

ON-CALL MAINTENANCE AND REPAIR CONTRACT

THIS ON-CALL MAINTENANCE AND/OR REPAIR CONTRACT (this “**Contract**”) is by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “**City**”), and **L.E.R. INC., d/b/a RENNER SPORTS SURFACES**, a Colorado corporation whose address is 2775 W. 7th Ave., Denver, CO 80204 (the “**Contractor**”), referred to herein jointly as the “**Parties**” and individually as a “**Party**”.

RECITALS

WHEREAS, the City has identified a need for qualified contractors to perform, as assigned, work as directed by the City on an “on-call” or “as needed” basis. Work will generally consist of performance of such maintenance and repair work described in **Exhibit A** attached hereto as required on a variety of as yet to be identified projects as assigned by the City.

WHEREAS, the Contractor is willing, able, and has the present capacity to perform all of said work in accordance with this Contract.

In consideration of the mutual agreements contained in this Contract, and subject to the terms and conditions stated in this Contract, the Parties agree as follows:

AGREEMENT

1. WORK TO BE PERFORMED.

A. **Work:** This Contract contemplates performance of maintenance and repair work described in **Exhibit A** (the “**Work**”) by the Contractor on a variety of as yet to be identified projects assigned by the City via Work Orders issued to the Contractor (“**Projects**”) on an “as needed” or “on-call” basis. The Contractor shall furnish all labor, tools, supplies, equipment, materials and everything necessary for and required to do, perform and complete all of the Work. The Contractor shall perform Work in a highly skilled manner consistent with the performance standards and technical requirements set forth in **Exhibit A**. The Contractor shall commence the Work in the time specified following the issuance by the City of a Work Order for a Project. The Contractor shall complete the Project within the time period specified in the Work Order. The Contractor shall diligently prosecute the Work to completion using its best efforts, highly skilled work effort and attention. The Contractor shall be solely responsible for all means, methods and techniques of performance, protection of property and safety. The Contractor shall be responsible to the City for the acts and omissions of the Contractor’s employees and any other persons performing any of the work or furnishing materials.

B. Oversight; Cooperation and Coordination: The Contractor shall conduct the Work under the general direction of and in coordination with the Executive Director of the Department of Parks and Recreation or other designated representative (the “**Director**”) and the Department employee(s) assigned to manage the Project (the “**Department**”) and make every reasonable effort to fully coordinate the Work with any City agency or any person or firm under contract with the City doing work which affects the Contractor’s Work. The Contractor agrees to allow the City to review any of the procedures used by it in doing the Work under this Contract and to make available for inspection all notes and other documents used in performing the Work.

C. Non-exclusivity: The Contractor acknowledges and agrees that this Contract does not create an exclusive right to perform all Work for which the City may contract for the type of work described in **Exhibit A**. The City may enter into contracts with other contractors to perform the same or similar work and reserves the right to select, at the discretion of the Director, the contractor that is the most cost effective, best suited, and/or most readily able to perform a specific Project.

D. Work Order: As the Department determines the need and availability of funding for each Project, the City will issue a written Work Order to the Contractor detailing the nature and extent of work to be performed, the location of the Project, and the timeframes within the Project is to be performed, with a projected amount to be paid to the Contractor (the “**Project Amount**”) based on the Work described in the Scope of Work and Technical Specifications in **Exhibit A. Exhibit B** attached to this Contract and incorporated herein by reference substantially reflects the form of the Work Order to be issued by the City. Following receipt of a Work Order, the Contractor shall, within forty-eight (48) hours and in good faith, confirm the scope of Work detailed therein and the associated Project Amount, all of which must be in accordance with the terms and conditions of this Contract, and respond back in writing to the Department as to the Contractor’s ability to initiate and complete the Work in the timeframes specified in the Work Order. The Contractor assumes all responsibility and risks, including any additional work or additional costs, for failure to confirm the completeness and accuracy of the Work Order and the Project Amount. Confirmation includes, but is not restricted to, inspections of the Project site and inquiries with the Department as to any directions or specifications in the Work Order which are not clear. Upon the Contractor executing the Work Order, the City shall finalize and execute the Work Order for the Project and return a copy of the executed Work Order to the Contractor. The City will not execute the Work Order unless any material changes proposed by the Contractor to the terms of the issued Work Order and/or additions to the Project Amount are deemed acceptable by the Director and incorporated into the Work Order and until funding adequate to cover the entire Project Amount is available.

E. **Work Order Change:** If, after execution of a Work Order and commencement on the Project, additions, deletions or modifications to the Work described in the Work Order, along with any associated changes in the Project Amount, are required by the City or are requested by the Contractor and approved in advance by the Director, Work Order Change, in substantially the form as set forth in **Exhibit C** attached to this Contract and incorporated herein by reference, may be issued in accordance to the same standards and procedures prescribed for Work Orders. The Contractor shall promptly and thoroughly review and respond to the proposed changes, in accordance to the same standards and procedures prescribed for Work Orders and notify the Department that the Contractor is ready and willing to perform the Project in the manner and timeframes as modified by the amended Work Order Change. The City will not execute the Work Order Change unless any material changes proposed by the Contractor to the terms of the issued Work Order and/or additions to the Project Amount are deemed acceptable by the Director and incorporated into the Work Order Change and until funding adequate to cover the entire Project Amount, if modified, is available.

F. **Inspection of the Work:** Persons who are employees of the City or who are under contract to the City will be assigned to inspect and test the Work. These persons may perform any tests and observe the Work to determine whether or not designs, materials used, manufacturing and installation processes and methods applied, and equipment installed satisfy the requirements of the technical specifications, all other Contract requirements, and the Contractor's warranties and guarantees. The Contractor shall permit these inspectors unlimited access to the Work and provide means of safe access to the Work, which cost shall be included in the Contractor's price for the Work. In addition, the Contractor shall provide whatever access and means of access are needed to off-site facilities used to store or manufacture materials and equipment to be incorporated into the Work and shall respond to any other reasonable request to further the inspector's ability to observe or complete any tests. Such inspections shall not relieve the Contractor of any of its quality control responsibilities or any other obligations under the Contract. All inspections and all tests conducted by the City are for the convenience and benefit of the City. These inspections and tests do not constitute acceptance of the materials or Work tested or inspected, and the City may reject or accept any Work or materials at any time prior to the inspections, whether or not previous inspections or tests were conducted by the inspector or a City representative.

1) **Site Conditions:** Any drawings, specifications, information or data, if provided for the Contractor's work, may have been prepared on the basis of interpretations by design professionals' investigations of the work site. The drawings, specifications, information or data are subject to sampling errors, and the interpretation of the information and data depends to a degree on the judgment

of the design professional. Information about the degree of difficulty of the work to be done cannot totally be derived from either the drawings and specifications or from the Project Manager. The Contractor shall not be entitled to an adjustment to the contract time or contract amount for any condition which was or would have been evident at the time of a pre-bid site inspection. The Contractor represents that it will visit the Work site if and to the extent it believes necessary, familiarize itself with the location and conditions under which the Work is to be performed, and correlate its observations with the requirements of the Contract.

2) Geotechnical and Other Design Professional Reports, Investigations and Tests:

a) The Contractor acknowledges that certain soils reports, borings, and other geotechnical data will be made available for inspection and review. The borings will be made available for the use of the City in the design of the Project and are intended as a resource for use in the Work by the Contractor.

b) The City in no way warrants the accuracy or reliability of said borings and other geotechnical data or of the data, information or interpretations contained in said soils reports, and is not responsible for any deduction, interpretation, or conclusion drawn therefrom by the Contractor. Said soil reports may contain interpretations by design professionals of borings and geotechnical data obtained at the work site. Such borings and geotechnical data are subject to sampling errors, and any interpretations or conclusions based on such borings and data depend to a degree on the judgment of the design professionals.

c) The Contractor agrees that it will make no claims against the City if, in performing the Work, it finds that the actual conditions encountered do not conform to those indicated by said soil reports, borings and other geotechnical data, or those reasonably inferred therefrom or reasonably discoverable by a thorough inspection of the site by the Contractor.

G. Warranties; Correction of Work: The Contractor warrants that all parts, materials, components, equipment, systems and other items incorporated into the Work (“**Items**”) shall be new, unless otherwise specified, and suitable for the purpose used, and will be of good quality, free from faults and defects, and in keeping with common industry standards and that said Items shall be properly installed or incorporated into the Work in accordance with manufacturer’s specifications and standard practices for said Items, and all of this shall be in conformance with the specifications and requirements of this Contract. The Contractor’s warranty shall be effective for a one-year period following the completion of the Work and

shall be extended for one year following any repair, replacement or corrective action required under the warranty. The Contractor, when requested, shall furnish the Director with satisfactory evidence of the kind and quality of Items proposed to be incorporated into the Work. At any time while this Contract is in effect or during the warranty period, the Contractor shall, at no cost to the City, promptly investigate, repair, replace, or otherwise correct any of its workmanship and/or Items in the Work which contain fault(s) or defect(s), whether such failure(s) are observed by the City or the Contractor, and promptly repair, replace, otherwise correct any damage to any personal or real property owned by the City or another person resulting from said fault(s) or defect(s) or from the repair, replacement, or correction of the fault(s) or defect(s).

H. Title: The Contractor warrants that it has full title to all Items, that its transfer of such title to the City is rightful and free and clear from all security interests, liens, claims, or encumbrances whatsoever, and that the Contractor will defend such title against all persons claiming the whole or part of any Item, at no cost to the City.

I. Completion; Deficiency: The Contractor shall promptly notify the Department as to the completion of the Work so that inspection of the Work may be made by the City. If a Completion Notice is specified in the Work Order, the Contractor shall not submit a request for payment for the Work performed until a Completion Notice is issued by the Director or ten (10) calendar days after City is notified of Work completion, whichever is sooner. If the Work performed is determined by the Director to be defective, deficient or incomplete, whether or not a Completion Notice is required, the Contractor shall correct or complete the Work, at no additional cost to the City, within the timeframe specified in a Notice of Deficiency issued by the Director, and promptly notify the Director upon correction or completion of the Work.

J. Time is of the Essence: The Work is time sensitive. The Contractor acknowledges and affirms that it is imperative that the Contractor exercise due diligence and actively and expeditiously undertake all measures necessary: 1) in initiating, making good progress, and completing the Project, all within the timeframes specified in this Contract and applicable Work Order, and 2) in promptly and fully correcting or completing any Work noted in a Notice of Deficiency. Failure or refusal by the Contractor to initiate, make good progress, or complete the Work within the Performance Period may result, at the discretion of the Director, in termination of this Contract, or in assessment of liquidated damages under Section 5 of this Contract.

K. Subcontracting: The Contractor is prohibited from hiring any subcontractor currently debarred by the City in accordance with section 20-77 of the Denver Revised Municipal Code.

2. **METHODS OF WORK.**

A. **Resources, Personnel, and Time Commitment:** The Work shall be promptly commenced and actively prosecuted with the optimum complement of workers and equipment in order to complete the Work in an effective and expeditious manner. The Contractor shall furnish all labor, tools, supplies, equipment, materials and everything necessary for and required to perform and complete the Work. The Work shall be undertaken by workers skilled, proficient, and experienced in the trades required by this Contract and shall be performed in an orderly and responsible manner in accordance with recognized standards and the plans and specifications contained in this Contract or provided to the Contractor by the City. If the City reasonably believes that the Work is not proceeding satisfactorily or timely because the Contractor has not utilized an adequate number of qualified and skilled personnel or workers or provided sufficient tools, supplies, equipment, or materials, then the City may require the Contractor, at no additional cost to the City, to utilize additional qualified and skilled personnel or workers or provide additional tools, supplies, equipment, or materials to perform the Work in a manner reasonably acceptable to the City.

B. **Permits and Licenses:** Any tasks specified under this Contract that require the employment of licensed or registered personnel shall be performed by licensed or registered personnel. The Contractor shall obtain, at its own expense, and maintain all permits or licenses, including any prescribed governmental authorizations or approvals, required for the performance of the Work and shall demonstrate, if requested, what actions the Contractor has taken to comply with the required permits, licenses, authorizations or approvals.

C. **Work Site Conditions:** Work sites and nearby locations shall be kept clean and neat. Equipment, vehicles, and materials no longer needed at the site shall be promptly removed from the site, and any such items lawfully stored for use on the site shall be so placed and secured as to protect the public health and safety. All scraps, debris, trash, excess soil, and other waste materials shall be regularly removed and properly disposed of. Disposal in solid waste containers provided by the City is prohibited unless written authorization is obtained.

D. **Protection of Property:** The Contractor shall assume full responsibility and expense for the protection of all public and private property, including but not limited to structures, street improvements, pathways, irrigation systems, landscaping, water lines, sewers, and other utilities, both above and below ground, at or near the site or sites of the Work or at any other location affected by the prosecution of the Work or the transportation or utilization of workers, equipment, or materials in connection with the Work. The Contractor shall provide, in a timely manner and in advance, written notice to: 1) the City department having charge of any property, right of way, or utility affected by the Work; 2)

any utility having charge of any utility affected by the Work; and 3) any private property owner whose property or improvements will be affected by the Work, and shall make all necessary arrangements with such City department, utility, or private property owner for the removal and replacement or the protection of such property. The Contractor shall arrange and obtain any utility locations required by law or necessary to protect utilities or underground facilities on public or private property and shall be liable for any failure to obtain or comply with such utility locations. To the extent that any permit or license is required by a City department or other governmental entity for any work on public property, said permit or license shall be obtained and paid for by the Contractor in advance of performing the Work and shall be complied with in the performance of the Work. If the Contractor or its employees, agents, or subcontractors destroy or damage any property, public or private, the Contractor shall promptly repair or replace such property, to the reasonable satisfaction of the Department, before the City will accept or pay for the Work performed. If the Contractor fails to make such repairs or replacement, the Director may, at the Director's discretion, undertake such repair or replacement and deduct the cost of the same from amounts payable to the Contractor under this Contract.

E. **Safety**: The Contractor is responsible for the health and safety of every person on or at the Work site and shall take all necessary and appropriate precautions and actions to protect such persons from injury, death or loss. The Contractor shall be responsible for being fully familiar with and complying with all applicable City, state or federal laws, ordinances, rules and regulations, requirements and guidelines, including the Occupational Safety and Health Act and any regulations or directives adopted thereunder ("**Safety Laws**"). The Contractor shall promptly notify the City in writing of any violations of said Safety Laws, along with copies of any injury reports, and any citations, orders, or warnings issued by governmental agencies in the enforcement of said Safety Laws. The Contractor shall provide and properly locate all necessary protective devices and safety precautions, including warning signs, barricades, or other devices or precautions as required by Safety Laws or the City. For all operations requiring the placement and movement of equipment or materials, the Contractor shall observe and exercise, and shall direct its employees or agents to observe and exercise, all appropriate and prudent caution so as to avoid injury to persons or damage to property and to minimize annoyance to or undue interference with the movement of the public and the performance of City functions. All ladders, scaffolding, or other devices used to reach objects not otherwise accessible, shall be of sound construction, firm and stable and shall be maintained in good, operable condition. All such equipment shall be moved, placed, shifted, and removed from work areas in such a manner as to provide maximum safety to persons and property and cause the least possible interference with the normal usage of such areas by the public and City personnel.

F. **Disposal of Non-Hazardous Waste at DADS:** In accordance with the Landfill Contract made between the City and Waste Management of Colorado, Inc., the Contractor will be required to haul dedicated loads (non-hazardous entire loads of waste) to the Denver-Arapahoe Disposal Site (“DADS”) for disposal. DADS is located at Highway 30 and Hampden Avenue in Arapahoe County, Colorado. The City will pay all fees associated with such disposal but the Contractor shall be responsible for the costs of transporting the loads. Non-hazardous waste is defined as those substances and materials not defined or classified as hazardous by the Colorado Hazardous Waste Commission pursuant to C.R.S. §25-15-207, as amended from time to time, and includes construction debris, soil and asbestos. Contractor shall not use Gun Club Road between I-70 and Mississippi Avenue as a means of access to DADS.

G. **Prohibition on Use of CCA-Treated Wood Products:** The use of any wood products pressure-treated with chromated copper arsenate (CCA) is prohibited. Examples of CCA-treated wood products include wood used in play structures, decks, picnic tables, landscaping timbers, fencing, patios, walkways and boardwalks.

H. **Waiver of Part 8 of Article 20 of Title 13, Colorado Revised Statutes:** The Contractor specifically waives all the provisions of Part 8 of Article 20 of Title 13, Colorado Revised Statutes regarding defects in the Work under this Contract.

I. **Liens and Other Encumbrances:** The Contractor shall not permit any mechanic’s or materialman’s liens or any other liens to be imposed and remain for more than ninety (90) days upon any City-owned property, or any part thereof, by reason of any worker labor performed or materials or equipment furnished by any person or legal entity to or on behalf of the Contractor, either pursuant to C.R.S. § 38-26-107 or by any other authority. The Contractor shall promptly pay when due all bills, debts and obligations incurred in connection with this Contract and shall not permit the same to become delinquent. The Contractor shall not permit any lien, mortgage, judgment, execution or adjudication of bankruptcy which will in any way impair the rights of the City under this Contract. The Contractor will indemnify and save harmless the City for the extent of any and all payments, interests, and penalties resulting from failure to comply with this section. The Contractor’s obligations set out in this section shall survive the termination of this Contract.

J. **Environmental Compliance:** The Contractor shall obtain all necessary federal, state, and local environmental permits and comply with all applicable federal, state, and local environmental permit requirements relating to the Work. The Contractor shall comply with all applicable local, state, and federal environmental guidelines, rules, regulations, statutes, laws, and orders (collectively, “**Environmental Requirements**”), including but not limited to Environmental Requirements regarding the

storage, use, transportation, and disposal of Hazardous Materials and regarding releases or threatened releases of Hazardous Materials to the environment. The term "Hazardous Materials" shall mean asbestos and asbestos-containing materials, special wastes, polychlorinated biphenyls (PCBs), any petroleum products, natural gas, radioactive source material, pesticides, any hazardous waste as defined at 42 U.S.C. § 6903(5) of the Solid Waste Disposal Act, any hazardous substance as defined at 42 U.S.C. § 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act, and chemical substance as defined at 15 U.S.C. § 2602(2) of the Toxic Substances Control Act, and any guidelines issued and rules or regulations promulgated pursuant to such statutes or any other applicable federal or state statute.

K. Attorney's Fees: Colorado Revised Statute 38-26-107 requires that in the event any person or company files a verified statement of amounts due and unpaid in connection with a claim for labor and materials supplied on this project the City shall withhold from payments to the Contractor sufficient funds to insure the payment of any such claims. Should the City be made a party to any lawsuit to enforce such unpaid claims or any lawsuit arising out of or relating to such withheld funds, the Contractor agrees to pay to the City its costs and reasonable attorney's fee which cost shall be included as a Cost of the Work. Because the City Attorney Staff does not bill the City for legal services on an hourly basis, the Contractor agrees a reasonable fee shall be computed at the rate of two hundred dollars per hour of City Attorney time.

L. Environmental Sustainability: The Contractor shall demonstrate commitment to and experience in environmental sustainability and public health protection practices applicable to its line of services including, but not limited to, construction waste recycling and energy efficiency. The Contractor shall work to reduce landfill waste by recycling and/or salvaging recyclable materials. Where applicable, vendor shall procure and install fixtures and equipment that reduce energy use.

M. Standards and Specifications for Construction; General Conditions: The City General Conditions to the Standards and Specifications for Construction, 2011 Edition, shall apply only as set forth in the specifications for the Work under this Contract and as referenced in this Contract. Reference to "Manager" shall be replaced with "Executive Director of Parks and Recreation"; and reference to "Deputy Manager" shall be replaced with "Deputy Executive Director of Parks and Recreation".

3. TERM. The term of this Contract will commence upon final execution by all Parties and shall terminate two years thereafter (the "**Term**"). The Contractor agrees to comply with all applicable Contract close-out procedures and requirements set forth in the Contract and as otherwise directed by the Director. If the time needed to complete any Work Order or Work Order Change extends beyond the Term specified above, this Contract shall remain in full force and effect but only as to such Work Order or Work

Order Change in progress; however, the total amount paid to the Contractor shall not exceed the Maximum Contract Amount specified in sub-section 4.A below.

4. COMPENSATION AND PAYMENT.

A. Maximum Contract Amount: The Maximum Contract Amount to be paid by the City to the Contractor for satisfactory completion of all Work Orders authorized by the City and performed by the Contractor under this Contract shall in no event exceed the sum of **TWO MILLION DOLLARS AND ZERO CENTS (\$2,000,000.00)**, unless this Contract is modified to increase said amount by a duly authorized and written amendment to this Contract executed by the Parties in the same manner as this Contract. The Maximum Contract Amount stated herein is not intended, and shall not be construed, as a promise or guarantee to the Contractor that the final price payable to the Contractor for all of the authorized Work will equal the Maximum Contract Amount.

B. Conditions of Payment: Payment shall be made upon satisfactory completion of the Work in accordance with the Work Order issued and this Contract. A properly issued and signed final receipt and lien waiver shall be a condition precedent to any obligation for the City to make final payment for Work performed by the Contractor. The request for payment submitted by the Contractor must fully document and itemize the Work rendered and all equipment, supplies, materials, labor, and other authorized and actually incurred costs. The request for payment shall affirmatively represent that: i) all of the Work specified in the Work Order has been fully performed and completed and any Deficiency Notice has been satisfied; ii) no claims, liens, or amounts owed to employees, suppliers, or materialmen are outstanding and all requirements and conditions of section 2.H. above have been fully complied with; iii) all rights, title and interests to the materials or improvements provided or installed as the result of the Work have transferred to the City; and iv) no interest or encumbrance of any kind associated with the Work will be asserted, has been acquired, or will be made by the Contractor or any other person or entity. If the request for payment does not contain these representations, the representations are hereby deemed to contain them. The request for payment must be approved by the Director in writing in order to be eligible for compensation under this Contract. Any payment may be reduced by any liquidated damages assessed by the Director under sub-section 5.D.2 below. The City shall deduct and retain a total of five percent (5%) from the total amount of approved applications for payment, including change orders. The City may also deduct in addition to retainage as stated above, the additional amount(s) of any and all outstanding claims pursuant to CRS § 38-26-107 from each approved application for payment. After ninety-five percent (95%) of the Work under the Contract has been satisfactorily accomplished by the Contractor, the Director, in his/her sole

discretion, may decrease the retained amount to a level that is no less than twice the value of the estimate of remaining Work.

C. **Subject to Appropriation; No Multiple Year Obligation:** It is understood and agreed that any payment obligation of the City hereunder, whether direct or contingent, shall extend only to funds appropriated by the Denver City Council for the purpose of this Contract, encumbered for the purpose of this Contract and paid into the Treasury of the City. The Contractor acknowledges that (i) the City does not by this Contract, irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Contract is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

D. **Amendments:** The Contractor acknowledges that the City is not obligated to execute an amendment to this Contract, and that any work performed by Contractor beyond that specifically described or allowed under this Contract or without a fully and properly executed amendment to this Contract is performed at Contractor's risk and without authorization under this Contract.

5. **TERMINATION & REMEDIES.**

A. **Termination for Convenience of the City:** The Director, upon giving twenty (20) calendar days written notice (unless a longer period is given), may terminate this Contract at the City's convenience, in whole or part. To the extent that the Contractor has initiated or completed Work for which the Contractor has not yet been compensated in accordance with this Contract, appropriate compensation for all such authorized Work shall be paid to the Contractor in accordance with this Contract.

B. **Termination, With Cause, by the City:** The occurrence of any one or more of the following shall constitute a breach of this Contract ("**Breach**"), for which the Director may, at the Director's option, either terminate this Contract or withdraw a Work Order, with cause, upon written notice to the Contractor:

- 1) The Contractor fails or refuses, within three (3) calendar days of being notified, to expeditiously and actively undertake or substantially or timely perform its responsibilities and obligations or fails or refuses to make adequate progress in performing its responsibilities and obligations under this Contract, including the due diligence obligations set forth in section 1 of this Contract or the Work methods under section 2 of this Contract, provided that the failure or refusal to undertake, make good progress, or complete the Work is not due to matters beyond the Contractor's control such as weather disaster or persistent bad weather, floods, or other acts of God, civil unrest, acts of the public enemy, national calamity, or strike at a manufacturer or supplier for the Project;

2) There is substantial evidence that it has been or will be impossible for the Contractor to perform the Work required due to matters within the Contractor's control such as voluntary bankruptcy, strikes, boycotts, and labor disputes involving the Contractor's employees or closure or suspension of operations by regulatory order of a governmental entity or an order of a court due to violations or infractions by the Contractor or the Contractor's employees;

3) The Contractor has persistently or flagrantly failed to perform the Work or failed to timely perform the Work or to comply with the specifications and requirements as set forth in the Scope of Work in **Exhibit A** to this Contract;

4) The Contractor has submitted one or more requests for payment under this Contract that are fraudulent or persistently or flagrantly erroneous or misleading;

5) The Contractor has made an assignment or transfer of, or subcontracted, its responsibilities and obligations under this Contract without obtaining the Director's written consent or not in conformance with this Contract;

6) The Contractor fails to obtain, renew, replace, or maintain the insurance coverage required by this Contract or causes or is at fault for damage to property or injury to persons that is not covered or not adequately covered by insurance and the Contractor fails to remedy the situation to the satisfaction of the Director;

7) The Contractor fails to obtain or properly and timely maintain any financial assurances required by this Contract;

8) Any lien is filed against City property because of any act or omission of the Contractor and is not timely discharged, unless the Contractor furnishes to the City such bond or other financial assurance reasonably acceptable to the Director to protect the interests of the City;

9) The Contractor has failed to obtain or maintain any required permit or license or has utilized personnel or workers not licensed or registered as required by law;

10) The Contractor has failed to deliver title or warranties or has failed to honor warranties as required by this Contract;

11) The Contractor fails, within three (3) calendar days of being notified, to comply with, or fails to compel its subcontractors to comply with, the prevailing wage requirements or other City ordinances applicable to the type and nature of Work being performed under this Contract; or

12) The Contractor or any of its officers or employees are convicted, plead nolo contendere, enter into a formal contract in which they admit guilt, enter a plea of guilty, or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue

influence, theft, racketeering, extortion or any offense of a similar nature, in connection with the Contractor's business.

C. **Compensation:** Upon termination of this Contract by the City, with cause, under sub-section 5.B above, the Contractor shall be compensated for the Work that the Director determines to have been satisfactorily completed, except that the City shall be entitled to keep any unpaid amount owing to the Contractor to the extent that said amount or some portion of said amount is needed to compensate the City for: i) liquidated damages, if specified under sub-section 5.D.2. below; ii) the costs of releasing any liens or satisfying any claims related to the Work; and iii) the costs of paying a new contractor for those services necessary to complete or rectify the Contractor's Work or to repair or replace any damaged or lost property caused by the Breach. The Contractor shall have no claim of any kind whatsoever against the City for any termination with cause, except for compensation for the Work satisfactorily performed as described herein.

D. **Remedies:**

1) ***Termination:*** For any termination with cause of this Contract, the City shall have the right to any or all of the following remedies through the courts or other means of legal recourse available to the City: a) cancellation of the Contract; b) actual damages or costs caused by Breach of the Contractor; and c) recovery of costs incurred by the City itself in paying for the release of liens related to the Work or in completing or rectifying the Work or in retaining and compensating another contractor to complete or rectify the Work, to the extent not covered in sub-section 5.C. above. In any legal action brought by the Contractor, the Contractor shall not be entitled to recover any more than the full amount, not previously paid, of any Work Orders executed with and performed in whole or part by the Contractor. The City and the Contractor understand and agree that the rights of specific performance and to incidental, consequential, or punitive damages have been hereby expressly waived and released by both Parties.

2) ***Liquidated Damages:*** If the Director determines, for a Breach under sub-section 5.B above, not to terminate the Contract but to apply liquidated damages as provided in this paragraph, the Contractor shall be liable to the City for liquidated damages in the amount of one thousand dollars (\$1,000.00) per day, calculated from the day that the Director issues notice to the Contractor of a Breach under sub-section 5.B through a) the day before the Breach is remedied, or b) the day before a new Work Order or Contract is executed with another contractor to perform the Work, as so determined by the Director. The Contractor and City each hereby acknowledges and agrees that it would be impractical and extremely difficult to estimate the damages which the City might incur for said breach, and that, in the interest of assuring that the Work is timely and properly performed, the liquidated damages provided herein

is the most fair and reasonable way to compensate the City for any delay or inadequate performance without termination of the Contract or litigation.

3) **Delay:** The Contractor agrees that delays resulting from any causes other than acts or omissions of the City, its employees, agents or officials shall be considered fully compensated by a time extension, and agrees to make no claim for monetary damages for such delays. In no event shall the Contractor be entitled to recover any delay costs caused by the acts or omissions of the Contractor, its employees or agents. If the Contractor's completion of the entire Contract is delayed due to actions within the control of the City, or due to the acts or omissions of persons authorized by the Director to act on behalf of the City with regard to this Contract, and if such delay causes an increase in the Contractor's total cost of performance of the Work, and if the Contractor has given timely notice of such delay and provided adequate documentation of any changes in cost associated with such delay, then the Contractor shall be entitled to an equitable adjustment to the Contract. Such equitable adjustment shall consist of a fair and reasonable adjustment in the Contract amount, an extension of the Contract time, or both.

6. **WHEN RIGHTS AND REMEDIES NOT WAIVED.** In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default that may then exist on the part of the Contractor. No payment, other action, or inaction by the City when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of this Contract constitutes a waiver of any other breach.

7. **INDEPENDENT CONTRACTOR.** The Contractor is an independent contractor retained to perform work for limited periods of time. Neither the Contractor nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever. The Contractor is responsible for the operational management, errors and omissions of the Contractor's employees, agents, and subcontractors. Without limiting the foregoing, the Contractor understands and acknowledges that the Contractor and the Contractor's employees, agents and subcontractors: a) are not entitled to workers' compensation benefits through the City; b) are not entitled to unemployment insurance benefits unless unemployment compensation coverage is provided by the Contractor or some other entity besides the City; and c) are obligated to pay federal and state taxes on any monies earned pursuant to this Contract. Furthermore, it is understood and agreed that nothing in this Contract is intended, or shall be construed, to constitute a joint venture between the Parties.

8. **INSURANCE.**

A. General Conditions: The Contractor agrees to secure, at or before the time of execution of this Contract, the following insurance covering all operations, goods or services provided pursuant to this Contract. The Contractor shall keep the required insurance coverage in force at all times during the term of this Contract, or any extension thereof, during any warranty period, and for three (3) years after termination of this Contract. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Contract. Such notice shall reference the City contract number listed on the signature page of this Contract. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, the Contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Contractor. The Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Contract are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Contract.

B. Proof of Insurance: The Contractor shall provide a copy of this Contract to its insurance agent or broker. The Contractor may not commence services or work relating to this Contract prior to placement of coverages required under this Contract. The Contractor certifies that the certificate of insurance attached as **Exhibit D**, preferably an ACORD certificate, complies with all insurance requirements of this Contract. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Contract shall not act as a waiver of the Contractor's breach of this Contract or of any of the City's rights or remedies under this Contract. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

C. **Additional Insureds:** For Commercial General Liability and Automobile Liability the Contractor and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

D. **Waiver of Subrogation:** For all coverages required under this Contract, with the exception of Professional Liability - if required, the Contractor's insurer shall waive subrogation rights against the City.

E. **Subcontractors and Subconsultants:** All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Contract) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Contractor. The Contractor shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. The Contractor agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

F. **Workers' Compensation/Employer's Liability Insurance:** The Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. The Contractor expressly represents to the City, as a material representation upon which the City is relying in entering into this Contract, that none of the Contractor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Contract, and that any such rejections previously effected, have been revoked as of the date Contractor executes this Contract.

G. **Commercial General Liability:** The Contractor shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

H. **Business Automobile Liability:** The Contractor shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Contract.

I. **Additional Provisions:**

- 1) For Commercial General Liability, the policy must provide the following:
 - (i) That this Contract is an Insured Contract under the policy;

- (ii) Defense costs are outside the limits of liability;
 - (iii) A severability of interests, separation of insureds provision (no insured vs. insured exclusion); and
 - (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.
- 2) For claims-made coverage:
- (i) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.
 - (ii) The Contractor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

9. DEFENSE & INDEMNIFICATION:

A. The Contractor hereby agrees to defend, indemnify, reimburse and hold harmless the City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Contract (“**Claims**”), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify the City for any acts or omissions of the Contractor or its subcontractors either passive or active, irrespective of fault, including the City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of the City.

B. The Contractor’s duty to defend and indemnify the City shall arise at the time written notice of the Claim is first provided to the City regardless of whether Claimant has filed suit on the Claim. The Contractor’s duty to defend and indemnify the City shall arise even if the City is the only party sued by claimant and/or claimant alleges that the City’s negligence or willful misconduct was the sole cause of claimant’s damages.

C. The Contractor will defend any and all Claims which may be brought or threatened against the City and will pay on behalf of the City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or

seeking to enforce this indemnity obligation. Such payments on behalf of the City shall be in addition to any other legal remedies available to the City and shall not be considered the City's exclusive remedy.

D. Insurance coverage requirements specified in this Contract shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

E. This defense and indemnification obligation shall survive the expiration or termination of this Contract.

10. COLORADO GOVERNMENTAL IMMUNITY ACT. The Parties hereto understand and agree that the City is relying upon, and has not waived, the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, § 24-10-101 *et seq.*, C.R.S.

11. TAXES, CHARGES AND PENALTIES. The City is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's prompt payment ordinance D.R.M.C. § 20-107, *et seq.* The Contractor shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under the Contract and shall not allow any lien, mortgage, judgment or execution to be filed against City property.

12. COMPLIANCE WITH ALL LAWS. The Contractor shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.

13. EXAMINATION OF RECORDS & AUDITS. Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at the City's election in paper or electronic form, any pertinent books, documents, papers and records related to the Contractor's performance pursuant to this Contract, provision of any goods or services to the City, and any other transactions related to this Contract. The Contractor shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under this Contract or expiration of the applicable statute of limitations. When conducting an audit of this Contract, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require the Contractor to make disclosures in violation of state or federal privacy laws. The Contractor shall at all times comply with D.R.M.C. 20-276.

14. DIVISION OF SMALL BUSINESS OPPORTUNITIES REQUIREMENTS.

A. This Contract is subject to Article III, Divisions 1 and 3 of Chapter 28, Denver Revised Municipal Code (“**D.R.M.C.**”), designated as §§ 28-31 to 28-40 and 28-51 to 28-90 (the “**MWBE Ordinance**”) and any Rules or Regulations promulgated pursuant thereto. The contract goal for MWBE participation established for this Contract by the Division of Small Business Opportunity (“**DSBO**”) is 6%.

B. Under § 28-68, D.R.M.C., the Contractor has an ongoing, affirmative obligation to maintain for the duration of this Contract, at a minimum, compliance with its originally achieved level of MWBE participation upon which this Contract was awarded, unless the City initiates a material alteration to the scope of work affecting MWBEs performing on this Contract through change order, contract amendment, force account, or as otherwise described in § 28-70, D.R.M.C. The Contractor acknowledges that:

1) If directed by DSBO, the Contractor is required to develop and comply with a Utilization Plan in accordance with § 28-62, D.R.M.C. Along with the Utilization Plan requirements, the Contractor must establish and maintain records and submit regular reports, as directed by DSBO, which will allow the City to assess progress in complying with the Utilization Plan and achieving the MWBE participation goal. The Utilization Plan is subject to modification by DSBO.

2) If change orders or any other contract modifications are issued under the Contract, the Contractor shall have a continuing obligation to immediately inform DSBO in writing of any agreed upon increase or decrease in the scope of work of such contract, upon any of the bases discussed in § 28-70, D.R.M.C., regardless of whether such increase or decrease in scope of work has been reduced to writing at the time of notification.

3) If change orders or other amendments or modifications are issued under the Contract that include an increase in the scope of work of this Contract, whether by amendment, change order, force account or otherwise, which increases the dollar value of the contract, whether or not such change is within the scope of work designated for performance by an MWBE at the time of contract award, such change orders or contract modification shall be immediately submitted to DSBO for notification purposes.

4) Those amendments, change orders, force accounts or other contract modifications that involve a changed scope of work that cannot be performed by existing project subcontractors are subject to the original contract goal. The Contractor shall satisfy the goal with respect to such changed scope of work by soliciting new MWBEs in accordance with § 28-70, D.R.M.C. The Contractor must also satisfy the requirements under §§ 28-60 and 28-73, D.R.M.C., with regard to changes

in scope or participation. The Contractor shall supply to the DSBO Director all required documentation described in §§ 28-60, 28-70, and 28-73 D.R.M.C. with respect to the modified dollar value or work under the contract.

5) For contracts of one million dollars (\$1,000,000.00) and over, the Contractor is required to comply with § 28-72, D.R.M.C., as applicable, regarding prompt payment to MWBEs. Payment to MWBE subcontractors shall be made by no later than thirty-five (35) days after receipt of an MWBE subcontractor invoice.

6) Failure to comply with these provisions may subject the Contractor to sanctions set forth in § 28-76 of the MWBE Ordinance.

7) Should any questions arise regarding specific circumstances, the Contractor should consult the MWBE Ordinance or may contact the Project's designated DSBO representative at (720) 913-1999.

15. ASSIGNMENT; SUBCONTRACTING. The Contractor shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under this Contract without obtaining the Director's prior written consent. Any assignment or subcontracting without such consent will be ineffective and void and will be cause for termination of this Contract by the City. The Director has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate the Contract because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) the Contractor shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any sub-consultant, subcontractor or assign.

16. NO THIRD-PARTY BENEFICIARY. Enforcement of the terms of the Contract and all rights of action relating to enforcement are strictly reserved to the Parties. Nothing contained in the Contract gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or the Contractor receiving services or benefits pursuant to the Contract is an incidental beneficiary only.

17. NO AUTHORITY TO BIND CITY TO CONTRACTS. The Contractor lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the Denver Revised Municipal Code.

18. CONTRACT AS COMPLETE INTEGRATION-AMENDMENTS. This Contract is the complete integration of all understandings between the Parties as to the subject matter of this Contract. No

prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in this Contract in writing. No oral representation by any officer or employee of the City at variance with the terms of this Contract or any written amendment to this Contract will have any force or effect or bind the City.

19. SEVERABILITY. Except for the provisions of this Contract requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of this Contract or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the Parties can be fulfilled.

20. CONFLICT OF INTEREST.

A. No employee of the City shall have any personal or beneficial interest in the services or property described in this Contract. The Contractor shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

B. The Contractor shall not engage in any transaction, activity or conduct that would result in a conflict of interest under this Contract. The Contractor represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Contractor by placing the Contractor's own interests, or the interests of any party with whom the Contractor has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate this Contract if it determines a conflict exists, after it has given the Contractor written notice describing the conflict.

21. NOTICES. All notices required by the terms of this Contract must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Contractor at the address first above written, and if to the City at:

By Contractor to: Executive Director of Parks and Recreation
201 West Colfax Avenue, Dept. 601
Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The Parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

22. **DISPUTES.** All disputes between the City and Contractor arising out of or regarding this Contract will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b)-(f). For the purposes of that administrative procedure, the City official rendering a final determination shall be the Director as defined in this Contract.

23. **GOVERNING LAW; VENUE.** This Contract will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into this Contract. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to this Contract will be in the District Court of the State of Colorado, Second Judicial District (Denver District Court).

24. **NO DISCRIMINATION IN EMPLOYMENT.** In connection with the performance of work under the Agreement, the Contractor may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability. The Contractor shall insert the foregoing provision in all subcontracts.

25. **USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS.** The Contractor shall cooperate and comply with the provisions of Executive Order 94 concerning the use, possession or sale of alcohol or drugs. Violation of this provision or refusal to cooperate with implementation of the policy can result in the City barring the Contractor from City facilities or participating in City operations.

26. **PREVAILING WAGES.**

A. The Contractor shall comply with, and agrees to be bound by, all requirements, conditions and City determinations regarding the Payment of Prevailing Wages Ordinance, Sections 20-76 through 20-79, D.R.M.C. including, but not limited to, the requirement that every covered worker working on a City owned or leased building or on City-owned land shall be paid no less than the prevailing wages and fringe benefits in effect on the date the bid or request for proposal was advertised. In the event a request for bids, or a request for proposal, was not advertised, the Contractor shall pay every covered worker no less than the prevailing wages and fringe benefits in effect on the date funds for the contract were encumbered. A copy of the applicable prevailing wage rate schedule is attached as **Exhibit E** and incorporated herein by reference.

B. Date bid or request for qualifications/proposals was advertised: September 16, 2020.

C. Prevailing wage and fringe rates will adjust on, and only on, the anniversary of the actual date of bid or proposal issuance, if applicable. Unless expressly provided for in this Contract, the Contractor will receive no additional compensation for increases in prevailing wages or fringe benefits.

D. The Contractor shall provide the Auditor with a list of all subcontractors providing any services under this Contract.

E. The Contractor shall provide the Auditor with electronically-certified payroll records for all covered workers employed under this Contract.

F. The Contractor shall prominently post at the work site the current prevailing wage and fringe benefit rates. The posting must inform workers that any complaints regarding the payment of prevailing wages or fringe benefits may be submitted to the Denver Auditor by calling 720-913-5000 or emailing auditor@denvergov.org.

G. If the Contractor fails to pay workers as required by the Prevailing Wage Ordinance, the Contractor will not be paid until documentation of payment satisfactory to the Auditor has been provided. The City may, by written notice, suspend or terminate work if the Contractor fails to pay required wages and fringe benefits.

27. PAYMENT OF CITY MINIMUM WAGE. The Contractor shall comply with, and agrees to be bound by, all requirements, conditions, and City determinations regarding the City's Minimum Wage Ordinance, Sections 20-82 through 20-84 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid no less than the City Minimum Wage in accordance with the foregoing D.R.M.C. Sections. By executing this Contract, the Contractor expressly acknowledges that the Contractor is aware of the requirements of the City's Minimum Wage Ordinance and that any failure by the Contractor, or any other individual or entity acting subject to this Contract, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.

28. PAYMENT AND PERFORMANCE BOND. Without limiting or waiving any other responsibilities or obligations of the Contractor under this Contract, the Contractor shall provide a payment and performance bond(s), an irrevocable letter of credit, or other performance guarantees. A bond in the amount of **Two Million Dollars and No Cents (\$2,000,000.00)** shall be provided at the time of Contract execution substantially in the form specified in **Exhibit F**, which is attached hereto and incorporated herein by reference. In the event the dollar amount of Work authorized under all Work Orders exceeds this amount, the Contractor shall provide properly executed bond Change Riders, also in the form specified in **Exhibit F**, totaling the amount of all authorized Work Orders/Task Orders (the "**Surety**"). The form of letters of credit or other performance guarantees must be acceptable to the City Attorney. The Contractor shall deliver

to the Director, prior to the execution of the Contract, a fully executed Surety which shall provide effective and sufficient financial assurance for the full and faithful performance of the Contractor's duties and obligations under this Contract and the payment of bills for labor and materials for the Work, along with appropriate powers of attorney. The Surety must be issued from a surety corporation or bank authorized to do business in the State of Colorado and which is acceptable to the City. Such Surety shall be payable to the City upon demand for the Contractor's failure to perform as required under this Contract and/or failure to pay all amounts owed to laborers, mechanics, subcontractors, and materialmen for work performed or materials, supplies, rental items, tools, and equipment provided for the Work under this Contract. The Surety shall also assure the repair or replacement of any Work found to be defective or otherwise not in compliance with this Contract. The Surety shall remain in effect or be promptly renewed or replaced by another Surety acceptable to the City during the Term and during the Term of any Extension Amendment and for a ninety (90) day period after the expiration or termination of this Contract or any Extension Amendment and any warranty period or other period prescribed by law. Satisfactory proof of renewal or acceptable replacement must be provided to the Director at least sixty (60) days prior to the date of expiration or termination of the Surety. The Contractor's obligations set out in this section shall survive the expiration or termination of this Contract and failure to obtain or maintain said Surety shall be grounds for immediate termination.

29. LEGAL AUTHORITY. The Contractor represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Contract. Each person signing and executing the Contract on behalf of the Contractor represents and warrants that he has been fully authorized by the Contractor to execute the Contract on behalf of the Contractor and to validly and legally bind the Contractor to all the terms, performances and provisions of the Contract. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate this Contract if there is a dispute as to the legal authority of either the Contractor the person signing this Contract to enter into this Contract.

30. CONFIRMATION OF LAWFUL EMPLOYMENT.

A. This Contract is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "**Certification Ordinance**").

B. The Contractor certifies that:

1) At the time of its execution of this Contract, it does not knowingly employ or contract with an illegal alien who will perform work under this Contract.

2) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Contract.

C. The Contractor also agrees and represents that:

1) It shall not knowingly employ or contract with an illegal alien to perform work under this Contract.

2) It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to the Contractor that it shall not knowingly employ or contract with an illegal alien to perform work under this Contract.

3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Contract, through participation in either the E-Verify Program.

4) It is prohibited from using either the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under this Contract, and it is required to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

5) If it obtains actual knowledge that a subconsultant or subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three (3) days. The Contractor shall also terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.

6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S., or the City Auditor, under authority of D.R.M.C. 20-90.3.

D. The Contractor is liable for any violations as provided in the Certification Ordinance. If the Contractor violates any provision of this section or the Certification Ordinance, the City may terminate this Contract for a breach of this Contract. If this Contract is so terminated, the Contractor shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of

this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying the Contractor from submitting bids or proposals for future contracts with the City.

31. NO CONSTRUCTION AGAINST DRAFTING PARTY. The Parties and their respective counsel have had the opportunity to review this Contract, and this Contract will not be construed against any Party merely because any provisions of this Contract were prepared by a particular Party.

32. CONTRACT DOCUMENTS; ORDER OF PRECEDENCE. This Contract consists of sections 1 through 37 which precede the signature page(s) (“**Contract Text**”), and the following exhibits and attachments which are incorporated herein and made a part hereof by reference:

Exhibit A	Scope of Work
Exhibit B	Work Order Form
Exhibit C	Work Order Change Form
Exhibit D	Insurance Certificate
Exhibit E	Prevailing Wage Rate Schedules
Exhibit F	Form of Payment and Performance Bond

In the event of an irreconcilable conflict (i) between a provision of the Contract Text and any of the listed exhibits or attachments or (ii) among provisions of any exhibits or attachments, such that it is impossible to give reasonable effect to all, the order of precedence to determine which document shall control to resolve such conflict, is as follows, in descending order:

Contract Text
Exhibit A
Exhibit B
Exhibit C
Exhibit D
Exhibit E
Exhibit F

33. SURVIVAL OF CERTAIN PROVISIONS. The terms of this Contract and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of this Contract survive this Contract and will continue to be enforceable. Without limiting the generality of this provision, the Contractor’s obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

34. **INUREMENT.** The rights and obligations of the Parties inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of this Contract.

35. **SECTION HEADINGS.** The captions and headings set forth herein are for convenience of reference only and shall not be construed so as to define or limit the terms and provisions hereof.

36. **CITY EXECUTION OF CONTRACT.** This Contract will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

37. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS.** The Contractor consents to the use of electronic signatures by the City. This Contract, and any other documents requiring a signature under this Contract, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of this Contract solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of this Contract in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

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Contract Control Number: PARKS-202057057
Contractor Name: L.E.R. Inc. dba Renner Sports Surfaces

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
Contractor Name:

PARKS-202057057
L.E.R. Inc. dba Renner Sports Surfaces

By:  _____
EADD07C0D8E9445...

Name: Greg McKenna
(please print)

Title: President
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

EXHIBIT A

A. GENERAL DESCRIPTION:

The contractor shall perform high-quality court repair and replacement services at various locations throughout the city on a continuing on-call basis. The work will typically consist of court repair and related work such as crack repair, resurfacing, post-tensioned concrete, chain link fencing, court lighting, tennis net posts and basketball goals, and landscape, irrigation, and/or concrete repair adjacent to courts.

The contractor will be required to perform all work executed under these contracts in accordance with all rules, regulations, and ordinances governing City of Denver and Department of Parks and Recreation work, including performance and payment bonding, insurance requirements, Denver's Division of Small Business Opportunity goals, and Prevailing Wage requirements.

B. SPECIFIC WORK REQUIREMENTS:

It's anticipated the contractor's scope of work may entail court repair and related services in any area of the City park system. Project work and related work may include (as may be required per project):

- Crack repair – clean out debris, fill, and grind level; or other proprietary crack repair system
- Acrylic resurfacing – pressure wash court, level minor depressions, apply three (3) coats of acrylic coatings/color, and lines per USTA specifications
- Post-tensioned concrete (over existing court or on prepared subgrade) – includes site preparation, erosion control measures, demolition, fine grading, five-inch (5") post-tensioned concrete slab, new net posts and concrete foundations, center anchor and foundation, nets and center strap
- Chain link fencing – repair or replace chain link fence posts, gates, mesh, and other associated hardware
- Tennis net posts and basketball goals – replace posts or goals by removing the existing posts or goals, including the footing, and installing new equipment per City standards
- Landscape, irrigation, and/or concrete flatwork repair – repair or replace landscape and site work adjacent to court work, or as affected by other repair activities
- Court lighting – refurbish, repair, or replace existing court lights including poles, fixtures, lenses, bulbs, ballasts, and any associated electrical components

The contractor must be a builder member of the American Sports Builders Association (ASBA), and must have a "Certified Tennis Court Builder" on staff.

The contractor must be a member of the Post-Tensioning Institute (PTI). The installing foreman shall be certified by the Post-Tensioning Institute (PTI) as a Level 1 installer and all work shall be supervised by a PTI-Certified Level 2 Inspector.

Concrete work shall be warrantied for one year, and acrylic surfacing shall have a two-year warranty.

C. TECHNICAL SPECIFICATIONS:

Work performed shall be governed by the applicable provisions of the following technical specifications:

- ASBA/USTA Tennis Court Construction & Maintenance Manual (2012)
- National Federation of State High School Associations – Basketball Court Diagram

- Post-Tensioning Institute, Post-Tensioning Manual (6th edition)
- Post-Tensioning Institute, Design of Post-Tensioned Slabs-on-Ground (3rd edition with 2008 supplement)
- CCD - Standard Specifications for Construction, General Contract Conditions (2011) as applicable
- Denver Parks and Recreation Standards and Specifications
- Post-Tensioning Institute, Design and Construction of Post-Tensioned Sport Courts
- American Concrete Institute – 360R-10, CCS-1(10)

D. SUSTAINABILITY:

The City's High Performing Green Building Guidelines provides that all new construction projects and major renovations be built and certified to the Standard of LEED Silver (with a goal of achieving LEED Gold). In the event that LEED is not applicable, projects should strive to incorporate sustainability wherever possible. It is the City's judgment that many of the contracts will offer opportunities for sustainable design and construction. The contractor shall research and present sustainable alternatives including, but not limited to, deconstruction and recycling of existing materials; construction materials, systems and equipment that contain high recycled content and/or components which are Energy Star-rated; and any other opportunities where sustainability may be incorporated.

EXHIBIT B



**On-Call Services
WORK ORDER**

NAME OF PROJECT:

Administered by: PARKS PLANNING, DESIGN AND CONSTRUCTION, DEPARTMENT OF PARKS AND RECREATION
201 W. COLFAX AVE., DEPT. 613, DENVER, CO 80202, (720)-913-0638, FAX (720) 913-0783

<p>Contractor: OC Contract #: Vendor ID#: Contract Name: On-Call Court Repair Services</p>	<p>Work Order #: Fund / Org. / Project# / Cap. Program: Retainage: Yes <input type="checkbox"/> No <input type="checkbox"/> Contract (PO) #: TBD</p>
---	--

It is hereby mutually agreed that when this WORK ORDER has been signed by the contracting parties, the following described scope of work shall be executed by the contractor/consultant in accordance with all contract documents and as herein stipulated and agreed:

All work described in the narrative below, summarized on scope table on next page and in Bid/Proposal, dated [redacted] and attached as Exhibit A.

Scope:

The sum, as indicated herein below, constitutes full and complete consideration, payment and satisfaction to the Contractor for the above described scope of work, and the Contractor hereby agrees to make no further claims, demands, or requests of any kind whatsoever for further monies, extensions of time, or other consideration for the above described scope of work to the contract.

THE CONTRACTOR AGREES to furnish all services, material and labor and perform all work/tasks required to complete the above described changes in accordance with requirements for similar work covered by the Work/Task Order, except as otherwise stipulated herein, for the following considerations:

The lump sum of: **XXXXXXXXXX and xx/100 (\$XXXXXXXX).**

Work Order Substantial Completion Date of: **XXXXX**

Liquidated Damage: **XXXX/day**

Contractor: _____

Accepted for Contractor/Consultant by: _____ Title _____ Date _____

USING AGENCY

I hereby certify that funds are available that will be reserved to pay the Contractor in full for the work to be performed under this WORK/TASK ORDER.

By Using Agency - Administrative or Budget Office _____ Date _____

COST SUMMARY FOR CONTRACT NO.

Previous Work/Task Orders	\$
Work/Task Order Change Additions/Deductions	\$ <u>NA</u>
Net Prior to this Work/Task Order	\$.
This Work/Task Order - Add <input type="checkbox"/> Deduct <input type="checkbox"/>	\$
Revised Contract Amount	\$
Maximum Contract Amount	\$
Amount Available	\$

APPROVALS

Approved by Project Manager, Parks Planning, **Project Manager** Date _____

Approved by Assistant Director, Parks Planning, **Bouchard** Date _____

NOTE: No persons shall authorize or perform any of the above until the Work/Task Order has all signatures and has been distributed.

DISTRIBUTION: Auditor, Contract Administration, Parks and Recreation Contract Admin, Parks On-Call Admin, City Engineering (PMO), DSBO, and Contractor.



On-Call Services WORK/TASK ORDER CHANGE

NAME OF PROJECT:

Administered by: PARKS PLANNING, DESIGN AND CONSTRUCTION, DEPARTMENT OF PARKS AND RECREATION
201 W. COLFAX AVE., DEPT. 613, DENVER, CO 80202, (720)-913-0638, FAX (720) 913-0783

Contractor/Consultant: Vendor ID #: OC Contract #: Contract Name: On-Call Court Repair Services	Work or Task Order #: Change Order #: Fund / Org. / Project # / Cap. Program: Contract (PO) #:
---	---

It is hereby mutually agreed that when this WORK/TASK ORDER CHANGE has been signed by the contracting parties, the following described changes shall be executed by the Contractor/Consultant without changing the terms of the Contract except as herein stipulated and agreed:

Modifications to the Work/Task Order described in the narrative below, summarized on scope table on next page and in Bid/Proposal, dated [redacted] and attached as Exhibit A.

Scope:

The additional sum, as indicated hereinbelow, constitutes full and complete consideration, payment and satisfaction to the Contractor/Consultant for the above described changes to the work order, and the Contractor/Consultant hereby agrees to make no further claims, demands, or requests of any kind whatsoever for further monies, extensions of time, other consideration for the above described changes to the work order.

THE CONTRACTOR AGREES to furnish all services, material and labor and perform all work/tasks required to complete the above described changes in accordance with requirements for similar work covered by the Work/Task Order, except as otherwise stipulated herein, for the following considerations:

Add to the Work/Task Order the sum of: [redacted] dollars (\$00.00).

Work/Task Revised Completion Date: [redacted]

Contractor/Consultant: _____

Accepted for Contractor/Consultant by: _____ Title _____ Date _____

WORK/TASK ORDER NO. 23-01 COST SUMMARY

Original Work/Task Order Amount	\$
Previous Change Order Additions <Deductions>	\$
SUB-TOTAL	\$
This Work/Task Order Change - Add <Deduct>	\$
REVISED TOTAL WORK/ TASK ORDER AMOUNT	\$

COST SUMMARY FOR CONTRACT NO.

Total of All Work/Task Orders Issued	\$
Previous Work/Task Order Change Additions/Deductions	\$
Net Prior to this Change	\$
This Change -- Add <Deduct>	<u>\$ or NO COST</u>
Revised Contract Amount	\$
Maximum Contract Amount	\$
Amount Available	\$

APPROVALS

Approved by Project Manager (Parks Dept.), **Name** Date

Approved by Director of Planning, Gordon Robertson Date

NOTE: No persons shall authorize or perform any of the above until the Work/Task Order Change has all signatures and has been distributed.

DISTRIBUTION: Auditor (Contracts), Auditor Import (Prevailing Wage), P&R Contract Administration, Parks On-Call Admin, City Engineering (PMO), DSBO, and Contractor.

EXHIBIT D



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
01/27/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Willis Towers Watson Northeast, Inc. c/o 26 Century Blvd P.O. Box 305191 Nashville, TN 372305191 USA	CONTACT NAME: Willis Towers Watson Certificate Center PHONE (A/C No. Ext): 1-877-945-7378 E-MAIL ADDRESS: certificates@willis.com		FAX (A/C, No): 1-888-467-2378	
	INSURER(S) AFFORDING COVERAGE INSURER A: XL Insurance America Inc			NAIC # 24554
INSURED L.E.R., Inc. dba Renner Sports Surfaces 775 Canosa Ct Denver, CO 80204	INSURER B: Travelers Property Casualty Company of Ame			25674
	INSURER C: Travelers Indemnity Company of America			25666
	INSURER D: Charter Oak Fire Insurance Company			25615
	INSURER E:			
	INSURER F:			

COVERAGES CERTIFICATE NUMBER: W19944676 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	Y	US00010327LI20A	05/01/2020	05/01/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY	Y	Y	TC2J-CAP-823K312A-TIL-20	09/28/2020	05/01/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	UB-8P793534-20-51-K	09/28/2020	05/01/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Workers Compensation & Employer's Liability Work Comp - Per Statute		Y	UB-8P760619-20-51-R	09/28/2020	05/01/2021	E.L. Each Accident \$1,000,000 E.L. Disease-Pol Lmt \$1,000,000 E.L. Disease-Each Emp \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Project: All Projects; On-Call Court Repair and Replacement Services 2018.

City and County of Denver, its elected and appointed officials, employees and volunteers are included as Additional Insureds on the General Liability and Automobile Liability policies, in conjunction with the liability arising out of ongoing and completed operations performed on the project specified in the construction contract for the period of time required within the contract.

CERTIFICATE HOLDER City and County of Denver Department of Public Works 201 W. Colfax Ave., #608 Denver, CO 80202	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

AGENCY CUSTOMER ID: _____

LOC #: _____



ADDITIONAL REMARKS SCHEDULE

AGENCY Willis Towers Watson Northeast, Inc.		NAMED INSURED L.E.R., Inc. dba Renner Sports Surfaces 775 Canosa Ct Denver, CO 80204	
POLICY NUMBER See Page 1		EFFECTIVE DATE: See Page 1	
CARRIER See Page 1	NAIC CODE See Page 1		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 **FORM TITLE:** Certificate of Liability Insurance

Such insurance as is afforded shall be primary and non-contributory with any other insurance in force for or which may be purchased by the Additional Insureds, where required by written contract executed prior to loss and permitted by law.

Waiver of Subrogation applies in favor of Additional Insureds with respects to General Liability, Automobile Liability and Workers Compensation coverage where required by written contract subject to policy terms and conditions and as permitted by law.

EXHIBIT E

TO: All Users of the City and County of Denver Prevailing Wage Schedules
FROM: Ryland Feno, Classification & Compensation Technician II
DATE: February 03, 2020
SUBJECT: Latest Change to Prevailing Wage Schedules

The effective date for this publication will be **Friday, January 31, 2020** and applies to the City and County of Denver for **HEAVY CONSTRUCTION PROJECTS** in accordance with the Denver Revised Municipal Code, Section 20-76(c).

General Wage Decision No. CO20200002
Superseded General Decision No. CO20190002
Modification No. 1
Publication Date: 01/31/2020
(6 pages)

Unless otherwise specified in this document, apprentices shall be permitted only if they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor (DOL). The employer and the individual apprentice must be registered in a program which has received prior approval by the DOL. Any employer who employs an apprentice and is found to be in violation of this provision shall be required to pay said apprentice the full journeyman scale.

Attachments as listed above.

***Career Service Board approved to adjust all Davis Bacon classifications under \$13.00 to comply with the city's minimum wage. The effective date is August 15, 2019. See page 7 for reference.**

Office of Human Resources
201 W. Colfax Ave. Dept. 412 | Denver, CO 80202
p: 720.913.5751 | f: 720.913.5720
www.denvergov.org/humanresources

"General Decision Number: CO20200002 01/31/2020

Superseded General Decision Number: CO20190002

State: Colorado

Construction Type: Heavy

Counties: Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, Jefferson, Larimer, Mesa, Pueblo and Weld Counties in Colorado.

HEAVY CONSTRUCTION PROJECTS

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.80 for calendar year 2020 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.80 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2020. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/03/2020
1	01/31/2020

ASBE0028-001 07/01/2019

Rates Fringes

Asbestos Workers/Insulator
(Includes application of
all insulating materials,

protective coverings,
 coatings and finishings to
 all types of mechanical
 systems).....\$ 32.98 14.73

BRCO0007-004 01/01/2019

ADAMS, ARAPAHOE, BOULDER, BROOMFIELD, DENVER, DOUGLAS,
 JEFFERSON AND WELD COUNTIES

	Rates	Fringes
BRICKLAYER.....	\$ 29.52	10.48

BRCO0007-006 05/01/2018

EL PASO AND PUEBLO COUNTIES

	Rates	Fringes
BRICKLAYER.....	\$ 25.88	10.34

ELEC0012-004 06/01/2019

PUEBLO COUNTY

	Rates	Fringes
ELECTRICIAN		
Electrical contract over \$1,000,000.....	\$ 27.50	12.50+3%
Electrical contract under \$1,000,000.....	\$ 24.85	12.50+3%

ELEC0068-001 06/01/2019

ADAMS, ARAPAHOE, BOULDER, BROOMFIELD, DENVER, DOUGLAS,
 JEFFERSON, LARIMER, AND WELD COUNTIES

	Rates	Fringes
ELECTRICIAN.....	\$ 36.50	16.18

ELEC0111-001 03/01/2019

	Rates	Fringes
Line Construction:		
Groundman.....	\$ 20.41	13.75%+\$6.20
Line Equipment Operator.....	\$ 28.98	13.75%+\$6.20

Lineman and Welder.....\$ 44.92 25.25%+\$5.75

 ELEC0113-002 06/01/2019

EL PASO COUNTY

	Rates	Fringes
ELECTRICIAN.....	\$ 32.60	16.23

 ELEC0969-002 06/01/2019

MESA COUNTY

	Rates	Fringes
ELECTRICIAN.....	\$ 25.20	10.06

 ENGI0009-001 05/01/2018

	Rates	Fringes
Power equipment operators:		
Blade: Finish.....	\$ 28.57	10.70
Blade: Rough.....	\$ 28.25	10.70
Bulldozer.....	\$ 28.25	10.70
Cranes: 50 tons and under..	\$ 28.40	10.70
Cranes: 51 to 90 tons.....	\$ 28.57	10.70
Cranes: 91 to 140 tons.....	\$ 29.55	10.70
Cranes: 141 tons and over...	\$ 31.07	10.70
Forklift.....	\$ 27.87	10.70
Mechanic.....	\$ 28.73	10.70
Oiler.....	\$ 27.49	10.70
Scraper: Single bowl under 40 cubic yards.....	\$ 28.40	10.70
Scraper: Single bowl, including pups 40 cubic yards and over and tandem bowls.....	\$ 28.57	10.70
Trackhoe.....	\$ 28.40	10.70

 * IRON0024-003 11/01/2019

	Rates	Fringes
Ironworkers:.....	\$ 30.85	22.26
Structural		

 LABO0086-001 05/01/2009

	Rates	Fringes
--	-------	---------

Laborers:

Pipelayer.....\$ 18.68 6.78

PLUM0003-005 06/01/2017

ADAMS, ARAPAHOE, BOULDER, BROOMFIELD, DENVER, DOUGLAS,
JEFFERSON, LARIMER AND WELD COUNTIES

Rates Fringes

PLUMBER.....\$ 39.08 16.44

PLUM0058-002 07/01/2018

EL PASO COUNTY

Rates Fringes

Plumbers and Pipefitters.....\$ 32.75 14.85

PLUM0058-008 07/01/2018

PUEBLO COUNTY

Rates Fringes

Plumbers and Pipefitters.....\$ 32.75 14.85

PLUM0145-002 07/01/2016

MESA COUNTY

Rates Fringes

Plumbers and Pipefitters.....\$ 35.17 11.70

PLUM0208-004 06/01/2016

ADAMS, ARAPAHOE, BOULDER, BROOMFIELD, DENVER, DOUGLAS,
JEFFERSON, LARIMER AND WELD COUNTIES

Rates Fringes

PIPEFITTER.....\$ 37.10 16.62

* SHEE0009-002 07/01/2019

Rates Fringes

Sheet metal worker.....\$ 34.62 17.95

 * TEAM0455-002 07/01/2019

	Rates	Fringes
Truck drivers:		
Pickup.....	\$ 21.91	4.42
Tandem/Semi and Water.....	\$ 22.54	4.42

 SUCO2001-006 12/20/2001

	Rates	Fringes
BOILERMAKER.....	\$ 17.60	
Carpenters:		
Form Building and Setting...	\$ 16.97	2.74
All Other Work.....	\$ 15.14	3.37
Cement Mason/Concrete Finisher...	\$ 17.31	2.85
IRONWORKER, REINFORCING.....	\$ 18.83	3.90
Laborers:		
Common.....	\$ 11.22	2.92
Flagger.....	\$ 8.91	3.80
Landscape.....	\$ 12.56	3.21
Painters:		
Brush, Roller & Spray.....	\$ 15.81	3.26
Power equipment operators:		
Backhoe.....	\$ 16.36	2.48
Front End Loader.....	\$ 17.24	3.23
Skid Loader.....	\$ 15.37	4.41

 WELDERS - Receive rate prescribed for craft performing
 operation to which welding is incidental.

**Office of Human Resources
Supplemental Rates
(Specific to the Denver Projects)
(Supp #74, Revised: 08-21-2019)**

Classification		Base	Fringe
Ironworker	Ornamental	\$24.80	\$10.03
Laborer	Group 1	\$18.18	\$8.27
	Group 2	\$21.59	\$8.61
Laborer (Common)		\$13.00	\$2.92
Laborer (Flagger)		\$13.00	\$3.80
Laborer (Landscape)		\$13.00	\$3.21
Laborer (Janitor)	Janitor/Yardmen	\$17.68	\$8.22
Laborer (Asbestos)	Removal of Asbestos	\$21.03	\$8.55
Laborer (Tunnel)	Group 1	\$18.53	\$8.30
	Group 2	\$18.63	\$8.31
	Group 3	\$19.73	\$8.42
	Group 4	\$21.59	\$8.61
	Group 5	\$19.68	\$8.42
Line Construction	Lineman, Gas Fitter/Welder	\$36.88	\$9.55
	Line Eq Operator/Line Truck Crew	\$25.74	\$8.09
Millwright		\$28.00	\$10.00
Power Equipment Operator	Group 1	\$22.97	\$10.60
	Group 2	\$23.32	\$10.63
	Group 3	\$23.67	\$10.67
	Group 4	\$23.82	\$10.68
	Group 5	\$23.97	\$10.70
	Group 6	\$24.12	\$10.71
	Group 7	\$24.88	\$10.79
Power Equipment Operator (Tunnels above and below ground, shafts and raises):	Group 1	\$25.12	\$10.81
	Group 2	\$25.47	\$10.85
	Group 3	\$25.57	\$10.86
	Group 4	\$25.82	\$10.88
	Group 5	\$25.97	\$10.90
	Group 6	\$26.12	\$10.91
	Group 7	\$26.37	\$10.94
Truck Driver	Group 1	\$18.42	\$10.00
	Group 2	\$19.14	\$10.07
	Group 3	\$19.48	\$10.11
	Group 4	\$20.01	\$10.16
	Group 5	\$20.66	\$10.23
	Group 6	\$21.46	\$10.31

Go to <http://www.denvergov.org/Auditor> to view the Prevailing Wage Clarification Document for a list of complete classifications used.

Bond No. K4022502A

EXHIBIT F

The liability of the Surety under this bond shall not extend beyond one year from the final completion and acceptance of the work by the owner/obligee and in no way shall the Surety be liable under any extended warranty provided by Renner Sports Surfaces or the named Principal on this bond.

CITY AND COUNTY OF DENVER
DEPARTMENT OF PARKS & RECREATION



PERFORMANCE AND PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned and existing under and by virtue of the laws of the State of CO <sup>L.E.R., Inc. dba
Renner Sports
Surfaces</sup>, hereafter referred to as the "Contractor", and Federal Insurance Company, a corporation organized and existing under and by virtue of the laws of the State of IN, and authorized to transact business in the State of Colorado, as Surety, are held and firmly bound unto the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, hereinafter referred to as the "City", in the penal sum of Two Million Dollars (\$2,000,000.00), lawful money of the United States of America, for the payment of which sum, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents;

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

WHEREAS, the above bounden Contractor has on the _____ day of _____, 2020, entered into a written contract with the aforesaid City for furnishing all labor and tools, supplies, equipment, superintendence, materials and everything necessary for and required to do, perform and complete the work and obligations of **CONTRACT NO. 202057057**, [ON-CALL COURT REPAIR SERVICES], Denver, Colorado, and has bound itself to complete the project within the time or times specified or pay liquidated damages, all as designated, defined and described in the said Contract and Conditions thereof, and in accordance with the Plans and Technical Specifications therefore, a copy of said Contract being made a part hereof;

NOW, THEREFORE, if the said Contractor shall and will, in all particulars well and truly and faithfully observe, perform and abide by each and every Covenant, Condition and part of said Contract, and the Conditions, Technical Specifications, Plans, and other Contract Documents thereto attached, or by reference made a part thereof and any alterations in and additions thereto, according to the true intent and meaning in such case, then this obligation shall be and become null and void; otherwise, it shall remain in full force and effect;

PROVIDED FURTHER, that if the said Contractor shall satisfy all claims and demands incurred by the Contractor in the performance of said Contract, and shall fully indemnify and save harmless the City from all damages, claims, demands, expense and charge of every kind (including claims of patent infringement) arising from any act, omission, or neglect of said Contractor, its agents, or employees with relation to said work; and shall fully reimburse and repay to the City all costs, damages, and expenses which it may incur in making good any default based upon the failure of the Contractor to fulfill its obligation to furnish maintenance, repairs or replacements for the full guarantee period provided in the Contract Documents, then this obligation shall be null and void; otherwise it shall remain in full force and effect;

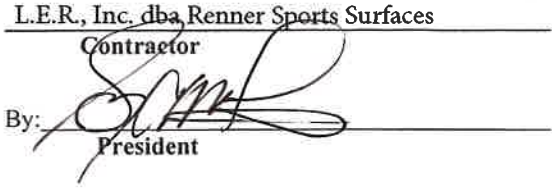
PROVIDED FURTHER, that if said Contractor shall at all times promptly make payments of all amounts lawfully due to all persons supplying or furnishing it or its subcontractors with labor and materials, rental machinery, tools or equipment used or performed in the prosecution of work provided for in the above Contract and that if the Contractor will indemnify and save harmless the City for the extent of any and all payments in connection with the carrying out of such Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect;

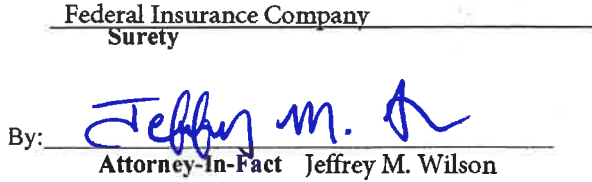
PROVIDED FURTHER, that if the said Contractor fails to duly pay for any labor, materials, team hire, sustenance, provisions, provender, gasoline, lubricating oils, fuel oils, grease, coal, or any other supplies or materials used or consumed by said Contractor or its subcontractors in performance of the work contracted to be done, or fails to pay any person who supplies rental machinery, tools or equipment, all amounts due as the result of the use of such machinery, tools or equipment in the prosecution of the work, the Surety will pay the same in any amount not exceeding the amount of this obligation, together with interest as provided by law;

PROVIDED FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract, or to contracts with others in connection with this project, or the work to be performed thereunder, or the Technical Specifications and Plans accompanying the same, shall in any way affect its obligation on this bond and it does hereby waive notice of any change, extension of time, alteration or addition to the terms of the Contract, or contracts, or to the work, or to the Technical Specifications and Plans.

IN WITNESS WHEREOF, said Contractor and said Surety have executed these presents as of this _____ day of _____, 2020.

Attest: 
Secretary

L.E.R., Inc. dba Renner Sports Surfaces
Contractor
By: 
President

Federal Insurance Company
Surety
By: 
Attorney-in-Fact Jeffrey M. Wilson

(Accompany this bond with Attorney-in-Fact's authority from the Surety to execute bond, certified to include the date of the bond).

APPROVED AS TO FORM:
Attorney for the City and County of Denver
signature will be provided at a
By: *later date*
Assistant City Attorney

APPROVED FOR THE CITY AND COUNTY OF DENVER
signature will be provided at a
By: *later date*
Michael B. Hancock
MAYOR
signature will be provided at a
By: *later date*
ALLEGRA "HAPPY" HAYNES
MANAGER OF THE DENVER DEPT.
OF PARKS & RECREATION

CHUBB

Power of Attorney

Federal Insurance Company | Vigilant Insurance Company | Pacific Indemnity Company

Know All by These Presents, That FEDERAL INSURANCE COMPANY, an Indiana corporation, VIGILANT INSURANCE COMPANY, a New York corporation, and PACIFIC INDEMNITY COMPANY, a Wisconsin corporation, do each hereby constitute and appoint Anna Childress, Mark W. Edwards II, Alisa B. Ferris, Robert R. Freel, Richard H. Mitchell, William M. Smith and Jeffrey M. Wilson of Birmingham, Alabama; Robert Read Davis of Atlanta, Georgia; Richard E. Daniels of Pensacola, Florida and Robert M. Verdin of Metairie, Louisiana -----

each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY have each executed and attested these presents and affixed their corporate seals on this 7th day of May, 2019.

Dawn M. Chloros

Dawn M. Chloros, Assistant Secretary

Stephen M. Haney

Stephen M. Haney, Vice President



STATE OF NEW JERSEY

County of Hunterdon

ss.

On this 7th day of May, 2019, before me, a Notary Public of New Jersey, personally came Dawn M. Chloros, to me known to be Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY, the companies which executed the foregoing Power of Attorney, and the said Dawn M. Chloros, being by me duly sworn, did depose and say that she is Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY and knows the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of said Companies; and that she signed said Power of Attorney as Assistant Secretary of said Companies by like authority; and that she is acquainted with Stephen M. Haney, and knows him to be Vice President of said Companies; and that the signature of Stephen M. Haney, subscribed to said Power of Attorney is in the genuine handwriting of Stephen M. Haney, and was thereto subscribed by authority of said Companies and in deponent's presence.

Notarial Seal



ROSE CURTIS
NOTARY PUBLIC OF NEW JERSEY
No. 5D072400
Commission Expires November 22, 2022

Rose Curtis
Notary Public

CERTIFICATION

Resolutions adopted by the Boards of Directors of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY on August 30, 2016:

"RESOLVED, that the following authorizations relate to the execution, for and on behalf of the Company, of bonds, undertakings, recognizances, contracts and other written commitments of the Company entered into in the ordinary course of business (each a "Written Commitment"):

- (1) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise.
- (2) Each duly appointed attorney-in-fact of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise, to the extent that such action is authorized by the grant of powers provided for in such person's written appointment as such attorney-in-fact.
- (3) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to appoint in writing any person the attorney-in-fact of the Company with full power and authority to execute, for and on behalf of the Company, under the seal of the Company or otherwise, such Written Commitments of the Company as may be specified in such written appointment, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (4) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to delegate in writing to any other officer of the Company the authority to execute, for and on behalf of the Company, under the Company's seal or otherwise, such Written Commitments of the Company as are specified in such written delegation, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (5) The signature of any officer or other person executing any Written Commitment or appointment or delegation pursuant to this Resolution, and the seal of the Company, may be affixed by facsimile on such Written Commitment or written appointment or delegation.

FURTHER RESOLVED, that the foregoing Resolution shall not be deemed to be an exclusive statement of the powers and authority of officers, employees and other persons to act for and on behalf of the Company, and such Resolution shall not limit or otherwise affect the exercise of any such power or authority otherwise validly granted or vested."

I, Dawn M. Chloros, Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY (the "Companies") do hereby certify that

- (i) the foregoing Resolutions adopted by the Board of Directors of the Companies are true, correct and in full force and effect,
- (ii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Whitehouse Station, NJ, this



Dawn M. Chloros

Dawn M. Chloros, Assistant Secretary

IN THE EVENT YOU WISH TO VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT:
Telephone (908) 903-3493 Fax (908) 903-3656 e-mail: surety@chubb.com



Insurance & Bonds

February 09, 2021

City & County of Denver
101 W Colfax Ave., Suite 900
Denver, CO 80202

**Re: L.E.R., Inc. dba Renner Sports Surfaces
Contractor Prequalification Information**

To Whom This May Concern:

Please be advised that Federal Insurance Company, a member of the Chubb Group of Insurance Companies, has the privilege of bonding L.E.R., Inc. dba Renner Sports Surfaces. They are licensed and authorized to do business in all states. They have a Treasury Listing of \$386,053,000 and are rated A++ by A. M. Best with a Financial Size XV.

Federal Insurance Company has extended surety credit to L.E.R., Inc. dba Renner Sports Surfaces in an aggregate amount of \$250,000,000, with a single job limit of \$30,000,000. However, these numbers do not represent the largest amount that the surety would consider. L.E.R., Inc. dba Renner Sports Surfaces is completing all current projects in a satisfactory manner.

It is our understanding that L.E.R., Inc. dba Renner Sports Surfaces has or will be submitting a proposal to you. We anticipate no problem in providing, should they be awarded, a Performance and Payment in the full amount of the proposal. As always, the surety reserves the right to perform normal underwriting at the time of any bond request, including without limitation to, prior review and approval of relevant contract terms and conditions, bond forms, appropriate contract funding and any other underwriting considerations at the time of the request. Our consideration and issuance of bonds is a matter solely between L.E.R., Inc. dba Renner Sports Surfaces and ourselves, and we assume no liability to third parties or to you by the issuance of this letter.

We appreciate having the opportunity to share with you our experience with this fine company and urge you to give them every consideration. Please contact me should you have any questions regarding this valued customer.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey M. Wilson".

Jeffrey M. Wilson
Senior Vice President – Surety
McGriff Insurance Services, Inc.