

1st Reading:  
2nd Reading:

**SPONSOR: HUELS**

**ORDINANCE NO. \_\_\_\_**

**BILL NO. 22-15**

**AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH MIDWEST POOL & COURT CO. FOR THE PURCHASE AND INSTALLATION OF THREE (3) CHEMTROL PC2100'S.**

**WHEREAS**, the City needs to repair or upgrade a current Chemtrol unit, which regulates the chemicals in the pools at Riverchase; and

**WHEREAS**, based on such need, Staff looked into the cost to upgrade or replace all four (4) of the existing Chemtrol units; and

**WHEREAS**, Midwest Pool & Court Co. (company utilized the YMCA, the City's current contractor to manage the City's pools and provide lifeguard services) provided the City two options for consideration; and

**WHEREAS**, the City also reached out to Westport Pools (the City's contracted on-call pool maintenance and repair service contractor) to provide a quote and although they could not provide a Chemtrol unit quote, they provided a quote for a comparable BECSys system; and

**WHEREAS**, both City and YMCA staff are familiar with the Chemtrol units and not the BECSys units, and both would have to learn a new system if the City did not purchase the Chemtrol units; and

**WHEREAS**, because the YMCA is familiar with the Chemtrol units and recognizing that the other system would be at a lesser cost for the City, the YMCA has offered to donate one (1) Chemtrol unit to the City; and

**WHEREAS**, at the March 10, 2022 Committee Meeting, the Board of Aldermen reviewed the bids received and Staff's and the YMCA's recommendation to purchase the Chemtrol units; and

**WHEREAS**, the Board of Aldermen finds that the City's bidding procedures were followed and is grateful and willing to accept the donation from the YMCA, and, therefore, desires and finds it in the best interest of the City to enter into a contract with Midwest Pool & Court Co. for the purchase of three (3) Chemtrol units.

**ORD. NO. \_\_\_\_\_**

ORD. NO. \_\_\_\_\_

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FENTON, MISSOURI, AS FOLLOWS:

**Section 1.** The Board of Aldermen hereby authorizes the Mayor to execute on behalf of the City a contract with Midwest Pool & Court Co. for the purchase and installation of three (3) Chemtrol PC2100's in substantially the form of Exhibit 1 attached hereto and incorporated herein by reference (the "Purchase Contract"), including all documents specified in the Purchase Contract.

**Section 2.** The Board of Aldermen hereby authorizes the City Administrator to take any reasonable actions and sign any required documents to accept the donation of one (1) Chemtrol unit from the YMCA and otherwise carry out the intent of the Purchase Contract and this ordinance.

**Section 3.** The requirements of Section 292.675 RSMo. and the OSHA requirements and obligations and penalties in the Purchase Contract are hereby incorporated herein by reference and made a part of this ordinance for all purposes.

**Section 4.** This ordinance shall be in full force and effect after the date of its passage and approval.

PASSED this 16<sup>th</sup> day of March, 2022.

\_\_\_\_\_  
BOB BRASSES, MAYOR

APPROVED this 16<sup>th</sup> day of March, 2022.

\_\_\_\_\_  
BOB BRASSES, MAYOR

ATTEST:

\_\_\_\_\_  
Jane Hungler, City Clerk

Motion to approve. Roll Call vote:

Ayes:

Nays:

Absent:

ORD. NO. \_\_\_\_\_

## Exhibit 1

### **City of Fenton, Missouri PURCHASE CONTRACT**

**THIS PURCHASE CONTRACT**, made and effective as of March 16<sup>th</sup>, 2022, by and between the **City of Fenton**, a Missouri municipal corporation, hereinafter referred to as City, and **Midwest Pool & Court Co.**, a business registered to do business in Missouri, hereinafter referred to as “SELLER or CONSULTANT”

**WITNESSETH:** That the parties hereto, for the considerations hereinafter set forth, agree as follows:

#### **I. DESCRIPTION OF PRODUCT**

Seller hereby agrees to provide and install the product and/or materials (including a five (5) year warranty) specifically set forth in the attached **Exhibit A** incorporated herein (hereinafter, the “Product”), provided however that the quantity of the Product shall be reduced from four (4) to three (3) with the same unit price as stated in **Exhibit A**. The Product shall be provided by the Seller in accordance with all the provisions of this Purchase Contract and attached **City of Fenton Purchase Contract General Conditions**, incorporated herein by reference, and which terms shall prevail over any conflicting terms that may otherwise be adopted herein or as part of any other attachment or exhibit.

Except as expressly specified herein, Consultant hereby agrees to provide all of the supervision, labor, technical services, facilities, materials, tools, equipment, and apparatus, and to perform all the services and do all the things necessary for the proper completion of the consultant services which are particularly described as furnishing, delivery, and installing the Product for the City, as more specifically set forth in the attached **Exhibit A**.

Consultant shall provide the Product and perform the services listed on **Exhibit A** to the highest standard of the industry and provide the City warranties for any equipment in accordance with this Contract and the Uniform Commercial Code Standards.

#### **II. DELIVERY**

The Product fully complying with this Purchase Contract shall be delivered and installed from the Seller to the City at mutually agreeable locations. Time is of the essence.

#### **III. COMPENSATION**

The City hereby agrees to pay the Seller, as full, complete, and sole compensation for the complete and satisfactory performance of this Purchase Contract, and all expenses and costs related thereto:

the sum of \$20,673.00 for purchase and installation of three (3) units.

or (if above box is not checked):

such amount as is set forth on an attached Exhibit A that is incorporated herein and subject to any such limits as established therein and in approving authorization.

#### IV. TIME AND MANNER OF PAYMENTS

All invoices complete with necessary support documentation shall be submitted in triplicate to the City and payment shall be made by City in a lump sum within thirty (30) days of receipt of an invoice received after satisfactory delivery and installation of the Product.

**IN WITNESS WHEREOF**, the parties hereto have signed this Purchase Contract as of the effective date of Purchase Contract first above written.

**SELLER**

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CITY OF FENTON, MISSOURI**

By: \_\_\_\_\_  
BOB BRASSES, MAYOR

Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
Jane Hungler, City Clerk

**CITY OF FENTON, MISSOURI  
PURCHASE CONTRACT GENERAL CONDITIONS**

**Compliance with Laws.** The Seller shall comply with all applicable City ordinances and other laws and regulations, Federal, State, and any political subdivision thereof, including but not limited to, unemployment and workers' compensation, occupational safety, equal employment and affirmative action and wage and price laws insofar as applicable to the performance of the Purchase Contract. If applicable to any Work undertaken as part of this Contract, Consultant and any subcontractor shall require all on-site employees to complete the ten-hour training program required under § 292.675.2 RSMo. such employees must hold documentation of prior completion of the program and shall be subject to such penalties as provided in § 292.675.4 RSMo. Consultant further agrees, to the extent applicable to any Work undertaken as part of this Contract, to pay not less than the prevailing hourly wage of wages to all workers performing any such applicable work under this Contract. The consultant will forfeit a penalty to the City of \$100 per day for each worker that is paid less than the prevailing rate for any work done under the Contract by the Consultant or subcontractor that required payment of prevailing wage under state law. In the event of a conflict between laws, codes, and regulations of various governmental entities having jurisdiction over the Product, the Seller shall notify the City of the nature and impact of such conflict. The City agrees to cooperate with the Seller in an effort to resolve any such conflict. Seller shall secure and pay for all permits, governmental fees, and licenses necessary for the proper installation of the Product, including those required to be obtained from the City, except fees imposed solely by the City shall be waived at the time of application.

**Independent Consultant.** Seller shall be and operate as an independent consultant in the performance of this Contract. Seller shall have complete charge of the personnel engaged in the performance of the Work, and all persons employed by the Seller shall be employees of said Seller and not employees of the City in any respect.

**Indemnification.** To the fullest extent permitted by law, the Seller agrees to defend with counsel selected by the City, and indemnify and hold harmless the City, its officers, engineers, representatives, agents and employees from and against any and all liabilities, damages, losses, claims or suits, including costs and attorneys' fees, for or on account of any kind of injury to person, bodily or otherwise, or death, or damage to or destruction of property, or any other circumstances, sustained by the City or others, arising from breach of the Purchase Contract or related warranties, or claims relating thereto, and including but not limited to the City's reliance on or use of the Products provided by the Seller under the terms of this Purchase Contract. The Seller shall not be liable for any loss or damage attributable solely to the negligence of the City provided, however, that nothing in this Contract shall require or authorize the City to indemnify the Seller. To the extent required to enforce this provision, Seller agrees that this indemnification requires Seller to obtain insurance in no event less than the maximum amounts of liability set forth in Chapter 537.610 RSMo. applicable to political subdivisions and that Seller has had the opportunity to recover the costs of such insurance in the Compensation set forth in this Agreement.

**Nondisclosure.** The Seller agrees that it will not divulge to third parties without the written consent of the City any non-public information or information designated as confidential obtained from or through the City in connection with the performance of this Purchase Contract.

**Changes.** No change in this Purchase Contract shall be made except in writing executed by all parties. The Seller shall make any and all changes in the Product without invalidating this Purchase Contract when specifically ordered to do so in writing by the City. The Seller, prior to the delivery of such changed or revised Product, shall submit promptly to the City, a written cost or credit proposal for such revised Product. If the City and the Seller shall not be able to agree as to the amount, either in consideration of time or money to be allowed or deducted, it shall nevertheless be the duty of the Seller, upon written notice from the City, to immediately proceed with such alteration or change, and the Seller shall be compensated the reasonable value of such Product. **No delivery of Product or change shall be undertaken or compensated for without prior written authorization from the City executed by Seller.**

**Attorney Fees' and Costs.** The Seller shall reimburse to the City any costs and attorneys' fees that the City may reasonably incur in pursuit of any remedies at law or equity or enforcement of any rights established in this Agreement, which may result from the Seller's breach of the Agreement, the Seller's failure to perform any obligation or requirement contained herein, or the City's enforcement of this Agreement.

**Termination.** The City shall have the right to terminate the Purchase Contract at any time for any reason by giving the Seller written notice to such effect. The City shall pay to the Seller in full satisfaction and discharge of all amounts owing to the Seller under the Purchase Contract an amount equal to the cost of all Product delivered by the Seller up to such termination date, less all amounts previously paid to the Seller. The Seller shall submit to the City its statement for the aforesaid amount, in such reasonable detail as the City shall request, within thirty (30) days after such date of termination. The City shall not be liable to the

Seller for any damages on account of such termination for loss of anticipated future profits with respect to the remainder of the Product.

**Product.** The Product as described in the Scope of Services and Seller's proposal shall be delivered to the City and no other substitute product shall be delivered without written approval of the City.

**Warranty of Title.** The title conveyed shall be good and its transfer rightful and shall not unreasonably expose the City to litigation because of any colorable claim to or interest in the Product. The Product shall be delivered free from any security interest or other lien or encumbrance.

**Express Warranties.** Any affirmation of fact or promise made by the Seller which relates to the Product and becomes part of the basis of the bargain creates an express warranty that the Product shall conform to the affirmation or promise. Any description of the Product which is made part of the basis of the bargain creates an express warranty that the Product shall conform to the description. Any sample or model that is made part of the basis of the bargain creates an express warranty that the whole of the Product shall conform to the sample or model. It is not necessary to the creation of an express warranty that the Seller use formal words such as "warrant" or "guarantee" or that the Seller has specific intention to make a warranty.

**Implied Warranty.** A warranty that the Product shall be merchantable is implied. Products to be merchantable must at least: be delivered in accordance with the Purchase Contract description; and in the case of fungible products, (a) are of fair quality within the description; (b) are fit for the ordinary purposes for which product of that description are used; (c) run, within the variations permitted by the agreement, of even kind, quality of quantity within each unit and among all units involved; (d) are adequately contained, packaged, and labeled as the Agreement may require; and (e) conform to the promise or affirmation of fact made on the container or label if any. Other implied warranties may arise from the course of dealing or usage of trade. Because Seller knows the particular purpose for which the Product is required, and that the City is relying on the Seller's skill or judgment to select or furnish suitable products, there is an implied warranty that the Product shall be fit for such purpose.

**Right to Inspect.** The City has a right before payment or acceptance to inspect the Product at any reasonable place and time and in any reasonable manner. The inspection may also be within a reasonable time after delivery and installation of the same. Expenses for inspection may be recovered from the Seller if the Product does not conform and are rejected.

**Rights on Improper Delivery.** If the Product delivered fails in any respect to conform to the Purchase Contract, the City may: (a) reject the whole; (b) accept the whole; or (c) accept any units and reject the rest and the Seller must adjust such Purchase Contract price accordingly.

**Revocation of Acceptance.** The City may revoke acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to the City if the City has accepted it: (a) on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; (b) revocation was within a reasonable time after delivery; or (c) without discovery of the nonconformity if the City's acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the Seller's assurances. In the case of revocation, the City has the same rights and duties as if the City had rejected the Product.

**Remedies.** If the Seller fails to make delivery or the City rightfully rejects, the City may in addition to recovering so much of the price as has been paid: (a) "cover" and receive damages of the cost difference between the cost of cover and the contract price for all the Product affected plus incidental or consequential damages; or (b) recover as damages for non-delivery the difference between the market price at the time the City learned of the breach and the Purchase Contract plus any incidental and consequential damages. If the Seller fails to deliver or repudiates, the City may also recover the Product, obtain specific performance, or replevy the Product. In the event of breach or failure to make delivery, the City is also entitled to liquidated damages as described in the executed Purchase Contract. Nothing in this Purchase Contract shall be deemed to be a waiver of the City's sovereign immunity or permit a cause of action against the City for damages relative to any claim against the City, and any remedy against the City shall be limited to specific performance as may be available under existing law.

**Site Operations.** Where appropriate, the City will arrange for right of entry to any property at the request of the Seller for the purpose of performing studies, tests, and evaluations in connection with the Work.

**Taxes.** The City is exempt from federal excise tax and Missouri sales tax and the Seller shall not charge the same to the City.

**Compliance with State Immigration Statutes.** As a condition for the award of this Agreement, the Consultant shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with

respect to the employees working in connection with the Work. The Consultant shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the Work. Such affidavits shall be in substantially the form provided in **Exhibit B**. The Consultant shall not be required to provide these affidavits to the City if such affidavits have been previously provided to the City within the past year. All words in this paragraph shall have the definitions as provided in Section 285.525 R.S.Mo.

Pursuant to Section 208.009 R.S.Mo., the Seller shall provide at the earlier of submission of any bid or execution of any agreement affirmative proof that the Applicant for the Seller is a citizen or a permanent resident of the United States or is lawfully present in the United States. The Applicant for the Seller (or "Applicant") shall be the person authorized to prepare, submit and sign contract documents on behalf of the Seller and shall be eighteen years of age or older. Such affirmative proof shall include documentary evidence recognized by the Missouri Department of Revenue when processing an application for a driver's license, a Missouri driver's license, as well as any document issued by the federal government that confirms an alien's lawful presence in the United States.

**Representations.** The Seller agrees that it has not relied on any representations or warranties of the City, oral or written, other than expressly identified in this Purchase Contract. The parties agree the Purchase Contract represents the entire agreement between the parties.

**Governing/Choice of Law.** This Purchase Contract shall be governed by and construed and interpreted in accordance with the internal laws of the State of Missouri, without regard to its principles of conflict of laws. As a prerequisite to the Seller filing any claim against the City in any court of law or equity pursuant to this Contract, the Seller agrees that its shall be bound to first file such claim with the City's Board of Administrative Review, pursuant to and in accordance with Chapter 160 of the City Code.

**Counterparts.** This Purchase Contract may be executed in one or more counterparts each of which shall be deemed an original and all of which shall constitute one and the same agreement.

**EXHIBIT A**

**Quotation**

Quote Number:

10002

Quote Date:

Feb 23, 2022

Page:

1

Midwest Pool & Court Co, Inc.

7841 Manchester

St. Louis, MO 63143

(314) 781-1000

Fax (314) 781-1004

**Quoted to:**

Fenton, City of  
625 New Smizer Rd  
Fenton, MO 63026

Customer ID	Good Thru	Payment Terms	Sales Rep
3430067	3/25/22	Net 15 Days	

Quantity	Item	Description	Unit Price	Extension
3.00 <del>4.00</del>		Supply and install 4 new Chemtrol PC2100's with Websever, PPM, ORP, pH and temperature options	6,865.00	<del>27,460.00</del> 20,595.00
1.00SH		Freight	78.00	78.00
			Subtotal	<del>27,538.00</del> 20,673.00
			Sales Tax	
			<b>Total</b>	<del>27,538.00</del> 20,673.00



**EXHIBIT B**

**AFFIDAVIT OF PARTICIPATION IN  
FEDERAL WORK AUTHORIZATION PROGRAM  
(CONTRACTS OVER \$5,000)**

Comes now \_\_\_\_\_ as \_\_\_\_\_ first being duly sworn, on my oath,  
(name) (office held)  
affirm \_\_\_\_\_ ("Company") is enrolled and will continue to participate in a federal work  
(company name)  
authorization program in respect to employees that will work in connection with the contracted  
services related to \_\_\_\_\_ of the City of Fenton and any  
incidental items associated with this work for the duration of the contract, if awarded, in accordance  
with Section 285.530.2, Revised Statutes of Missouri. I also affirm that the Company does not and will  
not knowingly employ a person who is an unauthorized alien in connection with the contracted services  
for the duration of the contract, if awarded. Attached to this affidavit is documentation of the  
Company's participation in a federal work authorization program.

**(ATTACH DOCUMENTATION SHOWING THAT COMPANY PARTICIPATES IN FEDERAL WORK  
AUTHORIZATION PROGRAM. ALSO ATTACH DRIVER'S LICENSE OR OTHER PROOF OF LAWFUL  
PRESENCE, AS PROVIDED IN THE GENERAL CONDITIONS – 208.009 RSMo.)**

***In Affirmation thereof, the facts stated above are true and correct (The undersigned  
understands that false statements made in this filing are subject to the penalties provided under §  
575.040 RSMo).***

\_\_\_\_\_  
Signature (person with authority)

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

State of Missouri )

) ss.

County of \_\_\_\_\_ )

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2022.

My commission expires:

\_\_\_\_\_  
Notary Public