



CDBG SERVICE AGREEMENT NO. 6622

Greenwood Pool Filter Renovation

THIS **Greenwood Pool Filter Renovation Service Agreement** ("Agreement") is entered into by and between the City of Corpus Christi, a Texas home-rule municipal corporation ("City") and Progressive Commercial Aquatics, LLC, dba Landmark Aquatic ("Contractor"), effective upon execution by the City Manager or the City Manager's designee ("City Manager").

WHEREAS, Contractor has bid to provide Greenwood Pool Filter Renovation Services in response to Request for Bid/Proposal No. 6622 ("RFB/RFP"), which RFB/RFP includes the required scope of work and all specifications and which RFB/RFP and the Contractor's bid or proposal response, as applicable, are incorporated by reference in this Agreement as Exhibits 1 and 2, respectively, as if each were fully set out here in its entirety.

NOW, THEREFORE, City and Contractor agree as follows:

- 1. Scope.** Contractor shall complete Greenwood Pool Filter Renovation Services ("Services") in accordance with the attached Scope of Work, as shown in **Attachment A**, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety, and in accordance with Exhibit 2.
- 2. Term.** The term of this Agreement is six months beginning on the date provided in the Notice to Proceed from the Contract Administrator or the City's Procurement Division. The parties may mutually extend the term of this Agreement for completion of performance, if necessary, provided, the parties do so in writing prior to the expiration of the original term.
- 3. Compensation and Payment.** This Agreement is for an amount not to exceed \$239,875.00, subject to approved extensions and changes. Payment will be made for Services performed and accepted by the City within 30 days of acceptance, subject to receipt of an acceptable invoice. All pricing must be in accordance with the attached Bid/Pricing Schedule, as shown in **Attachment B**, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety. Any amount not expended during the initial term or any option period may, at the City's discretion, be allocated for use in the next Option Period.

Invoices must be mailed to the following address with a copy provided to the Contract Administrator:

City of Corpus Christi
Attn: Accounts Payable

P.O. Box 9277
Corpus Christi, Texas 78469-9277

- 4. Community Development Block Grant Funding.** Contractor understands that this Agreement is funded with Community Development Block Grant (CDBG) funds and agrees to comply with the federal requirements, as shown in **Attachment C**. Contractor further agrees to the following provisions:

(A) Contractor shall submit a construction schedule at least 10 days before starting construction.

(B) The Contractor shall keep full and detailed accounts of materials, labor, and equipment utilized for the Services. Subject to prior written notice, the City shall be afforded reasonable access during normal business hours to all of the Contractor's records related to the Services. The Contractor shall preserve all such documents for a period of three years following final payment.

(C) Contractor and its subcontractors are required to comply with Davis-Bacon wage rates ("Davis-Bacon Wage Rates") and must submit weekly certified payrolls using the form shown in **Attachment C1**.

(D) Contractor shall install a CDBG project sign at the job site in a visible location and include all required documents that must be displayed and/or described, as detailed in **Attachment C2**.

(E) Contractor must use its best efforts to afford minority-owned business enterprises and women-owned business enterprises (51% or more owned or controlled by minority group members or women) the maximum practicable opportunity to participate in the performance of these Services for this project.

- 5. Contract Administrator.** The Contract Administrator designated by the City is responsible for approval of all phases of performance and operations under this Agreement, including deductions for non-performance and authorizations for payment. The City's Contract Administrator for this Agreement is as follows:

Liza Nino-Elizalde
Parks & Recreation Dept.
Phone: 361-826-3026
Email: lizan@cctexas.com

- 6. Insurance; Bonds.**

(A) Before performance can begin under this Agreement, the Contractor must deliver a certificate of insurance ("COI"), as proof of the required insurance coverages, to the City's Risk Manager and the Contract Administrator. Additionally, the COI must state that the City will be given at least 30 days'

advance written notice of cancellation, material change in coverage, or intent not to renew any of the policies. The City must be named as an additional insured. The City Attorney must be given copies of all insurance policies within 10 days of the City Manager's written request. Insurance requirements are as stated in **Attachment D**, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety.

(B) In the event that a payment and/or performance bonds are required of the Contractor to be provided to the City under this Agreement before performance can commence, Contractor shall use the bond forms as shown in Attachment D.

- 7. Inspection and Acceptance.** City may inspect all Services and products supplied before acceptance. Any Services or products that are provided but not accepted by the City must be corrected or re-worked immediately at no charge to the City. If immediate correction or re-working at no charge cannot be made by the Contractor, a replacement service may be procured by the City on the open market and any costs incurred, including additional costs over the item's bid/proposal price, must be paid by the Contractor within 30 days of receipt of City's invoice.

8. Warranty.

(A) The Contractor warrants that all products supplied under this Agreement are new, quality items, fit for their intended purpose, and of good material and workmanship. The Contractor warrants that it has clear title to the products and that the products are free of liens or encumbrances.

(B) In addition, the products purchased under this Agreement shall be warranted by the Contractor or, if indicated in **Attachment E** by the manufacturer, for the period stated in Attachment E. Attachment E is attached to this Agreement and is incorporated by reference into this Agreement as if fully set out here in its entirety.

(C) Contractor warrants that all Services shall be performed in accordance with the standard of care used by similarly situated contractors performing similar services.

- 9. Quality/Quantity Adjustments.** Any Service quantities indicated on the Bid/Pricing Schedule are estimates only and do not obligate the City to order or accept more than the City's actual requirements nor do the estimates restrict the City from ordering less than its actual needs during the term of the Agreement and including any Option Period. Substitutions and deviations from the City's product requirements or specifications are prohibited without the prior written approval of the Contract Administrator.

- 10. Non-Appropriation.** The continuation of this Agreement after the close of any fiscal year of the City, which fiscal year ends on September 30th annually, is subject to appropriations and budget approval specifically covering this Agreement as an expenditure in said budget, and it is within the sole discretion of the City's City Council to determine whether or not to fund this Agreement. The City does not represent that this budget item will be adopted, as said determination is within the City Council's sole discretion when adopting each budget.
- 11. Independent Contractor.** Contractor shall perform the work required by this Agreement as an independent contractor and furnish such Services in its own manner and method, and under no circumstances or conditions will any agent, servant or employee of the Contractor be considered an employee of the City.
- 12. Subcontractors.** Contractor may not utilize the work or services of subcontractors in the performance of this Agreement.
- 13. Amendments.** This Agreement may be amended or modified only in writing, dated, and executed by an authorized representative of each party.
- 14. Waiver.** No waiver by either party of any breach of any term or condition of this Agreement waives any subsequent breach of the same.
- 15. Taxes.** The Contractor covenants to pay payroll taxes, Medicare taxes, FICA taxes, unemployment taxes and all other applicable taxes. Upon request, the City Manager shall be provided proof of payment of these taxes within 15 days of such request.
- 16. Notice.** Any notice required under this Agreement must be given by fax, hand delivery, or certified mail, postage prepaid, and is deemed received on the day faxed or hand-delivered or on the third day after postmark if sent by certified mail. Notice must be sent as follows:

IF TO CITY:

City of Corpus Christi
Attn: Liza Nino-Elizalde, Contracts/Funds Administrator
Parks & Recreation Dept.
400 Mann St., Suite 200, Corpus Christi, TX 78401
Phone: 361-826-3026
Fax: N/A

IF TO CONTRACTOR:

Progressive Commercial Aquatics, LLC, dba Landmark Aquatic
Attn: Erica Peace, Director of Sales
2510 Farrell Rd., Houston, TX 77073
Phone: 281-982-0212
Fax: N/A

17. CONTRACTOR SHALL FULLY INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY OF CORPUS CHRISTI AND ITS OFFICERS, EMPLOYEES, AND AGENTS ("INDEMNITEES") FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, CLAIMS, DEMANDS, SUITS, AND CAUSES OF ACTION OF WHATEVER NATURE, CHARACTER, OR DESCRIPTION ON ACCOUNT OF PERSONAL INJURIES, PROPERTY LOSS, OR DAMAGE, OR ANY OTHER KIND OF INJURY, LOSS, OR DAMAGE, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, REASONABLE ATTORNEYS' FEES, AND EXPERT WITNESS FEES, WHICH ARISE OR ARE CLAIMED TO ARISE OUT OF OR IN CONNECTION WITH A BREACH OF THIS AGREEMENT OR THE PERFORMANCE OF THIS AGREEMENT BY THE CONTRACTOR OR WHICH RESULTS FROM THE NEGLIGENT ACT, OMISSION, OR FAULT OF THE CONTRACTOR OR ITS EMPLOYEES OR AGENTS. CONTRACTOR MUST, AT ITS OWN EXPENSE, INVESTIGATE ALL CLAIMS AND DEMANDS, ATTEND TO THEIR SETTLEMENT OR OTHER DISPOSITION, DEFEND ALL ACTIONS BASED THEREON WITH COUNSEL SATISFACTORY TO THE CITY ATTORNEY, AND PAY ALL CHARGES OF ATTORNEYS AND ALL OTHER COSTS AND EXPENSES OF ANY KIND ARISING OR RESULTING FROM ANY SAID LIABILITY, DAMAGE, LOSS, CLAIMS, DEMANDS, SUITS, OR ACTIONS. THE INDEMNIFICATION OBLIGATIONS OF CONTRACTOR UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

18. Termination.

(A) The City may terminate this Agreement for Contractor's failure to comply with any of the terms of this Agreement. The City must give the Contractor written notice of the breach and set out a reasonable opportunity to cure. If the Contractor has not cured within the cure period, the City may terminate this Agreement immediately thereafter.

(B) Alternatively, the City may terminate this Agreement for convenience upon 30 days' advance written notice to the Contractor. The City may also terminate this Agreement upon 24 hours written notice to the Contractor for failure to pay or provide proof of payment of taxes as set out in this Agreement.

19. Owner's Manual and Preventative Maintenance. Contractor agrees to provide a copy of the owner's manual and/or preventative maintenance guidelines or instructions, if available, for any equipment purchased by the City pursuant to this Agreement. Contractor must provide such documentation upon delivery of such purchased products or equipment and prior to receipt of the final payment by the City.

- 20. Limitation of Liability.** Each party's maximum liability under this Agreement is limited to the total amount of compensation shown in Section 3 of this Agreement. In no event shall either party be liable for incidental, consequential, or special damages.
- 21. Assignment.** No assignment of this Agreement by the Contractor, or of any right or interest contained herein, is effective unless the City Manager first gives written consent to such assignment. The performance of this Agreement by the Contractor is of the essence of this Agreement, and the City Manager's right to withhold consent to such assignment is within the sole discretion of the City Manager on any ground whatsoever.
- 22. Severability.** Each provision of this Agreement is considered to be severable and, if, for any reason, any provision or part of this Agreement is determined to be invalid and contrary to applicable law, such invalidity shall not impair the operation of nor affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part had been omitted.
- 23. Order of Precedence.** In the event of any conflicts or inconsistencies between this Agreement, its attachments, and exhibits, such conflicts and inconsistencies will be resolved by reference to the documents in the following order of priority:
- A. CDBG Federal Requirements;
 - B. this Agreement (excluding attachments and exhibits);
 - C. its attachments, in order of appearance;
 - D. the bid solicitation document including any addenda (Exhibit 1); then,
 - E. the Contractor's bid response (Exhibit 2).
- 24. Certificate of Interested Parties.** Contractor agrees to comply with Texas Government Code Section 2252.908, as it may be amended, and to complete Form 1295 "Certificate of Interested Parties" as part of this Agreement if required by said statute.
- 25. Governing Law.** Contractor agrees to comply with all federal, Texas, and City laws in the performance of this Agreement. The applicable law for any legal disputes arising out of this Agreement is the law of the State of Texas, and such forum and venue for such disputes is the appropriate district or county court in Nueces County, Texas. In accordance with Chapter 2271, Texas Government Code, Contractor verifies that Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement. In accordance with Chapter 2274, Texas Government Code, Contractor verifies that Contractor does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this Agreement against a firearm entity or fire trade association. In accordance with Chapter 2276, Texas Government Code, Contractor verifies that Contractor does not

boycott energy companies and will not boycott energy companies during the term of this Agreement.

- 26. Public Information Act Requirements.** This paragraph applies only to agreements that have a stated expenditure of at least \$1,000,000 or that result in the expenditure of at least \$1,000,000 by the City. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this agreement, and the Contractor agrees that the agreement can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.
- 27. Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement and supersedes all prior negotiations, arrangements, agreements and understandings, either oral or written, between the parties.

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CONTRACTOR

Signature: _____

Printed Name: _____

Title: _____

Date: _____

CITY OF CORPUS CHRISTI

Sergio Villasana Date
 Director, Finance & Procurement

Approved as to legal form:

Assistant City Attorney Date

Attached and Incorporated by Reference:

Attachment A: Scope of Work

Attachment B: Bid/Pricing Schedule

Attachment C: Community Development Block Grant Federal Requirements

Attachment D: Insurance Requirements; Performance and Payment Bonds

Attachment E: Warranty Requirements

Incorporated by Reference Only:

Exhibit 1: RFB/RFP No. 6622

Exhibit 2: Contractor's Bid/Proposal Response