

CONTRACT FOR INSTALLATION OF A NEW PVC MEMBRANE AT  
ANDREW R. MICKLE POOL

THIS CONTRACT is entered into this \_\_\_\_ day of \_\_\_\_\_, 2020, by the CITY OF GAINESVILLE, FLORIDA, a municipal corporation chartered in the State of Florida ("CITY"), and NATARE CORPORATION ("CONTRACTOR"), an Indiana corporation registered to do business in Florida.

The parties in consideration of the mutual covenants recited below agree as follows:

1. The CONTRACTOR shall furnish the labor, materials, and equipment to perform the Contract as provided by the following enumerated Specifications and Documents ("Contract Documents"), incorporated by reference and made part of this Contract:

- a. This Contract
- b. Addendum #5 dated April 13, 2020
- c. Addendum #4 dated March 18, 2020
- d. Addendum #3 dated March 12, 2020
- e. Addendum #2 dated March 6, 2020
- f. Addendum #1 dated February 19, 2020
- g. Request for Proposal #PRCA-200021-DM dated February 26, 2020
- h. Proposal of Natare Corporation dated June 1, 2020

In the event of conflict or inconsistency between the Contract Documents, the order of precedence for interpretation shall be the order in which the Contract Documents are listed above. Conflict or inconsistency within a particular contract document shall be resolved by having the more specific reference to the matter prevail.

2. The CITY shall pay One Hundred Twenty Thousand Two Hundred Thirty-Three Dollars and No Cents (\$120,233.00) to the CONTRACTOR for the faithful performance of this Contract in the sums due upon verified invoice within forty-five (45) days of receipt of invoice by Electronic Funds Transfer (EFT) or VISA. CONTRACTOR shall submit invoice within 10 business days after services have been provided. All materials or equipment shall be bid F.O.B. Gainesville, Florida.

3. Time is of the essence in the performance of this Contract, and all work shall be performed in accordance with the specified schedule, and shall be completed by February 21, 2021.

4. The term of this Contract shall commence upon execution and shall end on March 1, 2021.

5. CONTRACTOR shall within ten (10) days of execution of this Contract provide a ten (10) year warranty in accordance with the Natare Warranty attached hereto and incorporated as Exhibit A.

6. INSURANCE.

a. During the term of this Contract, CONTRACTOR shall maintain insurance as follows: Workers' Compensation insurance providing coverage in compliance with Florida Statutes.

Public Liability insurance (other than automobile) consisting of broad form comprehensive general liability insurance including contractual coverage \$1,000,000 per occurrence combined single limit for bodily injury and property damage. Automobile Liability insurance \$500,000 per occurrence combined single limit for bodily injury and property damage.

b. Prior to the effective date of this Contract, CONTRACTOR shall provide to CITY a certificate of insurance certifying such insurance and naming CITY as additional insured and that CITY will be notified in writing at least thirty (30) days before any such insurance is canceled or materially changed.

c. Insurance must be written by a company licensed to do business in the State of Florida and satisfactory to CITY. This Contract, together with the attached Contract Documents, constitutes the entire agreement between the parties.

7. CONTRACTOR shall be considered an independent CONTRACTOR and as such shall not be entitled to any right or benefit to which CITY employees are or may be entitled to by reason of employment. Except as specifically noted in the Contract Documents, CONTRACTOR shall be solely responsible for the means, method, techniques, sequences, and procedures utilized by the CONTRACTOR in the full performance of the Contract Documents.

8. The CONTRACTOR agrees, at its sole cost and expense, to indemnify, hold harmless, and defend the CITY and its officers, employees, and agents from all liabilities, damages, losses, claims, suits, causes of action, costs, or expenses of any kind or nature, including but not limited to reasonable attorneys' fees, for personal injury, death, property damage, or any other losses that arise from or are in any way connected with the negligence, recklessness, or intentional wrongful conduct of the CONTRACTOR and its officers, employees, and agents under the performance of this Contract. In effectuating the above, the CONTRACTOR shall at its sole expense assume and defend not only itself but also the CITY from any such claims, even if the claim is groundless, false, or fraudulent, provided the CITY retains the right to participate in the defense with its own counsel or counsel of its choosing at the CITY's own expense for attorneys' fees. This indemnification is not limited in any way by a limitation of the amount or type of damages or compensation payable by or for the CONTRACTOR under workers' compensation, disability, or other employee benefit acts, or the acceptance of insurance certificates required by this Contract, or the terms, applicability, or limitations of any insurance held by the CONTRACTOR. The CITY does not waive any rights against the CONTRACTOR that it may have by reason of this indemnification because of the CITY's acceptance of CONTRACTOR's insurance policies required by the CITY, and this indemnification applies to all damages and claims for damages of any kind suffered regardless of whether such insurance policies are determined to be applicable to any such damages or claims for damages. Nothing contained in this Contract may be interpreted as a waiver of the CITY's sovereign immunity as provided in Section 768.28, Florida Statutes, or as denying the CITY any remedy or defense available at law. This section and indemnification will survive and be in full force and effect after any termination or expiration of this Contract.

9. The obligations of the CITY as to any funding required pursuant to this Contract shall be limited to an obligation in any given year to budget and appropriate from legally available funds, after monies for essential CITY services have been budgeted and appropriated, sufficient monies for the funding that is required during that year. Notwithstanding the foregoing, the CITY shall not be prohibited from pledging any legally available non-ad valorem revenues for any obligations heretofore or hereafter incurred, which pledge shall be prior and superior to any obligation of the CITY pursuant to this Contract.

10. TERMINATION.

A. If the CONTRACTOR fails to observe or perform in accordance with the Contract Document (a "Default"), then the CITY, after providing at least ten (10) days written notice to the CONTRACTOR of the Default and the CITY's intent to terminate if such Default continues unremedied during the ten (10) day period, may terminate this Contract without prejudice to any other rights or remedies the CITY may have under this Contract and Florida law.

B. This Contract may be terminated by the CITY without cause upon thirty (30) days written notice to the CONTRACTOR. In the event this Contract is so terminated, the CONTRACTOR shall be compensated for services rendered through the effective date of the termination.

11. This Contract shall be interpreted in accordance with the laws of the State of Florida, except for its conflict of laws' provisions. In the event of any legal proceedings arising from or related to this Contract, venue for such proceedings shall be in Alachua County, Florida.

12. Any notice required under the terms of this Contract must be in writing and must be either hand delivered or sent by certified mail to the party to whom the notice is to be given at the following addresses:

CONTRACTOR:      Name, Title  
                                 Address

CITY:                      William Marcantel, Recreation Manager  
                                 City of Gainesville  
                                 PO Box 490, Sta 24  
                                 Gainesville, FL 32627

13. Florida has a very broad public records law and certain records of a contractor may be considered public records. Accordingly, by entering into an agreement with the CITY, CONTRACTOR must:

- a. Keep and maintain public records required by the CITY to perform the service.
- b. Upon request from the CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of

the contract term and following completion of the Contract if the CONTRACTOR does not transfer the records to the public agency.

d. Upon completion of the Contract, transfer, at no cost, to the CITY all public records in possession of the CONTRACTOR or keep and maintain public records required by the CITY to perform the service. If the CONTRACTOR transfers all public records to the public agency upon completion of the Contract, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the Contract, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 352-393-8526, [MARCANTELWP@CITYOFGAINESVILLE.ORG](mailto:MARCANTELWP@CITYOFGAINESVILLE.ORG) . PO BOX 490, STA 24, GAINESVILLE, FL 32627.

14. Except as otherwise provided in this Contract, any dispute concerning a question of fact or of interpretation of a requirement of the Contract which is not disposed of by mutual consent between the parties shall be decided by the City Manager or designee, who shall reduce the decision to writing and furnish a copy thereof to the parties. In connection with any dispute proceeding under this clause each party shall be afforded an opportunity to be heard and to offer evidence in support of its version of the facts and interpretation of the Contract. The City Manager or designee shall make such explanation as may be necessary to complete, explain or make definite the provisions of this Contract and the findings and conclusions shall be final and binding on both parties. Pending the final decisions of a dispute hereunder, CONTRACTOR shall proceed diligently with its performance of the Contract in accordance with the preliminary directions of the City Manager or designee.

IN WITNESS WHEREOF the parties have executed this Contract on the day first above written.

NATARE CORPORATION:

CITY OF GAINESVILLE:

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

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

Print Name:\_\_\_\_\_

Lee Feldman

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

City Manager:\_\_\_\_\_

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

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

Approved as to Form and Legality:

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City Attorney

DRAFT



# Statement of Extended Warranty

## Natatec Lining Systems

(Installed by Natate Corporation or authorized installer)

NATARE CORPORATION ("Natate") hereby provides to The City of Gainesville, Florida ("Owner") the warranties contained herein, or on exhibit on hereto, regarding the Lining Systems sold by Natate and installed at Northeast Pool ("Site"):

Natate WARRANTS that, for a period of one (1) year, the system or products are made from new materials, free from defects, and made in a workmanlike manner in accordance only with Natate shop drawings, submittals or technical information

Natate further WARRANTS that, for a period of ten (10) years (the "warranty period" commencing upon the completion of the installation as established by the Natatec Systems Warranty Application, the Lining shall: not peel, flake, crack, tear or delaminate; and retain its integrity as a watertight membrane.

In the event that during the warranty period the Lining System shall peel, flake, crack, tear or delaminate; or fail as a watertight lining, Natate agrees that it shall, as soon as practical after receipt of written notice from the Owner, and at its option, either repair or replace the defective materials, or refund to the Owner the portion of the purchase price attributable to the defective materials.

Specifically exempted from these warranties are claims arising from: **abuse or other conditions exceeding normal use; improper or incorrect operation, or maintenance; or any use of the product other than the particular use for which the product was intended; and structural or earth movements; or acts of God.**

In no event shall Natate be liable for any consequential or other damages, loss, or expense, arising in connection with the use or inability to use the Lining System for any purpose whatsoever. The warranty described herein is provided solely with regard to the Lining System purchased from Natate and upon payment in full to Natate for any and all charges related to the Lining System. Goods or equipment not manufactured by Natate are covered only by the standard warranty of the manufacturer, though sold or operated with the Natate goods or equipment. Natate represents only that the work and labor performed by Natate has been performed in a reasonable and workmanlike manner. Should any repair be required within one year for defective workmanship by Natate, Natate will undertake the required repair, and such repair, or cost thereof, shall be exclusive entitlement of the owner for any defective workmanship. Any claims against Natate must be made promptly in detail and in writing. All Natate warranties and other duties with respect to material, equipment, systems, or services furnished by Natate shall be conclusively presumed to have been satisfied one day after the expiration of the warranty period as set forth herein.

Specifically exempted from these warranties are claims arising from: **abuse or other conditions deviating from normal use or contrary to Natate Care and Maintenance Instructions or in violation; improper, incorrect or incomplete installation, operation, or maintenance; or any use of the product or system other than the particular use for which the product or system was intended; and structural or earth movements, or acts of God.**

*In no event shall Natate Corporation be liable for any consequential or other damages whatsoever, direct or indirect, except as expressly agreed to by Natate in writing. There are no other warranties or guarantees, expressed or implied, given by Natate or its agents except those provided herein.*

NATARE  
CORPORATION  
5905 West 74th Street  
Indianapolis, IN 46278  
(317) 290-8828



EFFECTIVE DATE OF WARRANTY March 15, 2016

SIGNED