

PURCHASE AND INSTALLATION AGREEMENT FOR SKATE PARK STRUCTURES AT LONG CANYON CREEK PARK

THIS PURCHASE AND INSTALLATION AGREEMENT ("Agreement") is made and entered into effect as of **August 27, 2024** ("Effective Date") by and between the City of Temecula, a California municipal corporation ("City"), and **American Ramp Company, a Corporation** ("Contractor").

RECITALS

- A. City desires to engage Contractor to provide and install the following Skate Park Structures at Long Canyon Creek Park as more fully described herein ("Project").
- B. Contractor has examined the location of all proposed work, carefully reviewed and evaluated the specifications set forth by the City for the Project, is familiar with all conditions relevant to the performance of services and is committed to perform all work as required by this Agreement.
- C. Contractor represents that Contractor is fully qualified, possesses all required licenses and certifications, and has the experience necessary, to perform the work necessary to complete the Project. City selected Contractor for this Project in substantial reliance on such representations by the Contractor.
- D. Contractor is a registered dealer of Skate Park Structures and has full access to the equipment and special pricing under the Sourcewell Contract Agreement **112420-ARC** ("Cooperative Contract") and all applicable provisions are incorporated herein.
- E. The City is a member of Sourcewell (Member no. **24002**) and is authorized to use the Cooperative Contract.
- F. City and Contractor enter this Agreement in order to set forth terms and conditions governing each party's performance of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual promises and covenants herein contained, the Parties agree as follows:

1. Scope of Work.

1.1 In consideration of the payment of the purchase price and subject to all the terms and conditions hereof, including applicable provisions of the Cooperative Agreement, Contractor shall provide all tangible items and products, and perform all services, described in the Scope of Services and Fee Schedule attached hereto as Exhibit "A" and incorporated herein by reference ("Products" and "Services", respectively). Contractor covenants that: (i) it will perform all Services in a manner commensurate with

all applicable, professional standards and degree of skill and care; and (ii) all Products will be new and of the highest quality available.

1.2 Contractor shall perform all work set forth in Exhibit A, and shall provide and furnish all the labor, materials, necessary tools, equipment and all utility and transportation services necessary to complete the Project as required herein.

1.3 The Products shall be delivered to the location designated in writing by the City. Title to and the risk of loss, damage, and destruction of the Products shall remain with the Contractor until inspection and acceptance of the Products by City. Such inspection may include reasonable tests and use of the Products by City. City may, at its option, (i) reject any or all of the Products found to be defective or otherwise not in compliance with the requirements of this Agreement; or, (ii) accept substitute Product(s) satisfactory to the City. Contractor shall be responsible for any and all costs of transportation and replacement of any rejected Products.

1.4 If the total Contract amount exceeds \$25,000, then Contractor shall provide a payment bond in an amount equal to 100% of the Contract price. If required by the City prior to commencing work, Contractor shall provide a performance bond in an amount equal to 100% of the Contract price. The bond forms required to be executed are attached hereto and incorporated by reference herein. The performance bond, if required, shall remain in force until written acceptance of the Work and the end of the one (1) year warranty period.

2. Time of Performance. Time is of the essence in the performance of the Services and Contractor shall complete the Project installation, implementation and acceptance testing within the times set forth in Exhibit A. The failure by Contractor to meet this schedule may result in termination of this Agreement by City.

3. Term. Unless earlier terminated in accordance with Section 18 of this Agreement, this Agreement shall continue in full force and effect until satisfactory completion of the Services.

4. Compensation.

4.1 City shall pay Contractor for the Services on a fixed fee, not-to-exceed basis, in accordance with the provisions of this Section and Exhibit A. Contractor's total and complete compensation for all Services satisfactorily performed and Products properly provided, shall not exceed **Three Hundred Twenty-Seven Thousand Five Hundred Ninety-Nine Dollars and Ninety-Six Cents (\$327,599.96)**, unless otherwise agreed upon in writing.

4.2 Contractor shall submit invoices to City describing the Services performed and/or the specific task in the Scope of Services to which it relates, and the date the Services were performed. City shall pay Contractor no later than thirty (30) calendar days after City approval of the invoice.

4.3 City shall reimburse Contractor only for those costs or expenses specifically identified in Exhibit A to this Agreement or specifically approved in writing in advance by City.

4.4 Contractor shall not receive any compensation for Extra Work performed without the prior written authorization of City. As used herein, "Extra Work" means any work that is determined by City to be necessary for the proper completion of the Project, but which is not included within the Scope of Services and which the parties did not reasonably anticipate would be necessary when this Agreement was executed. Compensation for any authorized Extra Work shall be paid in accordance with Exhibit A, or otherwise as agreed upon in writing.

4.5 Unless otherwise agreed upon in writing, Contractor shall provide City with a minimum fourteen (14) days' notice of its date(s) of installation to enable the City to ready the installation site(s) for installation the Products in accordance with the instructions of Contractor, if any. The City shall complete any required site preparation prior to the date installation of the Products begins.

5. Project Manager. Contractor shall designate a Project Manager, who shall coordinate all phases of the Project. This Project Manager shall be available to City at all reasonable times during the term of the Agreement. Contractor has designated **Wade Hilton** to be its Project Manager. Contractor shall not remove or reassign the Project Manager without the prior written consent of City. City's approval shall not be unreasonably withheld.

6. Administration. This Agreement will be administered by the City Manager or designee, who shall be the Project Administrator and shall have the authority to act for City under this Agreement.

7. Type and Installation of Materials/Standard of Care.

7.1 Contractor shall use only the only materials and Products described in Exhibit A in performing the Services. Any deviation from the materials or Products described in Exhibit A shall not be permitted unless approved in advance in writing by the Project Administrator.

7.2 All of the Services shall be performed by Contractor or under Contractor's supervision. Contractor represents that it possesses the personnel required to perform the Services required by this Agreement, and that it will perform all Services in a manner commensurate with industry-wide professional standards. All Services shall be performed by qualified and experienced personnel.

7.3 At all times during the term of this Agreement, Contractor shall possess a valid and current Class **A, B, C-61/D34** California Contractor's License to perform the work. Contractor hereby certifies that it holds the required license(s), License No. Insert **869556**.

8. Indemnification.

8.1 To the fullest extent permitted by law, Contractor shall, at its sole cost and expense, defend, hold harmless and indemnify the City, the Temecula Community Services District, the Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees and volunteers and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively "Liabilities"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Contractor, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Contractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees, as determined by judicial decision or by the agreement of the parties. Contractor shall defend the Indemnitees in any action or actions filed in connection with any Liabilities with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Contractor shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

For liabilities arising out of "design professional services", and in accordance with Civil Code § 2782.8(a), in no event shall the cost to defend the Indemnitees that is charged to Contractor, exceed Contractor's proportionate percentage of fault.

8.2 Contractor shall perform all Project work in a manner to minimize public inconvenience and possible hazard, to restore other work areas to their original condition and former usefulness as soon as possible, and to protect public and private property. Contractor shall perform work as specified in Exhibit A to limit impacts to traffic during the installation period. Contractor shall be liable for any private or public property damaged during the performance of the Project work.

8.3 The rights and obligations set forth in this Section shall survive the termination of this Agreement.

9. Independent Contractor. City has retained Contractor as an independent contractor and neither Contractor nor its employees, nor any of its subcontractors, are to be considered employees of the City. The manner and means of conducting the work are under the control of Contractor, except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service statutes or other right of employment shall accrue to Contractor or its employees.

10. Cooperation. Contractor agrees to work closely and cooperate fully with City's Project Administrator and any other agencies that may have jurisdiction or interest in the work to be performed. City agrees to cooperate with the Contractor on the Project.

11. Insurance. Without limiting Contractor's indemnification of City, and prior to commencement of work, Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement or for other periods as specified in this Agreement, policies of insurance of the type, amounts, terms and conditions described in the Insurance Requirements attached hereto as Exhibit B, and incorporated herein by reference.

12. Prevailing Wages.

12.1 This Agreement calls for work to be performed constituting public works. Contractor and all subcontractors shall pay the general prevailing rate of per diem wages as determined and as published by the State Director of the Department of Industrial Relations pursuant to Article 2 of Chapter 1 of Part 7, of Division 2 of the California Labor Code, including, but not limited to, Sections 1770, 1771, 1773, 1773.2 and 1774. In accordance with Labor Code Sections 1725.5 and 1771.1, no contractor or subcontractor shall be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to Section 1725.5 [with limited exceptions for bid purposes only under Labor Code Section 1771.1(a)] If the Agreement price exceeds \$25,000, Contractor shall be registered with DIR. Unless exempt, Contractor's DIR Registration number is **1000012376**.

12.2 Contractor shall post a copy of such wage rates at the job site and shall pay the adopted prevailing wage rates as a minimum. Contractor shall comply with the provisions of Sections 1775, 1776, 1777.5, 1777.6, and 1813 of the Labor Code. Pursuant to the provisions of 1775 of the Labor Code, Contractor shall forfeit to the City, as a penalty, not more than \$200.00 for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for any work done under this Agreement, by him or by any subcontractor under him, in violation of the provisions of this Agreement. Pursuant to Labor Code Section 1771.4, the Project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.

12.3 Contractor's attention is directed to the provisions in Sections 1774, 1775, 1776, 1777.5 and 1777.6 of the Labor Code. Contractor shall comply with the requirements of these Sections. The statutory provisions for penalties for failure to comply with the State's wage and hours laws will be enforced. Section 1776 requires the Contractor and all subcontractors to keep accurate payroll records, specifies the contents thereof, their inspection and duplication procedures and certain notices required of the Contractor pertaining to their location. Eight hours labor constitutes a legal day's work, as set forth in Labor Code Section 1810. The statutory provisions for penalties for failure to comply with the State's wage and hour laws will be enforced as set forth in Labor Code Section 1813.

13. Subcontracting. The subcontractors authorized by City, if any, to perform work on this Project are identified in Exhibit A. Contractor shall be fully responsible to City for all acts and omissions of any subcontractor. Except as specifically authorized herein, the Services to be provided under this Agreement shall not be otherwise assigned, transferred, contracted or subcontracted out without the prior written approval of City.

14. Conflicts of Interest. Contractor agrees not to accept any employment or representation during the term of this Contract or within twelve (12) months after completion of the work under this Contract wherein Contractor is or may likely become "financially interested," as provided in Government Code Section 1090 and 87100, in any decisions made by City on any matter in connection with which Contractor has been retained pursuant to this Contract.

15. Notices. All notices, demands, requests or approvals to be given under the terms of this Agreement shall be given in writing, to City by Contractor and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided. All notices, demands, requests or approvals from Contractor to City shall be addressed as follows:

To the City:

City of Temecula
41000 Main St.
Temecula, CA 92590
Attention: Stacy Fox

To the Contractor:

American Ramp Company
601 McKinley Ave.
Joplin, Missouri 64801
Attention: Josh Willis

16. **TERMINATION**

16.1 Termination With Cause. In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of five (5) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof. In the event that the default cannot be cured within five (5) days, no such failure will be deemed to exist if the defaulting party has given the non-defaulting party adequate assurance of due performance and commenced to

cure such default within such period, such cure efforts are prosecuted to completion with reasonable diligence, and in any event are completed with thirty (30) days.

16.2 Termination Without Cause. Notwithstanding the above provisions, City shall have the right, at its sole discretion and without cause, of terminating this Agreement at any time by giving seven (7) calendar days' prior written notice to Contractor. In the event of termination under this Section, City shall pay Contractor for Services satisfactorily performed and costs incurred in the performance of such Services up to the effective date of termination for which Contractor has not previously been paid. In the event of termination under this Section, City shall also pay Contractor for all Products, associated materials, and hardware delivered to City site under this Agreement that City deems usable.

17. Contractor's Knowledge of Conditions. By executing this Agreement, Contractor warrants that Contractor has visited or has been provided the opportunity to visit the Project site(s), has become familiar with the local conditions under which the work is to be performed, and has taken into consideration these factors in submitting its Project proposal and Scope of Services.

18. Warranty. For all Products provided to the City as part of this Agreement, Contractor warrants as follows: Contractor possesses good title to the Products and the right to transfer ownership of the Products to the City; the product shall be delivered to the City free from any security interest or other lien; the Products meet all specifications contained herein and are fit for their intended purpose(s); and, the Products and the Services shall be free from material defects in materials and workmanship under normal use for a period of not less than one (1) year from the date of delivery and completion of the work. The foregoing warranty is in addition to any and all manufacturers' warranties. All other warranties applicable to the equipment and materials purchased by City pursuant to this Agreement shall be as specified in Exhibit A.

19. Representations. Each party represents as follows: (a) that it has full power and authority to execute, deliver and perform its obligations under this Agreement; (b) that there are no actions, proceedings or investigations, pending or, to the best of each party's knowledge, threatened against such party which may in any manner whatsoever materially affect the enforceability of this Agreement or the rights, duties and obligations of the parties hereunder; and (c) that the execution, delivery and performance of this Agreement will not constitute a breach or default under any agreement, law or court order under which such party is a party or may be bound or affected by or which may affect the rights, duties and obligations hereunder.

20. Assignment. Contractor may not assign or transfer this Agreement without the City's prior, written consent.

21. Force Majeure. Neither party shall be responsible for delays in performance caused by unforeseeable events beyond the control and without the fault or negligence of the parties, including but not limited to acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, and/or freight embargoes. Contractor's lack of funding for any reason shall not be a force

majeure. If Contractor claims force majeure, City shall ascertain the facts and extent of delay, and extend the time for performing the Services for the period of the enforced delay when and if in the judgment of the City such delay is justified. In no event shall Contractor be entitled to recover damages against City for any delay in performance of this Agreement, however caused, Contractor's sole remedy being extension of the Agreement pursuant to this Section.

22. Miscellaneous Provisions.

22.1 Recitals. City and Contractor acknowledge that the above Recitals are true and correct and are hereby incorporated by reference into this Agreement.

22.2 Compliance with all Laws. Contractor shall at its sole cost and expense comply with all applicable statutes, ordinances, codes, and regulations throughout the term of this Agreement.

22.3 Waiver. A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

22.4 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

22.5 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Scope of Services or any other attachments or exhibits hereto, the terms of this Agreement shall govern.

22.6 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

22.7 Amendments. This Agreement may be modified or amended only by a written document executed by both Contractor and City and approved as to form by the City Attorney.

22.8 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

22.9 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Riverside, State of California.

22.10 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, age or any other impermissible basis under law.

22.11 Attorneys' Fees. In any litigation or other proceeding by which a party seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party shall be entitled to recover all attorneys' fees, experts' fees, and other costs actually incurred in connection with such litigation or other proceeding, in addition to all other relief to which that party may be entitled.

22.12 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written above.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

Date: _____

By: _____
Name: Peter M. Thorson
Title: City Attorney

ATTEST:

Date: _____

By: _____
Name: Randi Johl
Title: City Clerk

CITY OF TEMECULA,
a municipal corporation

Date: _____

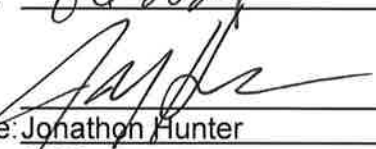
By: _____
Name: James Stewart
Title: Mayor

CONTRACTOR:

American Ramp Company,
a Corporation

By:  _____
Name: James Moss
Title: CFO

Date: 8.6.2024

By:  _____
Name: Jonathon Hunter
Title: CEO

Date: 8.6.2024

Attachments:

Exhibit A - Scope of Services and Fee Schedule
Exhibit B - Insurance Requirements
Bond Forms
Warranty Disclosure

EXHIBIT A

SCOPE OF SERVICES AND FEE SCHEDULE

Quote #	Design #	FOB	Date
Q28455.1	8649	Temecula, CA (Long Canyon Creek Park)	7-26-24

<u>Item</u>	<u>Obstacle</u>	<u>Height</u>	<u>Length</u>
1	Snap!	4.0'	4.0'
2	Half Pipe	4.0'	30.0'
3	Half Pipe	4.0'	30.0'
4	Half Pipe	4.0'	30.0'
5	Quarter Pipe	3.0'	20.0'
6	Quarter Pipe	3.0'	8.0'
7	Quarter Pipe	4.0'	7.0'
8	Quarter Pipe	4.0'	11.0'
9	Quarter Pipe	4.0'	11.0'
10	Skate Bench (Concrete)	1.5'	6.0'
11	Skate Bench (Concrete)	1.5'	6.0'
12	Grindbox	0.5'	12.0'
13	Grind Rail (Round)	1.0'	20.0'
14	DIY Spine	2.5'	11.5'
15	Grindbox	1.0'	10.0'
16	Wedge, Flat, Stair	1.5'	17.0'
17	Grind Rail (Round)	1.5'	8.0'
18	Wedge, Flat, Wedge	1.5'	18.0'
19	Grind Rail, Kinked (Round)	1.5'	13.0'
20	Wedge, Flat, Wedge 2' Wide	1.5'	18.0'
21	Wedge, Flat, Wedge	1.5'	18.0'
22	Bank Ramp (Wedge) 2' Wide	1.5'	6.0'
23	Planter (2' wide)	1.5'	6.0'
24	Bank Ramp (Wedge) 2' Wide	1.5'	6.0'
25	Quarter Pipe	2.0'	9.0'
26	Quarter Pipe	2.0'	9.0'
27	Bank Ramp (Wedge)	2.0'	6.0'
28	Bank Ramp (Wedge)	2.0'	6.0'
29	Grindbox	3.0'	12.0'
30	Bank Ramp (Wedge)	2.0'	6.0'
31	Quarter Pipe	3.0'	10.0'
32	Quarter Pipe	3.0'	10.0'
33	Bank Ramp	4.0'	13.0'
34	Bank Ramp	4.0'	13.0'
35	Pyramid Corner (Bank Ramp) 26 Degree	4.0'	9.1'
36	Bank Ramp	4.0'	13.0'
37	Bank Ramp	4.0'	13.0'
38	Bank Ramp	4.0'	13.0'

	<u>X Series</u>
Equipment	\$222,989.21
Sourcewell Discount	- \$15,609.24
Subtotal	\$207,379.97
Sales Tax (8.75% Product Only)	\$12,593.26
Concrete Pad*	\$101,203.20
Bonding	\$6,423.53
TOTAL	\$327,599.96



AMERICANRAMPCOMPANY.COM



8649 - CA, TEMECULA

EXHIBIT B

INSURANCE REQUIREMENTS

1. Provision of Insurance. Without limiting Contractor's indemnification of City, and prior to commencement of Services, Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City. Contractor agrees to provide insurance in accordance with requirements set forth here. If Contractor uses existing coverage to comply and that coverage does not meet these requirements, Contractor agrees to amend, supplement or endorse the existing coverage.
2. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.
3. Coverage Requirements.
 - A. Workers' Compensation Insurance. Contractor shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000).

Contractor shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees and volunteers.
 - B. General Liability Insurance. Contractor shall maintain commercial general liability insurance and, if necessary, umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.
 - C. Automobile Liability Insurance. Contractor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Contractor arising out of or in connection with Services to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each accident.

4. Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:
- A. Waiver of Subrogation. Excepting professional liability insurance, all insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Contractor or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subcontractors.
 - B. Additional Insured Status. Commercial general and auto liability policies shall provide or be endorsed to provide that City, the Temecula Community Services District, the Successor Agency to the Temecula Redevelopment Agency and their officers, officials, employees, agents, and volunteers shall be named as additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.
 - C. Primary and Non Contributory. Coverage provided by Contractor shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.
 - D. Notice of Cancellation. Contractor agrees to ~~oblige its insurance agent or broker and insurers~~ to provide to City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.
5. Additional Agreements Between the Parties. The parties hereby agree to the following:
- A. Evidence of Insurance. Contractor shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

- B. City's Right to Revise Requirements. City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Contractor a ninety (90)-day advance written notice of such change. If such change results in substantial additional cost to Contractor, the City and Contractor may renegotiate Contractor's compensation.
- C. Right to Review Subcontracts. Contractor agrees that upon request, all agreements with subcontractors or others with whom Contractor enters into contracts with on behalf of City will be submitted to City for review. Failure of City to request copies of such agreements will not impose any liability on City, or its employees.
- D. Enforcement of Agreement Provisions. Contractor acknowledges and agrees that any actual or alleged failure on the part of City to inform Contractor of non-compliance with any requirement imposes no additional obligations on City nor does it waive any rights hereunder.
- E. Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
- F. Self-insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by acceptable security. Self-insurance will not be considered to comply with these requirements unless approved by City.
- G. City Remedies for Non-Compliance. If Contractor or any subcontractor fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this Agreement, or to suspend Contractor's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Contractor or reimbursed by Contractor upon demand.
- H. Timely Notice of Claims. Contractor shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Contractor's performance under this Agreement, and that involve or may involve

coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

- I. Contractor's Insurance. Contractor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Services.

Bond No. _____

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS that:

WHEREAS the City of Temecula ("City"), has awarded to _____

(“Principal”)

(Name and address of Contractor)

a contract (the "Contract") for the Work described as follows:

(Project name)

WHEREAS, Principal is required under the terms of the Contract to furnish a Bond for the faithful performance of the Contract.

NOW, THEREFORE, we, the undersigned Principal, and _____

(Name and address of Surety)

(“Surety”) a duly admitted surety insurer under the laws of the State of California, as Surety, are held and firmly bound unto the City in the penal sum of _____

Dollars (\$ _____), this amount being not less than the total Contract Price, in lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors executors and administrators, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the hereby bounded Principal, his, her or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, provisions, and warranties in the Contract and any alteration thereof made as therein provided, on the Principal's part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered. Surety hereby waives any statute of limitations as it applies to an action on this Bond.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or of the Work to be performed thereunder or the specifications

accompanying the same shall in anywise affect its obligations under this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Work or to the specifications. Surety hereby waives the provisions of California Civil Code Sections 2845 and 2849. The City is the principal beneficiary of this Bond and has all rights of a party hereto.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety, on the date set forth below, the name of each corporate party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body.

Dated: _____

"Principal"

"Surety"

By: _____
Its

By: _____
Its

By: _____
Its

By: _____
Its

(Seal)

(Seal)

*Note: This Bond must be executed in duplicate and dated, all signatures must be notarized, and evidence of the authority of any person signing as attorney-in-fact must be attached. **DATE OF BOND MUST NOT BE BEFORE DATE OF CONTRACT.** Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the project is located.*

Bond No. _____

**PAYMENT BOND
(LABOR AND MATERIALS)**

KNOW ALL PERSONS BY THESE PRESENTS that:

WHEREAS the City of Temecula ("City"), State of California, has awarded to _____

(Name and address of Contractor) ("Principal")

a contract (the "Contract") for the Work described as follows:

(Project name)

WHEREAS, under the terms of the Contract, the Principal is required before entering upon the performance of the Work, to file a good and sufficient payment Bond with the City to secure the claims to which reference is made in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code.

NOW, THEREFORE, we, the undersigned Principal, and _____

(Name and address of Surety)

(“Surety”) a duly admitted surety insurer under the laws of the State of California, as Surety, are held and firmly bound unto the City and all contractors, subcontractors, laborers, material suppliers, and other persons employed in the performance of the Contract and referred to in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code in the penal sum of _____

Dollars (\$ _____), for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this Work or labor, that the Surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this Bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by City in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this Bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this Bond.

Upon expiration of the time within which the California Labor Commissioner may serve a civil wage and penalty assessment against the principal, any of its subcontractors, or both the principal and its subcontractors pursuant to Labor Code Section 1741, and upon expiration of the time within which a joint labor management committee may commence an action against the principal, any of its subcontractors, or both the principal and its subcontractors pursuant to Labor Code

Section 1771.2, if the condition of this Bond be fully performed, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or the Specifications accompanying the same shall in any manner affect its obligations on this Bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety, on the date set forth below, the name of each corporate party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body.

Dated: _____

“Principal”

“Surety”

By: _____
Its

By: _____
Its

By: _____
Its

By: _____
Its

(Seal)

(Seal)

Note: This Bond must be executed in duplicate and dated, all signatures must be notarized, and evidence of the authority of any person signing as attorney-in-fact must be attached. DATE OF BOND MUST NOT BE BEFORE DATE OF CONTRACT. Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the project is located.

601 McKinley
Joplin, MO 64801
Toll-free 877-RAMP-778
Local 417-206-6816
Fax 417-206-6888
sales@americanrampcompany.com



Warranty Statement

X-Series

- **20-year limited on all steel ramp components**
- **15-year limited on all HDPE substrate**
- **5-year limited on phenolic surface**

Begins on the date of delivery or when the on-site work is complete, under the condition that the skatepark equipment has no defect in material and/or workmanship. 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. Installation of replacement parts are not covered under this warranty and freight is to be prepaid by purchaser. This warranty is exclusive and is in lieu of all other warranties, whether expressed, implied, or statutory.

Exceptions to Warranty

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 equipment unless approved in writing by American Ramp Company. American Ramp Company will in no way be held liable for any damages, problems, or injuries that occur as a result of an installation that is not factory installed or supervised by factory trained personnel.

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

Purchasers are responsible for ordering equipment appropriate to the level of expected users. Equipment 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 any surety of American Ramp Company, other than the one-year guarantee as to materials and workmanship provided by this surety 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 and applicable law. Nothing contained herein shall be construed as establishing a contractual or other relationship between surety and purchaser.

Purchaser: _____ Date: _____

American Ramp Company Representative: _____

Witness: _____