

**SERVICES AND USE AGREEMENT**  
**“Youth-led Bicycle Library and Repair Shop”**

**THIS SERVICES AND USE AGREEMENT (“Agreement”)** is made and entered, effective as of the date set forth on the City’s signature page below (**“Effective Date”**), by and between the **CITY AND COUNTY OF DENVER**, a Colorado municipal corporation (the **“City”**) and **RE:VISION**, a Colorado non-profit corporation, with an address of 3800 Morrison Road, Denver, Colorado 80219 (the **“Contractor”**), both of which parties may be individually referred to in this Agreement as a **“Party”** or jointly referred to as the **“Parties”**.

**WHEREAS**, the City owns and operates, through its Department of Parks and Recreation, Garfield Lake Park, located at 3600 W. Mississippi Avenue, Denver, Colorado 80219, a designated park in accordance with the City Charter (the **“Park”**); and

**WHEREAS**, the City desires to introduce and implement certain programs and services in the Park, consistent with park purposes under the City Charter; and

**WHEREAS**, the City also desires to partner with community and youth oriented, local, non-profit organizations in order to implement certain programs and services in the Park; and

**WHEREAS**, the Contractor is suited and capable of providing programs and services in the Park, as is set forth in this Agreement; and

**WHEREAS**, the City and the Executive Director of the Department of Parks and Recreation have determined that providing programs and services as set forth in this Agreement is in the best interest of the City and Park patrons.

**NOW, THEREFORE**, 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. SERVICES TO BE PERFORMED:**

**A. Services:** The Contractor shall, at its own cost unless otherwise agreed upon, transport and place the “shipping container,” which houses the Bicycle Library and Repair Shop, in Garfield Park (**“Park”**) and within the Park at the location set forth in **Exhibit A**. The Services shall be performed at and within the “shipping container.” The Contractor shall diligently and professionally perform the services described in the scope of work, attached hereto as **Exhibit A**, incorporated herein by this reference (**“Services”**). The Contractor shall promptly initiate and diligently perform the Services. The Contractor shall faithfully perform the Services

required under this Agreement in accordance with the standards of care, skill, training, diligence and judgment provided by those who perform services of a similar nature. Any Services specified under this Agreement which requires the employment of licensed or registered personnel shall be performed by licensed or registered personnel.

**B. Limitations:** It is understood and agreed that the services to be provided by the Contractor shall be solely of a professional nature, as described in **Exhibit A**, and shall involve no work or manual labor by employees of the Contractor (except as needed for purposes of mentoring, training, demonstration and supervising youth volunteers). Any work or manual labor shall be solely performed by youth volunteers providing such voluntary and unpaid labor on behalf of the Contractor. All volunteers, or the parent or legal guardian of all youth volunteers, must sign a Release and Waiver form substantially in the form of the attached **Exhibit C**, which fully executed form must be submitted to the Contractor prior to initiation of on-site work by the volunteer. Copies of the signed forms shall be provided by the Contractor to the Department upon request by the Department.

**C. Oversight:** The Contractor shall conduct the Services 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 Services (the “**Department**”) and make every reasonable effort to fully coordinate the Services. The Contractor agrees to allow the City to review any of the procedures used by it in performing the Services under this Agreement.

**2. PARK USE:**

**A. Authority:** In accordance with §2.4.4(A) and (F) of the City Charter, the Director authorizes Contractor to place a “shipping container” as described in, and in the location depicted in, **Exhibit A**, which will be modified and equipped to allow Contractor to conduct the programming and perform the services set forth in this Agreement.

**B. “Library/Shop” Shipping Container:** The Contractor warrants that the Contractor has full title to all items equipment or materials to be utilized for the Services, including the “shipping container” which houses the Bicycle Library and Repair Shop, and that the items, equipment or materials are rightfully owned by the Contractor, and is free and clear from any security interests, liens, claims, or encumbrances that would reasonably interfere with or prevent Contractor from performing the agreed upon Services. The Contractor will defend

such title against all persons claiming the whole or part of any item, equipment or materials at no cost to the City. Contractor is fully and solely responsible, including all related costs and expenses, for the condition and use of the Bicycle Library and Repair Shop, including any and all needed repairs and other work required to ensure the Bicycle Library and Repair Shop is usable for its intended purpose under this Agreement, and to ensure it is safe. Contractor is also responsible for any and all liability involving, connected to or related to the Bicycle Library and Repair Shop and its use. The City shall not be responsible for any liability regarding the condition or use of the Bicycle Library and Repair Shop.

**B. No Conveyance of Property Right:** The City does hereby authorize Contractor to use and occupy the Park as depicted in **Exhibit A** subject to the terms and conditions of this Agreement, and solely for the purpose of operating the Bicycle Library and Repair Shop. Nothing in this Agreement is intended, nor shall it be construed, to create or grant a lease or any other property interest in the Park or other land. Furthermore, nothing in this Agreement grants a concession license under §2.4.4(C) of the City Charter. The use and occupancy of the Park is strictly limited to the area depicted in **Exhibit A** and is contingent upon Contractor faithfully and consistently providing Services as set forth in this Agreement, any amendments to this Agreement, or any other related agreements. Contractor agrees not to use the area, or permit the use of the area, for any purpose prohibited by or contrary to the laws of the United States, the State of Colorado, the City's Charter or ordinances, or the rules and regulations of the Department of Parks and Recreation (the "Department"). Contractor shall not use the area, or permit the use of the area, in any manner that results in waste of or damage to any portion of the Park or that causes a nuisance.

**C. Contractor Access:** Contractor intends to access the Bicycle Library and Repair Shop from the hours of 9:45 a.m. until 4:30 p.m. on Saturdays and Sundays. Contractor shall open the Bicycle Library and Repair Shop to the public on those same days between the hours of 10:00 a.m. and 4:00 p.m. Contractor shall be entitled to access to the Park and the Bicycle Library and Repair Shop during all Park non-curfew hours.

**D. Security:** Contractor shall be responsible for locking and unlocking the Bicycle Library and Repair Shop as needed and at such times as the Premises are not in use. Contractor will assist the Department in securing and protecting the Bicycle Library and Repair Shop against theft, arson, vandalism or other illegal activity. Contractor will promptly

communicate with the City Contact whenever Contractor staff is aware of any inappropriate, dangerous, destructive or illegal activity occurring in or around the Bicycle Library and Repair Shop. Contractor shall be entitled to securely store its items, equipment and materials inside the Bicycle Library and Repair Shop.

**E. City Access:** Contractor acknowledges and agrees that the City shall have a right of entry to and in the Bicycle Library and Repair Shop for any purpose necessary, incidental to or in connection with the City's rights and obligations under this Agreement, or in the exercise of the City's governmental functions, or for the purpose of making any inspection the City deems necessary for health and safety purposes and for the protection of the City's Park. The City will notify and cooperate with the Contractor for any needed entry to the Bicycle Library and Repair Shop, and to coordinate such entry so as to minimize any disruption to Contractor's operations. Contractor may lock the Bicycle Library and Repair Shop to ensure safety, however, Contractor also agrees not to take any unreasonable action to prevent or hinder authorized City employees or agents from entering as may be needed for inspection or other valid purposes. Upon request by the City, Contractor shall, at its own cost, move or remove the Bicycle Library and Repair Shop to accommodate City work or other City purposes.

**F. Surrender:** At the expiration or termination of this Agreement, Contractor shall remove the Bicycle Library and Repair Shop in order to surrender the Park space to the City. The Park space shall be in the same or better condition as it was at the beginning of this Agreement term, subject to City review and approval.

**3. PROTECTION OF PROPERTY/SAFETY:** 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, fences, irrigation systems, landscaping, water lines, sewers, and other facilities and utilities, both above and below ground, at or near the site of the Bicycle Library and Repair Shop as may be affected by the performance of the Services or the utilization of workers, volunteers, equipment, or materials in connection with the Services. If the Contractor or its employees, volunteers, agents, or subcontractors destroy or damage any property, public or private, the Contractor shall immediately notify the City. The Contractor shall, at the Director's direction, either (1) promptly repair or replace such property, to the reasonable satisfaction of the Department; or (2) cooperate with the City and the Director may, at the Director's discretion, undertake such repair or replacement. The City shall be

entitled to charge the Contractor for the cost of the repair or replacement. The Contractor is responsible for the health and safety of its employees, agents, volunteers or contractors on or at the site of Services 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 ensuring the safety of the youth volunteers, and shall promptly notify the City of any injury, damage or loss that occurs related to the Bicycle Library and Repair Shop.

4. **TERM:** The term of the Agreement is from July 25, 2017 until July 25, 2020, unless this Agreement is terminated earlier as provided in this Agreement or unless this Agreement is extended as provided in a separate amendment to this Agreement (“**Term**”). If after the end of the term any obligations are owed to either party, this Agreement shall remain in full force and effect but only as to such obligations, and only until that obligation is satisfied.

5. **TERMINATION & REMEDIES:**

A. **Termination for Convenience of the City:** The Director, upon giving thirty (30) 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 Director. To the extent that the Contractor owes the City any obligations under the Agreement, the Services or obligations required under the Agreement shall be completed. The Contractor shall have no claim of any kind whatsoever against the City.

B. **Termination for Convenience of the Contractor:** Provided that the Contractor is not in Breach as provided in sub-section 5.C. below and subject to the survival provision in section 29 below, the Contractor, upon giving thirty (30) calendar days written notice (unless a longer period is stated), may terminate this Agreement. To the extent there are remaining obligations at the time of Termination, those obligations or Services shall be completed. The Contractor shall have no claim of any kind whatsoever against the City for any termination without cause.

C. **Termination, With Cause, by the City:** The occurrence of any one or more of the following shall constitute a breach of this Agreement (“**Breach**”), for which the Director may, at the Director’s option, terminate this Agreement, 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 under this Agreement, provided that the failure or refusal to undertake or complete the Service 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, a strike at a manufacturer or supplier for the Work Project, or widespread unavailability of necessary materials or supplies;

2) There is substantial evidence that it has been or will be impossible for the Contractor to perform the Services required due to matters within the Contractor's control such as voluntary bankruptcy or disputes involving 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 Contractor's employees;

3) The Contractor has persistently or flagrantly failed to perform the Services or failed to timely perform the Services or to comply requirements as set forth in **Exhibit A** to this Agreement;

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

5) The Contractor fails to obtain, renew, replace, or maintain the insurance coverage required by this Agreement 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;

6) 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.

**6. 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 shall exist 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.

**7. INDEPENDENT CONTRACTOR:** It is understood and agreed that the status of the Contractor shall be that of an independent contractor and an entity or person retained on a contractual basis to perform contracted services for limited periods of time as described in Section 9.1.1.E.x. of the Charter of the City, and it is not intended, nor shall it be construed, that the Contractor or the Contractor's employees, agents, or subcontractors 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 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.

**8. 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 three (3) years after termination of the 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 is 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 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, 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. The Contractor's obligations set out in this section 8 shall survive the expiration or termination of 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. Contractor certifies that the certificate of insurance attached as **Exhibit B**, 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, Business Auto Liability, and Excess/Umbrella Liability, the Contractor's insurer(s), and any subcontractors' 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, 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 Agreement) 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 and subconsultants 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.

**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 Agreement.

**I. Additional Provisions:**

(1) For Commercial General Liability and Excess/Umbrella Liability, the policies must provide the following:

- (i) That this Agreement is an Insured Contract under the policy;
- (ii) Defense costs in excess of policy limits;
- (iii) A severability of interests, separation of insureds or cross liability provision;
- (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City; and

(v) No exclusion for sexual abuse, molestation or sexual misconduct.

(2) For claims-made coverage, 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.

(3) 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 the Contractor's own expense, where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Contractor shall 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 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 Agreement (“Claims”), unless and until such Claims have been specifically determined by the trier of fact to be due to the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of the Contractor or its subconsultants or 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 an action has been filed in court on the Claim. The Contractor’s duty to defend and indemnify the City shall arise even if the City is the only party sued and/or it is alleged that the City’s negligence or willful misconduct was the sole cause of the alleged 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 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.

**10. 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 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.

**11. 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 Agreement 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 Agreement. 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 13 shall survive the expiration or termination of this Agreement.

**12. BACKGROUND CHECKS:** With respect to the Work performed under this Agreement and to the extent that the Contractor retains any youth workers seventeen years of age or younger, the Contractor shall not hire, retain, or knowingly engage or permit the services of any supervisor, employee, volunteer, agent, or subcontractor who is an adult (eighteen years of age or older) 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 or youth. 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 through a national criminal background checks, that any supervisor, employee, volunteer, agent, or subcontractor who is an adult engaged in any Work under this Agreement or having contact with youth working under this Agreement, have not been convicted or charged as set forth above and shall immediately and fully inform the Manager if the Contractor becomes aware of any such conviction or charge. The Contractor shall provide proof of said background checks to the

Manager upon request. 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 Manager 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 Manager. Failure to comply with this Sub-section or failure to promptly discharge an employee, volunteer, agent, or subcontractor who has been so convicted or charged shall be cause for the Manager, at the Manager's option, to immediately terminate this Agreement. Acknowledging and agreeing that the City has no meaningful control over any adult supervisor, employee, volunteer, agent, or subcontractor the Contractor may engage in this Work or allow to have contact with youth working under this Agreement, the Contractor agrees to release and waive any claims or defenses which they could or may potentially assert against the City arising from or related to any failure to comply with this Sub-section or failure to achieve the purpose of this Sub-section to protect children and youth working under this Agreement.

**13. EXAMINATION OF RECORDS:** The Contractor agrees that any duly authorized representative of the City, including the City Auditor, shall, until the expiration of three (3) years after the final payment under this Agreement, have access to and the right to examine any books, documents, papers and records of the Contractor, involving transactions related to this Agreement.

**14. ASSIGNMENT & SUBCONTRACT:** The expectation of the City is that the Contractor shall itself perform all obligations and exercise all rights set forth for the Contractor 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. Any attempt by the Contractor to assign, transfer or subcontract the Contractor's rights and obligations under this Agreement may result, at the option of said Manager, in the termination of this Agreement and all rights of the Contractor hereunder.

**15. NO THIRD-PARTY BENEFICIARY:** The Parties understand and expressly agree that 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, and nothing contained in this Agreement shall give or allow any such claim or right of action by any third person. It is the

express intention of the Parties that 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.

**16. 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 obligate the City must be by the City, as required by Charter and ordinance.

**17. INTEGRATION & AMENDMENTS:** This Agreement, including the exhibits and attachments hereto (each of which is specifically incorporated herein), is intended as the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect, unless embodied in this Agreement in writing. No subsequent novation, renewal, addition, deletion, or other amendment shall have any force of effect unless embodied in a written amendment to this Agreement executed by the Parties in the same manner as this Agreement. 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.

**18. SEVERABILITY:** The Parties agree that 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.

**19. CONFLICT OF INTEREST:**

**A.** No employee of the City shall have any personal or beneficial interest in the services or property described in this Agreement, and the Contractor shall not hire, or contract for services with, any employee or officer of the City which 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 the Agreement. The Contractor represents that it has disclosed any and all current or potential conflicts of interest, which 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 the Agreement in the event it determines a conflict exists, after it has given the Contractor written notice describing the conflict.

**20. NOTICES & WORK ORDERS:** Notices and other communications required or permitted under this Agreement, including changes to the persons to be notified or their addresses, shall be made in writing:

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

And by the City to: Re:Vision  
3800 Morrison Road  
Denver, CO 80219

All notices shall be in writing and provided by either personal delivery, certified mail, return receipt requested, or overnight courier. All notices are effective upon personal delivery or upon placing the notice the United States mail or with the courier service.

**21. LAW; VENUE; and CONSTRUCTION DEFECTS:**

**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 and Revised Municipal Code of the City and County of Denver, and the ordinances, regulations and Executive Orders enacted and/or promulgated pursuant thereto, including any amendments. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference.

**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, ordinances, codes, rules, regulations and executive orders of the United States of America, the State of Colorado, and 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 this Agreement, the Contractor agrees not to refuse to hire,

discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, gender identity or gender expression, age, military status, sexual orientation, marital status, or physical or mental disability; and the Contractor further agrees to insert the foregoing provision in all approved subcontracts hereunder.

**23. 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.

**24. [RESERVED.]**

**25. PREVAILING WAGES:** As may be applicable, 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, 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.

Date bid or request for qualifications/proposals was advertised: N/A.

Prevailing wage and fringe rates will adjust on, and only on, the anniversary of the date the Contract was fully executed. Unless expressly provided for in this Agreement, Contractor will receive no additional compensation for increases in prevailing wages or fringe benefits.

Contractor shall provide the Auditor with a list of all subcontractors providing any services under the contract.

Contractor shall provide the Auditor with electronically-certified payroll records for all covered workers employed under the contract.

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](mailto:auditor@denvergov.org).

If Contractor fails to pay workers as required by the Prevailing Wage Ordinance, 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 Contractor fails to pay required wages and fringe benefits.

**26. PAYMENT OF LIVING WAGES:**

**A.** Employees of the Consultant or the Consultant's sub-consultants or subcontractors may be subject to the payment of living wages pursuant to § 20-80 *et seq.*, D.R.M.C., depending upon the nature of their work. Pursuant to § 20-80, D.R.M.C., the Consultant shall pay every Covered Worker, as defined in § 20-80(a) D.R.M.C., employed by the Consultant directly upon the site of the work under this Agreement, the full amounts accrued at the time of payment, computed at wage rates not less than that specified in § 20-80(c), D.R.M.C., regardless of any contractual relationship which may be alleged to exist between the Consultant or any subcontractor and such workers. The Consultant shall post in a prominent place which is easily accessible to the Covered Workers that scale of wages to be paid to such workers.

**B.** The Consultant shall furnish to the City Auditor or his authorized representative, upon the Auditor's request, a true and correct copy of the payroll records of all Covered Workers working under this Agreement, either for the Consultant or any subcontractor. All such payroll records shall include information showing the number of hours worked by each Covered Workers, the hourly pay of such worker, any deductions made from pay, and the net amount of pay received by such Covered Worker. The payroll record shall be accompanied by a sworn statement of the Consultant that the copy is a true and correct copy of the payroll records of all Covered Workers working under this Agreement, either for the Consultant or a subcontractor, that payments were made to the Covered Workers as set forth in such records, that no deductions were made other than those set forth in such records, and that all Covered Workers employed on work under this Agreement, whether by the Consultant or any subcontractor, were paid the living wages as set forth in this Agreement.

**C.** Increases in living wages pursuant to § 20-80, D.R.M.C., effective after the date of this Agreement shall not be mandatory on either the Consultant or the subcontractors if the term of this Agreement is less than one year. Increases in the living wages pursuant to §

20-80, D.R.M.C., shall be mandatory for the Consultant and the Consultant's subcontractors if the term of this Agreement is longer than one year, effective on the anniversary date of this Agreement. In no event shall any increases in living wages over the amount stated in this Agreement result in any increased liability on the part of the City, and the possibility and risk of any such increase is assumed by the Consultant. Decreases in living wages after the date of this Agreement shall not be permitted.

**D.** If any worker to whom the living wages are to be paid, employed by the Consultant or any subcontractor to perform work hereunder, has been or is being paid a rate of wages less than that required by this section, the Manager may, at the Manager's option, by written notice to the Consultant, withhold further payment to the Consultant or suspend or terminate the Consultant's right to proceed with the work or such part of the work as to which there has been a failure to pay the required wages. In the event of termination, the Consultant shall be liable to the City for any excess costs occasioned to the City thereby.

**27. PROHIBITION AGAINST EMPLOYMENT OF ILLEGAL ALIENS:**

**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 an illegal alien who will perform work under this Agreement.

(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 Agreement.

**C.** The Contractor also agrees and represents that:

(1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

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

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

(4) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires the Contractor 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 subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subcontractor and the City within three (3) days. The Contractor will also then terminate such subcontractor if within three (3) days after such notice the subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subcontractor provides information to establish that the 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. section 20-90.3.

**D.** The Contractor is liable for any violations as provided in the Certification Ordinance. If Contractor violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the 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 Contractor from submitting bids or proposals for future contracts with the City.

**28. 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.

**29. SURVIVAL OF CERTAIN PROVISIONS:** The Parties understand and agree that all terms and conditions of this Agreement, together with the exhibits and attachments

hereto, which, by reasonable implication, contemplate continued performance or compliance beyond the expiration or termination of this Agreement, shall survive such expiration or termination and shall continue to be enforceable as provided herein. Without limiting the generality of the foregoing, the Contractor's obligations for the provision of 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. In addition, all obligations for financial assurances, warranties, and title prescribed in this Agreement shall survive as provided in this Agreement.

**30. 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 permitted under this Agreement.

**31. 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.

**32. 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, hereby warrants and guarantees 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.

**33. CITY EXECUTION OF AGREEMENT:** This Agreement shall not be or become effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver.

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

**35. 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.

**[BALANCE OF PAGE INTENTIONALLY LEFT BLANK.]**

**SIGNATURES BEGIN ON NEXT PAGE.]**

Contract Control Number: PARKS-201736306-00

Contractor Name: Re: Vision

By: *Eric Kornacki*

Name: ERIC KORNACKI  
(please print)

Title: EXECUTIVE DIRECTOR  
(please print)

ATTEST: [if required]

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)



**Contract Control Number:**

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:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



## EXHIBIT A

### Westwood Youth-Led Bicycle Library and Repair Shop

Organization EIN: 26-1204343

Contact Person: Eric Kornacki

Address: Re:Vision, 3800 Morrison Road, Denver CO 80219

Phone: 720-261-5031

Email: danielleshort@westwoodunos.com

This outlines Re:Vision's scope of work related to the Westwood Youth-Led Bicycle Library and Repair Shop. This scope is for activities to be carried out at Garfield Lake Park between the execution of the contract in August 2017 and through July 2020, subject to revisions to seasonal, monthly or weekly agreed upon schedule for operations, with the potential of being extended, pending Westwood Unidos raising additional funds.

#### The Project

Local youth leaders who previously participated in bicycle maintenance workshops created this project. It will provide the opportunity for local youth aged 5-18, as well as adults, to borrow and learn how to fix bicycles in Garfield Lake Park. The Youth Bike Apprentices will do community outreach to tell people about the program. The program gives youth an opportunity to gain job skills in problem solving, team work, community building, customer service, and community development. The youth will learn to be leaders of the initiative, working as a team to make group decisions and implement the initiative.

The youth received initial funding from The Rose Community Foundation's Innovate for Good initiative, which was then matched by Centura Health. A partnership with Bicycle Colorado has provided technical assistance throughout the process.

Thirty bicycles and helmets, supporting accessories, and tools have been purchased and will be stored in a secure shipping container on a concrete pad at Garfield Lake State Park. The container will be painted, using one or more of the colors chosen by the youth in their design process with a professional graphic designer. A banner with a professionally designed logo will be hung on the container.

Ten Youth Apprentices will work under the supervision of a Youth Mentor to operate the bike workshop and library on weekends from June 4-Sept. 17 in the applicable year. The Library Repair Shop and Library will be open to the public from 10-4 on Saturdays and Sundays, and staff will be on the premises from 9:45-4:30 on those days. Free services offered will include the lending library as well as bike repair and maintenance services for local residents.

## **EXHIBIT A**

The youth will be trained in check in/out procedures, how to repair and maintain bikes, teach those skills to others, and teach safe bike handling skills. Bicycle Colorado will offer five bike education and maintenance workshops to the public. Bicycle Colorado is also providing technical assistance regarding best practices in Bicycle Library procedures, waivers, fleet maintenance, and safety.



< 5' >

8'x 30' CONTAINER

< 4' >

AREA FOR TENT



TENT AREA

8' x 30'  
SHIPPING CONTAINER

< 5' >

< 4' >



## **EXHIBIT C**

### **RELEASE OF CLAIMS AND WAIVER OF LIABILITY FOR VOLUNTEERS**

I want to volunteer my services to Re:Vision, which has agreed to provide mentoring services for the Youth-led Bicycle Library and Repair Shop in cooperation with the Department of Parks and Recreation for the City and County of Denver (“Denver”). I certify that I am physical health and condition and I understand that some risks may include, but are not limited to, slips and falls, physical activity and exertion, injuries from use of equipment including cuts and punctures.

I understand that while my volunteer services will be at the direction of the Organization and/or the Denver and their officials and employees, I am nevertheless not an employee of the Organization or Denver within the meaning of the Colorado Workers’ Compensation Act at the time of my performance of these volunteer services. I further understand that I am a volunteer and that no employee/employer or master/servant relationship is created between me and the Organization and/or Denver and that I will receive no compensation of any kind for my participation as a volunteer and that there is no promise of paid employment or future paid employment. There is no employment contract or other contract of hire between me and the Organization and Denver. I acknowledge that the volunteering of time and/or services does not constitute employment for purposes of the Workers’ Compensation Act of Colorado and further acknowledge that I am not entitled to benefits pursuant to said Act.

In consideration of the Organization and Denver allowing me to participate as a volunteer, I agree not to sue and forever release, waive and discharge the Organization and Denver and their respective employees, agents, representatives, officers, officials, directors, and any associated or sponsoring agencies and entities (hereinafter referred collectively as “Released Parties”) from any and all liability to me or my personal representatives, assigns, heirs, children, dependents, spouse and relatives (“Releasing Parties”) for any and all claims, causes of action, losses, judgments, liens, costs, demands or damages that are caused by or arise from any injury (including death) to me or my property regardless of the cause(s) of such injury. I assume all risks associated with my participation as a volunteer. I specifically, on behalf of myself and the Releasing Parties, waive any liability for injuries that may result from the negligence or carelessness of fellow volunteers, the public, contractors, and the Released Parties.

As further consideration for my being allowed to participate as a volunteer, the undersigned agrees, jointly and severally, to defend, indemnify, and hold harmless the Released Parties from and against any and all liabilities, claims, liens, actions, causes of action, costs or expenses of any nature whatsoever (including, without limitation, interest, penalties, reasonable attorneys’ fees and disbursements) arising from any damage, loss, or injury (including death) to the Released Parties, fellow volunteers, or the public resulting from my participation or actions as a volunteer regardless of any additional or intervening causes for such damages, loss, or injury (including death).

I understand that the Organization and/or Denver shall not be responsible for loss or theft of personal property, or damage to personal property, caused by the Organization’s employees, officials, or agents, Denver’s employees, officials, or agents, other volunteers, or the public.

I understand that my participation as a volunteer in this activity is purely and solely voluntary and that I am not an employee, contractor, or representative of the Organization or Denver.

I hereby acknowledge that I have carefully read this Release of Claims and Waiver of Liability for Volunteers, that I fully understand its contents, that I am over the age of 18, and that I am signing this Release of Claims and Waiver of Liability for Volunteers voluntarily and intend for it to be legally binding on me and the Releasing Parties.

\_\_\_\_\_  
Signature of Adult Volunteer or Adult Parent or Guardian of Youth under 18      Date

\_\_\_\_\_  
Signature of Youth Volunteer (Under Age 18)      Date

PLEASE PRINT:

NAME: \_\_\_\_\_ Adult      Youth

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ ZIP: \_\_\_\_\_

EMAIL: \_\_\_\_\_

DAY PHONE: \_\_\_\_\_ EVE. PHONE: \_\_\_\_\_

EMERGENCY CONTACT: \_\_\_\_\_ PHONE: \_\_\_\_\_