

THE STATE OF TEXAS

BID # S28-L22349

COUNTY OF HARRIS

ORDINANCE # 07-0573  
CONTRACT # 4600007852

**I. PARTIES**

**A. Address**

THIS AGREEMENT FOR SWIMMING POOL MAINTENANCE SERVICES FOR THE PARKS AND RECREATION DEPARTMENT ("Agreement") is made on the Countersignature Date between the CITY OF HOUSTON, TEXAS ("City"), a municipal corporation and COMMERCIAL CHEMICAL PRODUCTS, INC. DBA POOLSURE ("Contractor or Vendor"), 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  
of Parks & Recreation Department  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251

**Contractor**

Commercial Chemical Products, Inc. dba  
Poolsure  
2778 Bingle  
Houston, TX 77055  
Phone: 713-683-6436  
Fax: 713-683-6490  
  
Kevin Boyer  
  
E-mail: kboyer@poolsure.com

The Parties agree as follows:

**B. Table of Contents**

This Agreement consists of the following sections:

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- A. DEFINITIONS
- B. SCOPE OF SERVICES
- C. EQUAL EMPLOYMENT OPPORTUNITY
- D. MWBE SUBCONTRACT TERMS
- E. DRUG POLICY COMPLIANCE AGREEMENT
- F. CERTIFICATION OF NO SAFETY IMPACT POSITIONS
- G. DRUG POLICY COMPLIANCE DECLARATION
- H. FEES AND COSTS
- I. PERFORMANCE BOND

**C. Parts Incorporated**

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

**D. Controlling Parts**

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

**E. Definitions**

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

**F. Signatures**

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

ATTEST/SEAL (if a corporation):

Commercial Chemical Products, Inc dba Poolsure

WITNESS (if not a corporation):

By: *Bela Falik*  
Name: *Bela Falik*  
Title: *Secretary*

By: *John Falik*  
Name: *John Falik*  
Title: *CEO*  
Federal Tax ID Number: 76-0591704

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS

Signed by:

*[Signature]*  
City Secretary

*Bill White*  
Mayor *[Signature]*

APPROVED:

COUNTERSIGNED BY:

*[Signature]*  
City Purchasing Agent

*Arvise D. Parker*  
City Controller *[Signature]*

DATE COUNTERSIGNED:

*5-17-07*

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.

*5-3-07*  
Date

*[Signature]*  
Legal Assistant

## II. DUTIES OF CONTRACTOR

### A. Scope of Services

In consideration of the payments specified in this Agreement, Contractor shall provide all labor, material, and supervision necessary to perform the services described in Exhibit "B."

### B. RELEASE

#### 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.

### C. 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, ATTORNEYS' 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:

- (1) PRIME CONTRACTOR/SUPPLIER'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, "PRIME CONTRACTOR/SUPPLIER") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;
- (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
- (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.

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 PER OCCURRENCE. PRIME CONTRACTOR/SUPPLIER SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

### D. INDEMNIFICATION PROCEDURES:

- (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:
  - (a) a description of the indemnification event in reasonable detail,
  - (b) the basis on which indemnification may be due, and
  - (c) the anticipated amount of the indemnified loss.

This notice does not estop 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.

(2) Defense of Claims

(a) 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.

(b) 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 Contractor 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.

**E. Insurance**

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 coverages in the following amounts:

(1) Commercial General Liability insurance including Contractual Liability insurance:

\$500,000 per occurrence; \$1,000,000 aggregate

(2) Workers' Compensation including Broad Form All States endorsement:

Statutory amount

(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) **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)

All insurance policies must require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the City, and that it shall give 30 days written notice to the City before they may be canceled. 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:

- (1) immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default, or
- (2) purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Agreement.

**F. Warranties**

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.

With respect to any parts and goods furnished by it, Contractor warrants:

- (1) that all items are free of defects in title, material, and workmanship,
- (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,
- (3) that each replacement item is new in accordance with original equipment manufacturer's 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
- (4) that no item or its use infringes any patent, copyright, or proprietary right.

**G. Licenses and Permits**

Contractor shall obtain and pay for all licenses, permits, and certificates required by any statute, ordinance,

rule, or regulation.

**H. Compliance with Equal Opportunity Ordinance**

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

**I. MWBE Compliance**

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 Affirmative Action Division and will comply with them.

Contractor shall require written subcontracts with all MWBE subcontractors and shall submit all disputes with MWBEs to binding arbitration in Houston, Texas if directed to do so by the Affirmative Action Division Director. MWBE subcontracts must contain the terms set out in Exhibit "D." If Contractor is an individual person (as distinguished from a corporation, partnership, or other legal entity), and the amount of the subcontract is \$50,000 or less, the subcontract must also be signed by the attorneys of the respective parties.

**J. Drug Abuse Detection and Deterrence**

(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.

(2) Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):

- (a) a copy of its drug-free workplace policy,
- (b) 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,
- (c) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "F".

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.

(3) 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.

(4) Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

#### **K. Environmental Laws**

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.

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.

#### **L. Performance Bond**

The Contractor shall furnish and maintain a performance bond in the amount of **10% of the total contract cost, renewable annually**, which will be for a period not to exceed one year. If the City exercises its option to extend the agreement beyond the initial term of one year and the Contractor mutually agrees, the Contractor shall furnish a performance bond for each renewal year in the amount of 10% of the estimated option year cost. However, the surety providing the performance bond for the initial term of the agreement shall be under

no obligation to provide the performance bond for any renewal year. The bond shall be conditioned upon the Contractor's full and timely performance of this

agreement and must be issued by a corporate surety authorized to write surety bonds in the State of Texas and in the form set out in Exhibit "I".

If the City exercises any option years, Contractor shall maintain a Performance Bond in the amount equal to 10% of the contract amount for the option year, as determined by the City Purchasing Agent or Director. The bond must be in substantially the form attached as Exhibit "I" and issued by a corporate surety authorized and admitted to write surety bonds in Texas. If the amount of the bond exceeds \$100,000, the surety must be listed on the current list of accepted sureties on federal bonds published by the United States Treasury Department or reinsured for any liability in excess of \$100,000 by a reinsurer listed on the U.S. Treasury list.

**M. Contractor's Performance**

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.

**N. Payment of Employees and Subcontractors**

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.

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.

Contractor shall defend and indemnify the City from any claims or liability arising out of Contractors 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.

### III. DUTIES OF CITY

#### A. Payment Terms

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.

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.

#### B. Taxes

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.

#### C. Method of Payment

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.

#### D. Method of Payment - Disputed Payments

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.

#### E. Limit of Appropriation

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

\$107,000.00 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:

- (3) The City makes a supplemental allocation by sending a notice signed by the Director and the City Controller to Contractor and where appropriated, approved by motion, or ordinance of City Council in substantially the following form:

"NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS"

TO: [Name of Contractor]

FROM: City of Houston, Texas (the "City")

DATE: [Date of notice]

SUBJECT: Supplemental allocation of funds for the purpose of the "[title of this Agreement]" between the City and (name of Contractor) countersigned by the City Controller on (Date of Countersignature) (the "Agreement").

I, (name of City Controller), City Controller of the City of Houston, certify that the supplemental sum of \$\_\_\_\_\_, upon the request of the below-signed Director, 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.

The aggregate of all sums allocated for the purpose of such Agreement, including the Original Allocation, and all supplemental allocations (including this one), as of the date of this notice, is \$\_\_\_\_\_.

SIGNED:

(Signature of the City Controller)

City Controller of the City

REQUESTED:

(Signature of the Director)

Director

- (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.

**F. Changes**

- (1) At any time during the Agreement Term, the City Purchasing Agent or Director upon written authorization by the City Purchasing Agent 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.
- (2) The City Purchasing Agent or Director upon written authorization by the City Purchasing Agent 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 upon written notice to the City Purchasing Agent]

- (3) The City Purchasing Agent or Director upon written authorization by the City Purchasing Agent may issue more than one Change Order, subject to the following limitations:
  - (a) Council expressly authorizes the City Purchasing Agent or Director upon written authorization by the City Purchasing Agent, to approve a Change Order of up to

\$25,000. A Change Order of more than \$25,000 over the approved contract amount must be approved by the City Council.

- (b) 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.
- (c) The Total of all Change Orders issued under this section may not increase the Original Agreement amount by more than 25%.

(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.

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

**IV. TERM AND TERMINATION**

**A. Contract Term**

This Agreement is effective on the Countersignature Date and expires thirty-six (36) Months after the date specified in the Notice to Proceed unless sooner terminated according to the terms of this Agreement (the "Initial Term").

**B. Notice to Proceed**

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

**C. Renewals**

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 Department Director elects not to renew this Agreement, the City Purchasing Agent shall notify the Contractor in writing of non-renewal at least 30 days before the expiration of the then-current term.

**D. Time Extensions**

If 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).

**E. Termination for Convenience by the City**

The City Purchasing Agent or Director upon written authorization by the City Purchasing Agent 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.

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.

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.

**F. Termination for Cause by City**

If Contractor defaults under this Agreement, the City Purchasing Agent or Director upon written authorization by the City Purchasing Agent 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:

- (1) Contractor fails to perform any of its duties under this Agreement;
- (2) Contractor becomes insolvent;
- (3) all or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or
- (4) a receiver or trustee is appointed for Contractor.

If a default occurs, the City Purchasing Agent or Director upon written authorization by the City Purchasing Agent 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 upon written authorization by the City Purchasing Agent, at his or her sole option, may extend the termination date to a later date. If the City Purchasing Agent or Director upon written authorization by the City Purchasing Agent 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 upon written notice to the City Purchasing Agent may terminate this Agreement on the termination date, at no further obligation of the City.

To effect final termination, the City Purchasing Agent or Director upon written notice to the City Purchasing Agent 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.

**G. Termination for Cause by Contractor**

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.

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.

#### **H. Removal of Contractor Owned Equipment and Materials**

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.

#### **I. Surety Bond Renewals:**

It is understood that a surety bond will be provided at least 30 days before end of contract term for the proper amount for the new contract term. Each bond will denote the contract term being guaranteed. Renewal of the contract by the method noted above does not obligate the existing surety company to provide a bond for the new contract term. Failure of the existing surety company to provide a bond for the new term does not constitute a default under the old contract or bond, but failure of the Contractor to obtain a substitute surety bond shall constitute a default against the Contractor; however, the City will not take action against the previous surety company.

### **V. MISCELLANEOUS**

#### **A. Independent Contractor**

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

#### **B. Force Majeure**

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. This relief is not applicable unless the affected party does the following:
  - (a) uses due diligence to remove the Force Majeure as quickly as possible; and
  - (b) provides the other party with prompt written notice of the cause and its anticipated effect.
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.

4. If the Force Majeure continues for more than 30 days, the City Purchasing Agent or Director upon written authorization by the City Purchasing Agent 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.

**C. Severability**

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.

**D. Entire Agreement**

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.

**E. Written Amendment**

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.

**F. Applicable Laws**

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.

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

**G. Notices**

All notices required or permitted by this Agreement must be in writing and are deemed delivered on the earlier of the date actually received or the third day following: (1) deposit in a United States Postal Service post office

or receptacle; (2) with proper postage (certified mail, return receipt requested); and (3) addressed to the other party at the address set out in the preamble of this Agreement or at such other address as the receiving party designates by proper notice to the sending party.

**H. Non-Waiver**

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.

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.

**I. Inspections and Audits**

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 3 years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

**J. Enforcement**

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.

**K. Ambiguities**

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.

**L. Survival**

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.

**M. Parties In Interest**

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

**N. Successors and Assigns**

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.

**O. Business Structure and Assignments**

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 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.

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

**P. Remedies Cumulative**

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.

**Q. Contractor Debt**

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 Parks and Recreation 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" means the Directors 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 IIK (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"

### 1.0 SERVICES TO BE PROVIDED:

- 1.1 The Contractor shall provide, but not limited to, all labor, supervision, chemicals, supplies, and/or materials, and transportation necessary to perform repairs on equipment which is necessary for the safe operations of chemical dispensing equipment in to the Parks and Recreation Department's pools identified in section 6.0. The services shall include, but is not limited to, those requirements covered by local, State, and national codes, which pertain to commercial pools.
- 1.2 The Contractor shall furnish water testing and monitoring of chemicals to maintain chemical balance (Chlorine, Acid, Stabilizer, baking Soda and other required chemical) to achieve water quality of proper Ph and chlorine content).
- 1.3 The Contractor shall monitor and provide full service maintenance of control system(s) related to chemical feed systems installed at each pool.
- 1.4 The Contractor shall visit each pool site at a minimum of once per week to replenish chemicals if needed, check water balance, monitor automated equipment and make adjustments or repairs as necessary to provide quality water.
- 1.5 The Contractor shall be "on call" to correct emergency chemical imbalances identified by the Parks and Recreation Department's personnel and shall respond within four (4) hours of notification. Emergency calls made to the Contractor and all such calls will be made at no additional cost to the City. Non-Emergency calls shall be responded to within (8) business hours of contact to vendor and all such calls will be made at no additional cost to the City.
- 1.6 All work orders shall be issued via telephone, e-mail or facsimile for request of emergency or non-emergency work orders by the City of Houston Parks and Recreation designated representative. The work order will include assignment of work and any other instructions.

### 2.0 CITY'S RESPONSIBILITIES:

- 2.1 Inspect facilities, 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 to 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 contractor via telephone, fax, or e-mail of any chemical imbalance, or obvious visual problems with tanks, drums, or chemical control system.
- 2.8 Notify the Contractor when controller(s), feeders and feed lines need to be disconnected and reconnected within 30 days from the date starting and ending the Parks-to-Standard (Renovation) program.
- 2.9 Maintain necessary MSDS sheets at pool.
- 2.10 Maintain log sheets of chemical levels and duties completed each trip.

**3.0 MAINTENANCE:**

- 3.1 The Contractor shall maintain all dispensing equipment and provide pool chemicals as needed. Maintenance shall include, but is not limited to, adding and controlling the necessary chemicals to the pools to ensure water quality meets or exceeds City and Texas Department of Health (TDH) requirements for public pools; perform preventative maintenance and maintain the monitoring(s), Controller system(s) and related chemical equipment supporting chemical dispensing into the Parks and Recreation Department's pools.
- 3.2 The Contractor shall notify via telephone, email or facsimile to the Park and Recreation Department designated representative if equipment monitoring, controllers are removed from any pool location for maintenance or service. Contractor shall provide the following information: from where removed, when, to where, work done on equipment and when returned to the pool. The log for City pool visits must be kept by Contractor and be attached to monthly invoices for payment.

**4.0 WATER CONSERVATION:**

- 4.1 The Contractor shall immediately and promptly notify the Parks and Recreation Department designated representative of any water leakage found and or identified.

**5.0 SUBCONTRACTORS:**

- 5.1 Before the contract is awarded, the contractor shall submit to the City a list of all subcontractors and suppliers it intends to utilize on this contract.

**6.0 LOCATION OF POOL FACILITIES: - \* indicates regional pool**

**NORTHWEST QUADRANT**

<b>Pool Location</b>	<b>Address</b>	<b>Phone #</b>	<b>Water Capacity</b>	<b>People Capacity</b>
Agnes Moffitt *	10645 Hammerly	713-468-5666	522,000	400

<b>Pool Location</b>	<b>Address</b>	<b>Phone #</b>	<b>Water Capacity</b>	<b>People Capacity</b>
Independence Heights	603 East 35 <sup>th</sup>	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**

<b>Pool Location</b>	<b>Address</b>	<b>Phone #</b>	<b>Water Capacity</b>	<b>People Capacity</b>
Dunlavy	4400 Dunlavy	713-520-8293	80,000	75
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
Townwood*	3402 Simbrooks	713-433-6221	522,000	400
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**

<b>Pool Location</b>	<b>Address</b>	<b>Phone #</b>	<b>Water Capacity</b>	<b>People Capacity</b>
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
Glenbrook*	8201 North Bayou	713-645-7187	522,000	400
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	130,000	75
Sagemont	11507 Hughes	713-922-2312	243,975	75
Wilson Memorial	100 Gilpin	713-941-8842	229,940	250

## NORTHEAST QUADRANT

<b>Pool Location</b>	<b>Address</b>	<b>Phone #</b>	<b>Water Capacity</b>	<b>People Capacity</b>
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	243,975	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	165,000	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 on the invoice must be made by the Contractor to include an extra body of water (wading pool) for locations that have wading pools as a separate line item.

### **8.0 CHEMICALS:**

The Contractor shall furnish all necessary pool chemicals to treat pool water, keeping it in proper balance at all times, meeting the city, county and state health department regulations and requirements. The Parks and Recreation Department will be charged for the actual amount of chemicals used according to the Contract fee schedule.

- 8.1 Calcium Hypochlorite, "HTH"
- 8.1.1 Ingredients: Calcium Hypochlorite 65%
  - 8.1.2 35% inert ingredients (includes 5% moisture)
  - 8.1.3 Form: granular
- 8.2 Hydrochloric Acid 31.5%-  
Alternate Name: Muriatic Acid  
Form: Liquid
- Characteristics:  
Boiling Point: 340 degree C, 644 degree F(@760 mmHg)  
Vapor Pressure: (mm Hg), 0.3 (20 degree C)  
Specific Gravity: 1.290 – 1/350
- 8.3 12.5% Sodium Hypochlorite  
Ingredients: Sodium Hypochlorite 12.5% By weight  
Sodium Hydroxide 0.5% By Weight  
Sodium Chloride 5-13% By Weight  
Ph 12.5-13.5

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

- 9.1 The Contractor shall be responsible for all dispensing and servicing of chemicals at each pool site.
- 9.2 The Contractor shall be responsible for all spills and violation of delivery to pool site and dispensing of chemicals.
- 9.3 Vehicles used for services to be used shall be in full and 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 relate 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 chemical shall be safeguarded by pumping air through all lines to alleviate standing/remaining chemicals in lines between tank and quick adapter/cap.

**10.0 PREVENTATIVE MAINTENANCE TO CONTROLLERS, TANKS, AND CHEMICAL FEED SYSTEMS:**

- 10.1 Maintenance schedule must be followed on all controllers and chemical feed systems 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, chlorine and acid pumps at each pool site. Services shall also include an inspection at least once a month by a certified manufacture(s) representative. If the technician identifies that preventative maintenance repairs are required, he or she may perform those repairs at that time if parts are readily available. If parts are not available, the technician shall report that repairs are required to the Contractor's dispatch office so that repairs can be performed within the time limits set in section 1.5 after the report. At the time of chemical delivery, the Contractor's delivery person shall visually inspect the units, to include feed lines, and identify to the Contractor's dispatch office those units that may require repair. Monitoring, controllers and chemical feed systems that require repairs shall be repaired by a manufacturers certified technician. Certified manufacturers repair parts shall be installed within the time limits set in section 1.5 after the initial report (No Exception). After-market and/or inferior repair parts will not be accepted by the City of Houston and unless given written permission by the Parks and Recreation Departments designated representative.
- 10.3 All monitoring, controllers and chemical feed systems installed at the Parks and Recreation Department facilities shall be repaired within the time limits set in section 1.5, after the first notification is received by the Contractor's Dispatch Office.

- 10.4 The Contractor shall begin October 1 and conclude by April 1 "Overhaul and Preventative Maintenance Schedule" of the controllers, chemical feed systems and chemical tanks. The Contractor will provide a copy of its overhaul and preventative maintenance schedule to the Parks and Recreation Departments designated representative, located at 2999 South Wayside, Room A9, Houston, Texas, 77023.
- 10.5 New equipment covered under this Agreement or approved by the Parks and Recreation Department designated representative, if installed by the Contractor(s) shall become the property of the City of Houston upon expiration or termination of the Contract.

## **11.0 CHEMICAL TANKS:**

- 11.1 The Contractor shall replace all acid and chlorine tanks along with all parts and equipment to complete system functionality within the terms of the contract and within (60) business days from the effective date of the contract. **The contractor shall meet all Federal, State and local laws as it relates to storage and dispensing into tanks.** The Contractor shall provide the pool location and address, size of each tank, cost of the new tank, cost of labor, justification for replacement, and their priority based on the Contract fee schedule.
- 11.2 At anytime during the term of the Agreement, a tank fails to hold or potential will fail to hold chlorine, acid and chemicals, the Contractor will identify those tanks and immediately replace them within 24 hours. The Contractor shall warrant and monitor the safety of tank(s). All tanks and equipment installed shall become City property upon completion of contract and/or termination of contract including option years.
- 11.3 Parks and Recreation Departments designated representative may elect to conduct a market survey to determine if the pricing for replacement tanks are fair and reasonable. If Parks and Recreation Departments designated representative deems pricing under this Agreement for the replacement of tanks not reasonable, the City may elect to purchase and install replacement tanks off the Agreement and through the City's informal/formal purchasing procedures.
- 11.4 Referenced Tank Manufactures as per the following:
- 11.4.1. Poly Processing Company
  - 11.4.2. Snyder Industries
- 11.5 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 along with the following specifications:

## **12.0 INTERIOR PRIMARY TANK(S)**

- 12.1 The Contractor shall be responsible for the removal and proper disposal of all chlorine and acid tank(s) and its contents.

- 12.2 Interior primary tanks shall not be replaced under this Agreement unless; the Parks and Recreation Departments designated representative has approved.
- 12.3 Replacement tanks shall be the same size or larger and tanks must be UV stabilized, specific gravity of 1.9 minimum, and constructed of cross-linked high-density polyethylene, (HDXLPE).
- 12.4 All flexible connections are required to preserve warranty; this allows for expansion/contraction and reduces vibration stress.
- 12.5 Tanks shall be durable, chemically resistant, and corrosion resistant to chlorine and acid.
- 12.6 Tanks shall be seamless and a one piece design.
- 12.7 Tanks shall have an access hole no larger than 10" (inch) maximum opening with threaded lid (manways).
- 12.8 Tanks shall have UV and oxidation lining(s).
- 12.9 Tanks shall have a liquid level gauges with reverse float type system as (Attachment B1 - page 37 of 56).
- 12.10 Tanks shall have a top discharge system with locking quick adapter, ball valves.
- 12.11 All tanks shall become property of the city of Houston upon completion, extension and/or Cancellation of the contract.

**13.0 INTERIOR SECONDARY CONTAINMENT TANK(S)**

- 13.1 Secondary containment shall be 110% capacity of the primary tank. There shall be no recontamination of primary.
- 13.2 Specific gravity of tanks shall be no less than 1.9.
- 13.3 Tanks shall be made of the same density and structure as the primary unit.
- 13.4 All tanks shall be seamless and a one piece design.
- 13.5 Durable, chemically resistant, corrosion resistant to chlorine and acid.
- 13.6 All tanks shall become property of the City of Houston upon completion, extensions and/or cancellation of contract.
- 13.7 The Contractor shall be responsible for the removal and proper disposal of any Tanks replaced.
- 13.8 If necessary, the Contractor shall replace tanks with the same size or larger and tanks must be UV stabilized, specific gravity of 1.9 minimum, and constructed of cross-linked high-density polyethylene (HDXLPE) with oxidation resistant liner.
- 13.9 Capability for overflow release

#### **14.0 VENT TRAP SCRUBER FOR PRIMARY TANK(S) (ACID ONLY)**

- 14.1 Vent trap shall scrub 99% of the HTL vapors.
- 14.2 The principle of operations is that vapors from a closed system are neutralized in a solution prior to venting to atmosphere. These vapors are generated or displaced as a 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.
- 14.3 All tanks shall become property of the City of Houston upon completion, extensions, and/or cancellation of the contract.

#### **15.0 EXTERIOR TANK(S) (BLEACH AND ACID)**

- 15.1 The Contractor shall be responsible for the removal and proper disposal of chlorine and acid tank(s) and its contents.
- 15.2 Replacement tanks shall be the same size or larger tanks and must be UV stabilized, specific gravity of 1.9 minimum, and constructed of cross-linked high-density polyethylene, (HDXLPE). **Double wall containment with primary and secondary tanks combined into one unit.**
- 15.3 Tanks shall not be replaced under this Agreement unless; the Parks and Recreation Department designated representative has approved their replacement in writing.
- 15.4 All flexible connections are required to preserve warranty; this allows for expansion/contraction and reduces vibration stress.
- 15.5 Tanks shall be durable, chemically resistant, corrosion resistant to chlorine and acid.
- 15.6 Tanks shall be seamless and a one piece design.
- 15.7 Tanks shall be UV and oxidation lining(s).
- 15.8 Tanks shall have Liquid level gauges with reverse float type system as per (Attachment B2 - page 38 of 56).
- 15.9 Tanks shall have a top discharge system with locking quick adapter, ball valves.

#### **16.0 TANK CONNECTION**

- 16.1 Flexible connections required preserving warranty; this allows expansion/contraction and reduces vibration stress.
- 16.2 All fittings, tubing and pipe shall be durable, chemically and corrosion resistant.
- 16.3 Top discharge system with locking quick adapter, ball valves, support brackets and locking manways (bolted to tanks) as per (Attachment B1 - page 37 of 56).

- 16.4 All dispensing connection outside of facility shall be secure and have a locking mechanism or locking box to prevent vandalism.
- 16.5 Any exterior dispensing connections outside of facilities shall be buried 12" below grade.

**17.0 PARTS COVERED:**

- 17.1 The Parks and Recreation Department owns Aquasol chemical controller system(s) and related equipment located at all aquatic facilities (as listed in section 6.0). The Contractor shall remove controller system(s), chemical pump(s), hose/tubing/fitting(s), and tank(s). These systems are to be removed under the contract at no cost to the Parks and Recreation Department.
- 17.2 The Contractor shall provide a minimum of 40 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.
- 17.3 Manufacturers for monitoring systems, chemical feed pumps and related equipment shall be approved by a City of Houston Parks and Recreation Department designated representative.
  - 17.3.1 ACU-TROL - PROGRAMMABLE CONTROLLER - MODEL NO. AK110 OR APPROVED EQUAL
  - 17.3.2 CHEMTROL - PROGRAMMABLE CONTROLLER - MODEL NO. PC2000 OR APPROVED EQUAL
  - 17.3.3 SIEMENS - "STRANTROL" IMPACT AQUATIC MANAGEMENT SYSTEM.

**18.0 SPECIFICATION FOR CHEMICAL CONTROLLER SYSTEMS**

- 18.1 Oxidation Reduction Potential (ORP) control of sanitizer and/or oxidizer activity 24 hour 7 day per week monitoring of response and alerts the operator(s) in case of probe failure.
- 18.2 PH control with choice of acid or base feed 24 hour 7 day per week monitoring of response and alerts the operator(s) in case of probe failure.
- 18.3 Programmable shock treatment and chemical savings cycles.
  - 18.3.1 Proportional feed
  - 18.3.2 Feeder ON and OFF times
  - 18.3.3 Mixing times/Cycle times
  - 18.3.4 Overfeed lock out times
  - 18.3.5 pH and ORP set points
  - 18.3.6 pH calibration
  - 18.3.7 ORP Calibration
  - 18.3.8 Temp Calibration

- 18.3.9 Acid/Base feed
- 18.3.10 4-pager or cell-phone numbers and/or voice mail message
- 18.3.11 2 passwords
- 18.3.12 Alarm

- 18.4 Saturation Index for water balance.
- 18.5 Automatic data logging for up to 999 tests.
- 18.6 Full screen menus in English and Spanish.
- 18.7 Screen display in United States units.
- 18.8 Compatible with all common sanitizers, oxidizers and automated chloramine treatment (A.C.T.) program.
- 18.9 Sanitizer concentration display in ppm or mg/.
- 18.10 Programmable heater control.
- 18.11 Conductivity/total dissolved solids (TDS) control with autofill capability for salt generators.
- 18.12 Remote computer operations and graphic data display, ethernet and internet communication.
- 18.13 Communication to building management systems.
- 18.14 **Minimum 5 year warranty.**
- 18.15 One (1), 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.
- 18.16 Remote computer operation and graphic data display (using a windows software (format).
  - 18.16.1 Bi-Directional Control
  - 18.16.2 The ability to have real time control of remote equipment from the convenience of any computer with Internet capability.
  - 18.16.3 Allow real time control of any equipment that is directly connected to the controller such as pump, heater, motors, etc.
  - 18.16.4 Allows control of all internet controller parameter in real time.
  - 18.16.5 Has lockout ability preventing anyone from manually changing the controller while it is

accessed from the internet.

- 18.17 The controller systems shall provide 24 hours 7 days per week monitoring of response and alerts the operator(s) in case of probe failure.
- 18.18 The Contractor shall provide 4 sets of controller operator's manuals.
- 18.19 The Contractor shall provide 4 sets of controller technical manuals.
- 18.20 The controller tubing and hoses shall be of No. 5 (size) or as defined by manufactures specifications.
- 18.21 The controller shall provide 30 day data recording at 2-hour intervals.
- 18.22 The Electrical services for all systems should match what is currently at facilities.
- 18.23 The flow cell with built-in flow switch to disable feeding in no flow conditions.
- 18.24 The controller shall have a flow cell sampling port.
- 18.25 The controller shall have chemical injection ports.
- 18.26 Data management server shall handle the locations described in section 18.30 and meet the requirements below:
  - 18.26.1 Ability to view multiple pools on a single web page.
  - 18.26.2 Ability to record data from multiple pools.
  - 18.26.3 Ability to record and report relay on times.
  - 18.26.4 Ability to allow Parks and Recreation Department to select report frequency.
  - 18.26.5 Ability to track in excel format.
  - 18.26.6 Ability to select one day, one week or defined period of time parameters to review all data. All charts to refresh to select time changes.
  - 18.26.7 Ability to change parameters on demand remotely and on site.
- 18.27 Controller(s) along with 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.
- 18.28 Acid pump(s) along with 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.

18.29 All tanks shall become property of the City of Houston upon completion, extensions and/or cancellation of the contract.

18.30 **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	
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	

**19.0 DELIVERIES TO POOLS AND PREVENTATIVE MAINTENANCE/REPAIRS:**

19.1 The Contractor shall upon completion of repairs, leave completion slip(s) detailing by whom, what, and when the task was completed and notify via email or facsimile the Park and Recreation Department designated representative within (4) four hours of completion.

19.2 The Contractor shall upon delivery of chemicals log present volume prior to dispensing and leave completion slip(s) detailing by whom, what, and when the task was completed and notify via email or facsimile the Park and Recreation Department designated representative within (12) hours of completion.

19.3 In the event a partial (less than full capacity of 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 Noon the next day. Expected capacity is defined as 95% of full volume of a tank plus or minus levels before chemical dispensing.

- 19.4 The Contractor shall e-mail prior to and before 8:00 a.m. the beginning of each Monday, a weekly chemical delivery schedule for that week. Where holidays occur the Contractor shall e-mail the schedule the last business day before 12:00 p.m. All deliveries made from Memorial thru Labor day (peak-season) must be made as follows; each delivery accompanied by a two (2) part delivery ticket which is to be signed by the contractor's driver and Houston Parks and Recreation Department personnel (if applicable) at time of delivery. **Operational hours are Tuesday through Sunday (1:00 p.m. to 7:00 p.m.).**
- 19.5 All deliveries from October 1 thru April 1 must be delivered during normal business hours. No deliveries will be made after sundown. At the time of delivery, the Contractor's driver will leave a two-part delivery ticket signed by the driver, in the drop box or drop pouch located in pool office of the facility as required in Section 19.2.

## **20.0 Site Clean Up**

- 20.1 The Contractor shall clean the site occupied during the work performed of all rubbish, debris; and all parts of the work 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 will be the responsibility of the Contractor.
- 20.2 All debris/rubbish shall be considered the property of the Contractor who shall dispose of them in a manner consistent with applicable municipal, state, and federal Laws
- 20.3 Once the work and/or services have been completed and ready for inspection, the Contractor shall notify in writing and/or email the designated Parks and Recreation Departments representative. The designated Parks and Recreation Department representative shall make the necessary pool site inspection and if work has been properly completed in accordance with all terms of this Contract, the work will be approved for invoicing.
- 20.4 At any time the designated Parks and Recreation Department representative may enter site of the work to inspect the work and associated with the work hereunder.

## **21.0 Technical Literature:**

- 21.1 To evaluate the bids, Parks and Recreation Department may require product literature/specification sheets. Technical literature may be provided with the bid submittal but is not required. However, the City reserves the right to request literature or clarifications, as needed, after bid submittal.

## **22.0 Damage to City and City Property**

- 22.1 Damages to facility interior and exterior by the contractor shall result in an assessment of liquidated damages. The City of Houston competitive bid process shall be used to determine the amount of what vendor shall pay and work to be performed.

## **23.0 Invoicing**

- 23.1 Contractor shall submit invoices monthly, by the tenth (10<sup>th</sup>) calendar day of the month, all invoices for the previous month. The Contractor shall submit one original invoice to Accounts Payable and a copy to the Director's Designee. All invoices shall be original invoices or certified original invoices on Contractor's company stationery with the original signed by an authorized agent of the company. The invoice number shall not be duplicated during the term of the contract period(s). Each invoice shall detail the following information.
- 23.2 City Contract No. and Ordinance No.  
Copy of Work Order  
Ordering Department and Facility Name and address where services were performed  
Date(s) and time(s) services performed  
Parts or components repaired or replaced, Manufacturer Model/Part Nos. installed, detailing 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.)  
Total Invoice cost.
- 23.3 All unit prices for labor and parts shall be listed and easily identified against the quoted contract pricing.
- 23.4 Contractor shall mail invoices to: Parks & Recreation Department  
Accounts Payable Attn. Gina Chaney  
P.O. Box 1562  
Houston, Texas 77251-1562

## **24.0 RAQ GOODS INDEX PRICE ADJUSTMENTS**

- 24.1 The Contractor may 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 a increase or decrease.

## **25.0 ADDITIONS & DELETIONS**

- 25.1 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, supplies, locations and/or services to the list of equipment, supplies, locations, and/or services to be provided. Any such written notice shall take effect on the date stated in the notice from the City. Similar equipment, supplies, services, or locations added to the contract shall be in accordance with the contract specification/scope of services, and the charges or rates for items added shall be the same as specified in the fee schedule. In the event that the additional equipment, supplies, locations and/or services are not identical to the item(s) already under contract, the charges therefor will then be the Contractor's normal and customary charges or rates for the equipment, supplies, locations and/or services classified in the fee schedule.

25.2 The Director of the Parks and Recreation Department may choose to remove pools from service when a pool must be shut down for repairs. In this situation, the Parks and Recreation Department designate representative will give contractor 30 days written notice of the removal of the pool from service. If the pool is shut down for the period beginning and ending a monthly billing period, the Parks and Recreation Department will not be invoiced for monthly maintenance.

25.3 At the time of pool reopening, and if the pool reopens after the monthly billing period, partial service in a month will be charged for the entire month's service. This allows the contractor to recoup the additional cost of startup chemicals when the pool is re-opened.

#### **26.0 ESTIMATED QUANTITIES NOT GUARANTEED**

The estimated quantities specified herein are not a guarantee of actual quantities, as the City does not guarantee any particular quantity of swimming pool service and 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 into based on the City purchasing/requiring all the quantities specified herein.

#### **27.0 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 one-year period from the date of acceptance by the City. 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.

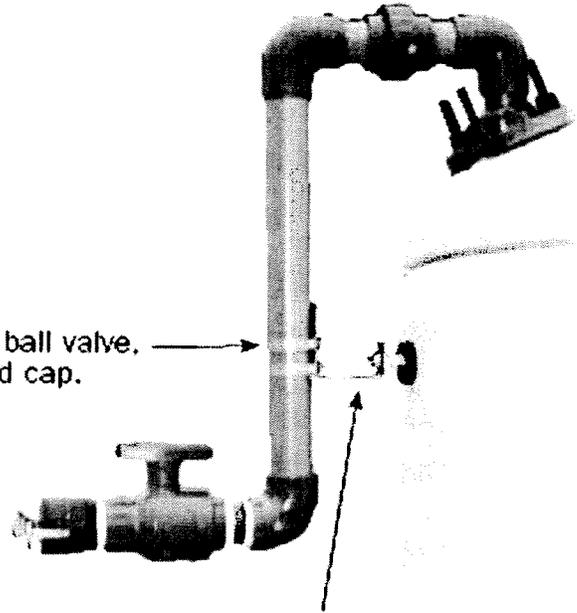
c) If the Contractor is required to correct or re-perform, it shall be at no cost to the City, and any services corrected or re-performed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or re-perform, the 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.

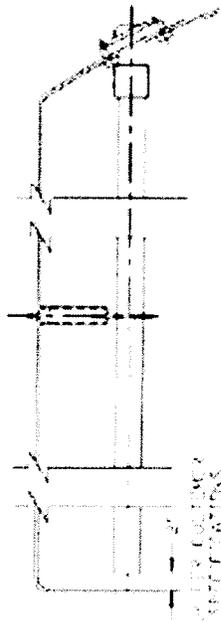
# ATTACHMENT – B1

## **Top Fill / Top Discharge Assemblies**

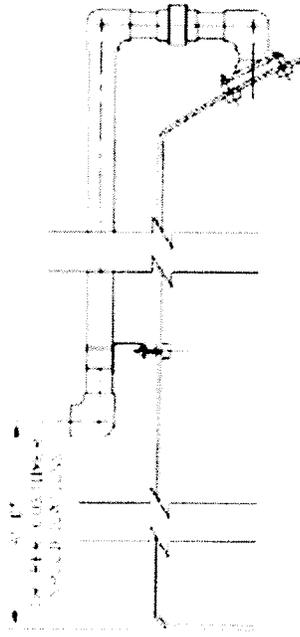
Fill line with optional ball valve, quick adapter and cap.



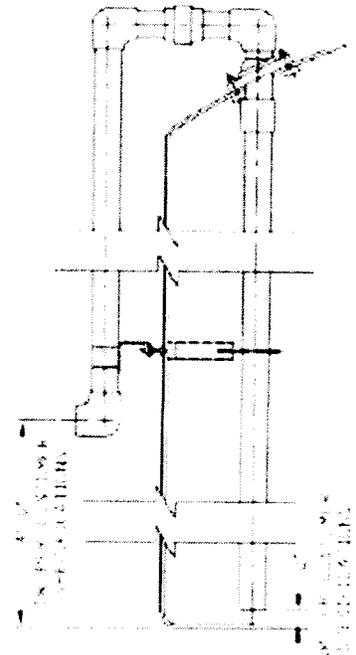
(1) Support required for every 6' of pipe.



INTERIOR DROP PIPE



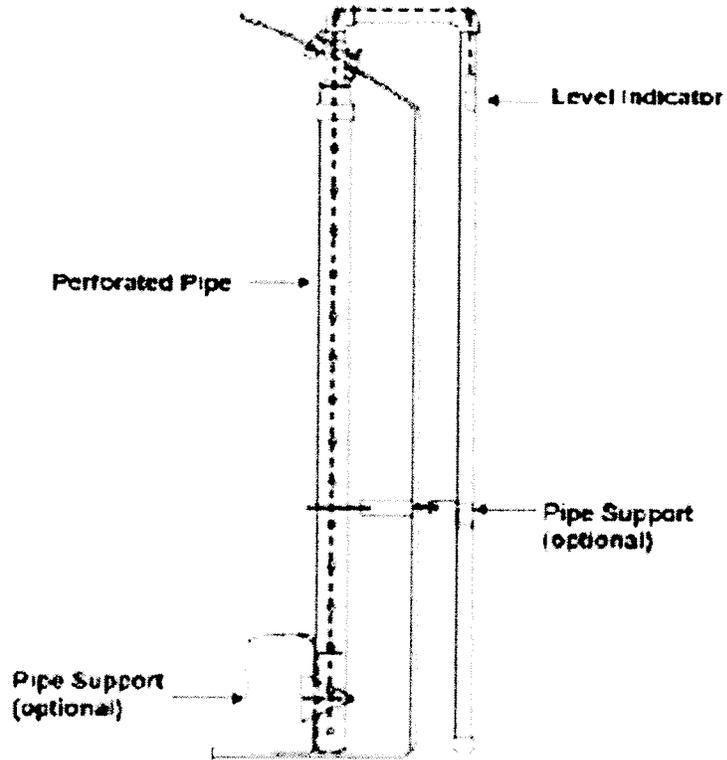
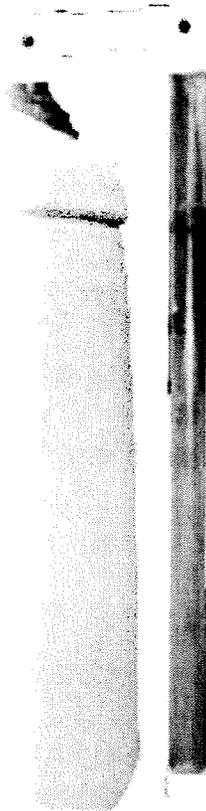
EXTERIOR DROP PIPE



COMBINATION DROP PIPE

# ATTACHMENT – B2

## Liquid Level Gauges



Reverse Float Type

**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 SUBCONTRACT TERMS**

Contractor shall ensure that all subcontracts with MWBE 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. Bates Chemical, Inc. (MWBE 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 City of Houston's Affirmative Action Director ("the Director").

2. Bates Chemical, Inc. (MWBE 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 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 concluded by the parties to this subcontract, and as evidenced by their signature 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 Office of the City's Affirmative Action Division.

Upon submittal of the matter to arbitration 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.

In the event the American Arbitration Association no longer administers Affirmative Action 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.

e. All arbitrations shall be conducted in Houston, Texas, unless the parties agree to a different location.

**EXHIBIT "E"  
DRUG POLICY COMPLIANCE AGREEMENT**

I, Kevin P. Bayer TX Reg. Mgr. as an owner or officer of  
(Name) (Print/Type) (Title)  
Poolsure (Contractor)  
(Name of Company)

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 04.06.07 Contractor Name Poolsure  
 Signature K-P. Bayer  
 Title TX Reg. Mgr.

**EXHIBIT "F"**  
**Contractor's Certification Of No Safety Impact Positions**  
**In Performance Of A City Contract**

I, \_\_\_\_\_  
(Name)(Print/Type) (Title)

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 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.

Date                     N/A                    

                    Podsure                      
Contractor Name  
                    K. E. B.                      
Signature  
                    TX Reg. Mgr.                      
Title

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

I, \_\_\_\_\_ as an  
(NAME) (PRINT/TYPE)

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 F. Boyer Trk Reg. Mgr. as an owner or officer of  
(Name) (Print/Type) (Title)  
Poolsure (Contractor or Vendor)  
(Name of Company)

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

This reporting period covers the preceding 6 months from November to April, 2006-07

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 10.

KB  
Initials From 01.01.06 to 04.01.07 the following test has occurred  
(Start date) (End date)

	Random	Reasonable Suspicion	Post Accident	Total
Number Employees Tested	2	1	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.

04.06.07  
(Date)

Kevin F. Boyer  
(Typed or Printed Name)  
[Signature]  
(Signature)  
Trk Reg. Mgr.  
(Title)

## EXHIBIT "H"

### FEES AND COSTS

#### Purchase of Tanks and Equipment

#### Years One – Year Five (Option Year Two)

Item #	Description	Unit of Measure	Unit Price
1	Agnes Moffitt Chlorine and Secondary Tanks Tank Sizes 905 1000	LOT	\$2600.00
2	Agnes Moffitt Acid and Secondary Tanks Tank Sizes 235 280	LOT	\$1600.00
3	Agnes Moffitt Vent Trap	Each	\$10.00
4	Agnes Moffitt Furnishing and installation of chemical controllers	LOT	\$3200.00
5	Independence Heights Chlorine and Secondary Tanks Tank Sizes 300 330	LOT	\$1700.00
6	Independence Heights Acid and Secondary Tanks Tank Sizes 235 280	LOT	\$1600.00
7	Independence Heights Vent Trap	Each	\$10.00
8	Independence Heights Furnishing and installation of chemical controllers	LOT	\$1600.00
9	Lincoln City Chlorine and Secondary Tanks Tank Sizes 605 685	LOT	\$2200.00
10	Lincoln City Acid and Secondary Tanks Tank Sizes 235 280	LOT	\$1600.00
11	Lincoln City Vent Trap	Each	\$10.00
12	Lincoln City Furnishing and installation of chemical controllers	LOT	\$3200.00
13	Love Chlorine and Secondary Tanks Tank Sizes 300 330	LOT	\$1700.00
14	Love Acid and Secondary Tanks Tank Sizes 235 280	LOT	\$1600.00
15	Love Vent Trap	Each	\$10.00
16	Love Furnishing and installation of chemical controllers	LOT	\$3200.00
17	Memorial Chlorine and Secondary Tanks Tank Sizes 615 685	LOT	\$2200.00
18	Memorial Acid and Secondary Tanks Tank Sizes 235 280	LOT	\$1600.00
19	Memorial	Each	\$10.00

Item #	Description	Unit of Measure	Unit Price
	Vent Trap		
20	Memorial Furnishing and installation of chemical controllers	LOT	\$1600.00
21	Oak Forest Chlorine and Secondary Tanks Tank Sizes 300 330	LOT	\$1700.00
22	Oak Forest Acid and Secondary Tanks Tank Sizes 235 280	LOT	\$1600.00
23	Oak Forest Vent Trap	Each	\$10.00
24	Oak Forest Furnishing and installation of chemical controllers	LOT	\$1600.00
25	G. Schwartz Chlorine and Secondary Tanks Tank Sizes 300 330	LOT	\$1700.00
26	G. Schwartz Acid and Secondary Tanks Tank Sizes 235 280	LOT	\$1600.00
27	G. Schwartz Vent Trap	Each	\$10.00
28	G. Schwartz Furnishing and installation of chemical controllers	LOT	\$3200.00
29	West Grey Chlorine and Secondary Tanks Tank Sizes 300 330	LOT	\$1700.00
30	West Grey Acid and Secondary Tanks Tank Sizes 235 280	LOT	\$1600.00
31	West Grey Vent Trap	Each	\$10.00
32	West Grey Furnishing and installation of chemical controllers	LOT	\$1600.00
33	H. Stude Chlorine and Secondary Tanks Tank Sizes 300 330	LOT	\$1700.00
34	H. Stude Acid and Secondary Tanks Tank Sizes 235 280	LOT	\$1600.00
35	H. Stude Vent Trap	Each	\$10.00
36	H. Stude Furnishing and installation of chemical controllers	LOT	\$1600.00
37	T.C. Jester Chlorine and Secondary Tanks Tank Sizes 905 1000	LOT	\$2600.00
38	T.C. Jester Acid and Secondary Tanks Tank Sizes 235 280	LOT	\$1600.00
39	T.C. Jester Vent Trap	Each	\$10.00
40	T.C. Jester Furnishing and installation of chemical controllers	LOT	\$1600.00
41	Dunlavy Chlorine and Secondary Tanks Tank Sizes 300 330	LOT	\$1700.00
42	Dunlavy Acid and Secondary Tanks Tank Sizes 235 280	LOT	\$1600.00

Item #	Description	Unit of Measure	Unit Price
43	Dunlavy Vent Trap	Each	\$10.00
44	Dunlavy Furnishing and installation of chemical controllers	LOT	\$1600.00
45	Emancipation Chlorine and Secondary Tanks Tank Sizes 615 685	LOT	\$2200.00
46	Emancipation Acid and Secondary Tanks Tank Sizes 235 280	LOT	\$1600.00
47	Emancipation Vent Trap	EACH	\$10.00
48	Emancipation Furnishing and installation of chemical controllers	LOT	\$3200.00
49	Landsale Chlorine and Secondary Tanks Tank Sizes 300 330	LOT	\$1700.00
50	Landsale Acid and Secondary Tanks Tank Sizes 235 280	LOT	\$1600.00
51	Landsale Vent Trap	Each	\$10.00
52	Landsale Furnishing and installation of chemical controllers	LOT	\$1600.00
53	Alief Chlorine and Secondary Tanks Tank Sizes 300 330	LOT	\$1700.00
54	Alief Acid and Secondary Tanks Tank Sizes 235 280	LOT	\$1600.00
55	Alief Vent Trap	Each	\$10.00
56	Alief Furnishing and installation of chemical controllers	LOT	\$1600.00
57	Sunnyside Chlorine and Secondary Tanks Tank Sizes 300 330	LOT	\$1700.00
58	Sunnyside Acid and Secondary Tanks Tank Sizes 235 280	LOT	\$1600.00
59	Sunnyside Vent Trap	Each	\$10.00
60	Sunnyside Furnishing and installation of chemical controllers	LOT	\$3200.00
61	Townwood Chlorine and Secondary Tanks Tank Sizes 905 1000	LOT	\$2600.00
62	Townwood Acid and Secondary Tanks Tank Sizes 235 280	LOT	\$1600.00
63	Townwood Vent Trap	Each	\$10.00
64	Townwood Furnishing and installation of chemical controllers	LOT	\$1600.00
65	Westbury Chlorine and Secondary Tanks	LOT	\$1700.00

Item #	Description	Unit of Measure	Unit Price
	Tank Sizes 300 330		
66	Westbury Acid and Secondary Tanks	LOT	\$1600.00
	Tank Sizes 235 280		
67	Westbury Vent Trap	Each	\$10.00
68	Westbury	LOT	\$1600.00
	Furnishing and installation of chemical controllers		
69	Sharpstown Chlorine and Secondary Tanks	LOT	\$2600.00
	Tank Sizes 905 1000		
70	Sharpstown Acid and Secondary Tanks	LOT	\$1600.00
	Tank Sizes 235 280		
71	Sharpstown Vent Trap	Each	\$10.00
72	Sharpstown	LOT	\$3200.00
	Furnishing and installation of chemical controllers		
73	Windsor Village Chlorine and Secondary Tanks	LOT	\$2200.00
	Tank Sizes 615 685		
74	Windsor Village	LOT	\$1600.00
	Acid and Secondary Tanks		
	Tank Sizes 235 280		
75	Windsor Village	Each	\$10.00
	Vent Trap		
76	Windsor Village	LOT	\$1600.00
	Furnishing and installation of chemical controllers		
77	Yellstone Chlorine and Secondary Tanks	LOT	\$1700.00
	Tank Sizes 300 330		
78	Yellstone	LOT	\$1600.00
	Acid and Secondary Tanks		
	Tank Sizes 235 280		
79	Yellstone Vent Trap	Each	\$10.00
80	Yellstone	LOT	\$1600.00
	Furnishing and installation of chemical controllers		
81	Beverly Hills Chlorine and Secondary Tanks	LOT	\$2200.00
	Tank Sizes 615 680		
82	Beverly Hills Acid and Secondary Tanks	LOT	\$1600.00
	Tank Sizes 235 280		
83	Beverly Hills Vent Trap	Each	\$10.00
84	Beverly Hills	LOT	\$1600.00
	Furnishing and installation of chemical controllers		
85	Cloverland Chlorine and Secondary Tanks	LOT	\$2200.00
	Tank Sizes 615 685		
86	Cloverland Acid and Secondary Tanks	LOT	\$1600.00
	Tank Sizes 235 280		
87	Cloverland Vent Trap	Each	\$10.00
88	Cloverland	LOT	\$1600.00
	Furnishing and installation of chemical controllers		
89	Dezavala Chlorine and Secondary Tanks	LOT	\$2200.00

Item #	Description	Unit of Measure	Unit Price
90	Tank Sizes 615 685 Dezavala Acid and Secondary Tanks Tank Sizes 235 280	LOT	\$1600.00
91	Dezavala Vent Trap	Each	\$10.00
92	Dezavala Furnishing and installation of chemical controllers	LOT	\$1600.00
93	Eastwood Chlorine and Secondary Tanks Tank Sizes 300 330	LOT	\$1700.00
94	Eastwood Acid and Secondary Tanks Tank Sizes 235 280	LOT	\$1600.00
95	Eastwood Vent Trap	EACH	\$10.00
96	Eastwood Furnishing and installation of chemical controllers	LOT	\$3200.00
97	Glenbrook Chlorine and Secondary Tanks Tank Sizes 905 1000	LOT	\$2600.00
98	Glenbrook Acid and Secondary Tanks Tank Sizes 235 280	LOT	\$1600.00
99	Glenbrook Vent Trap	Each	\$10.00
100	Glenbrook Furnishing and installation of chemical controllers	LOT	\$1600.00
101	MacGregor Chlorine and Secondary Tanks Tank Sizes 615 685	LOT	\$2200.00
102	MacGregor Acid and Secondary Tanks Tank Sizes 235 280	LOT	\$1600.00
103	MacGregor Vent Trap	Each	\$10.00
104	MacGregor Furnishing and installation of chemical controllers	LOT	\$3200.00
105	Mason Chlorine and Secondary Tanks Tank Sizes 615 685	LOT	\$2200.00
106	Mason Acid and Secondary Tanks Tank Sizes 235 280	LOT	\$1600.00
107	Mason Vent Trap	Each	\$10.00
108	Mason Furnishing and installation of chemical controllers	LOT	\$1600.00
109	Reveille Chlorine and Secondary Tanks Tank Sizes 300 330	LOT	\$1700.00
110	Reveille Acid and Secondary Tanks Tank Sizes 235 280	LOT	\$1600.00
111	Reveille Vent Trap	Each	\$10.00

Item #	Description	Unit of Measure	Unit Price
112	Reveille Furnishing and installation of chemical controllers	LOT	\$1600.00
113	Sagemont Chlorine and Secondary Tanks Tank Sizes 300 330	LOT	\$1700.00
114	Sagemont Acid and Secondary Tanks Tank Sizes 235 280	LOT	\$1600.00
115	Sagemont Vent Trap	Each	\$10.00
116	Sagemont Furnishing and installation of chemical controllers	LOT	\$1600.00
117	Wilson Memorial Chlorine and Secondary Tanks Tank Sizes 615 685	LOT	\$2200.00
118	Wilson Memorial Acid and Secondary Tanks Tank Sizes 235 280	LOT	\$1600.00
119	Wilson Memorial Vent Trap	Each	\$10.00
120	Wilson Memorial Furnishing and installation of chemical controllers	LOT	\$3200.00
121	Clinton Chlorine and Secondary Tanks Tank Sizes 300 330	LOT	\$1700.00
122	Clinton Acid and Secondary Tanks Tank Sizes 235 280	LOT	\$1600.00
123	Clinton Vent Trap	Each	\$10.00
124	Clinton Furnishing and installation of chemical controllers	LOT	\$1600.00
125	Denver Harbor Chlorine and Secondary Tanks Tank Sizes 615 685	LOT	\$2200.00
126	Denver Harbor Acid and Secondary Tanks Tank Sizes 235 280	LOT	\$1600.00
127	Denver Harbor Vent Trap	Each	\$10.00
128	Denver Harbor Furnishing and installation of chemical controllers	LOT	\$1600.00
129	Finnigan Chlorine and Secondary Tanks Tank Sizes 615 685	LOT	\$2200.00
130	Finnigan Acid and Secondary Tanks Tank Sizes 235 280	LOT	\$1700.00
131	Finnigan Vent Trap	Each	\$10.00
132	Finnigan Furnishing and installation of chemical controllers	LOT	\$3200.00
133	Greenwood Chlorine and Secondary Tanks Tank Sizes 300 330	LOT	\$1700.00

Item #	Description	Unit of Measure	Unit Price
134	Greenwood Acid and Secondary Tanks Tank Sizes 235 280	LOT	\$1600.00
135	Greenwood Vent Trap	Each	\$10.00
136	Greenwood Furnishing and installation of chemical controllers	LOT	\$1600.00
137	Hobart Taylor Chlorine and Secondary Tanks Tank Sizes 615 685	LOT	\$2200.00
138	Hobart Taylor Acid and Secondary Tanks Tank Sizes 235 280	LOT	\$1600.00
139	Hobart Taylor Vent Trap	Each	\$10.00
140	Hobart Taylor Furnishing and installation of chemical controllers	LOT	\$1600.00
141	Moody Chlorine and Secondary Tanks Tank Sizes 300 330	LOT	\$1700.00
142	Moody Acid and Secondary Tanks Tank Sizes 235 280	LOT	\$1600.00
143	Moody Vent Trap	Each	\$10.00
144	Moody Furnishing and installation of chemical controllers	LOT	\$3200.00
145	Northline Chlorine and Secondary Tanks Tank Sizes 300 330	LOT	\$1700.00
146	Northline Acid and Secondary Tanks Tank Sizes 235 280	LOT	\$1600.00
147	Northline Vent Trap	Each	\$10.00
148	Northline Furnishing and installation of chemical controllers	LOT	\$1600.00
149	Judson Robinson, Jr. Chlorine and Secondary Tanks Tank Sizes 300 330	LOT	\$1700.00
150	Judson Robinson, Jr. Acid and Secondary Tanks Tank Sizes 235 280	LOT	\$1600.00
151	Judson Robinson, Jr. Vent Trap	Each	\$10.00
152	Judson Robinson, Jr. Furnishing and installation of chemical controllers	LOT	\$3200.00
153	Tidwell Chlorine and Secondary Tanks Tank Sizes 905 1000	LOT	\$2600.00
154	Tidwell Acid and Secondary Tanks Tank Sizes 235 280	LOT	\$1600.00
155	Tidwell Vent Trap	Each	\$10.00

Item #	Description	Unit of Measure	Unit Price
156	Tidwell Furnishing and installation of chemical controllers	LOT	\$1600.00
157	Tuffly Chlorine and Secondary Tanks Tank Sizes 300 330	LOT	\$1700.00
158	Tuffly Acid and Secondary Tanks Tank Sizes 235 280	LOT	\$1600.00
159	Tuffly Vent Trap	Each	\$10.00
160	Tuffly Furnishing and installation of chemical controllers	LOT	\$3200.00
161	Replacement of PH Sensor Parts & Labor	Each	\$30.00
162	Replacement of ORP Sensor Parts & Labor	Each	\$40.00
163	Replacement of Flow Cell Parts & Labor	Each	\$40.00
164	Replacement of Temperature Sensor Parts & Labor	Each	\$20.00

#### Year One Furnishing and Dispensing of Chemicals

Item #	Description	Unit of Measure	Unit Price
1	Sulfuric Acid - Liquid Form 0 < 1,000 Gallons	Gallon	\$1.50
2	Sodium Hypochlorite 0 < 1,000 Gallons	Gallon	\$0.99
3	Hydrochloric Acid - Liquid Form 0 < 100 Gallons	Gallon	\$1.75
4	Soda Ash (Bags) 0 < 500 Pounds	Pound	\$0.30
5	Baking Soda (Bags)	Pound	\$0.30
6	Sodium Thioulfate Penta Hydrate 0 < 500 Pounds	Pound	\$0.50
7	Calcium Hypochlorite - Granular Form (25lb Container) 0 < 500 Pounds	Pound	\$1.35

**Year Two Furnishing and Dispensing of Chemicals**

<b>Item #</b>	<b>Description</b>	<b>Unit of Measure</b>	<b>Unit Price</b>
1	Sulfuric Acid - Liquid Form 0 < 1,000 Gallons	Gallon	\$1.50
2	Sodium Hypochlorite 0 < 1,000 Gallons	Gallon	\$0.99
3	Hydrochloric Acid - Liquid Form 0 < 100 Gallons	Gallon	\$1.75
4	Soda Ash (Bags) 0 < 500 Pounds	Pound	\$0.30
5	Baking Soda (Bags)	Pound	\$0.30
6	Sodium Thioulfate Penta Hydrate 0 < 500 Pounds	Pound	\$0.50
7	Calcium Hypochlorite - Granular Form (25lb Container) 0 < 500 Pounds	Pound	\$1.35

**Year Three Furnishing and Dispensing of Chemicals**

<b>Item #</b>	<b>Description</b>	<b>Unit of Measure</b>	<b>Unit Price</b>
1	Sulfuric Acid - Liquid Form 0 < 1,000 Gallons	Gallon	\$1.50
2	Sodium Hypochlorite 0 < 1,000 Gallons	Gallon	\$0.99
3	Hydrochloric Acid - Liquid Form 0 < 100 Gallons	Gallon	\$1.75
4	Soda Ash (Bags) 0 < 500 Pounds	Pound	\$0.30
5	Baking Soda (Bags)	Pound	\$0.30
6	Sodium Thioulfate Penta Hydrate 0 < 500 Pounds	Pound	\$0.50
7	Calcium Hypochlorite - Granular Form (25lb Container) 0 < 500 Pounds	Pound	\$1.35

**Year Four (Option Year One) Furnishing and Dispensing of Chemicals**

<b>Item #</b>	<b>Description</b>	<b>Unit of Measure</b>	<b>Unit Price</b>
1	Sulfuric Acid - Liquid Form 0 < 1,000 Gallons	Gallon	\$1.50
2	Sodium Hypochlorite 0 < 1,000 Gallons	Gallon	\$0.99
3	Hydrochloric Acid - Liquid Form 0 < 100 Gallons	Gallon	\$1.75
4	Soda Ash (Bags) 0 < 500 Pounds	Pound	\$0.30
5	Baking Soda (Bags)	Pound	\$0.30
6	Sodium Thioulfate Penta Hydrate 0 < 500 Pounds	Pound	\$0.50
7	Calcium Hypochlorite - Granular Form (25lb Container) 0 < 500 Pounds	Pound	\$1.35

**Year Five (Option Year Two) Furnishing and Dispensing of Chemicals**

<b>Item #</b>	<b>Description</b>	<b>Unit of Measure</b>	<b>Unit Price</b>
1	Sulfuric Acid - Liquid Form 0 < 1,000 Gallons	Gallon	\$1.50
2	Sodium Hypochlorite 0 < 1,000 Gallons	Gallon	\$0.99
3	Hydrochloric Acid - Liquid Form 0 < 100 Gallons	Gallon	\$1.75
4	Soda Ash (Bags) 0 < 500 Pounds	Pound	\$0.30
5	Baking Soda (Bags)	Pound	\$0.30
6	Sodium Thioulfate Penta Hydrate 0 < 500 Pounds	Pound	\$0.50
7	Calcium Hypochlorite - Granular Form (25lb Container) 0 < 500 Pounds	Pound	\$1.35

**PERFORMANCE BOND****THE STATE OF TEXAS****COUNTY OF HARRIS**

Commercial Chemical Products, Inc.  
 dba Poolsure, ("Principal") and SureTec Insurance Company, ("Surety"), shall pay to the City of Houston, Texas ("City"), the sum of \$80,920.00- in accordance with the terms and conditions stated below:

On or about this date, the Principal executed a Contract Agreement in writing with the City for Swimming Pool Maintenance Services for The Parks and Recreation Department ("Agreement"), which is incorporated into this Bond.

The conditions of this obligation are that if the Principal performs its obligations under the terms of the Agreement and this Bond in all respects, then this obligation is void and has no further force and effect; otherwise this obligation remains in effect and the sum of \$80,920.00- is payable to the City on demand.

The Surety relieves the City and its representatives from the exercise of any diligence whatever in securing the Principal's compliance with the terms of the Agreement, and the Surety waives any notice to it of the Principal's default or delay in the performance of the Agreement. The Surety shall take notice of and is held to have knowledge of all acts or omissions of the Principal, its agents, and representatives in all matters pertaining to the Agreement.

The City and its representatives may at any time, without notice to the Surety, make any changes in the terms and conditions of the Agreement, or extend it, and may add to or deduct from the Principal's obligations under the Agreement. Such changes, if made, do not in any way relieve, release, condition, or limit the obligation in this Bond and undertaking or release the Surety therefrom.

SURETY AND PRINCIPAL AGREE TO AND SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, AND REPRESENTATIVES FROM ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, DAMAGES, FINES, AND EXPENSES ARISING OUT OF OR RESULTING FROM ANY FAILURE ON THE PART OF THE PRINCIPAL, ITS AGENTS, AND REPRESENTATIVES, TO FULLY PERFORM UNDER THE AGREEMENT, INCLUDING ANY CHANGES OR EXTENSIONS TO IT.

If the City brings any suit or other proceeding at law on the Agreement or this Bond, or both, the Principal and the Surety shall pay to the City the additional sum of 10 percent of whatever amount the City recovers, which sum of 10 percent is agreed by all parties to be indemnity to the City for the expense of and time consumed by its City Attorney, his or her assistants, and office staff, and other costs and damages to the City. The amount of 10 percent is fixed and liquidated by the parties because the exact damage to the City would be difficult to ascertain.

This Bond and all obligations created under it shall be performable in Harris County, Texas, and all are non-cancelable. This Bond must be automatically renewed annually on the anniversary of the effective date of the Bond for the term of the Agreement and any extensions, unless the Surety gives the Principal and the City 30 days written notice before the renewal date that the Surety will not renew this Bond, in which case the Principal shall provide the City with a replacement bond (in the same form as this Bond) before the renewal date. The provisions of

V.T.C.A., Government Code Section 2253, as amended, control even though the Statute may not be applicable.

All notices required or permitted by this Bond must be in writing and are deemed delivered on the earlier of the date actually received or the third day following: (1) deposit in a United States Postal Service post office or receptacle; (2) with proper postage (certified mail, return receipt requested); and (3) addressed to the other party at the address set out on the signature page of this Bond or at such other address as the receiving party designates by proper notice to the sending party.

April 25, 2007 and will expire April 25, 2008

This Bond is effective on \_\_\_\_\_ and is binding on the Principal and the Surety, their heirs, executors, administrators, successors and assigns, jointly and severally.

EXECUTED in multiple originals this 25th day of April, 2007

ATTEST/SEAL: (if a corporation)  
WITNESS: (if not corporation)

Commercial Chemical Products, Inc. dba Poolsure

(Name of Principal)  
2778 Bingle  
Houston, Texas 77055  
(Address of Principal)

By: Casey R Garrett  
Name: CASEY R GARRETT  
Title: ADMIN ASST  
Date: 4.25.07

By: John L. Falik  
Name: JOHN L. FALIK  
Title: CEO  
Date: 4/25/07

ATTEST/SEAL  
SURETY WITNESS:

SURETEC INSURANCE COMPANY  
(Name of Surety)  
952 ECHO LANE, STE 450  
HOUSTON, TEXAS 77024  
(Address of Surety)

By: Sharon Cavanaugh  
Name: SHARON CAVANAUGH  
Title: WITNESS  
Date: APRIL 25, 2007

By: Leland C. Raich  
Name: LELAND C. RAICH  
Title: ATTORNEY-IN-FACT  
Date: APRIL 25, 2007

REVIEWED:

This Bond has been reviewed as to form by the undersigned Paralegal and has been found to meet established Legal Department criteria.

5-3-07  
Date

Paul Woodard  
Paralegal

HOUSTON, WOODARD, EASON, GENTLE,  
TOMFORDE, AND ANDERSON, INC.  
dba Insurance Alliance  
1776 Yorktown, Suite 200  
Houston, Texas 77056-4114  
TDI License #1381 FEIN #760362043

# SureTec Insurance Company

## LIMITED POWER OF ATTORNEY

**Know All Men by These Presents**, That SURETEC INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Texas, and having its principal office in Houston, Harris County, Texas, does by these presents make, constitute and appoint

C.W. Adams, Harlan J. Berger, Leland L. Rauch, Cheryl R. Colson, Sharon Cavanaugh,

Andrew J. Janda, Sue Kohler, Donald E. Woodard, Jr., Michael Cole, JoAnn Parker

of Houston, Texas its true and lawful Attorney(s)-in-fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings or other instruments or contracts of suretyship to include waivers to the conditions of contracts and consents of surety, providing the bond penalty does not exceed

Five Million and no/100 Dollars (\$5,000,000.00)

and to bind the Company thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seal of the Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises. Said appointment shall continue in force until December 31, 2008 and is made under and by authority of the following resolutions of the Board of Directors of the SureTec Insurance Company:

*Be it Resolved*, that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

*Attorney-in-Fact* may be given full power and authority for and in the name of and of behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

*Be it Resolved*, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached. (Adopted at a meeting held on 20<sup>th</sup> of April, 1999.)

**In Witness Whereof**, SURETEC INSURANCE COMPANY has caused these presents to be signed by its President, and its corporate seal to be hereto affixed this 20th day of June, A.D. 2005.

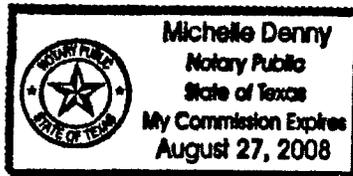


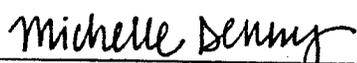
SURETEC INSURANCE COMPANY

By:   
 Bill King, President

State of Texas                      ss:  
 County of Harris

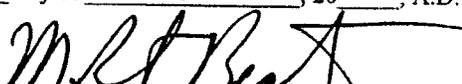
On this 20th day of June, A.D. 2005 before me personally came Bill King, to me known, who, being by me duly sworn, did depose and say, that he resides in Houston, Texas, that he is President of SURETEC INSURANCE COMPANY, the company described in and which executed the above instrument; that he knows the seal of said Company; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Company; and that he signed his name thereto by like order.



  
 Michelle Denny, Notary Public  
 My commission expires August 27, 2008

I, M. Brent Beaty, Assistant Secretary of SURETEC INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Company, which is still in full force and effect; and furthermore, the resolutions of the Board of Directors, set out in the Power of Attorney are in full force and effect.

Given under my hand and the seal of said Company at Houston, Texas this 25th day of April, 2007, A.D.

  
 M. Brent Beaty, Assistant Secretary

Any instrument issued in excess of the penalty stated above is totally void and without any validity.  
 For verification of the authority of this power you may call (713) 812-0800 any business day between 8:00 am and 5:00 pm CST.

**SureTec Insurance Company**  
**THIS BOND RIDER CONTAINS IMPORTANT COVERAGE INFORMATION**

**Statutory Complaint Notice**

To obtain information or make a complaint: You may call the Surety's toll free telephone number for information or to make a complaint at: 1-866-732-0099. You may also write to the Surety at:

SureTec Insurance Company  
9737 Great Hills Trail, Suite 320  
Austin, TX 78759

You may contact the Texas Department of Insurance to obtain information on companies, coverage, rights or complaints at 1-800-252-3439. You may write the Texas Department of Insurance at

PO Box 149104  
Austin, TX 78714-9104  
Fax#: 512-475-1771

**PREMIUM OR CLAIM DISPUTES:** Should you have a dispute concerning your premium or about a claim, you should contact the Surety first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

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**Terrorism Risks Exclusion**

The Bond to which this Rider is attached does not provide coverage for, and the surety shall not be liable for, losses caused by acts of terrorism, riot, civil insurrection, or acts of war.

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**Exclusion of Liability for  
Mold, Mycotoxins, Fungi & Environmental Hazards**

The Bond to which this Rider is attached does not provide coverage for, and the surety thereon shall not be liable for, molds, living or dead fungi, bacteria, allergens, histamines, spores, hyphae, or mycotoxins, or their related products or parts, nor for any environmental hazards, bio-hazards, hazardous materials, environmental spills, contamination, or cleanup, nor the remediation thereof, nor the consequences to persons, property, or the performance of the bonded obligations, of the occurrence, existence, or appearance thereof.