

ITEM 2 ATTACHMENT
PROFESSIONAL SERVICES AGREEMENT
Providing for Payment of Prevailing Wages

City of Calabasas/Becker Arena Products, Inc.

1. IDENTIFICATION

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into by and between the City of Calabasas a California Municipal Agency (“City”), and Becker Arena Products, Inc., a Minnesota Corporation (“Contractor”).

2. RECITALS

- 2.1 City has determined that it requires the following professional services from a Contractor: Installation, inspection and maintenance of a new dasher board system at De Anza Park.
- 2.2 Contractor represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Contractor further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Contractor agree as follows:

3. DEFINITIONS

- 3.1 “Scope of Services”: Such professional services as are set forth in Contractor’s **August 1, 2023** bid to City, attached hereto as Exhibit A, and as further specified in the **Dasher Board System** Proposal Dated **August 1, 2023**, including all project specifications and requirements, and all referenced documents, stated therein, attached hereto as Exhibit B. All of the provisions of the Scope of Services are made a part hereof as though fully set forth herein.
- 3.2 “Commencement Date”: August 24, 2023
- 3.3 “Expiration Date”: August 24, 2024

4. TERM

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Expiration Date unless extended by written agreement of the parties or terminated earlier in accordance with Section 17 (“Termination”) below.

5. CONTRACTOR'S SERVICES

- 5.1 Contractor shall perform the services identified in the Scope of Services, as further specified in the **Dasher Board System** Proposal Dated **August 1, 2023**, including all project specifications stated therein. City shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement. In no event shall the total compensation and costs payable to Contractor under this Agreement exceed the sum of **One Hundred Ninety-Five Thousand Six Hundred and Twenty Dollars (\$195,620.00)** unless specifically approved in advance and in writing by City. **Contractor shall receive 45% upon placement of the order, 45% 10 days prior to delivery and the remaining 10% upon delivery and installation.**
- 5.2 Contractor shall perform all work to the highest professional standards of Contractor's profession and in a manner reasonably satisfactory to City. Contractor shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*).
- 5.3 During the term of this Agreement, Contractor shall not perform any work for another person or entity for whom Contractor was not working at the Commencement Date if both (i) such work would require Contractor to abstain from a decision under this Agreement pursuant to a conflict of interest statute and (ii) City has not consented in writing to Contractor's performance of such work.
- 5.4 Contractor represents that it has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Contractor or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. **Perry Coleman** shall be Contractor's project administrator and shall have direct responsibility for management of Contractor's performance under this Agreement. No change shall be made in Contractor's project administrator without City's prior written consent.
- 5.5 To the extent that the Scope of Services involves trenches deeper than 4', Contractor shall promptly, and before the following conditions are disturbed, notify the City, in writing, of any:
- (1) Material that the contractor believes may be material that is hazardous waste, as defined in § 25117 of the Health and Safety Code, which is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
 - (2) Subsurface or latent physical conditions at the site differing from

those indicated by information about the site made available to bidders prior to the deadline for submitting bids.

(3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

5.6 The Contractor shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or involve hazardous waste, and cause a decrease or increase in the contractor's cost of, or the time required for, performance of any part of the work, the City shall issue a change order under the procedures described in the contract. In the event that a dispute arises between City and Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date provided in the Agreement but shall proceed with all work to be performed under the Agreement. Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

5.7 In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to this Agreement, Contractor offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (Section 16700, et seq.) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to Contractor, without further acknowledgment by the parties.

6. COMPENSATION

6.1 City agrees to compensate Contractor for the services provided under this Agreement, and Contractor agrees to accept in full satisfaction for such services, payment in accordance with the Scope of Services. Such compensation shall cover all expenses, losses, damages, and consequences arising out of the nature of the work during its progress or prior to its acceptance including those for well and faithfully completing the work and the whole thereof in the manner and time specified in the aforesaid Contract Documents; and also including those arising from actions of the elements, unforeseen difficulties or obstructions encountered in the prosecution of the work, suspension or discontinuance of the work, and all other unknowns or risks of any description connected with the work. Such unforeseen difficulties or obstructions includes any act of God, the elements, strike, walkout, or any other cause beyond Contractor's reasonable control that occurs before City accepts the work as complete.

6.2 Contractor expressly agrees that it shall look solely to City for payment under this

Agreement.

- 6.3 Contractor shall submit to City an invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. Within thirty calendar days of receipt of each invoice, City shall pay all undisputed amounts included on the invoice. City shall not withhold applicable taxes or other authorized deductions from payments made to Contractor.
- 6.4 This Agreement is further subject to the provisions of Article 1.7 (commencing at Section 20104.50) of Division 2, Part 3 of the Public Contract Code regarding prompt payment of contractors by local governments. Article 1.7 mandates certain procedures for the payment of undisputed and properly submitted payment requests within 30 days after receipt, for the review of payment requests, for notice to the contractor of improper payment requests, and provides for the payment of interest on progress payment requests which are not timely made in accordance with this Article. This Agreement hereby incorporates the provisions of Article 1.7 as though fully set forth herein.
- 6.5 To the extent applicable, at any time during the term of the Agreement, the Contractor may at its own expense, substitute securities equivalent to the amount withheld as retention (or the retained percentage) in accordance with Public Contract Code section 22300. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the public agency, or with a state or federally chartered bank in this state as the escrow agent, who shall then pay those moneys to the Contractor. Upon satisfactory completion of the contract, the securities shall be returned to the Contractor.

7. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents or other written material (“written products” herein) developed by Contractor in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon its use or dissemination by City. Contractor may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Contractor.

8. RELATIONSHIP OF PARTIES

Contractor is, and shall at all times remain as to City, a wholly independent contractor. Contractor shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise to act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Contractor or any of Contractor’s employees, except as set forth in this Agreement. Contractor shall not represent that it is, or that any of its agents or employees are, in any manner employees of City.

9. CONFIDENTIALITY

All data, documents, discussion, or other information developed or received by

Contractor or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Contractor without prior written consent by City. City shall grant such consent if disclosure is legally required. Upon request, all City data shall be returned to City upon the termination or expiration of this Agreement.

10. INDEMNIFICATION

- 10.1 The parties agree that City, its officers, agents, employees and volunteers should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the City with the fullest protection possible under the law. Contractor acknowledges that City would not enter into this Agreement in the absence of Contractor's commitment to indemnify and protect City as set forth herein.
- 10.2 To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Contractor or any of its officers, employees, servants, agents, or subcontractors in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees due to counsel of City's choice.
- 10.3 To the fullest extent permitted by law, Contractor shall also indemnify, hold harmless and defend the Cities of Agoura Hills and Calabasas, and their officers, agents, employees, and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Contractor or any of its officers, employees, servants, agents, or subcontractors in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees due to counsel of either Cities' choice.
- 10.4 City shall have the right to offset against the amount of any compensation due Contractor under this Agreement any amount due City from Contractor as a result of Contractor's failure to pay City promptly any indemnification arising under this Section 10 and related to Contractor's failure to either (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 10.5 The obligations of Contractor under this Section 10 will not be limited by the provisions of any workers' compensation act or similar act. Contractor expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

- 10.6 Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 10 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance of this Agreement. In the event Contractor fails to obtain such indemnity obligations from others as required herein, Contractor agrees to be fully responsible and indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Contractor's subcontractors or any other person or entity involved by, for, with or on behalf of Contractor in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.
- 10.7 City does not, and shall not, waive any rights that it may possess against Contractor because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

11. INSURANCE

- 11.1 During the term of this Agreement, Contractor shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Contractor's performance of this Agreement. Such insurance shall be of the types and in the amounts as set forth below:
- 11.1.1 Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) including products and operations hazard, contractual insurance, broad form property damage, independent Contractors, personal injury, underground hazard, and explosion and collapse hazard where applicable.
- 11.1.2 Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000), combined single limit, per accident.
- 11.1.3 Worker's Compensation insurance as required by the laws of the State of California, including but not limited to California Labor Code § 1860 and 1861 as follows:

Contractor shall take out and maintain, during the life of this contract, Worker's Compensation Insurance for all of Contractor's employees employed at the site of improvement; and, if any work is sublet, Contractor shall require the subcontractor similarly to provide Worker's

Compensation Insurance for all of the latter's employees, unless such employees are covered by the protection afforded by Contractor. Contractor and any of Contractor's subcontractors shall be required to provide City with a written statement acknowledging its obligation to secure payment of Worker's Compensation Insurance as required by Labor Code § 1861; to wit: 'I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.' If any class of employees engaged in work under this contract at the site of the Project is not protected under any Worker's Compensation law, Contractor shall provide and shall cause each subcontractor to provide adequate insurance for the protection of employees not otherwise protected. Contractor shall indemnify and hold harmless City for any damage resulting from failure of either Contractor or any subcontractor to take out or maintain such insurance.

- 11.2 Contractor shall require each of its subcontractors to maintain insurance coverage that meets all of the requirements of this Agreement.
- 11.3 The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.
- 11.4 Contractor agrees that if it does not keep the aforesaid insurance in full force and effect, City may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay, at Contractor's expense, the premium thereon.
- 11.5 At all times during the term of this Agreement, Contractor shall maintain on file with City's Risk Manager a certificate or certificates of insurance showing that the aforesaid policies are in effect in the required amounts and naming the City and its officers, employees, agents and volunteers as additional insureds. Contractor shall, prior to commencement of work under this Agreement, file with City's Risk Manager such certificate(s).
- 11.6 Contractor shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.
- 11.7 The General Liability Policy of insurance required by this Agreement shall contain an endorsement naming City and its officers, employees, agents and volunteers as additional insureds. The General Liability Policy required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City. Contractor agrees to require its insurer to modify the certificates of insurance to delete any

exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word “endeavor” with regard to any notice provisions. If this contract provides service to a Homeowners Association, that Homeowners Association must be listed as an additional insured in addition to the City.

- 11.8 The insurance provided by Contractor shall be primary to any coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers, shall be in excess of Contractor’s insurance and shall not contribute with it.
- 11.9 All insurance coverage provided pursuant to this Agreement shall not prohibit Contractor, and Contractor’s employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Contractor hereby waives all rights of subrogation against the City.
- 11.10 Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, Contractor shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Contractor shall procure a bond or other security acceptable to the City guaranteeing payment of losses and expenses.
- 11.11 Procurement of insurance by Contractor shall not be construed as a limitation of Contractor’s liability or as full performance of Contractor’s duties to indemnify, hold harmless and defend under Section 10 of this Agreement.

12. MUTUAL COOPERATION

- 12.1 City shall provide Contractor with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Contractor’s services under this Agreement.
- 12.2 In the event any claim or action is brought against City relating to Contractor’s performance in connection with this Agreement, Contractor shall render any reasonable assistance that City may require.

13. RECORDS AND INSPECTIONS

Contractor shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three years after the expiration or termination of this Agreement. City shall have the right to access and examine such records, without charge, during normal business hours. City shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities with respect to this Agreement.

14. PERMITS AND APPROVALS

Contractor shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary in the performance of this Agreement. This includes, but shall not be limited to, encroachment permits and building and safety permits and inspections.

15. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during the addressee's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to City:

City of Calabasas
100 Civic Center Way
Attn: Erica Green
Telephone: (818) 224-1654

If to Contractor:

Becker Arena Products, Inc.
720 Innovation Dr.
Shakopee, MN 55379
Attn: Perry Coleman
Telephone: (952) 890-2690
Email: perry@recsportsproducts.com

With courtesy copy to:

Matthew T. Summers
Colantuono, Highsmith & Whatley, PC
City Attorney
790 E. Colorado Blvd., Suite 850
Pasadena, CA 91101
Telephone: (213) 542-5700
Facsimile: (213) 542-5710

16. SURVIVING COVENANTS

The parties agree that the covenants contained in Section 9, Section 10, Paragraph 12.2 and Section 13 of this Agreement shall survive the expiration or termination of this Agreement.

17. TERMINATION

- 17.1. City shall have the right to terminate this Agreement for any reason on five calendar days' written notice to Contractor. Contractor shall have the right to terminate this Agreement for any reason on sixty calendar days' written notice to City. Contractor agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All City data, documents, objects, materials or other tangible things shall be returned to City upon the termination or expiration of this Agreement.
- 17.2. If City terminates this Agreement due to no fault or failure of performance by Contractor, then Contractor shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Contractor be entitled to receive more than the amount that would be paid to Contractor for the full performance of the services required by this Agreement.

18. GENERAL PROVISIONS

- 18.1. Contractor shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Contractor.
- 18.2. In the performance of this Agreement, Contractor shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability, medical condition or any other unlawful basis.
- 18.3. The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the section or paragraph thereof, as the case may be, and not such heading, shall control and govern in the construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).
- 18.4. The waiver by City or Contractor of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Contractor unless in writing.
- 18.5. Contractor shall not be liable for any failure to perform if Contractor

presents acceptable evidence, in City's sole judgment that such failure was due to causes beyond the control and without the fault or negligence of Contractor.

- 18.6. Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies. In the event legal action shall be necessary to enforce any term, covenant or condition herein contained, the party prevailing in such action, whether reduced to judgment or not, shall be entitled to its reasonable and actual court costs, including accountants' fees, if any, and attorneys' fees expended in such action. The venue for any litigation shall be Los Angeles County, California.
- 18.7. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and shall be enforceable in its amended form. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 18.8. This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 18.9. All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Contractor with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed by City and Contractor.

- 18.10. This Agreement is further subject to the provisions of Article 1.5 (commencing at Section 20104) of Division 2, Part 3 of the Public Contract Code regarding the resolution of public works claims of less than \$375,000. Article 1.5 mandates certain procedures for the filing of claims and supporting documentation by the contractor, for the response to such claims by the contracting public agency, for a mandatory meet and confer conference upon the request of the contractor, for mandatory nonbinding mediation in the event litigation is commenced, and for mandatory judicial arbitration upon the failure to resolve the dispute through mediation. This Agreement hereby incorporates the provisions of Article 1.5 as though fully set forth herein.
- 18.11. This Agreement is further subject to the provisions of California Public Contracts Code § 6109 which prohibits the Contractor from performing work on this project with a subcontractor who is ineligible to perform work on the project pursuant to §§ 1777.1 or 1777.7 of the Labor Code.
- 18.12. Pursuant to § 9550 of the California Civil Code, a payment bond is required to be submitted for all projects estimated in excess of \$25,000
- 18.13. Contractor shall execute a performance bond for the total amount of the Agreement as specified in the format attached to this Agreement.

19. PREVAILING WAGES

19.1 City and Contractor acknowledge that this Agreement is subject to the provisions of Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code relating to public works and public agencies and agree to be bound by all the provisions thereof as though set forth fully herein. Full compensation for conforming to the requirements of the Labor Code and with other Federal, State and local laws related to labor, and rules, regulations and ordinances which apply to any work performed pursuant to this Agreement is included in the price for all contract items of work involved. This Agreement is subject to prevailing wage law, including, but not limited to, the following:

19.1.1 The Contractor shall pay the prevailing wage rates for all work performed under the Agreement. When any craft or classification is omitted from the general prevailing wage determinations, the Contractor shall pay the wage rate of the craft or classification most closely related to the omitted classification. The Contractor shall forfeit as a penalty to City \$200.00 or any greater penalty provided in the Labor Code for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates for any work done under the Agreement employed in the execution of the work by Contractor or by any subcontractor of Contractor in violation of the provisions of the Labor Code. In addition, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day, or portion thereof, for which

each worker was paid less than the prevailing wage rate shall be paid to each worker by the Contractor.

19.1.2 Contractor shall comply with the provisions of Labor Code Section 1777.5 concerning the employment of apprentices on public works projects, and further agrees that Contractor is responsible for compliance with Section 1777.5 by all of its subcontractors.

19.1.3 Pursuant to Labor Code § 1725.5, Contractor and any subcontractor must be registered with the California Department of Industrial Relations for any bid proposal submitted on or after March 1, 2015, and for any contract for public work entered into on or after April 1, 2015. Further, this project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

19.1.4 Pursuant to Labor Code § 1776, Contractor and any subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor in connection with this Agreement. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following: (1) The information contained in the payroll record is true and correct; and (2) The employer has complied with the requirements of Labor Code §§ 1811, and 1815 for any work performed by his or her employees on the public works project. The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours as required by Labor Code § 1776.

19.1.5 Notwithstanding anything to the contrary, Contractor shall defend, indemnify, and hold harmless the City, and its officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of failure or alleged failure of Contractor to comply with such prevailing wage laws.”

19.2 To the extent that the estimated amount of this Agreement exceeds \$1,000, this Agreement is further subject to 8-hour work day and wage and hour penalty law, including, but not limited to, Labor Code Sections 1810 and 1813, as well as California nondiscrimination laws, as follows:

19.2.1 Contractor shall strictly adhere to the provisions of the Labor Code regarding the 8-hour day and the 40-hour week, overtime, Saturday, Sunday and holiday work and nondiscrimination on the basis of race, religious creed, color, national origin, ancestry,

physical disability, mental disability, medical condition, marital status, sex or sexual orientation, except as provided in Section 12940 of the Government Code. Pursuant to the provisions of the Labor Code, eight hours' labor shall constitute a legal day's work. Work performed by Contractor's employees in excess of eight hours per day, and 40 hours during any one week, must include compensation for all hours worked in excess of eight hours per day, or 40 hours during any one week, at not less than one and one-half times the basic rate of pay. Contractor shall forfeit as a penalty to City \$25.00 or any greater penalty set forth in the Labor Code for each worker employed in the execution of the work by Contractor or by any Subcontractor of Contractor, for each calendar day during which such worker is required or permitted to the work more than eight hours in one calendar day or more than 40 hours in any one calendar week in violation of the provisions of the Labor Code.

- 19.3 This AGREEMENT is subject to Public Contract Code Section 6109: CONTRACTOR shall be prohibited from performing work on this project with a subcontractor who is ineligible to perform work on the project pursuant to Sections 1777.1 or 1777.7 of the Labor Code.

20. Dispute Resolution

- 20.1 All disputes arising out of this Agreement are subject to a mandatory step-by-step claims submission and evaluation process as a precondition to legal action in accordance with Public Contracts Code § 9204.
- 20.2 Any court action arising out of this Agreement shall be filed in the Los Angeles County Superior Court. Any alternative dispute resolution proceeding arising out of this Agreement shall be heard in the County of Los Angeles.
- 20.3 AGENCY shall have full City to compromise or otherwise settle any claim relating to this Agreement or any part hereof at any time. City shall provide timely notification to Contractor of the receipt of any third-party claim relating to this Agreement. City shall be entitled to recover its reasonable costs incurred in providing the notification required by this section.
- 20.4 This Agreement is further subject to the provisions of Article 1.5 (commencing at Section 20104) of Division 2, Part 3 of the Public Contract Code regarding the resolution of public works claims of less than \$375,000. Article 1.5 mandates certain procedures for the filing of claims and supporting documentation by Contractor, for the response to such claims by the City, for a mandatory meet and confer conference upon the request of Contractor, for mandatory nonbinding mediation in the event litigation is commenced, and for mandatory judicial arbitration upon the parties' failure to resolve the dispute through mediation. This Agreement hereby incorporates the provisions of Article 1.5 as though fully set

forth herein.

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

“City”
City of Calabasas

“Contractor”
Becker Arena Products, Inc.

By: _____
David Shapiro, Mayor

By: _____
Andrew McRae, Chief Executive Officer

Date: _____

Date: _____

By: _____
Kindon Meik, City Manager

Date: _____

By: _____
Erica Green, Community Services Director

Date: _____

Attest:

By: _____
Maricela Hernandez, City Clerk

Date: _____

Approved as to form:

By: _____
Matthew T. Summers
Calabasas City Attorney

Date: _____

EXHIBIT A SCOPE OF WORK

Demolition and removal of the existing dasher board system.

Installation of the new dasher board system. The new system will be fabricated in the Consultant's factory and shipped to the site. Contractor will install it once it arrives on site.

Total price, including prevailing wages - \$195,620.00

EXHIBIT B
APPROVED FEE SCHEDULE

Demolition and removal of the existing dasher board system.

Installation of the new dasher board system. The new system will be fabricated in the Consultant's factory and shipped to the site. Contractor will install it once it arrives on site.

Total price, including prevailing wages and all bonding - \$195,620.00

NON-COLLUSION AFFIDAVIT

State of California)
) ss.
County of Los Angeles)

_____, being first duly sworn, deposes and says that he or she is _____ of _____, the party making the foregoing bid, that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.”

Signature of Bidder

Business Address

Place of Residence

Subscribed and sworn to before me this ___ day of _____, 20__.

Notary Public in and for the County
of
State of California.

My Commission Expires _____, 20__.

WORKERS' COMPENSATION INSURANCE
CERTIFICATE

The Contractor shall execute the following form as required by the California Labor Code, Sections 1860 and 1861:

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

DATE: _____

(Contractor)

By:

(Signature)

(Title)

Attest:

By:

(Signature)

(Title)

**PAYMENT BOND
CITY OF CALABASAS
NEW DASHER BOARD SYSTEM FOR DE ANZA PARK**

WHEREAS, the City of Calabasas, as City has awarded to Becker Arena Products, Inc., as Contractor, a contract for the above-stated project;

AND WHEREAS, Contractor is required to furnish a bond in connection with the contract, to secure the payment of claims of laborers, mechanics, material persons, and other persons as provided by law;

NOW THEREFORE, we, the undersigned Contractor and Surety, are held and firmly bound unto City in the sum of **One Hundred Ninety-Five Thousand Six Hundred and Twenty Dollars (\$195,620.00)**, which is one hundred percent (100%) of the total contract amount for the above-stated project, for which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION IS SUCH that if Contractor, its heirs, executors, administrators, successors, assigns or subcontractors, shall fail to pay any of the persons named in Civil Code Section 9100, or amounts due under the Unemployment Insurance Code with respect to work or labor withheld, and to pay over to the Employment Development Department from the wages of employees of the Contractor and its subcontractors pursuant to Section 13020 of the Unemployment Insurance Code, with respect to such work and labor, that the surety or sureties herein will pay for the same in an amount not exceeding the sum specified in this bond, otherwise the above obligation shall be void. In case suit is brought upon this bond, Surety will pay reasonable attorneys' fees to the plaintiffs and City in an amount to be fixed by the court.

This bond shall inure to the benefit to any of the persons named in Civil Code Section 9100 as to give a right of action to such persons or their assigns in any suit brought upon this bond.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or the specifications accompanying it shall in any manner affect Surety's obligations on this bond. The Surety hereby waives notice of any such change, extension, alteration or addition and hereby waives the requirements of Section 2845 of the Civil Code as a condition precedent to any remedies City may have.

(Continued on Next Page)

IN WITNESS WHEREOF the parties hereto have set their names, titles, hands, and seals as of the dates set forth below:

CONTRACTOR* CONTRACTOR's Signer's Name, Title _____
 CONTRACTOR's Business Name _____
 Mailing Street Address _____
 City, State, Zip Code _____
 Telephone # _____
 Date: _____

Surety* Surety Signer's Name / Title _____
 Surety's Business Name _____
 Mailing Street Address _____
 City, State, Zip Code _____
 Telephone # _____
 Date: _____

*Provide CONTRACTOR and Surety name, address and telephone number and the name, title, address and telephone number for the respective authorized representatives. Power of Attorney and Notary Acknowledgement must be attached. Seals and dates of signing must also be included.

(EXECUTE IN DUPLICATE)

CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of _____

On _____ before me, _____, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (SEAL)

**FAITHFUL PERFORMANCE BOND
CITY OF CALABASAS
NEW DASHER BOARD SYSTEM FOR DE ANZA PARK**

KNOW ALL PERSONS BY THESE PRESENTS That Becker Arena Products, Inc., hereinafter referred to as "Contractor" as Principal, and _____, hereinafter referred to as "Surety", a corporation duly organized and doing business under and by virtue of the laws of the State of California and duly licensed for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings as Surety, are held and firmly bound unto the City of Calabasas, hereinafter referred to as the "City" in the sum of **One Hundred Ninety-Five Thousand Six Hundred and Twenty Dollars (\$195,620.00)**, which is one hundred percent (100%) of the total contract amount for the above stated project; lawful money of the United States of America for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, assigns and successors, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH, that whereas Contractor has been awarded and is about to enter into a Contract with City to perform all work required pursuant to the contract documents for the project entitled: **New Dasher Board System**, which Contract is by this reference incorporated herein, and is required by City to give this Bond in connection with the execution of the Contract;

NOW, THEREFORE, if Contractor and his or her Subcontractors shall well and truly do and perform all the covenants and obligations of the Contract on his or her part to be done and performed at the times and in the manner specified herein including compliance with all Contract specifications and quality requirements, then this obligation shall be null and void, otherwise it shall be and remain in full force and effect;

PROVIDED, that any alterations in the work to be done, or in the material to be furnished, which may be made pursuant to the terms of the Contract, shall not in any way release Contractor or the Surety thereunder, nor shall any extensions of time granted under the provisions of the Contract release either Contractor or said Surety, and notice of such alterations of extensions of the Contract is hereby waived by said Surety.

In the event suit is brought upon this Bond by City and judgment is recovered, said Surety shall pay all costs incurred by City in such suit, including a reasonable attorney's fee to be fixed by the Court.

(Continued on Next Page)

IN WITNESS WHEREOF the parties hereto have set their names, titles, hands, and seals as of the dates set forth below:

CONTRACTOR* CONTRACTOR's Signer's Name, Title _____
 CONTRACTOR's Business Name _____
 Mailing Street Address _____
 City, State, Zip Code _____
 Telephone # _____
 Date: _____

Surety* Surety Signer's Name / Title _____
 Surety's Business Name _____
 Mailing Street Address _____
 City, State, Zip Code _____
 Telephone # _____
 Date: _____

*Provide CONTRACTOR and Surety name, address and telephone number and the name, title, address and telephone number for the respective authorized representatives. Power of Attorney and Notary Acknowledgement must be attached. Seals and dates of signing must also be included.

(EXECUTE IN DUPLICATE)

CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of _____

On _____ before me, _____, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (SEAL)

**MAINTENANCE BOND
CITY OF CALABASAS
NEW DASHER BOARD SYSTEM FOR DE ANZA PARK**

KNOW ALL PERSONS BY THESE PRESENTS THAT WHEREAS, the City of Calabasas, as City has awarded to Becker Arena Products, Inc., as Contractor, a contract for the above-stated project.

AND WHEREAS, Contractor is required to furnish a bond in connection with the contract guaranteeing maintenance thereof;

NOW, THEREFORE, we, the undersigned Contractor and Surety, are held firmly bound unto AGENCY in the sum of **One Hundred Ninety-Five Thousand Six Hundred and Twenty Dollars (\$195,620.00)**, which is 100 percent (100%) of the total contract amount for the above-stated project to be paid to City, its successors and assigns, for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH that if Contractor shall remedy without cost to City any defects which may develop during a period of one (1) year from the date of recordation of the Notice of Completion of the work performed under the contract, provided such defects are caused by defective or inferior materials or work, then this obligation shall be void; otherwise it shall be and remain in full force and effect. In case suit is brought upon this bond, Surety will pay reasonable attorneys' fees to the City in an amount to be fixed by the court.

IN WITNESS WHEREOF the parties hereto have set their names, titles, hands, and seals as of the date set forth below:

CONTRACTOR*	CONTRACTOR's Signer's Name, Title _____ CONTRACTOR's Business Name _____ Mailing Street Address _____ City, State, Zip Code _____ Telephone # _____ Date: _____
Surety*	Surety Signer's Name / Title _____ Surety's Business Name _____ Mailing Street Address _____ City, State, Zip Code _____ Telephone # _____ Date: _____

*Provide CONTRACTOR and Surety name, address and telephone number and the name, title, address and telephone number for the respective authorized representatives. Power of Attorney and Notary Acknowledgement must be attached. Seals and dates of signing must also be included.

(EXECUTE IN DUPLICATE)

CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of _____

On _____ before me, _____, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (SEAL)



720 Innovation Drive
Shakopee, Minnesota, USA 55379
Tel: 952-890-2690
beckerarena.com

Customer #:
Date: August 1, 2023
Quotation #: RST230221-2
Proposal Expiration Date: March 30, 2023
Sales Consultant: Perry Coleman
T: 604.583.3101
E: Perry@Recsportproducts.com

Rev 4

Prepared For:
Aimee Haber
City of Calabasas CA
T: 818.880.6461
E: ahaber@cityofcalabasas.com

Project Location:
Calabasas CA

Thank you for considering Becker Arena Products, Inc., we appreciate the opportunity...

Benefits of Choosing to Partner with Becker Arena Products

- A stable and reliable company since 1988
- A staff with in-depth knowledge of the industry and products
- Quality products that last
- Experienced and professional installers
- Excellent customer service
- Worry Free Projects – Guaranteed

ATHLETICA 5.0 PRO-SERIES OUTDOOR DASHER BOARD SYSTEM

Becker Arena Products shall furnish and install the following new custom-built Athletica 5.0 Pro-Series Aluminum outdoor dasher board system. Pricing is based on the information provided and will include the following items and features.

MAIN RINK SIZE: 180'x 95'x 10' RADIUS

DASHER FRAMING W/UV STABILIZED POLY FACING AND KICK PLATE - POLYETHYLENE

CAP Rail

- Rink Size: 180'x 95'x 10' radius – 533 lineal feet of 42" high 5" wide Athletica Sports Systems anodized aluminum frame dasher boards, ring only.
- 1/2" white UV stabilized poly dasher facing, Poly cut into 4' sections for expansion and contraction.

- 1/2" x 8" high yellow UV stabilized poly kick plate
- 1/2" white UV stabilized high-density polyethylene cap rail.
- UV stabilized colored game line in the dasher facing.
- All panels pre-assembled.
- Plastic attached with # 1/4-20 FHMS. All fasteners color matched, and zinc plated.
- Vertical dasher supports to be drilled and epoxy anchored directly into the existing concrete slab.

GATES

- Four 36" wide box gates with 8" high thresholds.
- 1" thick high-density polyethylene on access gate thresholds.
- Two 48" wide access gate with heavy duty hinges, push button latches, wheeled castors, and 0" high thresholds for level floor ADA access.

PLAYER, PENALTY AND TIMEKEEPER'S AREA

- Number of Boxes – two (existing)
- 14' 0" long with 4' 0" between the boxes
- Water bottle Shelf: 3/8" White to height of mid-stringer in Players Boxes
- Player, Penalty, and Time Box interiors, back & divider walls, and chain link fencing is existing.

UPPER CONTAINMENT

- **Ends & Radii:** 72" high 2", 6 ga. galv. fencing - No vinyl coating.
- **Players Box Side:** 72" high 2", 6 ga. galv. fencing - No vinyl coating. Fencing is not included in front of the players box areas. Fencing on the box back and side walls is existing.
- **Opposite Side:** 72" high 2", 6 ga. galv. fencing - No vinyl coating.
- **Pockets:** 6 "pockets" (3 on each side) in the fencing to allow for the existing basketball goal posts.
- **Fencing Supports & Finish:** 1 11/16" diameter hot dipped galvanized posts and rails c/w caps, line posts & tension bars.
Standard galvanizing for mesh (non-coated) is 1.2oz / sf.

PROTECTIVE SAFETY NETTING

- Black nylon netting above the chain link fencing on the south end only (including corners) to a height of 72" above the fencing.
- Netting is hung from extended fence posts.

PRE-FABRICATION SITE SURVEY

- Becker Arena Products will provide 1 Specialized Becker trained Dasher Technician to survey the site, confirm details and measurements required for preparation of production

drawings, and determine and discuss any existing site issues prior to production of the shop drawing.

REMOVAL OF EXISTING DASHERS

- Becker Arena Products will remove the existing dasher system and chain-link fencing and place them in containers provided by the City of Calabasas. Disposal and all related permits, disposal and recycling costs are the responsibility of the City of Calabasas. Price is based on removal of dashers on the same trip as the installation of a new Pro Series Dasher System.

DRAWINGS

- 1 complete set of as built drawings including the dasher and anchor layouts.

BONDING

- Payment Bond, Performance Bond and Maintenance Bond is included.

COMPLETE INSTALLATION –

- Becker Arena Products, Inc. will furnish a crew for the complete installation of the dasher system. Price includes installation labor (**Non-union labor / Non- prevailing wage rate**), all travel, lodging, per diem and a forklift.

TOTAL PRICE F.O.B. CALABASAS CA \$184,375.00 USD **Accept _____**

OPTION 1

COMPLETE INSTALLATION –

Becker Arena Products, Inc. will furnish a crew for the complete installation of the dasher system. Price includes installation labor (**using California Prevailing Wage Requirements wage rate effective at the time of this quote**), all travel, lodging, per diem and a forklift.

TOTAL PRICE F.O.B. CALABASAS CA \$195,620.00 USD **Accept _____**

By: _____
Perry Coleman – Field Sales Representative

If you require any additional information, please contact Perry Coleman at 604.583.3101 or via email at perry@recsportproducts.com

Please Note: Taxes are the responsibility of the purchaser. Prices do not include special insurance requirements, or applicable permits and/or license fees. Prices subject to site visit and/or receipt of final construction drawings and specifications. If sales tax is applicable, it will be added to the proposal totals and noted on a Contract Summary Sheet that will be sent back with your executed contract.

Material Price Escalation & De-Escalation Clause (Due to the volatility of all components of the above dasher board system)

- In the event that the price of any of the material(s) used in the Becker Arena Products, Inc. production of the above product increase or decrease by 3% or greater from the price used for that material(s) at the time the quote was signed, then the price for the material(s) in the contract between Becker Arena Products, Inc. and the purchaser shall be increased or decreased to reflect the additional or reduced cost to obtain that material or materials. Purchaser agrees that Becker Arena Products, Inc. shall be entitled to an adjustment to the contract price to reflect and price increases of material(s) that occur because of Becker Arena Products, Inc. incurring additional costs when ordering materials.

All payment terms are based on credit approval.

Our Standard Payment terms are:

45% due upon placement of order	(\$ _____)
45% due 10 days prior to delivery	(\$ _____)
10% due upon delivery and installation	(\$ _____)

The above payment amounts will be filled in based on total contract price and any applicable sales tax and sent back on the Contract Summary Sheet with your executed contract.

We are looking forward to the opportunity of working with you on your project and if we can be of further assistance please do not hesitate to call.

This proposal is subject to Becker Arena Products, Inc. Standard Terms and Conditions and Limited Warranty and may be withdrawn without penalty at any time before contract execution. If accepted, please sign, and return this copy to Becker Arena Products. When approved and signed by one of our officers a fully executed copy will be forwarded for your records. This proposal is subject to change, withdrawal, or cancellation until accepted by you. If Becker Arena Products, Inc. have not received your acceptance within 60 days from the date hereof, this proposal shall automatically expire. Becker Arena Products, Inc. retains a security interest in all products covered in this agreement until all payment terms have been met. In addition, the purchaser agrees to sign any additional documents for Becker Arena Products, Inc. to perfect its security interest in the products.

Purchaser Signature

Title

Print Name

Today's Date

Becker Arena Products, Inc.

General Manager

Jeff Brosz

Print Name

Today's Date

BECKER ARENA PRODUCTS INC. STANDARD TERMS AND CONDITIONS OF SALE - EFFECTIVE JANUARY 2021

1. Definitions. In these terms "Seller" means the seller of the Goods as defined herein; "Buyer" means the entity purchasing the Goods, including any successors thereof; "Goods" means the goods, products and materials manufactured, imported, supplied and/or delivered for or by Seller to Buyer, as such were approved by Seller in reply to Buyer's order and accordingly listed in the Approval of Order; "Approval of Order", in respect of any Buyer's order, means the instrument issued by Seller, bearing the same reference number of such order and specifying, *among any other terms*, the items of Goods, including their respective price and quantity, which shall be supplied to Buyer upon such order; "Contract" means the contract for the supply of Goods which have been ordered by Buyer and specified in Seller's Approval of Order, which contract is concluded based on these Terms and Conditions of Sale unless otherwise specified in the Approval of Order.

2. Payment. Payment for Goods shall be due on or prior to the delivery date of Goods and no discount may be taken. Payments received after the due date thereof shall bear a service charge from their due date, at the maximum lawful interest rate applicable, and if none – at the annual rate of 5% above the base rate from time to time of the central bank of the place of Buyer's incorporation. All payments shall be made to Seller's designated bank account in the same currency and for the same amounts as specified in the Approval of Order.

3. Prices, Duties and Taxes. Prices specified in the Approval of Order are net, excluding packaging, and shall be deemed Ex-works (Incoterms 2000 as amended). Prices are based, inter alia, on production costs for supplies, labor, deliveries, duties, and services current on the order date. In the event of material increase in any such costs, Seller reserves the right either to adjust the prices for Goods accordingly, or to cancel any certain part of the sales relating to undelivered Goods. Duties, taxes, fees, levies and other compulsory payments applicable to the sale of Goods any time, as well as freight, express, insurance and delivery charges, shall all be borne and paid in full by Buyer, unless otherwise expressly stipulated.

4. Delivery. Delivery dates noted on the Approval of Order are estimates only, and are not guaranteed, and are all subject to adjustment as determined by the Seller acting reasonably. The acceptance of shipment by a common carrier or by any licensed public truckman shall constitute proper delivery. Risk associated with the Goods shall pass to Buyer on delivery or with the passing of title in the Goods, whichever occurs first; provided however, that where delivery is delayed due to circumstances caused by or within the responsibility of Buyer, risk of loss shall pass to Buyer upon Seller's notification that Goods are ready for dispatch.

5. Retention of Title. Title shall pass to Buyer only upon full payment by Buyer for the Goods and following payment of any other outstanding debt by Buyer to Seller. Buyer shall, at Seller's request, take any measures necessary under applicable law to protect Seller's title in the Goods, and lawfully notify Buyer's present or potential creditors of Seller's title on and interest in the Goods. Buyer acknowledges that so long as title has not been transferred in the Goods, it holds the Goods as bailee and fiduciary agent for the Seller and shall safely and securely store and keep the Goods separate and in good condition, clearly showing the Seller's ownership of the Goods and shall respectively record the Seller's ownership of the Goods in its books. Notwithstanding the above, Buyer may use Goods for its own use, or sell Goods, as fiduciary agent for the Seller, to a third party in the normal course of business by bona fide sale at market value, whereby proceeds of such usage or sale of Goods, as the case may be, shall, to the extent of the amount being owed by Buyer to Seller at the time of receipt of such proceeds, be held by Buyer on trust for Seller and specifically ascertained, until payment in full for all payable debts by Buyer to Seller.

6. Warranty.

a) If applicable, Seller warrants that Goods as set out in the warranty applicable thereto given by Seller to Buyer, subject always to the terms and conditions thereof, and subject to use, storage and application thereof in accordance with and based on Seller's standard tolerances, instructions of use and recommendations. b) Unless otherwise restricted by mandatory applicable law, THE WARRANTY SET FORTH HEREIN IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY AND ALL WARRANTIES OF MERCHANTABILITY, QUALITY AND FITNESS FOR USE AND FOR PURPOSE, ANY ADVICE AND RECOMMENDATION AND ANY OBLIGATIONS OR LIABILITIES WHICH MAY BE IMPUTED TO SELLER, ANY AND ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED, DENIED AND EXCLUDED. BUYER EXPRESSLY AGREES THAT NO WARRANTY THAT IS NOT SPECIFICALLY STATED IN THIS AGREEMENT WILL BE CLAIMED OR OTHERWISE ADHERED TO BY BUYER AND/OR BY ANYONE ACTING ON BUYER'S BEHALF AND/OR BY ANYONE DERIVING THE LEGALITY OF ITS CLAIM FROM BUYER, NOR THAT WILL ANY SUCH WARRANTY BE VALID. SELLER NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT, ANY OTHER LIABILITY IN CONNECTION WITH THE SALE, USE OR HANDLING OF ANY AND ALL GOODS SPECIFIED OR CONTEMPLATED BY THIS CONTRACT. NO WARRANTY IS MADE WITH RESPECT TO ANY OF THESE GOODS WHICH HAVE BEEN SUBJECT TO ACCIDENT, NEGLIGENCE, ALTERATION, IMPROPER CARE, IMPROPER STORAGE, IMPROPER MAINTENANCE, ABUSE OR MISUSE.

7. Claims and Liability.

a) Unless Seller shall within 30 days after delivery of the Goods, receive from Buyer written notice of any matter or thing by reason whereof it is alleged that Goods are not in accordance with the Contract, Goods delivered shall be deemed to have been supplied, delivered and accepted in all respects in full conformity with the Contract and Buyer shall be entitled neither to reject the same nor to raise any claim for damages or for other remedy in respect of any alleged negligence and/or breach of warranty and/or any condition. b) In any claim, brought subject to the conditions above, Buyer must prove to the satisfaction of Seller that it followed Seller's instructions for use, care, storage, maintenance, handling and application of the Goods. c) Unless otherwise specifically restricted by mandatory applicable law, Seller's liability under any claim and in connection with any possible allegation, whether based on negligence, contract, or any other cause of action, shall, if the Seller shall be liable hereunder, be limited to either (i) the replacement of the Goods or the supply of equivalent goods; (ii) the repair, or payment of the cost of repair, of the Goods; or (iii) credit in an amount equal to the purchase price specified in Seller's pertinent invoice, or in an amount of equivalent goods, all at Seller's sole option. Buyer acknowledges that the remedy available to him as specified herein, is in lieu of any remedies that may be otherwise available to him, now or in the future, whether in law or in equity, relating to any loss or damage, whether directly or indirectly, arising from the purchase and/or the use of Goods, including without limitation, any actual or contingent damages, loss of production, loss of profit, loss of use, loss of contracts or any other consequential or indirect loss whatsoever, whether pecuniary or non-pecuniary, and it is acknowledged and agreed by Buyer that in no circumstances shall Seller be liable for any such damages. Should any limitation on Seller's liability hereunder be held ineffective under applicable law, then Seller's liability shall in any event be limited to the minimum amount of damages to which Seller may limit its liability, where such is greater than the purchase price as specified in Seller's pertinent invoice. Additionally, any action against Seller must be commenced within one year after the cause of action accrues. d) Buyer, for himself and for any other party which may claim either under or through Buyer, or independently of Buyer, including Buyer's employees, directors, officers, representatives and personnel, shall indemnify and hold Seller harmless, from and against any claim or liability for damages in any way relating to the supply or use of the Goods, including claims for negligence and including but not limited to, any claim in connection with the design, manufacture, use, care, storage, delivery, application or maintenance of any Goods sold hereunder, whether alleged to have been committed by Seller or by any other person whatsoever. Buyer's undertaking as specified in this subsection shall extend and inure to the benefit of Seller and of Seller's successors at any time, as well as to Seller's personnel, representatives, managers, directors and officers. Nothing contained herein shall take effect to exclude or limit liability where liability may not be excluded or limited under applicable law, including, without limitation, for death, personal injury and fraudulent misrepresentations. e) Any and all warranties, undertakings, guarantees, or assurances provided herein by Seller, are specifically limited to Buyer herein, and not imputed by Seller, whether directly or indirectly, expressly or impliedly, to any other person or entity, including any subsequent buyer or user, bailee, licensee, assignee, employee and agent of Buyer.

8. Default. Upon failure of Buyer to pay any amounts due to Seller, or in the event of any breach or anticipated breach by Buyer of any Contract with Seller, or if Buyer shall either (i) become insolvent, (ii) call a meeting of its creditors, or (iii) make any assignment for the benefit of creditors, or if (iv) a bankruptcy, insolvency, reorganization, receivership or reorganization proceeding shall be commenced by or against Buyer, then, in each such occasion, Seller may, at its sole discretion, opt to (1) cancel this and any other Contract with Buyer (without waiving any of Seller's rights to pursue any remedy against Buyer); (2) claim return of any Goods in the possession of Buyer, the title of which has not passed to Buyer, and enter Buyer's premises (or the premises of any associated company or agent where such Goods are located), without liability for trespass or any alleged damage, to retake possession of such Goods; (3) defer any shipment hereunder; (4) declare forthwith due and payable all outstanding bills of Buyer under this or any Contract; and/or (5) sell all or part of the undelivered Goods, without notice at public and/or on private sale, while Buyer shall be responsible for all costs and expenses of such sale and be liable to Seller for any shortfall in the discharge of the amounts due to Seller. **9. Independent Delivery.** Each delivery of Goods shall (without prejudice to Seller's rights under clause 8 hereinabove) be considered a separate contract and the failure of any delivery shall not vitiate any contract as to deliveries of other Goods and payment therefor.

10. Cancellation. Orders manufactured in whole or in part, pursuant to Buyer's specifications, may not be cancelled except with Seller's prior written consent, on terms which will compensate Seller for any resulting losses.

11. No-Assignment. No rights or obligations of Buyer arising out of this Contract may be assigned without the express prior written consent of Seller.

12. Force Majeure. Should Seller be prevented from effecting deliveries of the Goods or any of them by reason of either an act of god, insurrection, riot, war hostilities, terror attacks, warlike operations, piracy, arrests, restraints or detentions by any competent authority, strikes or combinations or lock-out of workmen, fire, floods, droughts, earthquakes, permanent or temporary delay or inability to obtain labor, material or services through Seller's usual and regular sources, or any other circumstances (whether of a nature similar to those specified, or not) beyond the absolute control of the Seller, then, in each such cases, the obligation of the Seller to effect deliveries hereunder shall be suspended until after such prevention shall cease to continue. Should any deliveries under this Contract be suspended under this clause for more than 90 days – either party may withdraw from this Contract and be relieved from any liability; provided however, that Buyer shall nevertheless accept delivery and pay for such Goods once the Seller is able to deliver in accordance with the period(s) of shipment named in this Contract. Seller shall not be liable for, and be relieved from, any loss or damages of any kind resulting from the causes mentioned hereinabove.

13. Advice. Any provisions specified or implied by herein or elsewhere notwithstanding, any advice, recommendation, information, assistance or service provided by Seller in relation to the Goods or in respect of their use or application is given in good faith, shall be deemed accepted by Buyer without imputation of any liability to Seller, and it shall be the responsibility of Buyer to confirm the accuracy and reliability of the same in light of the use of which Buyer makes or intends to make of the Goods.

14. Entire Agreement. This Contract merges the entire terms and conditions for sale of the Goods. In the event of any conflict between the terms herein and any provisions included in the Approval of Order, the latter shall govern and prevail. Subject to the foregoing, nothing specified in, or referred to by, any other document, record or instrument whatsoever, which relates to and/or which otherwise subsists in connection with the sale of Goods herein, whether expressly or impliedly, including any written order, request or other standard or specific terms of any entity, shall or may be interpreted to attribute to Seller and/or to Seller's affiliates or representatives (i) any liability, obligation, commitment and/or undertaking, and/or (ii) any waiver in connection with or of any right, whether contractual, proprietary, in-person and/or equitable, including but not limited to, any and all intellectual property rights in connection with the Goods, which are and shall always remain in the Seller's exclusive and complete ownership under all circumstances whatsoever, notwithstanding any sale of Goods hereunder and whether the Goods shall be standard Goods or manufactured to a specific order. No modification or waiver of any provision hereof shall become valid and effective except upon a written instrument duly signed beforehand by Seller. No waiver by either party of any default of the other party shall be deemed a waiver of any subsequent or other default. If any provision of this Contract becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, the balance of this Contract shall continue in full force and effect without the provision.

15. Law and Arbitration. This Contract shall be governed by and construed in accordance with the laws of the state of Seller's incorporation. Any dispute arising out of or in connection with this Contract shall, if so determined by the Seller, be finally settled by arbitration in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce ("ICC"), as shall be in effect from time to time, and if so determined, the balance of this Section shall apply. The arbitration shall be held at such location in the state of Seller's incorporation as shall be determined by Seller, in its sole discretion. The arbitrator shall be mutually appointed by Seller and Buyer within 21 (twenty-one) days following a written demand for arbitration by either of the parties. Failing to reach an agreement regarding the nomination of an arbitrator, the head of the relevant ICC national committee (located in the Seller's country of incorporation; and absent such local committee in that specific country – the ICC UK Committee (www.iccuk.net)) shall appoint an arbitrator at the request of any of the parties, a copy of which request for the appointment of an arbitrator shall be provided by the requesting party to the other party. Awards may be enforced in accordance with the 1958 New York Convention and judgment may be entered upon any award in any court having jurisdiction over the parties and/or their assets. The arbitrator's fees shall be paid by both parties in equal parts unless otherwise determined by the arbitrator. This provision shall survive any termination of any of the terms and conditions herein and shall be deemed to constitute an independent arbitration agreement between Buyer and Seller for all purposes and intents.

16. Dasher Board Systems

1. Seller may choose whether or not to produce the rink according to its production schedule. If they produce the rink on schedule, it will be stored at Becker Arena Product's location of business and storage fees will be charged to the Purchaser at the rate of US \$300 per week. All payments will be due according to the terms from the original ship date. If the Seller chooses to delay production to coincide with the new ship date, no storage fees will apply, and payment will be due according to the terms from the original ship date. If contract terms are paid in full prior to shipping, the time will start from the original ship date and not the adjusted ship date.
2. A new shipping installation date will be coordinated with Seller's installation department and confirmed with the Purchaser. The Seller will reschedule the installation for the next available date according to the Seller's installation schedule. In some cases, the site delay may cause additional charges. This includes, but is not limited to, wages, remobilization, and equipment rental, to be paid by the Purchaser.
3. If the Purchaser's site is not ready when the Seller's installation crew arrives, additional costs will be charged to the Purchaser. This includes, but is not limited to wages, travel, lodging, meals, equipment rental and changes in Becker Arena Product's installation schedule.

17. General Site Requirements.

The following criteria must be met, or extra charges may apply, and delays will be incurred, if the site is not in compliance when Seller is ready to deliver and install the goods:

1. Concrete and Floor Work: All concrete work is to be completed and allowed to cure, according to job specifications and/or refrigeration contractors requirements, before the date installation is scheduled to begin.
2. The levelness of the perimeter concrete, where the rink is to be installed, must be within 1/8" of levelness for every 10' in length and no more than 1/4" difference in height over the length and width of the perimeter surface.
3. For sand floors, the first 6" from the front of the curb, where the rink is to be installed, must be within 1/16" of flatness from the inside edge outward and meet the levelness and flatness conditions specified above, Sand floors are not to be final graded prior to dasher board installation.
4. Expansion joints, which are to be covered completely by the rink, are to be within 1/2" of straightness from end to end and side to side. The distance from side to side and end to end of the outside edge of the expansion joint is to be within 1/2" of the required dimension for the frame to cover it.
5. If, upon arrival, the perimeter concrete is inspected and does not meet the specifications for levelness, flatness, straightness and size, the following will occur:
6. Seller's Representative will determine if rink can be shimmed or adjusted/cut to achieve desired levelness, fit and/or expansion joint coverage while maintaining the structural integrity of the rink. If so, the additional time and materials to do this will be paid by the Purchaser. A change order must be filled out by the Seller's Representative and signed by the Purchaser before any work commences.
7. If the rink cannot be shimmed or adjusted to the desired levelness and/or coverage while maintaining the structural integrity of the rink, the Purchaser will be responsible for fixing the surface to meet specifications. All associated costs for this are the sole responsibility of the Purchaser.
8. The Seller will accept contracts that are retrofit projects with the understanding that the condition of the underlying perimeter concrete work meets the specifications stated above. If, after removal of the existing rink, the concrete does not meet these conditions, points "1" and "2" from above will apply.

18. Requirements for Rink Installations:

(Refer to the enclosed Site Requirements)

1. Walk Through Inspection. When Seller's work is complete or near complete, Purchaser or the Purchaser's Representative (including general contractors and architects) must be available for a final walk-through inspection with the Seller's Representative. Any parties who do not attend the walk through will forfeit their right to submit punch list items. A final punch list of items to be completed or repaired will be prepared as a result of this walk through. Any item not included on the final "punch list" will not be the responsibility of the Seller unless it is covered by the Seller's Warranty.
2. Shop Drawings and Non-standard Shielding. Preparation of shop drawings will not commence until after the signed contract has been delivered to Seller. Production will not commence until Seller receives approved shop drawings. Field measured; tempered glass (non-standard sizes) may require an additional 3-4 weeks for delivery after completion of installation. Any field measured tempered glass to be installed by purchaser.
3. Polyethylene. All polyethylene used to manufacture the rink shall be virgin material. All colors shall match within manufacturer's tolerance.
4. Seller will not be responsible for replacing polyethylene that conforms to manufacturers color tolerance. During manufacturing, all panels shall have the polyethylene overhang past the frame a minimum of 1/16" on each end to allow for contraction of the material due to temperature change in the field. Seller shall not be responsible for material contraction gaps between panels due to temperature change if it adheres to these manufacturing requirements.
5. Material Check-in. (Installation supervision and supply only contracts) The Purchaser shall be responsible to verify the shipment for quantities and any damage caused from shipping for jobs that include installation supervision or are supply only. Any quantity variances and/or damage must be noted and reported to the Project Manager by filling out the Material Check-in Form and faxing it to the Project Manager. Missing/damaged items must be reported within 24 hours of receipt to receive credit. All boxes will be clearly marked by the Seller. The Ship list will clearly identify the contents and quantities of the shipment. It is the responsibility of the Purchaser to verify that all box numbers in the hardware crate are accounted for, not to open and count each individual item per box. The Purchaser must count anything that is not boxed.



**California Secretary of State
Electronic Filing**



Corporation - Statement of Information

Entity Name: BECKER ARENA PRODUCTS, INC.

Entity (File) Number: C3098404

File Date: 01/25/2022

Entity Type: Corporation

Jurisdiction: MINNESOTA

Document ID: H146296

Detailed Filing Information

1. Entity Name: BECKER ARENA PRODUCTS, INC.

2. Business Addresses:

a. Street Address of Principal Office in California:

b. Mailing Address: 720 Innovation Drive
Shakopee, Minnesota 55379
United States of America

c. Street Address of Principal Executive Office: 720 Innovation Drive
Shakopee, Minnesota 55379
United States of America

3. Officers:

a. Chief Executive Officer: Andrew McRae
720 Innovation Drive
Shakopee, Minnesota 55379
United States of America

b. Secretary: Tanya Baur
720 Innovation Drive
Shakopee, Minnesota 55379
United States of America

Document ID: H146296



California Secretary of State Electronic Filing

Officers (cont'd):

- c. Chief Financial Officer: Pat Westfall
720 Innovation Drive
Shakopee, Minnesota 55379
United States of America
4. Director: Not Applicable
- Number of Vacancies on the Board of Directors: Not Applicable
5. Agent for Service of Process: COGENCY GLOBAL INC. (C2003899)
6. Type of Business: Sports equipment and arenas

No Officer or Director of this Corporation has an outstanding final judgment issued by the Division of Labor Standards Enforcement or a court of law, for which no appeal therefrom is pending, for the violation of any wage order or provision of the Labor Code.

By signing this document, I certify that the information is true and correct and that I am authorized by California law to sign.

Electronic Signature: Polline Bodin

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