

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made and entered into, effective as of the date set forth in this Agreement (“**Effective Date**”), by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “**City**”) and **SOFTBALL IN DENVER, INC.**, a Colorado corporation, with an address of 1360 S. Wadsworth, #107, Lakewood, Colorado 80232 (the “**Contractor**”), which may be individually referred to herein as a “**Party**” or jointly referred to as the “**Parties**”.

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

1. WORK TO BE PERFORMED:

A. Sports Officials and Referees Services: The Contractor shall diligently and professionally perform the sports officials and referees services and produce all the deliverables as described in the Scope of Work attached as **Exhibit A** and the Schedule and Rates attached as **Exhibit B**, which are both incorporated herein by this reference. The Contractor shall faithfully perform the work required under this Agreement in accordance with the standards of care, skill, training, diligence and judgment provided by highly competent professionals who perform work of a similar nature to the work described in this Agreement. Any professional services specified under this Agreement which requires the employment of licensed or registered personnel shall be performed by licensed or registered personnel. Contractor acknowledges and agrees that the services performed under this Agreement are for the benefit and enjoyment of sports participants as well as park patrons and the general public. Any breach of or failure to abide by Park Rules and Regulations shall be deemed a material breach of this Agreement, as set forth in Section 4 of this Agreement.

B. Oversight: The Contractor shall conduct the work under the general direction of and in coordination with the Executive Director of the Denver Department of Parks and Recreation or other designated supervisory personnel (the “**Executive Director**”) and the Department employee(s) assigned to manage this work (the “**Department**”) and make every reasonable effort to fully coordinate all services with any City agency or any person or firm under contract with the City doing work which affects the Contractor’s work. All records, data, specifications and documentation prepared by the Contractor under this Agreement, when delivered to and accepted by the Executive Director, shall become the property of the City. The

Contractor agrees to allow the City to review any of the procedures used by it in doing the work under this Agreement and to make available for inspection all notes and other documents used in performing the work.

2. **TERM:** The term of the Agreement commences on January 1, 2023 and expires on January 1, 2025 unless this Agreement is terminated earlier as provided in this Agreement or is extended as provided in a separate amendment to this Agreement (“**Term**”).

3. **COMPENSATION AND PAYMENT:**

A. **Maximum Contract Amount:** The Maximum Contract Amount to be paid by the City to the Contractor shall in no event exceed the sum of **FIVE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS AND ZERO CENTS (\$575,000)**, unless this Maximum Contract Amount is increased by a duly authorized and written amendment to this Agreement executed by the Parties in the same manner as this Agreement.

B. **Payments:** Monthly payments shall be made to the Contractor in accordance with the progress of the work as set out in the Scope of Work in **Exhibit A** and the Schedule and Rates specified in **Exhibit B**. Monthly invoices submitted by the Contractor to the Department must fully document services rendered including, but not limited to, the dates, number and types of games officiated, and the number of sports officials or referees provided. The invoices must be approved by the Executive Director in writing in order to be eligible for compensation under this Agreement. All invoicing and payments are subject to the City’s Prompt Payment Ordinance, §§ 20-107 through 20-118, D.R.M.C.

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 Agreement, encumbered for the purpose of the Agreement and paid into the Treasury of the City. The Contractor acknowledges that (i) the City does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

D. **Amendment:** The Contractor acknowledges that the City is not obligated to execute an amendment to this Agreement for any further phase of work by the Contractor other than the work described in the Scope of Work in **Exhibit A**, and that any further phase of work performed by Contractor beyond that specifically described or without an amendment to

this Agreement is performed at Contractor's risk and without authorization under this Agreement.

4. TERMINATION:

A. Termination for Convenience of the City: The Executive Director, upon giving twenty (20) calendar days written notice (unless a longer period is given), may terminate this Agreement, in whole or part, when it is in the best interest of the City as determined by the Executive Director. Any unfinished portion of the work shall be faithfully and timely performed by the Contractor to the extent directed by the Executive Director (in the Executive Director's discretion), and compensation for all such authorized Work performed shall be paid to the Contractor in accordance with this Agreement.

B. Termination for Cause: The City and the Contractor shall each have the right to terminate this Agreement, with cause, upon written notice to the other party. A termination shall be deemed "with cause" when it is based on a material breach of the covenants or a substantial default under this Agreement which has not been corrected or resolved to the satisfaction of the non-breaching or non-defaulting party within a reasonable time specified by the non-breaching or non-defaulting party in a written notice to the breaching or defaulting party. In addition, the City shall have the right to terminate this Agreement immediately for cause if the Contractor or any of its officers or employees are convicted, plead *nolo contendere*, enter into a formal agreement 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. Nothing herein shall be construed as giving the Contractor the right to continue performing work under this Agreement beyond the time when the Executive Director notifies the Contractor that the Contractor's work has become unsatisfactory to the Executive Director and the Executive Director is terminating the Agreement, except to the extent that the Executive Director specifies certain work to be completed prior to terminating this Agreement.

C. Compensation: If this Agreement is terminated by the City for cause, the Contractor shall be compensated for all work satisfactorily completed and delivered to the City, and such compensation shall be limited to: (1) the sum of the amounts contained in invoices already submitted and approved by the Executive Director and (2) the cost of any work which the Executive Director authorizes in writing which the Executive Director determines is needed

to accomplish an orderly termination of the work. If this Agreement is terminated by the City without cause or by the Contractor with cause, the Contractor shall also be compensated for any reasonable costs the Contractor has actually incurred in performing authorized work hereunder prior to the date on which all work is terminated. Upon termination of this Agreement by the City, the Contractor shall have no claim of any kind whatsoever against the City by reason of such termination or by reason of any act incidental thereto, except for compensation for work satisfactorily performed as described herein.

5. RIGHTS AND REMEDIES NOT WAIVED: In no event shall any action or inaction, including any payments to the Contractor, by the City constitute or be construed to be a waiver by the City of any breach of covenant or default which may then exist on the part of the Contractor, and the City's action or inaction when any such breach or default exists shall not impair or prejudice any right or remedy available to the City with respect to such breach or default. No assent, expressed or implied, to any breach or default shall be deemed or taken to be a waiver of any other breach or default.

6. STATUS OF CONTRACTOR: The Contractor is an independent contractor retained on a contractual basis to perform professional or technical services for limited periods of time. Neither the Contractor nor the Contractor's employees or officers are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever. Without limiting the foregoing, the Contractor and the Contractor's employees and officers: 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 Agreement. Furthermore, it is understood and agreed that nothing in this Agreement is intended, or shall be construed, to constitute a joint venture between the Parties.

7. INSURANCE:

A. General Conditions: The Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. The Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for such time period specified under this Agreement. 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 are canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the notices section of the Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. 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 Agreement 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 Agreement.

B. Proof of Insurance: The Contractor shall provide a copy of this Agreement to its insurance agent or broker. The Contractor may not commence services or work relating to the Agreement prior to placement of coverage required under this Agreement. The Contractor certifies that the Certificate of Insurance attached as **Exhibit C**, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. 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 Agreement shall not act as a waiver of Contractor’s breach of this Agreement or of any of the City’s rights or remedies under this Agreement. 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, Auto Liability and Excess Liability (if required), the Contractor and subcontractor’s insurer(s) shall name 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 Agreement, the Contractor's insurer shall waive subrogation rights against the City.

E. Subcontractors and Subconsultants: The Contractor shall confirm and document that all subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) procure and maintain coverage as approved by the Contractor and appropriate to their respective primary business risks considering the nature and scope of services provided.

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.

G. Commercial General Liability: The Contractor shall maintain a Commercial General Liability insurance policy with minimum limits of \$1,000,000 for each bodily injury and property damage occurrence, \$2,000,000 products and completed operations aggregate (if applicable), and \$2,000,000 policy aggregate.

H. Automobile Liability: Contractor shall ensure personal automobile insurance is in force with current state minimum limits for all vehicles used in performing services under this Agreement. Contractor represents, as material representations upon which the City is relying, that Contractor does not own any fleet vehicles and that in performing Services under the Agreement, Contractor's owners, officers, directors, and employees use their personal vehicles. Contractor shall ensure that any person operating a motor vehicle in performing Services under the Agreement shall keep in full force Personal Auto Liability coverage with minimum required limits.

8. DEFENSE & INDEMNIFICATION:

A. The Contractor hereby agrees to defend, indemnify, reimburse and hold harmless 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 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 the 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 the 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 Agreement 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 Agreement.

9. PERSONAL PROPERTY: The City assumes no responsibility whatsoever for any personal property provided by the Contractor for the performance of this Agreement. City may provide certain City-owned personal property to the Contractor for the purposes of performing the Agreement. Contractor agrees he or she is solely responsible for the care and protection of the City-owned personal property while it is in the Contractor's possession and control. Contractor further agrees that City is not responsible for or obligated to defend, protect or indemnify the Contractor for any loss or damage caused by the Contractor. The City may, upon notice, hold Contractor responsible for the loss or damage of City-owned personal property in the Contractor's possession or control.

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 Immunity Act, § 24-10-101, *et seq.*, C.R.S.

11. PERMITS, LICENSES, TAXES, CHARGES AND PENALTIES: The Contractor agrees to pay promptly all taxes, excises, license fees, and permit fees of whatever nature applicable to its operations or activities under this Agreement, and to take out and keep current all required licenses or permits (federal, state, or local) required for the conduct of its business hereunder, and further agrees not to permit any of said taxes, excises or license or permit fees to become delinquent. The Contractor further agrees to pay promptly when due all bills, debts and obligations incurred by it in connection with its operations and the performance of this Agreement and not to permit the same to be come delinquent. The City shall not be liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts which the City may be required to pay under § 20-107 to § 20-115, D.R.M.C. The City is a tax exempt entity.

12. EXAMINATION OF RECORDS: 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 City's election in paper or electronic form, any pertinent books, documents, papers and records related to the Contractor's performance pursuant to this agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. The Contractor shall cooperate with City representatives and City representatives shall be granted access to the forgoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, 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.

13. ASSIGNMENT & SUBCONTRACT: Unless otherwise expressly provided in this Agreement, the Contractor covenants and agrees that the Contractor will not assign, transfer or subcontract the Contractor's rights and obligations under this Agreement without obtaining the prior written consent of the Executive Director. Such consent may be granted or denied at the sole and absolute discretion of the Executive Director. Any assignment or subcontract approved by the Executive Director may require new or extended insurance being provided by the Contractor or the Contractor's assignee or subcontractor, as specified in the Executive Director's written consent. Any attempt by the Contractor to assign, transfer or subcontract the Contractor's rights and obligations under this Agreement without such prior written consent of the Executive Director is ineffective and void, and in no way binding on the City. In such event, the Executive Director may elect, at the discretion of said Executive Director, to terminate this Agreement and all rights of the Contractor under this Agreement and/or to seek such other remedies available to the City under law.

14. NO THIRD PARTY BENEFICIARY: Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties. Nothing contained in this Agreement shall give or allow any such claim or right of action to or by any third person or entity. Any person other than the City or the Contractor receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

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

16. INTEGRATION & AMENDMENTS: This Agreement, including the exhibits and attachments hereto (each of which is specifically incorporated herein), is the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion, or other modification hereto shall have any force or effect unless embodied in this Agreement in writing. No subsequent novation, renewal, addition, deletion, or other modification shall have any force of effect unless embodied in a written amendment to this Agreement properly executed by the Parties. Any oral representation by any officer or employee of the City

at variance with terms and conditions of this Agreement or any written amendment to this Agreement shall not have any force or effect nor bind the City.

17. SEVERABILITY: If any provision of this Agreement or any portion thereof is held by a court of competent jurisdiction to be invalid, illegal, unenforceable, or in conflict with any law, except for the provisions of the Agreement requiring prior appropriation of funds and limiting the total amount payable by the City, the validity of the remaining portions or provisions shall not be affected, if the intent of the Parties can be fulfilled.

18. CONFLICT OF INTEREST:

A. No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement; and the Contractor shall not hire, or contract for services with, any employee or officer of the City 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 which would result in a conflict of interest under this Agreement. The Contractor represents that the Contractor 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, shall determine the existence of a conflict of interest and may terminate this Agreement in the event such a conflict exists after the City has given the Contractor written notice describing the conflict.

19. NOTICES: All written notices required by the terms of this Agreement shall be made by hand delivery, by overnight courier service, or by certified mail, return receipt requested, with such notices by the Contractor being made to:

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

With a copy to: Denver City Attorney's Office
1437 Bannock Street, Room 353
Denver, Colorado 80202

And by the City being made to the Contractor at the address set forth on the first page of this Agreement. All notices are effective upon delivery by personal delivery or overnight courier service or upon receipt by certified mail, return receipt requested.

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

21. GOVERNING LAW; COMPLIANCE WITH LAW; VENUE:

A. Governing Law: This Agreement shall 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 hereby expressly incorporated into this Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments and supplements to the same.

B. Compliance with Law: The Contractor shall perform or cause to be performed all services and work under this Agreement in full compliance with all applicable laws, codes, rules, regulations and orders of the United States of America and the State of Colorado, as well as the Charter, ordinances, rules, regulations, and Executive Orders of the City and County of Denver.

C. Venue: Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver.

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

23. PAYMENT OF MINIMUM WAGES: 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 Agreement, Contractor expressly acknowledges that Contractor is aware of the requirements of the City's Minimum Wage Ordinance and that any failure by Contractor, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. sections shall result in the penalties and other remedies authorized therein.

24. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS: The Contractor shall cooperate and comply with the provisions of Executive Order 94 and Attachment A 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 and from participating in City operations.

25. EMPLOYEES & AGENTS: The Contractor shall not hire, retain, or use the services of any employee, agent, or subcontractor with a felony criminal conviction or convictions or who has been charged with a felony crime involving physical violence, sexual acts, or illegal drugs, including any criminal attempts, solicitations, trafficking, or conspiracies relating to the same, and any crime or crimes, whether a felony or a misdemeanor, that involve children. A "conviction" shall mean a plea of guilty, a plea of *nolo contendere*, a finding of guilt, a default judgment, or a deferred judgment and sentence. The Contractor shall use every reasonable means available to confirm that its employees, agents, or subcontractors have not been convicted or charged as set forth above and shall immediately and fully inform the City if the Contractor becomes aware of any such conviction or charge. If such a criminal conviction exists and the Contractor believes there are extenuating circumstances that should be considered, the Contractor may request, in writing, that the Executive Director waive the restrictions of this paragraph in light of policies set forth in C.R.S. Section 24-5-101, as amended, pertaining to the effect of criminal convictions on employment rights. Any waiver shall be in the absolute discretion of the Executive Director. Failure to comply with this paragraph or, at the City's option, failure to promptly fire an employee, agent, or subcontractor who has been so convicted or charged shall be cause for the City to immediately terminate this Agreement. The Contractor shall indemnify, hold harmless, and defend the City against any claims, actions, suits, damages, injuries, costs, penalties, judgments, awards, settlements, or other liability or expenses arising from or related to Contractor's failure to comply with this paragraph.

26. PROPRIETARY OR CONFIDENTIAL INFORMATION; OPEN RECORDS:

A. City Information: The Contractor acknowledges and accepts that, in performance of all work under the terms of this Agreement, the Contractor may have access to proprietary data or confidential information that may be owned or controlled by the City, and that the disclosure of such proprietary data or confidential information may be damaging to the City or third parties. The Contractor agrees that all proprietary data or confidential information provided or otherwise disclosed by the City to the Contractor shall be held in confidence and used only in the performance of the Contractor's obligations under this Agreement. The Contractor shall exercise the same standard of care to protect such proprietary data and confidential information as a reasonably prudent contractor would to protect the Contractor's own proprietary data or confidential information. Proprietary data and confidential information shall include, but not limited to, any materials or information which is designated or marked "Proprietary" or "Confidential" by the City or its agents, provided to or made available to the Contractor by the City subject to a confidentiality agreement or notice of confidentiality, or used by the City under a licensing agreement or other authorization by the owner of the materials or information. Proprietary data and confidential information may be in hardcopy, printed, digital or electronic format.

(1) Use of Proprietary Data or Confidential Information: Except as expressly provided by the terms of this Agreement and subject to written permission of the Executive Director, the Contractor agrees that the Contractor shall not disclose, disseminate, transmit, license, sublicense, assign, lease, release, publish, post on the internet, transfer, sell, permit access to, distribute, allow interactive rights to, or otherwise make available the proprietary data or confidential information, or any part thereof, or any repackaged form of the proprietary data or confidential information, or any part thereof, to any other person, party or entity in any form or media for any purpose other than performing the Contractor's obligations under this Agreement. The Contractor further acknowledges that by providing this proprietary data or confidential information, the City is not granting to the Contractor any right or license to use such data or information except as provided in this Agreement. The Contractor agrees that any ideas, concepts, knowledge, computer programs, or data processing techniques developed by the Contractor or provided by the City in connection with this Agreement, including any

proprietary data or any confidential information, shall be deemed to be the sole property of the City and all rights, including copyright, shall be reserved to the City. The Contractor agrees, with respect to the proprietary data and confidential information, that: (1) the Contractor shall not copy, recreate, reverse, engineer, or decompile such data, in whole or in part, unless authorized in writing by the Executive Director; (2) the Contractor shall retain no copies, recreations, compilations, or decompilations, in whole or in part, of such data or information; (3) the Contractor shall, upon the expiration or earlier termination of the Agreement, destroy (and, in writing, certify destruction), or return all such data or information or work products incorporating such data or information to the City.

(2) Employees and Subcontractors: The Contractor shall inform the Contractor's employees and officers of the obligations under this Agreement, and all requirements and obligations of the Contractor under this Agreement shall survive the expiration or earlier termination of this Agreement. The Contractor shall not disclose proprietary data or confidential information to subcontractors unless such subcontractors are bound by non-disclosure and confidentiality provisions at least as strict as those contained in this Agreement.

(3) Disclaimer: Notwithstanding any other provision of this Agreement, the City is furnishing proprietary data and confidential information on an "as is" basis, without any support whatsoever, and without representation, warranty or guarantee, including but not in any manner limited to, fitness, merchantability or the accuracy and completeness of the proprietary data or confidential information. The Contractor is hereby advised to verify the Contractor's work performed in reliance upon the proprietary data or confidential information. The City assumes no liability for any errors or omissions herein. Specifically, the City is not responsible for any costs including, but not limited to, those incurred as a result of lost revenues, loss of use of data, the costs of recovering such programs or data, the cost of any substitute program, claims by third parties, or for similar costs. If discrepancies are found, the Contractor agrees to contact the City immediately.

B. Contractor's Information: The Parties understand that all the material provided or produced under this Agreement may be subject to the Colorado Open Records Act., § 24-72-201, *et seq.*, C.R.S., and that in the event of a request to the City for disclosure of such information, the City shall advise the Contractor of such request in order to give the Contractor the opportunity to object to the disclosure of any of the Contractor's proprietary or confidential

material. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and the Contractor agrees to intervene in such lawsuit to protect and assert the Contractor's claims of privilege and against disclosure of such material or waive the same. The Contractor further agrees to defend, indemnify, and save and hold harmless the City, its officers, agents, and employees, from any claim, damages, expense, loss, or costs arising out of the Contractor's intervention to protect and assert the Contractor's claim of privilege against disclosure under this subsection including, but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs, and damages that the City may incur directly or may be ordered to pay by such court.

27. ADVERTISING AND PUBLIC DISCLOSURE: The Contractor shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of the Contractor's advertising or public relations materials without first obtaining the written approval of the Executive Director. Any oral presentation or written materials related to services performed under the Agreement will be limited to services that have been accepted by the City. The Contractor shall notify the Executive Director in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

28. SOFTWARE PIRACY PROHIBITION: The Contractor shall perform no work under this Agreement that results in or from the acquisition, operation, maintenance, or use of computer software in violation of United States copyright laws or applicable licensing restrictions. The Contractor hereby covenants and agrees that, for the term of this Agreement and any extensions, the Contractor has in place appropriate systems and controls to prevent such violations of federal law and licensing restrictions. If the City determines that the Contractor is in violation of this provision, the City may exercise any remedy available at law or equity or under this Agreement, including immediate termination of the Agreement and any remedy consistent with United States copyright laws or applicable licensing restrictions. The indemnification provision of this Agreement shall be applicable to any such violations by the Contractor.

29. NO EMPLOYMENT OF A WORKER WITHOUT AUTHORIZATION TO PERFORM WORK UNDER THE AGREEMENT:

A. This Agreement 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 Agreement, it does not knowingly employ or contract with a worker without authorization who will perform work under this Agreement, nor will it knowingly employ or contract with a worker without authorization to perform work under this Agreement in the future.

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

(3) 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 a worker without authorization to perform work under this Agreement.

(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 the Agreement, 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 Agreement knowingly employs or contracts with a worker without authorization, 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 worker without authorization, 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 a worker without authorization.

(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.

C. 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 Agreement for a breach of the Agreement. If this Agreement 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.

30. LEGAL AUTHORITY: The Contractor assures and guarantees that the Contractor possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement. The person or persons signing and executing this Agreement on behalf of the Contractor, do hereby warrant and guarantee that he/she or they have been fully authorized by the Contractor to execute this Agreement on behalf of the Contractor and to validly and legally bind the Contractor to all the terms, performances and provisions herein set forth. The City shall have the right, at its option, to either temporarily suspend or permanently terminate this Agreement, if there is a dispute as to the legal authority of either the Contractor or the person(s) signing the Agreement to enter into this Agreement.

31. NO CONSTRUCTION AGAINST DRAFTING PARTY: The Parties acknowledge that each of them and their respective counsel have had the opportunity to review this Agreement and that this Agreement shall not be construed against any party merely because this Agreement or any of its provisions have been prepared by a particular party.

32. ORDER OF PRECEDENCE: In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement shall control.

33. SURVIVAL OF CERTAIN PROVISIONS: The terms and conditions of this Agreement, together with the exhibits and attachments hereto, that, by reasonable implication, contemplate continued performance, rights, or compliance beyond the expiration or termination of this Agreement, shall survive the Agreement and shall continue to be enforceable. Without limiting the generality of the foregoing, the Contractor's obligations to provide insurance and to indemnify the City shall 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. FORCE MAJEURE: Neither Party shall be liable for delay or failure to perform hereunder, despite best efforts to perform, if such delay or failure is the result of force majeure, and any time limit expressed in this Agreement shall be extended for the period of any delay resulting from any force majeure. Timely notices of the occurrence and the end of such delay shall be provided by the Party asserting force majeure to the other Party. "Force majeure" shall mean causes beyond the reasonable control of a Party such as, but not limited to, epidemic;

pandemic; adverse weather conditions; uncontrollable, unpredictable, or unforeseen natural forces; public emergency or public order resulting in work stoppage; disasters or terrorist acts; strikes; work stoppages; unavailability of or delay in receiving labor or materials; faults by contractors, subcontractors, utility companies or third parties; fire or other casualty; or action of government authorities.

35. INUREMENT: The rights and obligations of the Parties herein set forth shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns, to the extent that such assignments are authorized under this Agreement.

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

37. COUNTERPARTS OF THIS AGREEMENT: This Agreement may be executed in counterparts, each of which shall be deemed to be an original of this Agreement.

38. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: The Contractor consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, 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 the Agreement 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 the Agreement 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.

[SIGNATURE PAGES FOLLOW]

[REMAINDER INTENTIONALLY LEFT BLANK]

Contract Control Number: PARKS-202265380
Contractor Name: SOFTBALL IN DENVER, INC.

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-202265380
SOFTBALL IN DENVER, INC.

By:  _____
DF59DD2FD477473...

Name: Ernest Perez _____
(please print)

Title: President _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

Exhibit A – Scope of Work

A. PROJECT BACKGROUND:

The City and County of Denver Parks and Recreation Department (“DPR”) provides sports programs for both adults and youths, in the spring, summer, fall, and winter seasons. The venues for these leagues include approximately twenty (20) recreation centers and thirty (30) sports fields located through the City and County of Denver. The Contractor shall provide sports officials for the following leagues:

ADULT SOFTBALL: ALL DIVISIONS

All sports officials assigned to work DPR games are expected to be well-versed in United States Specialty Sports Association (“USSSA”), Colorado High School Activities Association (“CHSAA”), Amateur Softball Association (“ASA”), National Sports Association (“NSA”), National Federation of State High School Associations (“NFHS”) rules, and in the Denver “House Rules” detailed on www.denvercitywidesports.org. Denver “House Rules” supersede all other rules.

B. ESTIMATED NUMBER OF GAMES:

The number of games listed are the City’s best estimate and do not obligate DPR to order or accept more than the City’s actual requirements during the period designated, as determined by actual needs and availability of appropriated funds. The Contractor expressly agrees to supply the City with its complete actual requirement of the services specified in this Agreement for the designated period.

2023	WINTER	SPRING	SUMMER	FALL	TOTAL
ADULT SOFTBALL	0	1750	3100	1750	6600

2024 & 2025	WINTER	SPRING	SUMMER	FALL	TOTAL
ADULT SOFTBALL	0	1750	3100	1750	6600

C. SPECIFIC REQUIREMENTS:

1. The Contractor agrees to supply qualified sports officials/umpires in the officiating of **adult softball**, which shall be conducted in accordance with the rules provided by the Citywide Sports Office. At the beginning of any league, the City shall designate the number of officials required to work each game of the league, and the Contractor shall provide these officials at game times and locations designated by the City.
2. The City shall pay the Contractor for the services of game officials/umpires at the rates quoted in **Exhibit B**. Weekly invoices must include the following information:
 - a. Total games worked per day (listed by field)
 - b. Number of officials working each game
 - c. Applicable contract pricing
 - d. Total number of “show up” charges by date
 - e. Contract number (assigned at the time of award)

3. Official Game Cancellation: The City shall not be billed for officiating services for any games cancelled by the City prior to one (1) hour before the scheduled game time. The Contractor will provide the City with one (1) contact number by which the City can alert them of any game cancellations due to weather or other conditions. This phone must be monitored on game days and must also be equipped with voicemail. The City will also have a published "weather line" phone number for use by officials, players, and staff to obtain current field and game status. A one-game official/umpire "show up" charge may be billed to the City for games that are cancelled after the notification deadline has passed.
4. No Show/Late Officials Policy: If an official fails to show up for a scheduled game, or shows up five (5) minutes or more late for a game, the City will receive a credit of fifty (50) percent of that official's fee against the contractor. Also, no additional charge shall be made to the City for any official who must work alone due to the non-appearance of another official/umpire. Any additional monies due to the official/umpire forced to work alone shall be the sole responsibility of the contractor.
5. Officials/umpires shall not be required to work forfeited games, and the contractor shall bill the City for officials assigned to work forfeited games as if the game had been played.
6. Officials shall arrive no later than ten (10) minutes prior to game time and in the appropriate uniform as outlined in the USSSA, CHSAA, NSA, or NFHS rule book.
7. The contractor and its staff shall take precautions to protect City property, including but not limited to remotes and portable scoreboards, which are only for use during officiating hours.
8. Officials/umpires shall provide professional and quality services and shall be in good standing with the City; the City reserves the right to require the contractor to remove and/or replace an official/umpire for reasons including, but not limited to, misconduct or poor performance.

Description	Group Id	Group Name	Comment	Price	Quantity	Total Cost
One game - cost 1 official	adult softball	all age divisions	52.00 GAME PRICE	\$52.00	1	\$52.00
One game - cost 2 officials	adult softball	all age divisions	104.00 GAME PRICE	\$104.00	2	\$208.00
Two consecutive games on the same night - cost 1 official	adult softball	all age divisions	49.00 PER GAME	\$49.00	1	\$49.00
Two consecutive games on the same night - cost 2 officials	adult softball	all age divisions	98.00 PER GAME	\$98.00	2	\$196.00
Three consecutive games on the same night - cost 1 official	adult softball	all age divisions	44.00 PER GAME	\$44.00	1	\$44.00
Three consecutive games on the same night - cost 2 officials	adult softball	all age divisions	88.00 PER GAME	\$88.00	2	\$176.00
Four or more consecutive games on the same night - cost 1 official	adult softball	all age divisions	41.00 PER GAME	\$41.00	1	\$41.00
Four or more consecutive games on the same night - cost 2 officials	adult softball	all age divisions	82.00 PER GAME	\$82.00	2	\$164.00

Exhibit B



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
07/27/2022

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 K&K Insurance Group, Inc. 1712 Magnavox Way Fort Wayne IN 46804	CONTACT NAME: Mass Merchandising PHONE (A/C, No, Ext): 1-800-426-2889 FAX (A/C, No): 1-260-459-5105 E-MAIL ADDRESS: info@sportsinsurance-kk.com PRODUCER CUSTOMER ID:														
INSURED 2001240998 CP# 1527 SOFTBALL IN DENVER INC 1360 S WADSWORTH SUITE 107 LAKEWOOD, CO 80232 A Member of the Sports, Leisure & Entertainment RPG	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: center;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: center;">NAIC #</th> </tr> <tr> <td>INSURER A: Nationwide Mutual Insurance Company</td> <td style="text-align: center;">23787</td> </tr> <tr> <td>INSURER B:</td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Nationwide Mutual Insurance Company	23787	INSURER B:		INSURER C:		INSURER D:		INSURER E:		INSURER F:	
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INSURER B:															
INSURER C:															
INSURER D:															
INSURER E:															
INSURER F:															

COVERAGES
CERTIFICATE NUMBER: 2000551649
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 type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:	X		6BRPG0000007788000	06/17/22 12:01 AM	06/17/23 12:01 AM	EACH OCCURRENCE	\$2,000,000
							DAMAGE TO RENTED PREMISES (Ea Occurrence)	\$1,000,000
							MED EXP (Any one person)	\$5,000
							PERSONAL & ADV INJURY	\$2,000,000
							GENERAL AGGREGATE	\$5,000,000
							PRODUCTS - COMP/OP AGG	\$2,000,000
							PROFESSIONAL LIABILITY	\$2,000,000
							LEGAL LIAB TO PARTICIPANTS	\$2,000,000
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY <input checked="" type="checkbox"/> Not provided while in Hawaii			6BRPG0000007788000	06/17/22 12:01 AM	06/17/23 12:01 AM	COMBINED SINGLE LIMIT (Ea accident)	\$2,000,000
							BODILY INJURY (Per person)	
							BODILY INJURY (Per accident)	
							PROPERTY DAMAGE (Per accident)	
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION						EACH OCCURRENCE	
							AGGREGATE	
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y / N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A					<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER	
							E.L. EACH ACCIDENT	
							E.L. DISEASE - EA EMPLOYEE	
							E.L. DISEASE - POLICY LIMIT	
A	MEDICAL PAYMENTS FOR PARTICIPANTS			6BRPG0000007788000	06/17/22 12:01 AM	06/17/23 12:01 AM	PRIMARY MEDICAL	
							EXCESS MEDICAL	\$25,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Legal Liability to Participants (LLP) limit is a per occurrence limit.
 Sport(s): Softball Age(s): 20 and Over (LLP - \$2,000,000); Umpires/Referees Assoc-Excluding Brain Injury Age(s): 20 and Over (LLP - \$1,000,000)
 City and County of Denver, its Elected Officials, Employees and Volunteers are added as an additional insured, but only for liability caused, in whole or in part, by the acts or omissions of the named insured.
 ** This certificate voids and replaces certificate # W02258057, W02249163 **

CERTIFICATE HOLDER

 City and County of Denver
 201 W Colfax Dept 600
 Denver, CO 80202
 Owner/Manager/Lessor of Premises

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

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Coverage is only extended to U.S. events and activities.

** NOTICE TO TEXAS INSURED: The Insurer for the purchasing group may not be subject to all the insurance laws and regulations of the State of Texas.

ACORD 25 (2016/03)

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