

**MARA BERMAN GIULIANTI PARK SPLASH PAD  
VORTEX USA INC.**

**ADDENDUM TO PROPOSAL FOR  
PIGGYBACK CONTRACT PS21115 - NPP**

**1. Insurance Requirements**

The insurance required by Article 5.6 of the General Conditions shall be as follows:

Any subcontractor used by the CONTRACTOR shall supply such similar insurance required of the CONTRACTOR. Such certificates shall name the City of Hollywood ("CITY") as an Additional Insured.

**1. BUILDERS RISK (BR 1) - Installation Floater: (Not Applicable)**

**2. GENERAL LIABILITY (GL3):**

Prior to the commencement of Work governed by the Contract, the CONTRACTOR shall obtain General Liability Insurance. Coverage shall be maintained throughout the life of the Contract and include, as a minimum:

- Premises Operations
- Products and Completed Operations
- Blanket Contractual Liability
- Personal Injury Liability

Expanded Definition of Property Damage The minimum limits acceptable shall be:

\$1,000,000 Combined Single Limit (CSL)

If split limits are provided, the minimum limits acceptable shall be:

\$1,000,000 per Person  
\$2,000,000 per Occurrence  
\$100,000 Property Damage

An Occurrence Form policy is preferred. If coverage is provided on a Claims Made policy, its provisions should include coverage for claims filed on or after the effective date of this contract. In addition, the period for which claims may be reported should extend for a minimum of 12 months following the acceptance of Work by the CITY.

The CITY shall be named as Additional Insured on all policies issued to satisfy the above requirements.

### 3. GENERAL LIABILITY (GLXCU):

Recognizing that the Work governed by the Contract involves either underground exposures, explosive activities, or the possibility of collapse of a structure, the CONTRACTOR'S General Liability Policy shall include coverage for the XCU (explosion, collapse, and underground) exposures with limits of liability equal to those of the General Liability Insurance policy.

### 4. VEHICLE LIABILITY (VL3):

Recognizing that the Work governed by the Contract requires the use of vehicles, the CONTRACTOR, prior to the commencement of Work, shall obtain Vehicle Liability Insurance. Coverage shall be maintained throughout the life of the Contract and include, at a minimum, liability coverage for:

➤ Owned, Non-Owned, and Hired Vehicles The minimum limits acceptable shall be:

\$1,000,000 Combined Single Limit (CSL)

If split limits are provided, the minimum limits acceptable shall be:

\$500,000 per Person  
\$1,000,000 per Occurrence  
\$100,000 Property Damage

The CITY shall be named as Additional Insured on all policies issued to satisfy the above requirements.

### 5. WORKERS' COMPENSATION (WC2):

Prior to the commencement of Work governed by the Contract, the CONTRACTOR shall obtain Workers' Compensation Insurance with limits sufficient to respond to the requirement of applicable state statutes.

In addition, the CONTRACTOR shall obtain Employers' Liability Insurance with limits of not less than:

\$500,000 Bodily Injury by Accident  
\$500,000 Bodily Injury by Disease, policy limits  
\$500,000 Bodily Injury by Disease, each employee

Coverage shall be maintained throughout the entire term of the Contract.

### 6. POLLUTION LIABILITY INSURANCE

The minimum limits of liability shall be:

Not Applicable

Coverage shall be provided by a company or companies authorized to transact business in the state of Florida, and the company or companies must maintain a minimum rating of "A" and Class X, as assigned by the A.M. Best Company.

The policy must be endorsed to provide the CITY with 30 days' notice of cancellation.

If the CONTRACTOR has been approved by the Florida's Department of Labor, as an authorized self-insurer, the CITY shall recognize and honor the CONTRACTOR'S status. The CONTRACTOR may be required to submit a Letter of Authorization issued by the Department of Labor and a Certificate of Insurance and endorsements providing details of the CONTRACTOR'S Excess Insurance Program.

If the CONTRACTOR participates in a self-insurance fund, a Certificate of Insurance and endorsements will be required. In addition, the CONTRACTOR may be required to submit updated financial statements from the fund upon request from the CITY.

## **2 Liquidated Damages**

Liquidated damages shall be paid by the CONTRACTOR to the CITY for failure to complete Work on time in accordance with the following schedule:

CONSTRUCTION/STARTUP/ACCEPTANCE:		
<u>Major Milestones</u>	<u>Completion Time (calendar days)</u>	<u>Liquidated Damages</u>
1. Substantial Completion Starting from Notice to Proceed:	180	\$100/day
2. Project Closeout	30	\$100/day

The CITY is authorized to deduct the sums described above from the monies which may be due to the CONTRACTOR for the Work under the Contract. Liquidated damages shall be additive such that the maximum total which may be deducted shall be \$200/day. Other damages for failure to meet warranty conditions as defined in other sections of the Specifications shall also be added with liquidated damages for failure to meet completion times. The Parties recognize and understand that liquidated damages are not a penalty for CONTRACTOR'S failure to comply with Contract deadlines, but rather, is a good faith estimate of the damages that the CITY will incur as a result of such failure.

### **3 Indemnification of City:**

- i. CONTRACTOR shall, at all times, indemnify, hold harmless and defend CITY, its agents, servants and employees from and against any claim, demand or cause of action of any kind or nature arising out of error, omission or negligent act of CONTRACTOR, its agents, servants or employees in the performance of services under this Contract.
- ii. CONTRACTOR further agrees, at all times, to indemnify, hold harmless and defend CITY, its agents, servants and employees from and against any claim, demand or cause of action of any kind or nature arising out of any conduct or misconduct of CONTRACTOR resulting from the performance of services under the Contract Documents.
- iii. The obligations of the CONTRACTOR above shall not extend to the liability of the City of Hollywood.
- iv. The provisions of (a) and (b) above shall survive the expiration or earlier termination of the Contract Documents.

In consideration of the amount listed in the Schedule of Prices Bid and other valuable consideration, the Contractor shall defend, indemnify and save harmless the CITY, its officers, agents, and employees from or on account of any personal injury, loss of life or damage to property received or sustained by any person or persons during or on account of any operations connected with the construction of this Project; or by or in consequence of any negligence (excluding negligence of the CITY) in connection with the same; or by use of any improper materials or by or on account of any use of any improper materials or by or on account of any act or omission of the CONTRACTOR or his subcontractor, agents, servants or employees.

CONTRACTOR agrees to indemnify and save harmless the CITY against any liability arising from or based upon the violation of any federal, state, county or city laws, by-laws, ordinances or regulations by the CONTRACTOR, his subcontractor, agents, servants or employees. CONTRACTOR further agrees to indemnify and save harmless the CITY from all such claims and fees, and from any and all suits and actions of every name and description that may be brought against the CITY on account of any claims, fees, royalties, or costs for any invention or patent, and from any and all suits and actions that may be brought against the CITY for the infringement of any and all patents or patent rights claimed by any person, firm, or corporation.

The indemnification provided above and elsewhere in the Contract Documents shall

obligate the CONTRACTOR to defend, at his own expense, or to provide for such defense, at the CITY's option, any and all claims or liability and all suits and actions of every name and description that may be brought against the CITY that may result from the operations and activities under this Contract, whether the construction operations be performed by the CONTRACTOR, his subcontractors or by anyone directly or indirectly employed by either.

Nothing in this indemnification shall be deemed to affect the rights, privileges or immunities of the CITY set forth in Section 768.28, Florida Statutes or otherwise at law.

The CITY will pay to the CONTRACTOR the specific consideration in the amount stated in the Schedule of Prices Bid. The CONTRACTOR shall acknowledge the receipt of payment and other good and valuable consideration from the CITY that has been paid to him as specific consideration for the indemnification provided herein and in accordance with the provisions of Section 725.06, Florida Statutes.

#### **4 Payment and Performance Bond**

CONTRACTOR shall furnish Performance and Payment Bonds in amounts equal to the Contract Price as Security for the faithful performance and payment of CONTRACTOR'S obligations. The Bond or Bonds shall remain in effect one year after the date of final payment.

#### **5. City May Terminate:**

A. Upon the occurrence of any one or more of the following events:

1. If the CONTRACTOR commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereafter in effect, or if the CONTRACTOR takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency.
2. If a petition is filed against the CONTRACTOR under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against the CONTRACTOR under any other federal or state law in effect at the time relating to bankruptcy or insolvency.
3. If the CONTRACTOR makes a general assignment for the benefit of creditors.
4. If a trustee, receiver, custodian or agent of the CONTRACTOR is appointed under applicable law or under contract, whose appointment or authority to

take charge of property of the CONTRACTOR is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of the CONTRACTOR'S creditors.

5. If the CONTRACTOR admits in writing an inability to pay its debts generally as they become due.
  6. If the CONTRACTOR persistently fails to perform the Work in accordance with the scope of work (including but not limited to failure to supply a qualified superintendent or sufficient skilled workers or suitable materials or equipment, or failure to adhere to the approved progress schedule revised from time to time).
  7. If the CONTRACTOR disregards laws or regulations of any public body having jurisdiction.
  8. If the CONTRACTOR disregards the authority of the PROJECT MANAGER.
  9. If the CONTRACTOR otherwise violates in any substantial way any provisions of the Contract Documents.
- B. The CITY shall provide written notice by CITY to CONTRACTOR of intent to terminate and CONTRACTOR shall have seven (7) days to cure such claimed breach, unless a longer cure period is approved, in writing, by the PROJECT MANAGER, at his or her sole and absolute discretion ("Cure Period"). If the CONTRACTOR fails to cure the claimed breach at the satisfaction of the PROJECT MANAGER's sole and absolute discretion, during the Cure Period, CITY may terminate this Contract under this Provision. Upon termination of this Contract, the CITY may, to the extent permitted by laws and regulations, terminate the services of the CONTRACTOR, exclude the CONTRACTOR from the site and take possession of the Work and of all the CONTRACTOR'S tools, appliances, construction equipment and machinery at the site previously paid for by the CITY (without liability to the CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which the CITY has paid the CONTRACTOR but which are stored elsewhere, and finish the Work as the CITY may deem expedient. In such case, the CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct, indirect, and consequential costs of completing the Work (including but not limited to fees and charges of engineers, architects, attorneys and other professionals, and court and arbitration costs), such excess will be paid to the CONTRACTOR. If such costs exceed such unpaid balance, the CONTRACTOR or CONTRACTOR'S Surety shall pay the difference to the CITY.
- C. Where the CONTRACTOR'S services have been terminated by the CITY, the CITY alone shall determine the scope and description of the Work to be completed and the method and schedule for completing it.

- D. Where the CONTRACTOR'S services have been terminated by the CITY, the termination will not affect any rights or remedies of the CITY against the CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due the CONTRACTOR by the CITY will not release the CONTRACTOR from liability.
- E. Upon seven days' written notice to the CONTRACTOR, the CITY may, at its sole discretion, reserves the right to terminate this Contract with or without cause. Upon receipt of such notice, the Contractor shall not incur any additional costs under the Contract. The CITY shall be liable only for reasonable costs incurred by CONTRACTOR prior to the date of the notice of termination. The CITY shall be the sole judge of "reasonable costs."

NOTICES:

All notices or other communications required under this Agreement shall be in writing and shall be given by hand-delivery or by registered or certified U.S. Mail, return receipt requested, addressed to the other party at the address indicated herein or to such other address as a party may designate by notice given as herein provided. Notice shall be deemed given on the day on which personally delivered; or, if by mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier.

FOR CITY:

City of Hollywood  
Design & Construction Management  
P.O. Box 229045  
Hollywood, FL. 33022

With A Copy to: City Attorney  
2600 Hollywood Blvd., Rm. 407  
Hollywood, Florida 33020

FOR CONTRACTOR:

Vortex USA Inc.

PUBLIC RECORDS LAW:

IF VORTEX USA INC. (COLLECTIVELY KNOWN AS "CONTRACTOR" IN THIS SECTION) HAS

QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 954.921.3211, [pcerny@hollywoodfl.org](mailto:pcerny@hollywoodfl.org), Hollywood City Hall 2600 Hollywood Blvd., Room 221 Hollywood, FL 33020.

Contractor must comply with public records laws, specifically to:

1. Keep and maintain public records required by the public agency to perform the service.
2. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
4. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.