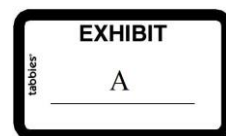


## CONTRACT



**THIS CONTRACT** is made and entered into this \_\_\_\_ day of May, 2023, by and between the *CITY OF JACKSON, MISSOURI*, a municipal corporation, (the “City”) and **CAPRI POOLS & AQUATICS** (the “Company”), **WITNESSETH:**

**WHEREAS**, the City has determined that it requires the purchase and installation of equipment at the City Pool located at 1003 N. High Street; and,

**WHEREAS**, the Company submitted appropriate qualifications for the sale and installation of equipment; and,

**WHEREAS**, the City has agreed to accept Company’s proposal.

**NOW, THEREFORE**, in consideration of the premises and promises contained herein, and other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, each party hereby agrees as follows:

### **SECTION A – Scope**

1. The Company hereby acknowledges that it shall provide and install a new BECSys5 chemical controller that will include communications, lighted flow cell with pH, ORP, temp and CP-1 (PPM) (“Equipment”), all as required in the attached Exhibit A, consisting of one (1) page and titled “Proposal”, which is made a part hereof.
2. The Company shall perform all work during the week of Monday through Friday from 8:00 a.m. through 5:00 p.m.
3. The Company shall complete all work within sixty (60) days of execution of this Contract unless otherwise agreed to in writing by both Company and City.

### **SECTION B – Authorization of Services**

1. Required services for installation of the Equipment described in Exhibit A.

2. Specific assignments for recommended additional services require the Company to submit a “change order” to the City containing a written scope of work and cost estimate schedule. A written notice to proceed from the City must be obtained by the Company prior to commencing with any recommended additional services.

#### **SECTION C – Compensation for Company’s Services**

1. The City shall pay the Company Eight Thousand Two Hundred Fifty Dollars (\$8,250.000) in one lump sum following the completion of installation of the Equipment.
2. Invoices for change orders approved in writing by the City are to be submitted on a monthly basis. Invoices should include the project name and a brief description of the services provided during the billing period. Separate invoices should be submitted per specific assignment. All invoices are to be sent to the attention of the Park Director.

#### **SECTION D – Miscellaneous Provisions**

1. The Company agrees to a one (1) year labor and material warranty for workmanship. If there is a failure, the Company will provide free labor and material to correct the problem.
2. No portion of the work covered by this Agreement, except as provided herein, shall be sublet or transferred without written consent and approval of the Park Director. The subletting of the work shall in no way relieve the Company of primary responsibility for the quality and performance of the work. The Company will give personal attention to the faithful completion of the work and will keep all aspects of the work under Company’s control.

3. Subcontracting shall not, under any circumstances, relieve the Company of liability or of any obligations under this Contract. The Company shall at all times have a supervising representative other than the subcontractor at a work site.
4. Work performed under this Contract must be satisfactory to the City. The City shall have the final say in determining such questions. Unsatisfactory work shall be sufficient justification for immediate termination of this Contract.
5. The Company must furnish the City with a certificate of insurance reflecting proof of public liability, property damage, and workmen's compensation insurance, as follows:
  - Commercial General Liability Insurance with a minimum limit of \$1,000,000 each occurrence/\$2,000,000 general aggregate written on an occurrence basis.
  - Comprehensive Business Liability Insurance for all owned, non-owned, and hired automobiles and other vehicles used with a combined single limit of \$1,000,000 minimum.
  - Worker's Compensation Insurance within statutory limits required by any applicable federal or state law and Employers Liability Insurance with minimum limit of \$1,000,000 per accident.
  - Additional Insured Endorsement naming the City of Jackson as an additional insured.
6. Certificates of insurance must be in a form acceptable to the City. Company shall provide the City ten days written notice prior to canceling insurance coverage. The City shall have absolute discretion as to the sufficiency of Company's insurance.
7. No provision of this Contract shall constitute a waiver of the City's right to assert a defense based on sovereign immunity, official immunity, or any other immunity available under law.

8. To the fullest extent permitted by law, Company agrees to indemnify, defend and hold harmless the City, its officers, agents, volunteers, lessees, invitees, and employees from and against all suits, claims, damages, losses, and expenses, including but not limited to attorneys' fees, court costs, or alternative dispute resolution costs arising out of, or related to the sale and installation of Equipment under this Contract involving an injury, death, or damage to property (including loss of use or diminution in value), but only to the extent that such suits, claims, damages, losses, or expenses are caused by the negligence or other wrongdoing of Company, its officers, agents, and volunteers, or anyone directly or indirectly employed or hired by the Company or anyone for whose acts the Company may be liable, regardless of whether caused in part by the negligence or wrongdoing of City and any of its agents or employees.
9. The Company shall comply with all federal, state and municipal laws, regulations and ordinances, including, but not limited to, environmental and labor statutes and regulations.
10. The Company agrees that during the life of this Contract it will not discriminate against any employee, applicant for employment or subcontractor because of race, religion and national origin. A similar nondiscrimination provision will be included in all subcontracts entered into in the performance of this Contract. Violation of this provision shall be good cause for the City to terminate this Contract, and any payment due or subsequently accruing to the Company under this Contract may be subject for forfeiture in the event of violation of this paragraph.
11. This Contract shall bind the parties hereto, their successors and assigns.

12. This Contract and attached exhibits constitute the entire Contract between the parties and supersedes any prior representations, offers, negotiations or understandings between the parties with respect to the subject matter of this Contract.
13. This Contract shall be deemed to have been fully executed and made by the parties herein and governed by the internal laws of the State of Missouri for all purposes and intents. It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Contract, or regarding its alleged breach, shall be instituted in the Circuit Court of Cape Girardeau County, Missouri.
14. The Company hereby certifies that the information provided to the City and in any attachments listed herein is true and correct to the best of the Company's knowledge and agrees to have any of the statements verified by the City unless the Company has indicated to the contrary. The Company authorizes the references listed to provide the City any and all information concerning the Company's previous employment and any pertinent information that they may have. Further, the Company releases all parties and persons from any and all liability for any damages that may result from furnishing such information to the City as well as from the use or disclosure of such information by the City or any of its agents, employees or representatives. The Company understands that any misrepresentation, falsification or material omission of information may result in the Company's failure to be awarded a contract or termination of contract.

**IN WITNESS WHEREOF**, the parties hereto have hereunto set their hands and seals the day and year first above written.

**CITY OF JACKSON, MISSOURI**

By: \_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
City Clerk

**CAPRI POOLS & ACQUATICS**

By: \_\_\_\_\_  
Signature/Title