

**AGREEMENT FOR SUPPLY AND DELIVERY OF BULK POOL CHEMICALS AND EQUIPMENT**

THIS AGREEMENT FOR SUPPLY AND DELIVERY OF BULK POOL CHEMICALS AND EQUIPMENT ("Agreement") is entered into by and between the **CITY OF OCALA**, a Florida municipal corporation ("City"), and **AQUASOL COMMERCIAL CHEMICAL, INC. DBA POOLSURE**, a foreign for-profit corporation duly organized in the state of Texas and authorized to do business in the state of Florida (EIN: 74-2861600) ("Vendor").

**WHEREAS**, on November 15, 2021 the City of Ocala issued an Invitation to Bid ("ITB") for the provision of providing and delivering bulk pool water treatment chemicals, leasing chemical pumping equipment, and providing preventive maintenance for two commercial pools and one commercial splash pad, ITB No.: REC/211027 (the "Solicitation"); and

**WHEREAS**, two firms responded to the Solicitation and, after consideration of price and other evaluation factors set forth in the Solicitation, the bid submitted by Vendor was found to be the lowest; and

**WHEREAS**, Vendor was chosen as the intended awardee to provide and deliver bulk pool water treatment chemicals, lease chemical pumping equipment, and provide preventive maintenance for two commercial pools and one commercial splash pad ("Services").

**NOW THEREFORE**, in consideration of the foregoing recitals, the following mutual covenants and conditions, and other good and valuable consideration, City and Vendor agree as follows:

1. **RECITALS.** City and Vendor hereby represent, warrant, and agree that the Recitals set forth above are true and correct and are incorporated herein by reference.
2. **CONTRACT DOCUMENTS.** The contract documents which comprise the entire understanding between City and Vendor shall only include: (a) this Agreement; (b) those documents listed in this section as Exhibits to this Agreement; and (c) the City's Solicitation for the Project and the bid submitted by Vendor in response to same (the "Solicitation Documents"). Each of these documents are incorporated herein by reference for all purposes. If there is a conflict between the terms of this Agreement and the Contract Documents, then the terms of this Agreement shall control, amend, and supersede any conflicting terms contained in the remaining Contract Documents.

A. **Exhibits to Agreement:** The Exhibits to this Agreement are as follows:

Exhibit A: Scope of Work (A-1 through A-4)

Exhibit B: Price Proposal (B-1)

Exhibit C: Vendor Terms and Conditions (C-1 through C-3)

If there is a conflict between the individual Exhibits regarding the scope of work to be performed, then any identified inconsistency shall be resolved by giving precedence in the following order: (1) Exhibit A, then (2) Exhibit B.

3. **SCOPE OF SERVICES.** Vendor shall provide all materials, labor, supervision, tools, accessories, equipment, permits, certifications, and all other things necessary for Vendor to perform its obligations under this Agreement as set forth in the attached **Exhibit A - Scope of Work** and the Solicitation Documents. In the event of a conflict between this Agreement and the Solicitation Documents, this Agreement and all of its Exhibits shall be given precedence to resolve any identified inconsistency. The Scope of Work may only be adjusted by written amendment executed by both parties.
4. **COMPENSATION.** The highest total compensation payable to Vendor by City under this Agreement for the timely and satisfactory performance of services in compliance with **Exhibit A – Scope of Work** shall be **SEVENTY-EIGHT THOUSAND, SEVENTY-SEVEN AND 40/100 DOLLARS (\$78,077.40)** (the "Maximum Limiting Amount"). The allowability of compensation sought under this Contract is expressly made subject to the terms of this Contract, and any pertinent Federal and State law.
  - A. **Pricing.** Vendor shall be compensated in accordance with the pricing schedule set forth in the attached **Exhibit B – Price Proposal**.
  - B. **Renewal Pricing Increases.** Any pricing increase for renewals shall be subject to negotiation as approved by City. Any and all renewals shall be subject to a maximum negotiated price increase of no more than **FIVE PERCENT (5%) ANNUALLY** unless there are mitigating market conditions. Price increases shall be based on the current CPI-U. Vendor's shall submit any request for pricing increase, along with CPI-U justification, at least **NINETY (90) DAYS** prior to the end of the Contract Term.
  - C. **Invoice Submission.** All invoices submitted by Vendor shall include the City Contract Number, an assigned Invoice Number, and an Invoice Date. Vendor shall submit the original invoice through the responsible City Project Manager at: **Ocala Recreation and Parks Department**, Attn: **John N. Spencer**, **828 NE 8<sup>th</sup> Avenue, Ocala, FL 34470**, E-mail: [jspencer@ocalafl.org](mailto:jspencer@ocalafl.org).
  - D. **Payment of Invoices by City.** The City Project Manager must review and approve all invoices prior to payment. City Project Manager's approval shall not be unreasonably withheld, conditioned, or delayed.
  - E. **Withholding of Payment.** City reserves the right to withhold, in whole or in part, payment for any and all work that: (i) has not been completed by Vendor; (ii) is inadequate or defective and has not been remedied or resolved in a manner satisfactory to the City Project Manager;

or (iii) which fails to comply with any term, condition, or other requirement under this Agreement. Any payment withheld shall be released and remitted to Vendor within **THIRTY (30)** calendar days of the Vendor's remedy or resolution of the inadequacy or defect.

F. **Excess Funds.** If due to mistake or any other reason Vendor receives payment under this Agreement in excess of what is provided for by the Agreement, Vendor shall promptly notify City upon discovery of the receipt of the overpayment. Any overpayment shall be refunded to City within **THIRTY (30)** days of Vendor's receipt of the overpayment or must also include interest calculated from the date of the overpayment at the interest rate for judgments at the highest rate as allowed by law.

G. **Tax Exemption.** City is exempt from all federal excise and state sales taxes (State of Florida Consumer's Certification of Exemption 85-8012621655C-9). The City's Employer Identification Number is 59-60000392. Vendor shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with the City, nor will Vendor be authorized to use City's Tax Exemption Number for securing materials listed herein.

5. **EFFECTIVE DATE AND TERM.** This Agreement shall become effective and commence on **JUNE 6, 2022** and continue for a term of **THREE (3)** years, through and including **JUNE 5, 2025** (the "Contract Term"). This Agreement may be renewed for up to **TWO (2)** additional, **ONE-YEAR** (1-year) periods by written consent between City and Vendor.

6. **FORCE MAJEURE.** Neither party shall be liable for delay, damage, or failure in the performance of any obligation under this Agreement if such delay, damage, or failure is due to causes beyond its reasonable control, including without limitation: fire, flood, strikes and labor disputes, acts of war, acts of nature, terrorism, civil unrest, acts or delays in acting of the government of the United States or the several states, judicial orders, decrees or restrictions, or any other like reason which is beyond the control of the respective party ("Force Majeure"). The party affected by any event of force majeure shall use reasonable efforts to remedy, remove, or mitigate such event and the effects thereof with all reasonable dispatch.

A. The party affected by force majeure shall provide the other party with full particulars thereof including, but not limited to, the nature, details, and expected duration thereof, as soon as it becomes aware.

B. When force majeure circumstances arise, the parties shall negotiate in good faith any modifications of the terms of this Agreement that may be necessary or appropriate in order to arrive at an equitable solution. Vendor performance shall be extended for a number of days equal to the duration of the force majeure. Vendor shall be entitled to an extension of time only and, in no event, shall Vendor be entitled to any increased costs, additional compensation, or damages of any type resulting from such force majeure delays.

7. **INSPECTION AND ACCEPTANCE OF THE WORK.** All services, work, and products provided by Vendor under this Agreement shall be provided under the direction and to the satisfaction and approval of the City Project Manager (the "Project Manager").
- A. The Project Manager shall decide all questions regarding the quality, acceptability, and/or fitness of materials, the rate of progress of the work, and the acceptable fulfillment of the Agreement, in his or her sole discretion, based upon both the requirements set forth by City and the information provided by Vendor in its Bid. The authority vested in the Project Manager pursuant to this paragraph shall be confined to the direction or specification of what is to be performed under this Agreement and shall not extend to the actual execution of the Services.
- B. Neither the Project Manager's review of Vendor's work nor recommendations made by Project Manager pursuant to this Agreement will impose on Project Manager any responsibility to supervise, direct, or control Vendor's work in progress or for the means, methods, techniques, sequences, or safety precautions or programs incident to Vendor's provision of Services under this Agreement.
8. **TERMINATION AND DEFAULT.** Either party, upon determination that the other party has failed or refused to perform or is otherwise in breach of any obligation or provision under this Agreement or the Contract Documents, may give written notice of default to the defaulting party in the manner specified for the giving of notices herein. Termination of this Agreement by either party for any reason shall have no effect upon the rights or duties accruing to the parties prior to termination.
- A. **Termination by City for Cause.** City shall have the right to terminate this Agreement immediately, in whole or in part, upon the failure of Vendor to carry out any obligation, term, or condition of this Agreement. City's election to terminate the Agreement for default shall be communicated by providing Vendor written notice of termination in the manner specified for the giving of notices herein. Any notice of termination given to Vendor by City shall be effective immediately, unless otherwise provided therein, upon the occurrence of any one or more of the following events:
- (1) Vendor fails to timely and properly perform any of the services set forth in the specifications of the Agreement;
  - (2) Vendor provides material that does not meet the specifications of the Agreement;
  - (3) Vendor fails to complete the work required within the time stipulated in the Agreement;
  - or
  - (4) Vendor fails to make progress in the performance of the Agreement and/or gives City reason to believe that Vendor cannot or will not perform to the requirements of the Agreement.

- B. **Vendor's Opportunity to Cure Default.** City may, in its sole discretion, provide Vendor with an opportunity to cure the violations set forth in City's notice of default to Vendor. Vendor shall commence to cure the violations immediately and shall diligently and continuously prosecute such cure to completion within a reasonable time as determined by City. If the violations are not corrected within the time determined to be reasonable by City or to the reasonable satisfaction of City, City may, without further notice, declare Vendor to be in breach of this Agreement and pursue all remedies available at law or equity, to include termination of this Agreement without further notice.
- C. **City's Remedies Upon Vendor Default.** In the event Vendor fails to cure any default under this Agreement within the time period specified in this section, City may pursue any remedies available at law or equity, including, without limitation, the following:
- (1) City shall be entitled to terminate this Agreement without further notice;
  - (2) City shall be entitled to hire another vendor to complete the required work in accordance with the needs of City;
  - (3) City shall be entitled to recover from Vendor all damages, costs, and attorney's fees arising from Vendor's default prior to termination; and
  - (4) City shall be entitled to recovery from Vendor any actual excess costs by: (i) deduction from any unpaid balances owed to Vendor; and (ii) any other remedy as provided by law.
- D. **Termination for Non-Funding.** In the event that budgeted funds to finance this Agreement are reduced, terminated, or otherwise become unavailable, City may terminate this Agreement upon written notice to Vendor without penalty or expense to City. City shall be the final authority as to the availability of budgeted funds.
- E. **Termination for Convenience.** City reserves the right to terminate this Agreement in whole or in part at any time for the convenience of City without penalty or recourse. The Project Manager shall provide written notice of the termination. Upon receipt of the notice, Vendor shall immediately discontinue all work as directed in the notice, notify all subcontractors of the effective date of the termination, and minimize all further costs to City including, but not limited to, the placing of any and all orders for materials, facilities, or supplies, in connection with its performance under this Agreement. Vendor shall be entitled to receive compensation solely for: (1) the actual cost of the work completed in conformity with this Agreement; and/or (2) such other costs incurred by Vendor as permitted under this Agreement and approved by City.
9. **WARRANTY.** Vendor warrants that all goods furnished under this Agreement, whether manufactured or fabricated by Vendor or a third party shall be new and of the type and quality required in accordance with the Contract Documents. Vendor shall guarantee that the materials provided shall be free from any defects for the longer of: (i) **ONE (1)** year from the date

furnished; or (ii) the period of warranty provided by any supplier or manufacturer. Any and all written manufacturers' warranties for materials supplied must be provided to the City's Project Manager before final payment will be authorized.

10. **PERFORMANCE EVALUATION.** At the end of the contract, City may evaluate Vendor's performance. Any such evaluation will become public record.
11. **NOTICE REGARDING FAILURE TO FULFILL AGREEMENT.** Any Vendor who enters into an Agreement with the City of Ocala and fails to complete the contract term, for any reason, shall be subject to future bidding suspension for a period of one (1) year and bid debarment for a period of up to three (3) years for serious contract failures.
12. **VENDOR REPRESENTATIONS.** Vendor expressly represents that:
  - A. Vendor has read and is fully familiar with all the terms and conditions of this Agreement, the Contract Documents, and other related data and acknowledges that they are sufficient in scope and detail to indicate and convey understanding of all terms and conditions of the work to be performed by Vendor under this Agreement.
  - B. Vendor has disclosed, in writing, all known conflicts, errors, inconsistencies, discrepancies, or omissions discovered by Vendor in the Contract Documents, and that the City's written resolution of same is acceptable to Vendor.
  - C. Vendor is familiar with all local, state, and Federal laws, regulations, and ordinances which may affect cost, progress, or its performance under this Agreement whatsoever.
  - D. Vendor understands that a "public entity crime" as defined in section 287.133(1)(g), Florida Statutes, is "a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States..." Vendor further understands that any person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime (1) may not submit a bid, proposal, or reply on a contract: (a) to provide any goods or services to a public entity; (b) for the construction or repair of a public building or public work; or (c) for leases of real property to a public entity; (2) may not be awarded or perform work as a Vendor, supplier, subcontractor, or consultant under a contract with any public entity; and (3) may not transact business with any public entity in excess of the threshold amount provided in section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
13. **VENDOR RESPONSIBILITIES.** Except as otherwise specifically provided for in this Agreement, the following provisions are the responsibility of the Vendor:
  - A. Vendor shall competently and efficiently supervise, inspect, and direct all work to be performed under this Agreement, devoting such attention thereto and applying such skills

and expertise as may be necessary to perform the work in accordance with the Contract Documents.

- B. Vendor shall be solely responsible for the means, methods, techniques, sequences, procedures, and safety precautions or programs incident thereto.
- C. Vendor shall be responsible to see that the finished work complies accurately with the contract and the intent thereof.
- D. Vendor shall comply with all local, state, and Federal laws, regulations, and ordinances which may affect cost, progress, or its performance under this Agreement, and be responsible for all costs associated with same.
- E. Vendor shall continue its performance under this Agreement during the pendency of any dispute or disagreement arising out of or relating to this Agreement, except as Vendor and City may otherwise agree in writing.

14. **NO EXCLUSIVITY.** It is expressly understood and agreed by the parties that this is not an exclusive agreement. Nothing in this Agreement shall be construed as creating any exclusive arrangement with Vendor or as prohibit City from either acquiring similar, equal, or like goods and/or services or from executing additional contracts with other entities or sources.
15. **COMMERCIAL AUTO LIABILITY INSURANCE.** Vendor shall procure and maintain, for the life of this Agreement, commercial auto liability insurance covering all automobiles owned, non-owned, hired, and scheduled by Vendor with a combined limit of not less than One Million Dollars (\$1,000,000) for bodily injury and property damage for each accident. Vendor shall name City as an additional insured under the insurance policy.
16. **POLLUTION LIABILITY INSURANCE.** If not otherwise included in Contractor's Commercial General Liability Insurance coverage, Contractor shall procure and maintain, for a period of **THREE (3)** years after final completion of the Work under this Agreement, pollution liability insurance coverage for claims arising from the discharge, dispersal, release, or escape of any irritant or contaminant into or upon land, any structure, the atmosphere, watercourse, or body of water, including groundwater. This shall include coverage for claims of: (a) clean up, either on-site or off site; (b) third party liability, including bodily injury, property damage, natural resource damage, third party property loss of use/revenue, and clean up; and/or (c) costs incurred for the investigation, defense, or settlement of claims.
17. **GENERAL LIABILITY INSURANCE.** Vendor shall procure and maintain, for the life of this Agreement, commercial general liability insurance with minimum coverage limits not less than:
  - A. One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate limit for bodily injury, property damage, and personal and advertising injury; and

- B. One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate limit for products and completed operations.
- C. Coverage for contractual liability is also required.
- D. City, a political subdivision of the State of Florida, and its officials, employees, and volunteers shall be covered as an additional insured with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage regarding liability arising out of activities performed by or on behalf of Vendor. The coverage shall contain no special limitation on the scope of protection afforded to City, its officials, employees, or volunteers.

18. **WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY.** Vendor shall procure and maintain, for the life of this Agreement, Workers' Compensation insurance and employer's liability insurance in amounts required by applicable statutes. Vendor shall ensure any and all subcontractors have coverage as required by applicable statutes. Vendor is not required to name City as an additional insured under the policies, but a subrogation waiver endorsement is required. Exceptions and exemptions may be allowed by City's HR/Risk Director, so long as they are in accordance with Florida Statute.

19. **MISCELLANEOUS INSURANCE PROVISIONS.**

- A. Insurance Requirements. These insurance requirements shall not relieve or limit the liability of Vendor. City does not in any way represent that these types or amounts of insurance are sufficient or adequate to protect Vendor's interests or liabilities, but are merely minimums. No insurance is provided by the City under this contract to cover Vendor. **No work shall be commenced under this contract until the required Certificate(s) of Insurance have been provided.** Work shall not continue after expiration (or cancellation) of the Certificates of Insurance and shall not resume until new Certificate(s) of Insurance have been provided. Insurance written on a "Claims Made" form is not acceptable without consultation with City of Ocala Risk Management.
- B. Deductibles. Vendor's deductibles/self-insured retentions shall be disclosed to the City and may be disapproved by City. Vendor is responsible for the amount of any deductible or self-insured retention.
- C. Certificates of Insurance. Vendor shall provide a Certificate of insurance, issued by an agency authorized to do business in the State of Florida and with an A.M. Best rating\* of at least A, showing the "City of Ocala" as an Additional Insured. Original and renewal certificates must be forwarded to the **City of Ocala Contracting Department, Third Floor, 110 SE Watula Avenue, Ocala, FL 34471, E-Mail: [vendors@ocalafl.org](mailto:vendors@ocalafl.org)** prior to the policy expiration. **TEN (10)** days written notice must be provided to the City in the event of cancellation.

\*Non-rated insurers must be pre-approved by the City Risk Manager.

- D. Failure to Maintain Coverage. In the event Vendor fails to disclose each applicable deductible/self-insured retention or obtain or maintain in full force and effect any insurance coverage required to be obtained by Vendor under this Agreement, Vendor shall be considered to be in default of this Agreement.
- E. Severability of Interests. Vendor shall arrange for its liability insurance to include General Liability, Business Automobile Liability, and Excess/Umbrella Insurance, or be endorsed to include, a severability of interests/cross liability provision, so that the "City of Ocala" (where named as an additional insured) will be treated as if a separate policy were in existence, but without increasing the policy limits.
- F. Mandatory Endorsements for All Required Policies. All required policies shall include: (i) endorsement that waives any right of subrogation against the City of Ocala for any policy of insurance provided under this Agreement or under any state or federal worker's compensation or employer's liability act; and (ii) endorsement to give the City of Ocala no less than **THIRTY (30)** days written notice (with the exception of non-payment of premium which requires a **TEN (10)** calendar day notice) in the event of cancellation or material change.

20. **SAFETY/ENVIRONMENTAL.** Vendor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work. Vendor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

- A. All employees on the work and other persons that may be affected thereby;
- B. All work, materials and equipment to be incorporated therein, whether in storage on or off the site; and
- C. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities.

All, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Vendor, any subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, shall be remedied by Vendor. Vendor's duties and responsibilities for the safety and protection of the work shall continue until such time as the work is completed and accepted by City.

21. **NON-DISCRIMINATORY EMPLOYMENT PRACTICES.** During the performance of the contract, Vendor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, sexual orientation,

gender identity, marital or domestic partner status, familial status, or veteran status and shall take affirmative action to ensure that an employee or applicant is afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation and selection for training or retraining, including apprenticeship and on-the-job training.

22. **SUBCONTRACTORS.** Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by City or its representatives to any subcontractor of Vendor or any other persons or organizations having a direct contract with Vendor, nor shall it create any obligation on the part of City or its representatives to pay or seek payment of any monies to any subcontractor of Vendor or any other persons or organizations having a direct contract with Vendor, except as may otherwise be required by law. City shall not be responsible for the acts or omissions of any vendor, subcontractor, or of any of their agents or employees.
23. **INDEPENDENT CONTRACTOR STATUS.** Vendor acknowledges and agrees that under this Agreement, Vendor and any agent or employee of Vendor shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which it performs the services and work required under this Agreement. Neither Vendor nor its agents or employees shall represent or hold themselves out to be employees of City at any time. Neither Vendor nor its agents or employees shall have employee status with City. Nothing in this Agreement shall constitute or be construed to create any intent on the part of either party to create an agency relationship, partnership, employer-employee relationship, joint venture relationship, or any other relationship which would allow City to exercise control or discretion over the manner or methods employed by Vendor in its performance of its obligations under this Agreement.
24. **ACCESS TO FACILITIES.** City shall provide Vendor with access to all City facilities as is reasonably necessary for Vendor to perform its obligations under this Agreement.
25. **ASSIGNMENT.** Neither party may assign its rights or obligations under this Agreement to any third party without the prior express approval of the other party, which shall not be unreasonably withheld.
26. **RIGHT OF CITY TO TAKE OVER CONTRACT.** Should the work to be performed by Vendor under this Agreement be abandoned, or should Vendor become insolvent, or if Vendor shall assign or sublet the work to be performed hereunder without the written consent of City, the City Project Manager shall have the power and right to hire and acquire additional men and equipment, supply additional material, and perform such work as deemed necessary for the completion of this Agreement. Under these circumstances, all expenses and costs actually incurred by City to accomplish such completion shall be credited to City along with amounts attributable to any

other elements of damage and certified by the Project Manager. The Project Manager's certification as to the amount of such liability shall be final and conclusive.

27. **PUBLIC RECORDS.** Vendor shall comply with all applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes. Specifically, Vendor shall:
- A. Keep and maintain public records required by the public agency to perform the service.
  - B. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
  - C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if Vendor does not transfer the records to the public agency.
  - D. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of Vendor or keep and maintain public records required by the public agency to perform the service. If Vendor transfers all public records to the public agency upon completion of the contract, Vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Vendor keeps and maintains public records upon completion of the contract, Vendor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

**IF VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: CITY OF OCALA, OFFICE OF THE CITY CLERK; 352-629-8266; E-mail: [clerk@ocalafl.org](mailto:clerk@ocalafl.org); City Hall, 110 SE Watula Avenue, Ocala, FL 34471.**

28. **AUDIT.** Vendor shall comply and cooperate immediately with any inspections, reviews, investigations, or audits relating to this Agreement as deemed necessary by the Florida Office of the Inspector General, the City's Internal or External auditors or by any other Florida official with proper authority.

29. **PUBLICITY.** Vendor shall not use City's name, logo, seal or other likeness in any press release, marketing materials, or other public announcement without City's prior written approval.
30. **E-VERIFY.** Pursuant to section 448.095, Contractor shall register with and use the U.S. Department of Homeland Security's ("DHS") E-Verify System, accessible at <https://e-verify.uscis.gov/emp>, to verify the work authorization status of all newly hired employees. Contractor shall obtain affidavits from any and all subcontractors in accordance with paragraph 2(b) of section 448.095, Florida Statutes, and maintain copies of such affidavits for the duration of this Agreement. By entering into this Agreement, Contractor certifies and ensures that it utilizes and will continue to utilize the DHS E-Verify System for the duration of this Agreement and any subsequent renewals of same. Contractor understands that failure to comply with the requirements of this section shall result in the termination of this Agreement and Contractor may lose the ability to be awarded a public contract for a minimum of one (1) year after the date on which the Agreement was terminated. Contractor shall provide a copy of its DHS Memorandum of Understanding upon City's request. Please visit [www.e-verify.gov](http://www.e-verify.gov) for more information regarding the E-Verify System.
31. **CONFLICT OF INTEREST.** Vendor must have disclosed with the submission of their bid, the name of any officer, director, or agent who may be employed by City. Vendor must disclose the name of any City employee who owns, directly or indirectly, any interest in Vendor or any affiliated business entity. Any additional conflicts of interest that may occur during the contract term must be disclosed to the City of Ocala Procurement Department.
32. **WAIVER.** The failure or delay of any party at any time to require performance by another party of any provision of this Agreement, even if known, shall not affect the right of such party to require performance of that provision or to exercise any right, power or remedy hereunder. Any waiver by any party of any breach of any provision of this Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to or demand on any party in any circumstance shall, of itself, entitle such party to any other or further notice or demand in similar or other circumstances.
33. **SEVERABILITY OF ILLEGAL PROVISIONS.** Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under the applicable law. Should any portion of this Agreement be declared invalid for any reason, such declaration shall have no effect upon the remaining portions of this Agreement.
34. **INDEMNITY.** Vendor shall indemnify City and its elected officials, employees and volunteers against, and hold City and its elected officials, employees and volunteers harmless from, all damages, claims, losses, costs, and expenses, including reasonable attorneys' fees, which City or

its elected officials, employees or volunteers may sustain, or which may be asserted against City or its elected officials, employees or volunteers, arising out of the activities contemplated by this Agreement including, without limitation, harm or personal injury to third persons during the term of this Agreement to the extent attributable to the actions of Vendor, its agents, and employees.

35. **NO WAIVER OF SOVEREIGN IMMUNITY.** Nothing herein is intended to waive sovereign immunity by the City to which sovereign immunity may be applicable, or of any rights or limits of liability existing under Florida Statute § 768.28. This term shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until any proceeding brought under this Agreement is barred by any applicable statute of limitations.
36. **NOTICES.** All notices, certifications or communications required by this Agreement shall be given in writing and shall be deemed delivered when personally served, or when received if by facsimile transmission with a confirming copy mailed by registered or certified mail, postage prepaid, return receipt requested. Notices can be concurrently delivered by e-mail. All notices shall be addressed to the respective parties as follows:

If to Vendor:

Aquasol Commercial Chemicals, Inc.  
Attention: Thomas Hodges  
1707 Townhurst Rd.  
Houston, TX 77043  
Phone: (800) 858-7665 Ext. 102  
E-mail: [bids@poolsure.com](mailto:bids@poolsure.com)

If to City of Ocala:

Tiffany Kimball, Contracting Officer  
110 SE Watula Avenue, 3rd Floor  
Ocala, Florida 34471  
Phone: 352-629-8366 Fax: 352-690-2025  
E-mail: [tkimball@ocalafl.org](mailto:tkimball@ocalafl.org)

Copy to:

Robert W. Batsel, Jr.  
Gilligan, Gooding, Batsel & Anderson, P.A.  
1531 SE 36<sup>th</sup> Avenue  
Ocala, Florida 34471  
E-mail: [rbatsel@ocalalaw.com](mailto:rbatsel@ocalalaw.com)

37. **ATTORNEYS' FEES.** If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees, sales and use taxes, court costs and all expenses reasonably incurred even if not taxable as court costs (including, without limitation, all such fees, taxes, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that civil action, arbitration or legal proceeding, in addition to any other relief to which such party or parties may be entitled. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, sales and use taxes and all other charges reasonably billed by the attorney to the prevailing party.
38. **JURY WAIVER.** IN ANY CIVIL ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF, CONCERNS, OR RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY ANY OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.
39. **GOVERNING LAW.** This Agreement is and shall be deemed to be a contract entered and made pursuant to the laws of the State of Florida and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of Florida.
40. **JURISDICTION AND VENUE.** The parties acknowledge that a majority of the negotiations, anticipated performance and execution of this Agreement occurred or shall occur in Marion County, Florida. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought only in the courts of record of the State of Florida in Marion County or the United States District Court, Middle District of Florida, Ocala Division. Each party consents to the exclusive jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court and/or the right to bring an action or proceeding in any other court. Service of any court paper may

be affected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws, rules of procedures or local rules.

41. **REFERENCE TO PARTIES.** Each reference herein to the parties shall be deemed to include their successors, assigns, heirs, administrators, and legal representatives, all who shall be bound by the provisions hereof.
42. **MUTUALITY OF NEGOTIATION.** Vendor and City acknowledge that this Agreement is a result of negotiations between Vendor and City, and the Agreement shall not be construed in favor of, or against, either party because of that party having been more involved in the drafting of the Agreement.
43. **SECTION HEADINGS.** The section headings herein are included for convenience only and shall not be deemed to be a part of this Agreement.
44. **RIGHTS OF THIRD PARTIES.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or because of this Agreement on any persons other than the parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Agreement.
45. **AMENDMENT.** No amendment to this Agreement shall be effective except those agreed to in writing and signed by both parties to this Agreement.
46. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.
47. **ELECTRONIC SIGNATURE(S).** Vendor, if and by offering an electronic signature in any form whatsoever, will accept and agree to be bound by said electronic signature to all terms and conditions of this Agreement. Further, a duplicate or copy of the Agreement that contains a duplicated or non-original signature will be treated the same as an original, signed copy of this original Agreement for all purposes.
48. **ENTIRE AGREEMENT.** This Agreement, including exhibits, (if any) constitutes the entire Agreement between the parties hereto with respect to the subject matter hereof. There are no other representations, warranties, promises, agreements or understandings, oral, written or implied, among the Parties, except to the extent reference is made thereto in this Agreement. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of the terms of this Agreement. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein.

49. **LEGAL AUTHORITY.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on \_\_\_\_\_.

**ATTEST:**

**CITY OF OCALA**

\_\_\_\_\_  
Angel B. Jacobs  
City Clerk

\_\_\_\_\_  
Ire Bethea, Sr.  
City Council President

**Approved as to form and legality:**

**AQUASOL COMMERCIAL CHEMICAL, INC.**

\_\_\_\_\_  
Robert W. Batsel, Jr.  
City Attorney

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

**BACKGROUND**

1. Vendor will provide and deliver bulk pool water treatment chemicals, lease chemical pumping equipment, and provide preventive maintenance for two commercial pools and one commercial splash pad, located at the addresses below:
  - A. **Jervey Gantt Aquatic Fun Center:** 2390 SE 36th Avenue, Ocala, FL 34471
  - B. **Hampton Aquatic Fun Center:** 255 NW Martin Luther King, Jr. Boulevard, Ocala, FL 34475
  - C. **Lily's Pad Splash Pad:** 2200 NW 17th Place, Ocala, FL 34475
2. Jervey Gantt is 180,000 gallons, Hampton Pool is 160,000 gallons, and Lily's Pad Splash Pad is 2,800 gallons.
3. Each commercial pool facility requires year-round chemical water treatment to maintain a sanitary condition, balance the pool water to protect public health, and meet the sanitation and safety standards for public pools as set forth in Florida Chapter 64E-9, *Florida Administrative Code: Public Swimming Pools and Bathing Places*.
4. The City's commercial pools are managed and operated by City staff who are Certified Pool Operators.

**LICENSING, PERMIT AND CERTIFICATION REQUIREMENTS**

1. **Licensing Requirement:** Vendor must be licensed as a Commercial Pool/Spa Contractor in the State of Florida and maintain the license throughout the contract term.
2. **Chemical Permits and Licenses:** Vendor trucks must have appropriate DOT permits and hazmat licenses for operation and bulk delivery of liquid chemicals (i.e., sodium hypochlorite and sulfuric acid) and transport of dry pool chemicals. *(The transporter must have DOT permits, hazmat licenses and carry pollution liability coverage).*
3. **Equipment Calibration Certification:** Vendor employees calibrating chemical pumping equipment must be certified as Certified Pool Operators (Florida 64E-9.018 Public Pool Service Technician Certification). *(Required for equipment calibrator).*

**LEAD TIME**

1. **Lead Time:** The maximum acceptable lead time on materials for initial equipment installation is two weeks.

**SUMMARY OF WORK, DELIVERABLES AND HOURS**

1. **Pool Equipment (City Pools):** Each of the two City's pools require the following:
  - A. Pumping
    - i. One programmable chemical automation system for continuous monitoring and control of pH and sanitizer ORP (oxidation-reduction potential).
      - a) *Remote Monitoring & Control*
        - 1) Required – controller shall have the capability for ORP and pH to be remotely viewed/monitored through the cloud using Ethernet/Internet network communication.
        - 2) Preferred – controller shall have capability to be remotely operated/controlled through the cloud using Ethernet/Internet network communication.

- ii. Three Stenner pumps (properly rated for pool sizing), or equivalent chemical pumps.
  - iii. Related chemical pumping equipment, tubing, and fixtures (needed to install chemical pumping equipment and storage tanks).
- B. Chemical storage tanks and equipment
- i. One (1) 325-gallon bulk Liquid Chlorine tank, with remote level monitoring.
  - ii. One (1) 165-gallon tank bulk sulfuric acid tank, with remote level monitoring.
2. **Pool Equipment (Splash Pad):** The City's splash pad requires the following:
- A. Pumping
- i. Two Stenner pumps (properly rated for pool sizing), or equivalent chemical pumps.
  - ii. Related chemical pumping equipment, tubing, and fixtures (needed to install chemical pumping equipment and storage tanks).
- B. Chemical storage tanks and equipment.
- i. One (1) 165-gallon bulk Liquid Chlorine tank, with remote level monitoring.
  - ii. One (1) 100-gallon tank bulk sulfuric acid tank, with remote level monitoring.
3. **Equipment Installation** (at all three locations- two pools and splash pad):
- A. Vendor must set up controllers and pumps, connect tubing, and switch over all storage tanks.
  - B. Vendor must train pool manager(s) through the equipment, controllers, and Stenner pumps.
4. **Equipment Support:**
- A. Vendor must be available to troubleshoot any chemical pumping related equipment issues **less than 24 hours** from service inquiry/request.
  - B. Vendor must agree to maintain, repair and/or replace all chemical pumping equipment as needed, at cost for parts/materials, for the term of this contract. Proof of Vendor's cost for parts must be submitted with the associated invoice.
  - C. **Preventive Maintenance:** Vendor shall provide twice a year preventive maintenance for chemical pumping equipment at all three locations. Equipment preventive maintenance shall be coordinated with City staff annually in April (prior to the annual pool opening season) and October.
5. **Pool Chemicals:** Vendor shall provide and deliver bulk pool water treatment chemicals and chemical pumping equipment to two commercial pools and one commercial splash pad. Storage area is available for dry goods.
6. **Chemical Delivery:** The chemicals routinely purchased under this contract for bulk delivery are:
- A. Liquid
- i. Sodium Hypochlorite 12.5% bulk liquid
  - ii. Sulfuric Acid 38% bulk liquid
- B. Dry Chemicals
- i. Sodium Bicarbonate 50-pound bag
  - ii. Cyanuric Acid (Stabilizer) 50-pound bag
  - iii. Calcium Chloride Flakes 50-pound bag

7. **Materials, Labor, and Equipment.** Vendor shall be responsible for all materials, labor, and equipment to complete the work.
8. **Working Hours:** The standard working hours for this agreement are 7:00 AM – 5:00 PM (Eastern time) Monday through Friday, excluding holidays. Vendor shall provide (forty-eight) 48-hour advance notice to City Project Manager for work outside normal shift hours. Vendor shall provide a contact method (after-hour phone or email) for technical support issues outside normal hours.
9. **Emergency Work Hours:** Vendor must have available staff prepared to begin work within two hours notification of any work deemed “Emergency.”

## DELIVERY

1. Delivery of equipment and chemical products will be to:
  - A. Jervey Gantt Aquatic Fun Center, 2390 SE 36th Avenue, Ocala, FL 34471.
  - B. Hampton Aquatic Fun Center, 255 NW Martin Luther King, Jr. Boulevard, Ocala, FL 34475.
  - C. Lily’s Pad Splashpad, 2200 NW 17th Place, Ocala, FL 34475.
2. **Delivery of chemicals shall take place no more than thirty-six (36) hours from placement of an order.** The City shall provide Vendor with access to each location (lockbox or key).
3. All routine deliveries must be made Monday-Friday, 7:00 AM – 5:00 PM (Eastern time). Emergency after-hours deliveries or service calls can occur at any time.
4. Scheduling of all deliveries shall be coordinated with the City’s Project Manager.
5. The City will not pay any additional delivery charges or surcharges.

## VENDOR EMPLOYEES AND EQUIPMENT

1. Vendor must utilize competent employees in performing the work. Employees performing work must be properly licensed, permitted and certified as required by the scope.
2. The Vendor shall provide an assigned Project Manager who will be the primary point of contact. Vendor must provide a valid telephone number and address at all times to the City Project Manager. The telephone must be answered during normal working hours or voicemail must be available to take a message.
3. Vendor must possess all required equipment, licenses, and permits to perform the work.
4. At the request of the City, the Vendor must replace any incompetent, unfaithful, abusive, or disorderly person in their employment. The City and the Vendor must each be promptly notified by the other of any complaints received.
5. Employees of the Vendor who work on-site in a City building must wear suitable work clothes and shall be clean and in as good appearance as the job conditions permit.
6. No smoking or vaping is allowed on City property or projects.

## CITY OF OCALA RESPONSIBILITIES

The City of Ocala will furnish the following services to the Vendor for the performance of services:

1. Access to City buildings, gates, and facilities to perform the work.

2. Coordination of City staff schedules for staff training of equipment and for equipment maintenance or emergency repairs.

**VENDOR RESPONSIBILITIES**

1. Vendor shall keep the premises free at all times from accumulation of waste materials and rubbish caused by operations and employees and dispose of debris in a legal manner.
2. Vendor is responsible for any and all damages caused by their activity. Should any public or private property be damaged or destroyed, the Vendor at their expense, shall repair or make restoration as acceptable to the City of destroyed or damaged property no later than one (1) week from the date damage occurred.

**SUB-CONTRACTORS**

1. Services assigned to sub-contractors must be approved by the City Project Manager.

**SAFETY**

1. All employees of the Vendor who work on-site shall comply with the City's current COVID-19 precautionary measures, protective equipment, or any other local, regional, or COVID-19 CDC guidelines.
2. The Vendor shall be fully responsible for the provision of adequate and proper safety precautions meeting all OSHA, local, state, and national codes concerning safety provisions for their employees, sub-contractors, all building and site occupants, staff, public, and all persons in or around the work area.
3. In no event shall the City be responsible for any damages to any of the Vendor's equipment, materials, property, or clothing lost, damaged, destroyed or stolen.
4. All hazardous spills, accidents, injuries or claims or potential claims shall be reported promptly to the Ocala Recreation & Parks and the City Risk Manager.

All hazardous spills must be reported promptly to the EPA and/or DEP as required by Florida and Federal laws.

**PRICING**

1. The City will pay the Vendor only for the actual units that the Vendor provides, installs, or delivers.

**Aquasol Commercial Chemical Inc. d/b/a Poolsure****Pool Chemical Delivery and Service (2022-2025)****CHEMICALS**

ITEM	DESCRIPTION	UOM	EST ANNUAL QTY	UNIT COST
1	Sodium Hypochlorite 12.5% mini bulk liquid	Gallon	5,800	\$ 1.89
2	Sulfuric Acid 38% mini bulk liquid	Gallon	700	\$ 3.35
3	Sodium Bicarbonate	50 lb bag	110	\$ 27.98
4	Cyanuric Acid (Stabilizer)	50 lb bag	25	\$ 62.00
5	Calcium Chloride Flakes	50 lb bag	60	\$ 39.85

**EQUIPMENT LEASE**

ITEM	DESCRIPTION	UOM	QTY	MONTHLY LEASE AMOUNT
6	Programmable pH and sanitizer ORP controller with remote monitoring	EA	2	\$ 90.00
7	Stenner pumps (rated for pool sizing)	EA	8	\$ 20.00
8	325-gallon liquid Chlorine tank	EA	2	No Charge
9	165-gallon bulk sulfuric acid tank	EA	2	No Charge
10	165-gallon liquid Chlorine tank	EA	1	No Charge
11	100-gallon bulk sulfuric acid tank	EA	1	No Charge

**PREVENTIVE MAINTENANCE**

ITEM	DESCRIPTION	UOM	ANNUAL QTY	UNIT COST
12	Preventive maintenance for chemical pumping equipment at all three locations. <i>(April &amp; October)</i>	LS	2	\$ 810.00

**HOURLY EQUIPMENT MAINTENANCE AND SERVICES**

ITEM	DESCRIPTION	UOM	QTY	UNIT COST
13	Hourly rate for equipment maintenance and servicing during normal hours	HR	1	\$ 95.00
14	Hourly rate for Emergency/after-hours equipment maintenance and servicing	HR	1	\$ 142.50

## **Exhibit C - Vendor Terms Conditions**

### **Poolsure Standard Terms & Conditions**

1. These Standard Terms & Conditions govern the relationship between Poolsure and the other party (the “Customer”) to the Estimate, Work Order, or similar document (“Work Authorization”) to which these Standard Terms & Conditions are attached. As herein, (i) the term “Equipment” means any and all controllers, tanks, or other equipment sold, leased, or otherwise provided to Customer by Poolsure, if any; (ii) the term “Chemicals” means any and all chemicals provided by Poolsure to the Customer to maintain the chlorine, ph, alkalinity levels, calcium and cyanuric acid levels, and other water chemistry of Customer’s swimming pools and other bodies of water (collectively, “Pools”), if any, and (iii) the term “Services” means any and all services furnished by Poolsure to Customer, including but not limited to maintenance and repair services, if any. The specific Equipment, Chemicals, and Services, and the terms upon which Poolsure agrees to provide the same to Customer are included on the Work Authorization. The provision of Equipment, Chemicals, and/or Services by Poolsure to Customer is referred to herein as the “Work”. Poolsure agrees to perform the Work as described in the Work Authorization, and Customer agrees to provide Poolsure reasonable access to the area(s) where Work is to be performed.

2. **Leased Equipment.** All leased Equipment (and any replacement thereof), shall remain the sole property of Poolsure, and shall be returned to Poolsure at the end of the lease term in good working condition, reasonable wear and tear excepted. If the leased Equipment is not returned within 60 days of the expiration of the lease term, then Customer agrees to pay Poolsure an amount equal to the then current purchase price of each piece of the leased Equipment that has yet to be returned. In addition, Customer will still be responsible for returning the leased Equipment to Poolsure. All leased Equipment shall remain personal property (even though said Equipment may hereafter become attached or affixed to real property) and the title thereto shall at all times remain exclusively in Poolsure. At Customer’s sole cost and expense, Customer shall (a) protect and defend Poolsure’s ownership of and title to the leased Equipment from and against all persons claiming against or through Customer, (b) at all times keep the leased Equipment free from any and all liens, encumbrances, attachments, levies, executions, burdens, charges or legal processes imposed against Customer, (c) give Poolsure immediate written notice of any matter described in this sentence, and (d) cooperate with Poolsure to promptly remove any encumbrance described in this sentence. Customer shall keep the leased Equipment at the approved delivery and storage location and shall not remove them or allow any of the leased Equipment to be removed without Poolsure’s prior, written consent, unless otherwise noted on the Work Authorization.

3. **Water Chemistry and Maintenance of Equipment.** Maintaining proper water chemistry in the Pools is the sole responsibility of Customer, despite Poolsure having agreed to provide the Chemicals and/or Equipment as a tool to assist Customer in connection therewith, as applicable. Customer agrees that it shall independently test the water chemistry of each Pool no less than daily (or more often if required by law), and shall keep an accurate and up-to-date written log of such tests as required by any applicable law. In the event that such tests reveal that any piece of Equipment is not maintaining proper water chemistry, Customer shall promptly notify Poolsure of the same, and Customer will add Chemicals to the Pools by hand or otherwise as necessary to maintain proper water chemistry therein, until such Equipment is repaired or replaced. Poolsure’s sole responsibility hereunder is to supply Chemicals, sell and/or lease the Equipment, and/or to repair such Equipment as expressly requested by Customer and agreed to by Poolsure; all responsibility for maintenance of the Chemicals in the Pools shall accrue to and be the responsibility of the Customer. Customer acknowledges that it is Customer’s responsibility to obtain and pay for all necessary permits and licenses needed to operate the Pools, and/or utilize the Equipment or Chemicals as required by applicable law. Any leased Equipment and feed system may only be used to feed approved chemicals provided by Poolsure. Customer shall not, under any circumstance, place or allow others to place products or chemicals obtained from any third-party in any piece of leased Equipment. Customer shall be solely responsible for any and all leaks in any piece of Equipment, and any circumstance arising or resulting from any leaks. Customer acknowledges that corrosion may result from Chemicals and Poolsure is not responsible for the same. It is recommended that a ventilation fan be installed in any enclosed Equipment/Chemical area to provide proper ventilation and minimize corrosion, and Customer shall install the same as required by applicable law. In the event the leased Equipment is damaged, including but not limited to as a result of the misuse, improper

## **Exhibit C - Vendor Terms Conditions**

### **Poolsure Standard Terms & Conditions**

use, or other intentional and wrongful or negligent acts or omissions of Customer's officers, employees, agents, contractors (other than Poolsure) or invitees, to the extent such damage is not covered by any warranties or insurance, Poolsure may service or repair the Equipment as needed and the cost thereof shall be paid by Customer to Poolsure immediately upon written request, together with interest thereon at the rate of one and one-half percent (1.50%) per month (or the maximum monthly interest rate permitted to be charged by law, if less) and reasonable attorneys' fees and costs incurred by Poolsure in collecting such amount from Customer. Any work so performed by Poolsure shall not deprive Poolsure of any of its rights, remedies, or actions against Customer for such damage.

**4. Warranties by Poolsure.** All Services performed by Poolsure will be provided in a good and workmanlike manner; provided that Poolsure makes no warranty with respect to any 3<sup>rd</sup> party lab testing utilized by Poolsure. Customer's sole remedy with respect to the warranty provided on Services is the reperformance of the Services by Poolsure. Poolsure makes no warranty with respect to the Chemicals or the Equipment, but Poolsure will assign or "pass-through" any manufacturer or 3<sup>rd</sup> party laboratory warranties to the extent the same may be assigned to Customer. POOLSURE SUPPLIES THE CHEMICALS AND EQUIPMENT UNDER THE WORK AUTHORIZATION IN THEIR "AS IS" CONDITION. EXCEPT AS SET FORTH IN THIS SECTION, POOLSURE MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESSED OR IMPLIED, AS TO THE SERVICES, CHEMICALS OR EQUIPMENT, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OR REPRESENTATION AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, DESIGN, CONDITION, DURABILITY, CAPACITY, MATERIAL OR WORKMANSHIP OF THE CHEMICALS OR EQUIPMENT. POOLSURE SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT OR CONSEQUENTIAL LOSSES OR DAMAGES SUFFERED BY CUSTOMER OR BY ANY OTHER PERSON FOR, AND CUSTOMER EXPRESSLY WAIVES ANY RIGHT TO HOLD POOLSURE LIABLE HEREUNDER FOR, ANY CLAIMS, DEMANDS AND LIABILITIES ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF SERVICES OR THE DESIGN OR MANUFACTURE, POSSESSION OR OPERATION OF THE CHEMICALS OR EQUIPMENT, INCLUDING, WITHOUT LIMITATION, INJURY TO PERSONS OR PROPERTY RESULTING FROM THE FAILURE OF, DEFECTIVE OR FAULTY DESIGN, OPERATION, CONDITION, SUITABILITY OR USE OF THE CHEMICALS OR EQUIPMENT. Poolsure is not the manufacturer of the Equipment or Chemicals, or the manufacturer's agent.

~~**5. Indemnity and Limitation of Damages. CUSTOMER HEREBY AGREES TO INDEMNIFY, DEFEND AND HOLD POOLSURE HARMLESS FROM AND AGAINST ALL CLAIMS, DAMAGES, ACTIONS, JUDGMENTS, SUITS, LOSSES, FINES, PENALTIES, DEMANDS, COSTS AND EXPENSES AND LIABILITY WHATSOEVER (AND ANY ATTORNEY'S FEES, WITNESS FEES, AND/OR COSTS INCURRED IN CONNECTION THEREWITH) (COLLECTIVELY THE "LOSSES") CAUSED BY OR ARISING FROM (A) CUSTOMER'S FAILURE TO FULLY PERFORM, OBSERVE OR SATISFY ITS COVENANTS, DUTIES, WARRANTIES OR OBLIGATIONS CONTAINED IN THE WORK AUTHORIZATION OR THESE STANDARD TERMS & CONDITIONS; (B) THE NEGLIGENT OR WRONGFUL USE AND OPERATION OF THE CHEMICALS OR EQUIPMENT DURING THE TERM BY CUSTOMER, ITS AGENTS, OFFICERS, EMPLOYEES, CONTRACTORS, OR INVITEES; (C) CUSTOMER'S FAILURE TO MAINTAIN PROPER WATER CHEMISTRY IN EACH AND EVERY POOL; (D) THE ACTS OR OMISSIONS OF CUSTOMER, ITS AGENTS, OFFICERS, EMPLOYEES, CONTRACTORS, OR INVITEES, INCLUDING BUT NOT LIMITED TO CUSTOMER'S FAILURE TO MAINTAIN AND UTILIZE THE EQUIPMENT AND THE CHEMICALS IN ACCORDANCE WITH APPLICABLE LAW; AND (E) THE STORAGE OF THE CHEMICALS ON CUSTOMER'S PREMISES. IF SUCH LOSSES WERE ALSO CAUSED IN PART BY THE ACTS OR OMISSIONS OF POOLSURE, THEN CUSTOMER SHALL ONLY BE LIABLE TO THE EXTENT AND FOR SUCH PORTION THAT SUCH LOSSES WERE CAUSED BY, ARISE FROM OR RELATE, TO THE ACTS OR OMISSIONS OF CUSTOMER, ITS OFFICERS, AGENTS, MANAGERS, CONTRACTORS EMPLOYEES AND/OR**~~

## **Exhibit C - Vendor Terms Conditions**

### Poolsure Standard Terms & Conditions

~~INVITEES. IN NO EVENT SHALL POOLSURE BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL (INCLUDING LOST PROFITS), SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES IN CONNECTION WITH THE WORK AUTHORIZATION, THE CHEMICALS OR EQUIPMENT, EVEN IF NOTICE WAS GIVEN OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF SUCH DAMAGES WERE REASONABLY FORESEEABLE.~~

~~NOTWITHSTANDING THE FOREGOING, THE CUSTOMER HEREBY ASSUMES ANY AND ALL RISK OF LOSS, DAMAGE OR COSTS, OR PROPERTY DAMAGE TO CUSTOMER'S WALKWAYS, CONCRETE, PARKING LOTS, OR OTHER FLOORING ("CUSTOMER'S FLOORING") THAT MAY BE INCURRED IN CONNECTION WITH THE CUSTOMARY AND REASONABLE ACTS AND/OR OMISSIONS OF POOLSURE IN DELIVERING CHEMICALS TO CUSTOMER'S PROPERTY OVER STAINED, PAINTED, DECORATIVE OR NON-DECORATIVE WALKWAYS, CONCRETE, PARKING LOTS OR ANY OTHER FLOORING AREAS LOCATED ON CUSTOMER'S PROPERTY DESIGNATED BY CUSTOMER AS AN ACCESS FOR PRODUCT DELIVERY. HOWEVER, THE ABOVE DOES NOT WAIVE OR RELEASE ANY CLAIMS AGAINST POOLSURE FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT ON THE PART OF POOLSURE, ITS AGENTS, EMPLOYEES, CONTRACTORS, OR REPRESENTATIVES. CUSTOMER ACKNOWLEDGES THAT THIS PARAGRAPH IN ITS NATURE IS A WAIVER FOR DAMAGES TO CUSTOMER'S FLOORING ARISING FROM AND DUE TO POOLSURE'S CUSTOMARY AND REASONABLE ACTIVITY OF DELIVERING CORROSIVE CHEMICALS OVER CUSTOMER'S FLOORING AND HEREBY RELEASES POOLSURE FOR CLAIMS OR DAMAGES TO CUSTOMER'S FLOORING RESULTING FROM POOLSURE'S CUSTOMARY AND REASONABLE ACTS IN CONNECTION WITH THE DELIVERY OF CHEMICALS TO CUSTOMER'S PROPERTY AND ASSUMES ANY AND ALL RISK OF LOSS, DAMAGE OR COSTS, OR PROPERTY DAMAGE TO CUSTOMER'S FLOORING THAT MAY BE INCURRED BY CUSTOMER ARISING OUT OF OR IN CONNECTION WITH POOLSURE'S CUSTOMARY AND REASONABLE ACTS AND/OR OMISSIONS IN DELIVERING CHEMICALS OVER STAINED, PAINTED, DECORATIVE OR NON-DECORATIVE WALKWAYS, PARKING LOTS OR ANY OTHER FLOORING AREAS DESIGNATED BY CUSTOMER TO BE ACCESS POINTS FOR PRODUCT DELIVERY. CUSTOMER FULLY UNDERSTANDS THE TERMS SET FORTH IN THIS PARAGRAPH, AND CUSTOMER HEREBY WAIVES ITS RIGHTS FREELY AND VOLUNTARILY WITHOUT ANY INDUCEMENT, ASSURANCE, OR GUARANTEE BEING MADE TO CUSTOMER TO THE FULLEST EXTENT ALLOWED BY LAW.~~

To the extent there is any conflict between the terms of this Section and the terms of any other agreement entered into between Poolsure and Customer, the terms of this Section shall control.