

# C O N T R A C T

**THIS AGREEMENT** made and entered into this 15th day of May, 2007, by and between the **CITY OF WICHITA**, a municipal corporation, hereinafter known as "**CITY**", and **AMERICAN RAMP COMPANY** (Performance Vendor Code Number –431836707-001) whose principal office is at 601 S. McKinley Avenue, Joplin, Missouri, 64801, telephone number (417) 206-6816, hereinafter known as the "**CONTRACTOR**".

**WITNESSETH**, That for and in consideration of covenants hereinafter set out the **CONTRACTOR** contracts, promises and agrees to and with the **CITY** that **American Ramp Company** will furnish all the material and labor necessary to perform the mechanical, electrical, plumbing, and add alternates and/or options as required by the specifications and work orders for the City of Wichita, for **Design/Build Skatepark at Edgemoor Park**, Formal Proposal – FP700004 for the Park & Recreation Department, Recreation Division in the City of Wichita, Sedgwick County, Kansas. The proposal package, plans, specifications and addenda provided by the City of Wichita as part of the proposal letting process for Formal Proposal – FP700004, dated February 23, 2007, and the contractor's proposal, as approved, shall be considered a part of this contract and are incorporated by reference herein, as approved by the City Council on May 15, 2007, which plans, specifications, addenda and proposals are on file in the office of the City Purchasing Manager of said **CITY**, and are hereby incorporated and made a part of this contract to the same extent as if fully set out herein.

**CONTRACTOR** further agrees that the work under this contract shall be completed to the full satisfaction of the City Purchasing Manager of the City of Wichita on or before **September 14, 2007**, for completion. Said work shall be done under the direct supervision of said Purchasing Manager, or such other person as the City Council may direct, and that said Purchasing Manager's decision as to the material used in said improvement and the method in which the work is to be done shall be final and conclusive upon the parties hereto. Working days shall be as defined in the Standard Specifications of the City of Wichita.

**CONTRACTOR** further agrees that at all times during the prosecution of said improvement **American Ramp Company** will maintain the proper safeguards, barricades and lights on the work and every portion thereof to insure the highest degree of safety to the public, and that **American Ramp Company** will hold the City of Wichita

harmless in all suits for damages brought against either of the parties to this contract on account of the negligent acts, omissions or default of said **CONTRACTOR**, their agents or servants in the prosecution of the work on said improvement.

**CONTRACTOR** further agrees to maintain said improvement for a period of one (1) year from date of the completion and acceptance of same by the City of Wichita; this maintenance to be done and performed by said **CONTRACTOR** without any expense to the **CITY** whatsoever. **CONTRACTOR** to furnish to the **CITY** any manufacturer's warranty on materials as applicable.

**CONTRACTOR** shall furnish the **CITY** a good and sufficient bond guaranteeing the completion of said improvement and every part thereof according to the specifications and the bid of said **CONTRACTOR** and the terms of this contract; conditioned further, for the maintenance of said improvements as herein before provided.

**CONTRACTOR** shall furnish a bond to the State of Kansas in the total amount of this contract; conditioned upon the payment of all material and labor bills incurred in the making of said improvement.

#### **Indemnification and Insurance.**

a. **CONTRACTOR** shall save and hold the **CITY** harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of **CONTRACTOR**, its officers, agents, servants, or employees, occurring in the performance of its services under this Contract, or arising from any defect in the materials or workmanship of any product provided in the performance of this Contract.

b. **CONTRACTOR** will carry insurance coverage during the term of this contract and any extensions thereof in the amounts and manner provided as follows:

1. Comprehensive General Liability covering premises— operations, xcu (explosion, collapse and underground) hazards when applicable, Product/Completed operations, Broad Form Property Damage, and Contractual Liability with minimum limits as follows:

Bodily Injury Liability	\$500,000 each occurrence \$500,000 each aggregate
Property Damage Liability	\$500,000 each occurrence \$500,000 each aggregate
Or	
Bodily Injury and Property Damage Liability (Combined Single Limit)	\$500,000 each occurrence \$500,000 each aggregate

2. Automobile Liability - Comprehensive Form including all owned, hired and non-owned vehicles with minimum limits for:

Bodily Injury Liability	\$500,000 each accident
Property Damage Liability	\$500,000 each accident
Or	
Bodily Injury and Property Damage Liability (Combined Single Limit)	\$500,000 each accident

3. Workers' Compensation/Employers Liability for minimum limits of:

Employers Liability	\$100,000 each accident
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**CITY** shall pay **CONTRACTOR** the following amount for the contract work:

**Design/Build Skatepark and Improvements at Edgemoor Park as per specifications of Request for Proposal – FP700004.\***

**TOTAL NOT TO EXCEED CONTRACT AMOUNT: \$160,422.66**

\*includes revisions

The **CONTRACTOR** shall be entitled to payment of 90 percent of its progress estimates every thirty (30) days during the prosecution of said improvement; 10 percent of the total amount being at all times retained until final completion, at which time **CONTRACTOR** shall be entitled to final payment.

If the **CONTRACTOR** fails to complete all requirements identified within these specifications by **September 14, 2007**, it is understood and the **CONTRACTOR** hereby **agrees that the amount of one hundred dollars (\$100.00) per calendar day per park to a maximum of the contract price may be deducted from the moneys due the CONTRACTOR** for each intervening calendar day any work remains incomplete, not as a penalty but as liquidated damages. **CONTRACTOR** will not be liable if performance failure arises out of causes beyond their control and without fault or negligence of the **CONTRACTOR** (e.g., acts of God, war, fires, floods, freight embargoes). Should a performance failure occur, it will be the responsibility of the **CONTRACTOR** to notify the Purchasing Manager in writing and submit proof of the circumstance responsible for non-performance, the **CONTRACTOR** must re-negotiate delivery schedules.

The **CONTRACTOR**, in performing the work required under this contract, agrees to comply with the provisions of the "Revised Non-Discrimination and Equal Employment Opportunity Statement For Contracts or Agreement" of the City of Wichita, which is incorporated herein by reference and attached as "Exhibit A".

For good cause, and as consideration for executing this contract, the **CONTRACTOR**, acting herein by and through its authorized agent, hereby conveys, sells, assigns, and transfers to the City of Wichita all right, title, and interest in and to all causes of action it may now or hereafter acquire under the anti-trust laws of the United States and the State of Kansas, relating to the particular product, products, or services purchased or acquired by the City of Wichita pursuant to this contract.

**Independent Contractor.** The relationship of the **CONTRACTOR** to the **CITY** will be that of an independent contractor. No employee or agent of the **CONTRACTOR** shall be considered an employee of the **CITY**.

**Compliance with Laws.** **CONTRACTOR** shall comply with all laws, statutes and ordinances which may pertain to the providing of services under this contract.

**No Assignment.** The services to be provided by the **CONTRACTOR** under this contract are personal and cannot be assigned, delegated, sublet or transferred without the specific written consent of the **CITY**.

**Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of any part of this contract to create in the public or any member thereof a third-party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

**No Arbitration.** The **CONTRACTOR** and the **CITY** shall not be obligated to resolve any claim or dispute related to the Contract by arbitration. Any reference to arbitration in bid or proposal documents is deemed void.

**Governing Law.** This contract shall be interpreted according to the laws of the State of Kansas.

**Representative's Authority to Contract.** By signing this contract, the representative of the contractor or vendor represents that he or she is duly authorized by the contractor or vendor to execute this contract, and that the contractor or vendor has agreed to be bound by all its provisions.

**IN WITNESS WHEREOF** the City of Wichita has caused these presents to be signed by its Purchasing Manager and attested by its clerk with the seal of the City of Wichita impressed hereon, and the **CONTRACTOR** has caused these presents to be duly executed the day and year first herein written.

**ATTEST:**

**THE CITY OF WICHITA**

\_\_\_\_\_  
Janis Edwards  
Deputy City Clerk

\_\_\_\_\_  
Melinda A. Walker  
Purchasing Manager

**APPROVED AS TO FORM:**

**AMERICAN RAMP COMPANY**

\_\_\_\_\_  
Gary E. Rebenstorf  
Director of Law

\_\_\_\_\_  
Signature

**CITY OF WICHITA, KANSAS**

\_\_\_\_\_  
Print Signature Name

\_\_\_\_\_  
Carl G. Brewer, Mayor

\_\_\_\_\_  
Title *(President or Corporate Officer)*

## EXHIBIT A

### REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
  
- B. Requirements of the State of Kansas:
  - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
  - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
  - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
  - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.
- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to 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 vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
  2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
  3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
  4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.