

AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF GALVESTON §

This agreement (“Agreement”) entered into by and between Vortex USA, Inc., (hereinafter “Professional”) and the City of League City, Texas (the “City”), a Texas home-rule city.

1. Scope of Services/Professional Fees/Reimbursable Costs

This Agreement authorizes the Professional to perform professional engineering and construction material services for the Design/Build Services for Splashpad at Hometown Heroes Park (the “Work”) for and on behalf of the City. Compensation to the Professional for the Work shall be paid on a monthly basis, with the unit fees and costs, including professional sub-consultants’ costs and reimbursable costs, as denoted in the Professional’s proposal dated March 31, 2015 – (the “Proposal”) attached hereto as Exhibit “A” and incorporated herein for all purposes. The Professional’s: (i) unit fees and reimbursable costs rate schedule; (ii) Scope of Services, including indicated deliverables; (ii) and estimated budget for reimbursable expenses are also included in the Exhibit “A”.

The Professional shall not exceed the estimated probable cost or fees for any phase of the Work, including reimbursable costs, as denoted in Exhibit “A” without prior written authorization from the City.

2. Professional’s Personnel and Sub-Consultants

a. Project Manager

Professional shall designate Avery Croteau to serve as Project Manager for the Work performed under this Agreement. Any change of Project Manager shall require thirty days’ advance written approval from the City’s Representative.

b. Licensed and Registered Engineers

Professional shall keep a full-time registered engineer licensed in the state of Texas on staff for the duration of its performance of the Work.

c. Professional’s Employees

Brief resumes of the Professional’s personnel have been provided in Professional’s Statement of Qualifications. Such personnel includes, but not be limited to, engineers.

d. **Rejection of Professional's Employees**

The City reserves the right to approve or reject from the Work any employees of the Professional.

e. **Professional's sub-consultants**

Copies of all proposed contracts with sub-consultants and/or subcontractors shall be given to the City before execution of such contracts.

3. Designation and Duties of the City's Representative

- a. The City's Deputy City Manager - Public Works, or his designee, shall act as the City's Representative.
- b. This City's Representative shall use his best efforts to provide non-confidential City records for Professional's usage on the Work and to provide access to City's property and easements.

4. Standards of Performance

- a. The Professional shall perform all services under this Agreement in accordance with the generally accepted engineering practice per specialized discipline.
- b. Codes and Standards
 - (1) All references to codes, standards, environmental regulations and/or material specifications shall be to the latest revision, including all effective supplements or addenda thereto, as of the date that the order for any necessary equipment is made by the City or that the construction specified is bid by the City.
 - (2) If any such equipment is specially manufactured, it shall be identified to the City, and the Contractor and the Seller shall present sufficient data to the City to support the design and the suitability of the equipment.
 - (3) All materials furnished on any City project shall be in accordance with ASTM specifications, or with other recognized standards. Proprietary material or other materials for which no generally recognized standards exist may be used provided there has been at least five years of proven experience in the field, and such satisfactory documentation has been approved by the City's Representative.

- (4) The Work shall be designed and furnished in accordance with the most current codes and/or standards adopted by City, State or Federal government or in general custom and usage by the profession.
- (5) The codes and standards used in the profession set forth minimum requirements. These may be exceeded by the Contractor or the Professional if superior designs or materials are available for successful operation of equipment and/or for the construction project on which the Work is performed. Any alternative codes or regulations used shall have requirements that are equivalent or better than those in the above listed codes and regulations. The Professional shall state the alternative codes and regulations used.
- (6) Professional agrees the services it provides as an experienced and qualified professional engineer will reflect the professional standards, procedures and performances common in the industry for this project. Professional further agrees that the design, preparation of drawings, the designation or selection of materials and equipment, the selection and supervision of personnel and the performance of other services under this contract, will be pursuant to the standard of performance common in the profession.
- (7) Professional shall promptly correct any defective designs or specifications caused by Professional at no cost to City. The City's approval, acceptance, use of or payment for all or any part of Professional's services hereunder or of the Work itself shall in no way alter Professional's obligations or the City's rights under this Agreement.

5. Notice to Proceed

Professional shall not proceed with the Work or any stage thereof until written notice to proceed is provided by the City's Representative.

6. Insurance

- a. Professional shall procure and maintain insurance in the amounts listed below for protection from claims under workers' compensation, claims for damages because of bodily injury, including personal injury, sickness or disease or death of any and all employees or of any person other than such employees and from claims or damages because of injury to or destruction of property including lose of use resulting therefrom.

Coverage

Limit of Liability

Workers' Compensation

Statutory for Worker's Compensation

Employer's Liability

Bodily Injury by Accident:
\$500,000 (Each Accident)

Bodily Injury by Disease:
\$500,000 (Policy Limit)
\$500,000 (Each Employee)

Commercial General:
(Including Broad Form
Coverage, Contractual
Liability, Bodily and
Personal Injury, and
Completed Operations)

Bodily Injury and Property
Damage, Combined:
Limits of \$500,000 each
Occurrence and \$1,000,000
aggregate (defense costs
excluded from face amount of
policy)

- b. Professional shall maintain professional liability (errors and omissions/malpractice) insurance in the amount of \$1,000,000. Professional shall provide a copy of its Certificate of Insurance to the City within ten days of contract execution or this contract shall be null and void. A deductible is acceptable for professional liability insurance and the deductible limits shall not exceed \$20,000.
- c. Professional shall give the City thirty days' written notice prior to any change or cancellation of these insurance policies.

7. Indemnification

Professional agrees to DEFEND, INDEMNIFY and HOLD HARMLESS the City, its employees, agents, officers and assigns from any and all suits, actions, claims, causes of action, damages and losses, including, without limitation, reasonable attorneys' fees and expenses, brought for or on account of any injuries or damages, real or asserted, received or sustained by any person or property, on account of any negligence or gross negligence, or any negligent act or omission of Professional, its contractors, subcontractors, sub-consultants, agents or employees arising directly or indirectly or in any way connected with the work performed by Professional under this Agreement.

8. Ethics Acknowledgement

Any vendor or contractor entering into this contract or agreement with the City of League City, Texas expressly acknowledges that it has familiarized itself with the provisions of Section 2-34(i) of the Code of Ordinances of the City of League City which provides, among other things, that if within two years after the commencement of this contract or agreement the vendor or contractor hires a city official, former city official, appointed city officer, former appointed city officer, appointed city executive employee, or former appointed city

executive employee or a city employee who, while acting in such capacity, had substantial and personal involvement with the negotiation of this contract or agreement, then this contract or agreement shall, at the option of the City Manager, be cancelled and/or the vendor or contractor shall be barred from additional contracting with the City of League City for a period of three years.

9. Termination of Professional

The City retains the right to terminate this Agreement “at will” and to pay only for the professional services and sub-consultant’s and subcontractor’s costs that were provided for and/or committed to and to that the City approved of prior to the date of termination. All engineering drawings, specifications and files shall be given to the City at the time of termination. Professional shall not be responsible for the City’s misuse of completed drawings, specifications and files; nor shall Professional be responsible for any work by others used to complete partial documents.

10. Records

At the City’s request, the City will be entitled to review and receive a copy of all documents that indicate work on the project that is the subject of this Agreement.

11. Supervision of Professional

Professional shall be subject to the direction and supervision of the City’s Representative. However, it is agreed and stipulated that Professional is an independent contractor and that the City neither reserves nor possesses any right to control the details of the Work performed by Professional under the terms of this Agreement.

12. Billings

The City shall have thirty (30) days to pay Professional’s bills from the date of receipt of such bills. All bills must identify with specificity the work or services performed and the date(s) of such work or services.

13. Reputation in the Community

Professional shall retain a high reputation in the community for providing professional engineering services. Professional shall forward to the City, a copy of any current petition or complaint in any court of law against Professional’s League City Office which (a) asserts a claim for \$50,000 or more for errors or omissions in providing engineering services and/or (b) seeks to deny the Professional the right to practice engineering services or to perform any other services in the state of Texas.

14. Payroll and Basic Records

- a. Professional shall maintain payrolls and basic payroll records during the course of the work performed under this Agreement and shall preserve them for a period of three years from the completion of the work called for under this Agreement for all personnel working on such work. Such records shall contain the name and address of each such employee, social security number, correct classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made and actual wages paid.
- b. Professional shall make the records required to be maintained under the preceding subsection (a) of this section available to the City for inspection, copying or transcription or its authorized representatives. Professional shall permit such representatives to interview Professional's employees during working hours on the job.

15. Default of Professional

- a. If Professional refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this Agreement (including any extension) or fails to complete the work within that time period, the City may, by written notice to Professional, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In such an event, the City reserves the right to take over the work and complete it by contract or otherwise, and may take possession of and use any records necessary for completing the work. Professional shall be liable for any damage to the City resulting from Professional's refusal or failure to complete the work within the specified time, whether or not Professional's right to proceed with the work is terminated. This liability includes any increased costs incurred by the City in completing Professional's work.
- b. Professional shall not be charged with damages under the preceding subsection if:
 - (1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the professional. Examples of such causes include (I) acts of God or of the public enemy, (ii) acts of the Government in either its sovereign or contractual capacity, (iii) acts of another Contractor or Professional in the performance of a contract with the Government, and/or extended review or approvals by government agencies out of the-control of the Professional, (iv) acts of fire, (v) floods, (vi) epidemics, (vii) quarantine restrictions (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of the professional; and
 - (2) Professional, within ten days from the beginning of any delay (unless extended by the City's Representative), notifies the City's Representative in

writing of the causes of delay. The City's Representative shall ascertain the facts and the extent of delay. If, in the judgment of the City's Representative, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the City's Representative shall be final and conclusive on the parties, but subject to appeal to the City's City Council.

- c. The rights and remedies of the City in this section are in addition to any other rights and remedies provided by law or under this Agreement.

16. Governing Law

This Agreement has been made under and shall be governed by the laws of the state of Texas. The parties further agree that performance and all matters related thereto shall be in Galveston County, Texas.

17. Notices

Notices required under this Agreement shall be mailed to the addresses designated below or such other addresses as the either of the parties may designate in writing from time to time, and unless otherwise indicated in this Agreement, shall be deemed received when sent postage prepaid U.S. Mail to the following addresses:

For the City:

City of League City, Texas
300 West Walker Street
League City, Texas 77573
Attention: John Baumgartner, PE

For the Professional:

Vortex USA, Inc.
2605 Sagebrush Dr., Suite 208
Flower Mound, TX 75028
Attention: Avery Conteau

18. Waiver

No waiver by either party to this Agreement of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

19. Complete Agreement

This Agreement represents the entire and integrated agreement between the City and Professional in regard to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either whether written or oral, on the subject matter hereof. This

Agreement may only be amended by written instrument approved and executed by both of the parties. The City and Professional accept and agree to these terms.

FOR THE CITY OF LEAGUE CITY:

SIGNED ON THE _____ day of _____, 2015 .

Name: John Baumgartner
Title: Deputy City Manager – Public Works

FOR Vortex USA, Inc.

SIGNED ON THE _____ day of _____, 2015 .

Name:
Title: