



General Construction Contract

1 Pursuant to the following terms and conditions, Max Pools Austin, LLC makes the following proposal to the above-referenced owner(s) of the property ("Owner") to furnish all materials and labor necessary for remodeling/repairing your swimming pool. Upon selection of the appropriate options by the Owner and Owner signing this proposal, this proposal shall become a binding and enforceable contract between Owner and Max Pools Austin, LLC on the terms and conditions set forth herein. The basic scope of the work to be performed is as follows:

2. Payment is due upon the following events: 50% on the day the work begins, 50% on the day of plaster. Time is of the essence with regard to these payment deadlines.

Commencement of Work. Max Pools Austin, LLC shall commence the work within 14 days of this proposal being accepted by Owner, or on such other date as mutually agreed to in writing by both Max Pools Austin, LLC and Owner. After work begins, Max Pools Austin, LLC shall make reasonable efforts to complete the project in a timely manner. Max Pools Austin, LLC does not warrant or guarantee completion of the project by any specific date. Owner acknowledges that events beyond the control of Max Pools Austin, LLC may delay the completion of the Project. Events include, but are not limited to: changes by the Owner, failure of the Owner to make payments when due, other acts of Owner or Owner's representatives, prohibitive inclement weather or acts of God, fire, non-availability of labor, services, or materials, delays caused by change in laws or ordinances, and other events reasonably beyond the control of Max Pools Austin, LLC.

Building Standards. All work to be performed by Max Pools Austin, LLC shall be in a good and workmanlike manner that is consistent with local customary industry standards and in compliance with the options selected by Owner in this proposal. Max Pools Austin, LLC undertakes this project as an independent contractor. Nothing herein shall be construed to make Max Pools Austin, LLC an agent, servant or employee of Owner, or create any partnership, joint venture, or other association between Max Pools Austin, LLC and Owner. Subject to the provisions below regarding materials supplied by Owner, Max Pools Austin, LLC will use all new materials that are of suitable quality for the intended purpose.

Objections to Work. Owner agrees to notify Max Pools Austin, LLC promptly of any objections to any work not in compliance with this proposal. **Failure by Owner to promptly notify Max Pools Austin, LLC of objections to any work constitutes Owners' acceptance of said work subject to Max Pools Austin, LLC's obligations under the warranty contained in this proposal.**

Change Orders. Except as otherwise stated in this proposal, no alterations, additions or deletions will be made to the work to be performed or materials supplied unless agreed to in writing by Owner and Max Pools Austin, LLC. To approve a proposed change, both Owner and Max Pools Austin, LLC shall sign a written change order. Upon receiving from Owner a written request for any change, Max Pools Austin, LLC will present Owner with a proposal for the changes including any additional price of construction and any extensions to the projected completion date as a result of the change. If Owner accepts Max Pools Austin, LLC's proposal for changes, the change order will become a binding attachment to this proposal, and to the extent a conflict between the written change order and this proposal exists, the terms of the written change order shall control. Any Owner party may sign the written change order as agent for the other, and the signature of one Owner shall be binding on all others. Failure of Owner to approve Max Pools Austin, LLC's proposal for changes within three (3) days after receipt shall constitute a rejection of the proposal. Max Pools Austin, LLC shall be reimbursed at \$100 per hour, with a minimum fifty dollars, for all expenses and effort incurred in the production of any written change order proposal not accepted by Owner. Unless otherwise specified in agreed upon change orders, Owner shall pay for all agreed upon change orders in cash or by authorizing Max Pools Austin, LLC to charge the credit card on file for this project within three (3) business days after Owner's acceptance of the proposal. Max Pools Austin, LLC will not be obliged to proceed with any work until all amounts have been paid as agreed. Max Pools Austin, LLC has no obligation to stop work while proposed change orders are being discussed.

Warranty. Max Pools Austin, LLC warrants the workmanship for one year. Warranty for any failure of any materials used by Max Pools Austin, LLC is the lesser of two years or the manufacturer's warranty. Max Pools Austin, LLC shall not be responsible for and does not warrant: grout above tile on pools with cantilever decks, tile that we set for no charge, existing tiles that fall off, structural cracks or ground movement, or lights that do not work when pool is refilled. Max Pools Austin, LLC will not be responsible for and does not warrant damage to plaster caused by weepers in gunite, wavy gunite, rebar or tie wire rusting through plaster, chemical imbalance, humans, animals, or other unforeseen abuse beyond our control. Any warranty provided by Max Pools Austin, LLC in this proposal is limited to the lesser amount of: (1) the actual cost necessary to cure the issue, or (2) the face amount of this proposal. Owner agrees that Max Pools Austin, LLC shall not be liable for any acts or omissions by, or losses, damages or delays caused by Owner, Owner's agent or any third party retained by Owner. Owner further agrees that (1) Max Pools Austin, LLC shall not be required to warrant or repair any items provided by Owner for the project; and (2) Max Pools Austin, LLC will not be required to pay for, warrant, repair insure, or correct any work performed or materials provided by persons or entities employed by, or who have contracted with Owner. Owner shall promptly pay

all sums charged by third parties hired by Owner and indemnify and hold Max Pools Austin, LLC harmless from all such charges and any related liens. **THIS WARRANTY IS VOID IN ITS ENTIRETY IF ANY OF THE FOLLOWING OCCUR: (1) THE POOL IS NOT FILLED COMPLETELY WITHIN TWENTY FOUR HOURS OF COMPLETION OF THE REMODEL; (2) THE POOL IS VACUUMED OR HEATED WITHIN TWO WEEKS OF COMPLETION OF THE REMODEL WITHOUT THE PRIOR WRITTEN AUTHORIZATION OF MAX POOLS AUSTIN, LLC; or (3) THE POOL IS DRAINED WITHIN TWO YEARS OF COMPLETION OF THE REMODEL WITHOUT THE PRIOR WRITTEN AUTHORIZATION OF MAX POOLS AUSTIN, LLC.**

Insurance. Max Pools Austin, LLC represents that it maintains general liability occupational accident insurance in an amount of at least one million (\$1,000,000.00) per occurrence. Owner represents that Owner maintains fire, tornado, and homeowner's insurance in an amount of at least five hundred thousand (\$500,000.00) per occurrence, or that prior to the commencement of the remodel by Max Pools Austin, LLC Owner shall obtain insurance in said amount covering the work to be performed by Max Pools Austin, LLC that covers fire, tornado, and any accidents that may arise as a result of the work to be done in accordance with this proposal.

Indemnification. Because of potential safety and health hazards present during construction, as well as the practical limitations on Max Pools Austin, LLC's ability to control the activities of all persons involved in the remodel process and thereby limit the risk of personal injury that may arise from construction/remodel activities, the parties agree as follows: to ensure and to protect the personal health and safety of Owner and Owner's licensees and invitees, Owner shall restrict entry by the Owner and Owner's licensees and invitees into the area of the property where the work is being performed by Max Pools Austin, LLC to a minimum, including but not limited to any porch, deck, or other similar structure adjacent to the pool being remodeled. When Owner chooses to enter onto the area as described herein (except at the request of Max Pools Austin, LLC), and irrespective of Max Pools Austin, LLC's presence on the property at such time, OWNER AGREES TO AND DOES HEREBY RELEASE, INDEMNIFY AND HOLD MAX POOLS AUSTIN, LLC HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS OR CAUSES OF ACTION ARISING IN FAVOR OF OWNER OR OWNER'S AGENTS, LICENSEES AND INVITEES ON ACCOUNT OF BODILY INJURY, DEATH OR DAMAGE TO OR LOSS OF PROPERTY IN ANY WAY OCCURRING OR INCIDENT TO THE CONDITION OF THE PROPERTY AND/OR THE IMPROVEMENTS. THIS RELEASE AND INDEMNITY IS GIVEN TO MAX POOLS AUSTIN, LLC REGARDLESS OF WHETHER MAX POOLS AUSTIN, LLC OR ITS AGENTS OR EMPLOYEES ARE NEGLIGENT IN WHOLE OR IN PART AND EVEN WHEN THE INJURY, DEATH OR DAMAGE TO OWNER OR OWNER'S AGENTS, LICENSEES AND INVITEES IS CAUSED BY THE SOLE NEGLIGENCE OF MAX POOLS AUSTIN, LLC OR ATTRIBUTABLE TO MAX POOLS AUSTIN, LLC'S NEGLIGENCE PER SE OR IMPOSED BY STRICT LIABILITY.

Limitation of Claims. Under no circumstances shall Max Pools Austin, LLC be liable for any special, indirect, or consequential damages, including claims of mental anguish, except as otherwise specifically set forth in this Contract. Any action or claim, regardless of form, that

arises from or relates to this proposal, the work and/or the improvements is barred unless it is brought by Owner or Max Pools Austin, LLC not later than two (2) years and one (1) day from the date the cause of action accrues.

Mechanic's Lien. Owner grants to Max Pools Austin, LLC a mechanic's lien to secure performance of the obligations of Owner. If Owner is obtaining loan, Max Pools Austin, LLC shall assign to the lender a portion of Max Pools Austin, LLC's mechanic's lien equal to the amount of the loan advanced to or for the benefit of Owner and paid to Max Pools Austin, LLC, and to subordinate any remaining amount of Max Pools Austin, LLC's lien to the loan. In the event that the work to be completed as set out in this proposal cannot be completed for any reason, or fails to be completed according to this proposal, or all of the labor and material fail to be provided by Max Pools Austin, LLC, then Max Pools Austin, LLC and the holder of the indebtedness under the builder's and mechanic's lien shall have a valid and subsisting lien for the total contract price set out in this proposal, less such amount as would be reasonably necessary to complete the work according to this proposal.

Upon acceptance by Owner, this proposal is a residential construction contract as defined in Section 53.001 of the Texas Property Code. By Owner's initials in the space provided below, Owner acknowledges delivery and receipt of the disclosure statement required for residential construction contracts in accordance with Section 53.255 of the Texas Property Code. A copy of this disclosure statement is attached to this proposal as an addendum.

OWNER'S INITIALS

Default by Max Pools Austin, LLC. The following items constitute an event of default by Max Pools Austin, LLC:

1. Failure, without cause, to make payment to any material supplier, laborer or subcontractor for which Max Pools Austin, LLC has received payment from Owner or Owner's lender.

2. A breach by Max Pools Austin, LLC of any material provision contained in this proposal.

3. Max Pools Austin, LLC's filing of a voluntary petition in bankruptcy, making an assignment for the benefit of any creditor, being adjudicated as bankrupt or insolvent, or applying for or consenting to the appointment of a receiver, trustee or liquidator of all or a substantial part of Max Pools Austin, LLC's assets.

4. Abandonment of the work by Max Pools Austin, LLC for a period of fifteen (15) or more consecutive days provided that the inactivity is not caused, at least in part, by weather, shortage of labor or materials, delays attributable to the conduct of Owner, other matters beyond the control of Max Pools Austin, LLC, or other delay permitted by Owner.

If Max Pools Austin, LLC commits an event of default, prior to exercising any remedy granted by this proposal or by law, Owner shall deliver written notice of such default to Max Pools Austin, LLC. If the event of default is not cured within fifteen (15) days after delivery of the written notice (Max Pools Austin, LLC's Cure Period), Owner may exercise any remedy subject to the terms of this Contract.

REMEDIES OF OWNER - Upon the occurrence of any event of default by Max Pools Austin, LLC and the expiration of Max Pools Austin, LLC's Cure Period, Owner may (but shall not be obligated to) terminate this Contract and recover monetary damages as specified below. The remedy of specific performance is hereby waived by Owner and shall not be available in any action concerning this Contract. Any monetary damages available to Owner shall not exceed the total of any sums paid to Max Pools Austin, LLC for (i) labor and materials not already incorporated into the Improvements; and (ii) reasonable and necessary attorney's fees and costs incurred to recover said amounts. If Owner receives notice of any lien or claim for labor or materials furnished to Max Pools Austin, LLC for which Owner might become liable, though primarily chargeable to Max Pools Austin, LLC, Owner shall have the right to retain out of any payment not already made to Max Pools Austin, LLC, an amount sufficient to indemnify Owner against such lien or claim. However, Max Pools Austin, LLC shall have the right to contest in good faith the validity of such lien or claim. If Max Pools Austin, LLC fails to discharge any such lien or claim, all amounts expended by Owner for the payment of any liens or claims shall be credited against the contract price set forth in this proposal.

Default by Owner. The following items constitute an event of default by Owner:

1. Owner or Owner's agents or representatives fail to make any payments due under this proposal, including payment for any change orders.

2. Owner or Owner's agents or representatives unreasonably delay or unreasonably interfere with Max Pools Austin, LLC in the execution of the Work.
Owner or Owner's agents or representatives fails to perform any material agreement contained in this proposal.

3. Owner, or any person liable for the payment or performance under this Contract, files a petition in bankruptcy, makes an assignment for the benefit of any creditor, is adjudicated as bankrupt or insolvent, or applies for or consents to the appointment of a receiver, trustee or liquidator of all or a substantial part of their or its assets.

4. If Owner commits an event of default, prior to exercising any remedy granted by this proposal or by law, Max Pools Austin, LLC shall deliver written notice of such default to Owner.

If the event of default is not cured within fifteen (15) days after delivery of such written notice (Owner's Cure Period), Max Pools Austin, LLC may exercise any remedy subject to the terms of this Contract.

REMEDIES OF MAX POOLS AUSTIN, LLC - Upon the occurrence of any event of default by Owner and the expiration of Owner's Cure Period, all amounts owed for work completed will, at the option of Max Pools Austin, LLC, become immediately due and payable without prejudice to any other remedy of Max Pools Austin, LLC and Max Pools Austin, LLC may (but shall not be obligated to), discontinue performance of this work set out in this proposal and (i) terminate this proposal and retain all money previously paid by Owner to Max Pools Austin, LLC as liquidated damages thereby releasing both parties from this Contract; or (ii) terminate and seek recovery of any and all damages suffered by Max Pools Austin, LLC, including, but not limited to, payment for all materials, labor, profit, overhead and fees with respect to this proposal. The remedy of specific performance is hereby waived by Max Pools Austin, LLC and shall not be available in any action concerning this proposal. If Owner refuses to accept the remodeled swimming pool and/or pay the total contract price to Max Pools Austin, LLC as specified in this proposal, Max Pools Austin, LLC not being in default, Max Pools Austin, LLC will be entitled to pursue all remedies provided under Texas law, save and except specific performance.

DELINQUENT PAYMENT - Should the Owner fail to make payment to Max Pools Austin, LLC of any portion of the total contract price under this proposal when the payment is due, then the Owner shall pay to Max Pools Austin, LLC, in addition to the sum shown as due, interest at the maximum rate allowed by applicable federal and state law, which interest shall accrue as of the date payment was first due and shall continue to accrue until the date of payment.

Withdrawal of Proposal. If Owner does not sign this proposal and return it to Max Pools Austin, LLC within thirty days of the date of proposal, Max Pools Austin, LLC may withdraw this proposal without further notice to Owner.

OWNER REPRESENTS THAT OWNER HAS READ AND UNDERSTANDS THIS PROPOSAL AND THAT UPON SIGNING BELOW THIS PROPOSAL SHALL BECOME A BINDING AND ENFORCEABLE CONTRACT. OWNER AGREES THAT NO VERBAL STATEMENT, PROMISE, OR CONDITION NOT SPECIFICALLY LISTED IN THIS PROPOSAL IS BEING RELIED UPON BY OWNER. OWNER ACKNOWLEDGES THAT THERE ARE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, BY MAX POOLS AUSTIN, LLC, ITS EMPLOYEES, OWNERS, SHAREHOLDERS, OFFICERS, DIRECTORS, OR AGENTS EXCEPT THOSE CONTAINED HEREIN. THIS PROPOSAL CANNOT BE MODIFIED OR AMENDED EXCEPT BY WRITTEN AGREEMENT SIGNED BY THE PARTIES. IF ANY COURT DECLARES ANY PROVISION OF THIS PROPOSAL TO BE VOID AND UNENFORCEABLE, THEN ONLY THAT PROVISION SHALL BE UNENFORCEABLE, WITH THE REMAINDER OF THE PROPOSAL REMAINING VALID AND ENFORCEABLE. OWNER ACKNOWLEDGES THAT MAX POOLS AUSTIN, LLC IS RELYING ON THESE REPRESENTATIONS AND WOULD NOT ENTER INTO THIS PROPOSAL/CONTRACT WITHOUT THIS UNDERSTANDING.

Client Signature / Date

Client Signature / Date

Client Property Address

Max Pools Austin, LLC Representative Signature / Date