

**GENERAL SERVICES CONTRACT
CONTRACT NO. 0118-1410**

THE PARTIES TO THIS CONTRACT are the City of Daytona Beach, a Florida municipal corporation (the "CITY"), and Blue Tiger Pools, LLC dba Blue Ribbon Pools, a Florida limited liability company ("CONTRACTOR" or "VENDOR").

In consideration of the mutual covenants herein contained, the Parties agree as follows:

Section 1. Scope of Services. CONTRACTOR will provide swimming pool maintenance services, including supply of chemicals, to the Oceanfront Breakers Park Splash Pad and the Oceanfront Clock Tower Fountain as further described in Exhibit A, attached hereto and incorporated herein services to the CITY as further described in Exhibit A, attached hereto and incorporated herein by reference.

This is not an exclusive Contract. The CITY specifically reserves the right to concurrently contract with other contractors for similar work if the CITY deems such action to be in the CITY's best interests.

Section 2. Fees and Payments; Limitations. Subject to adjustments that may be made as further described in Section 3, the CITY will pay CONTRACTOR Fees of up to \$26,120 annually, based on the Fee Schedule attached hereto as Exhibit B. The Fees to be paid herein as CONTRACTOR's sole compensation for the services to be provided. CONTRACTOR will be solely responsible for all of costs CONTRACTOR incurs in meeting its obligations herein.

Section 3. Adjustment to Fees.

(a) **Right to Request; Conditions.** In recognition of the volatility in in pool chemical pricing, CONTRACTOR will have the right to request annual adjustments in Chemical Supply Fees listed in the Fee Schedule for supply of chemicals. The request will be made by providing CITY written notice no later than 60 days prior to the end of the Term prior to the Term for which the adjustment is requested. No adjustment will be made pursuant to this Section until after the first 1-year Renewal Term.

(b) **Basis for Proposed Adjustment.** The request must include the information referenced in SI 3 of the Special Instruction Sheet that was included in the CITY's Invitation to Bid 0118-1410 (the "ITB"). A copy of the Special Instruction Sheet is attached hereto as Exhibit C. (The ITB is further referenced in Section 20(n).)

(c) **CITY Response to Request for Adjustment.** The CITY will have discretion whether to approve the requested Fee adjustment. The CITY will have 30 days from the date of the written request to accept or reject it. The CITY's failure to approve the adjustment will be deemed to be a denial of the request.

(d) **Implementation of an Approved Request for Adjustment.** Any adjustment made to the Chemical Supply Fees in response to CONTRACTOR's request will take place during the Term after the Term in which the request is made. The adjustment will be implemented through a formal amendment to this Contract, setting forth the adjusted annual not to exceed amount referenced in Section 2, and the adjusted Chemical Supply Fees. The City Manager is authorized to execute the amendment on the CITY's behalf, without need for City Commission approval, provided that the cost increase associated with the amendment is within the City Manager's authority pursuant to the Purchasing Code. All other amendments entered into pursuant to this Section require City Commission approval.

Section 4. Billing; Manner of Payment. In addition to requirements for payment established by applicable federal, state, or local law including the City Code, payment terms are as follows:

(a) No payment will be due for services performed until CONTRACTOR submits a proper invoice. CONTRACTOR will submit invoices only for services provided and accepted in accordance with the requirements of this Contract. CONTRACTOR may invoice the CITY no more frequently than monthly, and no sooner than 30 days after the Effective Date.

(b) The CITY will pay based on the unit prices set forth in the Exhibits for work completed by CONTRACTOR during the period billed, provided that such work is reflected on CONTRACTOR's invoice.

(c) In order to be considered proper, the invoice must include all information and documentation that the CITY may need to verify the accuracy of the invoice and the amount of payment due based on the specific requirements of this Contract. Where payment is for the cost incurred for certain reimbursables (such as for subcontractors or air travel), the invoice must include proof that CONTRACTOR has paid such costs.

(d) The CITY will within 30 days after receipt of an invoice notify the CONTRACTOR that the invoice is improper, or pay CONTRACTOR the amount due.

Section 5. Standard of Performance. CONTRACTOR's services will at a minimum meet the level care and skill ordinarily used by members of CONTRACTOR's profession performing the type of services provided herein within the State of Florida.

Section 6. Relationship between Parties. This Contract does not create an employee-employer relationship between the CITY and CONTRACTOR. CONTRACTOR is an independent contractor of the CITY and will be in control of the means and the method in which the requested work is performed. As an independent contractor, CONTRACTOR will be solely responsible for payment of all federal, state and local income tax, and self-employment taxes, arising from this Contract; and CONTRACTOR agrees to indemnify and hold harmless the CITY from any obligations relating to such taxes. The CITY will not make deductions from payments due, for such taxes, or for social security, unemployment insurance, worker's compensation, or other employment or payroll taxes. CONTRACTOR will also be responsible for the performance of CONTRACTOR's subcontractors.

Section 7. Books and Records; Documents.

(a) All reports, estimates, logs, original drawings, and other materials furnished, prepared or executed by CONTRACTOR during the term of and in accordance with the provisions of this Contract will be the property of the CITY and delivered to the CITY upon demand or, if no demand has previously been made, upon completion of the particular task for which such materials were prepared, executed, or otherwise required, or upon termination or expiration of this Contract.

(b) CONTRACTOR will maintain books, records, and other documents pertinent to performance under this Contract while this Contract is effect and for a period of 3 years following the termination or expiration of this Contract; provided, that this 3-year period will be extended with respect to any documents relating to any litigation, appeals or settlements of claims arising from such performance, CONTRACTOR will continue to maintain such documents up to 1 year after the final disposition of such litigation, appeals or claims. All such books, records, and other documents will be maintained in accordance with generally accepted accounting principles. The CITY will have inspection and audit rights to such documents during the period that they are maintained as required by this Section.

Section 8. Public Records.

(a) To the extent applicable, CONTRACTOR will comply with the requirements of Florida Statutes Section 119.0701, which include the following:

(1) Keeping and maintaining public records that the CITY requires for performance of the service provided herein.

(2) Upon the request of the City Clerk of the CITY, (i) providing the City Clerk with a copy of requested public records or (ii) allowing inspection or copying of the records, within a reasonable time after receipt of the City Clerk's request, at a cost that does not exceed the cost provided in Ch. 119, Florida Statutes, or as otherwise provided by law.

(3) Ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law until completion of this Contract, and following such completion if CONTRACTOR fails to transfer such records to the CITY.

(4) Upon completion of this Contract, keep and maintain public records required by the CITY to perform the service. CONTRACTOR will meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY upon request from the City Clerk, in a format that is compatible with the CITY's information technology systems.

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, CONTRACTOR MUST CONTACT THE CITY CLERK, WHOSE CONTACT INFORMATION IS AS FOLLOWS:

(Phone)	386 671-8023
(Email)	clerk@codb.us
(Address)	301 S. Ridgewood Avenue Daytona Beach, FL 32114

(b) Nothing herein will be deemed to waive CONTRACTOR's obligation to comply with Section 119.0701(3)(a), Florida Statutes, as amended by Chapter 2016-20, Laws of Florida (2016).

Section 9. Effective Date and Term.

The Effective Date of this Contract is the date on which the last Party signs it. The Term of this Contract is one year, commencing on the Effective Date. The CITY will have the option to renew this Contract for up to 3 Terms of 1 year each, by providing CONTRACTOR written notice. Such notice must be provided at least 60 days before the end of the current Term, unless waived by CONTRACTOR.

Section 10. Termination of Contract.

(a) The CITY may by written notice to CONTRACTOR terminate this Contract, in whole or in part, at any time, either for the CITY's convenience or because of the failure of the CONTRACTOR to fulfill its contractual obligations.

(1) Before terminating for convenience, CITY must provide CONTRACTOR at least 30 day's advance notice of termination. This Contract will terminate automatically and without need for further notice upon the expiration of the notice period.

(2) Except as provided in Section 10(a)(3), before terminating due to CONTRACTOR's material breach of its contractual obligations, CITY must provide CONTRACTOR prior written notice, specifying the breach and demanding CONTRACTOR remedy the breach within 10 days of the notice, or within such longer period as may be reasonably required if the nature of the breach is that it cannot be remedied within 10 days of notice. This Contract will terminate automatically and without need for further notice if CONTRACTOR fails to remedy the material breach within the period described in the CITY's notice of breach.

(3) The CITY may terminate this Contract upon CONTRACTOR's breach without providing CONTRACTOR an opportunity to remedy the breach as referenced immediately above, if CONTRACTOR or any of CONTRACTOR'S personnel, in connection with the services or rights provided herein, commit a criminal act or engage in activity that poses a material risk of injury to persons or damage to property. Such termination will be effective immediately upon providing CONTRACTOR written notice.

(b) If the termination is for convenience, CONTRACTOR will be paid compensation for authorized services performed to the date of termination. If termination is due to CONTRACTOR's material breach, the CITY reserves all rights and remedies it may have under law due to such breach. Among other things, the CITY may take over the work and prosecute the same to completion by other agreements or otherwise; and in such case, the CONTRACTOR will be liable to the CITY for all reasonable additional costs occasioned to the CITY thereby.

(c) If after notice of termination for the CONTRACTOR's failure to fulfill contractual obligations it is judicially determined by a court of law that the CONTRACTOR had not so failed, the termination will be conclusively deemed to have been effected for the CITY's convenience. In such event, adjustment in payment to CONTRACTOR will be made as provided in Section 10(b) for a termination for convenience.

(d) The rights and remedies of CITY provided for in this Section are in addition and supplemental to any and all other rights and remedies provided by law or under this Contract.

Section 11. Suspension of Services. The CITY may suspend CONTRACTOR's services if the notice of material breach provided pursuant to Section 10(a)(2) so directs. The CITY may also suspend CONTRACTOR's services in lieu of termination, under the conditions set forth in Section 10(a)(3), by providing CONTRACTOR written notice of suspension. CONTRACTOR will suspend activities immediately upon receipt thereof; and in such instance CONTRACTOR's rights to provide services referenced herein will also automatically be suspended for the period of such suspension.

Section 12. Indemnification. CONTRACTOR will indemnify and hold harmless the CITY, including the CITY's officers, employees, and agents, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of CONTRACTOR, or CONTRACTOR's officers, employees, or agents, including subcontractors and other persons employed or used by CONTRACTOR in the performance of this Contract. This indemnification agreement is separate and apart from, and in no way limited by, any insurance provided pursuant to this Contract or otherwise.

Section 13. Insurance. *[Risk management needs to approve this provision for every contract.]* CONTRACTOR will provide and maintain at CONTRACTOR's own expense, insurance of the kinds of coverage and in the amounts set forth in this Section. All such insurance will be primary and non-contributory with the CITY's own insurance. In the event any request for the performance of services presents exposures to the CITY not covered by the requirements set forth below, the CITY reserves the right to add insurance requirements that will cover such an exposure.

(a) **Coverage and Amounts.**

(1) **Workers Compensation Insurance** as required by Florida Statutes, Chapter 440, Workers' Compensation Insurance, for all employees of CONTRACTOR, employed at the site of the service or in any way connected with the work, which is the subject of this service. The insurance required by this provision will comply fully with the Florida Workers' Compensation Law and include Employers' Liability Insurance with limits of not less than \$500,000 per occurrence. Any associated or subsidiary company involved in the service must be named in the Workers' Compensation coverage. If CONTRACTOR wishes to claim an exemption from worker's compensation insurance requirements, CONTRACTOR will notify the Risk Manager in writing on CONTRACTOR's official letterhead.

(2) **Liability Insurance**, including (i) **Commercial General Liability coverage** for operations, independent contractors, products-completed operations, broad form property damage, and

personal injury on an "occurrence" basis insuring CONTRACTOR and any other interests, including but not limited to any associated or subsidiary companies involved in the work; and (ii) **Automobile Liability Insurance**, which will insure claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle used by the CONTRACTOR in the performance of this Contract.

THE COMMERCIAL GENERAL LIABILITY INSURANCE POLICY WILL NAME THE CITY AS AN ADDITIONAL INSURED. Contractor's Commercial General Liability insurance policy shall provide coverage to Contractor, and City when required to be named as an additional insured either by endorsement or pursuant to a blanket additional insured endorsement, for those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) without the attachment of any endorsements excluding or limiting coverage for Products/Completed Operations, Independent Contractors, Property of City in Contractor's Care, Custody or Control or Property of City on which contracted operations are being performed, Explosion, Collapse or Underground hazards (XCU Coverage, Contractual Liability or Separation of Insureds. When City is added as additional insured by endorsement, ISO Endorsements CG 20 10 and CG 20 37 or their equivalent shall be used to provide such Additional Insured status.

The limit of liability for each policy will be a combined single limit for bodily injury and property damage of no less than \$1,000,000 per occurrence. If insurance is provided with a general aggregate, then the aggregate will be in an amount of no less than \$1,000,000. The Risk Manager for the CITY may authorize lower liability limits for the automobile policy only, at the Risk Manager's sole discretion.

(b) **Proof of Insurance.** CONTRACTOR will furnish proof of insurance acceptable to the CITY prior to or at the time of execution of this Contract. CONTRACTOR will not commence work until all proof of such insurance has been filed with and approved by the CITY. CONTRACTOR will furnish evidence of all required insurance in the form of certificates of insurance which will clearly outline all hazards covered as itemized above, the amounts of insurance applicable to each hazard, the expiration dates. The certificates will also contain the following language as to cancellation:

"In the event of cancellation of this policy by the insurer or any insured, this Company will give not less than 30 days advance written notice to:

Risk Manager
The City of Daytona Beach
P.O. Box 2451
Daytona Beach, Florida 32115-2451"

If requested by the CITY, CONTRACTOR will furnish copies of the insurance contracts to support the certificates of insurance and the copies of said insurance must be acceptable to the CITY.

(c) **Cancellation; Replacement Required.** CONTRACTOR will file replacement certificates 30 days prior to expiration or termination of the required insurance occurring prior to the acceptance of the work by the CITY. If a required policy is canceled without CONTRACTOR's prior knowledge CONTRACTOR will immediately notify the CITY immediately upon becoming aware that a required insurance coverage has been canceled for any reason, and promptly replace the canceled policy. The CITY expressly reserves the right to replace the canceled policy at CONTRACTOR's expense if CONTRACTOR fails to do so.

(d) **Termination of Insurance.** CONTRACTOR may not cancel the insurance required by this Contract until the work is completed, accepted by the CITY and CONTRACTOR has received written notification from the Risk Management Division of the CITY that CONTRACTOR may cancel the insurance required by this Contract and the date upon which the insurance may be canceled. The Risk Management

Division of the CITY will provide such written notification at the request of CONTRACTOR if the request is made no earlier than two weeks before the work is to be completed.

(e) **Liabilities Unaffected.** CONTRACTOR's liabilities under this Contract will survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverages. Similarly, CONTRACTOR's liabilities under this Contract will not be limited to the extent of the existence of any exclusions or limitations in insurance coverages, or by CONTRACTOR's failure to obtain insurance coverage.

CONTRACTOR will not be relieved from responsibility to provide required insurance by any failure of the CITY to demand such coverage, or by CITY's approval of a policy submitted by CONTRACTOR that does not meet the requirements of this Contract.

Section 14. Bonds. No bonding is required for this project.

Section 15. Notice. Unless otherwise expressly agreed herein, all notices, requests, and demands to or upon the Parties will be delivered by hand, delivered by a courier service, provided to a nationally recognized delivery service for overnight delivery, transmitted to a receiving email followed by hard copy within two days, or by U.S. mail, postage prepaid by registered or certified mail, return receipt requested, to the addresses set forth herein:

To the CITY:
City of Daytona Beach
Attn: Joseph Paul, Operations Project Manager
950 Bellevue Avenue
Daytona Beach, FL 32114
Email: Paulice@codb.us

To CONTRACTOR:
Blue Tiger Pools, LLC
Attn: Maurice Francis Bushroe, President
400 Venture Drive, Suite A
South Daytona, FL 32119
Email: info@bluertibbonpools.com

provided, however, that either Party may change the person or address designated for receipt of the Party's notices, by providing written notice to the other Party.

Section 16. Personnel. CONTRACTOR represents that CONTRACTOR has or will secure at CONTRACTOR's own expense, all personnel required in performing the services under this Contract. Such personnel will not be employees of or have any contractual relationship with the CITY.

All personnel engaged in the work will be fully qualified and will be authorized under state and local law to perform such services.

Section 17. CITY's Responsibilities. The CITY agrees to make available for review and use by the CONTRACTOR, reports, studies, and data relating to the services required. The CITY will establish a project manager to meet periodically with the CONTRACTOR to facilitate coordination and ensure expeditious review of work product.

Section 18. Limitation on Waivers. Neither the CITY's review, approval, or acceptance of, or payment for, any of the services provided by CONTRACTOR, will be construed to operate as a waiver of the CITY's rights under this Contract. CONTRACTOR will be and always remain liable to the CITY in accordance with applicable law for any and all damages to the CITY caused by the CONTRACTOR's negligent or wrongful provision of any of the services furnished under this Contract.

Failure of the CITY to exercise any right or option arising out of a breach of this Contract will not be deemed a waiver of any right or option with respect to any subsequent or different breach, or the continuance of any existing breach. Furthermore, the failure of the CITY at any time to insist upon strict performance of any condition, promise, agreement or understanding set forth herein will not be construed as a waiver or relinquishment of the CITY's right to insist upon strict performance of the same condition, promise, agreement or understanding at a future time.

Section 19. Dispute Resolution. If a dispute exists concerning this Contract, the Parties agree to use the following procedure prior to pursuing any judicial remedies.

(a) **Negotiations.** A Party will request in writing that a meeting be held between representatives of each Party within 14 calendar days of the request or such later date that the Parties may agree to. Each Party will attend and will include, at a minimum, a senior level decision maker (an owner, officer, or employee of each organization) empowered to negotiate on behalf of their organization. The purpose of this meeting is to negotiate in the matters constituting the dispute in good faith. The Parties may mutually agree in writing to waive this step and proceed directly to mediation as described below.

(b) **Non-Binding Mediation.** Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them. Within 30 days after the procedure described in Subsection (a) proves unsuccessful or the Parties mutually waive the subsection (a) procedure, the Parties will submit to a non-binding mediation. The mediation, at a minimum, will provide for (i) conducting an on-site investigation, if appropriate, by the mediator for fact gathering purposes, (ii) a meeting of all Parties for the exchange of points of view and (iii) separate meetings between the mediator and each Party to the dispute for the formulation of resolution alternatives. The Parties will select a mediator trained in mediation skills and certified to mediate by the Florida Bar, to assist with resolution of the dispute. The Parties will act in good faith in the selection of the mediator and give consideration to qualified individuals nominated to act as mediator. Nothing in this Contract prevents the Parties from relying on the skills of a person who also is trained in the subject matter of the dispute or a contract interpretation expert. Each Party will attend and will include, at a minimum, a senior level decision maker (an owner, officer, or employee of each organization) empowered to negotiate on behalf of their organization.

If the Parties fail to reach a resolution of the dispute through mediation, then the Parties are released to pursue any judicial remedies available to them.

Section 20. General Terms and Conditions.

(a) **Amendments.** Except as otherwise provided herein, no change or modification of this Contract will be valid unless the same is in writing and signed by both Parties.

(b) **Assignments and Subcontracting.** No assignment or subcontracting will be permitted without the CITY's written approval.

(c) **Compliance with Laws and Regulations.** In providing all services pursuant to this Contract, CONTRACTOR will abide by all statutes, ordinances, rules, and regulations pertaining to, or regulating the provisions of, such services including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules, or regulations will constitute a material breach of this Contract and will entitle the CITY to terminate this Contract immediately upon delivery of written notice of termination to the CONTRACTOR.

(d) **Truth in Negotiations Certificate.** CONTRACTOR hereby certifies that the wages and other factual unit costs supporting the compensation herein are accurate, complete, and current at the time of this Contract.

(e) **No Third Party Beneficiaries.** There are no third party beneficiaries of CONTRACTOR's services under this Contract.

(f) **Contingency Fee.** CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR, to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONTRACTOR, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

(g) **Nondiscrimination.** CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, sex, or national origin. CONTRACTOR will take affirmative action to ensure that applicants are employed and the employees are treated during employment without regard to their sex, race, creed, color, or national origin. Further, CONTRACTOR agrees to comply with all local, state, and federal laws and ordinances regarding discrimination in employment against any individual on the basis of race, color, religion, sex, national origin, physical or mental impairment, or age. In particular, CONTRACTOR agrees to comply with the provisions of Title 7 of the Civil Rights Act of 1964, as amended, and applicable executive orders including, but not limited to, Executive Order No. 11246.

(h) **Principles in Construing Contract.** This Contract will be governed by and construed in accordance with the laws of the State of Florida. Captions and paragraph headings used herein are for convenience only, are not a part of this Contract and will not be deemed to limit or alter any provisions hereof or to be relevant in construing this Contract. The use of any gender herein will be deemed to be or include the other genders, and the use of the singular herein will be deemed to be or include the plural (and vice versa), wherever appropriate. If any word, phrase, clause, sentence or provision of the Contract, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, invalid or unenforceable, that finding will only effect such word, phrase, clause, sentence or provision, and such finding will not affect the remaining portions of this Contract; this being the intent of the Parties in entering into the Contract; and all provisions of the Contract are declared to be severable for this purpose.

(i) **Venue.** The exclusive venue for any litigation arising out of this Contract will be Volusia County, Florida if in state court, or the U.S. District Court, Middle District of Florida if in federal court.

(j) **Litigation Costs.** Except where specifically provided herein, in case of litigation between the Parties concerning this Contract, each party will bear all of its litigation costs, including attorney's fees.

(k) **Force Majeure.** A force majeure event is an act of God or of the public enemy, riots, civil commotion, war, acts of government or government immobility (whether federal, state, or local) fire, flood, epidemic, quarantine restriction, strike, freight embargo, or unusually severe weather; provided, however, that no event or occurrence will be deemed to be a force majeure event unless the failure to perform is beyond the control and without any fault or negligence of the Party charged with performing or that Party's officers, employees, or agents. Whenever this Contract imposes a deadline for performing upon a Party, the deadline will be extended by one day for each day that a Force Majeure event prevents the Party from performing; provided, however, that the Party charged with performing and claiming delay due to a Force Majeure event will promptly notify the other Party of the Event and will use its best efforts to minimize any resulting delay.

(l) **Jury Trial Waived.** THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS CONTRACT, OR ANY DEALINGS BETWEEN THE PARTIES. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY DISPUTES BETWEEN THE PARTIES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER, INCLUDING WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS.

(m) **Authority to Bind CONTRACTOR.** The undersigned representative of CONTRACTOR represents and warrants that he or she is fully authorized to bind CONTRACTOR to the terms and conditions of this Contract.

(n) **Incorporation of ITB and Bid.** The ITB and the CONTRACTOR's responsive bid are incorporated herein by reference as Composite Exhibit D. Composite Exhibit D is not attached but will remain on file with the CITY's Purchasing Agent and will be available upon request made to the City Clerk. In case of conflicts between the ITB and Proposal, the ITB will govern. In case of conflicts between Composite Exhibit D and other provisions of this Contract, including Exhibits A, B, and C, this Contract will govern.

(o) **Integration.** This Contract represents the entire agreement of the parties with respect to the subject matter hereof. No representations, warranties, inducements or oral agreements have been made by either Party except as expressly set forth herein, or in other contemporaneous written agreements.

IN WITNESS WHEREOF, the Parties through their undersigned representatives have caused this Contract to be executed in duplicate original.

THE CITY

CONTRACTOR

By: _____
Derrick L. Henry, Mayor

By: Rebecca M. Mitchum
Printed Name: Rebecca M. Mitchum
Title: General manager
Date: June 1, 2018

Date: _____

Attest: _____
Letitia LaMagna, City Clerk

Approved as to legal form:

By: _____
Robert Jagger, City Attorney

EXHIBIT A: Scope of Services

IN GENERAL

CONTRACTOR will provide service, including all chemicals, to Breakers Oceanfront Park Splash Pad and the Clock Tower Fountain as described below.

CONTRACTOR will maintain all required certifications for the duration of the contract, including, as applicable, Code of Federal Regulations Department of Transportation requirements for transportation of hazardous materials, and CPO (Certified Pool/Spa Operator).

CONTRACTOR will provide service to the Splash Pad and the Clock Tower Fountain daily, 365 days/year. Service price includes cost of all required chemicals.

CONTRACTOR must provide all transportation equipment including vehicles and trailers required for performance. CONTRACTOR is not authorized to use any City-owned equipment or vehicles.

CONTRACTOR will submit invoices no more frequently than once per month. Invoices will separately list service at Splash Pad and at Clock Tower.

BREAKERS OCEANFRONT PARK SPLASH PAD

Service Including Chemicals. Splash Pad is a "swimming pool" for purposes of Health Department compliance, and uses liquid chlorine feeder system.

1. CONTRACTOR will provide daily service of Splash Pad and equipment.
2. Service includes each of the following:
 - a. Checking and maintaining proper chemical stabilization of water.
 - b. Vacuuming collector tank.
 - c. Cleaning filter and pump strainers.
 - d. Backwashing filter.
 - e. Ensuring all equipment is in good working order.
3. CONTRACTOR will notify the Facilities Maintenance Division immediately of any malfunctioning equipment. During normal working hours, call 386-671-8726. After hours and on weekends call 386-212-8892.
4. CONTRACTOR will complete daily service no later than 9:00am.
5. CONTRACTOR will deliver and add required quantities of chlorine, Non-Fuming Sulfuric Acid, sodium bicarbonate and all other chemicals to maintain compliance with Florida Statute 514 and Florida Administrative Code 64E-9.
6. CONTRACTOR will sign the service log provided for this purpose in the pool equipment "doghouse", including date and time of service, Chlorine and pH readings, service and maintenance provided, initials of person providing service, and noting all equipment malfunctions.
7. CONTRACTOR's will submit invoices no more frequently than once per month, indicating service to the Splash Pad at the Contract monthly unit price.
8. Approximate annual usage of chemicals at Splash Pad:
 - a. Chlorine: 20 gal/month X 12 months = 240 gal/year
 - b. Sodium Bicarbonate: 6 50-lb bags/year (300 lbs/year)
 - c. Non-Fuming Sulfuric Acid 8 gal/month X 12 months = 96 gal/year

- d. Calcium: 2 25-lb bags/year
- e. Shock: 1 25-lb drum/year
- f. Stabilizer: 1 50-lb drum/year

OCEANFRONT CLOCK TOWER FOUNTAIN

Service Including Chemicals. Swimming is not permitted as this is a fountain and not a swimming pool. Service and chlorine will be provided to maintain a pleasing appearance. Fountain has a chlorine feeder system that uses 3" chlorine pucks.

1. CONTRACTOR will provide service of Clock Tower fountain, pool and equipment on a daily basis, including each of the following:

- a. Cleaning filter.
- b. Cleaning of fountain pool.
- c. Ensuring all equipment is in good working order.

2. CONTRACTOR will complete daily service no later than 9:30am, 7 days per week, year round, including weekends and holidays.

3. CONTRACTOR will provide chlorine only.

4. CONTRACTOR will drain and clean fountain pool on a quarterly basis.

5. CONTRACTOR will paint interior of fountain pool annually, upon written direction of the City to perform this service, using Sunstone Interior Finish with Bonding Agent, or acceptable equal.

6. CONTRACTOR will notify the Facilities Maintenance Division immediately of any malfunctioning equipment. During normal working hours, call 386-671-8726. After hours and on weekends call 386-212-8892.

7. CONTRACTOR will sign the service log provided for this purpose in the fountain pool equipment "doghouse", including date and time of service, chlorine reading, service and maintenance provided, initials of person providing service, and noting all equipment malfunctions.

8. CONTRACTOR's monthly invoice will indicate service to the Clock Tower Fountain Pool, at the monthly Contract unit price.

9. Approximate annual usage of chemicals at Clock Tower:

- a. Chlorine 3" pucks: 50 lb/year

10. Liquid Chlorine Minimal usage. If shock is required, provide at no extra cost to City.

Exhibit B: Fee Schedule

FEES FOR OCEANFRONT SPLASH PAD

For Daily Services	\$1210.00 Monthly
Chemical Supply	\$140.00 Monthly

FEES FOR CLOCK TOWER FOUNTAIN POOL

For Daily Services	\$800.00 Monthly
Chemical Supply	\$10.00 Monthly
For Drain & Acid Wash (annual only)	\$200.00 Annually

Total \$2,160 monthly

Exhibit C: Special Instructions

SI 1. NON-EXCLUSIVE CONTRACT. Award of this Contract will impose no obligation on the part of the City to use the successful bidder for all work of this type that may be required during the Contract period. This is not an exclusive contract. The City specifically reserves the right to concurrently contract with other companies for similar work if the City deems such action to be in the City's best interests. In the case of multiple term contracts, this provision will apply separately to each item.

SI 2. BOOKS AND RECORDS. Books and Records. The Vendor will maintain books, records, and documents pertinent to performance under this Contract and any purchase order issued hereunder in accordance with generally accepted accounting principles. The City will have inspection and audit rights to such records during the term of this Contract and for three years following the termination of obligations hereunder. Records which relate to any litigation, appeals or settlements of claims arising from such performance will be made available until a final disposition has been made of such litigation, appeals or claims.

SI 3. PRICE REDETERMINATION. Due to volatile prices in pool chemicals the successful Contractor will have the option to request price redeterminations.

Contractor requested redeterminations: The Contractor will not request a price redetermination in the first 12 months of any resulting contract. Contractor may request in writing a redetermination at least 60 days prior to the end of each term to go in effect for the next term. The Contractor's redetermination request will be based off the Producer Price Index (PPI) "Commodity data for Chemicals and allied products-Industrial chemicals, not seasonally adjusted" which can be found at <https://beta.bls.gov/dataViewer/view/timeseries/WPU061>. Contractor can only request a price adjustment based on the prior 12 month period. For example, if the Contractor does not request a price redetermination in the second term they cannot ask for an adjustment based on a 24 month period, but only the last 12 months.

Only the chemicals (ie chlorine) portion of the fee schedule rates will be subject to the price redetermination. The service rates will remain fixed for the entire contract, including any renewal periods.

City response: It will be the determination of the City whether the price determination request is warranted. The City will have 30 days from the date of the written request to accept or reject said request. If the request is accepted, a written confirmation with the newly adjusted price, will be sent to the Contractor and the new price will begin with the next term. If the price is rejected, the Contractor will complete the current term and may either i) renew at the rate of the current term (if renewal option is available) or ii) end the contract at the end of the current term.

Calculation: The PPI for Commodity data for Chemicals and allied products-Industrial chemicals, not seasonally adjusted for Mar 2018 is 269.1 based on the web site given above. Check the 12 month % change and update. The screen will show the 12 month % change which will be what the Contractor may base their adjustment on.

Composite Exhibit D is not attached. It will be kept on file with the Purchasing Agent, and will be made available upon request made to the City Clerk