

City of Palm Coast, Florida Agenda Item

Agenda Date: February 17, 2026

Department CITY ATTORNEY Division	Amount Account #
Subject: RESOLUTION 2026-XX SETTLEMENT AGREEMENT TO CASE NO. 2022-CA-00773	
Presenter: Marcus Duffy, City Attorney	
Attachments: 1. Resolution 2. Agreements	
Background: <p>The City of Palm Coast previously entered into an agreement for the construction and management of the James F. Holland Park Splash Pad. Following completion of the project, the City identified various construction and design concerns related to the facility.</p> <p>In November 2022, the City initiated litigation (Case No. 2022-CA-000773) in connection with these issues. The parties have engaged in discussions to resolve the dispute and the proposed Settlement Agreements represent a negotiated resolution.</p> <p>The City Attorney and City Administration recommend approval of the Settlement Agreements, finding that the terms are fair, reasonable, and are in the best interest of the City. Approval by the City Council will finalize the settlements and will resolve the litigation in this matter against all parties.</p>	
Recommended Action: ADOPT RESOLUTION 2026-XX SETTLEMENT AGREEMENT TO CASE NO. 2022-CA-00773	

RESOLUTION 2026-____
APPROVAL OF SETTLEMENT AGREEMENTS IN CASE NO. 2022-CA-00773

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING SETTLEMENT AGREEMENTS AND MUTUAL RELEASES TO THE SETTLING PARTIES RELATING TO CASE NO. 2022-CA-00773 IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUITS IN AND FOR FLAGLER COUNTY, FLORIDA; AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO NEGOTIATE, FINALIZE AND EXECUTE ANY NECESSARY DOCUMENTS; PROVIDING FOR FUTURE AMENDMENTS, PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR IMPLEMENTING ACTIONS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Palm Coast (“City”) entered into an agreement for the construction and management of the James F. Holland Park Splash Pad (“Project”); and

WHEREAS, the City subsequently identified various construction and design defects at the Project; and

WHEREAS, on or about November 2022, the City filed a civil action in the Seventh Judicial Circuit in and for Flagler County, Florida, designated as Case No. 2022-CA-000773 (“Litigation”), against BBI Construction Management Inc. (“BBI”), and other involved parties; and

WHEREAS, the City and the Settling Parties wish to resolve the above disputes between them in accordance with the terms and conditions of the Settlement Agreements, attached hereto as Exhibit A; and

WHEREAS, the City Attorney and City Administration recommend approval of the Settlement Agreements attached here as Exhibit A and incorporated herein as being in the best interest of the City as it will resolve further litigation in this matter; and

WHEREAS, the City Council finds that the terms of the proposed Settlement Agreements are fair, reasonable, and in the best interest of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, AS FOLLOWS:

SECTION 1. LEGISLATIVE AND ADMINISTRATIVE FINDINGS. The above recitals (whereas clauses) are hereby adopted as the findings of the City Council of the City of Palm Coast.

SECTION 2. APPROVAL OF AGREEMENTS. The City Council of the City of Palm Coast hereby approves the terms and conditions of the Settlement Agreements with the Settling Parties in the above litigation as attached hereto and incorporated herein by reference as Exhibit “A.”

SECTION 3. AUTHORIZATION TO NEGOTIATE, FINALIZE, AND EXECUTE. The City Manager, or designee, is hereby authorized to negotiate, finalize, and execute the necessary documents.

SECTION 4. SCRIVENERS ERROR. To the extent that there are scriveners, typographical, or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the City Council.

SECTION 5. SEVERABILITY. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

SECTION 6. CONFLICTS. All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

SECTION 7. IMPLEMENTING ACTIONS. The City Manager is hereby authorized to take any actions necessary to implement the action taken in this Resolution.

SECTION 8. EFFECTIVE DATE. This Resolution shall take effect immediately upon adoption by the City Council.

DULY PASSED AND ADOPTED by the City Council of the City of Palm Coast, Florida, on this 17th day of February 2026.

ATTEST:

CITY OF PALM COAST

KALEY COOK, CITY CLERK

MICHAEL NORRIS, MAYOR

APPROVED AS TO FORM AND LEGALITY

MARCUS DUFFY, CITY ATTORNEY

Attachment: Exhibit "A" – Settlement Agreements

Exhibit "A"
SETTLEMENT AGREEMENTS

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the “Agreement”) is entered into by and between:

The City of Palm Coast, including all departments, divisions and insurers, and its respective past, present, and future principals, agents, employees, members, partners, representatives, affiliates, officers, directors, managers, and affiliated entities in their official capacity (the “City”), and

S&ME, Inc. and its respective past, present, and future principals, agents, employees, members, partners, representatives, officers, directors, managers, shareholders, parent and affiliated entities subsidiaries, divisions, joint ventures, predecessors, transferees, successors and assigns, (“S&ME”).

Individually, the City and S&ME shall be referred to as a “Settling Party” and collectively, shall be referred to as the “Settling Parties.”

BACKGROUND

WHEREAS, the City is the owner of real property located at 18 Florida Park Drive North, Palm Coast, Florida 32164, which is known and referred to as James F. Holland Park (“Holland Park”).

WHEREAS, the City sought to design and construct improvements to Holland Park in the second part of a multi-phase plan inclusive of the construction and design of a Splash Pad, which is the subject of this Agreement (“Splash Pad”).

WHEREAS, S&ME entered into a contract with the City on January 17, 2018 to act as the lead designer of the Splash Pad and to conduct construction administration oversight.

WHEREAS, upon completion of construction of the Splash Pad, the City alleges that it became aware of various construction and design defects and deficiencies, which resulted in the City filing claims against S&ME and other defendants in the case styled: *City of Palm Coast v. BBI Construction Management, Inc. et. al.*, Case No. 2022-CA-000773, pending in the Seventh Judicial Circuit in and for Flagler County, Florida (the “Lawsuit”).

WHEREAS, S&ME disputes and denies the City’s claims.

WHEREAS, without affecting the City’s claims in the Lawsuit against any non-Settling Party, and while acknowledging the expense and uncertainty of litigation, the Settling Parties wish to reach an amicable resolution to avoid additional litigation of these disputed matters and desire to settle the Lawsuit and resolve all disputes between or among them arising out of or related to the Lawsuit and/or the Splash Pad.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and intended to be legally bound, the Settling Parties agree as follows:

AGREED TERMS

1. Settlement Payment Terms. In full settlement of all disputes between the Settling Parties related to the Lawsuit (and only between the Settling Parties), and in consideration of the covenants contained in this Agreement, S&ME shall pay the City or cause the City to be paid the total sum of One-Million One-Hundred Thousand Dollars and Zero Cents (\$1,100,000.00). This sum shall constitute the Settlement Payment (the “**Settlement Payment**”). The Settlement Payment shall be made payable to “Gray Robinson, P.A. Trust Account” and delivered to the City’s counsel, Trevor Arnold, Esq., Gray Robinson, PA, 301 E. Pine Street, Suite 1400, Orlando, Florida 32801, no later than thirty (30) days (“Payment Deadline”) after full execution of this Agreement by the Parties.

The Settling Parties agree that the City shall be entitled to allocate the total Settlement Payment to its various damages alleged in the Lawsuit, including any alleged loss of use, lost profits, and consequential damages, as well as the payment of the City’s attorneys’ fees and costs related to the Lawsuit. However, no such allocation by the City shall be an admission on the part of S&ME that any such allocation is correct or that such allocation items were legally recoverable by the City in the Lawsuit; such allocations being solely for the financial administrative benefit for the City.

2. Dismissal of Claims. Within ten (10) days of the clearance of the Settlement Payment, the City shall file in the Lawsuit a Dismissal with Prejudice of all claims asserted by the City against S&ME, with each Settling Party bearing its own attorney’s fees and costs. The Dismissal with Prejudice shall state that the Court in which the Lawsuit is pending shall retain jurisdiction to enforce the terms of this Agreement.

3. Mutual Release. The Settling Parties, on behalf of themselves, attorneys, agents, representatives, assigns, predecessors, successors, and all persons acting by, through, under, or in concert with them, hereby forever release and discharge each other, their predecessors, successors, direct and indirect parent companies, direct and indirect subsidiary companies, companies under common control with any of the foregoing, affiliates, assigns, insurers, and their past, present, and future officers, directors, shareholders, interest holders, members, partners, attorneys, agents, employees, managers, representatives, assigns, successors in interest, and all persons acting by, through, under, or in concert with them from all known and unknown charges, complaints, claims, grievances, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties, fees, wages, expenses (including attorneys’ fees and costs actually incurred), and punitive damages of any nature whatsoever, that are related to the Lawsuit and the Splash Pad, known or unknown, which the Parties have or may have had against each other, whether or not asserted in the Lawsuit, from the beginning of the world to the Effective Date of this Agreement.

(a) The Settling Parties expressly agree that nothing herein shall be construed as a release of any claims or disputes unrelated to the Lawsuit and the Splash Pad. Further, nothing herein is intended to, nor shall it be construed to, release any claims, in the Lawsuit or otherwise, against a party that is not a signatory to or an intended beneficiary of this Agreement.

(b) Nothing in this Agreement shall prevent a Settling Party from amending, adding, or supplementing any claims directed at a non-signatory against whom that Party has or may have claims, whether or not such claims are already pending, and whether or not such claims are brought in this or another forum.

4. No Admission of Liability. The Settling Parties acknowledge that the Settlement Payment is a compromise and final settlement of the disputed claims identified herein. The Settling Parties further acknowledge that payment of the Settlement Payment is not, and may not be, construed as an admission of liability by any Party, all of whom specifically disclaim and deny engaging in any wrongful, tortious, or unlawful activity.

5. Fees and Costs. As previously mentioned, a portion of the Settlement Payment is allocated for the payment of the City's attorneys' fees and costs related to the Lawsuit. However, notwithstanding that allocation, the Settling Parties agree to bear their own attorneys' fees and costs arising out of the dispute. However, to the extent any Settling Party initiates any legal proceeding relating to any dispute arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs from the breaching party.

6. Agreement is Legally Binding. The Settling Parties intend this Agreement to be legally binding and shall inure to the benefit of each of them and their respective successors, assigns, executors, administrators, heirs, and estates.

7. Entire Agreement. The recitals set forth at the beginning of this Agreement are incorporated by reference and made a part of this Agreement. This Agreement constitutes the entire agreement and understanding of the Settling Parties and supersedes all prior negotiations and/or agreements, proposed or otherwise, written or oral, concerning the subject matter hereof. Furthermore, no modification of this Agreement shall be binding unless in writing and signed by all of the Settling Parties hereto.

8. Interpretation. Should any provision of this Agreement be declared or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected thereby and said illegal or invalid part, term, or provision shall be deemed severed from and not to be a part of this Agreement. The headings within this Agreement are purely for convenience and are not to be used as an aid in interpretation. Moreover, this Agreement shall not be construed against any Settling Party as the author or drafter of the Agreement.

9. Choice of Law. This Agreement and all related documents, as well as all matters arising out of or relating to this Agreement, whether sounding in contract, tort, administrative law,

or statute, shall be governed by and construed in accordance with the laws of the State of Florida, without giving effect to the conflict of laws provisions thereof.

10. Jury Waiver. The Settling Parties hereby forever waive any right they may have to trial by jury in connection with any claim arising out of or related to this Agreement.

11. Reliance on Own Counsel. In entering into this Agreement, the Settling Parties acknowledge that the terms of this Agreement are fully understood and voluntarily accepted by them, and that other than the consideration set forth herein, no promises or representations of any kind have been made to them by any other Settling Party. The Settling Parties represent and acknowledge that in executing this Agreement, they did not rely, and have not relied, upon any representation or statement, whether oral or written, made by any other Settling Party or by any other Settling Party's agents, representatives, or attorneys with regard to the subject matter, basis, or effect of this Agreement or otherwise.

12. Counterparts. This Agreement may be executed by the Settling Parties in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed by electronic and PDF signatures, each of which shall have the same force and effect as an original signature.

13. Authority to Execute Agreement. By signing below, each Settling Party warrants and represents that the person signing this Agreement on its behalf has the authority to bind that Settling Party and that the Settling Party's execution of this Agreement is not in violation of any statute, administrative law, municipal code, by-law, covenants, and/or other restrictions placed upon them by their respective entities.

14. Effective Date. The terms of the Agreement will be effective when fully executed by the Settling Parties.

IN WITNESS WHEREOF, and intending to be legally bound, each of the Settling Parties hereto has caused this Agreement to be executed as of the date(s) set forth below.

City of Palm Coast

S&ME, Inc.

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the “Agreement”) is entered into by and between:

The City of Palm Coast, including all departments, divisions and insurers, and its respective past, present, and future principals, agents, employees, members, partners, representatives, affiliates, officers, directors, managers, and affiliated entities in their official capacity (the “City”), and

Aquatic Consulting Engineers, Inc. and its respective past, present, and future principals, agents, employees, members, partners, representatives, officers, directors, managers, shareholders, parent and affiliated entities subsidiaries, divisions, joint ventures, predecessors, transferees, successors and assigns, (“ACE”).

Individually, the City and ACE shall be referred to as a “Settling Party” and collectively, shall be referred to as the “Settling Parties.”

BACKGROUND

WHEREAS, the City is the owner of real property located at 18 Florida Park Drive North, Palm Coast, Florida 32164, which is known and referred to as James F. Holland Park (“Holland Park”).

WHEREAS, the City sought to design and construct improvements to Holland Park in the second part of a multi-phase plan inclusive of the construction and design of a Splash Pad, which is the subject of this Agreement (“Splash Pad”).

WHEREAS, ACE assisted with the creation of certain drawings for the Splash Pad pursuant to Purchase Order No. 72659 issued on February 11, 2020.

WHEREAS, upon completion of construction of the Splash Pad, the City became aware of various construction and design defects and deficiencies, which resulted in the City filing claims against ACE in the case styled: *City of Palm Coast v. BBI Construction Management, Inc. et. al.*, Case No. 2022-CA-000773, pending in the Seventh Judicial Circuit in and for Flagler County, Florida (the “Lawsuit”).

WHEREAS, ACE disputes and denies the City’s claims.

WHEREAS, without affecting the City’s claims in the Lawsuit against any non-Settling Party, and while acknowledging the expense and uncertainty of litigation, the Settling Parties wish to reach an amicable resolution to avoid additional litigation of these disputed matters and desire to settle the Lawsuit and resolve all disputes between or among them arising out of or related to the Lawsuit and/or the Splash Pad.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and intended to be legally bound, the Settling Parties agree as follows:

AGREED TERMS

1. Settlement Payment Terms. In full settlement of all disputes between the Settling Parties related to the Lawsuit (and only between the Settling Parties), and in consideration of the covenants contained in this Agreement, ACE shall pay the City or cause the City to be paid the total sum of Seventy-Five Thousand Dollars and Zero Cents (\$75,000). This sum shall constitute the Settlement Payment (the “**Settlement Payment**”). The Settlement Payment shall be made by wire transfer or check(s) payable to “Gray Robinson, P.A. Trust Account” no later than thirty (30) days (“Payment Deadline”) after full execution of this Agreement by the Parties and ACE’s counsel’s receipt of the Gray Robinson, PA’s wiring instructions and W9.

The Settling Parties agree that the City shall be entitled to allocate the total Settlement Payment to its various damages alleged in the Lawsuit, including any alleged loss of use, lost profits, and consequential damages, as well as the payment of the City’s attorneys’ fees and costs related to the Lawsuit. However, no such allocation by the City shall be an admission on the part of ACE that any such allocation is correct or that such allocation items were legally recoverable by the City in the Lawsuit; such allocations being solely for the financial administrative benefit for the City.

2. Dismissal of Claims. Within ten (10) days of the clearance of the Settlement Payment, the City shall file in the Lawsuit a Dismissal with Prejudice of all claims asserted by the City against ACE. The Dismissal with Prejudice shall state that the Court in which the Lawsuit is pending shall retain jurisdiction to enforce the terms of this Agreement.

3. Mutual Release. The Settling Parties, on behalf of themselves, attorneys, agents, representatives, assigns, predecessors, successors, and all persons acting by, through, under, or in concert with them, hereby forever release and discharge each other, their predecessors, successors, direct and indirect parent companies, direct and indirect subsidiary companies, companies under common control with any of the foregoing, affiliates, assigns, and their past, present, and future officers, directors, shareholders, interest holders, members, partners, attorneys, insurance carriers, agents, employees, managers, representatives, assigns, successors in interest, and all persons acting by, through, under, or in concert with them from all known and unknown charges, complaints, claims, grievances, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties, fees, wages, expenses (including attorneys’ fees and costs actually incurred), and punitive damages of any nature whatsoever, that are related to the Lawsuit and the Splash Pad, known or unknown, which the Parties have or may have had against each other, from the beginning of the world to the Effective Date of this Agreement.

(a) The Settling Parties expressly agree that nothing herein shall be construed as a release of any claims or disputes unrelated to the Lawsuit and the splash pad. Further, nothing herein is intended to, nor shall it be construed to, release any claims, in the Lawsuit

or otherwise, against a party that is not a signatory to or an intended beneficiary of this Agreement.

(b) Nothing in this Agreement shall prevent a Settling Party from amending, adding, or supplementing any claims directed at a non-signatory against whom that Party has or may have claims, whether or not such claims are already pending, and whether or not such claims are brought in this or another forum.

4. No Admission of Liability. The Settling Parties acknowledge that the Settlement Payment is a compromise and final settlement of the disputed claims identified herein. The Settling Parties further acknowledge that payment of the Settlement Payment is not, and may not be, construed as an admission of liability by any Party, all of whom specifically disclaim and deny engaging in any wrongful, tortious, or unlawful activity.

5. Fees and Costs. As previously mentioned, a portion of the Settlement Payment is allocated for the payment of the City's attorneys' fees and costs related to the Lawsuit. However, notwithstanding that allocation, the Settling Parties agree to bear their own attorneys' fees and costs arising out of the dispute. However, to the extent any Settling Party initiates any legal proceeding relating to any dispute arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs from the breaching party.

6. Agreement is Legally Binding. The Settling Parties intend this Agreement to be legally binding and shall inure to the benefit of each of them and their respective successors, assigns, executors, administrators, heirs, and estates.

7. Entire Agreement. The recitals set forth at the beginning of this Agreement are incorporated by reference and made a part of this Agreement. This Agreement constitutes the entire agreement and understanding of the Settling Parties and supersedes all prior negotiations and/or agreements, proposed or otherwise, written or oral, concerning the subject matter hereof. Furthermore, no modification of this Agreement shall be binding unless in writing and signed by all of the Settling Parties hereto.

8. Interpretation. Should any provision of this Agreement be declared or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected thereby and said illegal or invalid part, term, or provision shall be deemed severed from and not to be a part of this Agreement. The headings within this Agreement are purely for convenience and are not to be used as an aid in interpretation. Moreover, this Agreement shall not be construed against any Settling Party as the author or drafter of the Agreement.

9. Choice of Law. This Agreement and all related documents, as well as all matters arising out of or relating to this Agreement, whether sounding in contract, tort, administrative law, or statute, shall be governed by and construed in accordance with the laws of the State of Florida, without giving effect to the conflict of laws provisions thereof.

10. Jury Waiver. The Settling Parties hereby forever waive any right they may have to trial by jury in connection with any claim arising out of or related to this Agreement.

11. Reliance on Own Counsel. In entering into this Agreement, the Settling Parties acknowledge that the terms of this Agreement are fully understood and voluntarily accepted by them, and that other than the consideration set forth herein, no promises or representations of any kind have been made to them by any other Settling Party. The Settling Parties represent and acknowledge that in executing this Agreement, they did not rely, and have not relied, upon any representation or statement, whether oral or written, made by any other Settling Party or by any other Settling Party's agents, representatives, or attorneys with regard to the subject matter, basis, or effect of this Agreement or otherwise.

12. Counterparts. This Agreement may be executed by the Settling Parties in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed by electronic and PDF signatures, each of which shall have the same force and effect as an original signature.

13. Authority to Execute Agreement. By signing below, each Settling Party warrants and represents that the person signing this Agreement on its behalf has the authority to bind that Settling Party and that the Settling Party's execution of this Agreement is not in violation of any statute, administrative law, municipal code, by-law, covenants, and/or other restrictions placed upon them by their respective entities.

14. Effective Date. The terms of the Agreement will be effective when fully executed by the Settling Parties.

IN WITNESS WHEREOF, and intending to be legally bound, each of the Settling Parties hereto has caused this Agreement to be executed as of the date(s) set forth below.

City of Palm Coast

Aquatic Consulting Engineers, Inc.

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT,
IN AND FOR FLAGLER COUNTY, FLORIDA

CITY OF PALM COAST, a Florida governmental entity,

Plaintiff,

CASE NO: 2022-CA-000773

vs.

BBI CONSTRUCTION MANAGEMENT, INC., a Florida profit corporation; NO FAULT LLC, a foreign limited liability company; S&ME, INC., a foreign profit corporation; WESTFIELD INSURANCE COMPANY, a foreign profit company, VORTEX AQUATIC CORPORATION, a foreign profit corporation; and AQUATIC CONSULTING ENGINEERS, INC., a Florida profit corporation,

Defendants.

_____ /

BBI CONSTRUCTION MANAGEMENT, INC., a Florida corporation

Third-Party Plaintiff,

vs.

4C's TRUCKING & EXCAVATION, INC., a Florida profit corporation; COST OF WISCONSIN, INC., a Florida profit corporation; KDK CONCRETE OF VOLUSIA, INC., a Florida profit corporation; REP SERVICES, INC., a Florida profit corporation; TURNSOLE BUILDERS, LLC, a Florida limited liability company; WELLER POOLS, LLC, a Florida limited liability company,

Third-Party Defendants

_____ /

NO FAULT LLC

Third-Party Plaintiff,

vs.

A&W SAFETY SURFACING, LLC d/b/a PLAYSAFE SURFACING, LLC; and AMERICAN RECYCLING CENTER INC,

Third-Party Defendants.

_____ /

CONFIDENTIAL SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Confidential Settlement Agreement and Mutual Release (the "Agreement") is entered into by and between:

The City of Palm Coast, including all departments, divisions and insurers, and its respective past, present, and future principals, agents, employees, members, partners, representatives,

affiliates, officers, directors, managers, and affiliated entities in their official capacity (the “**City**”), and

BBI Construction Management, Inc. and its respective past, present, and future principals, agents, employees, insurers (including but not limited to Auto Owners Insurance Company), members, partners, representatives, officers, directors, managers, shareholders, parent and affiliated entities subsidiaries, divisions, joint ventures, predecessors, transferees, successors and assigns, (“**BBI**”), and

Westfield Insurance Company, and its respective past, present, and future principals, agents, employees, insurers, co-sureties, sub-sureties, members, partners, representatives, officers, directors, managers, shareholders, parent and affiliated entities, subsidiaries, divisions, joint ventures, predecessors, transferees, successors and assigns (“**Westfield**”), and

No Fault, LLC and its respective past, present, and future principals, agents, employees, insurers (including but not limited to James River Insurance Company), members, partners, representatives, officers, directors, managers, shareholders, parent and affiliated entities subsidiaries, divisions, joint ventures, predecessors, transferees, successors and assigns (“**No Fault**”).

Individually, the City, BBI, Westfield, and No Fault shall be referred to as a “Settling Party” and collectively, shall be referred to as the “Settling Parties.”

BACKGROUND

WHEREAS, the City is the owner of real property located at 18 Florida Park Drive North, Palm Coast, Florida 32164, which is known and referred to as James F. Holland Park (“**Holland Park**”).

WHEREAS, the City sought to design and construct improvements to Holland Park in the second part of a multi-phase plan (the “**Phase 2 Improvements**”).

WHEREAS, the City retained others to design the Phase 2 Improvements and related improvements at or adjacent to the Phase 2 Improvements site (the Designers”), and the Designers, themselves and through their various sub-design consultants, prepared the designs used for bidding, permitting and constructing the Phase 2 Improvements, including but not limited to the plans, specifications, drawings, and materials and equipment selections and approvals, (the “Design Documents”);

WHEREAS, on or about February 19, 2018, the City and BBI entered into a written contract for BBI to serve as the construction manager for the Phase 2 Improvements (“**BBI Contract**”). A copy of the BBI Contract is attached to the operative complaint in the subject lawsuit, and is incorporated herein by reference.

WHEREAS, on or about April 5, 2019, Westfield issued a payment and performance bond (the “**Bond**”) to BBI, as obligor, and the City, as obligee, pursuant to §255.05, Florida Statutes, for the BBI Contract with regard to the Phase 2 Improvements. A copy of the Bond is attached to the operative complaint in the subject lawsuit, and is incorporated herein by reference.

WHEREAS, on or about March 30, 2020, BBI entered into a subcontract with No Fault (the “**No Fault Contract**”) for No Fault to provide and install the poured-in-place surfacing material as part of the Phase 2 Improvements. On or about March 27, 2020, BBI and No Fault entered into the

No Fault Safety Surface Installation Agreement (“**NFIA**”). A copy of the No Fault Contract and the NFIA are attached to the operative complaint in the subject lawsuit, and is incorporated herein by reference.

WHEREAS, on or about April 22, 2020, the City provided No Fault with Purchase Order No. 20201556 for No Fault’s services on the Phase 2 Improvements under the No Fault Contract and NFIA (the “No Fault Purchase Order”). A copy of the No Fault Purchase Order is to the operative complaint in the subject lawsuit, and is incorporated herein by reference. .

WHEREAS, on or about April 22, 2021, No Fault Issued a No Fault Safety Surface Product Warranty with a duration of five (5) years warranting that the materials installed at Holland Park as part of the Phase 2 Improvements pursuant to the No Fault Contract and NFIA would be free from defects in materials and workmanship (the “No Fault Warranty”). A copy of the No Fault Warranty is attached to the operative complaint in the subject lawsuit, and is incorporated herein by reference. .

WHEREAS BBI relied on various subcontractors and material suppliers to implement and perform certain scopes of work of the Phase 2 Improvements, specifically and only: 4C’s Trucking & Excavation, Inc., KDK Concrete of Volusia, Inc., Rep Services, Inc., Turnsole Builders, LLC, and Weller Pools, LLC (the “**BBI Subcontractors**”). The BBI Subcontractors are intended to be beneficiaries of this Agreement, but not signatories to it.

WHEREAS No Fault relied on various subcontractors and material suppliers to implement the Phase 2 Improvements, including A&W Safety Surfacing, LLC d/b/a Playsafe Surfacing and American Recycling Center, Inc. (the “**No Fault Subcontractors**”). The No Fault Subcontractors are intended to be beneficiaries of this Agreement, but not signatories to it.

WHEREAS BBI, No Fault and Westfield explicitly deny that BBI, No Fault, the BBI Subcontractors, and the No Fault Subcontractors had any responsibilities for preparing or approving the Design Documents, or any other design or material and/or equipment selection, or approval of materials and/or equipment of the Phase 2 Improvements; or for inspecting and approving the Phase 2 Improvements. Further, BBI, No Fault and Westfield deny that the Phase 2 Improvements deviated in any way from the Design Documents and the designs and specifications developed, drawings prepared, and materials and/or equipment selected, reviewed and approved by the Designers and/or others that are not parties to this Agreement or intended beneficiaries of this Agreement.

WHEREAS, a dispute arose between the Settling Parties regarding the construction of the Phase 2 Improvements, and the City brought the above-styled action (the “**Lawsuit**”) against BBI, Westfield, No Fault, and others, generally alleging defective construction, building code violations, breach of contract, breach of warranty, negligence, defective design and professional negligence, and seeking damages for, among other things, costs incurred in investigating the defects and deficiencies with the Phase 2 Improvements; costs incurred for repairing and remediating the Phase 2 Improvements; loss of use and enjoyment of the Phase 2 Improvements; lost profits; costs incurred for additional City time and labor to assist, manage, and conduct investigative, repair, and remediation efforts; consequential damages; prejudgment interest; expert fees; and attorney’s fees and costs.

WHEREAS, without affecting the City’s claims in the Lawsuit against the Designers and anyone other than the Settling Parties, the BBI Subcontractors and the No Fault Subcontractors, the

Settling Parties desire to settle the Lawsuit and resolve all disputes between or among them arising out of or related to the Lawsuit and/or the Phase 2 Improvements.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and intended to be legally bound, the Settling Parties agree as follows:

AGREED TERMS

1. **Settlement Payment Terms.** In full settlement of all disputes between the Settling Parties related to the Lawsuit (and only between the Settling Parties), and in consideration of the covenants contained in this Agreement, BBI shall pay the City or cause the City to be paid the total sum described in **Confidential Exhibit A** which is expressly incorporated by reference herein (the “**BBI Payment**”), and No Fault shall pay the City or cause the City to be paid the total sum described in **Confidential Exhibit B** which is expressly incorporated by reference herein (the “**No Fault Payment**”). This combined sum shall constitute the Settlement Payment (the “**Settlement Payment**”). The signed Confidential Exhibits A and B shall be held in trust by Counsel for the City, who shall not disclose or provide copies of such exhibits to any other party to the Lawsuit, the BBI Subcontractors, the No Fault Subcontractors and/or any third parties, except to the extent necessary to comply with an Order issued by a Court of competent jurisdiction, to enforce this Agreement, and/or to disclose as otherwise required by law.

(a) BBI and No Fault shall make their respective portions of the Settlement Payment payable to “Gray Robinson, P.A. Trust Account” and delivered to the City’s counsel, Trevor Arnold, Esq., Gray Robinson, PA, 301 E. Pine Street, Suite 1400, Orlando, Florida 32801, no later than thirty (30) days (“Payment Deadline”) after full execution of this Agreement by the Parties.

(b) The City acknowledges that some or all of the Settlement Payment will be derived from contributions by the BBI Subcontractors and the No Fault Subcontractors. The Settling Parties agree that BBI and No Fault will endeavor to collect these contributions in a timely manner in order to submit the Settlement Payment under the terms of this Agreement. The Settling Parties further agree that in the event a BBI Subcontractor and/or a No Fault Subcontractor fails to make timely payment, BBI and/or No Fault shall immediately notify the City of such delay and shall undertake reasonable steps to recover from the non-paying subcontractor. The Settling Parties acknowledge and agree that any delays resulting from reasonable efforts to recover from any non-paying subcontractor shall not be considered a breach of this Agreement. Moreover, the Settling Parties agree that any failure by a subcontractor to timely submit its contribution to the Settlement Payment will not invalidate this settlement between the Settling Parties. Nonetheless, BBI and/or No Fault are ultimately responsible for payment for any of their respective subcontractors that fail to pay. If such subcontractors do not cure any non-payment within forty-five (45) days after the Payment Deadline, BBI and/or No Fault shall be responsible for paying any remaining balance owed to the City for any of their respective subcontractors that failed to pay. Thus, no later than seventy-five (75) days from the original payment deadline for BBI and No Fault’s direct payments all payments shall be made. Nothing contained herein shall constitute or be interpreted as a waiver of BBI’s and/or No Fault’s rights to enforce any settlement agreements between them and their respective subcontractors.

(c) The Settling Parties agree that the City shall be entitled to allocate the total Settlement Payment to its various damages alleged in the Lawsuit, including any alleged

loss of use, lost profits, and consequential damages, as well as the payment of the City's attorneys' fees and costs related to the Lawsuit. However, no such allocation by the City shall be an admission on BBI's, Westfield's, No Fault's, BBI Subcontractors', or No Fault Subcontractors' that any such allocation is correct or that such allocation items were legally recoverable by the City in the Lawsuit; such allocations being solely for the financial administrative benefit for the City.

(d) It is further agreed that, upon full execution of this Agreement, the City shall be entitled to utilize the opinions of any experts previously disclosed in the Lawsuit by BBI, Westfield, and No Fault at the City's sole expense. The City may separately retain said experts on its own, should the experts be willing to do so. Throughout the remaining pendency of the Lawsuit against Designers and other non-settling parties, the Settling Parties agree to reasonably cooperate with the City by assisting with the transfer of documents, files and/or materials reasonably necessary to enable the City to the use and benefit of the experts previously retained and disclosed in the Lawsuit by BBI, Westfield and No Fault. The Settling Parties expressly agree that communications, information and materials exchanged by and between BBI and No Fault and their respective attorneys and experts may be subject to privilege, and that to the extent there are communications between a Party(ies), their attorneys, and expert, that such communications may be privileged and therefore withheld. If such communications exist, a corresponding privilege log shall be provided to the City prior to production of the experts' project files to ensure that all necessary information is provided consistent with Rule 1.280 of the Florida Rules of Civil Procedure.

(e) The BBI Payment and the No Fault Payment, which combine to form the Settlement Payment, are several and not joint obligations.

2. Dismissal of Claims.

(a) Within ten (10) days of the clearance of the BBI Payment, the City shall file in the Lawsuit a Dismissal with Prejudice of all claims asserted by the City against BBI and Westfield in the Lawsuit. The Dismissal with Prejudice shall state that the Court in which the Lawsuit is pending shall retain jurisdiction to enforce the terms of this Agreement. Under no circumstances shall a delay in receipt of the No Fault Payment by the City delay the City's obligations to BBI and Westfield under this section. Within ten (10) days after the City's Dismissal with Prejudice as to BBI and Westfield has been filed, BBI shall dismiss with prejudice its crossclaims asserted against No Fault.

(b) Within ten (10) days of the clearance of the No Fault Payment, the City shall file in the Lawsuit a Dismissal with Prejudice of all claims asserted by the City against No Fault in the Lawsuit. The Dismissal with Prejudice shall state that the Court in which the Lawsuit is pending shall retain jurisdiction to enforce the terms of this Agreement. Under no circumstances shall a delay in receipt of the BBI Payment by the City delay the City's obligations to No Fault under this section.

3. Mutual Release. The Settling Parties, on behalf of themselves, their insurers, attorneys, agents, representatives, assigns, predecessors, successors, and all persons acting by, through, under, or in concert with them, hereby forever release and discharge each other, together with their insurers, sureties, predecessors, successors, direct and indirect parent companies, direct and indirect subsidiary companies, companies under common control with any of the foregoing, affiliates, assigns, and their past, present, and future officers, directors, shareholders,

interest holders, members, partners, attorneys, agents, employees, managers, representatives, assigns, successors in interest, and all persons acting by, through, under, or in concert with them, including the BBI Subcontractors and the No Fault Subcontractors, from all known and unknown charges, complaints, claims, grievances, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties, fees, wages, expenses (including attorneys' fees and costs actually incurred), and punitive damages of any nature whatsoever, that are related to the Phase 2 Improvements, known or unknown, which the Parties have or may have had against each other, from the beginning of the world to the Effective Date of this Agreement.

(a) The Settling Parties expressly agree that nothing herein shall be construed as a release of any claims or disputes unrelated to the Phase 2 Improvements. Further, nothing herein is intended to, nor shall it be construed to, release any claims, in the Lawsuit or otherwise, against a party that is not a signatory to or an intended beneficiary of this Agreement.

(b) The Settling Parties expressly agree that this Agreement releases and waives any claims related to the Phase 2 Improvements not currently pending between any of the Settling Parties and/or any of the intended beneficiaries of this Agreement. This expressly includes any claims that the City and/or BBI have or could have against any of the No Fault Subcontractors and any claims that the City and/or No Fault have or could have against the BBI Subcontractors. The Settling Parties agree to waive any claim of confidentiality to this provision and proof of execution of this Agreement where necessary to effectuate its intent on behalf of the BBI Subcontractors and/or the No Fault Subcontractors.

(c) Nothing in this Agreement shall prevent a Settling Party from amending, adding, or supplementing any claims directed at a non-signatory against whom that Party has or may have claims, whether or not such claims are already pending, and whether or not such claims are brought in this or another forum.

(d) Noting in this Agreement shall be construed as a waiver or modification of Westfield's rights under its written Agreement of Indemnity with BBI, *et al.*, or any other rights of indemnification, exoneration, or subrogation which may exist at law.

4. No Admission of Liability. The Parties acknowledge that the Settlement Payment is a compromise and final settlement of the disputed claims identified herein. The Parties further acknowledge that payment of the Settlement Payment is not, and may not be, construed as an admission of liability by any Party, all of whom specifically disclaim and deny engaging in any wrongful, tortious, or unlawful activity.

5. Confidentiality. The Settling Parties shall keep this Agreement and its terms, including the Confidential Exhibits, strictly confidential, unless compelled to disclose this Agreement or its terms by court order, or pursuant to Florida Law, or unless it is necessary to perform its obligations or defend its actions hereunder. If a Settling Party receives a subpoena or other court order requiring the disclosure of this Agreement or its contents, then the Settling Party shall provide written notice of same to all other Settling Parties so that they may object or intervene, as necessary. It is expressly understood and agreed that although none of the monetary consideration provided herein was offered for, or is being paid or accepted as, consideration for the provision to maintain confidentiality, the confidentiality of both the terms and the amount of consideration is an important part of the inducement given by or on behalf of each

Settling Party, and all Settling Parties acknowledge that that the cessation of the claims and dismissal of the Lawsuit between the Settling Parties are sufficient consideration and benefit in exchange for maintaining the confidentiality of the terms of this Agreement. In making any statements regarding the resolution of this matter, including responding to inquiries and official statements to the media or the public in the capacity of a representative of the Settling Parties, the Settling Parties are limited to acknowledging that the matter has been resolved to the mutual satisfaction of the Settling Parties without any implicit or explicit assignment of fault or liability and without otherwise disclosing the terms of this Agreement.

6. Non-Disparagement. The Settling Parties mutually agree, that at all times subsequent to the execution of this Agreement, each will take no actions and make no official statements, individually or through agents, employees, or representatives, whether written or verbal, privately or publicly, which are derogatory or defamatory regarding the conduct or character of any of the Settling Parties, or their respective performance or non-performance relating in any manner to the Phase 2 Improvements. Notwithstanding the foregoing, any testimony by a Settling Party, or their agents, employees, or representatives at a deposition, trial or other legal proceeding relating to this Lawsuit, shall not be deemed a violation of this clause.

7. Fees and Costs. As previously mentioned, a portion of the Settlement Payment is allocated for the payment of the City's attorneys' fees and costs related to the Lawsuit. However, notwithstanding that allocation, the Settling Parties agree to bear their own attorneys' fees and costs arising out of the dispute. However, to the extent any Settling Party initiates any legal proceeding relating to any dispute arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs from the breaching party.

8. Agreement is Legally Binding. The Settling Parties intend this Agreement to be legally binding and shall inure to the benefit of each of them and their respective successors, assigns, executors, administrators, heirs, and estates. The Settling Parties acknowledge and agree that the BBI Subcontractors and No Fault Subcontractors are intended third-party beneficiaries of this Agreement.

9. Entire Agreement. The recitals set forth at the beginning of this Agreement are incorporated by reference and made a part of this Agreement. This Agreement constitutes the entire agreement and understanding of the Settling Parties and supersedes all prior negotiations and/or agreements, proposed or otherwise, written or oral, concerning the subject matter hereof. Furthermore, no modification of this Agreement shall be binding unless in writing and signed by all of the Settling Parties hereto.

10. Interpretation. Should any provision of this Agreement be declared or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected thereby and said illegal or invalid part, term, or provision shall be deemed severed from and not to be a part of this Agreement. The headings within this Agreement are purely for convenience and are not to be used as an aid in interpretation. Moreover, this Agreement shall not be construed against any Settling Party as the author or drafter of the Agreement.

11. Choice of Law. This Agreement and all related documents, as well as all matters arising out of or relating to this Agreement, whether sounding in contract, tort, administrative law, or statute, shall be governed by and construed in accordance with the laws of the State of Florida, without giving effect to the conflict of laws provisions thereof.

12. Jury Waiver. The Settling Parties hereby forever waive any right they may have to trial by jury in connection with any claim arising out of or related to this Agreement.

13. Reliance on Own Counsel. In entering into this Agreement, the Settling Parties acknowledge that the terms of this Agreement are fully understood and voluntarily accepted by them, and that other than the consideration set forth herein, no promises or representations of any kind have been made to them by any other Settling Party. The Settling Parties represent and acknowledge that in executing this Agreement, they did not rely, and have not relied, upon any representation or statement, whether oral or written, made by any other Settling Party or by any other Settling Party's agents, representatives, or attorneys with regard to the subject matter, basis, or effect of this Agreement or otherwise.

14. Counterparts. This Agreement may be executed by the Settling Parties in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed by electronic and PDF signatures, each of which shall have the same force and effect as an original signature.

15. Authority to Execute Agreement. By signing below, each Settling Party warrants and represents that the person signing this Agreement on its behalf has the authority to bind that Settling Party and that the Settling Party's execution of this Agreement is not in violation of any statute, administrative law, municipal code, by-law, covenants, and/or other restrictions placed upon them by their respective entities.

16. Effective Date. The terms of the Agreement will be effective when fully executed by the Settling Parties.

IN WITNESS WHEREOF, and intending to be legally bound, each of the Settling Parties hereto has caused this Agreement to be executed as of the date(s) set forth below.

City of Palm Coast

BBI Construction Management, Inc.

By:  _____
Lauren Johnston (May 8, 2025 12:42 EDT)

By: _____

Its: Acting City Manager

Its: _____

Date: 05/08/25

Date: _____

Westfield Insurance Company

No Fault, LLC

By:  _____

By:  _____

Its: Surety Claims Counsel

Its: Senior Vice President

Date: 5/12/25

Date: 05/09/2025

12. Jury Waiver. The Settling Parties hereby forever waive any right they may have to trial by jury in connection with any claim arising out of or related to this Agreement.

13. Reliance on Own Counsel. In entering into this Agreement, the Settling Parties acknowledge that the terms of this Agreement are fully understood and voluntarily accepted by them, and that other than the consideration set forth herein, no promises or representations of any kind have been made to them by any other Settling Party. The Settling Parties represent and acknowledge that in executing this Agreement, they did not rely, and have not relied, upon any representation or statement, whether oral or written, made by any other Settling Party or by any other Settling Party's agents, representatives, or attorneys with regard to the subject matter, basis, or effect of this Agreement or otherwise.

14. Counterparts. This Agreement may be executed by the Settling Parties in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed by electronic and PDF signatures, each of which shall have the same force and effect as an original signature.


15. Authority to Execute Agreement. By signing below, each Settling Party warrants and represents that the person signing this Agreement on its behalf has the authority to bind that Settling Party and that the Settling Party's execution of this Agreement is not in violation of any statute, administrative law, municipal code, by-law, covenants, and/or other restrictions placed upon them by their respective entities.

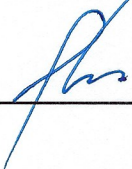
16. Effective Date. The terms of the Agreement will be effective when fully executed by the Settling Parties.

IN WITNESS WHEREOF, and intending to be legally bound, each of the Settling Parties hereto has caused this Agreement to be executed as of the date(s) set forth below.

City of Palm Coast

BBI Construction Management, Inc.

By:  Lauren Johnston (May 8, 2025 12:42 EDT)

By: 

Its: Acting City Manager

Its: President

Date: 05/08/25

Date: 5/12/25

Westfield Insurance Company


No Fault, LLC

By: _____

By: 


Confidential Exhibit A

Pursuant to and in compliance with the Confidential Settlement Agreement and Mutual Release, Defendant, BBI CONSTRUCTION MANAGEMENT, INC. shall pay or cause to be paid Six Hundred and Ninety Thousand Dollars and No Cents (**\$690,000.00**) to Plaintiff City of Palm Coast's counsel, Trevor Arnold, Esq. Such payment shall be made payable to "GrayRobinson, P.A. Trust Account" and delivered to 301 E. Pine Street, Suite 1400, Orlando, Florida 32801.

BBI CONSTRUCTION MANAGEMENT, INC.
By: <u></u>
Its: <u>Joe Burns</u>
Date: <u>5/29/25</u>

Confidential Exhibit B

Pursuant to and in compliance with the Confidential Settlement Agreement and Mutual Release, Defendant No Fault, LLC shall pay or cause to be paid Three Hundred Eighty-Five Thousand Dollars and No Cents (**\$385,000.00**) to Plaintiff City of Palm Coast's counsel, Trevor Arnold, Esq. Such payment shall be made payable to "GrayRobinson, P.A. Trust Account" and delivered to 301 E. Pine Street, Suite 1400, Orlando, Florida 32801.

<p>No Fault, LLC</p> <p>By:  _____</p> <p>Its: <u>Senior Vice President</u></p> <p>Date: <u>05/09/2025</u></p>
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CONFIDENTIAL SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Confidential Settlement Agreement and Mutual Release (the “Agreement”) is entered into by and between:

The City of Palm Coast, including all departments, divisions and insurers, and its respective past, present, and future principals, agents, employees, members, partners, representatives, affiliates, officers, directors, managers, and affiliated entities in their official capacity (the “City”), and

Vortex Aquatic Consultants; Vortex USA, Inc.; and Vortex Structures Aquatiques International, Inc. and its respective past, present, and future principals, agents, employees, insurers (including but not limited to Liberty Mutual Insurance Company; Liberty International Underwriters; Lloyd’s Underwriters; and Markel Canada, Ltd.), members, partners, representatives, officers, directors, managers, shareholders, parent and affiliated entities subsidiaries, divisions, joint ventures, predecessors, transferees, successors and assigns, (“Vortex”).

Individually, the City and Vortex shall be referred to as a “Settling Party” and collectively, shall be referred to as the “Settling Parties.”

BACKGROUND

WHEREAS, the City is the owner of real property located at 18 Florida Park Drive North, Palm Coast, Florida 32164, which is known and referred to as James F. Holland Park (“**Holland Park**”).

WHEREAS, the City sought to design and construct improvements to Holland Park in the second part of a multi-phase plan inclusive of the construction and design of a splash pad, which is the subject of this Agreement.

WHEREAS, Vortex supplied various materials, including play features, drains, water reservoirs, and recirculation system for the splash pad pursuant to Purchase Order No. 20200713 issued on October 23, 2019. In addition to the supply of materials for the splash pad, the City asserts that Vortex offered certain design services related to the preparation of drawings, responses to Requests for Information, and selection of products to be installed at the Splash Pad.

WHEREAS, upon completion of construction of the splash pad, the City became aware of various construction and design defects and deficiencies, which resulted in the City filing claims against Vortex in the case styled: *City of Palm Coast v. BBI Construction Management, Inc. et. al.*, Case No. 2022-CA-000773, pending in the Seventh Judicial Circuit in and for Flagler County, Florida (the “Lawsuit”).

WHEREAS, Vortex disputes and denies the City’s claims.

WHEREAS, without affecting the City's claims in the Lawsuit against any non-Settling Parties, and while acknowledging the expense and uncertainty of litigation, the Settling Parties wish to reach an amicable resolution to avoid additional litigation of these disputed matters and desire to settle the Lawsuit and resolve all disputes between or among them arising out of or related to the Lawsuit and/or the splash pad.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and intended to be legally bound, the Settling Parties agree as follows:

AGREED TERMS

1. **Settlement Payment Terms.** In full settlement of all disputes between the Settling Parties related to the Lawsuit (and only between the Settling Parties), and in consideration of the covenants contained in this Agreement, Vortex shall pay the City or cause the City to be paid the total sum of One-Hundred and Twenty-Five Thousand Dollars and Zero Cents (\$125,000). This sum shall constitute the Settlement Payment (the "**Settlement Payment**"). The Settlement Payment shall be made payable to "Gray Robinson, P.A. Trust Account" and delivered to the City's counsel, Trevor Arnold, Esq., Gray Robinson, PA, 301 E. Pine Street, Suite 1400, Orlando, Florida 32801, no later than thirty (30) days ("Payment Deadline") after full execution of this Agreement by the Parties.

The Settling Parties agree that the City shall be entitled to allocate the total Settlement Payment to its various damages alleged in the Lawsuit, including any alleged loss of use, lost profits, and consequential damages, as well as the payment of the City's attorneys' fees and costs related to the Lawsuit. However, no such allocation by the City shall be an admission on Vortex that any such allocation is correct or that such allocation items were legally recoverable by the City in the Lawsuit; such allocations being solely for the financial administrative benefit for the City.

2. **Dismissal of Claims.** Within ten (10) days of the clearance of the Settlement Payment, the City shall file in the Lawsuit a Dismissal with Prejudice of all claims asserted by the City against Vortex. The Dismissal with Prejudice shall state that the Court in which the Lawsuit is pending shall retain jurisdiction to enforce the terms of this Agreement.

3. **Mutual Release.** The Settling Parties, on behalf of themselves, attorneys, agents, representatives, assigns, predecessors, successors, and all persons acting by, through, under, or in concert with them, hereby forever release and discharge each other, their predecessors, successors, direct and indirect parent companies, direct and indirect subsidiary companies, companies under common control with any of the foregoing, affiliates, assigns, and their past, present, and future officers, directors, shareholders, interest holders, members, partners, attorneys, agents, employees, managers, representatives, assigns, successors in interest, and all persons acting by, through, under, or in concert with them from all known and unknown charges, complaints, claims, grievances, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties, fees, wages, expenses (including attorneys' fees and costs actually incurred), and punitive damages of any nature whatsoever, that are related

to the Lawsuit and the splash pad, known or unknown, which the Parties have or may have had against each other, from the beginning of the world to the Effective Date of this Agreement.

(a) The Settling Parties expressly agree that nothing herein shall be construed as a release of any claims or disputes unrelated to the Lawsuit and the splash pad. Further, nothing herein is intended to, nor shall it be construed to, release any claims, in the Lawsuit or otherwise, against a party that is not a signatory to or an intended beneficiary of this Agreement.

(b) Nothing in this Agreement shall prevent a Settling Party from amending, adding, or supplementing any claims directed at a non-signatory against whom that Party has or may have claims, whether or not such claims are already pending, and whether or not such claims are brought in this or another forum.

4. No Admission of Liability. The Settling Parties acknowledge that the Settlement Payment is a compromise and final settlement of the disputed claims identified herein. The Settling Parties further acknowledge that payment of the Settlement Payment is not, and may not be, construed as an admission of liability by any Party, all of whom specifically disclaim and deny engaging in any wrongful, tortious, or unlawful activity.

5. Confidentiality. The Settling Parties shall keep this Agreement and its terms, strictly confidential, unless compelled to disclose this Agreement or its terms by court order, or pursuant to Florida Law, or unless it is necessary to perform its obligations or defend its actions hereunder. If a Settling Party receives a subpoena or other court order requiring the disclosure of this Agreement or its contents, then the Settling Party shall provide written notice of same to all other Settling Parties so that they may object or intervene, as necessary. It is expressly understood and agreed that although none of the monetary consideration provided herein was offered for, or is being paid or accepted as, consideration for the provision to maintain confidentiality, the confidentiality of both the terms and the amount of consideration is an important part of the inducement given by or on behalf of each Settling Party, and the Settling Parties acknowledge that that the cessation of the claims and dismissal of the Lawsuit between the Settling Parties are sufficient consideration and benefit in exchange for maintaining the confidentiality of the terms of this Agreement. In making any statements regarding the resolution of this matter, including responding to inquiries and official statements to the media or the public in the capacity of a representative of the Settling Parties, the Settling Parties are limited to acknowledging that the matter has been resolved to the mutual satisfaction of the Settling Parties without any implicit or explicit assignment of fault or liability and without otherwise disclosing the terms of this Agreement.

6. Fees and Costs. As previously mentioned, a portion of the Settlement Payment is allocated for the payment of the City's attorneys' fees and costs related to the Lawsuit. However, notwithstanding that allocation, the Settling Parties agree to bear their own attorneys' fees and costs arising out of the dispute. However, to the extent any Settling Party initiates any legal proceeding relating to any dispute arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs from the breaching party.

7. Agreement is Legally Binding. The Settling Parties intend this Agreement to be legally binding and shall inure to the benefit of each of them and their respective successors, assigns, executors, administrators, heirs, and estates.

8. Entire Agreement. The recitals set forth at the beginning of this Agreement are incorporated by reference and made a part of this Agreement. This Agreement constitutes the entire agreement and understanding of the Settling Parties and supersedes all prior negotiations and/or agreements, proposed or otherwise, written or oral, concerning the subject matter hereof. Furthermore, no modification of this Agreement shall be binding unless in writing and signed by all of the Settling Parties hereto.

9. Interpretation. Should any provision of this Agreement be declared or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected thereby and said illegal or invalid part, term, or provision shall be deemed severed from and not to be a part of this Agreement. The headings within this Agreement are purely for convenience and are not to be used as an aid in interpretation. Moreover, this Agreement shall not be construed against any Settling Party as the author or drafter of the Agreement.

10. Choice of Law. This Agreement and all related documents, as well as all matters arising out of or relating to this Agreement, whether sounding in contract, tort, administrative law, or statute, shall be governed by and construed in accordance with the laws of the State of Florida, without giving effect to the conflict of laws provisions thereof.

11. Jury Waiver. The Settling Parties hereby forever waive any right they may have to trial by jury in connection with any claim arising out of or related to this Agreement.

12. Reliance on Own Counsel. In entering into this Agreement, the Settling Parties acknowledge that the terms of this Agreement are fully understood and voluntarily accepted by them, and that other than the consideration set forth herein, no promises or representations of any kind have been made to them by any other Settling Party. The Settling Parties represent and acknowledge that in executing this Agreement, they did not rely, and have not relied, upon any representation or statement, whether oral or written, made by any other Settling Party or by any other Settling Party's agents, representatives, or attorneys with regard to the subject matter, basis, or effect of this Agreement or otherwise.


13. Counterparts. This Agreement may be executed by the Settling Parties in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed by electronic and PDF signatures, each of which shall have the same force and effect as an original signature.

14. Authority to Execute Agreement. By signing below, each Settling Party warrants and represents that the person signing this Agreement on its behalf has the authority to bind that Settling Party and that the Settling Party's execution of this Agreement is not in violation of any statute, administrative law, municipal code, by-law, covenants, and/or other restrictions placed upon them by their respective entities.

15. Effective Date. The terms of the Agreement will be effective when fully executed by the Settling Parties.

IN WITNESS WHEREOF, and intending to be legally bound, each of the Settling Parties hereto has caused this Agreement to be executed as of the date(s) set forth below.

City of Palm Coast

By: 

Its: Acting City Manager

Date: 10/22/25

Vortex Aquatic Consultants

By: 

Its: VP Finance

Date: 10/02/2025