

CONTRACT FOR SERVICES

THIS CONTRACT is entered into this ___ day of _____ 2019, between the CITY OF STOCKTON, a municipal corporation ("CITY"), and **USA POOLS OF CALIFORNIA/USA MANAGEMENT, LLC** a **STATE OF CALIFORNIA CORPORATION**, with a business address at **237 KEARNY STREET, SUITE 367, SAN FRANCISCO, CA 94108** hereinafter called "CONTRACTOR." THIS CONTRACT is for the **POOL WATER AND FILTER SYSTEM MAINTENANCE (PROJECT NO. OM-19-019)**, hereinafter referred to as "SERVICE".

RECITALS

- A. CONTRACTOR represents that it is licensed in the State of California and is qualified, willing and able to provide the services proposed in the SCOPE OF WORK section of this Contract.
- B. CONTRACTOR represents that it is registered pursuant to Labor Code Section 1725.5 and will register annually with the Department of Industrial Relations, if the services have a wage determination for the services outlined in the SCOPE OF WORK section of this Contract.
- C. CONTRACTOR represents that it will pay all required prevailing wages under California Labor Code for all services provided that have a wage determination.
- D. CITY finds it necessary and advisable to use the services of the CONTRACTOR for the purposes provided in this Contract.

NOW THEREFORE, in consideration of the mutual promises, covenants and conditions in this Contract, CITY and CONTRACTOR agree as follows:

1. SCOPE OF SERVICES. Subject to the terms and conditions set forth in this Contract, CONTRACTOR shall undertake and complete the services described in **Exhibit A**. CONTRACTOR shall provide said services at the time, place, and in the manner specified in Exhibit A and compatible with the standards of the profession. CONTRACTOR agrees that it shall provide fully complete services including all labor, materials, tools, equipment and insurance required and that are acceptable to the CITY.

2. COMPENSATION. CITY shall pay CONTRACTOR for services outlined in **Exhibit A** according to the fee not to exceed the schedule detailed in **Exhibit B**, which is attached to this Contract and incorporated by this reference. CONTRACTOR agrees this fee is for full remuneration for performing all services and furnishing all staffing, materials and tools called for in the scope of services. The payments shall be made on a monthly basis upon receipt and approval of CONTRACTOR'S invoice for completed work. Total compensation for services and reimbursement for costs shall not exceed **\$342,900** or as otherwise mutually agreed to in a Contract Change Order.

Pursuant to Section 22300 of the Public Contract Code, CONTRACTOR will be permitted, at its request and sole expense, to substitute securities for any monies withheld by the CITY to ensure performance under the contract. Said securities will be deposited either with the CITY or with a State or federally chartered bank as escrow agent. Securities eligible for this substitution are those listed in Section 16430 of the California Government Code or bank or savings and loan certificates of deposit. CONTRACTOR shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.

- a. Invoices submitted by CONTRACTOR to CITY must contain a brief description of work performed, location of work, time used, materials and special equipment and City project number. Payment shall be made within thirty (30) days of approval of invoice by City.
- b. Upon completion of work and acceptance by CITY, CONTRACTOR shall have sixty (60) days in which to submit final invoicing for payment. An extension may be granted by CITY upon receiving a written request thirty (30) days in advance of said time limitation. CITY shall have no obligation or liability to pay any invoice for work performed which CONTRACTOR fails or neglects to submit within sixty (60) days, or any extension thereof granted by the CITY, after work is accepted by CITY.

3. INSURANCE. During the term of this Contract, CONTRACTOR shall maintain in full force and effect at its own cost and expense the insurance coverage as set forth in the attached **Exhibit C** (Insurance Requirements and Forms) which is attached to this contract and incorporated by this reference, and shall otherwise comply with the other provisions of Exhibit C. Maintenance of proper insurance coverage is a material element of this contract and that failure to maintain or renew coverage or to provide evidence of renewal may be treated as a material breach of contract.

CONTRACTOR shall not commence any work before obtaining, and shall maintain in force at all times during the duration and performance of this contract, the policies of insurance specified in Exhibit C, which is attached to this contract and incorporated by this reference, and as provided in the "contract documents" including Section 7-1.06 of the City of Stockton Standard Specifications and Plans as adopted on September 27, 2016, by Council Resolution No. 2016-09-27-1213, effective September 27, 2016.

It shall be a requirement under this agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named Insured; whichever is greater.

The Additional Insured coverage under the CONTRACTOR's policy shall be "primary and non-contributory" and will not seek contribution from the City of Stockton's insurance or

self-insurance and shall be at least as broad as ISO CG 20 01 04 13.

The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City of Stockton (if agreed to in a written contract or agreement) before the City of Stockton's own insurance or self-insurance shall be called upon to protect it as a named insured.

All self-insured retentions (SIR) must be disclosed to the CITY's Risk Management for approval and shall not reduce the limits of liability. Payment Bond in the amount of the self-insured retention (SIR) may be required.

Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the CITY.

The CITY reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

CONTRACTOR shall maintain insurance as required by this contract to the fullest amount allowed by law and shall maintain insurance for a minimum of five years following the completion of this project. In the event contractor fails to obtain or maintain completed operations coverage as required by this agreement, the CITY at its sole discretion may purchase the coverage required and the cost will be paid by CONTRACTOR.

CONTRACTOR agrees to include with all Subcontractors in their subcontract the same requirements and provisions of this agreement including the indemnity and insurance requirements to the extent they apply to the scope of the Subcontractor's work. Subcontractors hired by CONTRACTOR agree to be bound to CONTRACTOR and the CITY in the same manner and to the same extent as CONTRACTOR is bound to the CITY under the Contract Documents. CONTRACTOR further agrees to include these same provisions with any subcontractor regardless of tier. A copy of the CITY Contract Document Indemnity and Insurance provisions will be furnished to the Subcontractor upon request. The CONTRACTOR shall require all Subcontractors to provide a valid certificate of insurance and the required endorsements included in the agreement prior to commencement of any work and contractor will provide proof of compliance to the CITY.

4. INDEMNITY AND HOLD HARMLESS. With the exception that this section shall in no event be construed to require indemnification by CONTRACTOR to a greater extent than permitted under the public policy of the State of California, CONTRACTOR shall indemnify, protect, defend with counsel approved by CITY and at CONTRACTOR'S sole cost and expense, and hold harmless CITY, its Mayor, Council, officials, representatives, agents, employees, and volunteers from and against any and all claims, causes of action, liabilities, judgments, awards, losses, liens, claims, stop notices, damages, expenses, and costs (including without limitation attorneys' fees, expert and

consultant fees, and other expenses of litigation) of every nature, including, but not limited to, death or injury to persons, or damage to property, which arise out of or are in any way connected with the work performed, materials furnished, or services provided under this Agreement, or from any violation of any federal, State, or municipal law or ordinance, or City Policy, by CONTRACTOR or CONTRACTOR'S officers, agents, employees, volunteers or subcontractors. CONTRACTOR shall not be obligated to indemnify or defend CITY for claims finally determined by a court of law or arbitrator to arise from the active negligence or willful misconduct of the CITY. It is the intent of the Parties that this indemnity obligation is at least as broad as is permitted under California law. To the extent California Civil Code sections 2782, et seq., limit the defense or indemnity obligations of CONTRACTOR to CITY, the intent hereunder is to provide the maximum defense and indemnity obligations allowed by CONTRACTOR under the law. The indemnity set forth in this section shall not be limited by insurance requirements or by any other provision of this Agreement.

With exception that this section shall in no event be construed to require indemnification, including the duty to defend, by CONTRACTOR to a greater extent than permitted under the public policy of the State of California, the parties agree that CONTRACTOR'S duty to defend CITY is immediate and arises upon the filing of any claim against the CITY for damages which arise out of or are in any way connected with the work performed, materials furnished, or services provided under this Agreement by CONTRACTOR or CONTRACTOR'S officers, agents, employees, volunteers or subcontractors. CONTRACTOR'S duties and obligations to defend the CITY shall apply regardless of whether or not the issue of the CITY'S liability, breach of this Agreement, or other obligation or fault has been determined. CONTRACTOR shall be immediately obligated to pay for CITY'S defense costs of the claim, including, but not limited to, court costs, attorney's fees and costs, expert consultant and witness fees and costs, other witness fees, document reproduction costs, arbitration fees, and, if after final judgment an appeal is pursued, all of such costs for the appeal. At the conclusion of the claim, if there is any determination or finding of sole active negligence or willful misconduct on the part of the CITY, CITY will then reimburse CONTRACTOR for amounts paid in excess of CONTRACTOR'S proportionate share of responsibility for the damages within 30 days after CONTRACTOR provides CITY with copies of all bills and expenses incurred in the defense of the claim(s). It is agreed between the parties that this reimbursement provision assures CONTRACTOR is not obligated to defend or indemnify CITY in an amount greater than provided for under California law, including, without limitation, California Civil Code sections 2782, 2782.6, and 2782.8.

With the exception that this section shall in no event be construed to require indemnification by CONTRACTOR to a greater extent than permitted under the public policy of the State of California, and in addition to the other indemnity obligations in this Agreement, CONTRACTOR shall indemnify, defend, and hold harmless CITY, its Mayor, Council, officials, representatives, agents employees and volunteers from and against all claims, losses, expenses, and costs including, but not limited to attorneys' fees, arising out of any claim brought against the CITY by an employee, office, agent, or volunteer of CONTRACTOR, regardless of whether such claim may be covered by any applicable

workers compensation insurance. CONTRACTOR'S indemnification obligation is not limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR under workers' compensation acts, disability acts, or other employee benefit acts.

CONTRACTOR'S obligation to defend, indemnify, and hold the CITY, its agents, officers, and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this Contract for CONTRACTOR to procure and maintain a policy of insurance.

CONTRACTOR/Subcontractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this agreement for the full period of time allowed by law.

If any section, subsection, sentence, clause or phrase of this indemnification is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this indemnification.

5. SCHEDULE AND TERM. CONTRACTOR shall perform the scope of work as described in **Exhibit A** according to the schedule detailed in **Exhibit B**, which is attached to this Contract and incorporated by this reference. This contract shall commence on the date written above and shall expire on **DECEMBER 31, 2021**, unless extended by mutual agreement through the issuance of a Contract Change Order. This contract provides for four (4), one (1) year extensions at the same rates and terms as outlined in **Exhibit A** and **Exhibit B**.

6. CONFORMANCE TO APPLICABLE LAWS. CONTRACTOR shall comply with all applicable Federal, State, and Municipal laws, rules, and ordinances.

a. TITLE VI

Title VI of the Civil Rights Act of 1964 requires that "no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." (42 USC Section 2000d)
<http://www.dol.gov/oasam/regs/statutes/titlevi.htm>.

The City of Stockton requires compliance with the requirements of Title VI in all of its programs and activities regardless of funding source.

b. DISCRIMINATION AND HARASSMENT POLICY

The City of Stockton has a Discrimination and Harassment Policy (Exhibit D). The purpose of this policy is to reaffirm the CITY's commitment to demonstrating respect for all individuals by strictly prohibiting discrimination

and harassment, including sexual harassment in the workplace, to define the types of behavior and conduct prohibited by this policy, and to set forth a procedure for reporting, investigating, and resolving complaints of discrimination and harassment in the workplace.

c. LABOR STANDARDS PROVISIONS/CALIFORNIA LABOR CODE

The bidder shall understand that conditions set forth in Chapter 1, Part 7, Division 2 of the California Labor Code shall be considered part of the contract agreement.

https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=LAB&division=2.&title=&part=7.&chapter=1.&article=2.

d. PREVAILING WAGE

CONTRACTOR and any subcontractor shall pay each employee engaged in the trade or occupation not less than the prevailing hourly wage rate. In accordance with the provisions of Section 1770 of the Labor Code, the Director of Department of Industrial Relations of the State of California has determined the general prevailing and employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Section 1773.1, apprenticeship or other training programs authorized by Section 3093 and similar purposes applicable to the work to be done. CONTRACTOR performing the work under this contract shall obtain a copy of the wage rate determination and shall distribute copies to each subcontractor. As the wage determination for each craft reflects an expiration date, it shall be the prime CONTRACTOR and each subcontractor's responsibility to ensure that the prevailing wage rates of concern is current and paid to the employee.

i. The CONTRACTOR performing the work shall be responsible for obtaining a copy of the State wage rate determination. State wage rates may be obtained at <http://www.dir.ca.gov/OPRL/pwd/Determinations/Northern/Northern.pdf>

f. The CONTRACTOR shall be responsible for posting said wage rates at a prominent location at the work site and shall maintain same in a good readable condition for the duration of the work.

ii. Should the CONTRACTOR choose to work on a Saturday, Sunday or on a holiday recognized by the Labor Unions, the CONTRACTOR shall reimburse the CITY the actual cost of engineering, inspection, superintendence, and or other overhead expenses which are directly chargeable to the contract. Should such work be undertaken at the request of the CITY, reimbursement will not be required. To conform strictly with the provisions of Division 2, Part 7, Chapter 1, Article 2, of the Labor Code of the State of California. To forfeit as a penalty to

CITY the sum of TWENTY FIVE AND NO/100 DOLLARS (\$25.00) for each laborer, worker, or mechanic employed by CONTRACTOR, or by any subcontractor under CONTRACTOR, in the execution of this contract, for each calendar day during which any laborer, worker, or mechanic is required or permitted to work more than eight (8) hours and who is not paid the general prevailing rate of per diem wages for holiday and overtime work in violation of the provisions of Sections 1770 to 1781 of the Labor Code of the State of California. That all sums forfeited under the provisions of the foregoing sections shall be deducted from the payments to be made under the terms of this contract.

- iii. The CONTRACTOR to whom the contract is awarded shall insure that the prime and each subcontractor will in accordance with Section 1776 of the Labor Code, maintain certified payroll records. A copy of said records shall be provided with each invoice to the Public Works Department, Attention Contract Compliance Officer. It shall be the CONTRACTOR'S responsibility to obtain copies of the current prevailing wage rate determination for all subcontractors. Additionally, certified payroll records must be uploaded to the DIR website as required by labor code.
- iv. The CONTRACTOR shall comply with the provisions established in Section 1777.5 of the Labor Code concerning the 1) certified approval by local joint apprenticeship committees for the employment and training of apprentices, and 2) contribution of funds to administer and conduct apprenticeship programs, if applicable to the job.

e. LOCAL EMPLOYMENT ORDINANCE

Pursuant to Stockton Municipal Code Section 3.68.095 the CONTRACTOR and all subcontractors shall make a good faith effort to employ at least 50 percent of the workforce on this project from local residents, as measured by total labor work hours. Failure of any CONTRACTOR or subcontractor to comply with these requirements shall be deemed a material breach of the contract or subcontract. CONTRACTORS and subcontractors shall maintain records necessary for monitoring their compliance with section 3.68.095.

7. CHANGE ORDERS. CITY reserves the right to make such alterations, deviations, additions to or omissions from the plans and specifications, including the right to increase or decrease the quantity of any item or portion of the work, as may be deemed by the Project Manager to be necessary or advisable and to require such extra work as may be determined by the Project Manager to be required for the proper completion of the whole work contemplated.

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Any such changes will be set forth in a contract change order which will specify, in addition to the work done in connection with the change made, adjustment of contract time, if any, and the basis of compensation for such work. A contract change order will not become effective until approved by the City Manager and/or the City Council.

8. RIGHTS AND DUTIES OF CITY. CITY shall make available to CONTRACTOR all data and information in the possession of CITY which both parties deem necessary to complete the work, and CITY shall actively aid and assist CONTRACTOR in obtaining such information as may be deemed necessary from other agencies and individuals.

9. OBLIGATIONS OF CONTRACTOR. Throughout the term of this Contract, CONTRACTOR represents and warrants that it has or will have at the time this Contract is executed, all licenses, permits, qualifications, insurance, and approvals of whatsoever nature which are legally required for the CONTRACTOR to practice its professions, and CONTRACTOR shall, at its own cost and expense, keep in effect during the life of this Contract all such licenses, permits, qualifications, insurance, and approvals. CONTRACTOR shall meet with the Public Works Director or other personnel of CITY or third parties as necessary on all matters connected with the carrying out of CONTRACTOR'S services. Such meetings shall be held at the request of either party hereto. CONTRACTOR further warrants that it will follow the best current, generally accepted and professional practices to make findings, render opinions, prepare factual presentations, and provide professional advice and recommendations regarding this project.

10. TERMINATION. This Agreement is effective on the Effective Date. The City may terminate this Contract and work pursuant to any of all scope of works at any time by mailing a notice in writing to Contractor. The Contract shall then be deemed terminated and no further work shall be performed by Contractor. If the Contract is so terminated, the Contractor shall be paid for that percentage of work actually completed at the time the notice of termination is received.

11. CONTRACTOR STATUS. In performing the obligations set forth in this Contract, CONTRACTOR shall have the status of an independent contractor and CONTRACTOR shall not be considered to be an employee of the City for any purpose. All persons working for or under the direction of CONTRACTOR are its agents and employees, and are not agents of the CITY. Subcontractors shall not be recognized as having any direct or contractual relationship with the CITY. The persons engaged in the work, including employees of subcontractors and suppliers, will be considered employees of CONTRACTOR. The CONTRACTOR shall be responsible for the work of subcontractors, which shall be subject to the provisions of this Contract. The CONTRACTOR is responsible to the CITY for the acts and omissions of its subcontractors and persons directly or indirectly employed by them.

- a. If in the performance of this Contract any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the

direction, supervision, and control of CONTRACTOR. All terms of employment including hours, wages, working conditions, discipline, hiring, and discharging or any other term of employment or requirement of law shall be determined by CONTRACTOR.

- i. It is further understood and agreed that CONTRACTOR must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of CONTRACTOR'S personnel.
- ii. As an independent contractor, CONTRACTOR hereby indemnifies and holds CITY harmless from any and all claims that may be made against the CITY based upon any contention by any third party that employer-employee relationship exists by reason of this Contract.

12. ASSIGNMENT. CONTRACTOR shall not assign, sublet, or transfer this Contract or any interest or obligation in the Contract without the prior written consent of the CITY, and then only upon such terms and conditions as CITY may set forth in writing. CONTRACTOR shall be solely responsible for reimbursing subcontractors.

13. HEADINGS NOT CONTROLLING. Headings used in the Contract are for reference purposes only and shall not be considered in construing this Contract.

14. NOTICES. Any and all notices herein required shall be in writing and shall be sent by certified or registered mail, postage prepaid, addressed as follows:

<p>To CONTRACTOR: USA POOLS OF CALIFORNIA/ USA MANAGEMENT, LLC 237 KEARNY ST., STE. 367 SAN FRANCISCO, CA 94108</p>	<p>To City: Public Works Director City of Stockton 22 E. Weber Ave., Rm. 301 Stockton, CA 95202</p>
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15. LICENSES, CERTIFICATIONS, AND PERMITS. Prior to the CITY'S execution of this Contract and prior to the CONTRACTOR engaging in any operation or activity set forth in this Contract, CONTRACTOR shall obtain a City of Stockton business license, which must be kept in effect during the term of this Contract. CONTRACTOR covenants that it has obtained all certificates, licenses, permits and the like required to perform the services under this Contract.

16. RECORDS AND AUDITS. CITY reserves the right to periodically audit all charges made by CONTRACTOR to CITY for services under this Contract. Upon request, CONTRACTOR agrees to furnish CITY, or a designated representative, with necessary information and assistance.

CONTRACTOR agrees that CITY or its delegate shall have the right to review, obtain, and copy all records pertaining to performance of the Contract. CONTRACTOR agrees to provide CITY or its delegate with any relevant information requested, and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal

business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purposes of determining compliance with this Contract. CONTRACTOR agrees to maintain such records for a period of three years from the date that final payment is made.

17. CONFIDENTIALITY. CONTRACTOR shall exercise reasonable precautions to prevent the unauthorized disclosure and use of CITY'S reports, information, or conclusions.

18. CONFLICTS OF INTEREST. CONTRACTOR covenants that other than this Contract, CONTRACTOR has no financial interest with any official, employee, or other representative of the CITY. CONTRACTOR and its principals do not have any financial interest in real property, sources of income or investment that would be affected in any manner or degree by the performance of CONTRACTOR'S services under this Contract. If such an interest arises, CONTRACTOR will immediately notify CITY.

19. WAIVER. In the event either CITY or CONTRACTOR at any time waive any breach of this Contract by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Contract, whether of the same or of any other covenant, condition, or obligation.

20. GOVERNING LAW. California law shall govern any legal action pursuant to this Contract with venue for all claims in the Superior Court of the County of San Joaquin, Stockton Branch or, where applicable, in the federal District Court of California, Eastern District, Sacramento Division.

21. DISPUTE RESOLUTION. Prior to undertaking any litigation, the Parties shall make reasonable efforts to resolve all disputes informally, including by means of a conference between senior managers of each Party having authority to resolve the dispute.

1. Venue
Any controversy or claim between the Parties shall be determined with venue for all claims in the Superior Court of the County of San Joaquin, Stockton Branch or, where applicable, in the federal District Court of California, Eastern District, Sacramento Division.
2. If any litigation action or proceeding is commenced in connection with this Agreement, the prevailing Party, as determined by the court, shall be entitled to reasonable attorneys' fees (including allocated costs for in-house legal services), costs and necessary disbursements incurred in such action or proceeding.
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22. NO PERSONAL LIABILITY. No official or employee of CITY shall be personally liable to CONTRACTOR in the event of any default or breach by CITY or for any amount due CONTRACTOR.

23. INTEGRATION AND MODIFICATION. The response by CONTRACTOR to the Request for Proposals or Qualifications and the Request for Proposals or Qualifications on file with the CITY are hereby incorporated herein by reference to the extent that such documents do not differ from the provisions and terms of this Contract that shall supersede such response to Request for Proposals or Qualifications. This Contract represents the entire integrated agreement between CONTRACTOR and CITY, supersedes all prior negotiations, representations, or agreements, either written or oral, between the parties, and may be amended only by written instrument signed by CONTRACTOR and CITY. All exhibits and this contract are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Contract and the attached exhibits, the terms of this Contract will prevail.

24. SEVERABILITY. The provisions of this Contract are severable to the extent that should any of its provisions or terms be declared void in whole or in part by operation of law or agreement of the parties, the remainder of the provisions or terms not expressly declared void shall remain enforceable and in full effect.

25. THIRD PARTY RIGHTS. Nothing in this Contract shall be construed to give any rights or benefits to anyone other than CITY and CONTRACTOR.

[illegible]

26. **AUTHORITY.** The undersigned hereby represent and warrant that they are authorized by the parties to execute this Contract.

IN WITNESS WHEREOF: the parties have executed this Contract the day and year first hereinabove written.

CITY OF STOCKTON**USA POOLS OF CALIFORNIA/USA
MANAGEMENT, LLC**

By: _____
KURT O. WILSON
CITY MANAGER

By: 
Signature

ATTEST:

Carmen Zamudio
Print Name

By: _____
CHRISTIAN CLEGG
DEPUTY CITY MANAGER/INTERIM CITY CLERK

Title: Contracting Department

APPROVED AS TO FORM:

By: _____
DEPUTY CITY ATTORNEY



PUBLIC WORKS DEPARTMENT

REVISED 9-10-2018
SPECIAL PROVISIONS/SPECIFICATIONS

FOR

**POOL WATER AND FILTER SYSTEM
MAINTENANCE - PROJECT NO.
OM-19-019**

**Optional Job Walk: November 6, 2018, 9am
Bid Opens: November 15, 2018, 2pm**

CONTRACTOR MUST HAVE A
CLASS C-53 or C-61/D-35 LICENSE

FOR INFORMATION
REGARDING THIS PROJECT CALL
BRAD METTLER at (209) 937-7261, OR EMAIL,
Brad.Mettler@stocktonca.gov

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**CITY OF STOCKTON PUBLIC WORKS
SPECIAL PROVISIONS FOR POOL WATER AND FILTER SYSTEM MAINTENANCE
PROJECT NO. PW19-019**

SECTION 1 - SPECIFICATIONS AND PLANS

1.1 Specifications

The work described herein shall be done in accordance with the current City of Stockton, Department of Public Works Standard Specifications and Plans; State of California Code of Regulations Title 22, Division 4, Chapter 20; San Joaquin County Public Pool Standards; and these special provisions.

In case of conflict between these Special Provisions and the City Standard Specifications and Plans, the Special Provisions shall take precedence.

1.2 Terms and Definitions

Wherever in the Standard Specifications, Special Provisions, Notice to Contractors, Proposal, Contract, or other contract documents the following terms are used, the intent and meaning shall be interpreted as follows:

City or Owner -	City of Stockton
Contract Administrator	City Staff designated to oversee contract and contractor's actions
Department -	Department of Public Works, City of Stockton
Director -	Director of Public Works, City of Stockton
Public Pool Standards-	San Joaquin County Public Pool Standards as issued by the San Joaquin County Environmental Health Department
Regulations-	California Code of Regulations, Title 22, Division 4, Chapter 20, Public Swimming Pools
Standard Specifications -	Latest City of Stockton, Standard Plans and Specifications, and any amendments and revisions thereto.

SECTION 3 – BEGINNING OF WORK, TIME OF COMPLETION, LIQUIDATED DAMAGES, AND TERMINATION

3.1 Beginning of Work

At no time shall work begin without a fully executed contract and approved insurance on file.

The Contractor shall diligently prosecute all work items to completion. Full compensation for any additional costs occasioned by compliance with the provisions in these special provisions shall be considered as included in the prices paid for the various contract items of work, and no additional work compensation will be allowed therefore unless authorized with an executed contract change order by the City.

Understanding of Conditions

Bidders shall carefully examine these special provisions and all bid documents to judge for themselves as to the nature of the work to be done and the general conditions relative thereto and the submission of a proposal hereunder shall be considered prima-facie evidence that the bidder has made the necessary investigation and is satisfied with respect to the conditions to be encountered, the character, quantity and quality of the work performed. For work to be completed, contractors are advised to visit and review the job site prior to the submission of their bid

Bidders must be thoroughly competent and capable of satisfactorily performing the work covered by the proposal, and when requested shall furnish such statements relative to previous experience on similar work, the plan or procedure proposed, and the organization and the equipment available for the contemplated work, and any other as may be deemed necessary by the Contract Administrator in determining such competence and capability.

It shall be understood that the Contractor shall be required to perform and complete the proposed work in a thorough and workmanlike manner, and to furnish and provide in connection therewith all necessary labor, tools, implements, equipment, materials and supplies. The contractor is responsible to take all necessary precautions and use best practices in the industry to perform all work required to complete the project.

3.2 Time of Completion

Upon approval of the contract or upon issuance of a purchase order for said work and the furnishing of said materials, the performance of said work and the furnishing of said materials shall be executed beginning on January 1, 2019 and run through December 31, 2021.

Should the Contractor choose to work on a Saturday, Sunday, or on a holiday recognized by the labor unions, and that work requires inspection by the City, the Contractor shall reimburse the City of Stockton the actual cost of engineering, inspection, testing, superintendent, and/or other overhead expenses, which are directly chargeable to the contract. Should such work be undertaken at the request of the City, reimbursement will not be required.

3.3 Contract Extension

Upon request from the Contractor, the City may approve extending this contract for another calendar year beyond December 31, 2021, with up to four (4) one-year extensions. In no case shall the contract be extended beyond December 31, 2025. The Contractor must submit a request for a contract extension in writing to the Contract Administrator at least one hundred and eighty (180) calendar days prior to the expiration of the contract or any extension granted. Based on the Contractor's performance, the Contract Administrator will evaluate whether the contract should be extended. Any contract extension must be approved by the City Manager. Should an extension(s) be granted, at the end of such extension(s), upon completion of contract term, all pools shall be in conformance with the project specifications, subject to review approval by the Contract Administrator.

The price paid for a contract extension may be increased by 2.5% over the current year's contract amount, or the percentage increase in the San Jose/Oakland/San Francisco consumer price index for the immediately previous calendar year, whichever is less. No increase will be allowed for the original term of the contract.

3.4 Penalties

Full compensation for any costs required to comply with the provisions in these specifications shall be included in the prices paid for the various contract items of work, and no additional compensation will be allowed therefore.

The Contractor shall pay penalties to the City of Stockton in the corresponding amount for the work indicated in the price schedule submitted with bid (deducted from Contractor's monthly billing invoice) for any work not performed as specified in these special provisions or a minimum of Two Hundred Dollars (\$200) per day, whichever is greater. Work not performed will include items not performed as shown in Section 6.3 A, B, C, D, and E, or missing monthly required reports.

3.5 Termination Clause

The City may terminate the resultant contract for convenience by providing a thirty (30) calendar day advance notice unless otherwise stated in writing.

If, in the opinion of the City, the Contractor fails to diligently prosecute this contract, the City reserves the right to terminate this contract with a thirty (30) calendar day written notice. Within the 30-day period after the Contractor has been given a notice of termination, the City may hire an interim contractor. The City reserves the right to recall the Contractor's contract security as may be necessary to offset all costs of hiring such interim maintenance Contractor.

Whenever in the opinion of the Contract Administrator Contractor's service is not satisfactory, the Contractor shall be advised of the reasons in writing. Contractor's failure to correct the deficiency/unsatisfactory conditions within the time limit specified can be considered a lack of diligence in prosecuting the contract and grounds for terminating the contract.

Notwithstanding any provision to the contrary herein, City shall have no obligation to give more than three notices of unsatisfactory performance in any calendar year. In the event two (2) such notices of unsatisfactory performance are given in any calendar year, and if Contractor shall again fail to satisfactorily perform services pursuant to this contract, City may thereupon terminate this contract immediately.

SECTION 4 - GENERAL

4.1 Project Appearance

The Contractor shall maintain a neat and orderly work site at all times. Chemical storage and equipment areas shall be kept clean and organized, mechanical equipment shall be regularly wiped down and dusted, and any chemical storage is subject to the approval of the Contract Administrator.

At all times, Contractor shall maintain all pools in a sanitary, healthful and safe condition in conformance with the Regulations and the Public Pool Standards (refer to Section 6.7).

4.2 Increased or Decreased Quantities

The City reserves the right to make such alterations, deviations, additions to, or omissions from the plans and specifications, including the right to increase or decrease the quantity of any item or portion of the work or to omit any item or portion of the work, as may be deemed by the Contract Administrator to be necessary or advisable and to require such extra work as may be determined by the Contract Administrator to be required for the proper completion or construction of the whole work contemplated, without adjustment in the unit price as bid.

Section 4.2, "Increase or Decreased Quantities", of the Standard Specifications, shall not apply until any such change has been set forth in a contract change order. Such change order will specify, the change(s) made, adjustment of contract time, if any, and the basis of compensation for such work. A contract change order will not become effective until approved by the City Manager and/or City Council.

4.3 Pre-Construction/Pre-Start of Work Meeting

The City of Stockton Public Works Department will schedule a pre-construction/pre-start of work meeting with the Contractor following award of the contract and prior to commencing work. The City will issue the Notice to Proceed following execution of the Contract. This meeting will be held at the City of Stockton, Department of Public Works Municipal Service Center offices, 1465 S. Lincoln St. unless instructed otherwise.

4.4 Contractor Qualifications

Independent Contractor: Contractor acknowledges it is an independent contractor and shall not for any purpose be deemed to be an employee, agent, or other representative of the City. Contractor shall not assign, sublet, transfer or otherwise substitute its interest in this work, or any of its obligations, without the prior written consent of the City.

Emergency Call-Out: Contractor must be able to respond to an Emergency Call-Out within 30 minutes, seven days a week, 24 hours a day. The 30-minute response time is from the time the call is placed to the Contractor to the time the Contractor or Contractor's staff arrives at the site.

"Emergency Call-Outs" are defined as "any situation the Contract Administrator determines immediate attention is required by Contractor".

References: Contractor shall provide at least three (3) references with their bid demonstrating two (2) years of service at a level similar to the services described within these specifications (subject to City determination). At least one (1) reference must be a public agency (public agency is defined as; any pool open to the public or operated by a non-profit). All references must be able to confirm Contractor is providing service at a satisfactory level or the Contractor's bid may be disqualified. See "Experience Section".

Being released from a public agency maintenance job/project for non-performance may be grounds for disqualifying a contractor's bid. If, after contract award, it is found that Contractor has been released from a public agency maintenance job/project for non-performance, this will be grounds for terminating the contract.

A Contractor that has voluntarily resigned from a public agency maintenance job/project prior to the end of the contract term or any extension may have their bid disqualified for this reason. If after contract award for this work it is found that Contractor has been voluntarily released prior to the end of the contract term or any extension agreed to by the contractor, this will be grounds for terminating the contract.

Minimum Age Requirement: All employees of the Contractor must be a minimum of 18 years of age.

Conflict of Interest: The Contractor shall not employ any person who is an employee of the City if the employment of that person would create a conflict of interest.

Licensing: Contractor shall possess a valid City of Stockton Business License prior to starting work. Contractor shall possess a **C-53 Swimming Pool Contractor or Class C-61, Limited Specialty, D-35, Pool and Spa Maintenance Contractor**, license as issued by the Contractors State License Board of California in order to submit a bid for this work. Department of Industrial Relations (DIR) registration is not required for general pool maintenance, however Contractor shall register for any additional work as required by the DIR.

Certification: Contractor and all staff assigned to work at the pools shall be a Certified Pool/Spa Operator® as designated by the National Swimming Pool Foundation in order to submit a bid for this work. Contractor and all staff assigned to work at the pools must maintain their certification during the entire contract period.

Experience: Contractor shall have successfully and satisfactorily provided or shall be currently providing services comparable to those described in these special provisions for at least one (1) public agency for at least one (1) full year within the last three (3) years. Contractor shall have successfully maintained/operated concurrently at least one (1) public swimming pool of a size comparable to the Brookings or Oak Park Pool (main pool) for a public agency or an owner's association within the last three (3) years. "Successfully maintained/operated" means that the Contractor has satisfactorily completed the entire term of the contract and any extension granted.

Contractor shall have at least five (5) years of relevant experience in pool care and maintenance of facilities that are similar in size and type of amenities to those included in this project.

All services shall be performed by a person(s) with at least one (1) year of relevant pool maintenance experience, and who are directly employed and supervised by the Contractor.

Fingerprinting/Background Check: If selected for this work, Contractor and all Contractors' employees assigned to this work may be required to submit fingerprints in a manner authorized by the State of California Department of Justice. Prior to the start of work, Contractor and all Contractors' employees assigned to this work shall submit fingerprints if required by the City. Contractor is responsible for all costs of fingerprinting and background check.

Any Contractor who has been convicted of certain criminal offenses (disqualifiers) as

specified in California Public Resources Code Section 5164 is not eligible to submit a bid for this work. Any of Contractor's employees who have been convicted of certain criminal offenses (disqualifiers) as specified in California Public Resources Code Section 5164 are not eligible to perform any work at any of the sites under this contract. Contractor and all of Contractor's employees assigned to this work must be found not have any disqualifying convictions prior to Contractor/Contractor's employees being allowed to commence work under this contract. In addition, if any of Contractor's employee(s) assigned to this work is/are subsequently found to have a disqualifying conviction, that/those employee(s) shall be immediately removed from the work site and shall not be allowed to perform any further work under this contract. If Contractor is subsequently found to have a disqualifying conviction, the contract will be immediately terminated and Contractor shall not perform any further work.

Contractor selected to perform this work shall certify in writing to the City that neither the Contractor nor any of Contractor's employees have been convicted of any of the offenses specified in California Public Resources Code Section 5164. Certification must be provided prior to Contractor being allowed to start work.

4.5 Contractor Responsibilities

The Contractor shall employ only workers who are competent and skilled for work under this contract. The City shall, throughout the life of the contract, have the right of reasonable rejection and/or approval of staff assigned to the work by the contractor. If the City Contract Administrator rejects one of Contractor's staff, the Contractor must provide replacement staff satisfactory to the City at no additional cost to the City. If, in the opinion of the City, any Contractor employee who is incompetent, disorderly, refuses to perform in accordance with the contract specifications, threatens or uses abusive language while on City property, or is otherwise unsatisfactory, shall be removed immediately from work under this contract upon request of the City.

The Contractor shall appoint a Project Manager (Supervisor) who shall be responsible for overseeing the performance of the work and an Alternate(s) who shall act for the Contractor when the Project Manager is absent. The names of these persons shall be designated in writing to the City. In this contract, the term "Project Manager" shall include the alternate as specified above. The Project Manager, or his/her designee, shall be available twenty-four (24) hours a day, seven (7) days per week, to discuss problem areas with City Contract Administrators. Contractor shall provide contact information for both the Project Manager and Alternate. The Project Manager shall have a telephone/pager to permit timely contact by the City. The Project Manager must reply/respond to a call/page within 20 minutes.

No unauthorized person or persons not employees of the Contractor (i.e., spouse, children, brother, sister, friends, etc.) shall be allowed within the immediate work area during the performance of services under this contract.

Quality Assurance / Quality Control Program: Contractor shall have a quality assurance/quality control program that includes procedures that are required to ensure that work is being internally inspected and providing full protection of work and materials. Contractor's quality control will include, at a minimum, two quality control checks in the field on regular maintenance and any outstanding deficiency work orders each week.

Contractor shall submit written Quality Assurance/Quality Control Program with bid.

Inventory of Materials: Contractor shall have and maintain adequate inventory of materials used in the performance of this contract. Contractor shall provide all supplies necessary to accomplish the required services. Supplies shall conform to contract requirements and industry standards. Upon contract award, Contractor shall submit a list of supplies to the Contract Administrator, and, in compliance with the California Environmental Reporting System requirements (CERS), Contractor shall provide the Contract Administrator with a report of types and quantities of all chemicals stored on site on a weekly basis.

Damage to Improvements: Contractor is responsible for any and all damage which is a result of Contractor's actions. Contractor shall notify City within 24 hours of any damage to City amenities/improvements caused by Contractor. Contractor shall repair or replace any damaged improvement to the Contract Administrator's satisfaction at no cost to the City.

Safety: Contractor shall be solely responsible for the safety and welfare of all Contractor's personnel performing work under this contract. Contractor is solely responsible for advising and educating all personnel to the health hazards associated with this work prior to personnel commencing work under this contract. All work shall be performed with the utmost concern for safety of both the workers and the public. Where necessary, contractor shall barricade or temporarily close to the public those areas that are being serviced. Contractor shall provide all necessary personal protective equipment for personnel assigned to this work.

Protection of Property: The Contractor shall take every precaution to protect all public and private property during the performance of this contract. Any damages caused by Contractor's personnel or equipment must be immediately reported to the City Contract Administrator. Contractor will be responsible for the costs to restore the damaged amenity to the condition existing before the damage or for replacement, as determined by City. City reserves the right to select or approve the person/company doing the repair and the materials used.

Upon completion of service at a site, Contractor is responsible for securing all areas, including locking fences and/or gates and disabling/setting any alarms.

Illness and Injury Prevention Program: Contractor shall have an Illness and Injury Prevention Program and present a copy to the City prior to initial start of work.

Harassment Policy: Contractor shall comply with City Manager Administrative Directive HR-15 Discrimination and Harassment Policy and shall abide by all provisions of said policy.

Contractor shall have a written policy that, at a minimum, prohibits harassment and discrimination in employment on the bases of race, religion, color, national origin, ancestry, disability, marital status, pregnancy, medical condition, gender, sexual orientation, political affiliation, age, or any other category or attribute as consistent with state or federal law and present a copy to the City prior to initial start of work. The prohibition applies to all officers and employees of the Contractor and their interaction with City personnel and the members of the public encountered during the course of Contractor's work.

The policy applies to all aspects, including, but not limited to, hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, compensation, and training.

Workplace Violence Crisis Management Policy: Contractor is considered a "third party" as defined in City Manager Administrative Directive HR-64, Workplace Violence Crisis Management Policy and shall abide by all provisions of said policy.

Quality Assurance: Contractor shall have a quality assurance program that includes procedures that are required to assure full protection of work and materials and performance of tasks in accordance with these special provisions and present a copy to the City prior to initial start of work.

Found Items: Contractor shall insure that all items of possible personal or monetary value found by Contractor/Contractor's employees are turned in to the City Contract Administrator at the end of each work day.

Key Control: Contractor shall insure all keys and security codes issued to Contractor are not lost or misplaced and are not used by unauthorized persons. No keys issued to Contractor shall be duplicated. Contractor shall have a written Key Control Program and present a copy to the City prior to initial start of work. Contractor will be responsible to reimburse the City for all costs associated with repair/replacement of keys and locks should the Contractor lose or misplace their assigned keys.

4.6 Standards of Performance

All other portions of these special provisions notwithstanding, it is intent of these special provisions that the Contractor provide a level of maintenance that will always present the pools in a sanitary, healthful and safe condition in conformance with these Special Provisions, the Regulations, and the Public Pool Standards. It is the intent to call for the highest level of quality in maintenance compatible with standard industry practices and modern techniques accepted by the industry. Contractor agrees to maintain all pools covered by these special provisions at this level. The Contract Administrator shall be the sole judge as to whether Contractor's work conforms to the specifications.

It is the intent of these specifications that all work is to be performed by Contractor's forces. Contractor shall obtain City approval before subcontracting any part of this work.

Contractor and Contractor's personnel shall present a neat appearance. Contractor and Contractor's employee(s) shall wear a uniform which clearly identifies the Contractor's company and the employee. Personnel not so attired shall not be permitted to work under this contract until properly uniformed. The uniform shall be consistent for all workers and shall be worn at all times while performing maintenance under this contract. Uniforms shall be kept in a neat, clean and orderly manner.

Contractor shall provide Contract Administrator with a roster of employees assigned to this work. Contractor shall provide a revised roster anytime there is a change in staff.

All Contractor's maintenance vehicles, or vehicles of those persons representing the Contractor, shall be in proper working order and in a good state of repair, and shall clearly present the Contractor's company name, address, and telephone number of local office.

Contractor shall use equipment and materials of the quality, size, durability, and concentrations normally used in the industry for the performance of similar services. The Contract Administrator may periodically inspect the Contractor's equipment and materials to ensure its serviceability, safety and performance. Equipment and materials determined not in compliance, will be removed and replaced with suitable equipment and/or materials. All materials used shall be compatible with the City's filtration and chemical injection equipment.

Contractor shall provide at their own risk, all labor, materials, supervision, tools, equipment, insurance, storage, transportation, hauling, dumping, proper protection and all other items needed, or as directed, to perform the work described in these special provisions. Contractor shall provide supervision of all work crews at all times while performing work under this contract. Supervision of personnel is not required, provided that equipment or other means are available, enabling the work crews to communicate with the Contractor at all times. Each work crew shall have a designated person on the work site that has the authority to respond to inquiries from any citizens encountered during the course of work, the Contract Administrator, and/or the pool operator about work details and/or priorities. This designated person shall be able to accurately and effectively communicate any information essential to the operation of the organization.

Contractor shall employ a sufficient number of staff to ensure performance of the work described. All work shall be performed by experienced staff directly employed by the Contractor. The Contractor shall provide management and technical supervision through competent supervisors as required to implement modern methods and newly developed procedures. Contractor shall be responsible for the skills, methods, and actions of Contractor's employees and for all work.

All work shall be performed with the utmost concern for safety of both the workers and the public.

Day to day operation of the pool during the "Daily Maintenance Service" (see Section 6.3 C) period will be performed by a contracted pool operator (Operator, separate from Contractor). The Operator's responsibilities will include but not be limited to: trash collection from the grounds, emptying trash cans, cleaning bathrooms, daily opening and closing, and providing lifeguards. The Contractor shall coordinate with the Operator so as not to interfere with operation of the pool. Both Contractor and Operator shall coordinate their activities and tasks to keep the pool facility in compliance with all state and local codes and requirements.

Contractor is expected to be familiar with all areas and locations of the work and if they are not, shall have those questions answered before commencing work on this contract. Good, two-way communication between Contractor and City is paramount to good stewardship of these facilities and essential for successful contract fulfillment.

4.7 Workmanship

Contractor shall perform work contemplated herein in a good and workmanlike manner to the satisfaction of the Contract Administrator. The Contractor shall cooperate with the Contract Administrator to enable determination of contract compliance. The Contract Administrator shall be the sole judge as to whether Contractor's work conforms to these specifications. If any work does not meet the standards specified, the Contractor will be responsible for correcting such deficiencies within one (1) working day or as directed by the Contract Administrator. Corrections shall be at no additional cost to the City of Stockton. There shall be no delay of regular maintenance tasks while Contractor performs corrective work.

SECTION 5 - MEASUREMENT AND PAYMENT

5.1 General

Full compensation for performing the work and providing all materials required in these Special Provisions shall be included in the prices paid for the various contract items of work, and no additional compensation will be allowed therefore.

Contractor shall provide costs for "Supplemental Service" items. These are tasks that may have to be performed. Should a contract be awarded for this work, the contract price will include an allocation for performance of a certain number of the Supplemental Bid Item tasks. In the event these services are needed during the contract term, this is the compensation that will be allowed for performing the task. The City reserves the right to have the contractor perform some, all or none of the Supplemental Service tasks.

5.2 Payment

Payment requests shall be submitted monthly with all required monthly reports. Invoicing and payment for each month will be upon completion of the respective month's service. Contract work performed will be paid for approximately 30 days after all required reports are found to be complete and billing invoice is approved for payment. Contractor shall provide monthly reports as detailed in SUBMITTALS (Section 6.6 C) with the monthly billing invoice. Contractor shall submit documentation substantiating purchase of chemicals used during the month. Work not performed will be deducted from Contractor's invoice according to the Contractor's bid schedule for maintenance services submitted with Contractor's bid or as listed below. The City reserves the right to pay only on a prorated basis for the period of time, the actual maintenance services are performed and/or for the percentage of work completed for the month.

Payments Withheld: Payment may be withheld to such extent as may be necessary to protect the City from loss including, but not limited to, the following reasons:

- A. Work not done to specification.
- B. Work not performed.
- C. Incomplete/partially completed work.
- D. Not submitting required reports.
- E. Pools not able to open due to water quality/chemistry not meeting the Regulations and Public Pool Standards.
- F. Failure of the Contractor to make payments to subcontractors or suppliers for

material and labor.

If part or all of Contractor's payment must be withheld due to defective work, work not performed, incomplete work, and/or failure of the Contractor to make payments to subcontractors or suppliers for material and labor, in addition to any deduction for non-performance, an additional \$250.00 will be deducted to offset City costs to process the reduction. The price schedule submitted with Contractor's bid will be used to determine the value of defective work, work not performed and/or incomplete work to be deducted from Contractor's invoice.

5.3 Labor and Materials Security

Not applicable.

SECTION 6 - DESCRIPTION OF WORK

6.1 Description of Work

The City of Stockton is seeking a qualified licensed Pool and Spa Maintenance Contractor to provide commercial pool maintenance services, all needed chemicals, service the water filter equipment, chemical injection equipment, and be able to provide repairs to the filter and chemical injection equipment for public pools at Brooking, Oak, and Sousa. All will be referred to and considered for the description of tasks to be performed as "pools". Service work will include, Start Up Service; Daily Maintenance Service, Shut Down Service, Off Season Service, and Supplemental Service.

The contractor shall maintain all records and logs required by these Special Provisions, the Regulations, and the Public Pool Standards. All updated logs shall be provided to the City Contract Administrator with each pay application request. The contractor shall provide all labor, materials, chemicals, tools, supplies including all chemicals and testing materials, equipment and transportation necessary to provide services described in these special provisions.

The City will also be contracting with Operator/s for the pools who will schedule various programs at the pools. Contractor must coordinate Contractor's maintenance tasks with the Operator's operating schedule and be available to the City and the Operator at all times while the pools are open to the public. See Supplemental Services section.

6.2 Hours and Days of Work

Contractor shall provide a schedule of days and times that maintenance services will be performed at each pool. Contractor shall provide said schedule within fifteen (15) calendar days of City Council approval of Contract. Contractor will not be allowed to commence work until a work schedule has been submitted and approved.

Contractor must have all pools ready a minimum of one (1) hour prior to that day's scheduled opening. The City reserves the authority to direct the Contractor to amend the working hour schedule if conflicts are apparent. If scheduling problems develop, the City and Contractor will review and change the schedule as necessary. If adjustments to the schedule are necessary, they will be negotiated with the Contractor and the adjustments confirmed in writing as mutually agreed.

6.3 Pool Maintenance/Water Quality Services

For the following services, the contractor shall keep logs of all maintenance operations and chemical usage in accordance with the applicable regulations. Such records shall be subject to approval by the City Contractor Administrator or representative. Hardcopy logs and maintenance records shall be kept at each site for City inspection. A copy (.pdf or .jpg, are acceptable) of these logs shall be emailed to the Contract Administrator with each month's invoice for services.

A. Water Quality

Contractor shall maintain pool water quality and chemistry in accordance with the most current versions of the Regulations and the Public Pool Standards. At no time shall the water chemistry cause a failure of permission to operate the pool as granted by the regulatory agency.

Expected Free Chlorine (FC) count is 5.0 ppm (between 3.0 and 10.0 ppm is acceptable). Any reading less than 3.0, or above 10.0, is unacceptable and will constitute an Emergency Call-Out at no charge to the City. Combined Chlorine (CC) count at .04 ppm or less, 0.0 ppm is preferred. The City's desired level of pH (potential of hydrogen) is 7.4.

In the event permission to operate is revoked due to poor water quality/chemistry caused by Contractor's actions, Contractor's invoice for the month will be reduced by 1/30 of the Monthly Maintenance Service cost for each day the pool cannot be opened/operated during that service month. See also Section 3.4 Liquidated Damages, which will apply.

B. Start Up Service

Contractor shall have Start Up service complete and pools ready for full operation by May 20th each year of the contract. Start Up service shall consist of the following tasks:

Contractor shall meet with City Contract Administrator on or around March 1 each year of the contract. At such time, Contractor shall inspect each pool, filter system, and chemical injection system. By March 15, Contractor shall submit to City Contract Administrator a list of all items necessary to get the pool ready for full operation by May 20.

1. Drain pool (unless directed otherwise by Contract Administrator).
2. Acid wash interior pool surfaces. Inspect pool surface and notify Contract Administrator and any areas requiring repair. Contact Contract Administrator upon completion of acid washing.
3. Scrub water line tiles. Upon completion tiles should be clean and smooth with no evidence of dirt, scum, mineral deposits or chemical deposits
4. Clean and service chemical injection system. This shall include cleaning/flushing all feed and supply lines that deliver chemicals to the pool water.
5. Clean and service filter system.
6. Fill pool to proper level. Contact Contract Administrator for authorization/approval prior to commencing filling pool.

7. Adjust and maintain chemical levels in conformance with the Regulations and the Public Pool Standards for anticipated opening.
8. Place filtration and chemical injection systems into automatic operation and check/monitor for proper operation.
9. Check pool, clean out skimmer/strainer baskets, test water and adjust chemicals as necessary at least two (2) times a week with at least two (2) days between each service until Daily Maintenance commences.
10. Once each week, Brush/scrub pool walls, floor and steps to remove dirt and algae. Upon completion, there shall not be any dirt and/or algae and on any surfaces.
11. Vacuum pool at least two (2) times a week.

C. Daily Maintenance

Daily Maintenance Service tasks start the Friday immediately prior to Memorial Day each year and shall consist of the following tasks:

1. Test water chemistry prior to Operator arriving and opening the pool for public use:
Water chemistry shall be tested at least twice a day. Balance chemicals as needed to comply with all government rules and regulations.
2. Empty and clean all skimmer baskets as often as necessary but no less than once each day
3. Vacuum pool a minimum of three (3) times a week or more often if needed to keep pools clean.
4. Skim water surface with a net as often as necessary but no less than once each day to remove all floating material.
5. At least once each week or more often if needed, scrub water line tiles. Upon completion tiles should be clean and smooth with no evidence of dirt, scum, mineral deposits or chemical deposits.
6. Check pump, strainers and filters daily, and clean if necessary.
7. Check and record filter pressure gauge readings and flow meter reading daily and take corrective measures as indicated.
8. Maintain all pool filtration equipment in proper working order. This includes regular back-washing and/or cleaning pump strainer/filter as required.
9. Maintain chlorination systems and/or chemical feed/injection systems by cleaning and adjusting as required.
10. Daily make sure pump room and chemical storage areas are clean and clean if necessary.
11. At least once per week, wipe down all pool mechanical equipment.
12. Maintain required records in accordance with the Regulations and Public Pool Standards.
13. Project Manager shall confer with Contract Administrator at least once (1) each week to discuss progress of work.
14. Secure/lock building/s, gates, and pool site/s upon leaving.
15. Contractor management personnel will inspect the pool at least twice each week during the "Daily Maintenance" season on an unannounced basis.
Contractor shall submit reports of the inspections with their monthly invoice.

D. Shut Down Service

The contractor will perform the following "Shut Down Service" starting the day after Labor Day each year and service shall be completed within five (5) working days.

The pools shall be considered closed as of the day following Labor Day

1. Empty and clean all skimmer baskets
2. Skim water surface with net to remove all floating material.
3. Scrub water line tiles. Upon completion tiles should be clean and smooth with no evidence of dirt, scum, mineral deposits or chemical deposits
4. Brush/scrub pool walls, floor and steps to remove dirt and algae. Upon completion, there shall not be any dirt and/or algae and on any surfaces
5. Vacuum pool to remove all debris.
6. Clean pump, strainers and filters.
7. Check and record filter pressure gauge readings and flow meter readings.
8. Make all pool filtration equipment is in working order. Prepare report of any inoperable equipment and submit to City.
9. Clean and secure pump room and chemical storage areas. Remove all chemicals from sites.
10. Back-washing and/or cleaning pump strainer/filter as required.
11. Add winterization chemicals to pool to retard algae growth.
12. Upon Completion of Shut Down Service tasks, request walk through inspection with Contract Administrator. Inspection shall be completed prior to September 30.

Upon completion of Shut Down Service, contractor shall service pools according to "Off Season Service Tasks" through the last day of September. Contractor shall commence "Off Season Service" on October 1.

E. Off Season Service Tasks

Contractor shall, by November 30 each year, provide a written report listing any service/s, repair/s, and/or equipment which may be necessary to render each pool, filter system and any other appurtenant systems reliably operational for the following open season. The contractor shall provide a cost estimate for any necessary repairs or services that are not already a part of the scope of this work. Should City elect to have contractor perform the repairs, a change order will be issued and the contractor is expected to have all repairs completed prior to April 1 and pool openings for the following season.

Contractor shall maintain the pool water clarity and chemically balanced in accordance with the Regulations and Public Pool Standards.

Contractor shall perform the following tasks three (3) times each week:

1. Empty all filters and skimmers
2. Backwash filters as often as necessary to maintain at least 70% of normal flow rate.
3. Skim water surface to remove floating matter
4. Vacuum entire pool to remove all debris that has accumulated in pool.

5. Brush/scrub pool walls, floor and steps to remove dirt and algae. Upon completion, there shall not be any dirt and/or algae and on any surfaces.
6. Adjust/add chemicals as necessary to comply with the Public Pool Standards and the Regulations.
7. Verify timer is operating properly and pool circulation system runs for at least 6 hours per day.
8. Add water as necessary to bring to proper level.
9. Contractor shall check pool after each rain storm. Contractor shall remove all debris that has fallen into pool and shall adjust water chemistry to insure it is in conformance with the Regulations and the Public Pool Standards.
10. Prepare report of tasks performed and chemicals used at each visit.
11. Report any areas needing additional attention or circumstances requiring City's attention. Submit weekly reports on the condition of the pools to the Contract Administrator. The report shall also contain a picture of each pool showing the condition of the water.
12. Check the entire site including all building/s and fences for vandalism. Report any vandalism to City Contract Administrator.
13. Secure/lock building/s, gates, and pool site/s upon leaving.

Supplemental Services

Contractor shall provide bid costs for the following Supplementary Services. Some, none, or all of these services may be needed during the Daily Maintenance period.

F. Contamination Event (response time same as defined in Section G, Emergency Response)

In the event of Fecal, Vomit, and/or Blood contamination, depending on the level of contamination, Contractor shall perform the following disinfection procedures:

1. After a fecal, vomit, or blood contamination incident, the Operator will close the pool/s and contact the Contractor. If the public pool is one of multiple pools that use the same filtration system, then all interconnected pools will be closed to pool users. No one shall be allowed to enter the public pool(s) until the disinfection procedures have been completed.
2. The Operator will record the number of occupants in the pool, the type of contaminating material, the time of occurrence, and the time of day the pool was closed and provide this information to the Contractor.
3. Contractor shall remove contaminating material and discharge the contaminating material directly to the sanitary. The Contractor shall clean and disinfect the item used to remove the contaminating material.
4. The Contractor shall record the pH of the water and then ensure that the pH of the public pool water is maintained at 7.5 or lower and adjust the pH if necessary.
5. The Contractor shall record public pool water temperature.
6. The Contractor shall ensure that the filtration system is operating while the public pool reaches and maintains the proper free chlorine concentration during the disinfection process.
7. The Contractor shall disinfect the public pool water as follows:

- a. If the contaminating material is a formed fecal stool or vomit, the Contractor shall raise and maintain the free chlorine concentration in the pool to a minimum of 10 ppm for at least 25 minutes.
 - b. If the fecal material is a diarrheal-stool, the Contractor shall raise the free chlorine concentration in the pool to a minimum of 20 parts per million (ppm), maintain the pH between 7.2 and 7.5 with a temperature of about 77°F (25°C), for at least 12.75 hours to achieve the contact time (CT) value of 15,300. CT value is the concentration of chlorine in ppm multiplies by the time in minutes. In this case, a 20-ppm concentration of chlorine maintained in a pool for 12.5 hours or 765 minutes will result in a CT value of 15,300 (765 minutes X 20 ppm). Any combination of chlorine concentration and time resulting in a CT value of 15,300 or greater can be used to achieve disinfection. After the CT value has been reached, Contractor shall thoroughly backwash filter to the sanitary sewer and before the pool is reopened.
 - c. If the contaminating material is blood, the Contractor shall check the free chlorine concentration in the public pool at the time of the incident. If it is below the required minimum free chlorine concentration, the Contractor shall immediately close the public pool until the required minimum free chlorine concentration is achieved.
 - d. The Contractor shall test the free chlorine residual at multiple sampling points to ensure the proper free chlorine concentration is achieved throughout the public pool water for the entire disinfection time.
 - e. The Contractor shall replace any affected cartridge filters and shall backwash non-cartridge filters after the disinfection process has been completed and before the pool is reopened. The Contractor shall ensure the effluent is discharged directly to the sanitary. The Contractor shall not return the backwash through the filter. The Contractor shall replace the filter media if necessary.
 - f. The Contractor shall not release the pool for use until the disinfection process has been completed and the free chlorine concentration is less than ten (10) parts per million (ppm) and pH of the public pool water have returned to normal operating ranges in accordance with section 65529 of the Regulations.
 - g. When ready, the Contractor shall notify the Operator.
8. The Contractor shall immediately document each fecal, vomit, and blood contamination incident and maintain records as follows:
- a. The date and time of the incident, the available free chlorine, pool temperature, pH level, and, if used, cyanuric acid level at the time of the incident.
 - b. Whether the fecal stool was formed or diarrheal.
 - c. The number of pool users in the public pool and the length of time between the occurrence, detection and resolution of the incident.
 - d. Before reopening pool, record the free chlorine and pH levels, the procedures followed in response to the incident (including the process

used to increase the chlorine levels if necessary), and the contact time.

G. Emergency Response and Emergency Call Out

Contractor shall provide 30-minute response times for both Emergency Response and Emergency Call Out notifications. The 30-minute response time is from the time the call is placed to the Contractor, to the time the Contractor or Contractor's staff arrives at the site.

An Emergency Response is to be used to secure an immediate problem. If repairs are needed, they are to be accomplished during regular working hours if possible. Emergency Response time is considered additional service on a time and materials basis.

An Emergency Call Out is used when the Contractor has not performed as to the specifications and needs to immediately remedy the situation. An Emergency Call Out is not an additional service, and no extra fees will be paid by the City.

All Supplemental Services must be approved by the Contract Administrator prior to the Contractor performing the work. Payment for approved Supplemental Services shall be based on Contractor's bid prices. If Contractor is requested to perform a maintenance service that is not on the Bidding Schedule, the actual cost of labor plus cost of materials plus ten percent (10%) will be allotted for the service/repair. Contractor shall submit a proposal for the service/repair detailing the labor and material costs separately. Should the City decide to have the Contractor perform the work, a contract change order will be processed for the work.

Storage of Materials

Contractor may store a quantity of chemicals at each location sufficient to service the pool. Contractor shall not aggregate all chemicals at one location to distribute to the various locations. Contractor is limited to storing the following quantities of materials at each location:

Less than 20 gallons of liquids, or 200 pounds of solids or 200 cubic feet of compressed gas, or quantities of each not to exceed that as allowed by San Joaquin County Environmental Health Department. Once per week, quantities of all materials stored shall be reported to the Contract Administrator, see Section 4.7 Inventory of Materials.

**NOTE: CITY SHALL NOT BE LIABLE FOR SECURITY OF MATERIALS.
CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR THE SECURITY OF POOL
CHEMICALS AND ASSOCIATED MATERIALS STORED AT EACH LOCATION.
THEFT OF MATERIALS DOES NOT RELIEVE THE CONTRACTOR FROM
MAINTAINING WATER QUALITY/WATER CHEMISTRY REQUIREMENTS.**

6.4 DEFICIENCIES/CORRECTIONS

If there are parts of the Contractor's work that do not conform to the scope of work specifications or the condition of the areas to be maintained is not satisfactory, Contractor will be notified in writing by fax, e-mail, and/or letter via United States Postal Service mail of the deficiencies and a date by which corrections must be completed. Any form of

notification shall be valid. Contractor shall confirm receipt of notice via e-mail or fax within twenty-four (24) hours. If the deficiency is to secure an immediate health or safety issue, the correction shall be completed within one (1) working day. Other corrections shall be completed within the time specified in the correction notice. If Contractor fails to correct any deficiency by the specified date, the City may arrange to have the deficiency corrected and deduct the cost to correct the deficiency from the amount due Contractor. Not completing the correction by the specified date may also be considered a lack of diligence in prosecuting this contract. Corrections shall not interrupt or delay regularly scheduled service.

Contractor shall provide written confirmation to City within one (1) day of the completion of the work. Confirmation may be by fax, e-mail, or personal delivery to the Public Works office at 1465 S. Lincoln St. Stockton, CA 95206. Not providing confirmation of completing the corrections may be considered a lack of diligence in prosecuting the contract.

6.5 DISPOSAL OF MATERIALS (CONSTRUCTION AND DEMOLITION DEBRIS)

Contractor must provide monthly accounting for waste disposal, including description of material, copies of certified weight tickets and description of where material is being recycled/disposed. Monthly billing invoices will not be paid unless monthly report is submitted. Contractor shall also submit the report electronically in an Excel spreadsheet or other program that is compatible with City software. Report shall generally conform to the format attached as show in the Instructions to Bidders (template may be provided after award of contract).

6.6 SUBMITTALS

In addition to maintenance tasks, this project requires Contractor to perform various reporting tasks. Overall monthly reports should be submitted electronically to Contract Administrator. If that is not possible or will be delayed, a hard copy of any reports/documents can be submitted with approval of Contract Administrator.

A. Bid Submittals

The following items must be submitted with bid:

- i. References. See Section 4.4 Contractor Qualifications – References and Experience. Contractor shall provide at least three (3) references with their bid.
- ii. Copy of Contractor's Quality Assurance/Quality Control Program.

B. Contract Award Submissions

Once identified for contract award, Contractor shall submit the following within fifteen (15) calendar days of contract award:

- i. Key Control Program (Section 4.5). Contractor shall have a written program available upon request
- ii. Inventory of Materials (Section 4.5). Contractor shall submit a list of supplies they intend to use at each pool.
- iii. Material Safety Data Sheets (Section 6.3 Pool Maintenance/Water Quality Services – Storage of Materials). Contractor shall provide City with Material Safety Data Sheets for all chemicals proposed for use

- prior to their actual use.
- iv. Project Manager Designation (Section 4.5). Contact information for the Project Manager (supervisor) who shall be responsible for the performance of the work and an alternate(s) who shall act for the Contractor when the Project Manager is absent shall be provided upon contract award.
 - v. Work Schedule (Section 6.2 Hours and Days of Work). Contractor shall submit a work schedule showing the proposed days and location(s) of the maintenance work to be performed. Contractor will not be allowed to commence work until a work schedule is submitted. Should Contractor wish to later modify this schedule, a written request must be submitted to and approved by the Contract Administrator prior to the revised schedule becoming effective.

C. Monthly Billing Submissions

Several items are required in addition to the monthly billing invoice before City will process payment. Reports other than daily maintenance checklists should be submitted electronically on an Excel spreadsheet or other program that is compatible with City software. Contractor shall provide the following reports with monthly billing invoice:

- i. Certified Delivery Slips. Certified delivery slips for all material(s) required for use in carrying out with this contract or any subsequent change order, such as chemicals, testing supplies/materials, etc. Materials shall be as specified unless an alternate is approved. Upon request, samples of the material supplied shall be submitted to the Contract Administrator for review and approval.
- ii. Certified Payroll. Monthly report.
- iii. Local Employment Report. (Stockton Municipal Code 3.68.095, Section E). Include name, place of residence, hours employed and per diem wages and benefits of each person employed by the contractor, and the contractor's subcontractors, including full-time, part-time, permanent and temporary employees.
- iv. Maintenance Checklists. Hardcopy logs and maintenance records shall be kept at each site for City inspection. A copy (.pdf or .jpg, are acceptable) of these logs shall be emailed to the Contract Administrator with each month's invoice for services. (Section 6.3)
- v. Chemical Report (Section 6.3). Report shall include the application date(s), time(s) of application, location(s) of application, brand name of material, EPA registration number, concentration, application rate, and amount of material applied. Contractor must submit a report even if no chemicals were applied during the month. The contractor shall provide a sample report format. Reports shall be kept in hard copy as well as electronic format. A hard copy shall be kept on site, updated daily and shall be transmitted to the City on a weekly basis.
- vi. Waste Disposal Report (Section 6.5). Report shall include the amount of material, type of material and where material was disposed and shall include copies of the disposal tickets/receipts. Sample format shown in Instructions to Bidders (template provided upon request after

- contract award).
- vii. Quality Assurance/Quality Control Program (Section 4.5). A summary of inspection/quality control checks performed week by the Contractor are to be provided every week by 12 noon Thursday to the City. This report may be provided electronically on a form developed by contractor or may be sent as an e-mail.

6.7 Standards

- A.** State of California Code of Regulations, Title 22, Article 4, Chapter 20, Public Swimming Pools, Article 1 (Regulations)
- B.** San Joaquin County Public Pool Standards (Public Pool Standards)

6.8 Locations of work:

The following describes the general locations and specifications for the pools. These are provided for reference only and contractor shall verify conditions at each location.

Bid Item 1, Brooking Park Pool

4505 Nugget Av

Specifications:

134,700 gallons		Flow Rate:	374 GPM
Turnover Rate:	6 hr.	Filter Size:	33 SF
Filter Ability:	11.3 GPM/SF	MBL:	230 persons
Deep End:	5 ft. 6 in.	Shallow End:	3 ft.
Average Depth:	4.9 ft.	Halfway length:	37.5 ft.
Halfway width:	27.5 ft. from shallow end		

Bid Item 2; Oak Park Pool

3754 Alvarado Av

Specifications:

179,430 gallons		Flow Rate:	498 GPM
Turnover Rate:	6 hr.	Filter Size:	35 SF
Filter Ability:	14.2 GPM/SF	MB Load:	245 persons
Deep End:	5 ft. 6 in.	Shallow End:	3 ft.
Average Depth:	4.4 ft.	Halfway length:	37.5 ft.
Halfway width:	27.5 ft. from shallow end		

Bid Item 3; Sousa Pool

2900 Yellowstone Av

Specifications:

107,100 gallons		Flow Rate:	<u>unknown</u> GPM
Turnover Rate:	<u>unknown</u>	Filter Size:	<u>unknown</u> SF
Filter Ability:	<u>unk GPM/SF</u>	MBL:	163 persons
Deep End:	5 ft.	Shallow End:	3 ft.
Average Depth:	4.25 ft.	Halfway length:	unknown ft.
Halfway width:	unknown ft. from shallow end		

GPM = Gallons Per Minute

SF = Square Foot/Feet

FT = Foot/Feet

IN = Inch(es)

HR = Hour(s)

MBL = Maximum Bather Load

NON-COLLUSION DECLARATION
(Title 23 United States Code Section 112 and Public
Contract Code Section 7106)

To the CITY of STOCKTON DEPARTMENT OF PUBLIC WORKS.

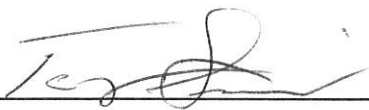
The undersigned declares:

I am the Sales Representative, of USA Pools of California, the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on November 7th, 2018 at Roswell (city), GA (state).



(Signature)

TITLE VI VIOLATION SELF-CERTIFICATION

We, the undersigned, self-certify that pursuant to Federal Code of Regulations (CFR), 23 CFR 200.9, 633 and 49 CFR 21.7, we do not have any unresolved violations under Title VI of the Civil Rights Act of 1964 and related statutes, including Americans with Disabilities Act (ADA). In addition, we acknowledge that an unresolved Title VI violation will disqualify us for consideration as a bidder for the subject project.

CONTRACTOR: USA Pools of California

BY: Tony Simpson



Sales Representative

TITLE

DATE: November 7th, 2018

LOCAL EMPLOYMENT ORDINANCE

This contract is subject to the requirements of the City of Stockton's Local Employment Ordinance. By my signature below, I certify that I have read and understood the Local Employment Ordinance of the City of Stockton, and agree to abide by its provisions. If selected to perform this contract, I specifically agree to report data on the actual number of Stockton residents employed, and understand that data will be subject to verification by an independent auditor.

Signature of Bidder



Date Signed

November 7th, 2018

LOCAL BUSINESS PREFERENCE ORDINANCE

The City of Stockton's Local Business Preference Ordinance applies to this project. By my signature below, I certify that I have read and understood the Local Business Preference Ordinance of the City of Stockton, and agree to abide by its provisions.

Signature of Bidder

A handwritten signature in black ink, appearing to be "Tony", written over a horizontal line.

Date Signed

November 7th, 2018

POOL WATER AND FILTER SYSTEM MAINTENANCE
PROJECT NO. 19-019

BIDDING SCHEDULE

Each bidder shall bid each item, including all alternate bid(s). Failure to bid an item shall be just cause for considering the bid as non-responsive. Line item costs should include all Contractor's overhead and profit and indirect costs. Bids not presented on City forms shall be cause for considering the bid as non-responsive.

QUESTIONS:

Contractor's bid will be considered non-responsive if the answer to any of questions 1 through 4 is "no"

Contractors bid will be considered non-responsive if the answer to any of questions 5 through 7 is "yes".

1. Has your company been continually in business for the last five (5) years?
"Yes" ☒ "No" ____.
2. Will your company provide on-site response within 30 minutes of having received notification of a Contamination or Emergency Event? "Yes" ☒ "No" ____.
3. Does your company have a written quality control plan / quality assurance program? If yes, submit a copy with your bid.
"Yes" ☒ "No" ____.
4. Within the last three (3) years, has your company provided contract services to a public agency? "Yes" ☒ "No" ____.
5. Has your contractor's license been revoked at any time in the last five (5) years?
"Yes" ____ "No" ☒.
6. Within the last three (3) years, has your company been terminated from a public agency contract? "Yes" ____ "No" ☒.
7. Within the last three (3) years, has your company terminated a public agency contract prior to the end of the initial term of the contract or prior to the end of an extension granted to that contract?
"Yes" ____ "No" ☒.

BID SCHEDULE - CONTINUED

Bid Item	Month - Bid Item Description	Quantity	Unit	Subtotal
Brooking Pool				
1A	January-Off Season Service	1	EA	\$1,000.00
1B	February-Off Season Service	1	EA	\$1,000.00
1C	March-Off Season Service	1	EA	\$1,000.00
1D	April-Start Up Service	1	EA	\$3,500.00
1E	May-Start Up Service and Daily Service	1	EA	\$4,000.00
1F	June-Daily Service	1	EA	\$6,000.00
1G	July-Daily Service	1	EA	\$6,000.00
1H	August-Daily Service	1	EA	\$6,000.00
1I	September-Daily Service and Shut Down Service	1	EA	\$3,000.00
1J	October-Off Season Service	1	EA	\$1,000.00
1K	November-Off Season Service	1	EA	\$1,000.00
1L	December-Off Season Service	1	EA	\$1,000.00
	TOTAL BROOKING POOL, Items 1A through 1L			\$34,500.00

BID SCHEDULE - CONTINUED

Bid Item	Month - Bid Item Description	Quantity	Unit	Subtotal
Oak Pool				
2A	January-Off Season Service	1	EA	\$1,000.00
2B	February-Off Season Service	1	EA	\$1,000.00
2C	March-Off Season Service	1	EA	\$1,000.00
2D	April-Start Up Service	1	EA	\$3,500.00
2E	May-Start Up Service and Daily Service	1	EA	\$4,000.00
2F	June-Daily Service	1	EA	\$6,000.00
2G	July-Daily Service	1	EA	\$6,000.00
2H	August-Daily Service	1	EA	\$6,000.00
2I	September-Daily Service and Shut Down Service	1	EA	\$3,000.00
2J	October-Off Season Service	1	EA	\$1,000.00
2K	November-Off Season Service	1	EA	\$1,000.00
2L	December-Off Season Service	1	EA	\$1,000.00
TOTAL OAK POOL, Items 2A through 2L				\$34,500.00

BID SCHEDULE - CONTINUED

Bid Item	Month - Bid Item Description	Quantity	Unit	Subtotal
Sousa Pool				
3A	January-Off Season Service	1	EA	\$1,000.00
3B	February-Off Season Service	1	EA	\$1,000.00
3C	March-Off Season Service	1	EA	\$1,000.00
3D	April-Start Up Service	1	EA	\$3,500.00
3E	May-Start Up Service and Daily Service	1	EA	\$4,000.00
3F	June-Daily Service	1	EA	\$6,000.00
3G	July-Daily Service	1	EA	\$6,000.00
3H	August-Daily Service	1	EA	\$6,000.00
3I	September-Daily Service and Shut Down Service	1	EA	\$3,000.00
3J	October-Off Season Service	1	EA	\$1,000.00
3K	November-Off Season Service	1	EA	\$1,000.00
3L	December-Off Season Service	1	EA	\$1,000.00
	TOTAL SOUSA POOL, Items 3A through 3L			\$34,500.00

BID SCHEDULE - CONTINUED

Bid Item	Supplemental Services	Quantity	Unit	Unit Cost	Unit Cost x Quantity = Subtotal
4	Contamination Service; formed fecal stool or vomit	9	Per Occurrence	\$150.00	\$1,350.00
5	Contamination Service; diarrheal-stool	3	Per Occurrence	\$250.00	\$750.0
6	Contamination Service; Blood	3	Per Occurrence	\$150.00	\$450.00
7	Emergency Response	30	Per Hour	\$125.00	\$3,750.00
8	Non-emergency Response and Vandalism Mitigation	50	Per Hour	\$90.00	\$4,500.00
	TOTAL SUPPLEMENTAL SERVICES, Items 4 + 5 + 6 + 7 + 8				\$10,800.00
	+ TOTAL BROOKING POOL, Items 1A through 1L				\$34,500.00
	+ TOTAL OAK POOL, Items 2A through 2L				\$34,500.00
	+ TOTAL SOUSA POOL, Items 3A through 3L				\$34,500.00
	TOTAL ANNUAL COST				\$114,300.00
					TOTAL ANNUAL COST X 3 = TOTAL BID

TOTAL BID (FOR 3 YEAR CONTRACT) \$342,900.00

"Total Bid" is 3-year cost for Brooking Park Pool, Oak Park Pool, Souza Park Pool, and Supplemental Services.

BIDDER'S NAME Tony SimpsonBIDDER'S SIGNATURE 

Exhibit C:
Insurance Requirements
(Pool Water and Filter System Maintenance, OM-19-019)

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his agents, representatives, employees or subcontractors.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.

If the contractor maintains broader coverage and/or higher limits than the minimums shown above, the City of Stockton requires and shall be entitled to the broader coverage and/or the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City of Stockton.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City of Stockton, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or

operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 if a later edition is used). Additional insured Name of Organization shall read "City of Stockton, its officers, officials, employees, and volunteers." Policy shall cover City of Stockton, its officers, officials, employees, and volunteers for all locations work is done under this contract.

Primary Coverage

For any claims related to this contract, the Contractor's insurance coverage shall be endorsed as primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City of Stockton, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Stockton, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. The City of Stockton does not accept endorsements limiting the Contractor's insurance coverage to the sole negligence of the Named Insured.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City of Stockton.

Waiver of Subrogation

Contractor hereby grants to City of Stockton a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City of Stockton by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Stockton has received a waiver of subrogation endorsement from the insurer. **The Workers' Compensation policy shall be endorsed with a waiver of subrogation** in favor of the City of Stockton for all work performed by the Contractor, its employees, agents and subcontractors.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City of Stockton Risk Services. The City of Stockton may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City of Stockton.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City of Stockton.

Verification of Coverage

Contractor shall furnish the City of Stockton with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City of Stockton Risk Services before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City of Stockton reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Contractor shall, prior to the commencement of work under this Agreement, provide the City of Stockton with a copy of its declarations page(s) and endorsement page(s) for each of the required policies.

Subcontractors

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City of Stockton is an additional insured on insurance required from subcontractors.

Special Risks or Circumstances

City of Stockton reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Certificate Holder Address

Proper address for mailing certificates, endorsements and notices shall be:

City of Stockton
Attn: City Risk Services
425 N El Dorado Street
Stockton, CA 95202

**CITY OF STOCKTON, CALIFORNIA
CITY MANAGER ADMINISTRATIVE DIRECTIVE**

Subject: DISCRIMINATION AND HARASSMENT POLICY	Directive No. HR-15	Page No. 1 of 14
	Effective Date: 5/1/2015	Revised From: 7/27/09 4/6/09 3/1/2010 (see below)

PER-015 (Sexual Harassment in the Workplace) revised from 10/21/94, 5/1/95, 1/1/98
PER-037 (Sexual Harassment Investigative Procedures) revised from 2/15/93

I. PURPOSE

The purpose of this policy is to reaffirm the City's commitment to demonstrating respect for all individuals by strictly prohibiting discrimination and harassment, including sexual harassment in the workplace. This policy defines prohibited behavior and conduct, and sets forth a procedure for reporting, investigating and resolving complaints of discrimination, harassment, in the workplace, including retaliation and hostile work environment.

II. POLICY

- A. The City of Stockton prohibits any form of discrimination and/or harassment of any person based on race, religious creed, color, national origin, ancestry, military and veterans status, physical or mental disability, medical condition, genetic characteristics or information, denial of family and medical care leave, marital status, sexual orientation, sex (including gender, gender identity, gender expression, transgender, pregnancy, childbirth and breastfeeding), political affiliation, age (40 and older), concerted labor activity, or any other category or attribute consistent with state or federal law. All such discrimination and harassment is unlawful and shall not be tolerated. In addition, under the federal Affordable Care Act (ACA), the City of Stockton prohibits discrimination and/or harassment, or retaliation against an employee who obtains coverage, receives a tax credit or subsidy through the Health Care "Market Place" or "Exchange."
- B. It is an unlawful employment practice to discriminate against or to harass an unpaid intern or volunteer on the basis of any legally protected classification unless an exception applies, such as a bona fide occupational qualification.
- C. The City will neither tolerate nor condone discrimination and/or harassment of employees by managers, supervisors, co-workers, or non-employees with whom City employees have a business service, or professional relationship.
- D. All City employees and non-employees share a responsibility to assist in

CITY OF STOCKTON, CALIFORNIA
CITY MANAGER ADMINISTRATIVE DIRECTIVE

Subject: DISCRIMINATION AND HARASSMENT POLICY	Directive No. HR-15	Page No. 2 of 14
	Effective Date: 5/1/2015	Revised From: 7/27/09 4/6/09 3/1/2010 (see below)

PER-015 (Sexual Harassment in the Workplace) revised from 10/21/94, 5/1/95, 1/1/98
 PER-037 (Sexual Harassment Investigative Procedures) revised from 2/15/93

maintaining an employment environment free of discrimination and harassment. This policy applies to all aspects of City employment, including, but not limited to, hiring, reassignment, placement, promotion, employment action, disciplinary action, layoff, reemployment, transfer, leave of absence, compensation and benefits, training; or other terms of treatment of that person in an unpaid internship, or another limited duration program to provide unpaid work experience for that person, or the harassment of an unpaid intern or volunteer.

- E. All allegations of discrimination and/or harassment shall be investigated immediately by the City, in accordance with this policy. If it is determined that any prohibited activity has occurred, remedial action shall be taken. Such action may include discipline up to and including discharge. In addition, under applicable law, individual supervisors and employees may be subject to personal liability and/or punitive damages in any litigation arising as a result of such conduct.
- F. All new hires shall attend harassment awareness training, and supervisors and managers shall attend harassment awareness and prevention training for supervisors every two years.
- G. The City of Stockton prohibits retaliation against any employee or non-employee by another employee, non-employee, supervisor, or manager for reporting, filing, testifying, assisting or participating in any manner in any investigation, proceeding, or hearing conducted by the employer or a federal or state enforcement agency.
- H. This policy applies to all officials, employees, volunteers, unpaid interns, agents, or contractors of the City.
- I. This policy shall be administered by the Director of Human Resources.

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III. DEFINITION AND EXAMPLES OF DISCRIMINATION AND HARASSMENT

- A. "Discrimination," as used in this policy, is any action, behavior, practice, or process that is intended to deny, or results in the denial of, employment rights, privileges, or benefits because of a person's race, religious creed, color, national origin, ancestry, military and veterans status, physical or mental disability, medical condition, genetic characteristics or information, denial of family and medical care leave, marital status, sexual orientation, sex (including gender, gender identity, gender expression, transgender, pregnancy, childbirth and breastfeeding), political affiliation, age (40 and older), concerted labor activity, or any other prohibition identified under state and federal law. The following are examples of conduct that may constitute discrimination:
1. Soliciting applications from a source where all or most of potential workers are of the same race or color.
 2. Considering a person's gender as the basis for differences in pay, work assignments, performance evaluations, training, discipline, or any other area of employment; and
 3. Questioning a job applicant about the existence, nature and severity of a disability.
- B. "Harassment," as used in this policy, consists of any conduct affecting another person because of his or her race, religious creed, color, national origin, ancestry, military and veterans status, physical or mental disability, medical condition, genetic characteristics or information, denial of family and medical care leave, marital status, sexual orientation, sex (including gender, gender identity, gender expression, transgender, pregnancy, childbirth and breastfeeding), political affiliation, age (40 and older), concerted labor activity, or any other category or attribute identified under state and federal law when such conduct has the purpose or the effect of: (1) creating an intimidating, hostile or offensive work environment; (2) unreasonably interfering with the employee's or non-employee's work performance; or (3)

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otherwise adversely affecting an employee's or non-employee's employment opportunities.

Harassment may take many forms, including, but not limited to, the following examples:

1. Verbal Harassment: Epithets, derogatory and offensive comments or slurs based on race, religion, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, medical condition, gender, sexual orientation, political affiliation, age, or any other category or attribute identified under state and federal law.
 2. Physical Harassment: Assault, impeding or blocking movement that results in the physical interference with normal work or movement on the basis of race, religion, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, medical condition, gender, sexual orientation, political affiliation, age, or any other category or attribute identified under state and federal law.
 3. Visual Harassment: The displaying of posters, photography, notices, bulletins, e-mails, cartoons or drawings with derogatory and offensive content based on race, religion, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, medical condition, gender, sexual orientation, political affiliation, age, or any other category or attribute identified under state and federal law.
- C. "Sexual harassment," as used in this policy, is a subcategory of harassment, and is specifically defined by law as unwanted sexual advances, requests for sexual favors or visual, verbal or physical conduct of a sexual nature when:
1. Submission to such conduct is made a term or condition of employment; or
 2. Submission to or rejection of such conduct is used as a basis for employment decisions affecting the individual; or

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3. Such conduct has the purpose or effect of unreasonably interfering with an employee's or non-employee's work performance or creating an intimidating, hostile or offensive working environment because of the persistent, severe or pervasive nature of the conduct.

Examples of Sexual Harassment include, but are not limited to the following:

- a. Unwelcome sexual overtures or propositions.
- b. Offering employment benefits or status in exchange for sexual favors.
- c. Making or threatening retaliation after a negative response to sexual advances.
- d. Visual conduct such as leering, making sexual gestures, displaying sexually suggestive objects or pictures, cartoons, calendars or posters.
- e. Verbal conduct such as using epithets or slurs, telling sexually explicit jokes, or making derogatory or suggestive comments about a person's body or dress.
- f. Written communications of a sexual nature distributed in hard copy, soft copy or via a computer network.
- g. Verbal abuse of a sexual nature, graphic verbal commentary about an individual's body, sexually degrading words to describe an individual, suggestive or obscene letters, notes or invitations.
- h. Physical conduct such as touching, assaulting, impeding or blocking movements.

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- i. Retaliation for making harassment reports or threatening to report harassment.

D. Affordable Care Act (ACA) Anti-Retaliation

Pursuant to section §1558 of the Affordable Care Act, the City prohibits discrimination or retaliation towards any employee who:

1. Receives a health insurance tax credit or subsidy through the Health Care "Marketplace" or "Exchange", by which can trigger a penalty payable by the employer;
2. Reports potential violations of protections afforded under Title I of the Act, which provides guaranteed availability protections among other things;
3. Testifies in a proceeding concerning such violation;
4. Assists or participates in a proceeding concerning a violation; or
5. Objects to, or refuses to participate in, any activity, policy, practice, or assigned task that the employee reasonably believes to be in violation of any provision of the Title I of the Act.

An employee who believes that he or she has been discharged or otherwise discriminated against in violation of section §1558 of the Affordable Care Act may seek relief in accordance with the procedures, notifications, burdens of proof, remedies, and statutes of limitation set forth in section 2087(b) of title 15, United States Code.

IV. REPORTING AND COMPLAINT PROCEDURES

A. Immediate Action Required

The City's reporting and complaint procedures provide for an immediate, thorough and objective investigation of discrimination or harassment claims, appropriate disciplinary action taken against any person found to have engaged in prohibited behavior, and appropriate alternative remedies to any

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employee or non-employee subject to discrimination or harassment. To accomplish this, such incidents must be reported immediately to a supervisor or manager.

1. Employee's and Non-Employee's Responsibilities when Subjected to Discrimination and/or Harassment
 - a. Employees or non-employees who believe they have been subjected to discrimination or harassment, or are aware of discrimination or harassment against others, shall report the situation immediately to his/her supervisor or manager, except as specified in subsection (b), below. Employees and non-employees shall report any such incidents occurring in the workplace, whether committed by coworkers, supervisors or managers, or third persons doing business with the City, such as customers or vendors, or other non-employees. If comfortable doing so, an employee or non-employee who has a complaint of discrimination or harassment is encouraged to directly inform the person(s) engaging in the behavior that such conduct is offensive and insist the behavior to stop.
 - b. Employees and non-employees must immediately contact a supervisor or manager to register a complaint of discrimination or harassment, unless that supervisor or manager is the individual engaging in the unwanted behavior. In that case, the employee or non-employee may contact someone at the next supervisory level. If the employee or non-employee feels uncomfortable dealing directly with his or her immediate supervisor or manager, he or she may contact the department head, or the Director of Human Resources (or either of their designees) to register a complaint of discrimination or harassment.
 - c. Employees and non-employees may file a formal complaint of harassment or discrimination with their department head or

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with Human Resources. To assist the City in conducting a thorough investigation, complaints shall be submitted in writing and shall include specific details of the incident(s), the names of the individuals involved, the names of any witnesses, and any documentary evidence (notes, pictures, cartoons, etc.) that will corroborate the allegations.

- d. Employees and non-employees shall immediately report any retaliation to a supervisor, manager, department head or Director of Human Resources (or designee). All retaliation complaints shall be immediately, objectively and thoroughly investigated in accordance with the investigation procedures. If a report of retaliation is substantiated, appropriate disciplinary action, up to and including discharge shall be taken.

2. Supervisor's or Manager's Responsibilities to Eliminate Discrimination and/or Harassment

- a. A supervisor or manager is responsible for enforcing the City's discrimination and harassment policy. Supervisors or managers must ensure that all employees and non-employees are aware of the City's policy through open discussion of the policy at staff meetings and by posting the policy in a conspicuous location accessible to all staff members.
- b. A supervisor or manager shall be cognizant of employees' and non-employees' behavior and shall not permit any employee or non-employee under their supervision to be subjected to or engage in any conduct prohibited by this policy.
- c. A supervisor or manager who observes conduct prohibited by this policy shall immediately direct the employee or non-employee to cease the conduct.

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- d. A supervisor or manager who receives a complaint of prohibited conduct is required to take the complaint seriously, and report the matter immediately to the department head; be supportive of the complainant; ensure there is no retaliation against the complainant; conduct an internal fact-finding review into the allegations; obtain as much detailed information as possible; thoroughly document the findings; communicate in written form to the parties the resolution of the complaint; and report to and consult with the Human Resources Department promptly, without delay.
- B. Confidentiality. The City will make every effort to protect the privacy and confidentiality of all parties involved, as well as any information and/or documentation obtained, to the extent possible consistent with a thorough investigation.
- C. Penalty for Non-Compliance. The City shall take disciplinary action, up to and including discharge, against any supervisor or manager who fails in his/her responsibility to take immediate action in response to an employee's or non-employee's complaint of discrimination or harassment. Further, such disciplinary action shall be taken against a supervisor or manager who fails to stop discriminatory or harassing conduct committed in his/her presence or to stop such conduct about which the supervisor or manager has knowledge.

V. INVESTIGATION PROCEDURESA. Determination of Responsibility for Investigation

If a formal complaint is filed with the department head or the Director of Human Resources (or either of their designees), the department head and the Director of Human Resources shall consult with one another to determine whether the department or Human Resources shall conduct the fact-finding investigation into the allegations. Either the department head or the Director of Human Resources (or either of their designees), depending on who is

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responsible for the investigation, shall issue written notification to the complainant and alleged harasser(s). The notification shall specify the nature of the complaint, and inform the parties that an investigation into the allegations of discrimination and/or harassment shall be conducted.

B. Investigative Guidelines

The investigation shall include the following steps taken in the order best suited to the circumstances:

1. Identify and preserve the evidence.
2. Confirm the name and position of the complainant. Interview the complainant.
3. Allow the complainant the opportunity to place the complaint in writing.
4. Obtain the identity of the alleged harasser(s).
5. Obtain as many details as possible regarding the incident(s) that prompted the complaint, including the number of occurrences, dates, times, locations, and witnesses (if applicable).
6. Ascertain how the complainant felt about the alleged incident when it occurred; complainant's response(s) to the alleged behavior; and witness statements (if applicable).
7. Ascertain if any threats or promises were made in connection with the alleged harassment.
8. Ascertain if the complainant knows of or suspects that there are other victims of harassment by the same person(s).
9. Ascertain whether the complainant has spoken to anyone, especially

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supervisors, about the harassment.

10. Ascertain what resolution would be acceptable to the complainant.
11. Interview the alleged harasser to get his or her side of the story, including any possible motivation for a false allegation.
12. Interview witnesses who were identified by the complainant regarding the alleged harasser or other persons identified during the investigation.
13. Interview witnesses who were identified by the alleged harasser or other persons identified during the investigation.
14. Advise all participants that the investigation is "confidential" and not to engage in any retaliatory conduct, as such conduct is subject to disciplinary action up to and including discharge. Confidentiality will be maintained to the extent possible. An individual who is interviewed during the course of an investigation is prohibited from discussing the substance of the interview, except as otherwise directed by a supervisor or the Director of Human Resources. Any individual who discusses the content of an investigatory interview will be subject to discipline or other appropriate sanction.
15. Conduct follow-up interviews, if warranted.
16. Prepare report of findings and discuss with management and designated legal staff.

VI. RESPONDING TO THE COMPLAINT

- A. Following the completion of the fact-finding investigation, either the department head or the Director of Human Resources (or either of their designees), depending on who is responsible for the investigation, shall

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make a report of findings, along with a recommendation regarding the appropriate remedial action to be taken, if warranted. The recommendation shall be made after reviewing the findings of the investigation, giving consideration to all factual information, the nature of the alleged conduct, and the totality of the circumstances. If the investigation was conducted by the Director of Human Resources, or designee, the Director, or designee, shall confer with the affected department head and both shall concur on the remedial action to be taken, if any. If the investigation was conducted by the department head, the department head shall confer with the Director of Human Resources prior to making the report of findings and both shall concur on the remedial action to be taken, if any.

- B. If either the department head or the Director of Human Resources does not concur with the findings and recommendation of the other, the City Attorney (or designee) shall review and resolve the matter in dispute.
- C. Report of findings and recommendation shall be treated as a confidential document and no other distribution shall be made without first consulting with the City Attorney's Office. A completed investigation report will not be disclosed, except as it is deemed necessary to support a disciplinary action, to take remedial action, to defend the City in adversarial proceedings, or to comply with the law or court order.
- D. Either the department head or the Director of Human Resources (or either of their designees), depending on who is responsible for the investigation shall provide a written response to the complainant and the person alleged to have committed the misconduct, discrimination and/or harassment. The response shall include a copy of the City's discrimination and harassment policy and a memorandum indicating the City's determination as to whether the complaint is:
 - 1. Unsustained: The investigation failed to disclose sufficient evidence to substantiate the allegation(s).
 - 2. Unfounded: The investigation proved that the act(s) or omission(s)

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complained of did not occur. The finding also applies when the individual employee(s) named in the complaint were not involved in the act(s) or omission(s) alleged.

3. Sustained: The investigation disclosed sufficient evidence to substantiate the allegation(s) made in the complaint; appropriate action will be taken.

- E. Details regarding any specific fact-findings or disciplinary action to be taken will not be communicated to the complainant. The City Attorney shall review the response for legal sufficiency before dissemination.
- F. The City shall close and retain the investigation file, in accordance with applicable laws, regulations, and City policy regarding retention of City records.

VII. DISCIPLINE

Disciplinary action imposed as a result of any investigation conducted pursuant to this policy shall be commensurate with the severity of the offense, up to and including discharge, even for a first offense.

VIII. ALTERNATIVE REMEDIES

If upon exhausting all internal remedies to file, investigate, and respond to a charges of discrimination/harassment, pursuant to title VII of the Federal Civil Rights Act of 1964 (42 U.S.C §§ 2000e *et seq.*), any person has a right to file a charge of discrimination/harassment with the Equal Employment Opportunity Commission ("EEOC"). In addition, pursuant to the California Fair Employment and Housing Act (Gov. Code §§ 12900 – 12996.) a person may also file a complaint of discrimination/harassment with the California Department of Fair Employment and Housing ("DFEH"). Employees or non-employees who believe that they have been subjected to discrimination/harassment may file a complaint with either of these

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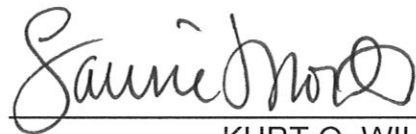
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agencies. Both the EEOC and DFEH serve as neutral fact-finders and attempt to assist parties in resolving disputes voluntarily.

IX. COMMUNICATION OF POLICY

This policy shall be provided to all managers, supervisors, employees, volunteers, unpaid interns, agents or contractors of the City and shall be posted in the appropriate places. All employees shall participate in City approved harassment awareness training as directed by management or Human Resources; and all supervisors, as required by law, shall participate in City approved interactive harassment awareness training and education sessions at least once every two years, or as otherwise specified by law.

APPROVED:



KURT O. WILSON
CITY MANAGER