

LETTER OF AGREEMENT

This is a Letter of Agreement (“Agreement”) between the City of Killeen (referred to herein as “City”) and American Ramp Company (referred to herein as “Contractor”), collectively the “Parties”.

In consideration of the premises and of the mutual covenants and agreements contained in this Agreement, the Parties hereby agree as follows:

Scope of Agreement. The purpose of this Agreement is to enlist the services of Contractor to:

Provide professional design services geared to create a completely custom skatepark design unique to your community
Conceptual Design services will include the following:

TASK 1.0 - CONCEPTUAL DESIGN

1.1 Project Team Kickoff

- Virtual kickoff meeting with project team to review project goals, objectives, opportunities, and constraints
- Base Data Collection – Client project team to send any information on existing conditions

1.2 Community Engagement

- American Ramp Company will host a virtual or live meeting with your local skaters or project team to formulate ideas for your concept design
- Summarize meeting findings with group

1.3 Concept Design

- Create initial concept design based on project objectives, existing site conditions, and target budget
- Verify the design is responsive to the site and budget to not exceed \$290,000
- Client to review initial design concept

1.4 Design Revisions

- Revise conceptual design based on feedback from initial input (2 revisions included if needed)
- Verify the design is responsive to the site and budget
- Client to review and approve final skatepark design and cost proposal

1.5 Cost Estimate

- Provide formal cost proposal for manufacturing and installation of approved skatepark design

1.6 Task Deliverables

- Large poster size print of final design
- Skatepark equipment cost proposal

(the "Project").

Term of Agreement. This Agreement shall commence on the 20 day of January 2022, and terminate 365 calendar days after commencement of work on the Project.

Consideration. Contractor agrees to provide the services stated above:

- at the rate of \$ _____ per hour; or
- for the lump sum payment not to exceed \$7,500.

Independent Contractor. Contractor shall act as an Independent Contractor. Under no circumstances shall Contractor be deemed an employee or partner of Owner.

Applicable Laws: Contractor shall follow all applicable local, State, and Federal laws, regulations, and requirements for the abatement and disposal of lead, asbestos, and other routinely encountered hazardous substances. If any unusual substances or extraordinary amounts of the aforementioned substances are encountered, the Contractor will contact the City to contact the State and the relevant agency with authority for regulation of the substance.

Standard of Care. The standard of care for all professional engineering and related services performed or furnished by Contractor under this Agreement will be the care and skill ordinarily used by members of the Contractor's profession practicing under similar circumstances at the same time and in the same locality.

Insurance. Contractor shall procure and maintain insurance in the following amounts:

Worker's Compensation	Statutory
Automobile Liability	\$500,000 Combined single Limit for each accident (Bodily injury and property damage).
General Liability	\$1,000,000 each occurrence (Bodily injury and property damage).
Professional Liability	\$1,000,000 general aggregate.

On all policies, except Worker's Compensation and Professional Liability, City shall be listed as an additional insured with a full waiver of subrogation. A certificate of coverage shall be provided to the City prior to commencing work on the Project.

Subcontracts and Assignments. Contractor's rights and obligations hereunder are deemed to be personal and may not be transferred or assigned. Any assignments shall be void and of no effect.

Indemnification. To the fullest extent permitted by law, City or Contractor, as applicable, shall indemnify and hold harmless the other party, and the other party's officers, directors, partners and employees from and against any and all costs, losses and damages (including, without limitation, all fees and charges of attorneys and other professionals, and all court or dispute resolutions costs) caused by the negligent acts or omissions of the City or Contractor, as applicable, or their respective officers, directors, partners, employees and consultants with respect to the performance under this Agreement or the Project.

Termination. This Agreement may be terminated by either party for cause upon thirty (30) calendar days' written notice, provided such cause cannot be reasonably cured within such thirty (30) day period. City may terminate this Agreement for convenience effective upon receipt of written notice declaring the same and Contractor shall be compensated for all work completed at that time in accordance with this Agreement.

Texas Law. This Agreement shall be subject to and governed by the laws of the State of Texas. The Parties agree that for venue purposes, any and all lawsuits, disputes, or causes of action shall be in Bell County, Texas.

Severability. If any provision of this Agreement shall, for any reason, be held to violate any applicable law, then the invalidity of such a specific provision in this Agreement shall not be held to invalidate the remaining provisions of this Agreement.

Survival. Any provision of this Agreement providing for indemnity, insurance or a duty that necessarily will not be completed until after the expiration or termination of this Agreement shall continue in full force and effect until such a time as all duties have been fully performed.

Non-waiver. Failure to enforce any provision of this Agreement by either party shall not constitute a waiver of that provision for purposes of the subsequent enforcement of that provision or the remainder of this Agreement.

Contract Verification. Texas law provides that a governmental entity may not enter into certain contracts for goods and services with a company unless the company provides written verification regarding aspects of the company's business dealings.

- Texas Government Code, Chapter 2271 – the company must verify that it does not boycott Israel and will not boycott Israel during the term of the contract. Boycott Israel is defined in Government Code Chapter 808.
- Texas Government Code, Chapter 2274 – the company must verify that it does not boycott energy companies and will not boycott energy companies during the term of the contract. Boycott energy company is defined in Government Code Chapter 809.

- Texas Government Code, Chapter 2274 – the company must verify that it does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association. Verification is not required from a sole source provider. Discriminate, firearm entity and firearm trade association are defined in Government Code Chapter 2274.

Affected by the above statutes are contracts 1) with a company with ten (10) or more full-time employees, and 2) valued at \$100,000 or more to be paid wholly or partly from public funds. A contract with a sole proprietorship is not included.

By signing below, I verify that the company listed below does not boycott Israel, does not boycott energy companies and does not discriminate against firearms entities or firearm trade associations and will not do so during the term of the contract entered into with the City of Killeen. I further certify that I am authorized by the company listed below to make this verification.

Entire Agreement. This Agreement shall represent the entire agreement by and between the Parties and it may not be changed except by written amendment duly executed by all Parties.

SIGNED, ACCEPTED AND AGREED TO this ^{RS}~~20~~ day of January, 2022, by the undersigned Parties who acknowledge that they have read and understand this Agreement and that the Agreement is issued in accordance with local, State, and Federal laws, and the undersigned Parties hereby execute this legal document voluntarily and of their own free will.

City

Contractor

Joseph Brown, Executive Director
of Recreation Services
City of Killeen

Printed: Jonathan Hunter

Title: VP

Signature: 

Appendix A
Required Contract Clauses
2 C.F.R. § 200.326 and 2 C.F.R. Part 200

1. Remedies.

- a. Contracts for more than the simplified acquisition threshold (\$150,000) must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II, ¶ A. All remedies are stipulated in the Purchase Order Terms and Conditions.
- b. Applicability: This requirement applies to all FEMA grant, cooperative agreement programs, and City contracts that are funded through federal awards and grants.

2. Termination for Cause and Convenience.

- a. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II, ¶ B.
- b. Applicability. This requirement applies to all FEMA grant, cooperative agreement programs, and City contracts that are funded through federal awards and grants. The Termination for Cause and Convenience is in the City's Purchase Order Terms and Conditions.

3. Equal Employment Opportunity.

- a. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60- 1.4(b), in accordance with Executive Order 11246, *Equal Employment Opportunity* (30 Fed.Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*, and implementing regulations at 41C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, ¶C.

b. Key Definitions.

(1) Federally Assisted Construction Contract. The regulation at 41 C.F.R.

§60-1.3 defines a "federally assisted construction contract" as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

(2) Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines "construction work" as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

Applicability. This requirement applies and the clauses incorporated to all FEMA grant, cooperative agreement programs, and City contracts and Purchase Orders that are funded through federal awards and grants:

c.. During the performance of this Contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(3) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with

procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law. (8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

4. Davis Bacon Act and Copeland Anti-Kickback Act.

- a. As amended (40 U.S.C. 3141-3148). When required by Federal Program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction)). See 2 C.F.R. Part 200, Appendix II, ¶ D.
- b. In accordance the statute, Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractors are required to pay 'wages not less than once a week.
- c. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding-agency.
- d. In contracts subject to the Davis-Bacon Act, the contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. §3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3(Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Copeland Anti •Kickback Act provides that each contractor or sub recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to federal awarding agency.
- e. Compliance with the Davis-Bacon Act
All transactions regarding this Purchase Order hereby incorporates the requirements of compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction)). Contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractors are required to pay 'wages not less than once a week.

f. Compliance with the Copeland "Anti-Kickback" Act.

All transactions regarding this Purchase Order hereby incorporates the requirements of compliance with the Copeland "Anti-Kickback" Act:

(1) Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

(2) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

5.Contract Work Hours and Safety Standards Act.

Applicability: This requirement applies and the clauses are incorporated to all FEMA grant, cooperative agreement programs, and City contracts and Purchase Orders that are funded through federal awards and grants:

- a. All Contractors awarded by the City of Killeen entity in excess of \$100,000 that involve the employment of mechanics or laborers must comply with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R.Part 5. See 2 C.F.R. Part 200, Appendix II, ¶E.
- b. Under 40 U.S.C. § 3702, each Contractor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- c. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- d. In accordance with 29 C.F.R. § 5.5(b) the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act are hereby incorporated:

Compliance with the Contract Work Hours and Safety Standards Act.

(1) Overtime requirements. No contractor or subcontractor contracting for any pay of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives

compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request, of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section."

6. Rights to Inventions Made Under a Contract or Agreement.

This requirement applies and the clauses are incorporated to all FEMA grant, cooperative agreement programs, and City contracts and Purchase Orders that are funded through federal awards and grants:

a. If the Federal award and grants meet the definition of "funding agreement" under 37 C.F.R. § 401.2(a) and the City of Killeen or sub recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the City hereby incorporates the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by the federal awarding agency into the contract. See 2 C.F.R. Part 200, Appendix II, ¶ F.

b. The regulation at 37 C.F.R. § 401.2(a) currently defines "funding agreement" as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

7. Clean Air Act and the Federal Water Pollution Control Act. Contracts of amounts in excess of \$150,000 must contain a provision that requires the contractor to agree to comply

with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C.

§§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II, ¶ G. This requirement applies and the clauses are incorporated to all FEMA grant, cooperative agreement programs, and City contracts and Purchase Orders that are funded through federal awards and grants:

a. Clean Air Act

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §7401 et seq.

(2)

(2) The Contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government} will, in tum, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by the federal awarding agency.

b. Federal Water Pollution Control Act

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The contractor agrees to report each violation to the City of Killeen and understands and agrees that the City of Killeen will, in tum, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by the awarding agency.

8. Debarment and Suspension.

Applicability: This requirement applies and the clauses are incorporated to all FEMA grant, cooperative agreement programs, and City contracts and Purchase Orders that are funded through federal awards and grants.

a.(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the

names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

9. Byrd Anti-Lobbying Amendment.

Applicability: This requirement applies and the clauses are incorporated to all FEMA grant, cooperative agreement programs, and City contracts and Purchase Orders that are funded through federal awards and grants:

a. Contractors that apply or bid for an award of \$100,000 or more must file the required certification. See 2 C.F.R. Part 200, Appendix II, § J; 44 C.F.R. Part 18; Chapter IV, 6.c; Appendix C, § 4.

b. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal

Award. Such disclosures are forwarded from tier to tier up to the non-Federal award. See Chapter IV, § 6.c and Appendix C, § 4.

d. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 44 C.F.R. PART 18- CERTIFICATION REGARDING LOBBYING
Certification for Contracts, Grants, Loans, and Cooperative Agreements (To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form • LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts

under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*,

10. Procurement of Recovered Materials.

Applicability: This requirement applies and the clauses are incorporated to all FEMA grant, cooperative agreement programs, and City contracts and Purchase Orders that are funded through federal awards and grants:

a. A non-Federal entity that is a state agency or agency of a political sub division of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). See 2 C.F.R. Part 200, Appendix II, ¶ K; 2 C.F.R. § 200.322; Chapter V, ¶ 7.

b. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

c.(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA designated items unless the product cannot be acquired-

(i) Competitively within a timeframe providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

(2) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA- designate items is available at [http://www.epa.gov/cpg/products .htm](http://www.epa.gov/cpg/products.htm)."

11. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.

Applicability: This requirement applies and the clauses are incorporated to all FEMA grant, cooperative agreement programs, and City contracts and Purchase Orders that are funded through federal awards and grants:

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under Public Law 115–232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(c) See Public Law 115–232, section 889 for additional information.

(d) See also § 200.471.

12.Domestic Preferences for Procurements.

Applicability: This requirement applies and the clauses are incorporated to all FEMA grant, cooperative agreement programs, and City contracts and Purchase Orders that are funded through federal awards and grants:

(a) As appropriate and to the extent consistent with law, the non–Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

13. Access to Records.

This requirement applies and the clauses are incorporated to all FEMA grant, cooperative agreement programs, and City contracts and Purchase Orders that are funded through federal awards and grants:

(1) The Contractor agrees to provide the City of Killeen (insert name of state agency or local or Indian tribal government), (insert name of recipient), the federal awarding agency, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The Contractor agrees to provide the federal awarding agency or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

14. DRS Seal, Logo, and Flags.

This requirement applies and the clause is incorporated to all FEMA grant, cooperative agreement programs, and City contracts and Purchase Orders that are funded through federal awards and grants:

a. The Contractor shall not use the DRS seal(s), logos, crests, or reproductions of flags or likenesses of DRS agency officials without specific federal awarding agency pre-approval.

15. Compliance with Federal Law, Regulations, and Executive Orders.

This requirement applies and the clause is incorporated to all FEMA grant, cooperative agreement programs, and City contracts and Purchase Orders that are funded through federal awards and grants:

a. This is an acknowledgement that FEMA financial assistance, CARES Funds, or other federal funds will be used to fund the contract only. The contractor will comply with all applicable federal law, regulations, executive orders, federal awarding agency policies, procedures, and directives.

16. No Obligation by Federal Government.

This requirement applies and the clause is incorporated to all FEMA grant, cooperative agreement programs, and City contracts and Purchase Orders that are funded through federal awards and grants:

a. The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

17. Program Fraud and False or Fraudulent Statements or Related Acts.

This requirement applies and the clause is incorporated to all FEMA grant, cooperative agreement programs, and City contracts and Purchase Orders that are funded through federal awards and grants:

- a. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

BUYBOARD BUILD AGREEMENT

THIS AGREEMENT is made this ___ day of _____, 2022, by and between CITY OF KILLEEN, TX (hereinafter called "**OWNER**"), whose principal office is located at 100 N. College Killeen, TX 76542 and American Ramp Company, (hereinafter called "**CONTRACTOR**"), whose principal office is located at 601 S. McKinley Ave. Joplin, MO 64801.

PROJECT: Conder Skatepark Rebuild

LOCATION: 910 Conder St, Killeen, TX 76541

PROJECT NUMBER: _____

WITNESSETH:

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 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 Contractor shall complete all work as specified or indicated in the agreement. The work is generally referred to as Conder Skatepark Rebuild and described as follows: Redevelopment and rehabilitation of skatepark slab into custom Pour-in-Place Skatepark. Please reference exhibit B for warranty statement.
- 1.3 CONSTRUCTION: Skatepark structure as determined by design meetings and conceptual design. Scope of work is limited to the footprint of the skatepark as included as Exhibits to this contract as follows:
 - Exhibit A – Scope of Work

ARTICLE 2 CONTRACT AMOUNT

2.1 OWNER agrees to pay CONTRACTOR the sum of **TWO HUNDRED NINETY-FIVE THOUSAND EIGHT HUNDRED DOLLARS (\$295,800.00)**, subject to additions and deductions for changes as may be agreed upon in writing. CONTRACTOR may bill his work progressively based on quantities installed.

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 milestones:

- 25% At Contract Signing
- 25% Upon Mobilization
- 25% Upon Substantial Completion
- 25% Upon Completion of Punch List items, Construction Sign Off and Owner Acceptance

All progress billings are due in full within 30 days of receipt of invoice from CONTRACTOR.

2.3 Execution of any Attachments and/or Add Alternates will be bound by all terms and conditions of the Agreement. If any changes are determined necessary, ARC will issue a change request to the owner for approval prior to performing work.

2.4 "Completion of the Project" shall be deemed the earlier of 1.) the date Owner executes Contractor's punch-list/sign-off sheet; or 2.) The date the Owner opens the Project to the public for permanent use.

2.5 All pricing of the skatepark elements is to be in line with ARC's BuyBoard contract #592-19.

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. Contractor must maintain Workers Compensation with the limits required by federal and state law and Employer's Liability Insurance of not less than \$1,000,000 per accident for injury and \$1,000,000 per employee for disease with a \$1,000,000 disease policy limit.

3.2 The CONTRACTOR shall contractually require each person with whom it contracts to provide services on the Project, to: Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreement, which meets the statutory requirements of Texas Labor Code, Section 401.011 (44) for all of its employees providing services on the Project, for the duration of the Project. provide the CONTRACTOR, prior to that person beginning Work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project provide the CONTRACTOR, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project. obtain from each other person with whom it contracts, and provide to the CONTRACTOR: a certificate of coverage, prior to the other person beginning work on the Project; and a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project. retain all required certificates of coverage on file for the duration of the Project and for one (1) year thereafter notify the OWNER in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and contractually require each person with whom it contracts, to perform as required by paragraphs (a) - (g), with the certificates of coverage to be provided to the person for whom they are providing services.

3.3 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.

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.

4.2 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 reasonably 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 Owner.

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 During construction the entire job site is considered hazardous. Under no circumstances may the skatepark be skated or ridden until final completion of the Project. CONTRACTOR will not be held liable for and OWNER shall hold CONTRACTOR harmless from any accidents that occur because ramps/rails were used before the Project was complete unless accidents are caused by negligence of the CONTRACTOR.

4.6 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.

4.7 All materials and workmanship are to conform to the contract drawings, details and specifications and the owner's Standards for Construction.

**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 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: _____

Exhibit A

SCOPE OF WORK

TASK 1.0 - CONSTRUCTION PHASE

1.1 CUSTOMER PROVIDES*:

- Geotechnical Report – If a current geo-technical report is available, it shall be the responsibility of the Client to provide ARC with the report (if applicable) prepared specifically for the project site. Should an existing report be available it shall be a maximum of 1 year old. If the report is over 1 year old, the original firm preparing the report shall issue a letter testifying that the report is still valid and no corrections or updates need to be prepared for the report. The letter shall be dated within 30 days of ARC's receipt of the Geotechnical report. The report shall be completed and sealed by a Geotechnical Engineer registered in the state where the project site is located. At a minimum the report is to include the following; vicinity map of the project limits, plot plan/aerial showing location of borings, detailed description of the findings and recommendations, a detailed report of the laboratory tests performed, and an executive summary stating general findings and recommendations.
- Survey and Mapping – The Client shall provide ARC with a current survey locating all above and belowground utilities, appurtenances, structures, and easements. *The survey shall be in digital format that can easily be used with AutoCAD software.
- 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.
- Removal of existing skatepark equipment

1.2 INCLUDES*:

- All labor, construction project management, supplies, tools, materials, and equipment required per scope of work
- Site Staking and Layout
- Cutting and shaping grades within skatepark footprint
- Erosion and Sediment Control and Site Stabilization
- Installation of Rebar
- Install and Finish Shotcrete
- Repair of existing expansion joints
- Concrete ledges, steps, and turndown walls if applicable
- Pipe coping edgings, rails
- Park Sealing
- Fine Grading
- Performance Bonds

1.3 EXCLUDES*:

- Repouring of existing concrete pad
- Stabilized Construction Entrance
- Landscaping, Site and Turf Restoration post skatepark construction
- Sidewalks/Walkways and Site Amenities of any Kind
- Permits, fees and/or engineering and stamping.
- Utility, mechanical, electrical, plumbing work, relocation or repairs of any kind.
- Toxic or hazardous material handling or removal.
- Removal and/or replanting of any trees or shrubs or protection of trees and shrubs.

******American Ramp Company will gladly coordinate and supply any of these services at a reasonable cost.**

Task 2.0 Deliverables:

- Fully constructed skatepark.

Exhibit B

Warranty Statement

Cast-in-place Concrete/ Shotcrete

- **1-year limited on all concrete & shotcrete surfaces**

Begins on the date of final project delivery or when the on-site work is complete, under the condition that the skatepark has no defect in material and/or workmanship. Warranty items covered include:

1. Spalling attributed to improper floating, finishing, water content or curing methods.
2. Compression strength less than required by the specifications.
3. Surface cracking greater than the width of two quarters.

Should purchaser believe American Ramp Company has failed to meet the terms of this warranty, they shall notify American Ramp Company, and American Ramp Company shall, at its sole discretion, repair or provide replacement parts. This warranty is exclusive and is in lieu of all other warranties, whether expressed, implied, or statutory.

Exceptions to Warranty

Concrete by its inherent characteristics develop hairline checks, cracks, discolor, and stain, and therefore will not be covered by this warranty except when such checks or cracks exceed the thickness of two quarters. Damage caused by surface or subterranean drainage under or around said concrete or earth fill movement or expansive soil, explosions, wrecking, and the like. Damage caused by improper landscape drainage, stopped up drain, excessive humidity, or commercial vehicular traffic on flatwork. Damage caused by premature use of the concrete surface by foot traffic, furniture, equipment, or vehicles. Repairs required by normal wear, neglect, abuse, accident, vandalism, use of products other than the intended purpose, and acts of nature or God are not warrantied. The warranty does not cover any modifications, additions, or changes to the skatepark unless approved in writing by American Ramp Company.

Disclaimer of Consequential Damages

American Ramp Company shall not be held liable to purchaser, purchaser's customers, or other users of the product, or to anyone else for incidental, consequential or any other direct loss or damage or for lost profits or revenues of any kind, arising out of this agreement, whether in any action for or arising out of breach of contract, tort, fraud, or otherwise.

Safety

Skatepark surfaces should be inspected regularly by purchaser to ensure that it is safe and in good repair. Should the purchaser neglect any suggested maintenance, this warranty is rendered invalid. Purchaser assumes all liability for site location and any and all problems resulting from such placement (noise, vandalism, traffic, etc.).

Nothing contained herein shall be construed as extending or otherwise increasing or modifying the obligation of Western Surety Company, the surety of American Ramp Company, Inc., other than the one-year guarantee as to materials and workmanship provided by Western Surety Company with respect to any claim by purchaser for defective work or materials under applicable law. Surety's obligation shall be limited to that set forth in its agreement and American Ramp Company, Inc. and applicable law. Nothing contained herein shall be construed as establishing a contractual or other relationship between surety and purchaser.



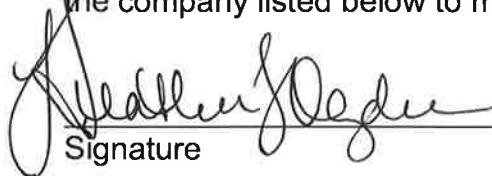
Contract Verification

Texas law provides that a governmental entity may not enter into certain contracts for goods and services with a company unless the company provides written verification regarding aspects of the company's business dealings.

- Texas Government Code, Chapter 2271 – the company must verify that it does not boycott Israel and will not boycott Israel during the term of the contract. *Boycott Israel is defined in Government Code Chapter 808.*
- Texas Government Code, Chapter 2274 – the company must verify that it does not boycott energy companies and will not boycott energy companies during the term of the contract. *Boycott energy company is defined in Government Code Chapter 809.*
- Texas Government Code, Chapter 2274 – the company must verify that it does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association. Verification is not required from a sole source provider. *Discriminate, firearm entity and firearm trade association are defined in Government Code Chapter 2274.*

Affected by the above statutes are contracts 1) with a company with ten (10) or more full-time employees, and 2) valued at \$100,000 or more to be paid wholly or partly from public funds. A contract with a sole proprietorship is not included.

By signing below, I verify that the company listed below does not boycott Israel, does not boycott energy companies and does not discriminate against firearms entities or firearm trade associations and will not do so during the term of the contract entered into with the City of Killeen. I further certify that I am authorized by the company listed below to make this verification.


Signature

Heather Ogden
Printed Name

3.25.22
Date

American Ramp Company
Company Name

Construction Manager
Title