

**CITY OF PFLUGERVILLE STANDARD CAPITAL IMPROVEMENT PROJECT (CIP)
CONSTRUCTION AGREEMENT BETWEEN CITY AND CONTRACTOR**

THIS AGREEMENT is entered into by and between City of Pflugerville, Texas (CITY) and Vortex USA, Inc. (CONTRACTOR). CITY and CONTRACTOR, in consideration of the mutual covenants, obligations and responsibilities herein established, agree as follows:

SECTION I. Generally.

Terms. Terms used in this Agreement, unless the context clearly indicates otherwise, will have the meanings indicated in the General Conditions attached hereto.

Work. CONTRACTOR shall complete all Work as defined in the General Conditions, and as specified or indicated in the other Contract Documents. The Work is generally referred to as Stone Hill Park Splash Pad Project regardless of whether the Work may only be a part of the Project, with the Work being generally described as follows:

Major items of the Work include: construction of an outdoor splash pad complete in place including mechanical and filtration systems.

The Project. The Project, for which the Work under the Contract Documents may be the whole or only a part of, is generally described under Article I above.

Design Consultant. The Design Consultant for the Project is:

Vortex
11024 Baily Road, Suite C
Cornelius, NC 28031

who is referred to as such in the Contract Documents for the purposes stated therein. The CITY shall provide written notice to the CONTRACTOR if any information regarding this designation should change during the course of this Agreement.

SECTION II. Contract Times/Liquidated Damages.

Time of the Essence. All time limits for Milestones, if any, Substantial Completion, and Final Completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

Milestones, Substantial Completion and Final Completion. The Work will be Substantially Completed within 90 days after the date when the Contract Times commence to run as provided in **Section 1.2.4** of the General Conditions, and Finally Completed and ready for final payment in accordance with **Section 13.1** of the General Conditions within 90 days after the date when the Contract Times commence to run.

Liquidated Damages. CONTRACTOR and CITY recognize that time is of the essence of this Agreement and that CITY will suffer financial loss if the Work is not completed within the times specified in **Section II** herein above, plus any extensions thereof allowed in accordance with the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by CITY if the Work is not completed on time. Accordingly, instead of requiring any such proof, CITY and CONTRACTOR agree that as liquidated damages for delay, but expressly acknowledged herein as not being a penalty, **CONTRACTOR shall pay CITY \$150.00 for each day that**

expires after the time specified in Section II herein for Substantial Completion until the Work is Substantially Complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by CITY for Final Completion, CONTRACTOR shall pay CITY \$150.00 for each day that expires after the time specified in Section II herein for Final Completion and readiness for final payment until the Work is completed and ready for final payment.

SECTION III. Contract Sum.

CITY shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount equal to the sum of the following, as applicable:

- (1) For all Work other than Unit Price Work, a Lump Sum of:

Two Hundred Fifty Thousand, Ninety-Seven Dollars and Fifty Cents (\$250,097.50).

The Lump Sum above includes all allowances computed in accordance with Section 3.8 of the General Conditions.

- (2) For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as follows:

See CONTRACTOR'S SUBMITTED BID PROPOSAL, which is incorporated herein by reference for all purposes.

Sum of all Unit Prices: N/A \$ _____ (dollars).

CONTRACTOR acknowledges that estimated quantities are not guaranteed and that the determination of actual quantities will be made in accordance with Sections 9.3-9.6 of the General Conditions.

SECTION IV. Payments.

Submittal and Processing of Payments. CONTRACTOR shall submit Applications for Payment in accordance with Article IX of the General Conditions. CITY shall make progress payments on account of the Contract Sum on the basis of CONTRACTOR's Applications for Payment in accordance with Article IX of the General Conditions. Prior to Final Completion, progress payments will be made in an amount equal to authorized amount, less the applicable retainage percentage indicated within Section 9.6 of the General Conditions, less permissible amounts withheld, in accordance with Article IX of the General Conditions.

SECTION V. Representations.

Representations. In order to induce CITY to enter into this Agreement CONTRACTOR makes the following representations in addition to those otherwise provided in the Contract Documents:

- (1) CONTRACTOR has comprehensively evaluated the Contract Documents and the other information identified in the Bidding Documents and has visited the Project Site and is satisfied as to the Site conditions that may affect completion of the Work.

- (2) CONTRACTOR has further carefully evaluated all: (a) information regarding subsurface conditions at or contiguous to the Site and all drawings relating to existing surface or subsurface structures at or

contiguous to the Site that have been identified in the Contract Documents, if any; and (b) information regarding a Hazardous Environmental Condition, if any, at the Site as identified in Contract Documents.

(3) CONTRACTOR has obtained and carefully evaluated all additional or supplementary information concerning surface and subsurface conditions at or contiguous to the Site that may affect CONTRACTOR'S completion of the Work for the stated Contract Sum within the stated Contract Time. Accordingly, based on said evaluations, CONTRACTOR hereby acknowledges and confirms that no additional information is necessary for the performance of the Work at the Contract Sum, within the Contract Times, and in accordance with the conditions of the Contract Documents.

(4) Finally, CONTRACTOR has provided written notice of all discrepancies that CONTRACTOR has discovered in the Contract Documents to the City or Design Consultant, and hereby acknowledges that all such discrepancies have been resolved sufficiently by the Design Consultant

SECTION VI. Additional Terms.

Controlling Law/Venue. This Agreement shall be governed by the laws of the State of Texas without regard to its conflicts of laws. Venue for any dispute resolution or legal proceedings lies exclusively in the Courts of Travis County, Texas.

Waiver. The failure of either Party hereto to enforce any provision of this Agreement does not constitute a waiver of that provision, affect the enforceability of that provision, or the enforceability of the remainder of this Agreement.

Third Party Beneficiaries. Nothing in this Agreement is intended to be by the Parties hereto or shall be construed to create rights in any person or entity other than the Parties hereto.

Execution. This Agreement may be executed in one or more counterparts and may be exchanged by facsimile or other electronic means. It is stipulated and agreed that any counterpart containing a signature or facsimile signature of the authorized representatives of the respective Party will be deemed an original for all purposes.

Authorization. CONTRACTOR represents that CONTRACTOR has the power and authority to execute and enter into this Agreement. The execution and delivery of this Agreement and the performance of the Work hereunder has been duly authorized by all necessary corporate action, if applicable. Upon execution, this Agreement will constitute the binding and valid obligations of CONTRACTOR and shall be enforceable in accordance with its terms. CONTRACTOR further represents that it is in good standing in and qualified to do business in the State of Texas.

CITY Ordinance Compliance and Certification. CONTRACTOR represents that CONTRACTOR has fully read and understood the terms and conditions for eligibility to contract with the CITY pursuant to Chapter 38 of the CITY'S Code of Ordinances and by entering into this Agreement certifies that CONTRACTOR is qualified to contract with the CITY compliance with all applicable requirements.

Texas Government Code Compliance. CONTRACTOR acknowledges that the CITY may not enter into an Agreement with a company for goods and services unless the Agreement contains a written verification from the company that; (i) it does not Boycott Israel; and (ii) will not Boycott Israel during the term of the contract. (Texas Government Code, Chapter 2270). CONTRACTOR, by entering into this Agreement, hereby verifies and certifies that it does not Boycott Israel and agrees that during the term of this Agreement will not Boycott Israel as that term is defined in the Texas Government Code Section 808.001, as amended.

Certificate of Interested Parties (TEC Form 1295). CONTRACTOR acknowledges that for contracts needing CITY Council approval, the CITY may not accept or enter into a contract until it has received from the CONTRACTOR a completed, signed, and notarized TEC Form 1295 complete with a certificate number assigned by the Texas Ethics Commission ("TEC"), pursuant to Texas Government Code § 2252.908 and the rules promulgated thereunder by the TEC. CONTRACTOR understands that failure to provide said form complete with a certificate number assigned by the TEC may prohibit the City from entering into this Agreement. Pursuant to the rules prescribed by the TEC, the TEC Form 1295 must be completed online through the TEC's website, assigned a certificate number, printed, signed and notarized, and provided to the CITY. The TEC Form 1295 may accompany the bid or may be submitted separately but must be provided to the CITY prior to the award of this Agreement. Neither the City nor its Design Consultant have the ability to verify the information included in a TEC Form 1295, and neither have an obligation nor undertake responsibility for advising CONTRACTOR with respect to the proper completion of the TEC Form 1295.

Assignment of Contract. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound in accordance with the General Conditions.

Successors and Assigns. CITY and CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

Severability. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon CITY and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

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In consideration for the mutual obligations, representations, terms and conditions herein recited, CITY and CONTRACTOR have agreed to and signed this Agreement to be effective on 10-1-19, (Effective D

CITY OF PFUGERVILLE, TEXAS:

By: _____

Sereniah Breland, City Manager

Attest _____

Karen Thompson, City Secretary

Address for giving notices:

Pflugerville, Texas 78660

CITY'S Designated Representative:

Name: Aileen Dryden, RLA

Title: Project Manager

Address: _____

400 Immanuel Rd, Pflugerville, TX 78691

Phone/Fax: 512-990-6353

Email: aileend@pflugervilletx.gov

CONTRACTOR:

By: Jim Bass / Director of Sales
Name/Title

Attest _____

By: _____

Name/Title

Address for giving notices: Vortex

11024 Baily Rd. Suite C

Cornelius, NC 28031

CONTRACTOR'S Designated Representative:

Name: Wm Cook

Title: Construction Manager, USA

Address: 11024 Baily Rd. Suite C

Cornelius, NC 28031

Phone/Fax: 704-305-5885

Email: wcook@vortex-intl.com