

**CITY OF HOLLYWOOD  
INTEROFFICE MEMORANDUM**

**TO:** Mayor and Commissioners **DATE:** 5/1/25

**FROM:** Damaris Henlon, Interim City Attorney

**SUBJECT:** Proposed Purchase Order with Vortex USA Inc. for the Installation of the New Splash Pad at Mara Berman Giuliani Park, in an Amount Up to \$453,841.24, based upon the NPPGOV and the League of Oregon Cities Contract PS21115-NPP, In Accordance with Section 38.41(C)(5) of the Procurement Code. (Piggyback)

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I have reviewed the above referenced Agreement with the participating Department/Office(s), and the proposed general business terms and other significant provisions are as follows:

- 1) Department/Division involved – Design and Construction Management
- 2) Type of Agreement – Piggyback
- 3) Method of Procurement (RFP, bid, etc.) – Section 38.41 (C)(5) of the Code of Ordinances allows the Chief Procurement Officer to procure, without following formal solicitation procedures, all goods, supplies, materials, equipment, and services that are the subject of contracts with the state, its political subdivisions, the United States government, other governmental entities, or a corporation not for profit whose members are governmental entities, public officers, or any combination thereof ("piggyback"), provided that the goods, supplies, materials, equipment, or services are the subject of a price schedule negotiated by the entities listed above and is based strictly on competitive bids, quotations, or competitive proposals and not on any preference; utilization of other governmental entities' contracts shall be permitted only during the term of the other governmental entity's contract.
- 4) Term of Contract:
  - a) initial – March 15, 2021 – March 15, 2027
  - b) renewals (if any) – The initial contract term shall be for three (3) calendar years from the Effective Date of this Agreement ("Initial Term"). Upon termination of the original three (3) year term, this Agreement shall automatically extend for up to three (3) successive one (1) year periods
  - c) who exercises option to renew – automatic
- 5) Contract Amount – \$453,841.24
- 6) Termination Rights –  
Section 3.1 - Either Vendor or the Lead Contracting Agency may terminate this Agreement by written notice to the other party if the other Party breaches any of its obligations hereunder and fails to remedy the breach

within thirty (30) days after receiving written notice of such breach from the non-breaching party.

Addendum – City’s standard termination for convenience clause is added.

- 7) Indemnity/Insurance Requirements – Contractor shall comply with applicable City requirements.

**ARTICLE 6 – INDEMNIFICATION AND HOLD HARMLESS**

6.1 Vendor agrees that it shall indemnify, defend and hold harmless Lead Contracting Agency, its respective officials, directors, employees, members and agents (collectively, the “Indemnitees”), from and against any and all damages, claims, losses, expenses, costs, obligations and liabilities (including, without limitation, reasonable attorney’s fees), suffered directly or indirectly by any of the Indemnitees to the extent of, or arising out of, (i) any breach of any covenant, representation or warranty made by Vendor in this Agreement, (ii) any failure by Vendor to perform or fulfill any of its obligations, covenants or agreements set forth in this Agreement, (iii) the negligence or intentional misconduct of Vendor, any subcontractor of Vendor, or any of their respective employees or agents, (iv) any failure of Vendor, its subcontractors, or their respective employees to comply with any Applicable Law, (v) any litigation, proceeding or claim by any third party relating in any way to the obligations of Vendor under this Agreement or Vendor’s performance under this Agreement, (vi) any Employee Taxes or Unemployment Insurance, or (vii) any claim alleging that the Products and Services or any part thereof infringe any third party’s U.S. patent, copyright, trademark, trade secret or other intellectual property interest. Such obligation to indemnify shall not apply where the damage, claim, loss, expense, cost, obligation or liability is due to the breach of this Agreement by, or negligence or willful misconduct of, Lead Contracting Agency or its officials, directors, employees, agents or contractors. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph. The indemnity obligations of Vendor under this Article shall survive the expiration or termination of this Agreement for two years.

6.2 LIMITATION OF LIABILITY: IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR INJURIES TO PERSONS OR TO PROPERTY OR LOSS OF PROFITS OR LOSS OF FUTURE BUSINESS OR REPUTATION, WHETHER BASED ON TORT OR BREACH OF CONTRACT OR OTHER BASIS, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6.3 The same terms, conditions and pricing of this Agreement may be extended to government members of National Purchasing Partners, LLC. In the event the terms of this Agreement are extended to other government members, each government member (procuring party) shall be solely responsible for the ordering of Products and Services under this Agreement. A non-procuring party shall not be liable in any fashion for any violation by a procuring party, and the procuring party shall hold non-procuring parties or unrelated purchasing parties harmless from any liability that may arise from action or inaction of the procuring party.

Addendum – City’s standard indemnification clause is added.

- 8) Scope of Services – Manufacturing and installation of the splash pad at Mara Berman Giulianti Park.
- 9) Other Significant Provisions: Competitively bid by League of Oregon Cities and NPPGov.

There is only a termination for cause provision in the piggyback contract. City has added a termination for convenience provision in an addendum.

cc: George R. Keller, Jr. CPPT, City Manager