

CITY OF OLATHE AGREEMENT

THIS AGREEMENT is made in Johnson County, Kansas, by and between the City of Olathe, Kansas, hereinafter "City," and Mammoth Sports Construction, LLC, hereinafter "Vendor" (each individually a "Party" and collectively, the "Parties"). City needs demolition of current dugout and construction of new dugouts at sport field facilities, and contracts with Vendor for the work described in Vendor's proposal in **Exhibit A**.

1. FEES AND EXPENSES. City agrees to pay Vendor an amount not to exceed \$162,180.00 for the work described in **Exhibit A**. If provided for in **Exhibit A**, Vendor will be reimbursed at the actual cost of the specified expenses.

2. COOPERATIVE PROCUREMENT. This Agreement is being made based on the cooperative procurement allowed under Contract #COG-2138A; ("Procurement Contract") between Vendor and The Cooperative Council of Governments, Inc. All terms and provisions of the Procurement Contract are incorporated by reference into this Agreement, to the extent such terms and conditions do not conflict with the terms and provisions of this Agreement. To the extent the terms and provisions of the Procurement Contract conflict with the terms and conditions of this Agreement, the terms and conditions of this Agreement will control.

3. ADDITIONAL SERVICES. Vendor may provide services in addition to those listed **Exhibit A** when authorized in writing by City.

4. BILLING. Vendor may bill City monthly for all completed work and reimbursable expenses. Vendor must submit a bill which itemizes the work and reimbursable expenses. The bill must be mailed to the attention of Account Payable, City of Olathe, PO Box 768, Olathe, KS 66051-0768 or emailed to apolathe@olatheks.org. The bill must indicate it is for work or expenses under this Agreement (include Agreement date for identification).

5. PAYMENT. City agrees to pay Vendor within thirty (30) days of approval by the Governing Body or other agent of City in accordance with the City's Procurement Policy. If City becomes credibly informed that any representations of Vendor provided in its billing are wholly or partially inaccurate, City may withhold payment of sums then or in the future due to Vendor until the inaccuracy and the cause thereof is corrected to City's reasonable satisfaction.

6. STANDARD OF CARE. Vendor will exercise the same degree of care, skill, and diligence in the performance of the work as is ordinarily possessed and exercised by a professional under similar circumstances. If Vendor fails to meet the foregoing standard, Vendor will perform at its own cost, and without reimbursement, any work necessary to correct errors and omissions which are caused by Vendor's negligence.

7. TERMINATION FOR CONVENIENCE. City may terminate this Agreement for convenience by providing fifteen (15) days' written notice to Vendor. City will compensate Vendor for all work completed and accepted and reimbursable expenses incurred to the date of its receipt of the termination notice. Compensation will not include anticipatory profit or consequential damages, neither of which will be allowed.

8. TERMINATION FOR LACK OF FUNDS. If, for whatever reason, adequate funding is not made available by City to support or justify continuation of the level of work to be provided by Vendor under this Agreement, City may terminate or reduce the amount of work to be

provided by Vendor under this Agreement. In such event, City will notify Vendor in writing at least thirty (30) days in advance of such termination or reduction of work for lack of funds.

9. DISPUTE RESOLUTION. The Parties agree that disputes regarding the work will first be addressed by negotiations between the Parties. If negotiations fail to resolve the dispute, the Party initiating the claim that is the basis for the dispute may take such steps as it deems necessary to protect its interests. Notwithstanding any such dispute, Vendor will proceed with undisputed work as if no dispute existed, and City will continue to pay for Vendor's completed undisputed work. No dispute will be submitted to arbitration without both Parties' written approval.

10. SUBCONTRACTING. Vendor may not subcontract or assign any of the work to be performed under this Agreement without first obtaining the written approval of City. Unless stated in the written approval to an assignment, no assignment will release or discharge Vendor from any obligation under this Agreement. Any person or entity providing subcontracted work under this Agreement must comply with **Section 11 (Insurance)**.

11. OWNERSHIP OF DOCUMENTS. All final documents provided to City as part of the work provided under this Agreement, including but not limited to reports, plans, and related documents, will become City's property except that Vendor's copyrighted documents will remain owned by Vendor. Such documents must be clearly marked and identified as copyrighted by Vendor.

12. INSURANCE. Vendor and any subcontractor will maintain for the term of this Agreement insurance as provided in **Exhibit B**.

13. INDEMNIFICATION AND HOLD HARMLESS. For purposes of this Agreement, Vendor agrees to indemnify, defend, and hold harmless City, its officers, appointees, employees, and agents from any and all loss, damage, liability or expense, of any nature whatsoever caused or incurred as a result of the negligence or other actionable fault of Vendor, its affiliates, subsidiaries, employees, agents, assignees, and subcontractors and their respective employees and agents. Vendor is not required hereunder to defend City, its officers, appointees, employees, or agents from assertions that they were negligent, nor to indemnify and hold them harmless from liability based on City's negligence. City does not indemnify Vendor.

14. LIMITATION OF LIABILITY FOR BREACH OF CONTRACT OR NEGLIGENT PERFORMANCE. Any attempt to limit liability for breach of contract or negligent performance to the amount of the payment to Vendor by City is void. Any attempt to limit Vendor's liability to City for consequential, exemplary, or punitive damages, or any other measure of damages permitted by law, in any action against Vendor for breach of contract is void.

15. KANSAS ACT AGAINST DISCRIMINATION. *Unless* Vendor employs fewer than four (4) employees during the term of this Agreement, or *unless* the total of all agreements (including this Agreement) between Vendor and City during a calendar year are cumulatively less than \$5,000, *then* during the performance of this Agreement, Vendor agrees that:

- a. Vendor will observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and will not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin, or ancestry;

- b. in all solicitations or advertisements for employees, Vendor will include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission ("commission");
- c. if Vendor fails to comply with the way Vendor reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, Vendor will be deemed to have breached the present contract and it may be canceled, terminated, or suspended, in whole or in part, by City without penalty;
- d. if Vendor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the commission which has become final, Vendor will 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; and
- e. Vendor will include the provisions of subsections a. through d. in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

16. KANSAS OPEN RECORDS ACT. Vendor acknowledges that City is subject to the Kansas Open Records Act (K.S.A. 45-215, *et seq.*). City retains the final authority to determine whether it must disclose any document or other record under the Kansas Open Records Act and the manner in which such document or other record should be disclosed.

17. ENTIRE AGREEMENT. This Agreement, including all documents and exhibits included by reference herein, constitutes the entire Agreement between the Parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to by both Parties. No form or document provided by Vendor after execution of this Agreement will modify this Agreement, even if signed by both Parties, unless it: 1) identifies the specific section number and section title of this Agreement that is being modified and 2) indicates the specific changes being made to the language contained in this Agreement.

18. NO THIRD-PARTY BENEFICIARIES. Nothing contained herein will create a contractual relationship with, or any rights in favor of, any Third Party.

19. INDEPENDENT CONTRACTOR STATUS. Vendor is an independent contractor and not an agent or employee of City.

20. COMPLIANCE WITH LAWS. Vendor will abide by all applicable federal, state, and local laws, ordinances, and regulations.

21. FORCE MAJEURE CLAUSE. Neither Party will be considered in default under this Contract because of any delays in performance of obligations hereunder due to causes beyond the control and without fault or negligence on the part of the delayed Party, including but not restricted to, an act of God or of a public enemy, civil unrest, volcano, earthquake, fire, flood, tornado, epidemic, quarantine restrictions, area-wide strike, freight embargo, unusually severe weather or delay of subcontractor or supplies due to such cause; provided that the delayed Party must notify the other Party in writing of the cause of delay and its probable extent within ten (10) days from the beginning of such delay. Such notification will not be the basis for a claim for additional compensation. The delayed Party must make all reasonable efforts to remove or eliminate the cause of delay and must, upon cessation of the cause, diligently pursue

performance of its obligation under the Agreement.

22. APPLICABLE LAW, JURISDICTION, VENUE. Interpretation of this Agreement and disputes arising out of or related to this Agreement will be subject to and governed by the laws of the State of Kansas, excluding Kansas' choice-of-law principles. Jurisdiction and venue for any suit arising out of or related to this Agreement will be in the District Court of Johnson County, Kansas.

23. SEVERABILITY. If any provision of this Agreement is determined to be void, invalid, unenforceable, or illegal for whatever reason, such provision(s) will be null and void; provided, however, that the remaining provisions of this Agreement will be unaffected and will continue to be valid and enforceable.

24. ORDER OF PRECEDENCE. If there is any conflict between the terms of this Agreement, excluding exhibits, and anything contained in the exhibits referenced herein or attached hereto, the terms and provisions of this Agreement, excluding exhibits, shall control.

[The remainder of this page is intentionally left blank.]

The Parties hereto have caused this Agreement to be executed this ____ day of

_____ 20__.

CITY OF OLATHE, KANSAS

By: _____
Mayor

ATTEST:


City Clerk

(SEAL)

APPROVED AS TO FORM:

City Attorney or Deputy/Assistant City Attorney

Mammoth Sports Construction, LLC

By: 

Jacob P. Farrant, CEO
601 E Wyandotte St
Meriden, KS 66512

Exhibit A
Vendor's Proposal



A Mammoth
Company

SPEAR SCAPES



GOLF
SHAPING



PET
SURFACES



ATHLETIC
TRAINING



PLAYGROUND
BUILDS



Submitted By:

**SPEAR
SCAPES**

SpearScapes
601 E Wyandotte St.
Meriden, KS 66512
info@spearscapes.com
spearscapes.com
(785) 371-0373

Luke Harr
VP - SpearScapes
luke@spearscapes.com

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SECTION 01

FIRM QUALIFICATIONS

**SPEAR
SCAPES**



SPEARSCAPES ARE POINT OF PRIDE

As a division of Mammoth, a pioneering master build firm committed to innovation and excellence, Spearscapes specializes in transforming visions into reality. Whether it's crafting captivating playgrounds, sculpting turf putting greens, engineering sport courts, or constructing bespoke dog runs, each project is approached with expert precision and unwavering dedication. At Spearscapes, we take pride in every detail, ensuring that our creations become points of pride for both our clients and their communities.



**SPEAR
SCAPES**

OUR SERVICES



For all ages. For all communities.
For those who wish to turn a place
to be into a place to play

**SPEAR
SCAPES**

LET'S BUILD SOMETHING SHARP.



PLAYGROUNDS

The playground is the common ground for kids of all ages. We build inclusive play spaces for all communities to enjoy.



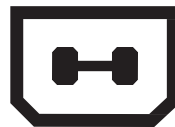
GOLF

Mini greens hold mighty possibilities. No matter the current landscape, our crews expertly shape and maintain golf courses of all sizes.



PET SURFACES

An enclosed dog run gives animals the space to play, while keeping them away from your gardens. It's a winning solution.



ATHLETIC TRAINING

Play for fun or work on fundamentals. It all happens here, in the practice spaces: weight rooms, batting cages, and sport courts.

FIRM LEADERSHIP



Small town values + a drive to make a difference = a tusk force to be reckoned with.

We are makers, movers, machine operators, artists, innovators, competitors, and builders. And there is nothing we can't do together.



JAKE FARRANT

Owner & CEO

Jake Farrant is the founder, owner, and CEO of Mammoth. He represents a classic American entrepreneurial story, growing the company from humble roots in his mother's garage, into a sports juggernaut ranking #692 on the Inc 5000 list of fastest-growing, privately held companies. Through the company's growth, Jake has been the driving force setting the tempo for culture, leadership, and excellence. He has a knack for hiring the right people, making strategic investments, and maintaining a relentless focus on performance.



BYRCE FARRANT

Chief Operating Officer

Bryce Farrant is the Chief Operating Officer of Mammoth. He is a dynamic leader who has provided direction, support, and strategic problem solving on hundreds of construction projects and eight unique start-ups, since nearly the inception of the firm. His practical, yet innovative, approach comes from having worked almost every role at Mammoth, including IT, HR, marketing, field labor, and child care chef. Bryce has managed every aspect of the rapid growth that resulted in Inc Magazine recognizing Mammoth as one of the 5,000 fastest growing companies in the U.S.



**SPEAR
SCAPES**

MEET YOUR SPEARSCAPES TEAM

Spearscapes is excited about the opportunity to work with you and bring to life your vision. Depicted is our team for your project and who you will be working hand-in-hand with from day one.



LUKE HARR
VP of Construction



JANELLE HARPER
Project Manager



MARK LITRELL
Director of Business Development

TRUSTED PARTNERS YOU CAN RELY ON.

We have long-standing relationships developed with some of the best sports vendors in the country. Having worked together on hundreds of projects, we know that they provide quality workmanship and will do what they say. This ensures your project stays within budget and on schedule.

**SPEAR
SCAPES**

LET'S BUILD SOMETHING SHARP.



SPEARSCAPES

SECTION 02

INVESTMENT

SPEAR
SCAPES



Demo Existing Dugouts

Demolition	\$14,656.00
Disposal	\$3,500.00

Scope: Provide labor and material to remove 10 dugouts (8'x30') at Lone Elm Sports Complex. Any anchors will be ground flush with the existing concrete. Chain link fence to remain in place.

*Price Excludes: Private Locates (provided by owner), and any irrigation repairs.



*All values shown are Estimates of Probable Cost and will be verified prior to contraction execution. Contract prices are based upon acceptance of the Proposal, including alternates, within 60 calendar days from date of this Proposal.

*Potential and additional costs that may be incurred after or during site investigation and/or design include but are not limited to: Survey (mass excavation & grading, retaining walls and access issues); Geotechnical Report (stabilization & rock excavation); Site Investigation (Utilities relocation, upgrades or modifications); Governing Jurisdiction or Agency Review, Comments or Requirements (SWPP- storm water protection plan, erosion control, environmental testing or remediation, permitting or other necessary approvals); Changes of Owner requested after contract execution.

New Dugouts (8'x30')

New Dugouts (10 Units)\$101,324.00

Install Dugouts (10 Units)\$42,700.00

Scope: Provide and install 10 new dugouts (DUG-8-30-C) for Lone Elm Sports Complex. Dugouts will be 8'x30', with hot dipped galvanized support posts, powder coated over galvanized roof framing, kynar finish roof sheeting (Standard White), and all required mounting hardware. All dugouts to be mounted on existing concrete. Delivery included with the price of the dugouts. Attached picture shows the dugout option. Benches, turf, and chain link fence not included.

*Price Excludes: Private Locates (provided by owner), sales tax, permits or fees, and any irrigation repairs.



*All values shown are Estimates of Probable Cost and will be verified prior to contraction execution. Contract prices are based upon acceptance of the Proposal, including alternates, within 60 calendar days from date of this Proposal.

*Potential and additional costs that may be incurred after or during site investigation and/or design include but are not limited to: Survey (mass excavation & grading, retaining walls and access issues); Geotechnical Report (stabilization & rock excavation); Site Investigation (Utilities relocation, upgrades or modifications); Governing Jurisdiction or Agency Review, Comments or Requirements (SWPP- storm water protection plan, erosion control, environmental testing or remediation, permitting or other necessary approvals); Changes of Owner requested after contract execution.

SpearScapes
601 E Wyandotte Street, Meriden, KS 66512
spearscapes.com

**SPEAR
SCAPES**

Exhibit B

CITY OF OLATHE INSURANCE REQUIREMENTS

These requirements apply to the vendor or contractor ("Vendor") entering into an Agreement with the City of Olathe ("City").

A. Insurance. Secure and maintain for the term of the Agreement insurance of such types and in at least such amounts as set forth below from a Kansas authorized insurance company which carries a Best's Policyholder rating of "A-" or better and carries at least a Class "VII" financial rating or better, unless otherwise agreed to by City:

1. Commercial General Liability: City must be listed by ISO endorsement or its equivalent as an additional insured on a primary and noncontributory basis on any commercial general liability policy of insurance. The insurance must apply separately to each insured against whom claim is made or suit is brought, subject to the limits of liability.

Limits: Per Occurrence, including Personal & Advertising Injury and Products/Completed Operations: \$1,000,000; General Aggregate: \$2,000,000.

2. Business Auto Insurance: City must be listed by ISO endorsement or its equivalent as an additional insured on a primary and noncontributory basis on any automobile policy of insurance. Insurance must apply separately to each insured against whom claim is made or suit is brought, subject to liability limits.

Limits: All Owned Autos; Hired Autos; and Non-Owned Autos: Per occurrence, combined single limit: \$500,000.

Notwithstanding the foregoing, if Vendor does not own any automobiles, then Vendor must maintain Hired and Non-Owned Auto insurance.

3. Worker's Compensation and Employer's Liability: Workers compensation insurance must protect Vendor against all claims under applicable state Worker's Compensation laws at the statutory limits, and employer's liability with the following limits.

Limits: \$500,000 Each Accident/\$500,000 Policy Limit/\$500,000 Each Employee

4. Professional Liability (if applicable): **Unless excused by the Agreement with the City**, Vendor must maintain for the term of this Agreement and for a period of three (3) years after the termination of this Agreement, Professional Liability Insurance.

Limits: Each Claim: \$1,000,000; General Aggregate: \$1,000,000.

5. Cyber Insurance (if applicable): **IF** accessing the City's network or City's data, **THEN** maintain the following coverages throughout for the term of this Agreement and for a period of three (3) years after the termination of this

Agreement: Cyber Incident/Breach Response and Remediation Expenses, Digital Data Recovery, Privacy and Network Security Liability, and Notification Expense.

Limits: Per claim, each insuring agreement: \$1,000,000; Aggregate: \$1,000,000.

B. Exposure Limits. Above are minimum acceptable coverage limits and do not imply or place a liability limit nor imply that the City has assessed the risk that may be applicable to Vendor. Vendor must assess its own risks and if it deems appropriate and/or prudent maintain higher limits and/or broader coverage. The Vendor's insurance must be primary, and any insurance or self-insurance maintained by the City will not contribute to, or substitute for, the coverage maintained by Vendor.

C. Costs. Insurance costs must be at Vendor's expense and accounted for in Vendor's bid or proposal. Any deductibles or self-insurance in the above-described coverages will be the responsibility and at the sole risk of the Vendor.

D. Verification of Coverage

1. Must provide certificate of insurance on ISO form or equivalent, listing the City as certificate holder, and additional insured endorsements for requested coverages.
2. Any self-insurance must be approved in advance by the City and specified on the certificate of insurance. Additionally, when self-insured, the name, address, and telephone number of the claim's office must be noted on the certificate or attached in a separate document.
3. When any of the insurance coverages are required to remain in force after final payment, additional certificates with appropriate endorsements evidencing continuation of such coverage must be submitted along with the application for final payment.
4. For cyber insurance, the certificate of insurance confirming the required protection must confirm the required coverages in the "Additional Comments" section or provide a copy of the declarations page confirming the details of the cyber insurance policy.

E. Cancellation. No required coverage may be suspended, voided, or canceled, except after Vendor has provided thirty (30) days' advance written notice to the City.

F. Subcontractor's Insurance: If a part of this Agreement is to be sublet, Vendor must either cover all subcontractors under its insurance policies; **OR** require each subcontractor not so covered to meet the standards stated herein.