

SKATEPARK STANDARD DESIGN/BUILD CONTRACT

<p>Grindline Skateparks, Inc. (Hereinafter referred to as "Contractor") Mailing Address: 4619 14th Ave SW Seattle, WA 98106 Attention: Micah Shapiro Chief Executive Officer Phone: (206) 932-6414 Email: micah@grindline.com</p>	<p>City of Hapeville (Hereinafter referred to as "Owner") Mailing Address: 3474 North Fulton Avenue Hapeville, GA 30354 Attn: Lee Sudduth Director of Community Services Phone: 404-557-7277 Email: lsudduth@hapeville.org</p>
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NAME OF THE PROJECT:

This Contract is made and entered into on this _____ day of _____ 2018 between Owner and Contractor engages Contractor to provide skatepark design and construction services for the Owner.

Owner, Owner’s Representative and Contractor agree as follows:

I. SCOPE OF THE WORK.

To furnish and perform the work as described in **Exhibit A – Scope of Work**, for the design and construction for the City of Hapeville, Hereinafter called Owner, in accordance with the Request for Proposals submitted September 10th, 2018, all of which documents in their entirety are hereinafter referred to as part of the Contract.

II. CONTRACT DOCUMENTS.

The following documents are incorporated into the Contract by this reference:

- A. Plans and Contract Drawings (Upon completion of final set).
- B. Exhibit A - Hapeville Skatepark DB Scope of work

III. COST OF THE WORK.

- a. The Owner shall pay the Contractor for completed Work and for services rendered. Such payment shall be full compensation for Work performed or services rendered, including, but not limited to, all labor, materials, supplies, equipment and incidentals necessary to complete the Work.
- b. As compensation for services to be performed by Contractor, the Owner will pay Contractor a total of \$300,000.00 for design and construction. Compensation for performing Additional Services with respect to each Phase will be pursuant to a mutually agreed upon Addendum to this Agreement. The total authorized budget amount shall not be exceeded without authorization from the Owner.

IV. CONTRACT TIME AND SCHEDULE.

- a. **Contract Time.** Contractor agrees to begin performing the Contract no later than 15 days upon the execution of this contract.
- b. **Contract Schedule.** A Project Schedule for the design and construction of the Project is incorporated in this contract with defined tasks and standard durations. Both parties acknowledge that the timing of funding and in kind services may impact the original schedule and both parties have responsibilities and obligations to keep the Project moving forward. Contractor will update the schedule at reasonable intervals and Owner will advise Contractor of any anticipated delays..

V. CONTRACTOR'S RIGHTS AND DUTIES.

1. **COOPERATION.** Contractor will cooperate with the Owner, Owner's Representative, other Contractors in the progress of the Project. Contractor will also take all reasonably necessary precautions to protect the Work of Owner's Representative and other Contractors from damage that may be caused by Contractor's Work.
2. **PAYMENT OF EMPLOYEES, Subcontractors and Suppliers.** Contractor agrees to pay its employees, Subcontractors and suppliers in a timely manner for all labor, services and materials supplied in connection with the Project. Contractor will indemnify and hold Owner harmless from any claims made by Contractor's employees, subcontractors and suppliers, providing Contractor has been paid for the Work that is the subject of the Claim.
3. **PROGRESS REPORTS.** Upon request by Owner, Contractor will supply reports on the progress of the Work and status of materials or equipment for use on the Project.
4. **SHOP DRAWINGS, PRODUCT DATA, SAMPLES.** Contractor will promptly submit Shop Drawings, Product Data, Samples or other documents and materials required by the Contract Documents within sufficient time so as not to delay the work and to obtain Owner's approval for such items.
5. **SAFETY.** Contractor will take appropriate and industry-standard safety precautions applicable to the Work, and will also comply with all safety programs or requirements set forth by Owner. Contractor will comply with all safety laws, regulations and/or ordinances applicable to the Project that are set forth by any governmental agency with jurisdiction over the Project. Contractor will maintain a safe workplace at all times and will immediately report any injuries or safety problems to Owner, and immediately mitigate and cure any safety problems, in cooperation with Owner. If Contractor uses a hazardous substance of a type which an employer is required by law to notify employees that the substance is in use, Contractor will not use such substance without obtaining prior written permission from Owner and notifying Owner of the use of the substance in sufficient time and with sufficient detail to allow Owner to respond with instructions or take necessary measures to ensure public safety.
- 6.. **NOTICES, LAWS, PERMITS, FEES.** Contractor will comply with all applicable federal, state, and local laws, rules, regulations, ordinances or any other rules set forth by any governing authority

with jurisdiction over the Project, including but not limited to all laws related to taxes, social security acts, unemployment compensation acts, and worker's compensation acts. Contractor will also be responsible for giving all notices required by federal, state and local laws, rules, regulations or ordinances and will secure and pay for all permits and licenses necessary for the completion of the Work.

7. **CLEANING UP.** Contractor will maintain a clean work site and will keep the premises free from accumulated waste.
8. **WARRANTY.** Contractor warrants that the materials supplied and the equipment furnished will be of good quality and new unless otherwise specified or permitted by the Contract. Contractor warrants that the Work will be free from defects not inherent in the quality of the Work and will conform to the Contract Documents. This warranty is in addition to any other warranty provided by law or the Contract documents. For a period of one year after Substantial Completion of the Project, Contractor agrees to correct any Work that is not in conformance with the Contract Documents
9. **SUPERINTENDENT, ASSIGNMENT OF CONTRACT AND SUBCONTRACTING.** Contractor will ensure there is a competent job superintendent, identified to the City, on site for the duration of the project. Communications to the superintendent are binding on the Contractor. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case. Neither party will assign the Contract without the written consent of the other. Contractor will not be relieved of any of the responsibilities of this Contract by assigning or subcontracting the Work or any portion thereof.
10. **ACCOUNTING RECORDS.** Contractor will keep records, including accounting records, relating to this Project in a form acceptable to Owner and will allow Owner access to all records upon reasonable notice to Contractor to review and audit such records.
11. **INDEPENDENT CONTRACTOR.** The Parties agree that Contractor is an independent contractor, with no employment relationship with Owner.
12. **PAYROLL TAXES.** Neither federal, state, or local income taxes, nor payroll taxes of any kind shall be withheld and paid by owner on behalf of contractor or contractor's employees or subcontractors. Contractor shall not be treated as an employee of owner with respect to the services performed pursuant to this agreement for federal or state tax purposes. Contractor understands that contractor is responsible to pay, according to law, contractor's taxes, and to withhold, according to law, taxes to be paid by employees or subcontractors. Contractor further understands that contractor may be held liable for self-employment (social security) tax to be paid by contractor according to law. Contractor shall indemnify, defend and hold harmless City against any claims or liabilities asserted against City, related to any tax payments or failure to pay taxes by contractor.
13. **LICENSES AND LAW.** Contractor represents that contractor possesses the skills and experience necessary and all licenses required to perform the services. Contractor shall comply with all applicable laws in the performance of the services.

14. **NON-DISCRIMINATION.** Contractor shall not refuse to hire any person, including any subcontractor, because of such person's race, creed, sex, color, national origin, ancestry, religion, physical or mental disability, marital or familial status, sexual orientation, or gender identity/expression, unless based on a bona fide occupational qualification.

15. INSURANCE

a. Contractor will obtain, pay for and maintain the coverage and amounts of coverage not less than those below by a carrier with a Best AA rating or its equivalent and licensed to do business in Georgia and will provide Owner with certificates issued by insurance companies satisfactory to Owner to evidence such coverages The Owner should be a named insured on the liability and completed operations policies.

b. Contractor will procure and maintain the following types of insurance at limits no less than stated below.

.1 Contractor shall maintain in full force and effect, worker's compensation coverage for Contractor and any agents, employees, and staff that Contractor employs, and shall require from all subcontractors, proof of worker's compensation coverage to be provided to both Contractor and City. Contractor shall provide proof of such coverage to Owner, or proof that such worker's compensation insurance is not required under the circumstances. Contractor shall indemnify, defend and hold harmless City against any claims or liabilities asserted against City, related to any worker's compensation coverage by Contractor, Contractor's employees, and Contractor's subcontractors.

.2 Products and Completed Operations Coverage for the protection against bodily injury and property damage claims arising from this hazard at a limit no less than \$1M/2M.

.3 Commercial Liability insurance with a combined single limit for bodily injury and property damage no less than \$1M each occurrence covering all insurable obligations or operations of Owner.

.4 Business Automobile Liability with a combined single limit for bodily injury and property damage no less than \$1M each occurrence to include coverage for all owned, non-owned and hired vehicles.

c. Limits of Liability: The insurer's maximum liability for all Loss and Claims Expenses resulting from each Claim shall be the limit of Liability for each claim set forth in Section 15.b. The insurer's maximum aggregate liability for all Loss and Claims Expenses resulting from all claims covered by this Policy shall be the aggregate Limit of Liability for all Claims set forth in Section 15.b.

V. OWNERS RIGHTS AND DUTIES

16. COOPERATION

a. Owner shall, throughout the performance of the Work, cooperate with Contractor and perform its responsibilities, obligations and services in a timely manner to facilitate Contractor's timely and efficient performance of the Work and so as not to delay or interfere with Contractor's performance obligations under the Construction Documents.

- b. Owner shall provide timely reviews and approvals of interim design submissions and construction documents consistent with the turnaround times set forth in Contractor's schedule.
- c. Owner shall give Contractor timely notice of any Work that Owner notices to be defective or not in compliance with the contract documents.
- d. Unless expressly stated to the contrary in the Scope of Work, Owner shall provide, at its own cost and expense, for Contractor's information and use the following, all of which Contractor is entitled to rely upon in performing the Work:
 - Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines
 - Geotechnical studies describing subsurface conditions, and other surveys describing other latent of concealed physical conditions at the Site
 - Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project
 - To the extent available, record drawings of any existing structures as well as environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

17. INVOICES AND PAYMENTS.

- a. Contractor will submit applications for payment to Owner monthly, on a percentage complete basis. Pay applications will accurately depict actual expenses incurred by Contractor and will reflect the payment schedule agreed upon by the parties. Owner will make payment within 30 calendar days of the invoice date. Contractor shall keep accurate records of expenses. If Owner contests an invoice, Owner shall advise the Contractor within 15 days of receipt of invoice of the specific basis for doing so, may withhold only that portion so contested, and shall pay the undisputed portion. Contractor understands and agrees that payment is made to Contractor from grant funds as such funds are received, and that Owner does not have a separate source of funds either available or budgeted for this Agreement. A sum equal to five percent (5%) of the monies earned by the Contractor will be retained by the City, from payments made by the City to the Contractor under this Contract. This retainage shall be used as a set-aside for the protection and payment of the claims of any person arising under the Contract.
- b. Interest. Except as stated above relative to any delays in grant funding, if payment is not received by the Contractor within 30 calendar days of the invoice date, Owner shall pay interest at a rate of 1% per month, up to the statutory judgment rate of interest in the State of Idaho, of the past due amount. Payments will be credited first to interest and then to principal.
- c. Suspension. If the owner fails to make payments when due, the contractor may suspend performance of services upon five (5) business days' notice to the Owner.
- d. Change Orders. Requests for changes orders and/or payments for any alterations in or additions to the work provided under this Contract shall be in writing and signed by both parties. Without

invalidating the Contract, Owner may make changes in the Scope of the Work and in the Contract Time. All changes to the Contract will be made in writing by Change Order and will be signed by both parties before being valid. Contractor shall be entitled to an equitable adjustment in the Contract Time and the cost of the Contract as a result of such changes.

- e. Final Payment. A sum equal to five percent (5%) of the monies earned by the Contractor will be retained from payments made by the City to the Contractor under this Contract. This retainage shall be used as a trust fund for the protection and payment of the claims of any person arising under the Contract.

18. INDEMNIFICATION.

- a. In the event claims, losses, damages, or expenses are caused by the joint or concurrent negligence of Owner and Contractor, they shall be borne by each party in proportion to its negligence. Contractor shall defend, indemnify, and hold Owner, its officers, agents, and employees harmless for all claims, losses, actions, damages, judgments, costs, expenses, and/or injuries to persons or property arising out of or in connection with any activities, acts, or omissions of Contractor, its officers, subcontractors, agents or employees. In the event Owner is alleged to be liable on account of any activities, acts, or omissions of Contractor, its officers, subcontractors, agents or employees, then Contractor shall defend such allegations through counsel chosen by Owner, and Contractor shall bear all costs, fees, and expenses of such defense, including, but not limited to, all attorney fees and expenses, court costs, and expert witness fees and expenses. This duty shall survive the termination or expiration of this Agreement.
- b. Owner, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Contractor and any of Contractor's officers, directors, employees, or agents from and against claims, losses, damages, liabilities, including attorney's fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than the work itself) to the extent resulting from the negligent acts or omissions of Owner's separate contractors or anyone for whose acts any of them may be liable.

19. OWNERSHIP AND USE OF DOCUMENTS.

All documents, drawings, specifications, digital data associated with the project plans, including but not limited to .dwg files and/or data in other drawing file formats and other materials produced by the Contractor in connection with the services rendered under this agreement shall be the property of the Owner whether the project for which they are made is executed or not. Ownership of documents shall transfer to the Owner once payment for such work has been received by Contractor. The Contractor shall be permitted to retain copies, including reproducible copies, of drawings and specifications for information, reference and use in connection with Contractor's endeavors. The Parties herein understand and acknowledge that this Agreement, its attachments and all documents generated pursuant to this Agreement with a Georgia municipality, may be public records subject to Georgia Public Records laws and Georgia Open Meetings laws and/or other applicable federal and state laws. Owner, in its sole

discretion, shall disclose any document relating to this Agreement, as it deems itself legally required.

20. TERMINATION OF THE CONTRACT

- a. **For Cause.** Either party may terminate this Contract if the other party fails or neglects to carry out the Work in accordance with the Contract Documents or otherwise materially breaches the Contract. The terminating party shall provide the other party with seven (7) calendar days' notice of the breach and provide the other party an opportunity to cure any breach. Should the other party fail to cure such breach, the terminating party shall have the right to terminate the Contract. Contractor shall be entitled to payment for the percentage of work completed, and Owner shall be entitled to reimbursement for the percentage of work paid for, if not completed.
- b. **With Notice.** The Owner and Contractor may terminate this Agreement in whole or in part at any time by giving 30 days written notice thereof, except that Contractor shall not terminate this Agreement without completing the agreed-to work, without the acceptance of such termination by Owner. The Owner, upon termination, shall promptly pay Contractor for all services rendered to the effective date of suspension of services, plus mutually agreeable suspension charges, which may include the cost of assembling documents, personnel and equipment, rescheduling or reassignment, and commitments made to others on the Owner's behalf, subject to grant fund availability.
- c. **MERGER, INTEGRATION AND MODIFICATIONS.** This document constitutes the full and complete Agreement between the parties and supersedes all prior negotiations, representations or agreements, whether written or oral. The Agreement may only be amended, whether by change order to other modification, if both parties specifically agree in writing to such amendment of the Agreement.
- d. **DISPUTE RESOLUTION.** Owner or Owner's Agent agree to notify Contractor of any claims against the Contractor within 1 year of discovery of any allegations, errors or omissions. Should a dispute arise, Owner and Contractor agree to negotiate disputes between them in good faith for a period of 30 calendar days from the date the dispute is raised in writing by either the Owner or Contractor. If the parties fail to resolve the dispute through negotiation, then the dispute shall be decided through non-binding mediation or other mutually agreed alternative dispute resolution technique. A representative of each party with authority to settle the Claim will be present at the mediation. Fees and expenses for mediation shall be split equally between the parties. The Owner and Contractor agree non-binding mediation or other mutually acceptable dispute resolution technique shall precede, and be a condition precedent to litigation. Notwithstanding the foregoing, either party may apply to a court for equitable relief or to attach assets prior to or concurrent with engaging in alternative dispute resolution. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Washington, with venue for any action brought pursuant to this Agreement to be in a court of competent jurisdiction in the State of Georgia .

- e. **SEPARATE CONTRACTORS.** The parties recognize that Owner may perform construction related to the Work with its own forces or with separate contractors. Owner shall provide for coordination of such forces with the work of Contractor, who will cooperate with them.
- f. **WAIVER, PERFORMANCE AND SEVERABILITY.** In the event any of these Contract Provisions are found to be illegal or otherwise unenforceable, the unenforceable Contract Provisions will be stricken, and those remaining Contract Provisions shall continue in full force and effect. The failure of either party of this Agreement to insist, in any one or more instances, upon the strict performance of any of the terms, covenants or conditions of this Agreement, shall not be construed as a waiver of breach, or of such term, covenant or right.
- g. **SUCCESSORS AND ASSIGNS.** This Agreement may not be assigned in whole or in part by either of the Parties hereto without the prior express written consent of the other Party. Contractor may utilize subcontractors, and Owner will cooperate with such subcontractors, but the Contractor will not be relieved of any of the responsibilities of this Contract by assigning or subcontracting the Work or any portion thereof.
- h. **ATTORNEY FEES.** In the event a controversy, claim, or action arises between the Parties to this Agreement regarding the enforcement of its terms and conditions, or the breach of any of its provisions, the prevailing Party shall be entitled to recover from the other Party all costs and expenses incurred by the prevailing Party, including reasonable attorney fees, regardless of whether such controversy, claim, or action is prosecuted to judgment or appealed.
- i. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.
- j. **JOINT DRAFTING.** The Parties expressly agree that this Agreement was jointly drafted, and that they both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

VI. MISCELLANEOUS

- a. Notwithstanding other sections of this agreement to the contrary, at its sole option, the City may opt to terminate the contract within seven (7) days of final receipt of all design products agreed upon herein (including but not limited to stamped construction drawings, specifications, line item construction budget, concept plan for phases 2, 3 and 4, and other related items); provided, that the Owner shall be responsible for paying design costs, not to exceed \$29,985, to the Contractor. All design products shall be the property of the City, as authorized in Section V, subsection 19.
- b. The Owner and Contractor acknowledge that the Owner may receive in-kind donations, including but not limited to construction services and labor, materials and lodging for workers. Unless otherwise mutually agreed upon, in-kind donations shall be the property of the Owner and used to enhance and expand the project.

VII. DESIGNATED REPRESENTATIVES

Owner and Contractor designate the following representatives to act on behalf of each party to have authority to make decisions, approve changes and process payment applications.

OWNER

Grindline Skateparks, Inc.
(Hereinafter referred to as "Contractor")
Mailing Address:
4619 14th Ave SW
Seattle, WA 98106
Attention: Micah Shapiro
Chief Executive Officer
Phone: (206) 932-6414
Email: micah@grindline.com

CONTRACTOR

City of Hapeville
(Hereinafter referred to as "Owner")
Mailing Address:
3474 North Fulton Avenue
Hapeville, GA 30354
Attn: Lee Sudduth
Director of Community Services
Phone: 404-557-7277
Email: lsudduth@hapeville.org

In Witness hereof, Owner and Contractor have caused this Agreement to be executed and accepted by their duly authorized officials:

Grindline Skateparks, Inc.:

By: _____
(signature)

(name--type or print)

(title)

(date)

Owner

By: _____
(signature)

(name type or print)

(title)

(date)