



STANDARD AGREEMENT

(version 5-1-2020)

This AGREEMENT (“Agreement”) is entered by and between **Commercial Chemical Products, Inc. DBA Poolsure** (“Contractor”), located at **1707 Townhurt Dr. Houston, TX. 77043** and the **City of League City** (“City”), a home-rule municipality, located at 300 W. Walker St., League City, Texas 77573 on the date set forth below.

Terms:

1. **Scope of Services:** Contractor will perform the services and/or provide the products as set forth in **Exhibit A**, which is attached and incorporated herein, and which can be generally described as **Delivery of Pool Chemicals**. If there is a conflict between the terms of this Agreement and Exhibit A, the terms of this Agreement will prevail.
2. **Term and Termination:** This Agreement shall commence on **October 1, 2021** and shall expire on **September 30, 2024**. The period from commencement to expiration is the Contract Term. City reserves the right to terminate this Agreement for convenience upon seven (7) days written notice to Contractor. Upon such termination, City shall pay Contractor, at the rate set out in **Exhibit A**, for services satisfactorily performed or products satisfactorily provided up through the date of termination. Notwithstanding any provision in this Agreement to the contrary, City will not be required to pay or reimburse Contractor for any services performed or for expenses incurred by Contractor after the date of the termination notice that could have been avoided or mitigated by Contractor.
3. **Compensation:** Contractor shall be paid for the services/products as set forth in **Exhibit A**. In no event shall the total compensation exceed **\$119,826.40** during the term of this Agreement. City shall tender payment (including progress/partial payments) for services/goods only after such services are completed or goods are delivered and are deemed to be acceptable under this Agreement, in the sole reasonable discretion of City. Contractor must submit to City invoices for all goods delivered and services provided, which invoices must include details and dates of service or delivery. Payment by City shall be made within thirty (30) days of receipt of an invoice, except for any portion of the invoiced amount that City disapproves as not compliant under this Agreement, in the sole reasonable discretion of City. If City disapproves any amount submitted for payment by Contractor, City shall give Contractor specific reasons for disapproval in writing.
4. **Insurance:** Contractor **is** required during the Contract Term to maintain insurance as follows: (a) Comprehensive General Commercial Liability insurance covering bodily injury and property damage, with minimum coverage limits—exclusive of defense costs—of \$1,000,000 per occurrence and \$2,000,000 aggregate; (b) If Contractor will provide City “professional services,” as that term is used in Chapter 252 of the Texas Local Government Code, Professional Liability (errors and omissions/malpractice) insurance with minimum coverage limits—exclusive of defense costs—of \$2,000,000 per occurrence; and (c) If at any point during the Contract Term it is foreseeable that Contractor will enter upon City premises: (i) Worker’s Compensation coverage with statutory limits for the State of Texas, and (ii) Commercial Automobile Liability coverage with minimum coverage limits—exclusive of defense costs—of \$1,000,000 per occurrence and \$2,000,000 aggregate. All policies must contain a waiver of subrogation against City. Comprehensive General Liability and Commercial Automobile Liability policies must name the City as Additional Insured. Contractor shall pay all insurance deductibles and deductibles must not exceed \$10,000.

unless approved in advance by City. Contractor shall provide City Certificates of Insurance evidencing these insurance requirements prior to the start of work.

5. **Liquidated Damages:** Contractor acknowledges that time is of the essence in performing this Agreement. City and Contractor (collectively, the “Parties”) agree that if Contractor is late in performing any obligation of this Agreement, City will suffer loss, damages, or other harm from Contractor’s delay. The Parties agree that the amount of loss, damages, or harm likely to be incurred is incapable or difficult to precisely estimate, and therefore Contractor agrees to pay City liquidated damages for delay at a daily rate equal to the total compensation allowed under the Agreement divided by the number of days in the Contract Term. The Parties further agree that: (i) the liquidated damages specified herein are not a penalty but rather bear a reasonable relationship to, and is not plainly or grossly disproportionate to, the probable loss likely to be incurred by City as a result of Contractor’s delay; (ii) one of the reasons for City and Contractor to agree to such amounts is the uncertainty and cost of litigation regarding the question of actual damages; and (iii) City and Contractor are sophisticated business parties and negotiated this Agreement at arm’s length.
6. **Independent Contractor:** Contractor is an independent contractor and is not an employee, partner, joint venture, or agent of City. Contractor understands and agrees that he/she will not be entitled to any benefits generally available to City employees. Contractor shall be responsible for all expenses necessary to carry out the services under this Agreement and shall not be reimbursed by City for such expenses except as otherwise provided in this Agreement.
7. **Intellectual Property:** This Agreement shall be an Agreement for services and the parties intend and consider any work created as a result of this Agreement, including any and all documentation, images, products or results, to be a work (the “Work”) for hire under federal copyright law. Ownership of the Work shall belong to and remain the exclusive property of City. The Work may be edited at any time within City’s discretion. If the Work would not be considered a work-for-hire under applicable law, Contractor hereby assigns, transfers, and conveys any and all rights, title and interest to City, including without limitation all copyrights, patents, rights of reproduction, rights to ownership, and right to secure registrations, renewals, reissues and extensions thereof. As the sole copyright holder of the Work, City maintains and asserts the rights to use, reproduce, make derivative works from, and/or edit the Work in any form of medium, expression or technology now known or hereafter developed, at any time within City’s discretion. Contractor shall not sell, disclose or obtain any other compensation for the services provided herein or the Work. If the Work is one to which the provisions of 17 U.S.C. § 106A apply, Contractor hereby waives and appoints City to assert on Contractor’s behalf Contractor’s moral rights or any equivalent rights regarding the form or extent of any alteration to the Work (including, without limitation, removal or destruction) or the making of any derivative works based on the Work, including, without limitation, photographs, drawings or other visual reproductions of the work, in any medium, for City’s purposes.
8. **Confidentiality:** During the course of the services to be provided under this Agreement, Contractor may become privy to confidential information of City. Contractor agrees to treat as confidential the information or knowledge that becomes known to Contractor during performance of this Agreement and to not use, copy, or disclose such information to any third party unless authorized in writing by City. This provision does not restrict the disclosure of any information that is required to be disclosed under applicable law. Contractor shall promptly notify City of any misuse or unauthorized disclosure of City’s confidential information and upon expiration of this Agreement shall return to City all confidential information in Contractor’s possession or control. Contractor shall further comply with all information security policies of City that may apply and shall not make any press releases, public statements or advertisement referring to the services provided under this Agreement or the engagement of Contractor without the prior written approval of City.
9. **Warranties and Representations:** Contractor warrants and agrees that Contractor shall perform its services and conduct all operations in conformity with all applicable federal, state, and local laws, rules, regulations, and ordinances. For any service performed on premises owned or controlled by City,

Contractor warrants and agrees that Contractor will perform said services in compliance with all City rules, including but not limited to, prohibitions related to tobacco use, alcohol, and other drugs.

10. **Licenses/Certifications:** Contractor represents and warrants that it will obtain and maintain in effect, and pay the cost of, all licenses, permits or certifications that may be necessary for Contractor's performance of this Agreement. If Contractor is a business entity, Contractor warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its formation; and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement and is authorized to execute this Agreement according to its terms on behalf of Contractor.
11. **Performance/Qualifications:** Contractor agrees and represents that Contractor has the personnel, experience, and knowledge necessary to qualify Contractor for the particular duties to be performed under this Agreement. Contractor warrants that all services performed under this Agreement shall be performed consistent with generally prevailing professional or industry standards.
12. **Conflict of Interest:** Contractor warrants, represents, and agrees that Contractor presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of the services hereunder. Contractor further warrants and affirms that no relationship or affiliation exists between Contractor and City that could be construed as a conflict of interest with regard to this Agreement.
13. **INDEMNIFICATION: CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CITY , AND EACH OF ITS OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND REASONABLE LITIGATION COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF CONTRACTOR IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT, TO THE EXTENT THE CLAIM ARISES FROM NEGLIGENCE, WILLFUL ACT, BREACH OF CONTRACT OR VIOLATION OF LAW.**
14. **Force Majeure:** Neither City nor Contractor shall be liable for any delay in the performance of this Agreement, nor for any other breach, nor for any loss or damage arising solely from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by the exercise of due diligence.
15. **Notices:** Any notice given under this Agreement by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified postage prepaid with return receipt requested. Mailed notices shall be addressed to the addresses of the Parties as they appear in the contract. Notices delivered personally shall be deemed communicated at the time of actual receipt. Mailed notices shall be deemed communicated three (3) days after mailing.

16. **Texas Family Code Child Support Certification:** Pursuant to Section 231.006 of the Texas Family Code, Contractor certifies that it is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated, and payment may be withheld if this certification is inaccurate.
17. **State and/or City Auditor:** Contractor understands that acceptance of funds under the Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency or the City's internal auditor (collectively, the "Auditor"), to conduct an audit or investigation in connection with those funds. Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Contractor will include this provision in all contracts with permitted subcontractors.
18. **Jurisdiction:** Any disputes under this Agreement shall be brought in a court of competent jurisdiction in Galveston, Texas and governed by Texas law.
19. **Alternative Dispute Resolution:** To the extent that Chapter 2260, Texas Government Code, is applicable to this Contract and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General Pursuant to Chapter 2260, shall be used by City and Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business. The Director of Finance of City shall examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve such claims. This provision shall not be construed as a waiver by City of its right to seek redress in the courts.
20. **Entire Agreement:** This Agreement contains the entire understanding between the Parties and supersedes all prior agreements, arrangements, and understanding, oral or written between the Parties relating to this Agreement. This Agreement may not be modified except by mutual written agreement of the Parties executed subsequent to this Agreement.
21. **Eligibility to Receive Payment:** Contractor certifies that, as a matter of state law, it is not ineligible to receive the Agreement and payments pursuant to the Agreement and acknowledges that the Agreement may be terminated, and payment withheld if this representation is inaccurate.
22. **Payment of Debt/Delinquency to State:** Contractor certifies that it is not indebted to the City of League City and is current on all taxes owed to the City of League City. Contractor agrees that any payments owing to Contractor under the Agreement may be applied directly toward any debt or delinquency that Contractor owes the City of League City regardless of when it arises, until such debt or delinquency is paid in full.
23. **Products and Materials Produced in Texas:** If Contractor will provide services under the Agreement, Contractor covenants and agrees that in performing its duties and obligations under the Agreement, it will purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.
24. **Risk of Loss:** If applicable, all work performed by Contractor pursuant to the Agreement will be at Contractor's exclusive risk until final and complete acceptance of the work by City. In the case of any loss or damage to the work prior to City's acceptance, bearing such loss or damage will be Contractor's responsibility.
25. **Publicity:** Contractor shall not use City's name, logo or likeness in any press release, marketing materials or other public announcement without receiving City's prior written approval.
26. **Legal Construction/Severability:** In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision, and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained in it. To this end, the

provisions of this Agreement are declared to be severable. The Parties may mutually agree to renegotiate the Agreement to cure such illegality/invalidity or unconstitutionality if such may be reasonably accomplished.

27. **Limitations:** The Parties are aware that there are constitutional and statutory limitations on the authority of City to enter into certain terms and conditions of the Agreement, including, but not limited to, those terms and conditions relating to liens on City's property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"). Any terms and conditions related to the Limitations will not be binding on City except to the extent authorized by the laws and Constitution of the State of Texas.
28. **Sovereign Immunity:** The Parties agree that neither the execution of the Agreement by City nor any other conduct, action or inaction of any City representative relating to the Agreement constitutes a waiver of sovereign immunity by City.
29. **Authority:** Contractor warrants and represents that Contractor has full power and authority to enter into and perform this Agreement and to make the grant of rights contained herein. The person signing on behalf of City represents that he/she has authority to sign this Agreement on behalf of City.
30. **Non-Waiver:** The Parties specifically agree that neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Contractor. No covenant or condition of this Agreement may be waived except by written consent of the waiving party. Forbearance or indulgence by one party in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the other party.
31. **Prohibition on Boycotting Israel:** Pursuant to Section 2270.002 of the Texas Government Code, by executing this Agreement Contractor verifies that Contractor: (1) does not boycott Israel; and (2) will not boycott Israel during the term of this Agreement.
32. **Prohibition Against Business with Iran, Sudan or Foreign Terrorists Organizations:** Contractor warrants, covenants, and represents that Contractor is not engaged in business with Iran, Sudan, or any company identified on the list referenced in Section 2252.152 of the Texas Government Code.

(signature block on next page)

Executed on _____. *(date to be filled in by City Secretary)*

COMMERCIAL CHEMICAL PRODUCTS, INC. DBA POOLSURE - “Contractor”



Alan Falik, President

CITY OF LEAGUE CITY – “City”

John Baumgartner, City Manager

Attest:

Diana Stapp, City Secretary

Approved as to Form:

Office of the City Attorney

Exhibit A

Scope of Services/Description of Products/Payment Schedule

(There are **6** pages for Exhibit A, including this page)

Delivery of pool chemicals at Hometown Heroes Park, located at 2105 Dickinson Avenue, League City, TX. 77573, and Walker Pool, located at 450 West Walker Street, League City, TX. 77573.

Pricing and scope of work to included on pages 2-5.

This will be a three (3) year contract, with the option to renew for two (2) additional one-year periods with no more than a 3% escalation per renewal term, available upon the mutual agreement of the parties.



BID #21-016 Swimming Pool Chemicals

I. SCOPE OF WORK

A. INTRODUCTION

1. The City of League City ("City") seeks competitive bids for supply and delivery of swimming pool chemicals. The purpose of these specifications is to describe the minimum requirements for the goods and services described. The quantities in the Invitation to Bid are estimates based on previous usage. These estimates are for acquainting the bidder with probable quantities to be expected during the contract period. These estimates are not intended to set forth minimum or maximum quantities of this contract and shall not be construed as such. The City requires two types of pool chemicals for regular delivery, Liquid Hypochlorite (chlorine) and Sulfuric Acid 35% a non-fuming acid. The City also requires dry chemicals delivered on an as needed basis. Dry chemicals include Sodium Bicarbonate, Cyanuric Acid, Calcium Chloride and Sodium Thiosulfate.

2. The City has two pools to which chemicals will need to be delivered: Hometown Heroes Park Pool located at 2105 Dickinson Avenue and Walker Street Pool located at 450 West Walker Street.

B. QUANTITY

The quantities listed below are estimated totals for the 3-year term contract.

Item Description	Estimated Quantity for 3 years
Liquid Hypochlorite	50,000 gallons
Sulfuric Acid 35%	5, 000 gallons
Sodium Bicarbonate	20,000 lbs.
Cyanuric Acid	3, 000 lbs.
Calcium Chloride	1,500 lbs.
Sodium Thiosulfate	1,500 lbs.

The quantities listed above are estimates and do not guarantee order quantities over the course of the contract resulting from this Bid. The City reserves the right to increase or decrease these quantities, based upon need by the Parks and Recreation Department.

C. ORDER AND DELIVERY REQUIREMENTS

Delivery is an essential part of this contract. If, during the term of the contract, the seller cannot fill delivery requirements, the City retains the right to terminate the contract and make purchases from an alternate source. Normal deliveries can be made Monday-Friday between 7am – 6pm.

1. Liquid Hypochlorite

a. Chlorine will be delivered into a 500-gallon container; one located at The Walker Pool and two at The Hometown Heroes Park Pool.

b. The bidder will utilize a sensor system to monitor tanks and fill when they are low (below 200 gallons).

c. Historically there will be a minimum of one delivery at each location bi-weekly from October through March and a minimum of one delivery per week during the months of April through September.

2. Sulfuric Acid 35%

a. To be delivered in 25 or 15 gallon containers.

b. Once bidder is on site for chlorine delivery, they are required to take an inventory count of bottles.

c. Bidder must swap out empty containers at each of the delivery location and replace with a full containers.

3. Dry Chemicals

a. Will be ordered on an as needed basis by phone from the City.

b. Bidder must deliver within three business days.

D. EMERGENCY ORDERS AND DISASTER PLAN

1. The Bidder must have a disaster plan in place to eliminate disruption in supply order placement.

2. The Bidder must provide a copy of the detailed disaster plan.

3. Any chemical that is ordered outside of normal delivery is to be considered an emergency, the city will call and place the order.

4. Emergency deliveries must be made within 24 hours of order being placed, regardless of day of the week.

E. PRICING

1. Prices for all goods and/or services shall be firm for the initial term of the contract.

2. Prices shall be all inclusive and list all the charges, as necessary, to perform the requirements of this bid.

3. If there are any additional charges of any kind, other than those mentioned

above, specified, or unspecified, Bidder MUST indicate the items required and attendant costs or forfeit the right to payment for such items.

F. ACCEPTANCE OF MATERIAL

Products which are not compliant with the specifications and/or not up to City's quality standards will be returned and replaced with compliant products at the Vendor's expense. Payment will not be made for any non-compliant materials.

G. VEHICLE/EQUIPMENT

Transportation of chemicals shall be in compliance with State and Federal transportation handling and safety requirements. Vendor shall, if requested by City, produce documentation to demonstrate compliance with such requirements.

1. Vehicles shall be capable of loading and unloading the chemicals, as described for each chemical in the bid specifications.

2. The delivery truck that will be supplying liquid to the 500 gallon container shall be equipped with a hose of a minimum of two hundred feet.

3. The delivery truck shall have a metered way of measuring actual amount of chlorine and/or other chemicals dispensed.

4. All Vendor vehicles on City properties must have their company name and telephone number visible.



BID #21-016
Swimming Pool Chemicals

Bid Cost Sheet

DUE DATE: Wednesday, September 01, 2021 by 10:00 a.m.

Item	Item Description	Unit of Measure	Unit Price	Estimated Quantity of UNITS for 3 years	Extended Total Price
1	Liquid Hypochlorite	Per Gallon	\$ 1.68	50,000 Gallons	\$ 84,000.00
2	Non-Fuming Acid	Per 25 Gallon Container	\$ 87.50	200 each	\$ 17,500.00
4	Sodium Bicarbonate	Per 50lb. bag	\$ 33.00	400 each	\$ 13,200.00
5	Cyanuric Acid	Per 50lb. bag	\$ 62.00	60 each	\$ 3,720.00
6	Calcium Chloride	Per 50lb. bag	\$46.88	30 each	\$ 1,406.40
7	Sodium Thiosulfate	Per 50lb. bag	\$ NO BID	30 each	\$ NO BID
GRAND TOTAL					\$ 119,826.40

Unit prices listed above are good for ninety (90) calendar days after receipt of proposal.

Poolsure Disaster Plan

In the event of a disaster, Poolsure has three core functionalities that serve to minimize disruption to supply orders:

Chemical and equipment reserves:

Poolsure has access to significant bleach reserves in Texas, and we maintain strong relationships with multiple chemical and parts suppliers across and beyond the Gulf Coast region. During past emergency events, we have also pulled product and resources from as far as Alabama and Florida to ensure minimal to no disruption to our Texas-based customers.

Access to these resources and supplier relationships allows us to continue serving accounts longer than any other mini-bulk supplier in the region in the event of a disaster.

Fleet capacity:

Poolsure owns and operates over 100 active tankers and service vehicles. In the event of a disaster or supply disruption, Poolsure can pull fleet assets from three service yards in different parts of the Houston metro area and 10 more along the Gulf Coast. We also have the only in-house bulk supply fleet that is capable of bringing in bleach from other regions during emergencies.

Communication:

Poolsure's cloud-based communications, dispatch, and administration infrastructure stretches across 13 satellite locations along the southern US states. This geographical distribution allows us to continue operations even when one location experiences disaster.

This decentralized nature of our communications and logistics infrastructure allows Poolsure to respond quickly to disaster events and allows service requests to reach Poolsure representatives during peak emergency times.

This disaster plan has already proven successful during recent disaster events such as the winter freeze and nationwide chlorine shortage, as well as several other times during our partnership with the City of League City.