



Quality Pools For Less | (239) 237-6250 | 3037 SW 11th Place,

Cape Coral, FL 33914 | www.QualityPoolsForLess.com

CONTRACT

Customer Information:

Name: City of Marco Island Mackle Park

Phone: 239-276-5789

E-Mail: lpomier@yahoo.com

Address: 1361 Andalusia Terrace Marco Island FL 34145

Inclusive Scope of Work

- 1. Contract signing**
- 2. Permit**
- 3. Remove existing Vak Pak equipment**
- 4. Remove existing collector tank**
- 5. Remove concrete from equipment area under Pak and tank**
- 6. Pressure test plumbing**
- 7. Install Vak Pak system- includes new bollard, Waterplay controller w/ remote capability, CAT 4000 ORP chemical controller w/ remote capability**
- 8. Install collector tank**
- 9. Plumb new equipment**
- 10. Pour 4 cu yds of concrete under Pak and collector tank**
- 11. Backfill equipment area**
- 12. Electrical (provided by City of Marco Island)**
- 13. Remove existing water spray heads**
- 14. Install new water spray heads**
- 15. Level and repair perimeter walkway area of splash pad**
- 16. Install new FloCo Decking on splash pad ****
- 17. Start up system**
- 18. Adjust chemicals**
- 19. Staff training for system operation and maintenance**
- 20. Final payment due upon completion**



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*** Splash pad area constitutes 962 sq ft.. Prep work includes proper installation of surface drains; grinding as needed for a flush, no hazard surface; self leveling concrete as needed; schluter brackets as needed. Specific color and pattern choices for rubberized surfaces are to be determined.*

Equipment to be installed

1. (1) Vak Pak Complete Above Grade Splash Pad Cabinet System with sand filter
2. (1) 1000 gal Vak Pak Collector Tank with Sky Lid

Salesperson/Contractor's Initials _____

1

Owner's Initials _____



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Services & Warranties Upon Completion:

1 year workmanship 10 year material for plaster

Equipment Warranties from Manufacturers of equipment

Items NOT Included in Contract:

Fencing, and Electrical will installed by others

- Additional soil
- Capping or repair of sprinkler system
- Excessive rock removal
- Excessive dewatering
- Removal & replacement of outdoor lights
- Tree removal
- Excessive concrete removal under ground

NOW THEREFORE, in consideration of the terms and promises set forth herein, which is deemed considered good, valuable and sufficient consideration, Quality Pools for Less (“Contractor”) and the City of Marco Island (“Owner”) hereby enter into an agreement to renovate the city park splash pad per the above-described scope of work and the terms and conditions set forth below (the “Project”).

Project Address:

Project Address: 1361 Andalusia Terrace Marco Island FL 34145

Price/Payment

Permit and Engineering: Included

Deposit: N/A

Due upon on site delivery of Vak Pak system and waterplay components: \$139,063.91

Due upon completion of project: \$169,336.09

TOTAL AMOUNT DUE: \$308,400

Salesperson/Contractor Initials _____

Owner’s Initials _____



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LIEN DISCLOSURE

ACCORDING TO FLORIDA'S CONSTRUCTION LIEN LAW (SECTIONS [713.001-713.37](#), FLORIDA STATUTES), THOSE WHO WORK ON YOUR PROPERTY OR PROVIDE MATERIALS AND SERVICES AND ARE NOT PAID IN FULL HAVE A RIGHT TO ENFORCE THEIR CLAIM FOR PAYMENT AGAINST YOUR PROPERTY. THIS CLAIM IS KNOWN AS A CONSTRUCTION LIEN. IF YOUR CONTRACTOR OR A SUBCONTRACTOR FAILS TO PAY SUBCONTRACTORS, SUBSUBCONTRACTORS, OR MATERIAL SUPPLIERS, THOSE PEOPLE WHO ARE OWED MONEY MAY LOOK TO YOUR PROPERTY FOR PAYMENT, EVEN IF YOU HAVE ALREADY PAID YOUR CONTRACTOR IN FULL. IF YOU FAIL TO PAY YOUR CONTRACTOR, YOUR CONTRACTOR MAY ALSO HAVE A LIEN ON YOUR PROPERTY. THIS MEANS IF A LIEN IS FILED YOUR PROPERTY COULD BE SOLD AGAINST YOUR WILL TO PAY FOR LABOR, MATERIALS, OR OTHER SERVICES THAT YOUR CONTRACTOR OR A SUBCONTRACTOR MAY HAVE FAILED TO PAY. TO PROTECT YOURSELF, YOU SHOULD STIPULATE IN THIS CONTRACT THAT BEFORE ANY PAYMENT IS MADE, YOUR CONTRACTOR IS REQUIRED TO PROVIDE YOU WITH A WRITTEN RELEASE OF LIEN FROM ANY PERSON OR COMPANY THAT HAS PROVIDED TO YOU A "NOTICE TO OWNER." FLORIDA'S CONSTRUCTION LIEN LAW IS COMPLEX, AND IT IS RECOMMENDED THAT YOU CONSULT AN ATTORNEY.

RIGHT-TO-CURE

CHAPTER 558 NOTICE OF CLAIM

ANY CLAIMS FOR CONSTRUCTION DEFECTS ARE SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES.

CONSTRUCTION INDUSTRIES RECOVERY FUND

FLORIDA HOMEOWNERS' CONSTRUCTION RECOVERY FUND

PAYMENT, UP TO A LIMITED AMOUNT, MAY BE AVAILABLE FROM THE FLORIDA HOMEOWNERS' CONSTRUCTION RECOVERY FUND IF YOU LOSE MONEY ON A PROJECT PERFORMED UNDER CONTRACT, WHERE THE LOSS RESULTS FROM SPECIFIED VIOLATIONS OF FLORIDA LAW BY A LICENSED CONTRACTOR. FOR INFORMATION ABOUT THE RECOVERY FUND AND FILING A CLAIM, CONTACT THE FLORIDA CONSTRUCTION INDUSTRY LICENSING BOARD AT THE FOLLOWING TELEPHONE NUMBER AND ADDRESS:

Construction Industry Licensing Board
2601 Blair Stone Road
Tallahassee, Florida 32399-
2215 (850) 487-1395



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Obtaining Permits/HOA Approvals

Prior to scheduling the start of construction, a permit and HOA approval must be obtained. There is no guarantee that a permit will be approved or that Owner's HOA will authorize the construction of the pool contemplated herein. Contractor shall not be liable for any delays in obtaining a permit or HOA approval.

Owner's Responsibility

The OWNER is responsible for:

- a. The location of the pool/spa construction project must be within the OWNER'S property boundary, setbacks, zoning and deed restrictions, as applicable.
- b. The homeowner must call State of Florida "No Cuts" (dial "811") to identifying and flag any underground utilities that could be in or near the path of construction project. Utilities could include pipes, wires, cable, or other underground services. CONTRACTOR is not responsible for any incidents that involve any un-flagged underground utility.
- c. Soil should be load bearing and free of obstructions, seawall tie backs or "dead men". Contract does not include excessive dewatering that requires more than a 1 HP electric pump.
- d. Contacting an irrigation company to cap lines that are on the path and construction area. After Constitution is complete replacing and installing new irrigation lines as required.
- e. Removing, replanting, or replacing all landscaping including but not limited to sod, trees shrubs, and bushes, that are in the path or directly in the construction site. All final yard pitches, French drains, swales and berms required by permitting agency and HOA.
- f. Owner is responsible for obtaining written permission from adjacent homeowners as required to access construction site.
- g. Providing water and power throughout the construction of the Pool. Access should be within 200 ft. CONTRACTOR is not responsible for losses and/or damages due to thrown breakers.
- h. Allow CONTRACTOR to store tools and material for the duration of the project.
- i. Refinishing, patching, repairing, or painting areas damaged from the removal of an existing screen enclosure and or its hardware.
- k. During the startup and 30 days of pool service, Owner will not tamper with or add chemicals to, or shutting off pool equipment.
- l. Paying all additional costs and expenses associated with a stoppage of work caused by OWNER, Governmental Order, Act of God or conditions beyond the reasonable control of CONTRACTOR.
- m. There is a \$75 change order fee in additional to the cost of the change. All Change Orders must be in writing, signed by Owner and Contractor and must be prepaid in full.
- n. During final inspection, the Owner or someone representing the homeowner must be onsite. It is sometime necessary for the inspection department to enter the home and Owner shall grant access as necessary.
- o. For Collier County, if impervious calculations require a type two storm water management plan, the engineering fee is a minimum of \$2,700. Any required water



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remediation identified in the type two water plan is not included in this contract. Water management plans takes approximately eight weeks.

- p. Owner shall grant Contractor full access to the project and property during the term of this Contract and Owner shall not hinder, delay, obstruct or otherwise interfere with Contractor's ability and efforts in performing the contracted work. Owner shall also not hinder, obstruct, delay, instruct, or otherwise interfere with subcontractors on the project. Owner shall not communicate with Contractor's subcontractors, as any such activity shall be considered as interference with the project. Owner acknowledges and understands that such types of interference with subcontractors undermines Contractor's authority and ultimately affects the progress and quality of the work.

Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. Owner shall secure and pay for necessary approvals, easements, assessments, and charges required for construction, use and occupancy. Upon the request of Contractor, Owner shall furnish to Contractor a true and correct statement of the record legal title to the property on which the Project is located and the Owner's interest therein at the time of execution of this Contract and, within five days after any change, information of such change in title, recorded or unrecorded. Any other information relevant to the Contractor's performance of the work

- k. under the Owner's control shall be furnished by the Owner after receipt from the Contractor of a request for such information.

Contractor's Limited Warranties & Disclaimers

The Contractor will not be responsible for, nor will the Contractor repair or correct defects which are the result of an act of God, caused by third parties or circumstances or events beyond the control of the Contractor, or which are caused by a lack of routine Owner maintenance. Further, the Contractor does not assume any liability for work performed by others, or not a part of this contract. **THERE ARE NO OTHER WARRANTIES, OF ANY FORM OR DESCRIPTION, EXPRESS OR IMPLIED, AS TO MERCHANT ABILITY OR FITNESS FOR A**

PARTICULAR PURPOSE OTHER THAN AS EXPRESSLY SET FORTH HEREIN. NO CLAIM UNDER THE TERMS OF ANY WARRANTY SHALL BE ENFORCEABLE UNTIL THE FULL CONTRACT PRICE, PLUS CHANGE ORDERS ARE PAID IN FULL.

CONTRACTOR SHALL NOT BE RESPONSIBLE FOR:

- a. Damage caused by water quality from water used in the initial filling of the Pool;
- b. Any damage or theft caused by unauthorized persons on the Pool's job site.
- c. Delays caused by OWNER, Governmental Order, Act of God or conditions or restrictions beyond the reasonable control of CONTRACTOR.
- d. Any actual, direct, incidental or consequential damages or compensation of any kind resulting from construction delays, hindrances, interferences or other similar events regardless of the cause, since Contractor has made no verbal agreements or representations related to completion or construction time for the project.
- e. Running gas lines, and/or making gas connection to a gas heater or any other gas component unless explicitly mentioned in the scope of work



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Mediation, Arbitration & Venue

Except the enforcement liens, all claims and disputes of any kind relating to this agreement shall be subject to mandatory pre-suit mediation at the option of either OWNER or CONTRACTOR. Mediation shall occur within 30 days from the date a party requests mediation. Should mediation fail to render a complete resolution, the parties agree that any remaining claims and disputes shall be subject to mandatory binding arbitration, which shall begin within 30 days from when a party requests arbitration. Any mediation or arbitration between the parties shall be conducted in Lee County, Florida with either a mutually agreed upon mediator/arbitrator or a mediator/arbitrator with at least 25 years of litigation experience as a practicing attorney in Florida. Any and all mediation and arbitration fees and costs shall be equally split between the parties.

Non-Payment/Interest:

In the event that the Owner fails to make any payment called for herein when the same becomes due, the Contractor may stop work without any penalty whatsoever. All unpaid amounts due and owing to Contractor shall bear interest at 1.5% per month (18% per annum) beginning ten (10) days after payment is requested.

Deviations in Plans and Specifications:

Construction will substantially conform to the plans and specifications as established above, allowing deviations in the dimensions, if any. Contractor expressly reserves the right to make modifications, additions, or deletions to the Plans and/or Scope of Work/Specifications as may be required, as determined by the Contractor in its sole discretion, for structural, architectural, building or zoning codes, and/or aesthetic reasons. The Owner acknowledges, understands and agrees that, during the course of construction, Contractor may deviate from the Plans (layout or dimensions) and/or Specifications to solve design implementation issues in the field. In the event Contractor is unable to obtain the exact materials specified in the plans and specifications, Contractor shall have the exclusive right to substitute materials of similar pattern, design, and quality, all without affecting the validity or total price under the contract.

Owner Selections:

Owner specifically acknowledges and understands that certain selections of colors, materials, and finishes shall be made by Owner on a timely basis so that construction can proceed in a timely, uninterrupted manner. Owner hereby expressly agrees to make necessary selections within five (5) days after being notified by Contractor that the Owner's selections are necessary for the orderly continuation of construction. Owner further agrees that the Contractor shall have the right to substitute materials or items of comparable quality for any material or items which may be unobtainable by reason of temporary unavailability, strike, discountenance or production, or for any other reason. Contractor shall advise Owner of such substitutions by written notice.

Inspection of Project:

Owner agrees, for themselves and their agents, not to make any inspection of the Project unless accompanied by the Contractor. All inspections shall be made between the hours of 8:00 am and 4:00 pm, Monday through Friday, legal holiday excluded, and only upon 24 hour notice to Contractor. **Owner agrees, for themselves and their agents, not**



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to make any inspection of the Project unless accompanied by the Contractor. If Owner desires to have a 3rd party agent inspect the Project, then said 3rd party representative shall produce to Contractor, prior to inspecting the Project, proof of workers compensation and liability insurance. Owner hereby releases and agrees to hold Contractor harmless for any and all claims, loss or damage to person or property as a result of Owner, or their agents, entering the Project. Owner acknowledges and agrees that Owner enters the Project at his "own risk" and that Contractor shall not have or incur any liability whatsoever as a result of Owner's inspection of the Project.

Project Completion/Acceptance:

The issuance of a Certificate of Occupancy or passing the final inspection on the Project by the authorities having jurisdiction, shall constitute final completion of all items of construction. Contractor and Owner shall endeavor to perform a walk-through of the Project together at the time of, or before, Project completion. Owner and Contractor may inspect the premises and any touch-up, repair, correction, follow-up or completion items may be listed by Contractor and/or Owner on a "punch list." Contractor shall correct any items on the punch list that are, in the goodfaith judgment of the Contractor, deficient in workmanship according to this Contract and industry standards. Contractor shall endeavor to complete any such punch list within a reasonable time. The Contractor's obligation to complete the punch list shall not be grounds for postponing, delaying nor for imposing any condition upon the final payment, including but not limited to withholding all or any portion of the last payment or final draw. Owner shall not take exclude the Contract or Contractor's subs from access or use the Project in any way, no matter how title to the property is held, before the occurrence of all of the following: (1) The passing the final inspection; (2) Inspection of Project and creation of the punch list, if any; and (3) Final payment made to Contractor. In the event that Owner excludes the Contractor of its subs or uses the Project in any way prior to the occurrence of all of the events identified in this Paragraph, then Owner shall be in default of this Contract, accepts the construction "AS IS", and waives all warranties express or implied.

Soil Conditions:

Owner hereby specifically accepts sole responsibility or elevation, subterranean and other soil conditions relative to the subject property and surrounding properties and hereby releases Contractor for any liability for same. Contractor is not a geotechnical engineer and therefore cannot give any advice as to the subsurface conditions. Contractor makes no warranty and assumes no responsibility for any subsurface anomalies, unsuitable soils, or the work performed by others which may be attached to Contractor's work. Contractor neither expressly nor impliedly warrants the habitability of the soil nor sub-surface conditions of the Project. Owner may, at Owner's expense, have any soil testing performed that Owner deems necessary. No additional costs for all fill dirt during the course of the build. Contractor makes no warranty, expressed or implied, as to the soil condition. If Contractor encounters conditions at the site which are: (1) subsurface or otherwise concealed physical conditions or (2) unknown physical conditions of an unusual nature, then Contractor shall notify the Owner and provide the Owner with a Change Order for extra work. In different parts of the Lee and Collier County, the surrounding areas and elsewhere, there are layers of rock at the three and four foot level

below the surface. Pools are dug with a backhoe that can work through smaller rock and boulders. However, if they hit rock that the backhoe cannot break through, other equipment must be brought in to break through these layers in order to get the pool to the depth required. This equipment to break this layer and the hauling sway of these rocks is



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not covered in our contract. What is below the surface of an owner's lot is an unknown, and therefore is not the responsibility of the contractor. This does not happen often, but it is our responsibility to bring to your attention. The cost for this equipment is calculated by the hour. A typical cost to hammer through the rock and haul away will range from \$700 to \$1,500, and photos will be taken for verification. Owner will be responsible for any additional costs and expenses related to any discovered subsurface anomalies or unsuitable soils.

Termination by the Contractor:

Contractor may terminate this Contract if the work is stopped through no act or fault of the Contractor, for any of the following reasons: (1) issuance of an order of a court or other public authority having jurisdiction; (2) an act of government, such as a declaration of national emergency, making material unavailable; (3) because the Owner has not made payment within ten (10) days of when payment is due under the Contract; (4) for repeated suspensions, delays, or interruptions by Owner, or (5) for any material breach of the Contract by Owner. If one of the above reasons exists, Contractor may, upon five (5) days written notice to Owner, terminate this Contract and recover from Owner payment for work executed with respect to materials, equipment, tools and construction equipment and machinery, including reasonable overhead, profit and lost profit, at 50%, on the remaining Contract work.

General Terms:

- a.** Governing Law: This Agreement shall be governed by the laws of the State of Florida. Any suit or proceeding brought hereunder shall have its venue in Lee County, Florida.
- b.** Severability: If any portion of this Agreement is held to be invalid, such invalidity shall not affect the other portions which can be given effect without the invalid portion, and to this end the directions in the Agreement are severable.
- c.** Informed Execution: Each Party to this Agreement hereby declares that they have read this Agreement in its entirety and have received advice of its counsel with respect thereto or has been given the opportunity to seek and consult with their own counsel, and that each Party fully understands all terms of this Agreement and voluntarily accepts such terms. It is the intent of the Parties that the terms of this Agreement, and the obligations undertaken hereunder, shall survive the execution hereof.
- d.** Negotiated Agreement: Each Party to this Agreement hereby stipulates, covenants and agrees that each and every term of this Agreement was fully negotiated and agreed to by the Parties hereto, and consequently neither this Agreement nor any provision hereof shall be construed in favor of or against any of the Parties.
- e.** No Reliance on Representations – Entire Agreement: In making this Agreement, no Party is relying on any representations (whether affirmative or negative, actual or implied, or spoken, written, or inferred from silence) made by any other Party or its representatives, agents, employees, or attorneys, except as such representations may be contained in this Agreement, and only to the extent that such representations are explicitly and affirmatively stated herein. All prior statements, discussions, negotiations, offers, and counteroffers are merged herein.
- f.** Voluntary Agreement: All Parties acknowledge that all of their agreements, and every part of every agreement reached by them, is set forth and included within this Agreement. Further, all Parties understand and agree that this Agreement is entered into with the advice and assistance of competent counsel, or have been given the opportunity to seek and consult with their own counsel and in no way was coerced by anyone in any way.



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g. Execution in Counterparts: This Agreement may be separately executed in one or more counterparts (including facsimile, email, and PDF copies), each of which shall be deemed an original, but all of which shall collectively constitute one and the same instrument. This Agreement may be executed by facsimile, electronic, or PDF signatures, which shall be deemed to be the equivalent of originals for all purposes.

IN WITNESS WHEREOF, the Parties have set their respective hands and seals hereto as follows:

CONTRACTOR:

Signature: _____

Name: _____

Date: _____

OWNER:

Signature: _____

Name: _____

Date: _____