

CONSTRUCTION DOCUMENTS-BUILD SOURCEWELL AGREEMENT

THIS AGREEMENT is made this 3rd day of March, 2021, by and between City of Mitchell, South Dakota (hereinafter called "**OWNER**"), whose principal office is located at _____, and American Ramp Company, (hereinafter called "**CONTRACTOR**"), whose principal office is located at 601 S. McKinley Ave, Joplin, MO 64801.

PROJECT: Mitchell Skate Park Expansion
LOCATION: Mitchell, SD
PROJECT NUMBER: TBD

WITNESSETH:

That CONTRACTOR is an approved vendor under Sourcewell, a national, competitively awarded purchasing contract, and that CONTRACTOR and OWNER hereby enter this Agreement consistent with SDCL 5-18A-22(3).

For value received, CONTRACTOR and OWNER agree as follows:

ARTICLE 1 DESCRIPTION OF WORK

1.1 The CONTRACTOR hereby covenants and agrees with the OWNER that he will well and faithfully construct the project in accordance with each and every one of the conditions, covenants, stipulations, terms and provisions contained in the specifications, drawings, and general conditions relating to the project, and will well and faithfully comply with and perform each and every obligation imposed upon him by said documents.

1.2 DESIGN: Construction Documents

1.3 CONSTRUCTION: Skatepark structure as determined by design meetings, conceptual and construction documents). Scope of work is limited to the footprint of the skatepark. See Exhibit A for a complete list of inclusions and exclusions.

ARTICLE 2 CONTRACT AMOUNT

2.1 OWNER agrees to pay CONTRACTOR the sum of **Not to Exceed One Hundred Twenty Thousand Dollars and No Cents (\$120,000.00)**, plus any applicable taxes, subject to additions and deductions for changes as may be agreed upon in writing. CONTRACTOR may bill his work progressively based on quantities installed. A monthly service charge of 1.5% (18% per annum) will be applied to any past due amount after thirty (30) days.

2.2 All portions of this contract will be billed in progress billings to be submitted to the OWNER by the CONTRACTOR based on the following pay schedule. All progress billings are due in full no later than the thirty (30) days upon receipt in order to avoid a monthly service charge as outlined in section 2.1 above.

10% Upon Completion of Construction Documents
15% Prior to Mobilization
25% Upon Completion of Formwork
25% Upon Completion of Shotcrete
25% Upon Completion of Flatwork

2.3 All pricing of the skatepark elements is to be in line with ARC's Sourcewell contract, #02213-ARC.

2.4 Execution of any Attachments and/or Add Alternates will be bound by all terms and conditions of the Agreement.

2.5 "Completion of the Project" shall be deemed the date Owner executes Contractor's punch-list/sign-off sheet.

ARTICLE 3 INSURANCE AND INDEMNITY

3.1 CONTRACTOR shall maintain at its cost the following minimum insurance and coverage throughout the term of the Agreement: Both (1) Comprehensive General Liability and (2) Comprehensive Automobile Liability Insurance covering liabilities for property damage and bodily injury, including death, at the minimum amount of One Million and No/100 Dollars (\$1,000,000.00) per occurrence.

3.2 CONTRACTOR agrees to indemnify and hold harmless OWNER from any and all claims, loss, or expense of every kind whatsoever which may arise from CONTRACTOR's negligent acts or omissions or breach of its obligations hereunder. OWNER agrees to indemnify and hold harmless CONTRACTOR from any and all claims, loss, or expense of every kind whatsoever which may arise from OWNER's negligent acts or omissions or breach of its obligations hereunder, however, the extent of OWNER's obligation is limited in that OWNER does not waive its sovereign immunity and the OWNER reserves the right to rely on sovereign immunity to the extent permitted by South Dakota Law.

ARTICLE 4 CONTRACTOR'S AND OWNER'S RESPONSIBILITIES

4.1 No variation of this agreement will be recognized unless such change has been approved in writing signed by both parties.

4.2 CONTRACTOR may assign or transfer this Agreement or any part thereof or amounts due or to become due hereunder with the written consent of OWNER, which shall not be unreasonably withheld. OWNER understands that CONTRACTOR may subcontract the

installation portion of this Agreement using independent Subcontractors without the consent of OWNER.

4.3 CONTRACTOR will in no way be liable for delays in the completion of the Project which are beyond the control of CONTRACTOR, including but not limited to: Acts of God, labor strikes, shortage of materials, shipping delays or actions attributable to the Purchaser.

4.4 After the final inspection and completion of the Project, all repair/replacement issues regarding the Project and the materials shall be determined under the terms set forth in CONTRACTOR's standard warranty.

4.5 Building permits and other local licenses that are required for the Project are the sole responsibility of the OWNER. If CONTRACTOR is required to purchase these licenses, such costs will be billed to the OWNER and added to the contract price hereunder.³

4.6 The standard and care for all services performed or furnished by CONTRACTOR under this agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality.

ARTICLE 5 MISCELLANEOUS

5.1 The persons signing this Agreement warrant that they are duly authorized to sign on behalf of their respective parties and to bind their respective parties hereto. This Agreement shall inure to the benefit of and be binding upon the undersigned parties and their respective heirs, executors, legal representatives, successors and assigns. No waiver of any provision of this agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver. If any provision of this agreement is held to be invalid or unenforceable, all other provisions shall nevertheless continue in full force and effect.

5.2 The parties shall endeavor to resolve their Claims by mediation. Request for mediation shall be filed, in writing, with the other party to the Contract. The request may be made concurrently with the submission of such Claim to a court of competent jurisdiction, as provided in the paragraph below, but, in such event, mediation shall proceed in advance of such legal proceedings, which shall be stayed pending mediation for a period of 60 days from the date of submission, unless stayed for a longer period by agreement of the parties or court order.

5.3 Claims, disputes or other matters in question between the parties arising out of or relating to this Contract and which cannot be resolved by mediation, as provided in above paragraph, shall be governed by South Dakota law and shall be determined exclusively in the Courts of Davidson County, South Dakota without regard to its conflicts of law provisions. The prevailing party shall be entitled in any such action to recover its reasonable attorney's fees and legal expenses from the other party.

5.4 This agreement constitutes the entire agreement between the parties pertaining to its subject matter, and it supersedes all prior contemporaneous agreements, representations, and understandings of the parties. No supplement, modification, or amendment of this agreement shall be binding unless executed in writing by all parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

OWNER:

Firm: _____

Authorized Signature: _____

Name Print: _____

Date Executed: _____

CONTRACTOR:

Firm: American Ramp Company

Authorized Signature: _____

Name Print: _____

Date Executed: _____

**** NOTE -- EXHIBIT A, WHICH DESCRIBES THE WORK TO BE PERFORMED,
ATTACHED TO THIS AGREEMENT. ****

SCOPE OF WORK

TASK 1.0- CONSTRUCTION DRAWINGS

1.1 Existing Conditions/ Demo Plan

- Show relevant existing site amenities and identify items to be marked for removal or salvage.
- Identify items/ materials/ vegetation to be removed or salvaged by keynote referenced on legend.

1.2 Site Plan/ Layout Plan

- Provide location of Skate Park perimeter and skating elements using horizontal coordinate curve data and/or horizontal dimensioning.

1.3 Grading & Drainage/ Utility Plan

- Show vertical spot elevations of Skate Park surfaces and adjacent park elements.
- Location and sizing of necessary drainage structures, sizing and location of pipe daylight, invert and finish grades of drains.

1.4 Materials Plan

- Identify materials types, colors, slab thickness, metal size & types to be located within the skatepark.
- Reference all relevant construction details, cross sections, and manufactures specifications.

1.5 Sections/ Elevation Plan

- Show vertical cross sections sufficient to relay all sculptural and geometric elements within the Skate Park design.
- Show vertical relations of skatepark perimeter to adjacent grades, berms, buffers & landscaping areas.
- Provide keynote legend depicting section cuts in plan view.

- Show horizontal and vertical dimensions on cross sections.

1.6 Skate Park Jointing Plan

- Identify location of all concrete control joints, sawcut joints, expansion joints, and cold joints.

1.7 Construction Details

- Provide sufficient construction detailing for the construction of the Skate Park.
- Provide all proposed manufactures details / specifications.

1.8 Specifications

- Provide CSI (Construction Specification Institute) format specifications for all skate park items.
- Provide all proposed manufacturer specifications.

1.9 Review Period

- Submit construction drawings, specifications, & cost estimate.
- Address & correct any redline drawing and specification comments from City review.

Task I Deliverables:

- One (1) Electronic file of Final drawings.
- One (1) Electronic set of construction specifications in the CSI

TASK 2.0- SKATEPARK CONSTRUCTION

1.1 INCLUDES*:

- Site staking and layout
- Cutting and shaping grades within skatepark footprint
- All formwork related to skatepark
- Cast-in-place concrete and shotcrete within skatepark footprint
- 4" flatwork
- Saw cutting & cold joints
- Supply and install steel grind rails, coping and edge protection within skatepark footprint.

1.2 EXCLUDES*:

- Erosion and sediment control
- Geotechnical Report
- Stabilized construction entrance

- Landscaping, site and turf restoration post skatepark construction
- Entrance walkways and site amenities
- Fencing of any kind
- Permits and fees: Any necessary permit(s) will be acquired by others.
- Site testing and inspections: standard proctor/density testing, onsite concrete cylinders, engineering, surveying, or testing services.
- Utility, mechanical, electrical, plumbing work, relocation or repairs of any kind.
- Any surface treatments other than the agreed upon color and concrete upgrades (sealer, stamping, marble, granite, tinting, brick, staining, acid etching, decorative finish, etc.)
- Professional services provided by Architects, Surveyors, Geotechnical & Electrical Engineers. Although not required, American Ramp Company will provide a Geotechnical Report prior to construction.
- Toxic or hazardous material handling or removal.
- Pedestrian protection, walkways, dust protection, temporary enclosures, protection of work or adjacent items.
- Soil treatment, termite treatment, landscaping, or reseeded.
- Removal and/or replanting of any trees or shrubs.
- Any work not specifically indicated above.

1.3 CUSTOMER PROVIDES*:

- Sufficient water and electrical power within 100 feet of work areas.
- Unobstructed, safe, and continuous access to work area with heavy equipment. All weather roads for heavy equipment.
- All necessary site information including topography, site surveying, and elevations.
- Customer will possibly provide In-kind donations. Any In-kind donations that are provided will be deducted from the contract value at the rate that American Ramp Company would have purchased those items for.

Task I Deliverables:

- Fully constructed skatepark.