

Agreement For Services

THIS AGREEMENT FOR SERVICES ("Agreement") is made and entered into this _____ day of _____, 2018, by and between Aquatic Chemical Solutions, INC., whose address is P.O. Box 17856, Denver, CO 80217 (hereinafter referred to as "Vendor") and the TOWN OF ERIE, COLORADO, a Colorado municipal corporation, whose address is 645 Holbrook Street, P.O. Box 750, Erie, Colorado 80516 (hereinafter referred to as "Town" or "Erie").

W I T N E S S E T H

WHEREAS, the Town desires to engage the Vendor to render the services described in this Agreement and the Vendor is qualified and willing to perform such services in accordance with, and subject to the provisions of this Agreement; and,

WHEREAS, legal authority exists to engage the Vendor and sufficient funds have been budgeted and are available for the work to be performed by the Vendor under this Agreement, and other necessary approvals have been obtained.

NOW, THEREFORE, in consideration of the mutual promises, covenants and obligations of the parties hereto, the terms, covenants and conditions hereof, and intending to be legally bound, the Town and the Vendor agree as follows:

1. The Project. The Vendor's services are engaged under this Agreement for the following project: **ECC Pool Play Structure Replacement (PR 18-01)** ("Project").
2. Vendor's Services. The Vendor shall, during the term of this Agreement, provide the services to the Town as set forth in Exhibit "A," attached hereto and incorporated herein by this reference (the "Services"). The Vendor shall perform the Services competently, efficiently, and in accordance with the highest standards of its profession. The Vendor shall perform the Services meeting all industry safety standards.
3. Additional Services. The Town may request the Vendor to perform additional work or phases of the Project in addition to the Services. The Vendor agrees to perform the additional work or phases of the Project if the Town so requests, either pursuant to an amendment to this Agreement or a new agreement in which the Town and the Vendor shall define the scope of, and additional payment for, the additional work.
4. Pricing. Pricing, including discounts, set forth in the bid shall remain in effect during the term of the Agreement.
5. Warranties. The Vendor warrants that all services supplied under the Agreement shall conform with applicable drawings, specifications, samples, and/or other descriptions given to the Town, and that they shall be free from defects. Without limitation of any rights which the Town may have by reason of any breach of warranty, services which are not as warranted may be rejected at the Vendor's sole expense within a reasonable time after performance, either for credit or reperformance as the Town may direct.

6. Compensation. In consideration for the performance of the Services, the Town shall pay to the Vendor in accordance with the payment schedule, as set forth in Exhibit "A," attached hereto and incorporated herein by this reference.
7. Inspection and Acceptance. The Town shall inspect the serviced area within a reasonable time after services have been performed by the Vendor. The Town shall not be deemed to have accepted the performance until it has inspected the serviced area and has found the area acceptable in its sole discretion and has indicated its acceptance in writing.
8. Commencement and Completion of Services. The Vendor understands and agrees that time is an essential requirement of this Agreement. The term of this Agreement shall commence on the date of this agreement and shall end on **September 30, 2018**. The Services shall be completed as soon as good practice and due diligence will permit.
9. Termination.

A. This Agreement may be terminated by either party upon Ten (10) days prior written notice to the other party in the event of a substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party.

B. This Agreement may be terminated by the Town in its sole discretion upon Ten (10) days prior written notice to the Vendor.

C. In the event of termination as provided for in this paragraph, the Town shall pay the Vendor in full for Services performed to the date of notice of termination plus any Services the Town deems necessary during the notice period. Said compensation shall be paid upon the Vendor's delivering or otherwise making available to the Town all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the Vendor in performing the Services included in this Agreement, whether completed or in progress.

10. Insurance.

10.1 Vendor shall procure and maintain, and shall cause any Subcontractor of Vendor to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the Town. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by Vendor pursuant to paragraph 17 of this Agreement. In case of any claims made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

A. Workmen's Compensation Insurance and Employer's Liability Insurance to cover obligations imposed by applicable laws for any employee of Vendor or a Subcontractor engaged in the performance of work under this Agreement. In the event Vendor is a sole proprietor with no employees, the Workman's Compensation Insurance required herein may be waived.

B. General liability insurance with minimum combined single limits of One Million Dollars (\$1,000,000) each occurrence and One Million Dollars (\$1,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employees' acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interests provision.

C. Comprehensive Automobile Liability insurance within single limits for bodily injury and property damage of not less than One Million Dollars (\$1,000,000) each occurrence and One Million Dollars (\$1,000,000) aggregate with respect to each of Vendor's owned, hired or non-owned vehicles assigned to or used in the performance of this Agreement. The policy shall contain a severability of interests provision.

The policies required by subparagraphs B and C, above shall be endorsed to include the Town and the Town's officers and employees as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the Town, its officers, or its employees, or carried by or provided through any insurance pool of the Town, shall be excess and not contributory insurance to that provided by the Vendor. The Vendor shall be solely responsible for any deductible losses under any policy required above.

A certificate of insurance shall be completed by the Vendor's insurance agent and provided to the Town as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the Town prior to commencement of the Agreement. The certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be cancelled until at least thirty (30) days prior written notice has been given to the Town. Vendor shall notify the Town within ten (10) days if the coverages afforded under the policies are materially changed. The completed Certificate of Insurance shall be sent to:

Town Clerk
Town of Erie
PO Box 750
Erie, CO 80516

Notwithstanding any other portion of this Agreement, failure on the part of Vendor to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of this Agreement for which the Town may immediately terminate this Agreement, or, at its discretion, the Town may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all money so paid by the Town shall be repaid by the Vendor to the Town upon demand, or the Town may offset the cost of the premiums against any money due to the Vendor from the Town.

The parties hereto understand and agree that the Town is relying on, and does not

waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., as from time to time amended, or any other law, protection or limitation otherwise available to the Town, its officers, or its employees.

11. Payment of Subcontractors. Vendor shall agreement with and pay any and all Subcontractors used by Vendor in the performance of the Services. The Town shall in no event have any liability to any Subcontractor, and Vendor shall hold the Town harmless with respect to any payments alleged to be due to Vendor's Subcontractor.
12. Compliance with Applicable Laws. In connection with the execution of this Agreement, the Vendor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or disability. Such actions shall include, but not be limited to the following: employment; upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Vendor shall comply with the Americans with Disabilities Act (Public Law 101-336), and all applicable regulations and rules promulgated by the Equal Employment Opportunity Commission and the Colorado Civil Rights Commission. At all times during the performance of the Agreement, Vendor shall strictly adhere to all applicable federal, state and Town laws that have been or may hereafter be established. This shall include, without limitation, the United States Department of Labor standards. As used in this paragraph, and hereafter, the term "laws" shall include, without limitation, all federal, state and Town codes, charters, ordinances, laws, standards, rules and regulations. The indemnification and termination provisions of this Agreement shall apply with respect to Vendor's failure to comply with all applicable laws or regulations.
- 12A. No Discrimination in Employment. In connection with the performance of work under this Agreement, Vendor agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified on the basis of race, color, ancestry, creed, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability and further agrees to insert the foregoing provision in all subcontracts hereunder.
13. Prohibited Interest.
 - A. The Vendor agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its Services hereunder. The Vendor further agrees that in the performance of the Agreement, no person having any such interest shall be employed.
 - B. No official or employee of the Town shall have any interest, direct or indirect, in the Vendor, this Agreement or the proceeds therefrom.

14. Independent Vendor. The Vendor shall perform all Services as an independent Vendor, and nothing in this Agreement is intended to or shall create a relationship of employer-employee, joint venturers, or partners, between the parties. The Vendor shall be solely responsible for all federal and state income taxes attributable to the monies payable to the Vendor for the Services.
15. Obligation of Non-Disclosure. The Vendor agrees to keep confidential any and all drawings, reports, documents, memoranda, research, plans, analysis, maps, photographs, designs, information and work product either provided by the Town or generated by the Vendor pursuant to this Agreement, or provided to the Vendor by other Vendors. Vendor shall make use of the information or items set forth hereinabove for any purpose, including public hearings of the Town, as expressly directed by the Town, for the Town's benefit. Vendor shall not use the information or items set forth hereinabove for its own account, or another's account, or in any manner detrimental to the Town. The Town acknowledges the need to share said information and items referred to hereinabove with the Vendor's Subcontractors under this Agreement, and hereby approves such sharing and use.
16. Release of Liability. Acceptance by the Vendor of the last payment shall be a release to the Town and every officer and agent thereof from all claims and liability hereunder for anything done or furnished for or relating to the Agreement and the services provided thereunder or for any act or neglect of the Town or of any person relating to the Agreement and the services provided thereunder.
17. No Waiver of Rights. Neither the inspection by the Town or any of its officials, employees, or agents, nor any order by the Town for payment of money, or any payment for, or acceptance of, the whole or any part of the services by the Town, nor any extension of time, nor any possession taken by the Town or its employees, shall operate as a waiver of any provision of the Agreement, or of any power reserved to the Town therein, or any right to damages provided therein, nor shall any waiver of any breach in the Agreement be held to be a waiver of any other or subsequent breach.
18. Professional Liability. The Vendor shall exercise in its performance of the Services hereunder the standard of care required by Colorado law. The Vendor shall be liable to the Town for any loss, damages, or costs incurred by the Town for the repair, replacement or correction of any part of the Project which is deficient or defective as a result of any failure of the Vendor to comply with this standard.
19. Communications. All communications relating to the day-to-day Services shall be exchanged between the respective Project representatives of the Town and the Vendor who will be designated by the parties promptly upon commencement of the Services.
20. Indemnification. Vendor agrees to indemnify and save harmless the Town against any and all claims, debts, demands, damages or obligations which may be asserted against the Town arising by reason of, or in connection with, any alleged act or omission of Vendor or any person claiming under, by or through Vendor, at Vendor's own expense using those attorneys that the Town deems appropriate. If, however, it becomes necessary for the Town to defend any action arising by reason of, or in connection with, any alleged act or omission of Vendor or any person

claiming under, by or through Vendor seeking to impose liability for such claim or demand, Vendor shall pay all court costs, witness fees, expert witness fees, and attorney's fees, incurred by the Town in effecting such defense in addition to any other sums which the Town may be called upon to pay by reason of the entry of any judgment, assessment, bond, writ or levy against the Town in the litigation in which such claims are asserted. Vendor shall be subrogated to any and all amounts paid by it on behalf of the Town to any claims that the Town may have as a result of said payments to any person or third persons which are the reason or cause of said payments.

21. Patent Guarantee. The Vendor shall, with respect to any device or composition of the Vendor's design or standard manufacture, indemnify and hold harmless the Town, its employees, officers and agents, from costs and damage as finally determined by any court of competent jurisdiction for infringement of any United States Letters Patent, by reason of the sale or normal use of such device or composition, provided that the Vendor is promptly notified of all such actual or potential infringement suits and is given an opportunity to participate in the defense thereof by the Town.
22. No Assignment. Vendor's duties and obligations pursuant to this Agreement require a particular expertise and skill, and may not be assigned to any third party or agency without the express written consent of the Town, which consent may be withheld at the sole discretion of the Town.
23. Notices. Any notices required or permitted hereunder shall be sufficient if personally delivered or if sent by certified mail, return receipt requested, addressed as follows:

If to the Town:

Assistant to the Town Administrator –
Community Services
Town of Erie
P.O. Box 750
Erie, Colorado 80516

With a copy (which shall not constitute notice) to:

Mark R. Shapiro
Mark R. Shapiro, P.C.
1002 Walnut Street, #203A
Boulder, Colorado 80302

If to the Vendor:

Aquatic Chemical Solutions, INC.
Attention: Robert Morgan
P.O. Box 17865
Denver, CO 80217

Notices personally delivered shall be effective upon delivery. Mailed notices shall be effective three (3) business days after mailing.

24. Agreement Subject to Annual Appropriation.

A. The parties hereto understand and agree that sufficient funds have been appropriated and budgeted for compensation for work done pursuant to this Agreement for the current fiscal year ending December 31, 2018. This is a full and lawful appropriation as required by appropriate statute for this project. In the event that the Town fails to appropriate sufficient funds to cover any compensation which may become due for the fiscal year beginning January 1, 2019, then, and in that event, this Agreement shall immediately terminate as of December 31, 2018, without further action of any party. The Town shall provide notice to Vendor prior to December 31, 2018, as to whether an appropriation has been made for further work anticipated following December 31, 2018.

B. The amount of money appropriated by the Town is sufficient to pay the Agreement amounts due herein for the current fiscal year.

C. The Town shall be prohibited from issuing any change order or other form of order or directive requiring additional compensable work to be performed, which work causes the aggregate amount payable under this Agreement to exceed the amount appropriated for the original Agreement, unless Vendor is given written assurance by the Town that lawful appropriations to cover the cost of the additional work have been made or unless such work is covered under a remedy-granting provision in this Agreement.

25. Prohibition Against Employment of Illegal Aliens.

A. By its signature on this Agreement, Vendor certifies that, as of the time of its signature, it does not knowingly employ or contract with an illegal alien and that, in order to verify that it does not employ any illegal aliens, the Vendor will participate in the E-Verify Program created in Public Law 104-208, as amended, and expanded in Public Law 108-156, as amended, administered by the United States Department of Homeland Security and the Social Security Administration.

B. Vendor agrees that it shall not knowingly employ or contract with an illegal alien to perform work under this Agreement; and that it shall not enter into a contract with a Subcontractor that fails to certify to the Vendor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract.

C. Vendor has verified through participation in the E-Verify Program that the Vendor does not employ any illegal aliens.

D. Vendor shall not use the E-Verify Program procedures to undertake pre-employment screening of job applicants while work under this Agreement is being performed.

E. If Vendor obtains actual knowledge that a Subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Vendor shall: (1) notify the Subcontractor and the Town within three days that

the Vendor has actual knowledge that the Subcontractor is employing or contracting with an illegal alien; and (2) terminate the subcontract with the Subcontractor if, within three days of receiving the notice required herein, the Subcontractor does not stop employing or contracting with the illegal alien; except that the Vendor shall not terminate the contract with the Subcontractor if during such three days the Subcontractor provides information to establish that the Subcontractor has not knowingly employed or contracted with an illegal alien.

F. The Vendor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. section 8-17.5-101(5).

G. If Vendor violates a provision of this Illegal Alien section, the Town may terminate this Agreement for breach of contract. If the Agreement is so terminated, the Vendor shall be liable for actual and consequential damages to the Town. Vendor understands that, in the event of such a termination, Town is required to notify the office of the Colorado Secretary of State.

26. Attorney's Fees; Interest. In any action brought to enforce the provision(s) of this Agreement, the prevailing party shall be entitled to an award of all reasonable attorney's fees and costs, including expert witness' fees, expended or incurred, to be recovered as part of the costs therein. Any fees and expenses not paid to Vendor by the Town when due shall earn interest at the rate of four percent (4%) per annum.
27. Waiver. Failure to insist upon strict compliance with any of the terms, covenants, and/or conditions hereof shall not be deemed a waiver of such terms, covenants or conditions, nor shall any waiver or relinquishment of any right or power hereunder at any one time or more times be deemed a waiver or relinquishment of such right or power at any other time or times.
28. Amendments to Agreement. No changes, alterations or modifications to any of the provisions hereof shall be effective unless contained in a written agreement signed by both parties.
29. Entire Agreement. This Agreement shall constitute the entire agreement between the parties hereto and shall supersede all prior contracts, proposals, representations, negotiations and letters of intent, whether written or oral, pertaining to the Services.
30. Situs, Venue and Severability. The laws of the State of Colorado shall govern the interpretation, validity, performance and enforcement of this Agreement. For the resolution of any dispute arising hereunder, venue shall be in the Courts of the County of Weld, State of Colorado. If any provision of this Agreement shall be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby.
31. Paragraph Headings. Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Agreement.

32. Binding Agreement. This Agreement shall be binding upon and for the benefit of the parties hereto, their successors and assigns.

33. Vendor's General Warranty and Guarantee.

A. Vendor warrants and guarantees to the Town that the Project and the Services will be in accordance with the Services as set forth in Exhibit "A," and all other requirements as set forth in this Agreement, and will not be defective.

B. Vendor's obligation to perform and complete the Project and the Services in accordance with the Agreement shall be absolute.

C. The Vendor warrants that, unless otherwise specified in the Agreement, the materials and equipment installed in the Project and the Services will be new, merchantable, and fit for the purpose for which they are intended, and that the Project and the Services will be performed in a workmanlike manner. The Vendor also warrants the workers who perform the work on the Project and the Services will be sufficiently skilled to produce a high quality product which is free of blemishes, (surface defects) and flaws (internal defects).

D. The Vendor is under a continuing duty to warn the Town any possible defect in the design of the Project and the Services and materials incorporated in the Project and the Services which may cause personal injury or property damage, as soon as the Vendor discovers the possible defect or has notice that the Project and the Services may be unsafe. The Vendor's duty under this paragraph shall be continuing, and shall not expire when the Town accepts the Project and the Services or when the Vendor's guarantee expires. If the Vendor fails to warn the Town of a design or product defect of which the Vendor is aware, and if personal or property damage thereafter results from such design or product defect, the Vendor shall be liable jointly and severally with any other party responsible at law for all damages resulting from such defect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day
and year first-above written.

TOWN:

TOWN OF ERIE,
a Colorado municipal corporation

By: _____
Tina Harris, Mayor

ATTEST:

By: _____
Jessica Koenig, Deputy Town Clerk

VENDOR:

By: _____

ATTEST:

By: _____

EXHIBIT "A"
Unit-Price Bid Form
ECC Pool Play Structure Replacement (PR-18-01)

Service Description	Units	Quantity	Unit Cost	Total Cost
Mobilization	LS	1	\$ 4,985.00	\$ 4,985.00
New Play Structure	LS	1	\$ 82,390.00	\$ 82,390.00
Play Structure Installation	LS	1	\$ 7,050.00	\$ 7,050.00
Stand Alone Water Table Feature	LS	1	\$ 12,650.00	\$ 12,650.00
Stand Alone Water Table Feature Installation	LS	1	\$ 1,850.00	\$ 1,850.00
Total				\$ 108,925.00

Alternate 1	Units	Quantity	Unit Cost	Total Cost
Spinny Squirt with Play Phase Base	EA	1	\$ 6,225.00	\$ 6,225.00
Funbrella with Play Phase Base	EA	1	\$ 1,950.00	\$ 1,950.00
Ground Spray Installation	EA	1	\$ 1,850.00	\$ 1,850.00
Total				\$10,025.00
Total Project Cost				\$118,950.00