

Sponsored by: Williams

**CITY OF MARATHON, FLORIDA
RESOLUTION 2026-45**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA APPROVING A DESIGN BUILD CONTRACT WITH SPLASHPADS USA VIA A PIGGY-BACK CONTRACT FROM NATIONAL BUYERS GROUP SAM.GOV ID # CWFYU2TZ1LD3 FOR A NEW SPLASH PAD IN THE AMOUNT NOT TO EXCEED \$700,000.00; AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT AND EXPEND AND APPROPRIATE FUNDS IN THE AMOUNT OF \$700,000.00; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Ordinance 2015-04, the City adopted purchasing policies and procedures (the "Purchasing Policies and Procedures") after determining that it was fiscally prudent and in the City's best interest to adopt policies and procedures for City employees and officials regarding the acquisition and purchase of contractual services, equipment, goods, and other similar types of services; and

WHEREAS, in accordance with Section 2-184(3), the City may waive competitive bidding procedures to made under state general services administration contracts, federal, county or other governmental contracts or competitive bids with other governmental agencies with a substantially similar competitive bidding process (a "Piggy-Back" Agreement) ; and

WHEREAS, the City requires expediated completion of construction of a new splash pad in a total amount not to exceed \$700,000.00; and

WHEREAS, a portion of this maximum amount was provided by a donation the City received; and

WHEREAS, the City desires to engage Splashpads USA. ("Contractor") for such services to the City of Marathon via a piggyback contract from National Buyers Group.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:

Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The City Council hereby approves a "Piggy-Back" Agreement between the City of Marathon, Florida and the Contractor. The Contract between the City and Contractor for design-build construction of the splash pad in an amount not to exceed \$700,000.00; together with such non-material changes as may be acceptable to the City Manager and approved as to form by the City Attorney, is hereby approved.

Section 3. The City Manager is authorized to execute the contract, expend and appropriate funds in the amount of \$700,000.00.00 on behalf of the City.

Section 4. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 12th DAY OF MAY 2026.

THE CITY OF MARATHON, FLORIDA


Lynny Del Gaizo, Mayor

AYES: Still, Struyf, Landry, Matlock, Del Gaizo
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:


Diane Clavier, City Clerk

(City Seal)

**APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**


Steve Williams, City Attorney

CONSISTENCY CHECKLIST:

Yes

No

1. Comprehensive Plan

XX

FISCAL NOTE:

The FY26 Adopted Capital Infrastructure Fund Budget includes \$600,000 for this project. After discussion with the City Manager and Finance Director, the additional funds would be available from the Capital infrastructure budget from saving on other projects.

RECOMMENDATION: Council approve Resolution 2026-45

PROJECT NAME: CITY OF MARATHON, SPLASH PAD PROJECT
PROJECT LOCATION: 3911 OVERSEAS HWY. MARATHON, FL 33050
CONTACT/CLIENT: CITY OF MARATHON, FLORIDA. MARK TUSCHEL
TUSCHELM@CI.MARATHON.FL.US
SITE: COMMERCIAL/PUBLIC



April 16th 2026

INSTALLATION OF RECIRCULATING SPLASH PAD AS FOLLOWS:

**Recirculating Splash Pad – Dimension Circular Overlap approximately 4300 sq. ft.)
Approximately 800' of Run or less from Center Pad to Equipment Area/30' from tank
to Equipment Area**

Scope of Work; – All work is as per Design Engineered Plan Set

- Provide and Install all sch 80/40 PVC pipelines to Equipment/Tank/Splash Pad
- Perform piping pressure tests
- Provide and Install Stainless Steel Ground Nozzle Housings, Stainless Steel Feature Base Footings, Forms, Drains.
- Provide and Install all Stainless Steel SPUSA Above Ground Features
- Provide and Install all SPUSA Brass or Delrin Nozzle inserts
- Provide and Install Direct Bury Tank and Bulk heads (compaction according to Engineered plans.)
- Provide and remove over excavation per site elevation and Plans with 6" compaction lifts, and compaction according to approved engineered plans. (If needed)
- Provide and install engineered Commercial Concrete Splash Pad base 4000 psi min.
- Provide and Install New Equipment in Equipment Area.
- Provide and Install Concrete floor pad for Equipment area.
- Bond loop all metal components on splash pad #8 copper wire to equipment room inspection per electrician for continuity.
- Train Client Personnel for Maintenance and Winterization instructions
- ADA compliant
- Remote access for chemical systems and dosage and automatic record keeping
- Installation of splash pad including and not limited to required earthwork to reach proposed grades.
- Comply and coordinate with all inspections necessary by County and State entities.

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support@splashpadsusa.com 855-433-PADS (7237)

EQUIPMENT & SPLASHPAD COMPONENTS

(31) SPUSA Commercial Housings & Nozzles with varying patterns of spray

(1) Splash Pad Drains

(1) 1200 Gallon Holding Tank or Equivalent

(1) Pentair 7.5 Horsepower Pump – Feature, nozzles and recirculation. Complete total UV flow per Florida State Health Code.

(1) U.V. Sanitizer NSF 50 certified (Chlorking) Crypto Certified

(1) IPS m-920 Chemical Feeder with Stenner Pumps – Remote Capable

(1) K1100 electronic water filler

(1) Pentair – 420 Cartridge Filter or Sand Filter TC-60

(1) 8 Valve Manifold for Nozzles -Sch 80 True union ball valves, Irritrol 700 solenoid valves for nozzles

(1) Pentair 3 Way Diverter/Valve Solenoid valves/Misc. Sch. 40 Sch 80 Fittings/Flow meters Pressure gauges Etc.

(1) SPUSA Control Box W/ Activation Timer and settings

(1) SPUSA Foot Pad Activator w/ Proximity Switch

All Stainless-Steel base footings and above ground components with 30-year warranty. Made in USA (see warranty page)

(2) SPUSA Stainless Steel Cane Showers

(1) SPUSA Stainless Steel Dual Dump Bucket with City Logo

(1) SPUSA Stainless Steel 40" Mushroom w/Dolphin spots

(1) SPUSA Stainless Steel 60" Mushroom w/turtle spots

(3) SPUSA Stainless Steel Water Cannons – Adjustable angle capability and complete SS/Brass CNC components. NO internal bearings.

(2) SPUSA Stainless Steel Coconut Palm Dump

(1) SPUSA Stainless Steel Mega Dump Bucket with City Logo

(2) SPUSA Stainless Steel Half Rain Curtain

(2) SPUSA Stainless Steel Full Rain Curtain

(1) SPUSA Modified Coating Non-Slip surface ADA compliant – Additional Turnkey savings component

Complete Turn-Key Recirculating total: 636,500.00 (4300

sq. ft. 15 above ground features /31 ground nozzles and non-slip surface)

OWNER's RESPONSIBILITIES

- Min. 1" culinary and back flowed water line source to equipment room area.
- Electrical 220v brought to equipment room along with pump hook up, 110 V for plugs, grounding of equipment, all other electrical needs by licensed electrician per pump and receptacles per engineered plan set.
- All permits, permit fees, and inspections
- Sewer line in equipment area for tank flush out (if needed) Sand Filter back wash.
- Provide access to Equipment area for all piping to tank and splashpad
- Re furbish and replace any damage caused to landscape, existing drainage lines, sewer or other utilities around Splashpad or tank area and to Equipment area.

ABOVE TURNKEY PRICING

- Payment of Engineered plan set required by County and State of Florida. SPUSA can provide a Florida Stamped plan set of \$14,500.00 above Turnkey price for Monroe County and Florida State Health Department.
- Provide Site Plan for elevations and requirements per possible Florida State and County requirements to accompany Stamped Engineered Plan Set provided by SplashPadsUSA. (If required)

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support@splashpadsusa.com 855-433-PADS (7237)



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Proposal

Dated:	5/21/2025	Project Name:	21693 Marathon Splashpad
Prepared For:	Wendy Bowerman Rep Services 407-831-9658 wendy@repservices.com	Aquatix Proposal Number:	1197071-01-01
			Total GPM: 646

Dear Wendy:

It is our understanding that Aquatix by Landscape Structures is to provide the following water play features for the above referenced project.

Water Play Features

<u>Qty</u>	<u>Description</u>	<u>Model #</u>	<u>Unit Sales Price</u>	<u>Final Sales Price</u>
1	Acrylic Tot Shower Dome	AQ101109	\$5,160.00	\$5,160.00
1	Arch Jet Manifold - SS - PVC	AQ101154	\$5,670.00	\$5,670.00
1	Curvy Jet Manifold - SS - PVC	AQ101151	\$6,170.00	\$6,170.00
2	Funnel Twist- SS	316626	\$770.00	\$1,540.00
2	Geyser - SS	AQ100462	\$2,580.00	\$5,160.00
1	Junior Water jewel - SS	AQ101165	\$770.00	\$770.00
1	Triple Arch Jet - SS	AQ101158	\$770.00	\$770.00
2	Triple Mist Nozzle	AQ101156	\$980.00	\$1,960.00
1	Multi-Play Tubular	AQ100224	\$65,510.00	\$65,510.00
1	Pipe Water Bar	AQ101137	\$11,190.00	\$11,190.00
1	Tot Rotating Water Ball- SS	AQ101138	\$8,260.00	\$8,260.00
1	Shower Water Dome	AQ101139	\$13,790.00	\$13,790.00
1	Tot Arch- SS	AQ101140	\$6,385.00	\$6,385.00
2	Tot Groundspray Covers	AQ100512	\$1,400.00	\$2,800.00
2	Twist N Spray- SS	AQ101142	\$7,205.00	\$14,410.00
1	Water Bucket Brigade	AQ100119	\$33,535.00	\$33,535.00
3	Water Globe	AQ101092	\$8,975.00	\$26,925.00
2	Water Shower	AQ100170	\$5,610.00	\$11,220.00
1	Water Spout	AQ100128	\$9,305.00	\$9,305.00
1	Water Tent - SS	AQ100443	\$6,780.00	\$6,780.00
				\$237,310.00

Water play feature design notes:

- All above water play features are to be the standard product of Aquatix by Landscape Structures.
- All ground spray features are imbed and installed prior to concrete being poured.
- Pricing reflects painted products.
- Additional fees may apply for products to be powdercoated.
- Any surface finishes shown on renders are conceptual and provided by others.
- Level mounting area required for all products.
- Above ground features are surface mounted and are not intended to be a direct replacement. See retrofit disclaimer under general conditions.
- Recommended Pool Water Depths:
 - Do not exceed 6" water depth on our underwater bubbler and structures up to 24" tall
 - Do not exceed 12" water depth on structures up to 48"
 - Do not exceed 18" water depth on structures taller than 48"
 - Do not exceed 12" water depth on Multi Level platforms . No water spray or crawl tunnels to be underwater.

Mechanical Components

Recirculation System

\$225,897

1 Sand Filtration Skid

A pre-plumbed, pre-wired, integrated filtration equipment system mounted on a finished skid. The skid to consist of main system control panel, filtration pump with integral hair and lint strainer, sand filtration system, automatic chemical treatment controller, gauges, and flow meter. System to be manufactured by Aquatix and be capable of 140 gpm filtration rates.

1 Chemical Treatment

To consist of Liquid Chlorine Pump, Liquid Acid Pump, and (2) 15 gallon Chemical Solution Crock. CAT controller manufactured by Hayward. To be stored in a Nema4 enclosure.

2 Ultra Violet Disinfection System

To consist of a HydroRite UV disinfection unit that is housed in a sch 80 PVC enclosure, UL listed, NSF certified and cryptosporidium evaluated, and EPA registered. Unit has electronic controller that has UV monitors. Unit to be capable of the feature flow rate of 646. To be provided loose. Plumbing and electrical connections by others.

1 Feature Skid

A pre-plumbed, pre-wired, integrated equipment system mounted on a finished skid. System to consist of a self-priming feature pump with integral hair and lint strainer, check valves, isolation valves, gauges, and flow switch. System to be manufactured by Aquatix and be capable 646 gpm feature flow rates. Typical power requirements 230V 1Ph/60Hz and 230v 3Ph/60hz. ***INCLUDES DIVERTER VALVE.**

1 Distribution Manifold

A Sch. 80 PVC distribution manifold with ball valve flow control for all water activities. Manifold to be connected (in the field) to feature pump discharge and have all discharge lines with manual flow control to water play elements. *Y strainers will be included if misting products are proposed.

1 Pre-fabricated Water Reservoir

To consist of a 4000 gallon concrete vessel complete with diamond plate access hatch, access ladder, floating skimmer, water make-up float valve, overflow outlet, submersible pump out system, inlet loop manifold, pumps foot valves, and all piping and electrical connections specific to project design.

2 Aquavator

To consist of an stainless steel activation bollard with bulldog touch sensor that will signal a control panel to activate feature supply system for set duration of time.

1 Control Panel - All On/Off

To be a UL listed control panel that will provide complete operating system power distribution and system controls for an on/off recirculation system. Panel includes a programmable control system that will set hours of operation, duration of system run time, and activate water flow via a touch enabled activation device. Typical electrical requirements for ON/OFF Recirculation systems are 230V 1Ph/60Hz and 120v 1Ph/60hz

3 Collector Box

To consist of a 18" diameter PVC sump and HDPE grate top. Each collector box has a nominal capacity of 250 gpm gravity supply to water reservoir.

1 Rain Diverting Waste Valve Box

To consist of an electric gate valve housed in a plastic burial housing that will allow for collector boxes to drain to waste when feature pumping system is not operating.

Mechanical system design notes:

- All mechanical components are per the described products above. If there are code requirements that have different product capabilities, Aquatix will need to be notified for a revised proposal. Aquatix is not responsible for specific code related requirements.
- If you want Wi-Fi capabilities on the control panel please inform your Aquatix consultant.

Services

Design & Construction drawings:

\$12,032

Including: All design and construction drawings for splash pad project construction to consist of construction of concrete pad, mechanical system, electrical and control systems, inbed spray fixtures / collector box installation details, water play structure assembly / installation on concrete splash pad, equipment systems installation and hookups.

Splash Pad Design Notes:

1. Aquatix by Landscape Structures design services are based on ideal site locations and conditions.
2. Aquatix by Landscape Structures design services do not include soil corrections, demolition planning, site elevation plans, utility planning / design or relocation of utilities. (i.e. based on water, waste and power being available at designed area's of splash pad by others.)
3. All permits and costs of permits are not included in our splash pad design package.
4. Design package will be prepared based on Aquatix's interpretation of Local health code.
5. The fee for design services is non-commissionable.
6. Any additional drawings associated with project outside of splash pad to be made by others. (sidewalks, landscaping, electrical)

*Mini design package is available upon request.

Sealed Engineer Stamp:

\$6,800

Aquatix by Landscape Structures to have drawings stamped by a licensed PE in the State of project. The fee for design services is non-commissionable.

Please note: Subsequent requests for additional revisions and PE Stamps can result in additional charges ranging between \$1,500-\$4,000 per stamp.

Lead times for revisions will vary based on timing and detail.

System Startup and Training:

\$4,000

Aquatix by Landscape Structures to provide (1) factory direct technician for (2) day of system startup, balancing, and owner training. Aquatix requires 2-4 weeks advance notice depending on seasonal demand.

Pricing Summary

Total Price for Equipment as Described Above:

\$486,039

FOB Destination:

\$45,400

*Water heaters are offered at additional costs.

*Equipment Enclosures are offered at additional costs (otherwise mechanical equipment to be stored in above ground equipment enclosure, by others).

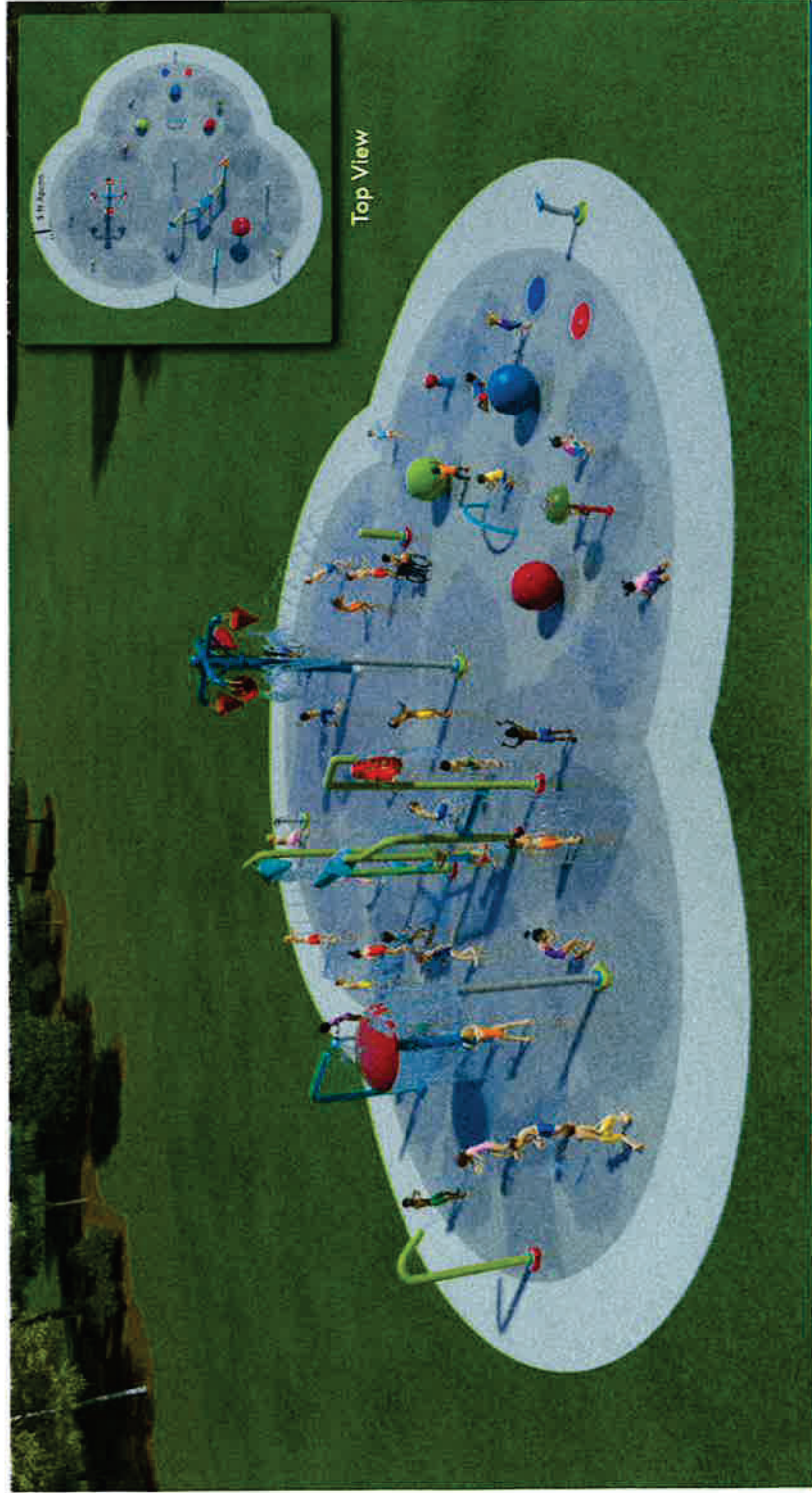
*Quote is for product only.



Budgetary Examples

Independent Recirculation System (Not Sequencing)

Example R - H



Splash Pad Data

Total Feature Flow Rate
661 GPM

Splash Features
Multi Play Tubular
Pipe Water Bar
Tot Rotating Water Ball
Shower Water Dome
Tot Arch
(2) Tot Ground Spray Cover
(2) Twist N Spray
Water Bucket Brigade
(3) Water Globe
(2) Water Shower
Water Spout
Water Tent
Acrylic Tot Shower Dome
Arch Jet Manifold
Curvy Jet Manifold
(2) Funnel Twist
(2) Geyser
Junior Water Jewel
Triple Arch Jet
(2) Triple Mist Nozzle

Size of Concrete Pad
Dimensions: 79' 0" x 72' 1"
Total Area: 4,321 sq. ft.

*This example assists in creating a design direction based on scale of project and number of water elements being considered

Proposal Splashpad

Inclusions:

- Splashpad 52X80 (4160 Sq feet)
 - Outer dry zone 6 feet surrounding the splashpad zone
 - Measured from the front edge of the splash pad:
 - 0'-12': front activity zone
 - Small ground sprays and the front slide centered here
 - 12'-32': primary play zone
 - Dolphin/turtle spray toys and vertical jets
 - 32'-50': central bucket zone
 - Main dumping bucket feature centered
 - 50'-64': rear hoop zone
 - 3 Hoops on both sides
 - 64'-80': back safety / splash runout zone
 - Open spray space and clearance behind the bucket
- Buried tank – 2500 gallons
- Utility Building 10x10 with recirculation system
 - Sand filter(s)/Pump(s)/UV/Automated chemical controller/Auto levelling system
- Optional – Shade Structures/benches/picnic tables



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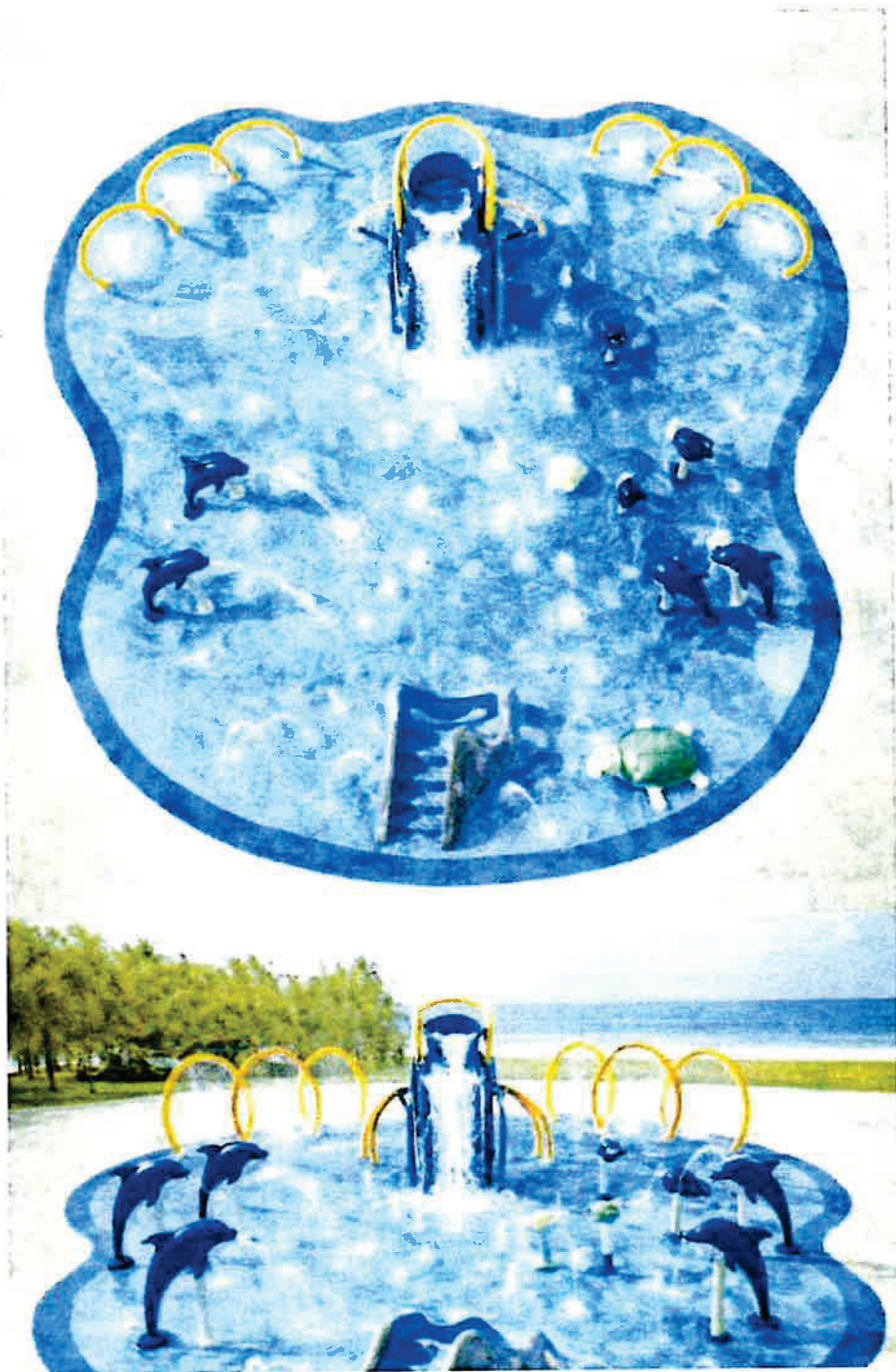
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ESTIMATE

Oasis Waterplaygrounds Inc
9801 Westheimer Rd Ste 300
Houston, TX 77042-3979

accounting@oasiswaterplaygrounds.
com
+1 (713) 370-6601
www.oasiswaterplaygrounds.com



Bill to
City of Marathon Florida
9805 Overseas Highway
Marathon, Florida 33050 USA

Ship to
City of Marathon Florida
9805 Overseas Highway
Marathon, Florida 33050 USA

Estimate details

Estimate no.: 1410
Estimate date: 04/18/2026

#	Product or service	Description	Qty	Rate	Amount
1.	3 Hoop Set	Stainless 304L - UV resistant powder coating	2	\$18,000.00	\$36,000.00
2.	Jumping Dolphin	Fiberglass - UV resistant powder coating	5	\$9,100.00	\$45,500.00
3.	Giant Dumping Bucket	Stainless 304L - UV resistant powder coating with custom logo (TBD)	1	\$24,500.00	\$24,500.00
4.	Fish Post	Stainless 304L - UV resistant powder coating	2	\$4,200.00	\$8,400.00
5.	Junior Slide	Fiberglass/LPDE plastic	1	\$16,400.00	\$16,400.00
6.	Turtle	Fiberglass - UV resistant powder coating	1	\$8,400.00	\$8,400.00
7.	Single Stream Jet	Brass - Flush mounted	5	\$495.00	\$2,475.00
8.	Fan tail Jet	Stainless 304L - Flush mounted	6	\$795.00	\$4,770.00
9.	Water Tunnel	Stainless 304L - Flush mounted	2	\$1,950.00	\$3,900.00
10.	Activator	Stainless 304L - UV resistant powder coating - capacitive touch sensor (activation of the splashpad)	1	\$2,900.00	\$2,900.00
11.	Manifold	Stainless 304L - PGA valves - pressure gauge - water hammer arrestor - 23 output	1	\$11,400.00	\$11,400.00
12.	Control Panel	10" touchscreen - customizable date/time/feature sequencing. chemical	1	\$19,200.00	\$19,200.00

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12.	Control Panel	10" touchscreen - customizable date/time/feature sequencing. chemical	1	\$19,200.00	\$19,200.00

level monitoring/tank level
monitoring/emergency stop

13. Splashpad Installation	Installation inclusive of all labor and materials - (concrete slab with rebar at 12", 5 inch thickness)	1	\$298,500.00	\$298,500.00
14. Anti-Slip Surfacing	Spraydeck anti slip textured surfacing with cool deck	5760	\$12.00	\$69,120.00
15. Design and engineering	Stamped set incl hard copies (5)	1	\$2,200.00	\$2,200.00
16. Splashpad Manuals	(5) hard copies and digital copy	1	\$1,295.00	\$1,295.00
17. Drain	14X14 Safety approved drains	4	\$425.00	\$1,700.00
18. Buried Tank	Norwesco 2500 gallon buried tank, Bulkheads (2", 3", 4", 6")	1	\$18,500.00	\$18,500.00
19. Feature Pump	Hayward VS950 or equivalent	1	\$3,250.00	\$3,250.00
20. Recirculation Pump	Hayward VS900 or equivalent	1	\$2,390.00	\$2,390.00
21. Chemical Controller	Hayward Cat 2000 or equivalent	1	\$4,500.00	\$4,500.00
22. Levlor	K1100 or equivalent	1	\$2,200.00	\$2,200.00
23. Sand Filters	Hayward pro series 32" or equivalent	1	\$5,100.00	\$5,100.00
24. UV	Hayward UV or equivalent	1	\$6,000.00	\$6,000.00
25. Utility Room	12x12 utility building	1	\$26,500.00	\$26,500.00

Subtotal \$625,100.00

Shipping \$4,900.00

Note to customer

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Total \$630,000.00

Accepted date

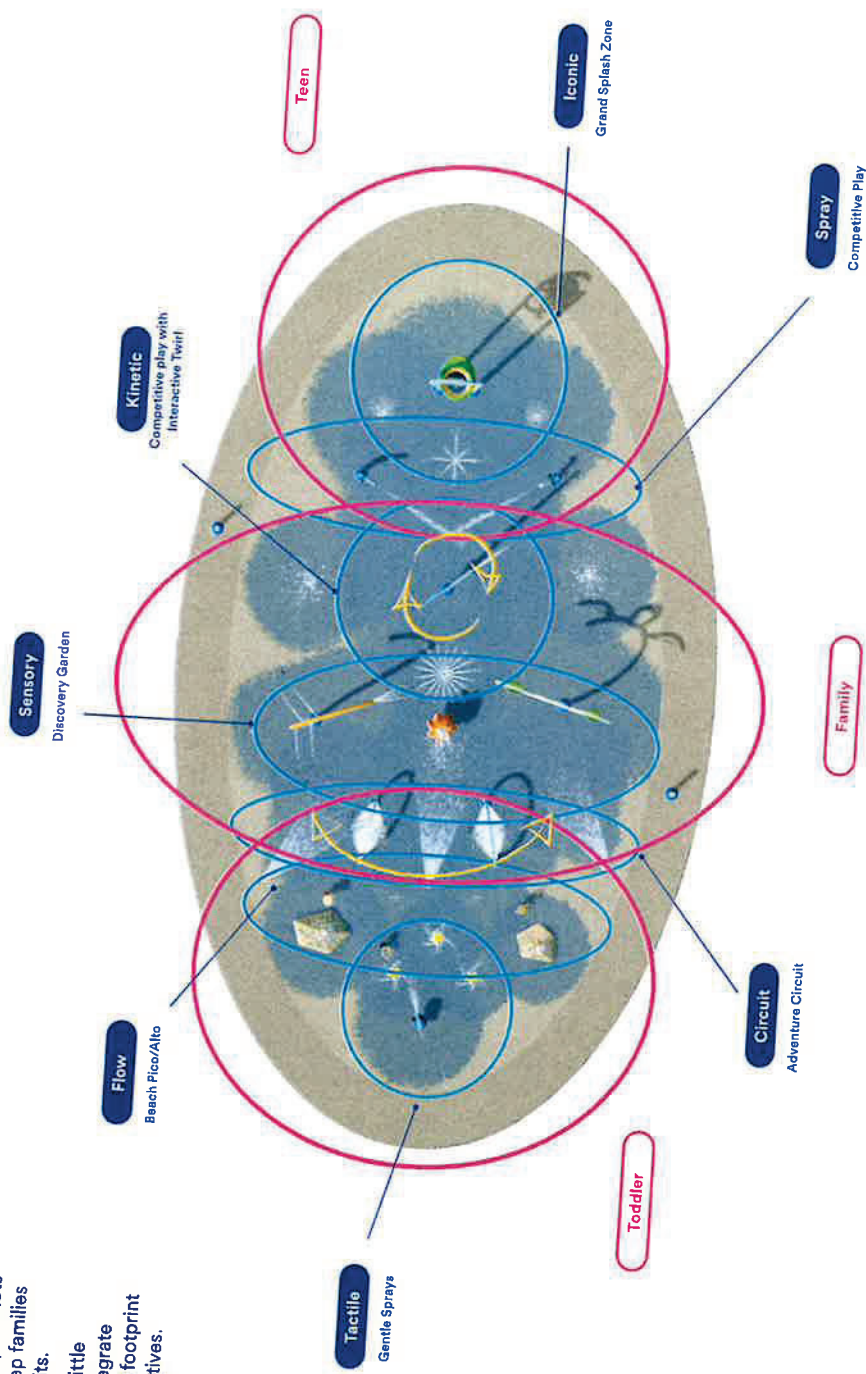
Accepted by



Aquatic play may feel spontaneous, but it actually requires lots of planning. We design every play experience to keep families engaged, boost dwell times, and increase return visits.

To build lasting memories among moms, dads, and little ones of all abilities, we carefully consider how to integrate products that cater to everything from the location's footprint and capacity to its demographics and theming objectives.

-  **Sensory**
Stimulates & develops multiple sense experiences
-  **Spray**
Encourages teamwork & competition
-  **Tactile**
Promotes discovery of water textures
-  **Iconic**
Features interactive fun & serves as a social gathering place
-  **Circuit**
Encourages physical development
-  **Flow**
Develops discovery & learning
-  **Kinetic**
Features interactive fun & encourages movement
-  **Misty**
Cloud-like experience gives refreshing thrills

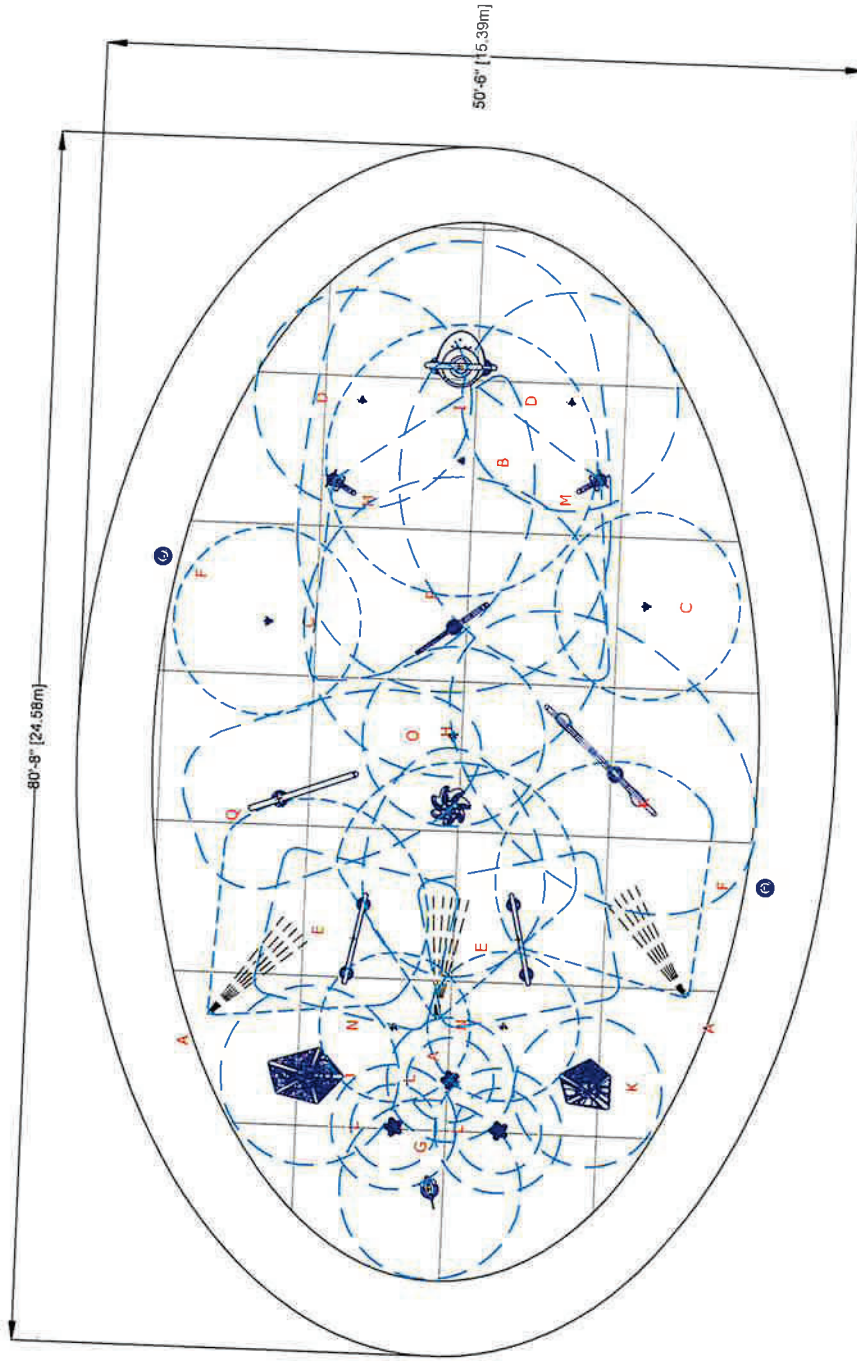


SPLASHPAD DIMENSION

TOTAL AREA : 3214 ft² 298m²
 SPRAY AREA : 2246 ft² 208m²
 GRID SIZE : 10 x 10ft 3 x 3m

PRODUCT LEGEND

REF	PRODUCT	QTY	GPM	LPM
A	Rooster Tail VOR 0303	3	27	102.1
B	Water Boom N°1 VOR 0322	1	9	34
C	Splash N°1 VOR 0324	2	6	22.7
D	Geyser N°2 VOR 0311	2	20	75.6
E	Spray Loop VOR 0519	2	15	56.7
F	Activator N°3 VOR 0611	2	0	0
G	Fan N°1 VOR 7218	1	4	15.1
H	Shell N°3 VOR 5338	1	3	11.3
I	Trampoline VOR 7242	1	12	45.4
J	Auto Beach VOR 7252	1	12.5	47.3
K	Pico Beach VOR 7253	1	10	37.8
L	Nez Starfish VOR 7254	3	10.5	39.7
M	Dolphin VOR 7255	2	18	68
N	Jet Stream N°1 VOR 7512	2	5	18.9
O	Side Windel VOR 7518	1	6.5	24.6
P	Sea Simuquie N°1 VOR 7677	1	4.5	17
Q	Sea Simuquie Angularish VOR 7685	1	15	56.7
R	Sea Simuquie N°2 VOR 7685	1	8	30.2
TOTAL		28	186	703.1



5'(1.5m) SPRAY FREE CONCRETE AREA ALL AROUND THE SPLASHPAD
 NOTE: QUANTITY AND LOCATION OF DRAINS BASED ON VORTEX RECOMMENDATIONS.
 MODIFICATIONS MAY BE REQUIRED DUE TO SPECIFIC SITE CONDITIONS AND/OR LOCAL CODE.

**SECTION 00500
CONSTRUCTION CONTRACT**

This Contract (the "Contract") is dated as of the th day of July 2026 by and between the City of Marathon (hereinafter called the "CITY") and SplashPads USA (hereinafter called "CONTRACTOR") located at: 60 N Cutler Dr, Ste 104, North Salt Lake City, UT 84054, USA.

CITY and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1. WORK

- 1.1 Project/Work: CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as the following:

The construction of this project consists of labor, materials and equipment necessary to complete the installation of a new splashpad and associated work as indicated and described in Exhibit A, Scope Of Work.

ARTICLE 2. CITY'S REPRESENTATIVE, ARCHITECT AND ENGINEER

2.1 It is understood that the CITY will designate a representative for the Work. The CITY'S REPRESENTATIVE referred to in any of the Contract Documents designated herein is Mark Tuschel, Project Manager, 9805 Overseas Highway, Marathon Florida 33050.

ARTICLE 3. TERM

3.1 Contract Term. The Work shall be substantially completed within One hundred eighty (180) calendar days after the date specified in the Notice to Proceed ("Substantial Completion"), and fully completed and ready for final payment in accordance with the Contract Documents within Two hundred ten (210) calendar days after the date specified in the Notice to Proceed ("Final Completion").

3.2 Contract Time. The Contract Term shall not commence until the CITY issues to CONTRACTOR a Notice to Proceed and the term of the Contract shall be through the date of final payment unless terminated earlier pursuant to Article 10 of this agreement.

3.3 Survival of Obligations. Any obligations by the CONTRACTOR, including but not limited to those set forth in Section 00700 – General Conditions, Article 12, Contractor's General Warranty and Guarantee, that would or could occur after the date of expiration or termination of the Contract shall survive the termination or expiration of the Contract.

3.4 Liquidated Damages. CITY and CONTRACTOR recognize that time is of the essence in this Contract and that the CITY will suffer financial loss if the Work is not completed within the contract times specified in Section 3.1 for the Work above, plus any approved extensions thereof allowed in accordance with the General Conditions. The CONTRACTOR also recognizes that the damages which the City will incur if the Work is not substantially completed on time and/or fully completed on time are not readily ascertainable at the time this Agreement is entered into, and the Contractor recognizes the difficulties involved in proving the actual loss suffered by CITY if the Work is not substantially completed on time and/or fully completed on time. Accordingly, instead of requiring any such proof, CITY and CONTRACTOR agree that as liquidated damages to compensate the City and not as a penalty for delay or as an incentive to complete on time, CONTRACTOR shall pay CITY (\$1500.00) for each calendar day that expires after the time specified in Section 3.1 for Substantial Completion of the Work. After Substantial Completion, if CONTRACTOR fails to fully complete the Work within the time specified in Section 3.1 for completion and readiness for final payment or any proper extension thereof granted by

CITY, CONTRACTOR shall pay CITY (1000.00) for each calendar day that expires after the time specified in Section 3.1 for full completion and readiness for final payment. Contractor agrees that the liquidated damage amounts specified in the Contract Documents bear a reasonable relationship to the actual damages to be suffered due to public inconvenience and damage to the City's reputation if the Contractor fails to substantially complete and/or fully complete the Work on time. The liquidated damages are not in compensation for any other damages, and expressly exclude damages for completion contractor expenses, lost/unrealized revenue, financing costs, professional services, attorney fees, and/or additional City staffing that may be incurred if the work is not substantially completed on time and/or fully completed on time. All liquidated damages amounts will continue to be charged if the Contractor abandons the Work, or is terminated, and the Work is completed by another party.

3.5 Should the Substantial Completion and/or Full/Final Completion and acceptance of Work, together with any modification or additions, be delayed beyond the time for performance set in Section 3.1 above because of lack of performance by the CONTRACTOR, it is understood and agreed that aside from any liquidated damages, the Contractor shall be liable to the City for all actual additional costs and/or losses incurred by the CITY including, but not limited to, completion contractor expenses, lost/unrealized revenue, financing costs, professional services, attorney fees, and/or additional City staffing that incurred because the Work was not substantially completed on time and/or fully completed on time.

3.6 Monies due to the CITY under Sections 3.4 and 3.5 shall be deducted from any monies due the CONTRACTOR, or if no money is due or the amount due is insufficient to cover the amount charged, the CONTRACTOR shall be liable for said amount.

ARTICLE 4. CONTRACT PRICE

4.1 CITY shall pay CONTRACTOR for completion of the Work in accordance with the Contract an amount in current funds equal to the sum of the amounts determined pursuant to **Exhibit A** of this Section.

4.2 The CONTRACTOR agrees that all specific cash allowances are included in the above Contract Price and have been computed in accordance with the Contract.

ARTICLE 5. PAYMENT PROCEDURES

5.1 CONTRACTOR shall submit Applications for Payment in accordance with Exhibit A. The CITY will not make more than one payment per month. Applications for Payment will be processed by CITY as provided in the Contract.

5.2 Progress Payments, Retainage. CITY shall make progress payments, deducting the amount from the Contract Price above, on the basis of CONTRACTOR'S Applications for Payment as recommended by the CITY'S REPRESENTATIVE, in accordance with the Florida Prompt Payment Act. All such payments will be made in accordance with the schedule of values established in **Exhibit A**.

5.2.1 No progress payment shall be made until CONTRACTOR delivers to the CITY **certified copies of the performance bond and payment bond by acceptable surety as noted in the contract documents establishing that the bonds have been recorded with the county clerk**, complete original partial releases of all liens, bond claims, and claims signed by all Subcontractors, materialmen, suppliers, and vendors, indicating amount of partial payment, on a form approved by the CITY, and an affidavit that so far as the CONTRACTOR has knowledge or information, the releases include and cover all Materials and Work for which a lien, bond claim, or claim could be filed for work completed to date.

5.2.2 No progress payment shall be made until **CONTRACTOR** delivers to **CITY** complete original partial releases and waivers of all liens and claims signed by all Subcontractors, materialmen, suppliers, and vendors, indicating

receipt of partial payment due each for work performed since last progress payment. The partial release shall be accompanied by an affidavit stating that, so far as **CONTRACTOR** has knowledge or information, the releases include and cover all Materials and Work for which a lien or claim could be filed for work completed to date. The form of the partial release and waiver of lien and affidavit specified herein shall be approved by the CITY.

5.3 The **CONTRACTOR** agrees that five percent (5%) of the amount due for Work as set forth in each Application for Payment shall be retained by CITY for each Progress Payment until Final Payment.

5.3.1 Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated above, but, in each case, less the aggregate of payments previously made and less such amounts as CITY'S REPRESENTATIVE shall determine, or CITY may withhold, in accordance with the General Conditions.

5.4 The payment of any Application for Payment by CITY, including the Final Request, does not constitute approval or acceptance by CITY of any item of the Work in such Request for Payment, nor shall it be construed as a waiver of any of CITY's rights hereunder or at law or in equity.

5.5 The Final Application for Payment by **CONTRACTOR** shall not be made until the **CONTRACTOR** delivers to the City complete original final releases of all liens and claims signed by all Subcontractors, materialmen, suppliers, and vendors on a form approved by the CITY, and an affidavit that so far as the **CONTRACTOR** has knowledge or information, the releases include and cover all Materials and Work for which a lien or claim could be filed. The **CONTRACTOR** may, if any Subcontractor, materialmen, supplier or vendor refuses to furnish the required Final Waiver of Lien, furnish a bond satisfactory to City to defend and indemnify City and any other property owner, person or entity City may be required to indemnify against any lien or claim.

ARTICLE 6. INSURANCE.

6.1 UPON EXECUTION OF THIS CONTRACT, **CONTRACTOR** SHALL SUBMIT CERTIFICATE(S) OF INSURANCE TO THE CITY EVIDENCING THE REQUIRED COVERAGES AND SPECIFICALLY PROVIDING THAT CITY IS NAMED AS AN ADDITIONAL INSURED WITH RESPECT TO THE REQUIRED COVERAGES AND THE OPERATIONS..

6.2 **CONTRACTOR** shall file Certificates of Insurance with the City, reflecting evidence of all Coverages. All certificates of insurance must clearly identify the Contract to which they pertain, including a brief description of the subject matter of the Contract. They shall be filed with the City's Risk Management within fourteen (14) days of the execution of this Contract by both parties. The certificates of insurance shall contain a provision that coverage afforded under these policies will not be canceled until at least thirty (30) days' prior written notice has been given to the City. Policies for Coverage shall be issued by companies authorized to do business under the laws of the State of Florida and any such companies' financial ratings must be no less than A-VII in the latest edition of the "BEST'S KEY RATING GUIDE", published by A.M. Best Guide.

6.3 All coverages shall be in force throughout the life of this Contract. In the event insurance certificates provided to City indicate that any insurance shall terminate and lapse during the period of this Contract and any and all amendments or extensions of it, then in that event, **CONTRACTOR** shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like Coverages for the remaining term of the Contract and any and all extension of it, is in effect.

REPRESENTATIONS.

6.4 CONTRACTOR shall procure and maintain at its own expense and keep in effect during the full term of the Contract a policy or policies of insurance which must include the following coverages and minimum limits of liability:

General Liability insurance with limits of not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage including coverage for contractual liability, personal injury, broad form property damage, products and completed operations. Annual Aggregate shall apply "Per Project/Job". This policy of insurance shall be written in an "occurrence" based format and include a Waiver of Subrogation in favor of the City.

Comprehensive or Business Automobile Liability insurance with/ limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage including coverages for owned, hired, and non-owned vehicles, equipment or both as applicable This policy of insurance shall be written in an "occurrence" based format and include a Waiver of Subrogation in favor of the City.

Workers Compensation- Statutory Limits (per limits outlined by Chapter 440, Florida Statutes)

Employers Liability Limits:

- \$500,000 for bodily injury caused by an accident, each accident
- \$500,000 for bodily injury caused by disease, each employee
- \$500,000 for bodily injury caused by disease, policy limit

Workers Compensation must be provided for all persons fulfilling this contract, whether employed, contracted, temporary or subcontracted.

Contractor(s) must be in compliance with all applicable State and federal workers' compensation laws, including US Longshore and Harbor Workers Compensation Act, Jones Act (maritime), Federal Employers Liability Act (railroad), etc.

6.5 **Subcontractors' Compliance:** It is the responsibility of the contractor to ensure that all subcontractors comply with all insurance requirements.

6.6 **Cancellation Requirements:** Required insurance shall always be maintained during which the contractor is on City premises. The above policies shall provide the City of Marathon with 30 days' written notice of cancellation or material change from the insurer. If the policies do not contain such a provision, it is the responsibility of the Contractor to provide such notice.

6.7 **Notice Requirements:** If an insurable incident occurs while CONTRACTOR is engaged in a City project, notification to the City is required.

6.8 **Certificates of Insurance/Verification of Coverage:** Proof of the required insurance reflecting all required insurance above will be furnished by CONTRACTOR to the City of Marathon by Certificate of Insurance within 5 days of notification of award. All certificates (and any required documents) must be received and approved by the City before any work commences to permit CONTRACTOR time to remedy any deficiencies.

Valid Certificates verifying coverage is in force as required above must be on file with the City at all times during contract. If the policies renew during the term of the Contract, updated Certificates verifying coverage is in force shall be submitted to the City within 10 days of expiration. Contractor and/or any Subcontractor shall not perform or continue to work pursuant to this contract, unless all coverages remain in full force and effect; work delay is subject to provisions in this contract. If contractor fails to provide proof of insurance within 7 days of City's receipt of notice at any time during this contract, the City shall have the right to consider the contract breached, and therefore terminated.

A copy of Additional Insured Endorsement or other endorsements may be attached to the Certificate.

Description of Operations section of COI: Confirm coverage required is documented in the body of the Certificate of Insurance, and also in the Description of Operations. Additionally, include Job, Event, Contract, or Contract number.

Notices/ Certificate Holder:

City of Marathon

9805 Overseas Highway

Marathon, FL 33050

The City of Marathon, Florida reserves the right to review/revise, reject or accept any required policies of insurance, including limits, coverages or endorsements, herein throughout the term of this Contract.

ARTICLE 7. **Indemnification.**

(a)General Indemnity. Contractor shall indemnify and hold harmless the City, its officers, and employees, from or on account of all claims, damages, losses, liabilities and expenses, direct, indirect or consequential, including, but not limited to, fees and charges of engineers, architects, attorney's, consultants and other professionals and trial and appellate court and arbitration costs arising out of or resulting from the performance of the Work, excluding claims arising from the sole negligence of City. Such indemnification shall specifically include but not be limited to claims, damages, losses and expenses arising out of or resulting from (i) any and all bodily injuries, sickness, death, disease; (ii) injury to or destruction of real property or tangible personal property, be it publicly or privately owned, including the loss of use resulting therefrom; (iii) other such damages, liabilities or losses received or sustained by any person or persons during or on account of any operations connected with the construction of the Work including the warranty period; (iv) the use of any improper materials; (v) any construction defect including patent defects; (vi) any act or omission of Contractor or his Subcontractors, agents, servants or employees; (vii) the violation of any federal, state, county or City laws, ordinances or regulations by Contractor, his Subcontractors, agents, servants or employees; (viii) the breach or alleged breach by Contractor of any term of this Agreement, including the breach or alleged breach of any warranty or guarantee.

(b)Defense. In the event that any claims are brought or actions are filed against the City that are encompassed by the Contractor's duty to indemnify as stated in this Agreement, the Contractor agrees to defend against all claims and actions brought against the City regardless of whether such claims or actions are rightfully or wrongfully brought or field. City reserves the right to select its own legal counsel to

conduct any defense in any such proceedings and all costs and fees associated therewith including any costs or fees of an appeal shall be the responsibility of Contractor.

(c) Specific Indemnity. Contractor shall indemnify and hold harmless the City for liability for damages to persons or property caused in whole or in part by any act, omission, or default of the City, its officers, directors, agents, or employees arising from the Agreement or its performance. Such indemnification shall not include claims of, or damages resulting from, gross negligence, or willful, wanton or intentional misconduct of the City or its officers, directors, agents or employees, or for statutory violation or punitive damages except and to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of the Contractor or any of the Contractors, subcontractors, sub-subcontractors, materialmen, or agents of any tier or their respective employees. The monetary limitation on the extent of the indemnification provided to the City shall not be less than \$1 million per occurrence.

(d) Payment of Losses. Contractor shall pay all claims, losses, liens, settlements or judgments of any nature whatsoever, excluding only those in which the damages arose out of the sole negligence of City, in connection with the foregoing indemnification, including, but not limited to, reasonable attorney's fees and costs to defend all claims or suits in the name of City when applicable.

(e) Contractor's indemnification shall not be limited to the amount of comprehensive general liability insurance which Contractor is required to obtain under the Agreement. Nothing contained herein is intended nor shall it be construed to waive the City's rights and immunities under the common law or Section 768.28 Florida Statutes, as amended from time to time. This obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party described in this Section and its subparts.

ARTICLE 8. CONTRACTOR'S REPRESENTATIONS

In order to induce CITY to enter into this Contract, CONTRACTOR makes the following representations:

8.1 Contractor shall exercise the same degree of care, skill and diligence in the performance of the Work as is ordinarily provided by a professional under similar circumstances. If at any time during the term of this Agreement or within one year from the completion of the Work, it is determined that the Contractor's deliverables are incorrect, defective or fail to conform to the Scope of Work or perform as intended, upon written notification from the City Manager, the Contractor shall at Contractor's sole expense, immediately correct the Work.

8.2 Contractor and its subcontractors shall comply with all applicable laws and regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall develop and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent public and private property and of underground facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damage, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Contractor, and Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be immediately remedied by Contractor. The contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and the City has made final payment to Contractor.

8.3 CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda).

8.4 CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.

8.5 CONTRACTOR has made, or caused to be made, examinations, investigations, tests, or studies as necessary to determine surface and subsurface conditions at or on the site. CONTRACTOR acknowledges that CITY does not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to subsurface conditions or underground facilities at or contiguous to the site. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

8.6 The CONTRACTOR is aware of the general nature of Work to be performed by CITY and others at the site that relates to the Work as indicated in the Contract Documents.

8.7 The CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

8.8 The CONTRACTOR has given the CITY'S REPRESENTATIVE written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by the CITY'S REPRESENTATIVE is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

8.9 On a daily basis during the course of the Work, Contractor shall maintain the site free of debris and dust so as to minimize any inconvenience to surrounding properties. Upon completion of the Work, Contractor shall remove all apparatus, debris, equipment, materials, and tools created or used to construct the Work, and except for the Work or as otherwise directed by the City return the site in the same condition as at the beginning of the Work.

8.10 The CONTRACTOR warrants the following:

8.10.1 Anti-Discrimination: The CONTRACTOR agrees that it will not discriminate against any employees or applicants for employment or against persons for any other benefit or service under this Contract because of race, color, religion, sex, national origin, or physical or mental handicap where the handicap does not affect the ability of an individual to perform in a position of employment, and to abide by all federal and state laws regarding non-discrimination.

8.10.2 Anti-Kickback: The CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, and that no employee or officer of the CITY or any other applicable federal or state agency, has any interest, financially or otherwise, in the Project. For breach or violation of this warranty, the CITY shall have the right to declare contractor in default, and/or annul this Contract without liability or, in its discretion, to deduct from the Contract Price or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

8.10.3 Licensing and Permits: The CONTRACTOR warrants that it shall have, prior to commencement of work under this Contract and at all times during said work, all required licenses and permits whether federal, state, County or City.

8.10.4 Public Entity Crime Statement: The CONTRACTOR warrants that it has not been placed on the convicted vendor list following a conviction for public entity crime.

8.10.5 E-Verify. In accordance with F.S. 448.095, the Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the term of the Contract and shall expressly require any subcontractors performing work or providing services pursuant to the Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the Contract term.

ARTICLE 9. CONTRACT DOCUMENTS.

9.1 The Contract Documents listed below, which are listed in their order of precedence for the purpose of resolving conflicts, errors and discrepancies, by this reference shall become a part of the Contract as though physically attached as a part thereof:

9.1.1 Change Orders.

9.1.2 Field Orders.

9.1.3 Contract for Construction.

9.1.4 Exhibits to this Contract.

9.1.5 Supplementary Conditions.

9.1.6 General Conditions.

9.1.7 Any federal, state, county or city permits for the Project

9.1.8 Drawings consisting of a cover sheet and inclusive of all sheets bearing the following general titles: **Community Park Splashpad, Marathon.**

9.1.9 Addenda subject matter takes the same precedence of the respective subject matter that it is modifying. Furthermore, each subsequent addendum takes precedence over previous addenda.

9.1.10 The documents listed above shall be incorporated into this Contract (except as expressly noted otherwise above).

9.1.11 There are no Contract Documents other than those listed above in this Article. The Contract Documents may only be amended, modified or supplemented as provided in the General Conditions.

9.1.12 The Contract Documents shall remain the property of the CITY. The CONTRACTOR shall have the right to keep one record set of the Contract Documents upon completion of the Project; provided; however, that in no event shall the CONTRACTOR use, or permit to be used, any or all of such Contract Documents on other projects without the City's prior written authorization.

9.1.13 The General Conditions discuss the bond and surety requirements of the CITY. This Contract requires the CONTRACTOR to provide payment and performance bonds, unless stated otherwise in Section 255.05, Florida Statutes.. If the Contract does not require bonds, the references to bonds in the General Conditions do not apply to this Contract.

ARTICLE 10. Termination.

10.1 The City Manager without cause may terminate this Agreement upon thirty (30) days written notice to the Contractor, or immediately with cause.

10.2 Unless directed otherwise in writing by the City Manager, upon receipt of the City written notice of intent to terminate or notice of actual termination, the Contractor shall stop the Work.

10.3 In the event of termination by the City, the Contractor shall be paid for all Work accepted by the City Manager up to the date of termination.

10.4 The Contractor shall transfer all books, records, reports, working drafts, documents, maps, and data properly indexed and labeled pertaining to the Work to the City, in a hard copy and/or electronic format (as specified by the City) within 14 days from the date of the written notice of termination or the date of expiration of this Agreement.

ARTICLE 11. Nondiscrimination.

11.1 During the term of this Agreement, Contractor shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and to abide by all Federal and State laws regarding nondiscrimination.

ARTICLE 12. MISCELLANEOUS.

12.1 Terms used in this Contract which are defined in Article 1 of the General Conditions, Section 700, will have the meanings indicated in the General Conditions. Terms used in Article 1 of the Instructions to Bidders, Section 200, also apply to this Contract.

12.2 Except as otherwise provided in the Contract Documents with respect to subcontractors, no assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party thereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

12.3 CITY and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

12.4 Severability. Should any provision, paragraph, sentence, word, or phrase contained in this Contract be determined by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word, or phrase shall be deemed modified to the extent

necessary in order to conform with such laws, then shall be deemed severable, and in this Contract, shall remain unmodified and in full force and effect.

12.5 Remedies. If and when any default of this Contract occurs, the CITY may avail itself of any legal or equitable remedies that may apply, including, but not limited to, liquidated damages specified in Article 3.4, actual damages, and specific performance. Such remedies may be exercised in the sole discretion of the CITY. Nothing contained in this Contract shall limit the CITY from pursuing any legal or equitable remedies that may apply. A default by CONTRACTOR under any contract with the CITY will be a default under all contracts with the CITY. The CITY may apply the proceeds from any contract between CONTRACTOR and the CITY to satisfy amounts owed by the CONTRACTOR to the CITY under any other contract.

12.6 The failure of the City to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach of wrongful conduct.

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

ARTICLE 13. Access to Public Records.

The CONTRACTOR shall comply with the applicable provisions of Chapter 119, Florida Statutes.

All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the Consultant providing services to the City under this Agreement shall be the property of the City. The Records are not intended or represented to be suitable for use, partial use, or reuse by the City or others on extensions of this project or on any other project. Any such use, reuse, or modifications made by the City to any of Consultant's Records will be at City's sole risk and without liability to Consultant, and City shall, to the extent allowable by Florida law, and subject to Section 768.28, Florida Statute, and all monetary limits listed therein, indemnify, defend and hold Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom.

13.1.1 The "CONTRACTOR" as defined by Section 119.0701(1)(a), Florida Statutes, and shall comply with the public records provisions of Chapter 119, Florida Statutes, including the following:

1. Keep and maintain public records required by the City to perform the service.
2. Upon request from the City Clerk, 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 Chapter 119, Florida Statutes or as otherwise provided by law.
3. 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 City.
4. 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 City 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 Clerk, in a format that is compatible with the information technology systems of the City.

13.1.2 Public Records” is defined in Section 119.011(12), Florida Statutes, and includes all documents, papers, letters, photographs, data processing software, or other material, regardless of physical form, made or received in connection with this Agreement.

13.1.3 Should the CONTRACTOR assert any exemption to the requirements of Chapter 119 and related law, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the CONTRACTOR.

13.1.4 The CONTRACTOR consents to the City’s enforcement of the CONTRACTOR’s Chapter 119 requirements by all legal means, including, but not limited to, a mandatory injunction, whereupon the CONTRACTOR shall pay all court costs and reasonable attorney’s fees incurred by the City.

13.1.5 The CONTRACTOR’s failure to provide public records within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes. Further, such failure by the CONTRACTOR shall be grounds for immediate unilateral cancellation of this Agreement by the City.

13.1.6 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 305-743-0033, CITYCLERK@C1MARATHON.FL.US, OR 9805 OVERSEAS HIGHWAY, MARATHON FLORIDA 33050.

13.7 Inspection and Audit. During the term of this Contract and for five (5) years from the date of final completion or Termination, the CONTRACTOR shall allow CITY representatives access during reasonable business hours to CONTRACTOR’S records related to this Contract for the purposes of inspection or audit of such records. If upon an audit of such records, the CITY determines the CONTRACTOR was paid for services not performed, upon receipt of written demand by the CITY, the CONTRACTOR shall remit such payments to the CITY.

ARTICLE 14. Counterparts.

14.1 This contract may be signed in one or more counterparts, each of which when executed shall be deemed an original and together shall constitute one and the same instrument.

14.2 Notices. Whenever any party is required to give or deliver any notice to any other party, or desires to do so, such notices shall be sent via certified mail or hand delivery to:

FOR CITY: City of Marathon
ATTN: Interim City Manager
Steve Williams
9805 Overseas Highway
Marathon, Florida 33050

WITH COPY TO:

City Attorney
Steve Williams
9805 Overseas Highway
Marathon, Florida 33050
Phone: 305-289-4103
Fax: 305-289-4123

FOR CONTRACTOR

Richard Funk
VP Operations
60 N Cutler Drive Ste 104
North Salt Lake, Utah 84054
Phone: 855-433-7237

14.3 WAIVER OF JURY TRIAL AND VENUE. The CITY and CONTRACTOR knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in State and or Federal court proceedings in respect to any action, proceeding, lawsuit or counterclaim based upon the Contract, arising out of, under, or in connection with the Work, or any course of conduct, course of dealing, statements or actions or inactions of any party. The venue for any lawsuit arising out of this Contract shall be Monroe County, Florida.

14.4 Attorneys' Fees. If either the CITY or CONTRACTOR is required to enforce the terms of the Contract by court proceedings or otherwise, whether or not formal legal action is required, the parties shall bear their own attorney fees, costs and expenses, at the trial and appellate level.

14.5 Amendments. This Contract may only be amended by the prior written approval of the parties or by execution of a Change Order in the form provided by the City

IN WITNESS WHEREOF, the parties hereto have made and executed this Contract on the respective dates under each signature: THE CITY OF MARATHON, FLORIDA, signing by and through its Mayor or Vice Mayor, authorized to execute same by Council action on the 12 day of May, 2026, and by Splash Pads USA (Contractor), signing by and through its VP, duly authorized to execute same.

CONTRACTOR

WITNESS

By: [Signature]

By: Lyska Emercon
President, SplashPadsUSA

By: [Signature]
(Signature and Title)
(Corporate Seal)
RICHARD FUNK VP OPERATIONS
(Type Name/Title signed above)

7 day of AUGUST, 2026

CITY

CITY OF MARATHON, FLORIDA

[Signature]
City Manager

ATTEST

[Signature]
City Clerk

11 day of Aug., 2026

APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND BENEFIT OF THE CITY OF MARATHON ONLY:

By: [Signature]
City Attorney

(*) In the event that the Contractor is a corporation, there shall be attached to each counterpart a certified copy of a resolution of the board of the corporation, authorizing the officer who signs the contract to do so in its behalf.

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, RICHARD FUNK, certify that I am the
VP OF OPERATIONS of Splash Pass USA Inc and that
RICHARD FUNK, who signed the Bid with the City of Marathon, Monroe County, Florida for
Splash Pass USA, is VP OPERATIONS of said Corporation with full authority to sign said
Bid on behalf of the Corporation.

Signed and sealed this 7 day of August, 2026

(SEAL) [Signature]
Signature

RICHARD FUNK VP OPERATIONS
Typed w/Title

STATE OF FLORIDA Utah
COUNTY OF Davis

SWORN TO AND SUBSCRIBED before me this 7 day of August, 2026

My Commission Expires: 2.19.29

[Signature]

Notary Public

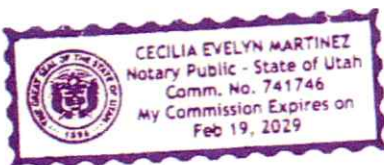


Exhibit "A"



CONSTRUCTION CONTRACT

This Construction Contract ("Contract") is entered into by and between SplashPadsUSA, Inc. ("SplashPadsUSA") and the Customer identified in Paragraph 1 below. SplashPadsUSA will not be responsible to perform or provide any services that are not specifically articulated in the Contract. In consideration of the mutual promises contained herein, SplashPadsUSA and Customer agree as follows:

1. PROJECT INFORMATION

SplashPadsUSA:

SplashPadsUSA, Inc.
60 N Cutler Dr, Ste 104
North Salt Lake, UT 84054
Support@SplashPadsUSA.com

Customer:

City of Marathon
City of Marathon
9805 Overseas Highway
Marathon, Florida
33050

Project:

City of Marathon Splash Pad Project
City Park

2. SCOPE OF WORK AND PAYMENT

Scope of Work: Customer has hired SplashPadsUSA to perform the following work in the Scope of Work according to the proposal attached hereto as Exhibit "A" for the price of \$636,500.00 and \$14,500.00 Florida Stamped Engineered Splash Pad Plan Set.
Totaling \$651,000.00

Additional Scope

Install sonotubes with anchors and concrete 12" diameter 3' deep, qty 4
Additional concrete prep, compact, rebar pour finish

\$8,900.00

Subtotal: \$659,900.00

Project Payment Performance Bond 4% project cost

\$ 26,396.00

Total Project total: \$686,296.00

Payment: City contract will follow Florida Prompt Payment Act.

Progress Payment Schedule (\$686,296.00):

Splash Pad payment schedule will be as follows:

Payment #1:

Payment for Performance bond

\$26,396.00

20% Manufacturing and Scheduling deposit including engineered plan set

\$131,980.00

Total = **\$158,376.00**

Due within 10 days of contract signing.

Payment #2 / Payable on 10/15/2026:

25% Excavation, Compaction, Installation of Base footings, Nozzle housings,

\$164,975.00

15% Piping installation, Drain installation, pressure tests with approved inspections.

\$ 98,985.00

Total = **\$263,960.00**

Payment #3 / Payable on 11/15/2026:

15% Approved inspections for bonding. Auger Sonotubes installed with Concrete pour for Splash Pad, and Equipment area.

\$98,985.00.00

15% Completion of all equipment in the manifold area, above ground features, nozzles, electrical. All inspections to completion.

\$ 98,985.00

Total = **\$197,970.00**

Payment #4 / Payable on 12/15/2026 (Or when accepted by City)

10% Completion of Concrete coating with design, Maintenance instruction submitted, and project accepted by City.

Total = **\$65,990.00** (Less \$32,950 Retainage)

Grand Total for project = \$686,296.00

Any additions or upgrades (Change Orders) will be invoiced separately and will be due upon receipt.

Customer's Failure to Make Payments: Terms per City Contract.

Change Orders: Terms per City Contract

Site Preparation: Customer shall be responsible for preparing the site as specified in the Contract, including but not limited to, site preparation, installation of water line to equipment room area, specified electricity brought to equipment site area along with attached electrical specs and sewer drain installed to proposed equipment room site. Customer shall give SplashPadsUSA at least five (5) business days advance written notice of the date the site will be ready for SplashPadsUSA's work.

Permits: Customer pay for all permits required for the services to be performed hereunder. Contractor is required to obtain all necessary building and health department permits for the project

Inspections: Contractor shall schedule all required inspections as required by the building department through the permitting portal.

Access to Work: Customer shall grant free access to work areas for workers and vehicles and allow for storage of materials and rubbish. Customer shall also provide utility services required by SplashPadsUSA at Customers cost.

3. PROSECUTION OF WORK

Job Completion: SplashPadsUSA will perform completion of splash pad once groundbreaking payment has been received by SplashPadsUSA. SplashPadsUSA will perform all work in accordance with the Scope of Work until project completion. As per City Contract.

4. CHANGES

If Customer gives SplashPadsUSA an instruction that modifies the requirements of the Contract documents, SplashPadsUSA shall be entitled to an adjustment in the Contract Sum and/or time for completion. This process will follow "Change Order Terms" in City Contract.

5. MISCELLANEOUS PROVISIONS

Termination: As per City Contract.

Limited Warranty: SplashPadsUSA warrants to the Customer that for the periods of time from the original installation specified below, the following materials will be free from defects:

- a. Two Years: Splash pad lights and lighted nozzles.
- b. Three Years: Control boxes, timer boxes and the stainless-steel manifold.
- c. Five Years: Splash pad tanks and nozzles (other than the lighted nozzles).
- d. 30 Years: Stainless steel water features, pipes and welds, stainless steel footing bases.

SplashPadsUSA makes no other warranties, express or implied, and disclaims all implied warranties including, without limitations, the implied warranties of merchantability and fitness for a particular purpose, as well as any implied warranty that could arise from course of dealing or usage of trade.

When, within the applicable Warranty Period, SplashPadsUSA, is given prompt notice of a defect and a reasonable period of time in order to perform any warranty work, it will, in it's discretion and option, repair, or replace any defective items covered by this warranty. SplashPadsUSA's sole obligation, and Customers' sole remedy, shall be this repair or replacement. Customer shall provide access to the items to be repair or replaced and remove any materials or structures necessary to provide free and clear access. SplashPadsUSA shall not be liable for and this warranty shall not apply to any damage to the materials sustained by any person or by acts of God, riot and civil commotion, fire, explosion, impact of foreign objects or by defects in the preparatory work performed by Customer. This warranty shall not apply to any damage to the extent it is caused or made worse by (i) negligence or improper maintenance, (ii) changes, alterations or additions made to the materials after completion of work by SplashPadsUSA, or (iii) misuse, negligence, accident, or failure to operate in accordance with the instructions of SplashPadsUSA and/or manufacturer, or (iv) damage caused by Customer or a third party. SplashPadsUSA shall not be liable for any consequential, special, incidental or punitive damages. No representative, employee or agent of SplashPadsUSA, or any other person, has authority or assumes for SplashPadsUSA any additional liability or responsibility. This warranty is personal to the Customer and is not assignable or transferrable under any circumstances. Customer must notify SplashPadsUSA by registered mail or certified mail, return receipt requested, of a breach of warranty within 30 days after discovery thereof, but no later than the warranty period, otherwise such claims shall be deemed waived.

Repair or replaced parts or goods and re-performed services shall remain under warranty for the expired portion of the original Warranty Period as warranty work shall not extend the Warranty Period.

Materials and Scope of Work

Complete Turn-Key Recirculating Splashpad. Minimum 4300 sq. ft., 15 above ground features / 31 ground nozzles with non-slip surface.

OWNER's RESPONSIBILITIES

- Min. 1" culinary and back flowed water line source to equipment room area.**
- Electrical 220v brought to equipment room along with pump hook up, 110 V for plugs, grounding of equipment, all other electrical needs by licensed electrician per pump and receptacles per engineered plan set.**
- All permit fees.**
- Sewer line in equipment area for tank flush out (if needed) Sand Filter back wash.**
- Provide access to Equipment area for all piping to tank and splashpad**
- Re furbish and replace any damage caused to landscape, existing drainage lines, sewer or other utilities around Splashpad or tank area and to Equipment area.**

TURNKEY PACKAGE

- Engineered plan set, if required by County and State of Florida. SPUSA can provide a Florida Stamped plan set for \$14,500.00 (included in Grand Total) for Monroe County and Florida State Health Department.**
- Provide Site Plan for elevations and requirements per possible Florida State and County requirements to accompany Stamped Engineered Plan Set provided by SplashPadsUSA.**

EQUIPMENT & SPLASHPAD COMPONENTS

- (31) SPUSA Commercial Housings & Nozzles with varying patterns of spray**
- (1) Splash Pad Drains**
- (1) 1200 Gallon Holding Tank or Equivalent**
- (1) Pentair 7.5 Horsepower Pump – Feature, nozzles and recirculation. Complete total UV flow per Florida State Health Code.**
- (1) U.V. Sanitizer NSF 50 certified (Chlorking) Crypto Certified**
- (1) IPS m-920 Chemical Feeder with Stenner Pumps – Remote Capable**
- (1) K1100 electronic water filler**
- (1) Pentair – 420 Cartridge Filter or Sand Filter TC-60**

(1) 8 Valve Manifold for Nozzles -Sch 80 True union ball valves, Irritrol 700 solenoid valves for nozzles

(1) Pentair 3 Way Diverter/Valve Solenoid valves/Misc. Sch. 40 Sch 80 Fittings/Flow meters Pressure gauges Etc.

(1) SPUSA Control Box W/ Activation Timer and settings

(1) SPUSA Foot Pad Activator w/ Proximity Switch

All Stainless-Steel base footings and above ground components with 30-year warranty. Made in USA (see warranty page)

(2) SPUSA Stainless Steel Cane Showers

(1) SPUSA Stainless Steel Dual Dump Bucket with City Logo

(1) SPUSA Stainless Steel 40" Mushroom w/Dolphin spots

(1) SPUSA Stainless Steel 60" Mushroom w/turtle spots

(3) SPUSA Stainless Steel Water Cannons – Adjustable angle capability and complete SS/Brass CNC components. NO internal bearings.

(2) SPUSA Stainless Steel Coconut Palm Dump

(1) SPUSA Stainless Steel Mega Dump Bucket with City Logo

(2) SPUSA Stainless Steel Half Rain Curtain

(2) SPUSA Stainless Steel Full Rain Curtain

(1) SPUSA Modified Coating Non-Slip surface ADA compliant – Additional Turnkey savings component

Scope of Work

INSTALLATION OF RECIRCULATING SPLASH PAD AS FOLLOWS:

- All work will be as per Design Engineered Plan Set**
- Install Recirculating Splash Pad – Octagonal shaped Splashpad as per site plan, with a minimum 4300 sq. ft.**
- Approximately 80' of Run or less from Center Pad to Equipment Area /30' from tank to Equipment Area**
- Provide and Install all sch 80/40 PVC pipelines to Equipment/Tank/Splash Pad**
- Perform piping pressure tests**
- Provide and Install Stainless Steel Ground Nozzle Housings, Stainless Steel Feature Base Footings, Forms, Drains.**
- Provide and Install all Stainless Steel SPUSA Above Ground Features**
- Provide and Install all SPUSA Brass or Delrin Nozzle inserts**
- Provide and Install Direct Bury Tank and Bulk heads (compaction according to Engineered plans.)**
- Provide and remove over excavation per site elevation and Plans with 6" compaction lifts, and compaction according to approved engineered plans. (If needed)**
- Provide and install engineered Commercial Concrete Splash Pad base 4000 psi min.**
- Provide and Install 14' x 18' Concrete floor pad for Equipment area (As per building drawings).**
- Provide and Install New Equipment in Equipment Area.**
- Bond loop all metal components on splash pad #8 copper wire to equipment room inspection per electrician for continuity.**
- Train Client Personnel for Maintenance and Winterization instructions**
- ADA compliant**
- Remote access for chemical systems and dosage and automatic record keeping**
- Installation of splash pad including and not limited to required earthwork to reach proposed grades.**
- Comply and coordinate with all inspections necessary by City, County and State entities.**

E-VERIFY STATEMENT

Bid/Proposal Number: _____

Project Description: _____

I/FIRM acknowledges and agrees to the following:

I/FIRM shall utilize the U.S. Department of Homeland Security's E-Verify system, in accordance with the terms governing use of the system, to confirm the employment eligibility of:

1. All persons employed by the FIRM during the term of the Contract to perform employment duties within Florida; and
2. All persons assigned by the FIRM to perform work pursuant to the contract with the Department.

Individual/Company/Firm: _____

Authorized Signature: _____

Title: _____

Date: _____

TRENCH SAFETY FORM

This form must be completed and signed by the Bidder.

Failure to complete this form may result in the bid being declared non-responsive.

Bidder acknowledges that the Florida Trench Safety Act, Section 553.60 *et seq.* Fla. Stat. which became effective October 1, 1990, shall be in effect during the period of construction of the Project. The Bidder by signing and submitting the Bid is, in writing, assuring that it will perform any trench excavation in accordance with applicable trench safety standards. The Bidder further identifies the following separate item of cost of compliance with the applicable trench safety standards as well as the method of compliance:

Method of Compliance

Total: \$

Bidder acknowledges that this cost is included in the applicable items of the Bid and in the Total Base Bid. Failure to complete the above may result in the bid being declared non-responsive.

The Bidder is, and the CITY and ENGINEER are not, responsible to review or assess Bidder's safety precautions, programs of costs, of the means, methods, techniques or technique adequacy, reasonableness of cost, sequences of procedures of any safety precaution, program or cost, including but not limited to, compliance with any and all requirements of Section 553.60 *et seq.*, Fla. Stat. cited as the "Trench Safety Act". Bidder is, and the CITY and ENGINEER are not, responsible to determine, if any safety or safety related standards apply to the Project, including but not limited to, the "Trench Safety Act".

Witness Signature

Witness Signature

Bidder's Signature

Printed Name

Title

Date

Date

PUBLIC ENTITY CRIMES STATEMENT

CITY OF MARATHON, FLORIDA SWORN STATEMENT UNDER F.S. SECTION 287.133(3) (A), ON PUBLIC ENTITY CRIMES.

THIS FORM MUST BE SIGNED IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICER AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted with Bid, Proposal or Contract for _____
2. This sworn statement is submitted by (entity) _____ whose business address is _____ and (if applicable) Federal Employer Identification Number (FEIN) is _____ (If a Sole Proprietor and you have no FEIN, include the last four (4) digits of your Social Security Number: _____ .)
3. My name is _____ and my relationship to the entity named above is _____
4. I understand that a "public entity crime" as defined in Paragraph 287.133(a) (g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any proposal or contract for goods or services to be provided to any public entity or any agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
5. I understand that "convicted" or "conviction" as defined in paragraph 287.133(a) (b), Florida Statutes, means finding of guilt or a conviction of a public entity crime with or without an adjudication of guilt, in any federal or state trial court of records relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.
6. I understand that an "affiliate" as defined in Paragraph 287.133(1) (a), Florida Statutes, means:
 1. A predecessor or successor of a person convicted of a public entity crime; or
 2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers,

directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling income among persons when not for fair interest in another person, or a pooling of equipment or income among persons when not for fair market value under a length agreement, shall be a prima facie case that one person controls another