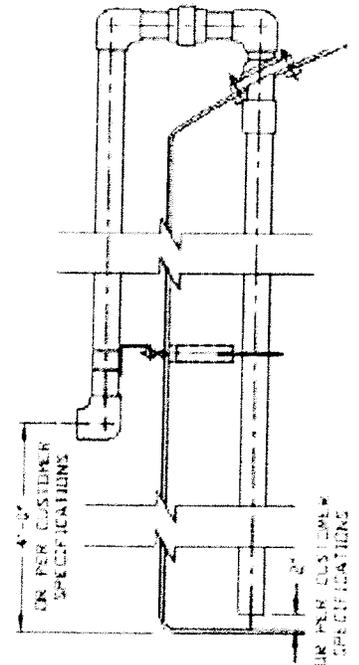
(1) Support required for every
6' of pipe.



INTERIOR DROP PIPE

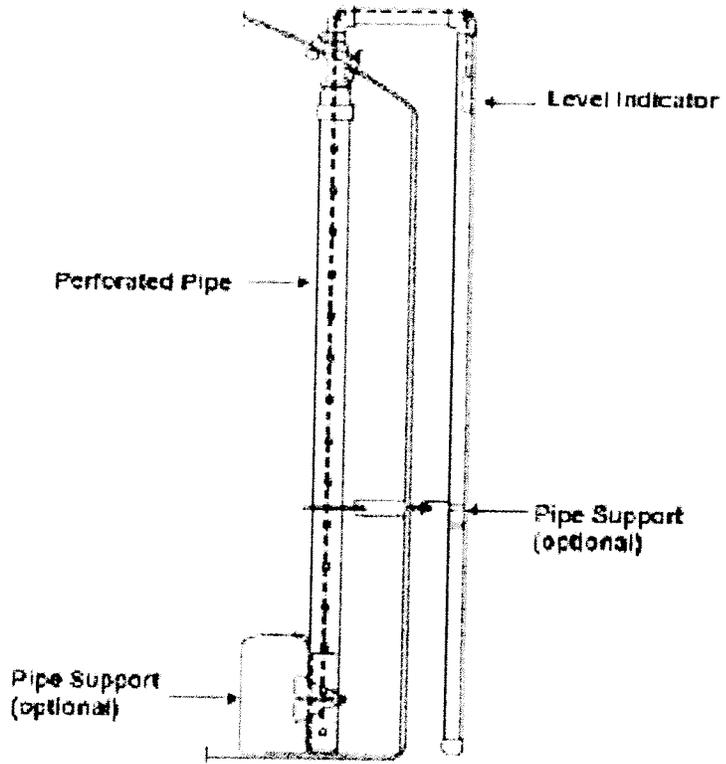


EXTERIOR DROP PIPE



COMBINATION DROP PIPE

Liquid Level Gauges



Reverse Float Type

EXHIBIT BB-3

Sample Form -- Wireless Swimming Pool Monitoring (Web-Internet Based)

Location	Body of Water	ORP	pH	PPM	Status Update	Enter Daily Reading	Update Reading	History	Details	Alert
Agnes Moffit Pool	Baby Pool	784	7.4	3	10/23/06 @ 11:30 PM.	Enter Daily Reading	Update readings	History	Details	Power - Restore
Agnes Moffit Pool	Large Pool	518	7.8	0.5	10/23/06 @ 11:30 PM.	Enter Daily Reading	Update readings	History	Details	Power - Restore
Beverly Hills Pool	Large Pool	212	7.2	0.05	10/23/06 @ 9:39 PM	Enter Daily Reading	Update readings	History	Details	
East Wood Pool	Baby Pool	369	7.4	0.5	10/20/06 @ 8:44 PM>	Enter Daily Reading	Update readings	History	Details	
Finnigan Pool	Large Pool	215	8	0.5	10/23/06 @ 8:19 AM	Enter Daily Reading	Update readings	History	Details	Power - Restore
Finnigan Pool	Baby Pool	200	8	0.05	10/23/06 @ 4:09 PM	Enter Daily Reading	Update readings	History	Details	
Glenbrook Pool	Large Pool	737	8	4	10/23/06 @ 4:09 PM	Enter Daily Reading	Update readings	History	Details	
Habort Taylor Pool	Large Pool	613	8	5	10/23/06 @ 7:56 AM	Enter Daily Reading	Update readings	History	Details	Power - Restore
Judson Robinson	Large Pool	652	7.8	5	10/23/06 @ 9:15 A.M.	Enter Daily Reading	Update readings	History	Details	

EXHIBIT BB-4

INVENTORY LIST OF POOL LOCATIONS AND ADDRESSES

Pool Location	Address	Tank Size Gallon: Chlorine and Second.		Tank Size Gallon: Acid and Second.		Vent Trap Size Gallon
Agnes Moffitt *	10645 Hammerly	1	1	1	1	1
Independence Heights	603 East 35 th	1	1	1	1	1
Lincoln City	1048 Grenshaw	1	1	1	1	1
Love	1000 West 12th	1	1	1	1	1
Memorial	6402 Amot	1	1	1	1	1
Oak Forest	1400 Dubarry	1	1	1	1	1
G. Schwartz	8203 Vogue	1	1	1	1	1
West Grey	1475 W. Grey	1	1	1	1	1
H. Stude	1031 Stude	1	1	1	1	1
T.C. Jester *	4205 T. C. Jester	1	1	1	1	1
Emancipation	3018 Dowling	1	1	1	1	1
Landsale	8201 Roos	1	1	1	1	1
Alief	11903 Bellaire	1	1	1	1	1
Sunnyside	3502 Bellfort	1	1	1	1	1
Townwood	3402 Simbrooks	1	1	1	1	1
Westbury	10605 Mullins	1	1	1	1	1
Sharpstown*	6600 Harbortown	1	1	1	1	1
Windsor Village	1441 Croquet	1	1	1	1	1
Yellowstone	6900 Lasalette	1	1	1	1	1
Beverly Hills	9800 Kingspoint	1	1	1	1	1
Cloverland	11800 Scott	1	1	1	1	1
Dezavala	7521 Avenue H	1	1	1	1	1
Eastwood	5000 Harrisburg	1	1	1	1	1
Glenbrook	8201 North Bayou	1	1	1	1	1
MacGregor	5225 Calhoun	1	1	1	1	1
Mason	541 South 75th	1	1	1	1	1
Reveille	7700 Oak Vista	1	1	1	1	1
Sagemont	11507 Hughes	1	1	1	1	1
Wilson Memorial	100 Gilpin	1	1	1	1	1
Clinton	203 Mississippi	1	1	1	1	1
Denver Harbor	1020 Gazin	1	1	1	1	1
Finnigan	4900 Providence	1	1	1	1	1
Greenwood	602 Braesford	1	1	1	1	1
Hobart Taylor	8100 Kenton	1	1	1	1	1
Moody	3201 Fulton	1	1	1	1	1
Northline	6911 Nording	1	1	1	1	1
Judson Robinson, Sr.	1422 Ledwicke	1	1	1	1	1
Tidwell*	9720 Spaulding	1	1	1	1	1
Tuffly	3200 Russell	1	1	1	1	1

EXHIBIT "C"
EQUAL EMPLOYMENT OPPORTUNITY

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.
2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.
3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.
5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor, subcontractor, vendor, supplier, or lessee.
6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.
7. The contractor shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
8. The contractor shall file and shall cause his or her subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.

EXHIBIT "D"
MWBE REQUIREMENTS

EXHIBIT "DD-1"
CITY OF HOUSTON CERTIFIED M/WBE SUBCONTRACT TERMS

Contractor shall insure that all subcontracts with M/WBE subcontractors and suppliers are clearly labeled "THIS CONTRACT IS SUBJECT TO BINDING ARBITRATION ACCORDING TO THE TEXAS GENERAL ARBITRATION ACT" and contain the following terms:

1. Pretty Quick Polishing Services, LLC. (M/WBE subcontractor) shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the Mayor's Office of Business Opportunity (MOBO) Director ("the Director")
2. Pretty Quick Polishing Services, LLC. (M/WBE subcontractor) shall permit representatives of the City of Houston, at all reasonable times, to perform 1) audits of the books and records of the subcontractor, and 2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four (4) years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.
3. Within five (5) business days of execution of this subcontract, Contractor (prime contractor) and Subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.
4. As conclude by the parties to this subcontract, and as evidenced by their signatures hereto, any controversy between the parties involving the construction or application of any of the terms, covenants or conditions of this subcontract shall, on the written request of one party served upon the other or upon notice by Director served on both parties, be submitted to binding arbitration, under the Texas General Arbitration Act (Tex. Civ. Prac. & Rem. Code Ann., Ch. 171 - "the Act"). Arbitration shall be conducted according to the following procedures:
 - a. Upon the decision of the Director or upon written notice to the Director from either party that a dispute has arisen, the Director shall notify all parties that they must resolve the dispute within thirty (30) days or the matter may be referred to arbitration.
 - b. If the dispute is not resolved within the time specified, any party or the Director may submit the matter to arbitration conducted by the American Arbitration Association under the rules of the American Arbitration Association, except as otherwise required by the City's contract with American Arbitration Association on file in the MOBO.
 - c. Each party shall pay all fees required by the American Arbitration Association and sign a form releasing the American Arbitration Association and its arbitrators from liability for decisions reached in the arbitration.
 - d. In the event the American Arbitration Association no longer administers MOBO arbitration for the City, the Director shall prescribe alternate procedures as necessary to provide arbitration by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

These provisions apply to goal-oriented contracts. A goal oriented contract means any contract for the supply of goods or non-personal or non-professional services in excess of \$100,000.00 for which competitive bids are required by law; not within the scope of the MBE/WBE program of the United States Environmental Protection Agency on the United States Department of Transportation; and ;, which the City Purchasing Agent has determined to have significant M/WBE subcontracting potential in fields which there are an adequate number on known MBEs and/or WBE's to compete for City contract.

The M/WBE policy of the City of Houston will be discussed during the pre-bid. For information assistance, and/or to receive a copy of the MOBO policy and/or ordinance contact MOBO at (832) 393-0600, 611 Walker, 7th Floor, Houston, Texas 77002.

EXHIBIT DD-2

MAYOR'S OFFICE OF BUSINESS OPPORTUNITY & CONTRACT COMPLIANCE
M/WBE UTILIZATION REPORT

Report Period _____

PROJECT NAME & NUMBER: SWIMMING POOL MAINTENANCE SERVICES
 PRIME CONTRACTOR: COMMERCIAL CHEMICAL PRODUCTS, DBA POOLSURE
 ADDRESS: 1707 Townhurst, Houston, Texas 77043
 LIAISON/PHONE No.: 713.683.6436 x-101
 AWARD DATE: FEBRUARY, 2012
 CONTRACT No.: S10-L23988, OA 4600011362
 CONTRACT AMOUNT: \$4,441,890.00
 M/WBE GOAL: 11%

M/WBE SUBVENDOR NAME	DATE OF MOBO CERTIFICATION	DATE OF SUBCONTRACT	SUBCONTRACT AMOUNT	% OF TOTAL CONTRACT	AMOUNT PAID TO DATE	% OF CONTRACT TO DATE
Pretty Quick Delivery Services, LLC			\$488,607.90	11%		
Use additional pages if needed. Submit by the 15th day of the following month. Provide support documentation on all revenues paid to end of the report period to: M/WBEs to reflect up/down variances on contract amount						
MOBO ATTN: Carlecia D. Wright, 832-393-0600 611 Walker, 7 th Floor Houston, Texas 77002						

EXHIBIT "E"
DRUG POLICY COMPLIANCE AGREEMENT

I, Kevin Boyer (Name) COO (Title) as an owner or officer of
Commercial Chemical Products Inc. dba Poolsure (Name of Company) (Contractor)

have authority to bind Contractor with respect to its bid, offer or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, I affirm that the Contractor is aware of and by the time the contract is awarded will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before the City issues a notice to proceed:

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of the Contractor that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with the City of Houston.

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the contract with the City and may result in non-award or termination of the contract by the City of Houston.

Date 12-21-11

Contractor Name Kevin Boyer for Poolsure

Signature K-Boyer

Title COO

EXHIBIT "F"
CONTRACTOR'S CERTIFICATION OF NO SAFETY IMPACT POSITIONS
IN PERFORMANCE OF A CITY CONTRACT

I, Kesin Boyer (Name)(Print/Type) COO (Title)

as an owner or officer of Commercial Chemical Products, Inc. d/b/a Poolcare (Contractor) have authority to bind the Contractor with respect to its bid, and I hereby certify that Contractor has no employee safety impact positions as defined in §5.18 of Executive Order No. 1-31 that will be involved in performing this City Contract. Contractor agrees and covenants that it shall immediately notify the City's Director of Personnel if any safety impact positions are established to provide services in performing this City Contract.

12.21.11
Date

Kesin Boyer for Poolcare
Contractor Name

[Signature]
Signature

COO
Title

CONTRACTOR'S CERTIFICATION OF NON-APPLICATION OF
CITY OF HOUSTON DRUG DETECTION AND DETERRENCE PROCEDURES
FOR CONTRACTORS

I, _____ (NAME) (PRINT/TYPE)

as an owner or officer of _____ (Contractor) have authority to bind the Contractor with respect to its bid, and I hereby certify that Contractor has fewer than fifteen (15) employees during any 20-week period during a calendar year and also certify that Contractor has no employee safety impact positions as defined in 5.18 of Executive Order No. 1-31 that will be involved in performing this City Contract. Safety impact position means a Contractor's employment position involving job duties that if performed with inattentiveness, errors in judgment, or diminished coordination, dexterity, or composure may result in mistakes that could present a real and/or imminent threat to the personal health or safety of the employee, co-workers, and/or the public.

DATE

CONTRACTOR NAME

SIGNATURE

TITLE

**EXHIBIT "G"
DRUG POLICY COMPLIANCE DECLARATION**

I, Kevin Boyer COO as an owner or officer of
 (Name) (Print/Type) (Title)
Commercial Chemical Products, Inc. dba Poolcare
 (Name of Company) (Contractor or Vendor)

have personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding 6 months from 6.21 to 12.21, 20 11.

KB
Initials

A written Drug Free Workplace Policy has been implemented and employees notified. The policy meets the criteria established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Policy).

KB
Initials

Written drug testing procedures have been implemented in conformity with the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31. Employees have been notified of such procedures.

KB
Initials

Collection/testing has been conducted in compliance with federal Health and Human Services (HHS) guidelines.

KB
Initials

Appropriate safety impact positions have been designated for employee positions performing on the City of Houston contract. The number of employees in safety impact positions during this reporting period is 5.

KB
Initials

From 6.21.11 to 12.21.11 the following test has occurred
 (Start date) (End date)

	Random	Reasonable Suspicion	Post Accident	Total
Number Employees Tested	3	0	0	3
Number Employees Positive	0	0	0	0
Percent Employees Positive	0%	0%	0%	0%

KB
Initials

Any employee who tested positive was immediately removed from the City worksite consistent with the Mayor's Policy and Executive Order No. 1-31.

KB
Initials

I affirm that falsification or failure to submit this declaration timely in accordance with established guidelines will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in this declaration are within my personal knowledge and are true and correct.

12.21.11
(Date)

Kevin Boyer
(Typed or Printed Name)
KB
(Signature)
COO
(Title)

EXHIBIT "H"
FEEES AND COSTS

EXHIBIT H (FEES AND COSTS)

Item #	Description	U/M	Unit Price
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Section 1, Years 1-3: Purchase of Tanks and Operational Equipment, and Installation.

1	Chlorine Tank with Installation.	EA	\$ 800.00
2	Chlorine Secondary Tank with Installation.	EA	\$ 800.00
3	Acid Tank with Installation.	EA	\$ 450.00
4	Acid Secondary Tank with Installation.	EA	\$ 450.00
5	Vent Trap Tank with Intallation.	EA	\$ 50.00

Section 2, Years 1-3: Purchase and Dispensing of Chemicals.

1	Sulfuric Acid in Liquid Form, with Dispensing.	GAL	\$ 2.25
2	Baking Soda/Sodium Bicarbonate (Purchased and Dispensed in 25lb-50lb Bags).	LB	\$ 0.10
3	Sodium Hypochlorite in Liquid Form with Dispensing.	GAL	\$ 1.35
4	Hydrochloric Acid with Dispensing in Liquid Form (Gallons).	GAL	\$ 2.25
5	Soda Ash with Dispensing. (Purchased and Dispensed in 25lb-50lb Bags.)	LB	\$ 0.10
6	Sodium Thioulfate Penta Hydrate with Dispensing.	LB	\$ 0.10
7	Calcium Hypochlorite in Granular Form, with Dispensing. (25lb Containers.)	EA	\$ 1.35

Section 3, Years 1-3: Purchase and Installation of Chemical Controllers.
(Payment Shall Be Invoiced Per Site.)

1	Purchase and Installation Fee (Including Wading Pools).	EA	\$ 1,999.00
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Section 4, Years 1-3: Annual Service and Maintenance Fee(s).

1	Agnes Mofitt Pool Location at 10645 Hammerly.	EA	\$ 1,200.00
2	Independence Heights Pool Location at 603 East 35th.	EA	\$ 1,200.00
3	Lincoln City Pool Location at 1048 Grenshaw.	EA	\$ 1,200.00
4	Love Pool Location at 1000 West 12th.	EA	\$ 1,200.00
5	Memorial Pool Location at 6402 Amot.	EA	\$ 1,200.00
6	Oak Forest Pool Location at 1400 Dubarry.	EA	\$ 1,200.00
7	G. Schwartz Pool Location at 8203 Vogue.	EA	\$ 1,200.00
8	West Grey Pool Location at 1475 West Grey.	EA	\$ 1,200.00
9	H. Stude Pool Location at 1031 Stude.	EA	\$ 1,200.00
10	T.C. Jester Pool Location at 4205 T.C. Jester.	EA	\$ 1,200.00
11	Emancipation Pool Location at 3018 Dowling.	EA	\$ 1,200.00
12	Alief Pool Location at 11903 Bellaire.	EA	\$ 1,200.00
13	Sunnyside Pool Location at 3502 Bellfort.	EA	\$ 1,200.00
14	Townwood Pool Location at 3402 Simbrooks.	EA	\$ 1,200.00
15	Westbury Pool Location at 10605 Mullins.	EA	\$ 1,200.00
16	Sharpstown Pool Location at 6600 Harbortown.	EA	\$ 1,200.00
17	Windsor Village Pool Location at 1441 Croquet.	EA	\$ 1,200.00
18	Yellstone Pool Location at 6900 Lasallete.	EA	\$ 1,200.00
19	Beverly Hills Pool Location at 9800 Kingspoint.	EA	\$ 1,200.00

EXHIBIT H (FEES AND COSTS)

Item #	Description	U/M	Unit Price
20	Cloverland Pool Location at 11800 Scott.	EA	\$ 1,200.00
21	Dezavala Pool Location at 7521 Avenue H.	EA	\$ 1,200.00
22	Eastwood Pool Location at 500 Harrisburg.	EA	\$ 1,200.00
23	Glenbrook Pool Location at 8201 North Bayou.	EA	\$ 1,200.00
24	MacGregor Pool Location at 5225 Calhoun.	EA	\$ 1,200.00
25	Mason Pool Location at 541 South 75th.	EA	\$ 1,200.00
26	Reveille Pool Location at 7700 Oak Vista.	EA	\$ 1,200.00
27	Sagemont Pool Location at 11507 Hughes.	EA	\$ 1,200.00
28	Wilson Memorial Pool Location at 100 Gilpin.	EA	\$ 1,200.00
29	Clinton Pool Location at 203 Mississippi.	EA	\$ 1,200.00
30	Denver Harbor Pool Location at 1020 Gazin.	EA	\$ 1,200.00
31	Finnegan Pool Location at 4900 Providence.	EA	\$ 1,200.00
32	Greenwood Pool Location at 602 Braesford.	EA	\$ 1,200.00
33	Hobart Taylor Pool Location at 8100 Kenton.	EA	\$ 1,200.00
34	Moody Pool Location at 3201 Fulton.	EA	\$ 1,200.00
35	Northline Pool Location at 6911 Nording	EA	\$ 1,200.00
36	Judson Robinson, Jr. Pool Location at 1422 Ledwicke.	EA	\$ 1,200.00
37	Tidwell Pool Location at 9720 Spauling.	EA	\$ 1,200.00
38	Tuffly Pool Location at 3200 Russell.	EA	\$ 1,200.00

Section 5, Years 1 - 3: West Grey Community Center: Seasonal Mechanical Service and Repairs.

1	Seasonal Mechanical Service and Repairs for the West Grey Pool Location, 1475 West Grey.	25% Markup
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Section 1, Option Year 1 & 2: Purchase of Tanks and Operational Equipment, and Installation.

1	Chlorine Tank with Installation.	EA	\$ 800.00
2	Chlorine Secondary Tank with Installation.	EA	\$ 800.00
3	Acid Tank with Installation.	EA	\$ 450.00
4	Acid Secondary Tank with Installation.	EA	\$ 450.00
5	Vent Trap Tank with Intallation.	EA	\$ 50.00

Section 2, Option Year 1 & 2: Purchase and Dispensing of Chemicals.

1	Sulfuric Acid in Liquid Form, with Dispensing.	GAL	\$ 2.25
2	Baking Soda/Sodium Bicarbonate (Purchased and Dispensed in 25lb-50lb Bags).	LB	\$ 0.10
3	Sodium Hypochlorite in Liquid Form with Dispensing.	GAL	\$ 1.35
4	Hydrochloric Acid with Dispensing in Liquid Form (Gallons).	GAL	\$ 2.25
5	Soda Ash with Dispensing. (Purchased and Dispensed in 25lb-50lb Bags.)	LB	\$ 0.10
6	Sodium Thioulfate Penta Hydrate with Dispensing.	LB	\$ 0.10
7	Calcium Hypochlorite in Granular Form, with Dispensing. (25lb Containers.)	EA	\$ 1.35

EXHIBIT H (FEES AND COSTS)

Item #	Description	U/M	Unit Price
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Section 3, Option Year 1 & 2: Purchase and Installation of Chemical Controllers.
(Payment Shall Be Invoiced Per Site.)

1	Purchase and Installation Fee (Including Wading Pools).	EA	\$ 1,999.00
---	---	----	-------------

Section 4, Option Year 1 & 2: Annual Service and Maintenance Fee(s).

1	Agnes Mofitt Pool Location at 10645 Hammerly.	EA	\$ 1,200.00
2	Independence Heights Pool Location at 603 East 35th.	EA	\$ 1,200.00
3	Lincoln City Pool Location at 1048 Grenshaw.	EA	\$ 1,200.00
4	Love Pool Location at 1000 West 12th.	EA	\$ 1,200.00
5	Memorial Pool Location at 6402 Amot.	EA	\$ 1,200.00
6	Oak Forest Pool Location at 1400 Dubarry.	EA	\$ 1,200.00
7	G. Schwartz Pool Location at 8203 Voque.	EA	\$ 1,200.00
8	West Grey Pool Location at 1475 West Grey.	EA	\$ 1,200.00
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25	Mason Pool Location at 541 South 75th.	EA	\$ 1,200.00
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38	Tuffly Pool Location at 3200 Russell.	EA	\$ 1,200.00

EXHIBIT H (FEES AND COSTS)

Item #	Description	U/M	Unit Price
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Section 5, Option Year 1 & 2: West Grey Community Center: Seasonal Mechanical Service and Repairs.

1	Seasonal Mechanical Service and Repairs for the West Grey Pool Location, 1475 West Grey.		25% Markup
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EXHIBIT "I"
PAY OR PLAY PROGRAM



FORM POP 2 (DOCUMENT 00630)

CERTIFICATION OF AGREEMENT TO COMPLY WITH PAY OR PLAY PROGRAM

Contractor Name: Commercial Chemical Products, Inc. dba Polbanc \$ 4,441,530.00 (Contractor/Subcontractor) (Amount of Contract)

Contractor Address: 1707 Townhurst Houston, TX 77043

Project No.: [GFS/CIP/AIP/File No.] 910-623983

Project Name: [Legal Project Name] Swimming Pool Maintenance Services

In accordance with the City of Houston Pay or Play Program authorized by Ordinance 2007-534, Contractor agrees to abide by the terms of this Program. This certification is required of all contractors for contracts subject to the program. You must agree EITHER to PAY or to PLAY for each covered employee, including those of subcontractors subject to the program.

[] Yes [X] No Contractor agrees to Pay \$1.00 per hour for work performed by covered employees, including compliance for covered subcontractors' employees and contract labor, under the contract with the City.

[X] Yes [] No Contractor agrees to offer health benefits to each covered employee, including compliance by the covered subcontractors that meet or exceed the following criteria: (1) the employer will contribute no less than \$150 per employee per month toward the total premium cost; and (2) the employee contribution, if any amount, will be no greater than 50% of the total premium cost.

[] Yes [X] No Contractor agrees to pay on behalf of some covered employees and contract labor and play on behalf of other covered employees, in accordance with program requirements, including subcontractors' employees, if applicable.

[] Yes [X] No If contract labor is utilized the Contractor agrees to report hours worked by the contract laborer and Pay \$1.00 per hour for work performed.

[X] Yes [] No Contractor will comply with all provisions of the Pay or Play Program and will furnish all information and reports requested to determine compliance with program provisions.

[X] Yes [] No For Prime Contractors Only: Contractor will file compliance reports with the City, which will include activity for subcontractors subject to the program, in the form and to the extent requested by the administering department or the Affirmative Action and Contract Compliance Office. Compliance reports shall contain information including, but not limited to, documentation showing employee health coverage and employee work records.

Table with 3 columns: Following information is Mandatory, Prime Contractor, Sub-Contractor. Rows include Total No. Of Employees on City Job, No. Of Employees - 'Playing', No. Of Employees - 'Paying', No. Of Employees 'Exempt'.

I hereby certify that the above information is true and correct.

CONTRACTOR (Signature) Kevin P. Boyer

DATE 12.26.11

NAME AND TITLE (Print or type) Kevin P. Boyer COO



City of Houston

Form POP-1A
7.1.07

**Pay or Play Program
Acknowledgement Form**

What this form does. This form acknowledges your awareness of the Pay or Play program. Your signature affirms that you will comply with the requirements of the program if you are the successful bidder/proposer, and ensure the same on behalf of subcontracts subject to the Pay or Play Program.

If you cannot make this assurance now, do not return this form.

For more information, contact the Contract Administrator.

Routing. Return this form with your bid or proposal.

I declare under penalty of perjury under the laws of the State of Texas that if awarded a contract, I will comply with the requirements of the Pay or Play Program.

K. R. Boyer
Signature

12.21.11
Date

Keon R. Boyer
Print Name

109614
City Vendor ID

Commercial Chemical Products, Inc.
Company Name
aka Poolsure

713-683-6436 x101
Phone Number

kboyer@poolsure.com
Email Address

EXHIBIT "J"

PERFORMANCE BOND
(Annual Form)

Argonaut Insurance Company
10101 Reunion Place, Suite 500
San Antonio, TX 78216

Bond No. SUR0008312

KNOW ALL MEN BY THESE PRESENTS, that we, Commercial Chemical Products, Inc. dba Poolsure, as Principal, and Argonaut Insurance Company, licensed to do business in the State of Texas, as Surety, are held and firmly bound unto City of Houston (Obligee), in the penal sum of Four Hundred Forty-Four Thousand One Hundred Eighty-Nine and No/100 Dollars (\$444,189.00), lawful money of the United States of America, for the payment of which sum, well and truly to be made, the Principal and Surety do bind themselves, their heirs, executors, administrators, and successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the above bounden Principal has entered into a certain written Contract with the above named Obligee, effective the 1st day of March, 2012, and terminating the 28th day of February, 2013, for Swimming Pool Maintenance Service Contract and more fully described in said Contract, a copy of which is attached, which Agreement is made a part hereof and incorporated herein by reference, except that nothing said therein shall alter, enlarge, expand or otherwise modify the term of the bond as set out below.

NOW, THEREFORE, if Principal, its executors, administrators, successors and assigns shall promptly and faithfully perform the Contract, according to the terms, stipulations or conditions thereof, then this obligation shall become null and void, otherwise to remain in full force and effect. This bond is executed by the Surety and accepted by the Obligee subject to the following express condition:

Notwithstanding the provisions of the Contract, the term of this bond shall apply from 1st day of March, 2012, until 28th day of February, 2013, and may be extended by the Surety by Continuation Certificate. However, neither nonrenewal by the Surety, nor the failure or inability of the Principal to file a replacement bond in the event of nonrenewal, shall itself constitute a loss to the obligee recoverable under this bond or any renewal or continuation thereof. The liability of the Surety under this bond and all continuation certificates issued in connection therewith shall not be cumulative and shall in no event exceed the amount as set forth in this bond or in any additions, riders, or endorsements properly issued by the Surety as supplements thereto.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of said Chapter to the same extent as if it were copied at length herein.

Sealed with our seals and dated this 8th day of February, 2012.

PRINCIPAL

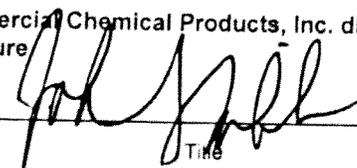
Commercial Chemical Products, Inc. dba
Poolsure

ARGONAUT INSURANCE COMPANY

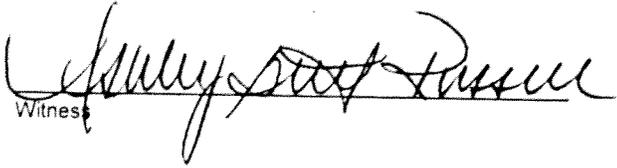
Brett A. Tisdale, Attorney-in-Fact



Witness



Title



Witness



Brett A. Tisdale, Attorney-in-Fact

Agreed and acknowledged this _____ day of _____, 20____.

this contract has been reviewed as to form by the undersigned legal assistant and has been found to meet established legal department criteria. The legal department has not reviewed the content of these documents.

February 13 2012

Brenda Lewis

By: _____

- a. This Contract has been reviewed as to form by the undersigned legal assistant and has been found to meet established Legal Department criteria. The Legal Department has not reviewed the content of these documents. Date _____
Legal Assistant SEE SIGNATURE ON PAGE 47A.

Argonaut Insurance Company
225 W. Washington, 6th Floor
Chicago, IL 60606

AS-0031634

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That the Argonaut Insurance Company, a Corporation duly organized and existing under the laws of the State of Illinois and having its principal office in the County of Cook, Illinois does hereby nominate, constitute and appoint:

David G. Miclette, Edward G. Britt, Jr., David T. Miclette, Barry K. McCord, Kristine S. Lovett, Ashley Britt Russell, Joni Bowen, Mary Ann Garcia, Brett A. Tisdale

its true and lawful agent and attorney-in-fact, to make, execute, seal and deliver for and on its behalf as surety, and as its act and deed any and all bonds, contracts, agreements of indemnity and other undertakings in suretyship provided, however, that the penal sum of any one such instrument executed hereunder shall not exceed the sum of:

\$15,000,000.00

This Power of Attorney is granted and is signed and sealed under and by the authority of the following Resolution adopted by the Board of Directors of Argonaut Insurance Company:

"RESOLVED, That the President, Senior Vice President, Vice President, Assistant Vice President, Secretary, Treasurer and each of them hereby is authorized to execute powers of attorney, and such authority can be executed by use of facsimile signature, which may be attested or acknowledged by any officer or attorney, of the Company, qualifying the attorney or attorneys named in the given power of attorney, to execute in behalf of, and acknowledge as the act and deed of the Argonaut Insurance Company, all bond undertakings and contracts of suretyship, and to affix the corporate seal thereto."

IN WITNESS WHEREOF, Argonaut Insurance Company has caused its official seal to be hereunto affixed and these presents to be signed by its duly authorized officer on the 15th day of September, 2008.

Argonaut Insurance Company

Michael E. Arledge

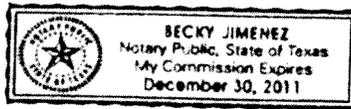
By: _____

Michael E. Arledge President

STATE OF TEXAS
COUNTY OF BEXAR SS:

On this 15th day of September, 2008 A.D., before me, a Notary Public of the State of Texas, in and for the County of Bexar, duly commissioned and qualified, came THE ABOVE OFFICER OF THE COMPANY, to me personally known to be the individual and officer described in, and who executed the preceding instrument, and he acknowledged the execution of same, and being by me duly sworn, deposed and said that he is the officer of the said Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and the said Corporate Seal and his signature as officer were duly affixed and subscribed to the said instrument by the authority and direction of the said corporation, and that Resolution adopted by the Board of Directors of said Company, referred to in the preceding instrument is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed my Official Seal at the County of Bexar, the day and year first above written.



Becky Jimenez

(Notary Public)

I, the undersigned Officer of the Argonaut Insurance Company, Illinois Corporation, do hereby certify that the original POWER OF ATTORNEY of which the foregoing is a full, true and correct copy is still in full force and effect and has not been revoked.

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the Seal of said Company, on the 8th day of February 2012

Joshua C. Betz
Joshua C. Betz Assistant Vice President

IMPORTANT NOTICE

To obtain information or make a complaint:

You may call Argonaut Insurance Company and its affiliates by telephone for information or to make a complaint:

ARGONAUT INSURANCE COMPANY

Please send all notices of claim on this bond to:
Argo Surety Claims
(210) 321-8400

10101 Reunion Place
San Antonio, TX 78216-4156

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:

1-800-252-3439

You may write the Texas Department of Insurance:

P. O. Box 149104
Austin, TX 78714-9104
Fax: (512) 475-1771
Web: <http://www.tdi.state.tx.us>
E-mail: ConsumerProtection@tdi.state.tx.us

PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim you should contact your agent or Argo Surety first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

ATTACH THIS NOTICE TO YOUR BOND:

This notice is for information only and does not become a part or condition of the attached document and is given to comply with Texas legal and regulatory requirements.