

AGREEMENT
between
THE CITY OF COCONUT CREEK
and
FREEPORT FOUNTAINS, LLC
for
DESIGN-BUILD NORTH AND SOUTH SPLASH PADS
RFQ NO. 05-28-19-01

THIS AGREEMENT is made and entered into this ____ day of _____, 2019, by and between the City of Coconut Creek, a municipal corporation, with principal offices located at 4800 West Copans Road, Coconut Creek, FL 33063 (the "City") and Freeport Fountains, LLC, a Foreign Limited Liability Company with principal offices located at 1510 Kastner Place, Sanford, FL 32771 (the "Contractor") to provide Design-Build North and South Splash Pads as specified in Request for Qualifications ("RFQ") No. 05-28-19-01.

Now therefore, in consideration of the mutual covenants hereinafter set forth, the City and Contractor agree as follows:

1) The Contract Documents

The Contract Documents consist of this Agreement, conditions of the contract (General, Supplementary and other Conditions) RFQ No. 05-28-19-01, all addenda issued prior to, and all modifications issued after execution of this Agreement. These Contract Documents form the Agreement, and all are as fully a part of the Agreement as if attached to this Agreement or repeated therein. In the event that there is a conflict between the aforementioned documents, this Agreement will control, followed by Exhibit "A" – "Proposal Package" and Exhibit "B" – "RFQ Documents" in that order.

2) The Work

The Contractor shall perform all work for the City required by the Contract Documents and RFQ No. 05-28-19-01, as set forth below:

- a) Contractor shall furnish all labor, materials, and equipment necessary to complete the scope of work, as outlined in the Contract Documents.
- b) Contractor shall supervise the work force to ensure that all workers conduct themselves and perform their work in a safe and professional manner. Contractor shall comply with all OSHA safety rules and regulations in the operation of equipment and in the performance of the work. Contractor shall at all times have a competent field supervisor on the job site to enforce these policies and procedures at the Contractor's expense.
- c) Contractor shall provide the City with seventy-two (72) hours written notice prior to the beginning of work under this Agreement and prior to any schedule change with the exception of changes caused by inclement weather.

- d) Contractor shall comply with any and all Federal, State, and local laws and regulations now in effect, or hereinafter enacted during the term of this Agreement, which are applicable to the Contractor, its employees, agents or subcontractors, if any, with respect to the work and services described herein.

3) **Insurance**

Contractor shall obtain at Contractor's expense all necessary insurance in such form and amount as required by the City's Risk Manager before beginning work under this Agreement including, but not limited to, Workers' Compensation, Commercial General Liability, and all other insurance as required by the City, including Professional Liability when appropriate. Contractor shall maintain such insurance in full force and effect during the life of this Agreement. Contractor shall provide to the City's Risk Manager certificates of all insurances required under this section prior to beginning any work under this Agreement. The Contractor shall be responsible for all actions of his subcontractors and shall ensure that all subcontractors comply with the above guidelines, retaining necessary insurance in force, where required, throughout the term of this agreement.

Contractor shall indemnify and hold the City harmless for any damages resulting from failure of the Contractor to take out and maintain such insurance. Contractor's Liability Insurance policies shall be endorsed to add the City as an additional insured. Contractor shall be responsible for payment of all deductibles and self-insurance retentions on Contractor's Liability Insurance policies.

4) **Time of Commencement**

- a) The work to be performed under this Agreement shall be commenced after City execution of the Agreement and not later than five (5) days after the date that Contractor receives the City's Notice to Proceed, subject to any permitted extensions of time under the Contract Documents.
- b) Two (2) Locations:
 - i. **Recreation Complex, 4455 Sol Press Blvd, Coconut Creek, FL 33073:** Project substantial completion shall be within seventy-five (75) days from issuance of City's Notice to Proceed, subject to any permitted extensions of time under the Contract Documents. Final completion shall be fifteen (15) calendar days from date of substantial completion totaling ninety (90) calendar days. For the purposes of this Agreement, completion shall mean the issuance of final payment.
 - ii. **Community Center, 1100 Lyons Road, Coconut Creek, FL 33063:** Project substantial completion shall be within one hundred thirty (130) days from issuance of City's Notice to Proceed, subject to any permitted extensions of time under the Contract Documents. Final completion, shall be thirty (30) calendar days from date of substantial completion totaling one hundred sixty (160) calendar days. For the purposes of this Agreement, completion shall mean the issuance of final payment.
- c) During the pre-construction portion of the work, the parties agree to work diligently and in good faith in performing their obligations so that all required permits for the construction portion of the work may be obtained by the Contractor in accordance with the Schedule included in the Contract Documents. In the event that any delays in the pre-construction or construction portion of the work occur, despite the diligent efforts

of the parties and such delays are the result of force majeure or are otherwise outside of the control of either party, then the parties shall agree on an equitable extension of the time for substantial completion.

5) Guaranteed Maximum Price as Contract Sum

The City shall pay the Contractor in current funds for the performance of the work, in the Guaranteed Maximum Price ("GMP") of SIX HUNDRED THOUSAND Dollars and ZERO cents (\$600,000.00) pursuant to Exhibit "A" – Proposal Package.

6) Payments

Payments will be made in accordance with Contract Documents and RFQ No. 05-28-19-01. Payment will be made monthly for work that has been completed, inspected and properly invoiced. A retainage of ten percent (10%) will be deducted from the monthly payment. The City may, at its sole discretion, reduce the retainage to five percent (5%) after successful completion of fifty percent (50%) of work. Retainage monies will be released upon satisfactory completion and final inspection of the project.

7) Remedies

Damages

The City reserves the right to recover any ascertainable actual damages incurred as a result of the failure of the Contractor to perform in accordance with the requirements of this Agreement, or for losses sustained by the City resultant from the Contractor's failure to perform in accordance with the requirements of this Agreement.

Correction of Work

If, in the judgment of the City, work provided by the Contractor does not conform to the requirements of this Agreement, or if the work exhibits poor workmanship, the City reserves the right to require that the Contractor correct all deficiencies in the work to bring the work into conformance without additional cost to the City, and / or replace any personnel who fail to perform in accordance with the requirements of this Agreement. The City shall be the sole judge of non-conformance and the quality of workmanship.

8) Change Orders

- a) Without invalidating the Contract, without any monetary compensation, and without notice to any surety, the City reserves and shall have the right to make increases, decreases or other changes to the work as may be considered necessary or desirable to complete the proposed construction in a satisfactory manner. The Contractor shall not start work pursuant to a Change Order until the Change Order setting forth the adjustments is approved by the City, and executed by both parties. Once the Change Order is so approved, the Contractor shall promptly proceed with the work. All Change Orders shall include no more than five percent (5%) overhead and five percent (5%) profit respectively.
- b) The Contract Price constitutes the total compensation (subject to authorized adjustments, if applicable) payable to the Contractor for performing the work. All duties, responsibilities and obligations assigned to or undertaken by the Contractor shall be at Contractor's expense without change in the Contract Price or Time except as approved in writing by the City.

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- c) The Contract Price and/or Time may only be changed by a Change Order. A fully executed Change Order for any extra work must exist before such extra work is begun. Any claim for an increase or decrease in the Contract Price shall be based on written notice delivered by the party making the claim to the other party promptly (but in no event later than 15 days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. The amount of the claim with supporting data shall be delivered (unless the City allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by claimant's written statement that the amount claimed covers all known amounts to which the claimant is entitled as a result of the occurrence of said event. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this Paragraph.
- d) The Contract Time may only be changed by a Change Order. A fully executed Change Order must exist prior to extension of the contract time.
- e) Any claim for an extension of the Contract Time shall be based on written notice delivered by the party making the claim to the other party no later than fifteen (15) days after the occurrence of the event giving rise to the claim. Notice of the extent of the claim shall be delivered with supporting data and stating the general nature of the claim. Contractor hereby agrees to waive rights to recover any lost time from delays unless Contractor has given the notice and the supporting data required by this Paragraph.
- f) Extensions of time shall be considered and will be based solely upon the effect of delays to the work as a whole. Extensions of time shall not be granted for delays to the work, unless the Contractor can clearly demonstrate that such delays did or will, in fact, delay the progress of work as a whole. Time extensions shall not be allowed for delays to parts of the work that are not on the critical path of the project schedule. Time extensions shall not be granted until all float or contingency time, at the time of delay, available to absorb specific delays and associated impacts is used.
- g) In the event satisfactory adjustment cannot be reached by the City and the Contractor for any item requiring a change in the Contract, and a Change Order has not been issued, the City reserves the right, at its sole option, to terminate the Contract as it applies to these items in question and make such arrangements as the City deems necessary to complete the work. The cost of any work covered by a Change Order for an increase or decrease in the Contract price shall be determined by mutual acceptance of a Guaranteed Maximum Price by the City and Contractor. If notice of any change in the contract or contract time is required to be given to a surety by the provisions of the bond, the giving of such notice shall be the Contractor's responsibility, and the amount of each applicable bond shall be adjusted accordingly. The Contractor shall furnish proof of such adjustment to the City. Failure of the Contractor to obtain such approval from the Surety may be a basis for termination of this Contract by the City.

9) **No Damages for Delays**

ALL TIME LIMITS STATED IN THE CONTRACT DOCUMENTS ARE OF THE ESSENCE OF THE AGREEMENT. EXCEPT AS PROVIDED HEREIN, NO CLAIM FOR DAMAGES OR ANY CLAIM OTHER THAN FOR AN EXTENSION OF TIME SHALL BE MADE OR ASSERTED AGAINST THE CITY BY REASON OF ANY DELAYS. Contractor shall not be entitled to an increase in the construction cost or payment or compensation of any kind from City for direct, indirect, consequential, impact or other costs, expenses or damages including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption or interference be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable. In addition, if Contractor is delayed at any time in the progress of the Work by an act or neglect of the City's employees, or separate contractors employed by the City, or by changes ordered in the Work, or by delay authorized by the City pending arbitration, then the Contract Time shall be reasonably extended by Change Order, and the Guaranteed Maximum Price shall be reasonably increased by Change Order in order to equitably increase the general conditions component of the Guaranteed Maximum Price. Furthermore, if Contractor is delayed at any time in the progress of the Work by labor disputes, fire, unusual delay in deliveries, adverse weather conditions not reasonably anticipated, unavoidable casualties or other causes beyond the Contractor's control, or by other causes that the City and Contractor agree may justify delay, then the Contract Time shall be reasonably extended by Change Order. Otherwise, Contractor shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay, in accordance with and to that extent specifically provided above. No extension of time shall be granted for delays resulting from normal weather conditions prevailing in the area as defined by the average of the last ten (10) years of weather data as recorded by the United States Department of Commerce, National Oceanic and Atmospheric Administration at the Fort Lauderdale Weather Station.

10) **Waiver of Liens**

Prior to final payment of the Contract Sum, a final waiver of lien shall be submitted by all suppliers, subcontractors, and/or Contractors who worked on the project that is the subject of this Agreement.

11) **Warranties**

Warranty of Title

Contractor warrants to the City that all goods and materials furnished under the contract will be new unless otherwise specified and that Contractor possesses good, clear, and marketable title to said goods and there are no pending liens, claims, or encumbrances whatsoever against said goods. All work not conforming to these requirements, including substitutions not properly approved and authorized may be considered defective.

Warranty of Specifications

Contractor warrants that all goods, materials and workmanship furnished, whether furnished by the Contractor or its subcontractors and suppliers, will comply with the specifications, drawings and other descriptions supplied or adopted.

Warranty of Merchantability

Contractor warrants all material and workmanship for a minimum of one (1) year from date of project completion and acceptance by the City. If within one (1) year after acceptance

by the City, or within such larger period of time as may be prescribed by law any of the materials or work are found to be defective or not in accordance with the Contract Documents, the Contractor shall after receipt of a written notice from the City to do so, promptly replace the defective material and/or correct the work unless the City has previously given the Contractor a written acceptance of such condition.

12) Indemnification

The Contractor shall indemnify and hold harmless the City, its elected and appointed officials, employees, and agents from any and all claims, suits, actions, damages, liability, and expenses (including attorneys' fees) in connection with loss of life, bodily or personal injury, or property damage, including loss of use thereof, directly or indirectly caused by, resulting from, arising out of or occurring in connection with the operations of the Contractor or its officers, employees, agents, subcontractors, or independent Contractors, excepting only such loss of life, bodily or personal injury, or property damage solely attributable to the gross negligence or willful misconduct of the City or its elected or appointed officials and employees. The above provisions shall survive the termination or expiration of this Agreement and shall pertain to any occurrence during the term of this Agreement, even though the claim may be made after the termination of expiration hereof.

Nothing contained herein is intended nor shall be construed to waive City's rights and immunities under the common law or Florida Statutes 768.28, as amended from time to time.

13) Anti-Discrimination

That Contractor shall for itself, its personal representatives, successors in interests, assigns, subcontractors, and sub-lessees, as a part of the consideration hereof, hereby covenant and agree that:

- a) No person on the ground of race, color, religion, sex, national origin, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, or gender identity, expression or veteran or service member status shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of or performance of services described herein; and
- b) Contractor, its personal representatives, successors in interests, assigns, subcontractors, and sub-lessees shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement with respect to hiring, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment because of race, color, religion, sex, national origin, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, or gender identity or expression or veteran or service member status.

14) Independent Contractor

This Agreement does not create an employee/employer relationship between the Parties. It is the intent of the Parties that the Contractor is an independent contractor under this Agreement and not the City's employee for any purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Worker's Compensation Act, and the State Unemployment Insurance law. The Contractor shall retain sole and

application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Worker's Compensation Act, and the State Unemployment Insurance law. The Contractor shall retain sole and absolute discretion in the judgment of the manner and means of carrying out Contractor's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of Contractor, which policies of Contractor shall not conflict with City, State, or United States policies, rules or regulations relating to the use of Contractor's funds provided for herein. The Contractor agrees that it is a separate and independent enterprise from the City, that it had full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the Contractor and the City and the City will not be liable for any obligation incurred by Contractor, including but not limited to unpaid minimum wages and/or overtime premiums.

15) Assignment and Subcontracting

Contractor shall not transfer or assign the performance required by this Agreement without the prior consent of the City. This Agreement, or any portion thereof, shall not be subcontracted without the prior written consent of the City nor shall the Contractor assign any monies due or to become due to him or her, without the previous written consent of the Contract Administrator.

16) Notice

Whenever either party desires or is required under this Agreement to give notice to any other party, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended at the following addresses.

CITY

City Manager
City of Coconut Creek
4800 West Copans Road
Coconut Creek, FL 33063
With a copy to the City Attorney at the same address.

CONTRACTOR

Jon D. Vollet
Freeport Fountains, LLC
1510 Kastner Place
Sanford, FL 32771
Office: (407) 330-1150
Fax: (407) 330-3257
Email: jvollet@freeportfountains.com or jwolcott@freeportfountains.com
www.freeportfountains.com

17) Agreement Subject to Funding

This agreement shall remain in full force and effect only as long as the expenditures provided for in the Agreement have been appropriated by the City Commission of the City of Coconut Creek in the annual budget for each fiscal year of this Agreement, and is subject to termination without any penalty due to lack of funding.



18) Venue

The parties waive the privilege of venue and agree that all litigation between them in the state courts shall take place exclusively in the Seventeenth Judicial Circuit in and for Broward County, Florida and that all litigation between them in the federal courts shall take place exclusively in the Southern District in and for the State of Florida.

19) Waiver of Jury Trial

Contractor and the City each hereby knowingly, voluntarily and intentionally waive any right either may have to a trial by jury with respect to any litigation based on this Agreement, or arising out of, under or in connection with this Agreement and/or the products or services provided hereunder, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of either party.

20) Signatory Authority

The Contractor shall provide the City with copies of requisite documentation evidencing that the signatory for Contractor has the authority to enter into this Agreement.

21) Severability; Waiver of Provisions

Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

22) Merger; Amendment

This Agreement constitutes the entire Agreement between the Contractor and the City, and negotiations and oral understandings between the parties are merged herein. This Agreement can be supplemented and/or amended only by a written document executed by both the Contractor and the City.

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IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature. CITY OF COCONUT CREEK, through its City Manager or designee and Freeport Fountains, LLC, signing by and through its Managing Member, Jon D. Vollet, duly authorized to execute same.

CITY OF COCONUT CREEK

ATTEST:

Mary C. Blasi, City Manager Date

Leslie Wallace May Date
City Clerk

Approved as to form and legal sufficiency:

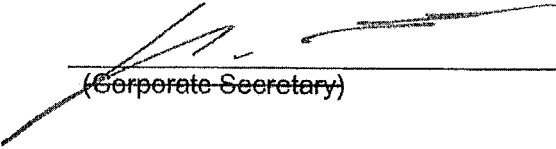
Terrill C. Pyburn, City Attorney Date



FREEPORT FOUNTAINS, LLC

ATTEST:

Freeport Fountains, LLC.
Company Name


(Corporate Secretary)

 8/27/19
Signature of Managing Member Date

Joel M. Wolcott
Type/Print Name of Corporate Secy.

Jon D. Vollet
Type/Print Name of Managing Member



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CORPORATE ACKNOWLEDGEMENT

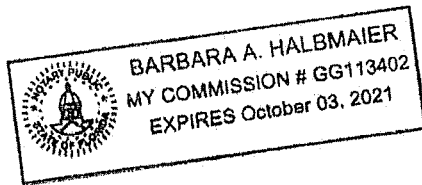
STATE OF FLORIDA:

:SS

COUNTY OF Seminole:

I HEREBY CERTIFY that on this day, before me, an Officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared _____
Jon D. Vollet, of Freeport Fountains, LLC a Arkansas
Corporation, to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged before me that he/she executed the same.

WITNESS my hand and official seal this 27th day of August, 2019.



Barbara Halbmaier
Signature of Notary Public
State of Florida at Large

Barbara Halbmaier
Print, Type or Stamp
Name of Notary Public

- Personally known to me or
 Produced Identification

Type of I.D. Produced

- DID take an oath, or
 DID NOT take an oath.

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