

**CITY OF TOMBALL
SERVICES AGREEMENT**

THE STATE OF TEXAS §

COUNTY OF HARRIS §

Description of Services: Replastering of Pool and Concrete Deck Renovations at Jerry Matheson Pool

This Agreement is made and entered into by the **City of Tomball** (referred to as the “City”), with an office at 501 James Street, Tomball, TX and **Hancock Pool Services, Inc. (BuyBoard No. 701-23)** (the “Company”), with an office at **POBox 670345, Houston, Texas 77267**, City hereby engages the services of Company as an independent contract for pool renovations, upon the following terms and conditions.

1. SCOPE OF AGREEMENT

- 1.1. The City hereby agrees to employ Company and Company agrees to perform the necessary services as set forth in Exhibit A – Scope of Work and Contract Pricing, attached hereto and incorporated herein for all purposes.
- 1.2. In the event of a conflict among the terms of this Agreement and the Exhibit A, the term most favorable to the City, in the City’s sole discretion, shall control.

2. TERM OF AGREEMENT; TERMINATION

- 2.1. This Agreement shall be effective upon proper execution by the City. It shall be effective from **September 6, 2023 through May 31, 2024**. The City reserves the right to withdraw from the Agreement immediately if its governing body fails to appropriate funds necessary for the satisfaction of its contractual obligations. ***Either party may terminate this Agreement for any reason with ninety days (90) written notice to the other party.***
- 2.2. The City’s obligations under this Agreement shall not constitute a general obligation of the City or indebtedness under the constitution or laws of the State of Texas. Nothing contained herein shall ever be construed so as to require City to create a sinking fund or to assess, levy and collect any tax to fund its obligations under this Agreement.
- 2.3. The City reserves the right to enforce the performance of this Agreement in any manner prescribed by law or deemed to be in the best interest of the City in the event of breach or default of any provision of this Agreement, including immediate termination of this Agreement.

3. ENTIRE AGREEMENT

This Agreement represents the entire agreement between Company and the City and no prior or contemporaneous oral or written Agreements or representations shall be construed to alter its terms. No additional terms shall become part of this Agreement without the written consent of both parties and compliance with relevant state law. This Agreement supersedes all other prior agreements either oral or in writing.

4. ASSIGNMENT

Company shall not assign or subcontract its obligations under this Agreement without the prior written consent of the City.

5. COMPENSATION

For and in consideration of the services rendered by the Company pursuant to this Agreement, the City shall pay the Company only for the actual work performed under the Scope of Work, on the basis set forth in Attachment B, up to an amount not-to-exceed **\$93,450**.

6. MODIFICATION OF RATES

Base Rate adjustments for changes in the Consumer Price Index (CPI) will be considered by the City no more than once per year during the renewal term of the Contract, during the month of October of each Contract Year.

7. IDEMNITY

7.1. DEFINITIONS

For the purpose of this section the following definitions apply:

- a. "City" shall mean all officers, agents and employees of the City of Tomball.
- b. "Claims" shall mean all claims, liens, suits, demands, accusations, allegations, assertions, complaints, petitions, proceedings and causes of action of every kind and description brought for damages.
- c. "Company" includes the corporation, company, partnership, or other entity, its owners, officers, and/or partners, and their agents, successors, and assigns.
- d. "Company's employees" shall mean any employees, officers, agents, subcontractors, licensees and invitees of Company.
- e. "Damages" shall mean each and every injury, wound, hurt, harm, fee, damage, cost, expense, outlay, expenditure or loss of any and every nature, including but not limited to:
 - i. injury or damage to any property or right
 - ii. injury, damage, or death to any person or entity
 - iii. attorneys' fees, witness fees, expert witness fees and expenses,
 - iv. any settlement amounts; and
 - v. all other costs and expenses of litigation
- f. "Premise Defects" shall mean any defect, real or alleged, which now exists or which may hereafter arise upon the premises.

7.2. Indemnity

COMPANY AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY FROM AND AGAINST LIABILITY FOR ANY CLAIMS FOR DAMAGES ARISING OUT OF THE COMPANY'S WORK AND ACTIVITIES CONDUCTED IN CONNECTION WITH THIS AGREEMENT.

COMPANY IS AN INDEPENDENT CONTRACTOR AND IS NOT, WITH RESPECT TO ITS ACTS OR OMISSIONS, AN AGENT OR EMPLOYEE OF THE CITY.

COMPANY MUST AT ALL TIMES EXERCISE REASONABLE PRECAUTIONS ON BEHALF OF, AND BE SOLELY RESPONSIBLE FOR, THE SAFETY OF COMPANY'S EMPLOYEES WHILE IN THE VICINITY WHERE THE WORK IS BEING DONE. THE CITY IS NOT LIABLE OR RESPONSIBLE FOR THE NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS OF COMPANY OR COMPANY'S EMPLOYEES.

THE CITY ASSUMES NO RESPONSIBILITY OR LIABILITY FOR DAMAGES WHICH ARE DIRECTLY OR INDIRECTLY ATTRIBUTABLE TO PREMISE DEFECTS.

THE CITY AND COMPANY MUST PROVIDE THE OTHER PROMPT AND TIMELY NOTICE OF ANY COVERED EVENT WHICH IN ANY WAY AFFECTS OR MIGHT AFFECT THE COMPANY OR CITY. THE CITY HAS THE RIGHT TO COMPROMISE AND DEFEND THE SAME TO THE EXTENT OF ITS OWN INTERESTS.

THE INDEMNITY OBLIGATIONS HEREIN SHALL SURVIVE THE TERMINATION OF THE AGREEMENT FOR ANY REASON AND SHALL SURVIVE THE COMPLETION OF THE WORK.

8. INSURANCE

8.1. AMOUNTS OF INSURANCE

Company agrees to provide and to maintain the following types and amounts of insurance, for the term of this Contract:

TYPE	AMOUNT
(a) Workers Compensation Employer's Liability	(where required – Statutory by State Law) \$100,000 per occurrence

(b) Commercial (Public) Liability, including but not limited to:

- a. Premises/ Operations Combined Single Limit
- b. Independent Contractors
- c. Personal Injury
- d. Products/Completed Operations
- e. Contractual Liability (insuring above indemnity provisions)

All insured at combined single limits for bodily injury and property damage at \$500,000 per occurrence.

(c) Comprehensive Automobile Liability, in include coverage for:

- a. Owned/Leased Automobiles

- b. Non-owned Automobiles
- c. Hired Cars

All insured at combined single limits for bodily injury and property damage for \$500,000 per occurrence.

8.2. OTHER INSURANCE REQUIREMENTS

Company understands that it is its sole responsibility to provide the required Certificates and that failure to timely comply with the requirements of this article shall be a cause for termination of this Contract.

Insurance required herein shall be issued by a company or companies of sound and adequate financial responsibility and authorized to do business in the State of Texas. All policies shall be subject to examination and approval by the City Attorney's Office for their adequacy as to form, content, form of protection, and providing company.

Insurance required by this Contract for the City as additional insured shall be primary insurance and not contributing with any other insurance available to City, under any third party liability policy.

Company further agrees that with respect to the above required liability insurances, the City shall:

- a. Be named as an additional insured;
- b. Be provided with a waiver of subrogation, in favor of the City,
- c. Be provided with 30 days advance written notice of cancellation, nonrenewal, or reduction in coverage (all "endeavor to" and similar language of reservation stricken from cancellation section of certificate); and
- d. Prior to execution of this Agreement, be provided through the office of the City Attorney with their original Certificate of Insurance evidencing the above requirement.

The insurance requirements set out in this section are independent from all other obligations of Company under this Agreement and apply whether or not required by any other provision of this Agreement.

9. PAYMENT AND PERFORMANCE

Payment for services described in this Agreement will be made in accordance with the Texas Prompt Payment Act, Chapter 2251 of the Texas Government Code, or as subsequently amended.

10. VENUE; RECOVERY OF FEES; DISPUTE RESOLUTION; CHOICE OF LAW

Any suit or claim or cause of action regarding this Agreement shall be brought in Harris County, Texas, as the choice of venue and jurisdiction and site of performance by the parties. If the City is the prevailing party in any such action, the City may recover reasonable costs, including costs of court, attorney's fees, expert witnesses' fees, and trial consultants' fees. The parties further agree that the law of the State of Texas shall govern any interpretation of the terms of this Agreement.

11. COMPANY CERTIFICATIONS

Company certifies that neither it, nor any of its agents or employees, have or will offer or accept gifts or anything of value, or enter into any business arrangement, with any employee, official, or agent of the City.

Company certifies, pursuant to Texas Government Code Chapter 2270, that it does not boycott Israel and will not boycott Israel during the term of this Agreement. Company further certifies, pursuant to Texas Government Code Chapter 2252, Subchapter F, that it does not engage in business

with Iran, Sudan, or a foreign terrorist organization as may be designated by the United States Secretary of State pursuant to his authorization in 8 U.S.C. Section 1189.

12. NO WAIVER OF IMMUNITY

The City does not waive any statutory or common law right to sovereign immunity by virtue of the execution of this Agreement.

13. NOTICES

Any written notice provided under this Agreement or required by law shall be deemed to have been given and received on the next day after such notice has been deposited by Registered or Certified Mail with sufficient postage affixed thereto and addressed to the other party to the Agreement; provided, that this shall not prevent the giving of actual notice in any manner.

Notice to Company may be sent to the following address:

PO Box 670345 Houston Tx 77267
hancockpool@aol.com

14. CONTRACT ADMINISTRATOR

This Agreement shall be administered on the City's behalf by the Project Manager, and all notices, questions, or documentation, arising under this Agreement shall be addressed to the Project Manager at:

City of Tomball, Texas
Attn: Project Manager
501 James Street
Tomball, Texas 77375

AGREED to and ACCPETED this th 30 day of August, 2023.

Hancock Pool Services, Inc.
Company

Pat Hancock
Signature

Pat Hancock
Print Name

President
Title

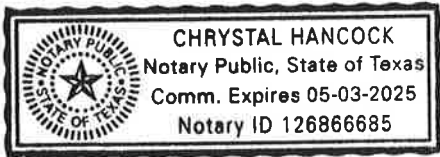
THE STATE OF TEXAS

§

COUNTY OF HARRIS

§

This instrument was acknowledged before me on this 30th day of August, 2023,
by Pat Hancock, on behalf of said entity.



Chrystal Hancock
Notary Public, State of Texas

AGREED to and ACCPETED this 30th day of August, 2023.

City of Tomball

David Esquivel, PE
City Manager

Attest:

Tracylynn Garcia
City Secretary

EXHIBIT A**APPROVED SERVICES - COST PROPOSAL**

Item	Cost
Plaster	\$43,450.00
Chemical Start-Up	\$3,600.00
Additional Strip Prep (unknown cost)	\$11,750.00
Deck Work	\$27,000.00
Concrete Decking with Spray Deck Finish	\$7,650.00
Total	\$93,450.00



Brian Vestal
RE: Jerry Matheson Park Pool Renovation
1240 Ulrich Rd
Tomball, TX 77375
Buy Board #: 701-23

August 16, 2023

Brian,

Listed below is the price to replaster the lap pool at Jerry Matheson Park. These prices do not include tax. These prices are valid for 60 days. We are currently scheduled out approximately two weeks. This work will take approximately three to four weeks to complete depending on which plaster prep is required.

Plaster:

The cost to re-plaster the pool using the bond coat preparation method with Marquis Series 100% quartz category 1 plaster: \$43,450

- The bond coat preparation method includes the draining of the pool, installing relief holes through the pool shell to relieve possible ground water, removing any loose or hollow plaster (approximately 10% of the existing plaster), applying a bond coat, and new plaster installation.
- Please note that if the pool has three or more layers of plaster, and/or excessive check cracking or pop-offs, there is a possibility that more preparation will be required and more than 10% of the existing plaster will need to be removed. If this is the case, there will be an additional cost for the extra preparation. It is not possible in all cases to determine if more than 10% of the plaster will need to be removed in pools before they are drained, and preparation has begun.
- The above quoted work includes new 2"x2" toe tile on all steps and benches to State Code and new wall return eyeballs.
- The existing main drain covers are stainless steel, which do not require replacement unless damaged. We will replace the hardware and evaluate the existing drain covers for damages. If the drain covers require replacement, we will provide an additional cost.

Chemical Start-Up:**The cost for the chemical start-up upon project completion: \$3,600**

- This cost includes the start-up chemicals and labor to brush, clean, and vacuum the pool for one week after the pool is filled. This price does not include adding chlorine stabilizer.
- The owner is responsible for monitoring and setting up the process of fill water, including the quality of the fill water. It is important that the pools are filled within 30 hours. We will not be responsible or liable for excessive check cracking if the pools are not completely full 30-hours after completion of plaster. We will not be liable for any staining if the fill water is of poor quality.
- Hancock Pool Services will provide a thorough plaster care form detailing how to care for the new plaster, and will provide chemical balancing training, if needed.
- To achieve optimal results with the new pool, finish additional care is required for the first 28 days after water fill.

Unknown Cost/Options:**The additional cost to re-plaster the pool using the strip preparation method: \$11,750**

- The strip preparation method includes the draining of the pool, installing relief holes through the pool shell to relieve possible ground water, removing up to 3 layers of the existing plaster to the hardest surface, and new plaster installation. This typically requires removing approximately 90% of the existing plaster. **If more than 3 layers of plaster must be removed, the additional cost is \$4,850 per layer.**
- Sometimes the pool appears that the bond coat preparation method is only needed to re-plaster the pool, but the pool can have an excessive number of hollow spots not visible or flaking and soft (rotten) plaster where the strip preparation method would be needed instead.
- The above listed price would be the additional amount to re-plaster the pool using the strip preparation method. **This price does not include any dumpsters. The cost is \$700 per dumpster if required. If this pool must be stripped, it could take 2-3 dumpsters.**

The cost to replace plastic in-wall steps: \$150 each step**The cost to replace plastic in-wall anchors: \$50 each anchor****The cost to install pool light niche rings: \$150/each****The cost to install a 4" wide tiled transition line at 5 feet deep: \$1,200**

- State code requires a transition line on the pool floor and walls at 5 feet deep marking the deep end.

Once the pool is drained, we will measure the existing depth markers for accuracy and tile for damages. If any tiles require replacement, we will provide a cost for repairs.

Warranty:

- There is a five-year plaster bonding warranty.
- Marquis Series plaster has a five-year manufacture limited warranty.
- This warranty does not cover any discoloration that might occur after the new plaster has been installed after a 30-day period. Owner is responsible for the necessary chemical maintenance, pool cleaning, and proper pool care to assure plaster life and integrity to be able to receive the delamination warranty.

Plaster / Pool Finish:

Pool plaster finishes may contain a certain amount of shading and/or color variation, which should not be construed as a defect. Plaster is not guaranteed against discoloration or staining since such defects generally result from local water conditions, improper use of chemicals, or the absence of routine pool cleaning and maintenance. Hancock Pool Services, Inc. is not responsible for brushing or conditioning pool after time frame specified above. Contractor will repair or replace any defective component or warranted goods at no cost to owner for the duration of the manufactures original warranty.

Light Fixture Disclosure:

By necessity the pool/spa light fixture(s) must be moved during construction. Contractor will take every precaution to ensure continued operation of the lighting subsequent to completion. However, the owner is advised that during this process light fixtures can fail despite best efforts by the contractor. Contractor is not responsible for existing light(s) in pool(s), spa(s), water feature(s), etc. which fail to operate subsequent to project completion.

Contract Acceptance - Owner:

Hancock Pool Services, Inc. agrees that all work will be completed in a workmanlike manner according to standard industry practices but shall not be responsible for delay or failure to perform work when such delay or failure is due to reasons beyond its control (i.e. weather). Hancock Pool Services, Inc. is not responsible for any damages to existing sprinkler lines, cable/telephone lines, utility lines, any sod/plants, etc. damaged during construction process. Any alterations or deviation from above specifications involving extra costs will be performed only upon a new revised proposal by the contractor. On all re-plasters we will drain the swimming pool, chip around the lights, main drains, and fittings. We will remove any hollow spots that may be present. If the existing plaster has an excessive number of hollow spots or flaking plaster there may be an additional charge. Unfortunately, we cannot determine this until the pool is drained.

Water and Electricity are necessary for our work and must be available on-site. Customer must keep area free from other workman, pets, and children. Water (sprinklers) must be turned OFF during application.

Hancock Pool Services is responsible for completion of the work in compliance with the contract and for the quality of material and workmanship in accordance with standard specifications.

The above quoted work does not include taxes. If the facility is tax exempt, a tax-exempt form will be required prior to the start of work. If not tax-exempt, taxes will be added on.

30% is due upon the start of the job, 30% upon plaster preparation completion, 30% upon new plaster installation, with the balance due upon project completion. Any change orders will be due upon completion during the duration of the project. A payment schedule will be arranged prior to beginning the job.

Thank you for the opportunity to quote this work for you. Hancock Pool Services is a family owned and operated business, which has served the Greater Houston Area for 41 years. We have completed many projects similar to this one to the complete satisfaction of our customers. I have attached a reference list of some of our most recent projects. We would be very happy to complete this project with you.

Thank you,

Austin Hancock
Hancock Pool Services, Inc.
832-334-7584



Brian Vestal
 RE: Jerry Matheson Park Deck Renovation
 1240 Ulrich Rd
 Tomball, TX 77375
 Buy Board #: 701-23

August 16, 2023

Brian,

Listed below is the price for the deck renovation at Jerry Matheson Park. These prices do not include tax. These prices are valid for 60 days. We are currently scheduled out approximately two weeks. This work will take approximately three weeks to complete.

Deck Work:

The pool deck area renovation cost: \$27,000

- Pressure wash the existing concrete to apply approximately 4,750 square feet of spray deck and paint.
- Remove existing coping mastic and apply approximately 277 linear feet of new mastic.
- Remove existing decking expansion joint mastic and apply approximately 285 linear feet of new mastic.
- Repair approximately 45 linear feet of concrete spalls.
- Remove approximately 10 square feet of rust spots and concrete repairs.
- Repair approximately 125 linear feet of cracks. There is no warranty with crack repairs.
- Float approximately 460 square feet of existing un-level decking areas.
- This may not eliminate all low spots that could hold water.

The cost to add approximately 410 square feet of 4" concrete decking with spray deck finish: \$7,650

The cost to remove the painted floors in the bathrooms to apply spray deck: \$5,000

- This may not eliminate all low spots that could hold water.

Options:

The cost to clean the pool upon completion: \$600

P.O. Box 670345
 Houston, TX 77267

www.hancockpoolservices.com

281-583-7665

- If this work is not completed during the pool replaster, this is the additional cost to clean the pool upon completion of the deck work.

Warranty:

- There is a one-year delamination warranty with deck coatings.

Contract Acceptance - Owner:

Hancock Pool Services, Inc. agrees that all work will be completed in a workmanlike manner according to standard industry practices but shall not be responsible for delay or failure to perform work when such delay or failure is due to reasons beyond its control (i.e. weather). Hancock Pool Services, Inc. is not responsible for any damages to existing sprinkler lines, cable/telephone lines, utility lines, any sod/plants, etc. damaged during construction process. Any alterations or deviation from above specifications involving extra costs will be performed only upon a new revised proposal by the contractor.

Water and Electricity are necessary for our work and must be available on-site. Customer must keep area free from other workman, pets, and children. Water (sprinklers) must be turned OFF during application. The owner is responsible for removing all furniture and equipment from the deck prior to beginning work.

Hancock Pool Services is responsible for completion of the work in compliance with the contract and for the quality of material and workmanship in accordance with standard specifications.

The above quoted work does not include taxes. If the facility is tax exempt, a tax-exempt form will be required prior to the start of work. If not tax-exempt, taxes will be added on.

50% is due upon the start of the job, with the balance due upon project completion. Any change orders will be due upon completion during the duration of the project. A payment schedule will be arranged prior to beginning the job.

Thank you for the opportunity to quote this work for you. Hancock Pool Services is a family owned and operated business, which has served the Greater Houston Area for 41 years. We have completed many projects similar to this one to the complete satisfaction of our customers. I have attached a reference list of some of our most recent projects. We would be very happy to complete this project with you.

Thank you,

Austin Hancock
Hancock Pool Services, Inc.
832-334-7584
P.O. Box 670345
Houston, TX 77267

www.hancockpoolservices.com

281-583-7665