



Concession Agreement 202371357

Parties and Addresses:

City and County of Denver,
Department of Aviation:

City and County of Denver
Denver International Airport
Airport Office Building, 9th Floor
8500 Peña Boulevard
Denver, CO 80249-6340

Concessionaire:

InMotion DEN-B, LLC
3755 West Sunset Road, Suite A
Las Vegas, NV 89118

CONCESSION AGREEMENT

This Concession Agreement for the Denver International Airport (“**DEN**”)’s Concessions Program (“**Agreement**”) is entered into as of the date stated on City’s signature page below, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, for and on behalf of its Department of Aviation (hereinafter “**City**”), Party of the First Part, and **INMOTION DEN-B, LLC.**, a limited liability company authorized to do business in Colorado (“**Concessionaire**”), Party of the Second Part (collectively, “**Parties**”).

For and in consideration of the mutual covenants hereof, the Parties do hereby agree as follows:

ARTICLE I: SUMMARY OF CONTRACT PROVISIONS

1.01 SUMMARY OF CONTRACT PROVISIONS

City Address for Notices			ATTN: Chief Executive Officer City and County of Denver Department of Aviation Denver International Airport Airport Office Building, 9th Floor 8500 Peña Boulevard Denver, CO 80249-6340	
Concessionaire Address for Notices			InMotion DEN-B, LLC ATTN: Roderick McOwan 3755 West Sunset Road, Suite A Las Vegas, NV 89118	
Premises: See Exhibit A				
Location	Address / Space	Sq. Ft.	Min. Invest. per Sq. Ft.	Trade Name
A-Center Core	8700 Pena Blvd #AC-3B / R17-1-3-W3-N2	280.2	\$1,783.00	InMotion
C Center Core	9100 Pena Blvd #CC-4B / R19-1-3-W3-S1	303.1	\$1,783.00	InMotion
Premises Total			583.3 sq. ft.	
Term			9 Years	
Effective Date			Date of City Execution	
Required Opening Date			May 1, 2026	
Mid-Term Refurbishment Completion Date			May 1, 2031	
Expiration Date			May 1, 2035	
Minimum Annual Guarantee (“MAG”)			• Year 1: \$656,549.00. If Concession is open for business on or before the Required Opening Date, DEN will waive Year 1 MAG. • Beginning Year 2 & Onward, MAG is 85% of Year 1 Total Compensation paid to DEN.	
Percentage Fee			11% Apple Products 19% Non-Apple Products	
Common Maintenance Services Fee			\$0	

Total Minimum Capital Investment	\$1,040,023.90 (\$1,783.00 per sq. ft. X 583.3 sq. ft.)	
Joint Marketing Fee Rate	1%	
Common Area Capital Improvement and Maintenance Share [Food Court]	N/A	
Surety	\$386,205.00	
Major Merchandise Category	Retail	
Minor Merchandise Category	Specialty Retail	
ACDBE Goal	Percent	27.3%
	Ownership Participation	InMotion DEN-B, LLC – 72% Pastorelle Marketing Group, Inc – 28%
ACDBE Operator Name	Pastorelle Marketing Group, Inc. – 28%	
MWBE Goal	Percent	25%

1.02 MODIFICATIONS TO SUMMARY OF CONTRACT PROVISIONS

The Parties acknowledge and agree certain provisions stated in the Summary of Contract Provisions are estimates as of the Effective Date.

The Parties further acknowledge and agree that the provisions stated in the Summary of Contract Provisions, excepting for the length of the Term, are subject to change in accordance with the provisions of this Agreement, and the Parties agree to modify the Summary of Contract Provisions as needed by letter executed by the CEO or its designee without formal amendment.

ARTICLE II: DEFINITIONS, CONTRACT CONSTRUCTION, AND DISPUTE RESOLUTION

2.01 DEFINITIONS

The following terms have the stated meanings when used in this Agreement:

- A. **Actual Opening Date:** The first date the Premises under this Agreement is Open for Business.
- B. **Advertisement or Advertise:** Includes without limitation any sponsorship or displays of materials, signs, fixtures, or equipment for drawing attention to the goods and services offered by the Concessionaire or to a related event.
- C. **Agreement:** This Agreement between the parties as described in the preamble to this Agreement, including all exhibits, appendices, schedules, attachments, any letter modifications allowed by this Agreement, and subsequent amendments thereto.

- D. **Approved Project:** Concessionaire's construction, furnishing, fixturing, refurbishing, and remodeling of any portion of the Premises as reviewed and approved by City in accordance with the Concessions Handbook.
- E. **Capital Investment:** Those dollars spent by Concessionaire in the actual construction, remodeling, furnishing, fixturing, and equipping of any portion of the Premises, including reasonable architectural and engineering fees relating thereto, in connection with an Approved Project for such portion of the Premises. Capital Investment includes:
1. **Premises Improvements:** All improvements and equipment that are structural in nature or are affixed to the Premises and cannot be removed without material damage to the Premises including, but not limited to, mechanical, electrical and plumbing work, floors, ceilings, demising walls, store fronts, lighting fixtures, and built-in shelving.
 2. **Trade Fixtures:** All furniture, fixtures, and major equipment installed by Concessionaire, for use in its performance of the Concession, removable from the Premises without causing material damage to the Premises.
- F. **Chief Executive Officer or CEO:** The Chief Executive Officer of Denver International Airport, formerly referred to as the Manager of Aviation, and/or any successor in function and/or title, as amended by Executive Order 140, is the officer appointed by the Mayor to be in full charge and control of DEN including the management, operation, and control of Denver International Airport, the Denver municipal airport system, and all other facilities relating to or otherwise used in connection with the foregoing.
- G. **City:** The City and County of Denver, a municipal corporation of the State of Colorado, acting for and on behalf of its Department of Aviation, and the owner of the Denver International Airport and party of the first part to this Agreement.
- H. **City's Fiscal Year:** The twelve-month period beginning January 1st of a calendar year through December 31st of the calendar year.
- I. **Claim:** Any demand, action, cause of action, suit, proceeding, arbitration, claim, judgment or settlement, or compromise relating thereto which may give rise to a right to indemnification and defense under Article XIII of this Agreement.
- J. **Common Maintenance Services:** Certain maintenance and repair services performed by City on behalf of and for the benefit of all concessionaires as further described in Section 11.02 and may be described elsewhere in this Agreement.
- K. **Concession:** The privileges granted to Concessionaire by City to develop and operate a business to sell related goods to and/or perform services for the public and related operations thereto, in accordance with the terms and conditions of this Agreement.

- L. **Concession Promotions Program:** Activities by City, as described in Section 6.14, to promote the concession program at DEN.
- M. **Concessions Handbook:** The compilation of DEN's standards, procedures, requirements, directives, delegations of authority, directions, and instructions governing the operations of concessionaires and actions of their employees, representatives, agents, contractors, and vendors, which is incorporated herein by reference. City reserves the right to amend the Concession Handbook. Concessionaire agrees that it has no vested right to any particular version of the Concession Handbook, and upon notice to Concessionaire by DEN, and after an opportunity to comment on proposed changes, any amendment of the Concession Handbook will be binding on Concessionaire without amendment to this Agreement, *excepting that* if any amendment of the Concessions Handbook conflicts with substantive terms and conditions of this Agreement, this Agreement shall control.
- N. **Concessionaire:** The legal entity that is the party of the second party to this Agreement who is bound by this Agreement to develop and operate a Concession at DEN. Concessionaire shall include all sub-concessionaires and contract operators of Concessionaire who are operating within the Premises with City's written consent or pursuant to City pre-approved subleases with Concessionaire. In all provisions of this Agreement that require a person to comply with a specific provision requiring representation of Concessionaire, this person shall be an authorized official of Concessionaire.
- O. **Concessionaire's Operating Obligation(s):** The various maintenance, repair, and operating duties hereunder to be performed by Concessionaire, at its own cost and expense, in the operation of the Concession. The performance of the obligation by the Concessionaire, or payment to a third party for the performance of these obligations, are not rental payments or other considerations for the right to occupy real property, but are acknowledgements by the Concessionaire of its obligation to maintain, repair, and otherwise keep the Premises and operate the concession in a First-Class manner.
- P. **Concessionaire's Proposal:** Concessionaire's response to an RFP, or Concessionaire's proposal or concept offer made to DEN, as applicable, and any subsequent information submitted by Concessionaire during the evaluation or negotiation process, as modified and accepted by City.
- Q. **Contract Year:**
 - 1. With respect to the first Contract Year during the Term, the period commencing on earlier of the Actual Opening Date or the Required Opening Date and continuing through the end of City's Fiscal Year in which the Required Opening Date occurs.

2. With respect to each Contract Year thereafter during the Term, each twelve-month period commencing on the first day of City's Fiscal Year and ending on the last day of City's Fiscal Year, provided that if the Term expires or is terminated on a day other than the last day of a Contract Year, the last Contract Year will then end as of the date of such expiration or termination.
- R. **Contract:** See definition of Agreement.
- S. **Covenant:** Any agreement, undertaking, commitment, guarantee, warrant, pledge, and/or promise made under this Agreement.
- T. **Damage(s):** Any compensation for loss or injury, excluding consequential, special, and punitive damages, and/or any loss, liability, claim, damage, cost and expense, including costs of investigation and defense and reasonable attorneys' fees, whether the action is for money damages, or for equitable or declaratory relief.
- U. **Date of Possession:** The date on which City makes the Premises available for occupation by the Concessionaire.
- V. **DEN:** The Denver Municipal Airport System of Denver, Colorado as defined in the Denver Revised Municipal Code, and specifically the Denver International Airport, including the passenger transportation facilities at the Denver International Airport, existing or under construction as of the Effective Date of this Agreement, known individually as the Jeppesen Terminal and its appurtenant Concourses, including all user movement areas, areas leased exclusively or preferentially to any third party or parties, common areas and baggage claim areas there in, and interconnecting hallways, concourses, and bridges.
- W. **D.R.M.C.:** The Denver Revised Municipal Code.
- X. **DEN's Rules and Regulations:** The Denver Municipal Airport System's Rules and Regulations initially adopted January 11, 1994, for an effective date of March 9, 1994, and including as they have been or may be modified from time to time by the Chief Executive Officer, or the CEO's successor in function or title, pursuant to the authority granted in the Denver Revised Municipal Code. Concessionaire agrees it has no vested right to any particular version of DEN's Rules and Regulations, and so after the Effective Date the Concessionaire will follow the most current version of such rules or a particular rule as may be issued or amended by DEN.
- Y. **Denver-Aurora Statistical Area:** The "Denver-Aurora-Lakewood, CO Metropolitan Statistical Area", as defined by the U.S. Bureau of Labor Statistics,
- Z. **Effective Date:** The date of full execution of this Agreement by City, as set forth on City's signature page.

- AA. **Emergency:** A serious, unexpected situation requiring immediate action including, but not limited to, any emergency declared by the FAA, the TSA, the City, or the CEO.
- BB. **Encumbrance:** Any burden or impediment on property and or assets.
- CC. **Expiration Date:** The anniversary of the Required Opening Date corresponding to the length of the Term, as stated in Section 1.01 Summary of Contract Provisions.
- DD. **Federal Aviation Administration (FAA):** The Federal Aviation Administration established by the federal government under the Federal Aviation Act of 1958, as amended, or such other governmental agency which may be successor in function thereto or be vested with the same or similar authority.
- EE. **First Class:** A manner of operation of the Concession, a standard of quality of materials and construction, a standard of quality of goods and services, and sustainability practices creating a high performing Concession contributing to a four (4) to five (5) star rating in food and beverage, retail, consumer services, and airport staff from the SKYTRAX rating service or a similar standard chosen by the City.
- FF. **General Manager:** An active, qualified, competent, and experienced employee(s) of Concessionaire that oversees and manages the performance of the Concession and represents and acts on behalf of Concessionaire.
- GG. **Goods and Services:** The wholesome food, food products, non-alcoholic beverages, alcoholic beverages, merchandise, or consumer services which Concessionaire is authorized to sell under this Agreement.
- HH. **Gross Revenue:** The total amount of monies paid to or earned by Concessionaire at or from the Premises in its performance of the Concession, as further described in Section 4.01.
- II. **Independent CPA:** A Certified Public Accountant licensed in Colorado acceptable to City who is independent and without the appearance of impropriety within the meaning of the American Institute of Certified Public Accounts' Code of Professional Conduct Rule 1.200.001 – 1298.010.16 or its successor.
- JJ. **Joint Marketing Fund:** The central marketing and promotional fund which, in City's sole discretion, will serve the Concession Promotions Program for overall service, retail, and food and beverage concessions at DEN.
- KK. **Law:** Any order, writ, injunction, decree, judgment, law, ordinance, decision, ruling, statute, code, rule, or regulation of any Governmental Authority, including as these may be amended after the Effective Date of this Agreement.
- LL. **Loss:** Any expense, cost, or damage to person or property.

- MM. **Mid-Term Refurbishment:** Renovation, remodel, or significant repair of the Premises at or about the midpoint of the Term, in accordance with Section 9.11.

- NN. **Minimum Annual Guarantee or “MAG”:** The minimum amount payable by Concessionaire to City each Contract Year as a portion of the Privilege Fee as further described in Section 4.02. The Minimum Annual Guarantee shall be paid in equal portions monthly throughout each Contract Year in the Term. The Minimum Annual Guarantee is hereinafter referred to as the MAG.

- OO. **Notice to Proceed:** As it applies to any portion of the Premises, the written notice from City to Concessionaire allowing Concessionaire to commence an Approved Project.

- PP. **Open For Business:** The date Concessionaire has met the requirements stated in the Concessions Handbook to be open to the public for business, including, but not limited to, the following: (1) delivered documentation satisfactory to City of Substantial Completion of the Premises; (2) obtained written permission from the CEO to remove any construction wall surrounding the Premises; and (3) commenced generating Gross Revenue from the Premises.

- QQ. **Percentage Fee:** The fee paid by Concessionaire to City, as a portion of the Privilege Fee, calculated in accordance with Section 4.02.

- RR. **Personnel:** A sufficient number of properly trained representatives, agents, and employees of Concessionaire to service customers in a timely and efficient manner and to meet Concessionaire’s obligations under this Agreement.

- SS. **POS Terminal(s):** Electronic point-of-sale terminal(s) consistent with the requirements of Section 6.10.

- TT. **Premises Improvements:** See Article II, Section 2.01(E).

- UU. **Premises:** The specific area of DEN, as described and/or depicted in **Exhibit A**, that Concessionaire is authorized to occupy and use for the purposes set forth herein.

- VV. **Price Benchmark Establishment(s):** City’s approved business(s) within the Denver-Aurora Statistical Area (specifically excluding businesses located at DEN) used to determine compliance with the Pricing comparable in concept, size, ambiance, service style and quality to the Premises, and in full compliance with Section 6.03(B).

- WW. **Price List:** A listing, as requested by City, of the goods and services to be sold from the Premises, and the prices for such goods and services.

- XX. **Pricing:** Comparable price(s) to similar or equivalent goods and services sold in comparable non-DEN locations within the Denver-Aurora-Lakewood Statistical Area, as described in Section 6.03.

- YY. **Privilege Fee:** The fee paid by Concessionaire to City, calculated in accordance with Section 4.02, as consideration for the privilege of operating a concession(s) at DEN, comprised of the MAG and the Percentage Fee for each month during the Term.
- ZZ. **Required Opening Date:** The date stated on the Summary of Contract Provisions by which the Premises under this Agreement must be open to the public for business, except as such date may be extended in accordance with the provisions herein.
- AAA. **Store Hours:** The hours of operation for the Concession, to be in accordance with the requirements of the Concessions Handbook.
- BBB. **Substantial Completion:** The stage in the process of any construction or other work when such work is sufficiently complete, as reasonably determined by City, so that, (1) if the City has performed work, Concessionaire is able to take possession of the Premises, or (2) in the case of Approved Project work, Concessionaire has received a Certificate of Occupancy and/or a Temporary Certificate of Occupancy from City and County of Denver Building Department and is able to occupy the Premises for the purpose of opening for business. It is the intent of the Parties that the application of the term Substantial Completion in the context of this Agreement shall coincide with the application of that term in Colorado Revised Statutes Section 39-1-103(17) (a) (II) (A) and (B), so that the date on which Substantial Completion occurs under this Agreement shall be the same date relative to the imposition and levy of possessory interest taxes.
- CCC. **Summary of Contract Provisions:** The statement of key provisions of this Agreement located in Article I of this Agreement.
- DDD. **Surety:** An irrevocable letter of credit, bond, or other instrument as first approved in writing by City, generally in a form consistent with Section 15.01 *infra*, drawn on behalf of City.
- EEE. **Term:** The period of time beginning on the Required Opening Date and ending on the Expiration Date, as stated in Section 1.01 Summary of Contract Provisions.
- FFF. **Trade Fixtures:** See Article II, Section 2.01(E)(2).
- GGG. **TSA:** The U.S. Department of Homeland Security's Transportation Security Administration, or any successor thereto.

2.02 CONTRACT CONSTRUCTION

- A. **Exhibits and Appendices.** The following Exhibits and Appendixes are attached hereto and are hereby incorporated and made a part of this Agreement:
1. Exhibit A, Premises Description

2. Exhibit B, Permitted Uses
3. Exhibit C, Monthly Concession Report
4. Exhibit D, Insurance Requirements
5. Exhibit E, ACDBE Commitment Form
6. Exhibit F, EcoPass Program
7. Exhibit G, Equity, Diversity, and Inclusion Plan
8. Exhibit H, Development Schedule
9. Appendix A, General Civil Rights Provisions
10. Appendix B, Compliance with Nondiscrimination Requirements
11. Appendix C, Standard Federal Assurances and Nondiscrimination in Construction, Maintenance, Operation Of Facilities
12. Appendix D, Standard Federal Assurances and Nondiscrimination in Construction, Use, Or Access To Facilities
13. Appendix E, Title VI List of Pertinent Nondiscrimination Authorities
14. Appendix 1, Disadvantaged Business Enterprises- Required Statements
15. Appendix 2, ACDBE Nondiscrimination and Assurance Requirements

The Parties acknowledge and agree that certain provisions of the above Exhibits are subject to change in accordance with the provisions of this Agreement.

B. Concessionaire's Proposal. Concessionaire and City acknowledge that Concessionaire's Proposal was valuable consideration in the award of this Agreement to Concessionaire and is an authoritative reference for understanding the intention of the Parties. The Parties agree that the financial Pro Forma, operational or performance standards, and licensed concepts included in Concessionaire's Proposal are material parts of the bargain between the Parties. Concessionaire acknowledges that City relied upon Concessionaire's Proposal in entering into this Agreement, and failure to comply with such assurances made in the Proposal and relied on by the City would be a breach of contract.

C. Interpretations.

As used herein, these terms mean as follows:

1. Day(s) shall mean calendar day(s).

2. Month(s) shall mean calendar month(s).
3. The use of any gender shall include all genders.
4. The use of any number(s) shall be construed as the singular or the plural, all as the context may require.
5. Section Headings are for the convenience and reference of the Parties, and do not define or limit the scope of any section or provision.
6. The language of this Agreement shall be construed according to its fair meaning, and not strictly for or against either Party.
7. If any provision in this Agreement is capable of two or more constructions, some of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

2.03 ADMINISTRATIVE HEARING

Disputes arising under or related to this Agreement, and Concessionaire's disputes of all decisions, determinations, or other actions by City arising out of this Agreement, shall be resolved by administrative hearing initiated and conducted according to the procedures outlined in D.R.M.C. § 5-17 and DEN Rule 250, *excepting that* City shall retain its right to obtain an order of eviction in accordance with applicable state law. The parties agree that the determination resulting from said administrative hearing shall be final, subject only to any Party's right to appeal the determination under the Colorado Rules of Civil Procedure, Rule 106.

2.04 GOVERNING LAW AND VENUE

- A. **Governing Law.** This Agreement is made under and shall be governed by the laws of Colorado. Each and every term, provision, or condition herein shall be construed, interpreted, and applied in accordance with, governed by, and enforced under the laws of the State of Colorado, as well as the Charter and Ordinances of the City and County of Denver.
- B. **Venue for Disputes.** The Parties agree that venue for any action arising from this Agreement shall be in the District Court for the City and County of Denver.
- C. **Governing Law and Venue for ACDBE and DSBO Contracts.** Concessionaire agrees that any contract upon which Concessionaire will rely to comply with ACDBE or the City's Division of Small Business Opportunity ("**DSBO**") goals or requirements stated *infra* in this Agreement, including *e.g.* joint venture or service agreements, will state that such contract is governed by Colorado law, and that venue for any action arising from such contract shall be in the District Court for the City and County of Denver, unless DEN approves in writing an alternate choice of law or venue.

2.05 DELEGATION OF AUTHORITY

The CEO exercises the City’s authority and discretion under the Agreement, and has the authority and discretion to further delegate any authority or discretion granted to the CEO. The CEO has designated a representative and delegated authority and discretion under this Agreement to DEN’s Executive Vice President, Chief Commercial Officer (“**EVP**”). Only the CEO and/or EVP may exercise City’s authority and discretion granted under the Agreement, *except that* the EVP has delegated authority for all day-to-day management responsibilities and decisions to the Department of Aviation’s Director of Concessions (“**Director**”). The CEO and/or EVP may rescind or amend any designation of representative or delegation of authority and discretion under the Agreement upon written notice to Concessionaire.

ARTICLE III: PREMISES

3.01 PREMISES DESCRIPTION

City hereby grants to Concessionaire, as of the Date of Possession under this Agreement, the privilege to occupy, improve, and use the Premises within DEN as listed and depicted in **Exhibit A (“Premises Description”)**. The total area of the Premises as determined by DEN is listed in the Summary of Contract Provisions. Through a letter executed by the CEO, City may modify the Premises, Premises Description, and the Summary of Contract Provisions in its sole discretion to incorporate any additional as-built areas and other spaces that were not included in the original Premises Description, and may increase the compensation owed under this Agreement to account for such additional square footage without need for formal amendment to this Agreement.

3.02 MODIFICATIONS AND CLOSING OF PREMISES

City shall have the right to close or make modifications to any portion of the Premises, at the sole discretion of City, to accommodate DEN operations, health and safety measures, security renovations, maintenance, public art, or other work to be completed at DEN.

3.03 RECLAIMING OF PREMISES FOR AIRPORT PURPOSES

City reserves the right to reclaim the Premises or portions thereof when, in the sole and absolute discretion of City, such reclaiming is necessary for the development or operations of DEN or is in the best interest of City. City will make a reasonable effort to identify replacement premises with similar area, visibility, and exposure to passenger traffic as the reclaimed Premises.

City may exercise such right to reclaim by giving Concessionaire ninety (90) days’ prior written notice specifying the effective date of the reclaiming (the “**Reclaiming Effective Date**”) and identifying any replacement premises. If any replacement premises are identified, Concessionaire shall notify City in writing as to its acceptance or rejection of the replacement premises within thirty (30) days after the City’s notice. If Concessionaire accepts the replacement premises, the following provisions will go into effect immediately:

1. All of the terms, covenants, conditions, and provisions of this Agreement shall continue in full force and effect and apply to the replacement premises; provided, however, that City may reasonably adjust the Privilege Fees owed to compensate for any extra square footage provided at the replacement premises.
2. Concessionaire shall vacate and surrender possession of the reclaimed Premises by the Reclaiming Effective Date.
3. Concessionaire shall accept possession of the replacement premises in its “As Is” condition as of a date to be specified by City.
4. City will pay Concessionaire basic moving expenses limited to the moving of furniture, equipment, and other personal property from the reclaimed Premises to the replacement premises. Concessionaire shall pay all other costs to improve and fit out the replacement premises and shall perform such work in accordance with this Agreement and City directions.

Subject to the exceptions and requirements outlined below, City will pay Concessionaire an amount equal to the actual expenses incurred in the direct physical construction and equipping of the reclaimed Premises, less any amounts attributable to asset depreciation, as calculated by City, to ensure compliance with DEN’s federal grant assurances. City will not pay for any costs or expenses for furniture, equipment, or other property that is relocated to any replacement premises, or for any such items that are destroyed, transferred, or repurposed, or that otherwise remain in the possession or control of Concessionaire or any third parties. City will not pay for any costs or expenses that reflect travel expenditures, shipping and delivery, internal employee wages, bid proposal costs, meals, design services, or any other expenses that are not for the direct physical construction and equipping of the reclaimed Premises. City will not pay for any reimbursable costs or expenses that cannot be directly verified via invoices and other documentation to the satisfaction of City in its sole discretion, and will not pay any amount in excess of the Minimum Capital Investment. City further reserves the right to deny or reduce any claims for expenses for goods and services that it determines were not reasonable or that were not actually paid for, received, or used for the Premises. Concessionaire shall submit all documentation relating to claimed expenses within sixty (60) days after the City’s notice, and shall promptly cooperate with all specific requests to provide information about any such expenses, including contracts and purchase orders between Concessionaire and its contractors. If Concessionaire moves to replacement premises or operates any other concessions at DEN, any final amount determined by City for reimbursement will be provided solely in the form of an account credit.

Concessionaire shall not be compensated and City shall not be liable for any inconvenience to Concessionaire or for any damages, lost profits, or interruption of Concessionaire’s business relating to or arising in any way from the reclaiming of the Premises or moving to any replacement premises.

Within a reasonable time after the Reclaiming Effective Date, the Parties will modify the Summary of Contract Provisions and **Exhibit A** to delete the reclaimed Premises and formally

incorporate the replacement premises, if any, via letter executed by the CEO without need for formal amendment to this Agreement.

Notwithstanding any other provision, if no adequate replacement premises are available, as determined solely by City in its discretion, or if Concessionaire fails to respond to City's notice within thirty (30) days after the date of such notice or otherwise rejects any replacement premises, this Agreement will terminate on the Reclaiming Effective Date and this Agreement's termination provisions shall apply.

3.04 INGRESS AND EGRESS

Concessionaire will have the privilege of ingress to and egress from DEN and the Premises for Concessionaire's officers, authorized officials, employees, agents, and invitees, including customers, suppliers of materials, furnishers of services, equipment, vehicles, machinery, and other property. Privilege of ingress and egress will be subject to FAA regulations, applicable laws, and DEN's Rules and Regulations. Moreover, without exception, nothing in this Agreement shall be construed to prevent City from charging the operators of vehicles or carrying passengers and property a fee for the privilege of entering upon DEN, using DEN's roadways, soliciting passengers upon DEN, or otherwise operating vehicles at DEN. City reserves the right to make such charges provided they do not discriminate unreasonably against the operators of vehicles used for carrying officers, employees, passengers, or property of Concessionaire.

3.05 PREMISES ACCEPTANCE AS IS

Concessionaire understands, acknowledges, and accepts the Premises in its present condition, "As Is" with all faults and with absolutely no warranties as to condition or suitability for use being given by City. City shall have no obligation, liability, responsibility to construct additional improvements or to modify existing conditions, nor to provide services of any type, character, or nature (including any obligation to maintain, repair, or replace utilities or telephone/data service) on or to the Premises other than as explicitly stated in this Agreement.

3.06 NO WARRANTY FOR ECONOMIC VIABILITY

City makes no warranty, promises, or representations as to the economic viability of the Premises, Concessionaire's business concept, or any other matter pertinent to the potential or likelihood for success or failure of Concessionaire's business operations. Concessionaire understands, acknowledges, and accepts that airline gate usage and other aspects of DEN operations are subject to change without notice and that City makes no warranty regarding passenger numbers or traffic, or airline gate usage. Except as is specifically set forth herein, City shall not, by virtue of the existence of this Agreement, be constrained in connection with its operation of DEN.

3.07 TERM

This Agreement shall be effective and binding upon the Parties as of the Effective Date. The Term of concession operation shall begin on the Required Opening Date and continue through

the Expiration Date, unless this Agreement is earlier terminated as provided herein. In no case will the Term extend beyond the Expiration Date as stated in the Summary of Contract Provisions.

3.08 TEMPORARY OPERATIONS

After the Effective Date and continuing during the Term, City, in the sole and absolute discretion of the CEO, may grant Concessionaire the privilege of conducting temporary concession operations at DEN. Where the CEO determines it is in the best interest of the City to allow Concessionaire the privilege of conducting temporary concession operations, City shall notify Concessionaire by letter executed by the CEO or CEO's authorized representative and acknowledged by Concessionaire, without need for formal amendment to this Agreement. Such privilege shall be on a temporary basis, upon the same terms and conditions as stated herein, unless otherwise stated in said letter. Temporary operations added in accordance with this Section shall open within ninety (90) days from the date of the CEO's letter and terminate on a date determined by City.

3.09 HOLDOVER

Any exercise by Concessionaire of the privileges granted herein after the Expiration Date, if permitted by DEN, shall be on a month-to-month basis with all provisions of this Agreement, including compensation, fees, charges, insurance policies, Surety, and Guarantees remaining in place until such time City gives notice to Concessionaire to surrender the Premises. Notice to surrender will be provided in writing not less than thirty (30) days prior to the anticipated surrender date.

Any exercise by Concessionaire of the privileges granted herein after the Expiration Date, or after termination of this Agreement without the written approval of City constitutes a trespass, in accordance with D.R.M.C. § 38-115. No occupancy of any portion of the Premises by Concessionaire after the expiration or other termination of this Agreement, without City's written approval, extends the Term of such portion of the Premises. Nothing herein shall be construed to give Concessionaire the right to hold over. In the event of such trespass, Concessionaire shall indemnify City against all damages arising out of the Concessionaire's trespass, including but not limited to, any costs incurred by City to evict Concessionaire, regain possession of the Premises or any portion(s) thereof, and all insurance policies, Surety, and Guarantees required to be obtained and maintained by Concessionaire as set forth in this Agreement shall continue in full force and effect.

3.10 PRIVILEGES AND OBLIGATIONS UPON EXPIRATION OR TERMINATION

- A. Concessionaire covenants that, upon termination of this Agreement with or without cause, it will surrender the Premises to the City peaceably, quietly, and in as good order and condition as the same may be hereafter improved by Concessionaire or City, reasonable use and wear thereof and damage by casualty, which damage Concessionaire did not cause and is not required to repair or restore under this Agreement, excepted.

- B. Concessionaire also covenants to provide to City any and all keys to doors, window displays, or any area of controlled access within the footprint of the Premises.
- C. City shall be entitled to exercise the non-judicial remedy of locking Concessionaire out of the Premises as a means of enforcing City's right of possession, regardless of whether Concessionaire is delinquent in compensation payments, including without limitation, the de-activation of Concessionaire's security badges or credentials; and this right of de-activation shall not, and legally cannot, limit or otherwise affect City's governmental police powers to de-activate security credentials for security or other governmental reasons.
- D. Upon expiration or termination of this Agreement, Concessionaire shall remove all its Trade Fixtures and Concessionaire or brand proprietary property, inventory and other personal property, and leave the Premises in broom clean condition. Additionally, at the option and upon the written request of City, and to the extent assignable under license agreement or otherwise, Concessionaire shall convey the rights to any permit or license applicable to the Premises to any designee of City for the designee's use on an "As Is" basis without warranties. No act by City shall be deemed an acceptance of a surrender of the Premises; the City's acceptance of a surrender of the Premises shall be valid only if such acceptance is in writing and signed by City.
- E. The Parties understand and agree all terms and conditions of this Agreement (such as the indemnity agreement set forth herein) which by reasonable implication contemplate continued performance or compliance beyond termination of this Agreement (by expiration of the term or otherwise), shall survive the expiration or earlier termination of this Agreement and shall continue to be fully enforceable as provided herein.

3.11 END OF TERM TRANSITION

During the final Contract Year, City may award and transition to a new concession agreement that may include privileges to the Premises or portions thereof. If Concessionaire is not selected for the new agreement, Concessionaire acknowledges and agrees to follow the end of term transition procedures and guidelines identified in the Concessions Handbook.

ARTICLE IV: COMPENSATION, FEES, OTHER CHARGES, REPORTING, AND ACCOUNTING RECORDS

4.01 GROSS REVENUE

Gross Revenue includes all monies paid or payable to Concessionaire or due or received from customers by Concessionaire for sales made, services rendered, and customer orders fulfilled at or from the Premises, regardless of when or where the customer order is placed (including outside the Premises), and any other receipts, credits, rebates, allowances, internet sales, or revenues of any type arising out of or in connection with Concessionaire's or Concessionaire's

sub-concessionaires' or agents' operations at the Premises, including, but not limited to, branding fees, marketing fees, merchandising fees, promotional allowances, performance allowances, retail display allowances, and any other type of ancillary advertising or product placement fees, other allowances and fees, and any amount charged by Concessionaire as a pass through to its customers of the Privilege Fee or any other fee or charge payable per this Agreement. Gross Revenue shall not include:

1. Any taxes imposed by law that are separately stated to and paid by a customer and directly payable to the taxing authority by Concessionaire.
2. Notwithstanding the foregoing, amounts and credits received from suppliers for merchandise, including those received for merchandise returned by concessionaire.
3. Cash and credit card refunds to customers for merchandise returned.
4. Amounts and credits received in settlement of claims for loss of, or damage to, merchandise.
5. Insurance proceeds received from the settlement of claims for the loss of or damages to Concessionaire's property at or on the Premises other than the proceeds from business interruption insurance.
6. Inter-company store transfers.
7. United States Postal Service stamp sales.
8. Amounts received for uniforms or clothing purchased by employees where such uniforms or clothing are required to be worn by employees.
9. Reimbursements from Concessionaire's sub concessionaires for any taxes, fees, franchise or license fees, utilities or other services paid or provided by Concessionaire for or on behalf of its sub concessionaires; provided, however, that any reimbursement in excess of the actual cost of such taxes, fees, franchise or license fees, utilities or other services shall be included in Gross Revenue.
10. Compensational fees, and charges paid to Concessionaire by its sub concessionaires pursuant to the provisions of this Agreement; provided, however, that any such payment in excess of the amounts required hereunder shall be included in Gross Revenue.
11. Gift cards sold at the Premises. When a gift card is redeemed or accepted as payment for a purchase at the Premises, the transaction must be reported as part of Gross Revenue.

12. Amounts for coupons and other forms of discounts including complimentary customer services, such that only the amounts actually received are ultimately included in Gross Revenue.
13. Gratuities for services performed by employees paid by Concessionaire or by its customers except to the extent Concessionaire may be entitled to receive a portion of the gratuities.

4.02 PRIVILEGE FEE

As consideration for the privileges granted herein to operate the Concession at DEN, beginning on the earlier of the Actual Opening Date or the Required Opening Date and continuing through the Term, Concessionaire covenants to pay the Privilege Fee to City for each month, or portion thereof, during the Term.

A. MAG.

1. First Contract Year. Beginning on the earlier of the Actual Opening Date or the Required Opening Date and continuing through the Contract Year in which such Opening Date occurs, the initial MAG amount in the Summary of Contract Provisions will be pro-rated to include only the months from the Actual or Required Opening Date to the end of that Contract Year. If the Actual Opening Date or Required Opening Date is after the first of a month, the calculation will be performed based on the Partial Months provision below. Any full monthly amount will be one-twelfth (1/12th) of the initial MAG amount in the Summary of Contract Provisions.
2. Waiver of MAG in Year 1. The MAG for the First Contract Year shall be waived only if the Concession opens by the Required Opening Date. If the Actual Opening Date occurs on or before the Required Opening Date, no MAG shall be due or payable until after the end of the First Contract Year.
3. MAG Calculation for Year 2. For the Second Contract Year, the MAG shall be calculated based on a pro-rated amount corresponding to the number of months the location has been operational in Year 1.
4. Subsequent Contract Years. Beginning with the Third Contract Year and continuing each Contract Year thereafter, including any Holdover period, the MAG will equal the greater of the Second Contract Year MAG or eighty-five percent (85%) of the total Percentage Fee payable in the Prior Contract Year. The applicable MAG for the last Contract Year will be pro-rated if such Contract Year is less than twelve (12) months.
5. Partial Months. For any payment period of less than one month, the applicable MAG shall be paid on a pro rata basis in the same proportion that the number of days in the payment period bears to the total number of days in the month for which the MAG is payable.

- B. **Percentage Fee.** Concessionaire covenants to pay a Percentage Fee in an amount equal to Gross Revenue for a month multiplied by the Percentage Fee Rate stated in the Summary of Contract Provisions, but only to the extent that such calculated amount exceeds the MAG payable for that month.
- C. **Payment of Privilege Fee.** Beginning on the earlier of the Actual Opening Date or the Required Opening Date, the applicable Privilege Fee shall be paid in accordance with the procedure identified in the Concessions Handbook.

4.03 OTHER FEES AND CHARGES

- A. **Joint Marketing Fee.** Beginning on the earlier of the Actual Opening Date or the Required Opening Date, Concessionaire agrees to pay the applicable Joint Marketing Fee in accordance with the procedure identified in the Concessions Handbook, within ten (10) days after the last day of each month, as payment for the performance by City of marketing services through the Joint Marketing Fund, a Joint Marketing Fee in an amount equal to the Joint Marketing Fee Rate as stated in the Summary of Contract Provisions multiplied by Gross Revenue for the month.
- B. **RTD EcoPass Program.** Concessionaire will participate in the EcoPass Program as described in **Exhibit F (“EcoPass Program”)**.
- C. **Commons Area Maintenance.** When any Concessions Location within the Premises is located in a food court, Concessionaire agrees to be charged and pay on the first (1st) day of each month the Common Area Maintenance Fee. The Common Area Maintenance Fee is payment for City’s performance of maintenance of the food court areas, and represents the Concessionaire’s share of the annual Common Area Maintenance Costs in twelfths (1/12) applicable to the Premises, as stated in the Summary of Contract Provisions . The Parties agree Concessionaire’s share may increase or decrease during the Term. The Parties agree to update the Summary of Contract Provisions to incorporate any increase or decrease, to be confirmed by letter executed by the CEO and acknowledged by Concessionaire, without need for formal amendment to this Agreement. Additional guidance on the Common Area Maintenance fee is in the Concessions Handbook.
- D. **Utilities.** City will provide certain utility connections as stated in the Tenant Work Permit Handbook. Concessionaire may connect into or extend, at its cost, such utilities in accordance with Tenant Work Permit Handbook. Beginning on the Date of Possession, Concessionaire covenants to pay for all utilities necessary in the operation of the Premises. All charges, including, but not limited to, deposits, installation costs, connection charges, usage, service charges, and applicable taxes for utility services metered directly to the Premises or pro-rated by usage shall be paid by Concessionaire, regardless of whether the utility services are furnished by City or other utility service entities. Concessionaire covenants to execute and deliver any utility usage data release forms required for City to have access to Concessionaire’s utility usage data.

- E. **Other Fees and Charges.** Concessionaire covenants to pay in a timely manner other damages due to City, or charges and fees as City or DEN assesses, in accordance with its procedures and requirements stated in the Concessions Handbook, and also other fees that Concessionaire incurs in the normal course of business, including but not limited to telephone, badging, fingerprinting, plus any applicable taxes.

4.04 FAILURE TO MAKE TIMELY PAYMENTS

- A. Immediately upon Concessionaire's receipt of monies from sales, services, or doing business under this Agreement, the percentages of said monies belonging to City per this Agreement shall immediately vest in and become the property of City. Concessionaire understands, accepts, and agrees to be responsible as a trustee for said monies until the same are delivered to City. Concessionaire also covenants to pay all compensation, damages, charges, and fees under this Agreement independent of any obligation of City. No breach of this Agreement by City shall relieve Concessionaire of its obligation and duty to pay all such obligations when due.
- B. Without waiving any other right or action available to City, in the event Concessionaire is delinquent in the payment of compensation, damages, charges, or fees hereunder or rightly due and owing by an audit of Concessionaire's books and records as provided in Section 4.07, and in the event Concessionaire is delinquent in paying to City any such compensation, damages, charges, or fees for a period of five (5) business days after the payment is due, City reserves the right to charge Concessionaire interest thereon, from the date such compensation, damages, charges, or fees became due to the date of payment, at 18% per annum, to the maximum extent permitted by law.
- C. In the event of a dispute as to the amount to be paid, City shall accept the sum tendered without prejudice and, if a deficiency is determined to exist, interest shall apply only to the deficiency.
- D. The right of City to require payment of interest and the obligation of the Concessionaire to pay shall be in addition to and not in lieu of the right of City to enforce other provisions herein, including termination of this Agreement, and to pursue other remedies provided by law.
- E. The failure of City to take action in the event of a delinquent payment or series of payments shall in no way waive the right of City to take action at a subsequent time. City expects all compensation, fees and charges to be paid on time and Concessionaire agrees to pay on time. Further, any endorsements or statements on a check or letter accompanying such payment for compensation or other charges shall not be deemed an accord and satisfaction or otherwise recognized for any purpose whatsoever.

- F. Notwithstanding other provisions of this Agreement, and without limiting the other provisions of this Agreement concerning, among other things, events deemed to constitute a material breach by Concessionaire, City may terminate this Agreement upon written notice to Concessionaire, in accordance with Section 12.01, if (i) there are recurring instances in which Concessionaire's payments required hereunder are not timely or are insufficient to cover sums actually due and payable; or (ii) Concessionaire fails to maintain adequate records and accounts reflecting its business operations at DEN and calculation of Gross Revenue under this Agreement; or (iii) Concessionaire fails or refuses to submit the formal supporting paperwork as required herein.

4.05 RECORD KEEPING, REPORTS, ANNUAL STATEMENT, AND END OF YEAR ADJUSTMENT

- A. **Bookkeeping System.** Concessionaire agrees to establish and maintain a system of bookkeeping satisfactory to the City Auditor. Such system shall be kept in a manner that distinguishes each Concession location that is operated by Concessionaire from all other Concession locations operated by Concessionaire.
- B. **Records Maintenance.** Concessionaire shall maintain, in accordance with Generally Accepted Accounting Principles, complete and accurate books and records that include all financial transactions in the performance of this Agreement. Concessionaire shall retain such books and records for a period in accordance with this Agreement and shall make such books and records available for inspection by representatives of the City, including, without limitation, the City's Auditor and independent auditors hired by the City. Such books and records shall include, without limitation, all sales slips, cash register tapes, stand sheets, sales books, bank books or duplicate deposit slips, and all other evidence of total receipts, Gross Revenue, Direct Operating Expenses, Net Operating Profits, Net Operating Losses, Minimum Guaranteed Payments, City Commissions, Monthly Reports, Weekly Reports, Annual Reports, and CCC Business Incentive Fund, Marketing Fund, Additional Expenditures, and Reserve Fund balances (collectively, the "**Financial Records**").
- C. **Required Onsite Records.** Concessionaire shall keep within the Premises – or otherwise keep readily available for City review if onsite storage is impracticable – adequate and accurate accounting books and records documenting all business and transactions engaged in by Concessionaire pursuant to this Agreement. Such books and records shall include, without limitation, daily receipts and expenses, daily bank deposits, daily sales records, and copies of all business tax returns filed with the State of Colorado and all federal income tax returns. Concessionaire's bookkeeping systems are subject to the City's approval, and Concessionaire agrees to comply with any modifications to such bookkeeping that the City may require from time to time.
- D. **Cash Registers and Inventory Sheets.** At each location where cash registers are used, cash register tapes shall be balanced with the inventory to determine the Gross

Revenue from that location. At each location where cash registers are not used, the Inventory Method shall be used to determine Gross Revenue. Concessionaire shall retain all cash register receipts and stand inventory sheets in accordance with this Agreement; and these documents are subject to audit by the City in accordance with this Agreement.

- E. **Financial Reports.** Concessionaire covenants to prepare and submit reports to City as specified in the Concessions Handbook. City reserves the right to change the form and frequency of reports and statements, including, but not limited to, the **Exhibit C** Monthly Concession Report, and to require the submission by Concessionaire of other statistics and information pertaining to the Gross Revenue hereunder. Concessionaire agrees to change the form of the required reports and statements as requested by City and to provide any additional statistics and information City may request.

- F. **Annual Statement.** No later than February 28 after the end of each year of operation after the first Contract Year, Concessionaire will, at its sole cost and expense, provide an “Annual Statement” to City prepared by an Independent Certified Public Accountant (“CPA”). There may be no limitation on the scope of the engagement that would preclude the Independent CPA from expressing an unqualified opinion as to the correctness and completeness of the reported Gross Revenue. The engagement will include a schedule of Gross Revenue and Privilege Fees for each month of the Concessionaire’s operations in the Contract Year, prepared in accordance with the comprehensive basis of accounting defined herein and reported in a format acceptable to City. The engagement will be conducted in accordance with Generally Accepted Auditing Standards and shall include an opinion from the Independent CPA on whether the Gross Revenue, Privilege Fees, and all other fees or charges payable under this Agreement have been completely and accurately presented, calculated, reported, and paid according to the terms of this Agreement. City reserves the right to reject Concessionaire’s choice of Independent CPA, where in City’s view the Independent CPA does not have the appropriate standing, reputation, or independence from the Concessionaire. The City may further define or modify the requirements for the Annual Statement through updates to the Concessions Handbook or by the CEO’s signed directive.

- G. **Findings.** City reserves the right to challenge any findings or conclusions of the Annual Statement. In such event, City may conduct its own audit under the provisions in Section 4.07 or may require production of the supporting documentation used to reach the finding or conclusion in question. The resolution by City of any dispute will be final. Delivery of an Annual Statement containing a qualified opinion, or an adverse opinion, or a disclaimer of opinion as defined in the Statements on Auditing Standards, as may from time to time be amended or superseded, issued by the Auditing Standards Board of the American Institute of Certified Public Accountants, or any successor board or agency thereto, will be deemed a material breach of this Agreement and, in addition to all other remedies available to City, City may, in its sole discretion, terminate this Agreement.

- H. **End of Year Adjustment.** If Concessionaire has paid to City an amount greater than Concessionaire is required to pay as Privilege Fee for a Contract Year under the terms hereof, Concessionaire shall be entitled to a credit against Concessionaire's MAG for the amount of the overpayment. If Concessionaire has paid less than the amount required to be paid as Privilege Fee for such Contract Year, then Concessionaire shall pay the difference to City in the next payment of the MAG.
- I. **Acceptance of Reporting.** Acceptance of any financial reports or payments by City does not constitute agreement by City with the amounts reported and paid. City reserves the right to reject any reports submitted by Concessionaire.

4.06 FORM OF PAYMENT

All payments due under this Agreement shall be paid in lawful money of the United States of America. City may accept payment without prejudice to its right to recover the balance of any amount due and to pursue any other remedies in this Agreement or otherwise available. All payments of MAG, Percentage Fee, and all other damages, fees, and/or charges shall be made by the method specified in the Concession Handbook. Concessionaire assumes all risk of loss of payments.

4.07 CITY'S RIGHT TO PERFORM AUDITS, INSPECTIONS, ATTESTATION ENGAGEMENTS

- A. Any authorized agent of the City, including the City Auditor, his or her representative, or independent auditors hired by the City, has the right to access and the right to examine and/or audit any Financial Records and other pertinent books, documents, papers and records of Concessionaire (together with the Financial Records, the "**Records**"), involving transactions related to this Agreement until the later of three (3) years after the final payment under this Agreement or expiration of any applicable statute of limitations. Concessionaire shall make its Records available to the City within fourteen (14) calendar days of its receipt of a written request from the City for the same. Concessionaire may satisfy this requirement by either: (i) making the Records available for examination within the Denver metropolitan area; or (ii) paying the City, in full and in advance, travel and related expenses for a City representative to travel to any location outside the Denver metropolitan area for such examination. Upon completing such travel, expenses shall be reconciled, and any difference between the advance payment and the actual expenses shall be paid by or refunded to Concessionaire as appropriate.
- B. Concessionaire agrees that the City, and any of the City's agents including the City's Auditor or an authorized representative of the Auditor, may inspect any document, return, data or report filed pursuant to Chapter 53 of the Denver Revised Municipal Code by Concessionaire with the City's Manager of Finance and any related reports, document, data or other information generated by the City's Manager of Finance or employees under the control of the Manager of Finance in connection with any investigation or audit of Concessionaire by the City's

Department of Finance. Concessionaire authorizes and permits the inspection of such documents, data, returns, reports and information by the City and any of its agents, including but not limited to the City's Auditor or an authorized representative of the Auditor, and in regards to such inspection waives any claim of confidentiality that it may have in connection with such documents, returns, data, reports and information.

- C. If City requests and Concessionaire fails to furnish any records in a timely manner, City reserves the right to, in addition to all other remedies available hereunder, at law, or in equity, have an independent forensic accounting firm attempt to reconstruct the missing records. Concessionaire covenants to reimburse City for the reasonable cost associated with reconstructing any missing records, including but not limited to, the cost of the independent forensic accounting firm, attorney's fees, and litigation expenses incurred. Engagements will be conducted in accordance with the procedures identified in the Concessions Handbook. The Parties recognize that City will incur additional costs if records requested are not provided in a timely manner and that the amount of those costs is difficult to determine with certainty. Consequently, the Parties agree City may collect liquidated damages, as set forth in Article VII, for the records requested and not received.
- D. If the City determines after an audit for any Contract Year that any payment(s) made to the City were understated or materially misstated in the Annual Report, Concessionaire shall pay the amount of the deficiency plus interest at two percent (2%) per month compounded daily computed from the date due until the date paid. If such payments were understated or materially misstated by more than one percent (1%), Concessionaire shall pay to the City the cost of the audit in addition to the deficiency and interest. If the City determines after an audit that the City was overpaid, the City shall have the option to either credit an overpayment against a subsequent amount due or provide a refund to Concessionaire.
- E. Concessionaire will include a provision providing City the same rights to initiate and perform audits, inspections, or attestation engagements in any sub concessionaire agreement that it enters and cause its sub concessionaires to include the statements in further sub concessionaire agreements.

ARTICLE V: PERMITTED USES

5.01 PERMITTED USES

- A. **Permitted Uses.** Concessionaire shall use the Premises only for the purposes of operating the Concession, as further described in this Article V, and for such other uses as City may agree to in writing. No portion of the Premises shall be used to warehouse, stock, or store any goods, wares, or merchandise not intended to be offered for sale at or from the Premises. **Exhibit B**, Permitted Uses, which is attached hereto and made a part hereof, sets forth the trade name for the Concession and a listing, by general category, of goods and services Concessionaire is allowed

to sell from the Premises. Such list of the Permitted Uses shall constitute a limitation of the goods and services, which may be sold at the Concession. City reserves the right to amend **Exhibit B**, in accordance with the procedures outlined in the Concession Handbook, without need for formal amendment of this Agreement.

- B. **Price List.** No later than sixty (60) days prior to the Required Opening Date of the Premises, Concessionaire must submit to City a Price List in accordance with the procedures outlined in the Concessions Handbook.
- C. City may, at its discretion, require Concessionaire to add or delete goods or services that are in public demand to the Price List, in accordance with the procedures outlined in the Concessions Handbook.

5.02 NON-EXCLUSIVE RIGHTS

The privileges granted herein for the performance of the Concession shall be non-exclusive. City may, at any time, award space (existing or newly created) to other parties who may have privileges or may sell goods or services similar to those non-exclusively granted herein. City may, in its sole discretion, grant exclusive privileges to other concessionaires to sell goods or services that Concessionaire is not authorized to sell.

In the event of a dispute between Concessionaire and any other party operating at DEN as to the privileges of the parties under their respective Concessions, City shall determine the privileges of each party and Concessionaire agrees to be bound by City's decision.

5.03 RESTRICTIONS

Nothing in this Article will be construed as authorizing Concessionaire to conduct any business separate and apart from this Agreement or in areas of DEN other than its Premises. All privileges not specifically granted to Concessionaire for its use of and operations at DEN pursuant to this Agreement are hereby reserved for and to City.

5.04 PERMITS AND LICENSES

Concessionaire will obtain and maintain all permits, certificates, licenses, or other authorizations required in connection with the operation of the Concession, including licenses for specific concepts that are part of the Concessionaire's Proposal. Copies of all required permits, certificates, licenses, or other authorizations will be appropriately displayed within the Premises and forwarded to City upon issuance and each renewal.

ARTICLE VI: PERFORMANCE AND OPERATING STANDARDS

6.01 CITY'S RIGHT TO MONITOR PERFORMANCE

- A. **First Class Requirement.** It is City's intention Concessionaire's business be conducted in a manner so as to meet the needs of DEN patrons and employees and

in a manner that will reflect positively upon the Concessionaire and City. The Concessionaire shall equip, organize, and efficiently manage the Concession to provide First Class goods and services in a clean, attractive, sustainable, and pleasant atmosphere.

- B. **Objections.** City in its sole discretion shall have the right to raise reasonable objections to the condition of the Premises, the quality and quantity of goods and services, the character of the service, the hours of operation, the sustainability practices of Concessionaire, and/or the appearance and performance of service personnel, and to require any such conditions or practices objectionable to City to be remedied by Concessionaire.
- C. **Performance Audits.** City reserves the right to conduct periodic performance audits of the Premises to assure Concessionaire consistently performs all of the operational, safety, sustainability, and compliance standards of this Agreement. Concessionaire acknowledges performance audits will be conducted by City, or its representative, and hereby covenants to cooperate with all performance audits. Repeated violations and deficiencies in performance by Concessionaire may cause, at City's sole discretion, to terminate this Agreement.
- D. **Annual Review.** No later than ninety (90) days after the end of each Contract Year, Concessionaire and City will meet to review and evaluate the financial, customer service, and operational performance of the Concession; ownership; the physical condition of the Premises; and Concessionaire's compliance with any applicable ACDBE requirements. Before the review meeting, Concessionaire shall provide the information required in the Concessions Handbook. During the course of the review, City may determine, in its sole discretion, that the performance of the Concession is unsatisfactory in one or more categories listed in the Concessions Handbook.
- E. **Remediation Plan.** If City determines, based on the performance criteria specified for the Annual Review in the Concession Handbook, a Concession performed unsatisfactorily during the prior Contract Year, City will provide written notice to Concessionaire. Within thirty (30) days of receipt of such written notice, Concessionaire shall prepare and submit to City, for its approval, a Remediation Plan, as described in the Concession Handbook.

If after six (6) months of implementation of a Remediation Plan, the City determines that the Concession is still performing in an unsatisfactory manner, City reserves the right to require Concessionaire to replace the underperforming concept or brand, if not already replaced by the Remediation Plan, at Concessionaire's expense. Within ninety (90) days of receipt of written notice from City requiring a replacement, Concessionaire shall submit to City a proposal for a brand or concept replacement plan, as described in the Concession Handbook. City, in its sole discretion, reserves the right to approve or deny the proposed replacement plan and require Concessionaire to submit another replacement plan.

6.02 QUALITY OF GOODS AND SERVICES

- A. Concessionaire shall ensure that all customers are provided First Class goods and services, and Concessionaire shall keep in stock and have ready for sale, at all times of operation, a sufficient supply and variety of goods and services offered for sale at the Premises, consistent with the Price List, to meet the demand of customers at DEN.
- B. If City identifies any deficiencies with respect to the operations, including, without limitation, quality, variety, and quantity of goods or services offered, Concessionaire shall be notified in writing by City and shall correct, or cause to be corrected, such problem or problems within the cure period stated in the Concessions Handbook. If Concessionaire fails to correct within the allowed cure period, City may collect liquidated damages as described in Article VII.
- C. If Concession is a franchise concept, then every Contract Year during the Term, Concessionaire shall certify all franchise standards applicable to the Concession are met or exceeded.
- D. If the City approves and accepts a Concessionaire's Proposal that includes a local, regional, or national brand, branded item, or branded concept that Concessionaire is authorized to use at DEN, such brand, branded item, or concept shall be listed or described in the Summary of Contract Provisions and referred to in this Agreement as "Concessionaire's Brand(s)." Concessionaire acknowledges and agrees that the use of Concessionaire's Brands stated in the Concessionaire's Proposal is of critical importance in meeting City's purpose for the concessions program at DEN. Therefore, Concessionaire's Brand(s) is(are) a material part of the consideration for this Agreement and may not be unilaterally discontinued or changed by Concessionaire. Any proposed new brand, branded item, concept, or change in use shall be submitted to City for written approval prior to implementing such change.

6.03 PRICING

- A. **Pricing.** Concessionaire acknowledges City's objective to provide DEN patrons and employees high quality goods and services at reasonable prices. Accordingly, Concessionaire covenants that all goods and services sold by Concessionaire shall meet City's Pricing policy as described in the Concessions Handbook.
- B. **Price Benchmark Establishment(s).** No less than sixty (60) days prior to the Required Opening Date of the Premises, and prior to the end of each Contract Year, Concessionaire must submit to City for its approval Price Benchmarking Establishments in accordance with the procedures outlined in the Concessions Handbook. Once approved by City, the Price Benchmark Establishment(s) will be used as the basis for price comparisons.
- C. **Price Surveys.** No later than sixty (60) days prior to the Required Opening Date of the Premises, and prior to the beginning of each Contract Year, Concessionaire

shall, at its own expense, submit a pricing survey in accordance with the procedures described in the Concession Handbook.

- D. **DEN Employee Discount.** Concessionaire shall offer a minimum ten percent (10%) discount on all food and non-alcoholic beverages purchased by DEN employees who have been issued (and show at the time the discount is requested) appropriate identification badges. The discount shall be based on Concessionaire's normal non-sale or non-promotional prices. No discount shall be given on food and non-alcoholic beverages with a manufacturer pre-printed price.
- E. **Price Conformance.** At any time during the Term, City may survey or cause to be surveyed, prices being charged for goods or services offered by Concessionaire. City shall have the right to monitor and test all of Concessionaire's goods and services prices by a shopping service or City personnel. If City concludes, based on the results of the survey, any prices being charged by Concessionaire do not comply with the Pricing policy; City will require Concessionaire to adjust prices to the amounts permitted. Upon written notice from the City, Concessionaire will, within the cure period stated in the Concessions Handbook, adjust any prices that City determines, in its sole discretion, to be inconsistent with the Pricing policy. Failure to rectify any pricing discrepancies within the cure period shall constitute a material breach by Concessionaire of this Agreement and City may collect liquidated damages as set forth in Article VIII, invoke any other remedies available to City by law, or City may, in its sole discretion, terminate this Agreement.

6.04 HOURS OF OPERATION

- A. **Store Hours.** Concessionaire shall ensure the Concession is open to the public, without interruption, during the Store Hours as described in the Concessions Handbook. City may, in its sole discretion and upon notice to the Concessionaire, require Store Hours to change during the Term. Concessionaire hereby acknowledges and agrees to operate the Concession Locations as required which, if requested by City, may be up to twenty- four (24) hours per day seven (7) days per week, including all holidays.
- B. **Extension of Store Hours.** Concessionaire agrees to remain open beyond Store Hours for certain events as described in the Concessions Handbook.
- C. **Failure to Open.** Unless previously authorized by the City in writing, failing to open for business by the required opening time, or closing early, shall constitute a violation of this Section for which City may collect liquidated damages as set forth in Article VIII.

6.05 DELIVERY OF GOODS

- A. **Procedures.** Concessionaire shall make all deliveries of money, coin, supplies, goods, products, and food and beverage items in such manner as specified in the Concessions Handbook.

- B. **Central Receiving and Distribution.** City may implement a Central Receiving and Distribution Center (hereinafter referred to as “**CRDC**”) and may contract, at its discretion, with a third party to operate the CRDC and provide distribution and delivery services to DEN (hereinafter referred to as “**Logistics Manager**”). If a CRDC is established, Concessionaire agrees to use, at its own cost and expense, the CRDC and have all deliveries made to the CRDC, except where delivery to a third party is prohibited by law or as otherwise approved in writing by City. Concessionaire agrees to pay Concessionaire’s share of the costs of the operation of the CRDC and said distribution and delivery services, as determined by City. Concessionaire agrees to comply with the rules and procedures for implementation and utilization of the CRDC as described in the Concessions Handbook.

6.06 PERSONNEL

- A. **Staffing.** Concessionaire shall hire, train, supervise, and deploy a sufficient number of Personnel to service customers in a timely and efficient manner and to meet Concessionaire’s obligations herein and as specified in the Concessions Handbook.
- B. **General Manager.** Concessionaire shall appoint at least one General Manager to oversee and manage the performance of the Concession, and represent and act on behalf of Concessionaire, as further described in the Concessions Handbook. The General Manager shall be full time and work onsite.
- C. **Customer Service Training.** Concessionaires are expected to abide by DEN’s Service Values, Service Standards, and Image Standards set forth in the Concessions Handbook amended. If City establishes a customer service-training program for the employees of all concessionaires at DEN, City, after first giving reasonable notice to Concessionaire, will require all of Concessionaire’s employees to complete the training program, in accordance with the procedures outlined in the Concessions Handbook.
- D. **City’s Right to Object.** City reserves the right to object to unprofessional behavior, conduct, or appearance of any Personnel of Concessionaire or those doing business with it, in accordance with the procedures outlined in the Concessions Handbook.

6.07 COMPLIANCE WITH DENVER WAGE LAWS

Concessionaire will comply with, and agrees to be bound by, all rules, regulations, requirements, conditions, and City determinations regarding the City’s Minimum Wage and Civil Wage Theft Ordinances, Sections 58-1 through 58-26 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid all earned wages under applicable state, federal, and city law in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, the Concessionaire expressly acknowledges that the Concessionaire is aware of the requirements of the City’s Minimum Wage and Civil Wage Theft Ordinances and that any failure by the Concessionaire, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.

6.08 SECURITY REQUIREMENTS

Concessionaire shall be responsible for ensuring Personnel, vendor, and contractor compliance with all security rules, regulations, and procedures including, but not limited to, those issued by the FAA, TSA, and City. The rules, regulations, and procedures of the FAA, TSA, and City regarding security matters may be modified at any time and Concessionaire covenants to comply with all changes and/or modifications. Additionally, Concessionaire shall adhere to the procedures and security requirements listed in the Concessions Handbook. At least sixty (60) days prior to the Required Opening Date, Concessionaire shall submit to City a Security Plan, in accordance with the Concessions Handbook. Concession may not Open for Business without an approved Security Plan.

6.09 EMPLOYEE PARKING

Nothing in this Agreement shall be deemed to require City to provide parking to Concessionaire's Personnel. City may provide parking accommodations to Concessionaire's Personnel in common with employees of other concessionaires and users of DEN, subject to the payment of reasonable charges therefor as may be established from time to time by City. In such event, Concessionaire's Personnel shall be required to park within the designated areas.

6.10 POINT OF SALE TERMINALS

Concessionaire must install a POS Terminal(s) to accurately record all business transactions occurring for accounting, reporting, and auditing purposes as set forth in the Concessions Handbook. City reserves the right to implement and/or modify a universal point-of-sale system or other technology to work in tandem with Concessionaire's POS Terminals for continual access to point-of-sale data. Concessionaire agrees to cooperate in the implementation of such a universal point-of-sale system or other technology. If City instructs Concessionaire to install any technology, equipment, software, and systems as part of such implementation, City shall not be obligated to pay the cost of or furnish Concessionaire with the technology, equipment, software, or systems necessary to do so, or to pay any related costs.

6.11 CASH HANDLING AND CREDIT CARD REQUIREMENTS

Concessionaire must accept cash payments and all other payment mechanisms required by the Concessions Handbook. The Concessionaire also may request that the City approve other payment mechanisms. Concessionaire shall at all times observe cash-handling and record-handling procedures in accordance with sound accounting and financial control practices and as necessary to provide timely and accurate reports to City. City may at any time request a copy of these procedures. Additionally, Concessionaires Cash Handling and Credit Card requirements must meet the standards described in the Concessions Handbook. City shall have the right to monitor and test all of Concessionaire's procedures and controls and require Concessionaire to make changes to its procedures. Concessionaire must yearly provide certification that Concessionaire's operations are compliant with Payment Card Industry Data Security Standards. City reserves the right to receive reports required by the Payment Card Industry Security Standards Council.

6.12 ADVERTISED SALES OR PROMOTIONS

Concessionaire shall adhere to the advertising promotions guidelines stated in the Concessions Handbook. Concessionaire may not advertise in DEN, except with City's advertising contractors who sell advertising at DEN. Permission will not be granted to Concessionaire for any other advertising at DEN. Concessionaire shall not use nor permit Premises to be used as a medium for third party paid advertising, including sponsorships or any advertising material, sign, fixture, or equipment, whether paid for in-kind, by cash, or by credit.

6.13 COMPLAINTS

Concessionaire must respond to all customer complaints, written or oral, in accordance with the procedures outlined in the Concession Handbook.

6.14 CONCESSION PROMOTIONS PROGRAM

In addition to other compensation, fees, and charges due City under this Agreement, Concessionaire agrees to pay to City a Joint Marketing Fee for DEN's Concession Promotions Program, in accordance with the procedures stated in the Concession Handbook.

- A. **Joint Marketing Fund.** City shall provide or cause to be provided a Joint Marketing Fund to underlying DEN's Concession Promotions Program. Concessionaire shall pay, or cause to be paid, the Joint Marketing Fee, as reflected in the Summary of Contract Provisions, for the Joint Marketing Fund for every month during the Term. City shall not be obligated to expend more for promotions and advertising than is actually collected from Concessionaires. Any promotional services and personnel so provided shall be under the exclusive control and supervision of City. City reserves the right at any time to terminate the Joint Marketing Fund and thereafter, continue to provide marketing and promotional services until the balances remaining in the fund are exhausted.
- B. **DEN's Concession Promotions Program.** The Concessions Promotions Program may include, but is not limited to, the costs of any incentive programs and activities with direct application to promoting and monitoring the concessions at DEN such as food, services, and retail merchandise advertising, marketing, public relations, media production and placements, special events, brochures, videos, directories, catalogues, customer service training, mystery shopper programs, and concession surveys relating to consumer satisfaction and market research, as well as the costs of administration of the Promotions Program.
- C. **Prohibition.** City may prohibit Concessionaire from participating in any promotional activities including, but not limited to Grand Opening events, if Concessionaire is in breach of this Agreement.

6.15 OPERATING PROCEDURES AND STANDARDS

- A. **City Requirements.** The occupancy and use by Concessionaire of the Premises and the privileges herein conferred upon Concessionaire shall be conditioned upon and subject to DEN's Rules and Regulations, and Operational Directives as are now or may hereafter be prescribed by City through the lawful exercise of its powers. Concessionaire covenants to operate the Concession in accordance with the Concessions Handbook.
- B. **Health and Safety Standards.** Concessionaire shall comply with all health and sanitary regulations adopted by City, State of Colorado, and any other governmental authority with jurisdiction. Concessionaire shall give access for inspection purposes to any duly authorized representatives of all such governing bodies. Concessionaire shall provide City with copies of all inspection reports by other health and sanitary governing bodies within forty-eight (48) hours of receipt. This paragraph does not require Concessionaire to waive any applicable attorney-client or attorney work product privileges.
- C. **Sustainability.** City is committed to incorporating sustainable practices into all aspects of DEN operations. Concessionaire shall operate in a manner consistent with DEN's Sustainability Policy and participate in the sustainability programs outlined in the Concessions Handbook, at its own cost and expense, including but not limited to energy programs and waste reduction programs such as composting and recycling.
- D. **Additional Compliance.** Concessionaire shall comply with all applicable governmental laws, ordinances, regulations, codes, and permits in the conduct of its operations under this Agreement including, but not limited to, TSA regulations regarding products or procedures.
- E. **Concessionaire's Standards.** Subject to licensor or franchisor agreements, Concessionaire shall submit to City a copy of its standards, plans, and manuals for customer service and operation, according to the procedures stated in the Concessions Handbook. Concessionaire shall ensure continuous adherence to Concessionaire's own standards, in addition to other standards as set forth herein.

6.16 CLEANING AND ROUTINE MAINTENANCE

- A. **General Obligations.** Concessionaire shall ensure that the Concession is maintained and operated in a First-Class manner and that the Premises are kept in a safe, clean, orderly and inviting condition at all times in a manner satisfactory to City. To comply with these requirements, Concessionaire must regularly review or cause to be reviewed the Premises, its operations at DEN, and the maintenance obligations in the Concessions Handbook.
- B. **Preventive and Routine Cleaning and Maintenance Obligation.** Concessionaire shall be responsible for preventive and routine cleaning and maintenance of all

assets within the Premises, whether built by Concessionaire or City, from the Date of Possession through the expiration of the Term and any Holdover period. Consistent with the schedule stated in the Concessions Handbook, Concessionaire shall establish a preventive and routine cleaning and maintenance program for the Premises including, but not limited to, all the items identified in the Concessions Handbook. The provisions of the program shall be subject to the initial written approval of and periodic review by City. Upon request by City, Concessionaire shall provide City a written schedule of Concessionaire's cleaning and maintenance program.

- C. **Pest Control.** Concessionaire is responsible for pest control on and within the Premises.
- D. **Routine Refurbishment.** Each Contract Year representatives of City and Concessionaire shall follow the procedures outlined in the Concessions Handbook for Routine Refurbishment. If Concessionaire and City cannot jointly agree upon the type and extent of routine refurbishment, City may determine, in its sole discretion, the routine refurbishment required for that Contract Year. For purposes of this Section 6.16 only, "Routine Refurbishment" shall mean the routine repainting or redecoration of public areas within the Premises including, but not limited to, the replacement or repair of worn carpet, tile, furniture, furnishings, fixtures, or finishes.
- E. **Maintenance Personnel and Program.** Concessionaire covenants to employ or contract with sufficient personnel to provide necessary equipment to keep the Premises and all furniture, furnishings, fixtures, and equipment clean, neat, safe, sanitary, and in good working order and condition at all times pursuant to the maintenance requirements of this Agreement.
- F. **City Sole Judge of Maintenance.** City shall be the sole and absolute judge of the quality of Concessionaire's maintenance of the Premises. City or its representative may at any time, without notice, enter the Premises to determine if maintenance satisfactory to City is being performed. Performance by Concessionaire of maintenance pursuant to a written maintenance plan previously approved by City shall be conclusive evidence of satisfactory maintenance unless City determines that there is a present danger or safety hazard within the Premises. If City determines that maintenance is not satisfactory, City shall notify Concessionaire in writing. Concessionaire will perform the required maintenance, to City's satisfaction, and so notify the City within the time frame stated in the Concessions Handbook, or else the City or its representative shall have the right to enter upon the Premises and perform the maintenance. However, where unsatisfactory maintenance threatens the safety, health, or welfare of the traveling public and/or DEN's facilities, Concessionaire shall immediately perform the maintenance. Where City or its representative performs maintenance, Concessionaire agrees to reimburse City for the cost thereof, plus an administrative fee, the amount of which will be in accordance with the Concessions Handbook.

- G. **Emergency Repairs.** In the event of an emergency repair is required, Concessionaire shall notify City of the repair situation as soon as possible. Following such notice, City may inspect the repair work and require alterations if the repair is not satisfactory to City. In the event of an after-hours emergency repair, Concessionaire agrees City shall have the right to enter any affected portion of the Premises and perform the emergency repair. Concessionaire covenants to pay to City the costs associated with any after-hours emergency repair. All emergency repairs requiring shutdown of any DEN system or utility require prior written approval of City. If any emergency repair affects other tenants at DEN, City may, at in its sole discretion, fix the problem immediately and invoice Concessionaire. Concessionaire covenants to pay to City any proportional costs of emergency repairs completed by City, which Concessionaire may have contributed to the cause of the incident.

6.17 PAGING, AUDIO, VIDEO SYSTEMS, AND FREQUENCY PROTECTION

If Concessionaire installs, in accordance with applicable Concessions Handbook procedures and only after City's approval, any type of radio transceiver, beacon technology, or other wireless equipment, Concessionaire will provide frequency protection in accordance with restrictions promulgated by the FAA for the vicinity of FAA Transmitter or Receiver facilities. Frequency protection will also be provided for all other frequency bands operating near Concessionaire's equipment. If frequency interference occurs because of Concessionaire's installation, City reserves the right to shut down Concessionaire's installation until appropriate remedies to the frequency interference are made by Concessionaire. Remedies may include relocation of Concessionaire's equipment to another site. The cost to remedy the frequency interference will be solely at Concessionaire's expense. Concessionaire acknowledges and accepts that any paging, audio, or communications systems installed by Concessionaire maybe used by City to announce any notification or emergency at DEN. City shall not be liable to Concessionaire for any such use of the paging or audio systems installed by Concessionaire.

6.18 SUBMITTALS

City shall have the right at any time to require that reports, plans, and any other submittals required under this Article VI be delivered electronically using technology and procedures designated by City in the Concessions Handbook. If City instructs Concessionaire to deliver any submittals required hereunder by computer, e-mail, internet website, or transmission, City shall not be obligated to furnish Concessionaire with the equipment or systems necessary to do so.

6.19 PROHIBITED ACTS

Concessionaire is prohibited from perform any prohibited acts listed in the Concessions Handbook. Additionally, Concessionaire will not engage in any activity prohibited by DEN's Rules and Regulations and Operating Directives, including as they may be modified. In the event Concessionaire fails to adhere to DEN's Rules and Regulations and Operating Directives or fails to prevent any other of the prohibited acts set forth in this Section, City may collect liquidated damages as set forth in Article VII until such prohibited act is ended. Within the time frame stated in the Concessions Handbook. Moreover, if the prohibited act is not corrected as directed by City,

City or its representative shall have the right to enter upon the Premises and take corrective action, and Concessionaire agrees to promptly reimburse City for any related costs, and an administrative fee equal calculated as a percent of the corrective action costs, calculated as stated in the Concessions Handbook.

6.20 DELIVERY TECHNOLOGY

City reserves the right to implement universal food, beverage, and merchandise delivery technology and services at DEN. Additionally, City reserves the right to contract, at its discretion, with a third party to develop, service, and operate any delivery services and/or technology at DEN. If established, City will place procedures for deployment and usage in the Concessions Handbook. Concessionaire agrees to use, at its own cost and expense, the delivery services and/or technology for the Concession, except where delivery by a third party is prohibited by law or as otherwise approved in writing by City, in accordance with any procedures described in the Concessions Handbook.

ARTICLE VII: FAILURE TO COMPLY WITH PERFORMANCE/OPERATING STANDARDS

7.01 LIQUIDATED DAMAGES

- A. **Violations.** Concessionaire acknowledges City's objective to provide the public and air travelers with the level and quality of service as described herein, and that Concessionaire's failure to meet these standards will result in financial loss to City. Concessionaire also acknowledges it can be difficult to measure the harm suffered by the City when these standards are not met or when Concessionaire violates certain provisions of this Agreement, the Concessions Handbook and/or DEN's Rules and Regulations. Accordingly, the Parties have agreed upon a series of liquidated damages, as set forth in the table below, that the City may assess for certain breaches or violations. Concessionaire and City agree that the damages set forth herein are reasonable estimates of the significant but difficult to predict harm to the City, and Concessionaire further agrees to pay to City such liquidated damages in accordance with the rates or in the amounts specified herein upon each occurrence of the specified violation, upon written demand by City. Concessionaire further acknowledges that the liquidated damages are not exclusive remedies, and City may therefore pursue other remedies as allowed for in this Agreement and/or as may be available at law, in City's sole discretion and option. City's waiver of any payment provided for in this Section shall not be construed as a waiver of the violation or Concessionaire's obligation to remedy the violation. Further, City's assessment of liquidated damages for past violations does not preclude City from opting for and pursuing other available remedies for future violations.
- B. **Payment.** Payment of liquidated damages will be due within fifteen (15) days from the date of invoice.

- C. **Table.** The following table lists the liquidated damages assessable under this Contract. References to Sections are for convenience only. Any discrepancy in such reference does not affect the validity or enforceability of said damages.

LIQUIDATED DAMAGES*		
Types of Infractions	Section	Liquidated Damages
Deficient Goods or Services	Contract § 7.02; Handbook § 13.10	If not cured within seven-day cure period, then \$100 per day dating back to the date of Notice, for each day until corrected.
Pricing Policy	Contract § 7.03; Handbook § 14.01	\$100 per day until corrected.
Late Open or Early Close	Contract § 7.04; Handbook § 14.05	\$100 per hour or fraction thereof.
Prohibited Acts	Contract § 7.19; Handbook § 14.43	\$100 per day until corrected.
Security Infraction	Contract § 7.08; Handbook § 14.29	\$500 per occurrence for violations not otherwise addressed in TSA or DEN's Rules and Regulations.
Late Daily Gross Revenue	Handbook § 12.03	\$100 per day until corrected.
Late Monthly Concession Report	Handbook § 12.03	\$100 per day until corrected.
Late Annual Report	Handbook § 12.03	\$350 per day until corrected.
Offering Goods or Services Not Permitted	Handbook § 13.02	\$100 per day until ceased.
Failure to Remove or Modify Merchandise Display	Handbook § 13.11	\$100 per day until compliant.
Failure to Address City Objections for Unprofessional Personnel	Handbook § 13.14	\$100 per day until cured.
Failure to Provide Records for Financial Audit	Handbook § 15.01	\$100 per day until provided.
Failure of Performance Audit	Handbook § 15.02	\$100 per day after cure time until corrected.
Violation of Handbook Not Otherwise Specified	Handbook § 15.08	<u>First Violation:</u> \$100 per day; if a cure period applies but violation is not cured within allowed

		time, then LDs will be calculated from date of violation, and continue until corrected. <u>Second Violation:</u> \$150 per day until corrected. <u>Third Violation:</u> \$200 per day until corrected.
Closure Due to Operational Deficiency or Failure to Maintain	Contract § 7.15; § 7.16	\$1000 per day for each full or partial day Concession is closed.
Failure to Meet Required Opening Date	Contract § 10.07(D)	\$1,000 per day until Actual Opening Date.
Improper Transport, Disposal, or Cleanup of Fry Oil	Handbook § 13.04	\$300 per event.
Violation of Sustainability program requirements	Handbook § 13.06	\$100 per day until cured.

*LDs are subject to escalation of damages for continued violations. Such liquidated damages may increase by a multiple of two (x2) after ten (10) days of uncured violations, and thereafter increase by an additional multiple every ten (10) days until corrected (e.g. x3 after 20 days, etc.). However, in no event will liquidated damages escalate higher than a multiple of five (x5).

If any or all of the provisions of this Article VII are found to be unenforceable, any affected violation shall then be immediately covered by Article XII, and City shall have a right to all remedies available at law, including but not limited to the remedies provided in Article XII.

ARTICLE VIII: NON-DISCRIMINATION, SMALL BUSINESS, AND FEDERAL AID REQUIREMENTS

8.01 NO DISCRIMINATION IN EMPLOYMENT

In connection with the performance of work under the Agreement, the Concessionaire may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The Concessionaire shall insert the foregoing provision in all subcontracts.

8.02 CITY'S ACDBE POLICY

As a condition of eligibility for financial assistance from the FAA, DEN developed and implemented an ACDBE Policy and Program. The ACDBE Program was developed and implemented in accordance with DOT's Final Rule 49 CFR Part 23. DEN's Director of the Airport Access & Business Opportunity ("**Director**," as used in this Article VIII only) has been delegated as the ACDBE Liaison Officer for DEN. In that capacity, the Director is responsible for compliance with all aspects of the ACDBE program. The Director has established ACDBE goals

for DEN and may also establish ACDBE concession specific goals as a percentage of annual Gross Revenue for this Agreement. The applicable concession specific ACDBE goal, if any, is stated in Section 1.01 Summary of Contract Provisions of this Agreement. The stated goal was included in a competitive solicitation process in which Concessionaire was recommended to operate in the Premises. During that process, Concessionaire submitted its required **Exhibit E** to meet the ACDBE goal. The Director found the required **Exhibit E** to be responsive and thus, required **Exhibit E** is attached to this Agreement. If its actions or failure to act violates its ACDBE responsibilities under its Agreement or the ACDBE regulations of the DOT as they may be adopted or amended from time to time, such actions shall constitute a material breach by Concessionaire of its Agreement and, in addition to all other remedies available to City, City may, in its sole discretion, terminate this Agreement.

8.03 ACDBE PARTICIPATION AND COMPLIANCE

- A. **ACDBE Goal.** Concessionaire agrees that it will provide for a level of ACDBE participation in this Agreement equal to or greater than the percent of the total annual Gross Revenue stated on the Summary of Contract Provisions, or clearly demonstrate in a manner acceptable to City its good faith efforts to do so. Concessionaire will contract with the ACDBEs identified in **Exhibit E** presented with Concessionaire's Proposal and approved by City, or such other ACDBEs certified with DEN as may be approved by City. Concessionaire is required to make good faith efforts to explore all available options to meet the goal to the maximum extent practicable.
- B. **ACDBE Termination and Substitution.** Concessionaire will not terminate an ACDBE for convenience without City's prior written consent. If an ACDBE is terminated by Concessionaire with City's consent or, if an ACDBE fails to complete its work on this Agreement for any reason, Concessionaire must make good faith efforts to replace such ACDBE in accordance with the procedures described in the Concessions Handbook.
- C. **Reporting Requirements.** Concessionaire shall submit to the Director regular ACDBE Utilization Reports, in accordance with the procedures described in the Concessions Handbook. Concessionaire further agrees to submit any other report(s) or information that City is required by law or regulation to obtain from Concessionaire, or which the Director may request relating to Concessionaire's operations.
- D. **Monitoring.** The Director will monitor the compliance and good faith efforts of Concessionaire in meeting the requirements of this Article. Concessionaire covenants to grant the Director access to the necessary records to examine such information as may be appropriate for the purpose of investigating and determining compliance with this Article, including, but not limited to, records, records of expenditures, contracts between Concessionaire and the ACDBE participants, and other records pertaining to the ACDBE participation plan, which Concessionaire will maintain for a minimum of three (3) years following the termination of this Agreement. Concessionaire covenants to grant the Director access to the Premises

under this Agreement for purposes of such monitoring. The extent of ACDBE participation will be reviewed prior to the exercise of any renewal, extension or material amendment of this Agreement to consider whether an adjustment in the ACDBE requirement is warranted. Without limiting the requirements of this Agreement, City reserves the right to review and approve all sub-leases or subcontracts utilized by Concessionaire for the achievement of these goals.

- E. **Prompt Payment.** Concessionaire agrees to pay each subcontractor under this Agreement for satisfactory performance of its contract no later than ten (10) calendar days from the receipt of each invoice and acceptance of work or services. Concessionaire agrees further to release retainage payments to each subcontractor within ten (10) calendar days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of City. This clause applies to both MWBE/SBE and non-MWBE/SBE subcontractors.
- F. **Other Requirements.** Concessionaire agrees to comply with Federal, State, and Local Disadvantage Business Programs as fully set forth in **Exhibit E**. Concessionaire's failure to comply with Federal, State, and Local Disadvantage Business Programs shall constitute a material breach by Concessionaire of this Agreement and, in addition all other remedies available to City, City may, in its sole discretion, terminate this Agreement.
- G. **Non-Compliance.** In the event of Concessionaire's non-compliance with the ACDBE Program or failure to either meet the ACDBE goal set forth in Section 8.02 or to demonstrate a good faith effort to do so, City may, in addition to pursuing any other available legal remedy, terminate, suspend or cancel this Agreement in whole or in part; and/or suspend or debar Concessionaire from eligibility to contract with City in the future or to receive bid packages or request for proposal packages or other solicitations, unless Concessionaire demonstrates, within a reasonable time as determined by City, its compliance with the terms of the ACDBE Program or this Article or its good faith efforts to comply.
- H. **Contact Information.** Should any questions arise regarding specific circumstances, the Concessionaire should consult CFR 49 Part 23 and 26 or may contact the designated ACDBE representative at: DEN-ACDBE@flydenver.com.

8.04 COMPLIANCE WITH EQUITY, DIVERSITY AND INCLUSIVENESS PLAN

Concessionaire shall comply the Equity, Diversity and Inclusion Plan attached as **Exhibit G ("EDI Plan")** and as it may be modified in the future by the City. The City will monitor Concessionaire's compliance with the EDI Plan. Failure to adhere to any representations, policies, or efforts contained in the EDI Plan, as determined by the City, will amount to default.

8.05 FAIR LABOR STANDARDS ACT

This Agreement incorporates by reference the provisions of 29 C.F.R. Part 201, the Federal Fair Labor Standards Act (“FLSA”), with the same force and effect as if given in full text. The FLSA sets federal minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. Concessionaire agrees to incorporate by reference the provisions of FLSA in all contracts and subcontracts resulting from this Agreement. Concessionaire has full responsibility to monitor compliance to the referenced regulation. Concessionaire must address any claims or disputes arising from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

8.06 OCCUPATIONAL SAFETY AND HEALTH ACT

This Agreement incorporates by reference the requirements of 29 C.F.R. Part 1910 with the same force and effect as if given in full text. Concessionaire must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. Concessionaire retains full responsibility to monitor its compliance and any subcontractor’s compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (29 C.F.R. Part 1910). Concessionaire must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

ARTICLE IX: CONSTRUCTION AND CAPITAL INVESTMENT

9.01 CONSTRUCTION BY CONCESSIONAIRE

Concessionaire shall not make any improvements or modifications, do any construction work on the Premises, or alter, modify, or make additions, improvements, replacements or repairs, except emergency repairs, to any structure now existing or built without prior written approval of City. Concessionaire shall not install any fixtures, other than Trade Fixtures, without the prior written approval of City. In the event any construction, improvement, alteration, modification, addition, repair, excluding emergency repairs, or replacement is made without City approval, or done in a manner other than as approved, City may, at its discretion, (i) terminate this Agreement in accordance with the provisions herein; or (ii) require Concessionaire to remove the same; or (iii) require Concessionaire to change the same to the satisfaction of City. In case of any failure on the part of Concessionaire to comply, City may, in addition to any other remedies available to it at law or in equity, effect the removal or change referenced above in this Section and Concessionaire shall pay the cost thereof to City plus an administrative charge, to be calculated as a percentage of the City’s costs, as stated in the Concession’s Handbook.

9.02 DESIGN AND CONSTRUCTION STANDARDS

In its design and construction work on the Premises, Concessionaire will fully comply with the standards and development guidelines identified in the Concessions Handbook. Concessionaire covenants to comply with the version of the Concessions Handbook in effect as of the date of any construction it undertakes.

9.03 INITIAL CAPITAL INVESTMENT

As a valuable consideration for City entering into this Agreement, but not as a payment of compensation or a form of consideration for the privilege to occupy space at DEN, but rather to relieve City from making expenditures for Premises occupied by Concessionaire, Concessionaire's Capital Investment expended in the initial construction, furnishing, and equipping of the Premises shall not be less than the Minimum Capital Investment set forth in the Summary of Contract Provisions. Concessionaire agrees to follow the process for certification and approval of the Minimum Capital Investment described in the Concessions Handbook. Any amounts paid to City because of this provision or the procedure described in the Concessions Handbook shall not be deemed a Capital Investment for any purpose under this Agreement nor shall it be deemed payment of any compensation or other fees due under this Agreement.

9.04 DEVELOPMENT SCHEDULE

The development schedule for the initial construction of the concession on the Premises will be coordinated with the City. The Required Opening Date or any other portions of the development schedule may only be changed by DEN in its sole discretion based on delays caused by DEN or other factors clearly outside either Party's fault or control. In no event will delays attributable to Concessionaire's actions or failure to act be a cause for City to modify the development schedule.

Any failure by the City to deliver Notice of Possession or actual possession of the Premises to Concessionaire on any date previously agreed to will not give rise to any claim for damages by Concessionaire against City or against City's contractor; nor shall such failure affect the validity of this Agreement or Concessionaire's obligations and related deadlines hereunder.

9.05 SUBMITTAL AND APPROVAL OF PLANS

- A. **Submittal of Plans.** Prior to Concessionaire's commencement of any construction activities on the Premises, Concessionaire shall submit plans and specifications that conform to all of the requirements of Concessions Handbook, to City for review and approval. No construction work shall commence until City has approved the plans and specifications and has issued a Notice to Proceed. Concessionaire shall submit plans and specifications, in the form and number identified in Tenant Work Permit Handbook, for the Premises. In the event of disapproval by City of any portion of any submittal of plans and specifications, Concessionaire shall promptly make modifications and revisions and re-submit for approval by City.
- B. **Disclaimer of Compliance with Laws or Codes.** The approval by City of any plans and specifications refers to the conformity of such plans and specifications to City standards. Approval of any plans and specifications by City does not constitute its representation or warranty as to their conformity with applicable laws, statutes, codes, or permits and responsibility therefore always remains with Concessionaire.
- C. **Approvals Extend to Architectural and Aesthetic Matters.** City approval will be required for all construction work and systems, including architectural and

aesthetic matters. City reserves the right to reject any designs submitted by Concessionaire and to require Concessionaire, at Concessionaire's expense, to make modifications and revisions, and to resubmit designs until designs are deemed acceptable and subsequently approved in writing by City.

- D. **Design and Permitting.** Concessionaire shall be responsible, at its sole cost and expense, for the costs of design and permitting of all improvements within the Premises and shall not commence any work with respect to an Approved Project until all governmental permits and approvals with respect to the Approved Project have been obtained. At no cost or liability to City, City shall reasonably cooperate with Concessionaire's efforts to obtain such permits and approvals, which cooperation shall include, without limitation, the execution of such instruments as may be required by governmental authorities in order for Concessionaire to apply for and obtain such permits and approvals.

9.06 MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE (MWBE) REQUIREMENTS

- A. This Agreement is subject to Article III, Divisions 1 and 3 of Chapter 28, Denver Revised Municipal Code ("D.R.M.C."), designated as §§ 28-31 to 28-40 and 28-51 to 28-90 (the "MWBE Ordinance"); and any Rules and Regulations promulgated pursuant thereto. The initial Concessionaire [Goal] commitment for MWBE participation for this Agreement is stated in Section 1.01 Summary of Contract Provisions, as stipulated in the DSBO MWBE Commitment Form submitted by the Concessionaire.
1. Prior to the Notice to Proceed being issued by the City, the Concessionaire shall provide completed and updated DSBO forms, entitled "Commitment to MWBE Participation" and "Letter of Intent" ("LOI"). The LOI evidences Concessionaire's understanding that they will enter into a contractual relationship with the listed MWBE firm or that Concessionaire's general contractor, subcontractor(s), subconsultant(s), and/or supplier(s) will do so. A separate LOI is required for each MWBE subcontractor, subconsultant, and/or supplier at all tiers. The collective LOI amounts must be consistent with the total committed MWBE participation percent stated on the Commitment to MWBE Participation form.
- B. Under § 28-68, D.R.M.C., the Concessionaire and its contractors and consultants have an ongoing, affirmative obligation to maintain for the duration of this Agreement, at a minimum, compliance with the MWBE participation upon which this Agreement was awarded, unless the City initiates a material modification to the scope of work affecting MWBEs performing on this Agreement through change order, contract amendment, force account, or other modification under § 28-70, D.R.M.C. The Concessionaire acknowledges that:
1. The MWBE [Goal] commitment stated in Section 1.01 Summary of Contract Provisions is *only* applicable to the *initial construction and*

buildout of the Premises. Future construction work under this Agreement, including but not limited to the Mid-Term Refurbishment, will be subject to a *new* MWBE goal established by DSBO. If any such future construction scope of work's value is determined to be over \$150,000.00, the Concessionaire must contact DSBO as soon as possible to request an MWBE participation goal on the refurbishment and/or other construction work to be completed. Contact should be made in the form of an email to: goals@denvergov.org. If an MWBE participation goal is established by DSBO, the Concessionaire must submit the required Commitment to MWBE Participation form and Letter(s) of Intent for each City and County of Denver certified MWBE firm *prior to receiving a Notice to Proceed from the City*. Failure to submit the required DSBO forms could prevent NTP from being executed. Contact should be made in the form of an email to: dsbo@flydenver.com.

2. If change orders or any other contract modifications are issued under the Agreement, the Concessionaire and its contractors and consultants shall have a continuing obligation to promptly inform DSBO in writing of any agreed upon increase or decrease in the scope of work of such contract, upon any of the bases under § 28-70, D.R.M.C., regardless of whether such increase or decrease in scope of work has been reduced to writing at the time of notification of the change by the City.
3. If change orders or other amendments or modifications are issued that include an increase in the scope of work of any construction project under this Agreement, whether by amendment, change order, force account or otherwise, which increases the dollar value of the contract, whether or not such change is within the scope of work designated for performance by an MWBE at the time of contract award, such change orders or contract modification shall be promptly submitted to DSBO for notification purposes.
4. Those amendments, change orders, force accounts or other contract modifications that involve a changed scope of work that cannot be performed by existing project subcontractors or subconsultants are subject to the applicable goal and related requirements. The Concessionaire must ensure that its contractors and consultants satisfy the requirements with respect to such changed scope of work by soliciting new MWBEs in accordance with § 28-70, D.R.M.C. The Concessionaire must ensure that its contractors and consultants also satisfy the requirements under §§ 28-60 and 28-73, D.R.M.C., with regard to changes in scope or participation. The Concessionaire must ensure that it or its contractors and consultants supply to the DSBO Director all required documentation under §§ 28-60, 28-70, and 28-73, D.R.M.C., with respect to the modified dollar value or work under the contract.

5. If applicable, for contracts of \$1,000,000.00 and over, the Concessionaire will ensure that its contractors and consultants are required to comply with § 28-72, D.R.M.C. regarding prompt payment to MWBEs. Payment to MWBE subcontractors/subconsultants shall be made by no later than thirty-five (35) days after receipt of the MWBE subcontractor or subconsultant's invoice.
6. Failure to comply with these provisions may subject the Concessionaire to sanctions set forth in § 28-76 of the MWBE Ordinance.
7. Should any questions arise regarding specific circumstances, the Concessionaire and its contractors and consultants should consult the MWBE Ordinance or may contact the Project's designated DSBO representative at: DSBO@flydenver.com.

9.07 CONSTRUCTION

- A. **Procedures.** Concessionaire shall, at its own cost and expense, commence construction of an Approved Project in accordance with the procedures described in the Concessions Handbook. Concessionaire agrees that all construction work to be performed, including all workmanship and materials, shall be of First-Class quality and in accordance with the Approved Project. All construction shall be performed in accordance with the requirements of this Agreement, the Concessions Handbook, and applicable laws, regulations, ordinances, codes and permits including, but not limited to, workers' compensation requirements, City's Prevailing Wage Ordinance (D.R.M.C. § 20-76), City's MBE/WBE participation requirements (D.R.M.C. Articles III and VII), the City's Living wage Ordinance, and the Americans with Disabilities Act, 42 U.S.C. 12,000 *et seq.*, and DEN regulations. City and its designees shall have the right from time to time to inspect each Approved Project.
- B. **Bonding During Construction.** Concessionaire will obtain performance and/or payment bonds before beginning any construction work, in the form and the amount required by the Concessions Handbook.
- C. **Timing.** Concessionaire must complete any initial Approved Project and Open for Business no later than the Required Opening Date, and by any required completion date for all later Approved Projects, subject to any extensions that may be approved by City.
- D. **Liquidated Damages for Failure to Meet Date.** Concessionaire acknowledges that if it fails to Open for Business by the Required Opening Date, or a required completion date for later Approved Projects, the delay may cause the City to suffer substantial damages that are extremely difficult to ascertain or prove. Therefore, if Concessionaire fails to open the Premises for business by a required date, Concessionaire's failure shall be subject to the procedures described in the Concessions Handbook, and the City will have the right to exercise any and all

remedies available at law or in equity including but not limited to the option to terminate this Agreement.

9.08 COMPLETION OF CONSTRUCTION

For each Approved Project, Concessionaire shall conform to Project Closeout Activities set forth in the Concessions Handbook.

9.09 TITLE TO IMPROVEMENTS

All Premises Improvements made to the Premises by Concessionaire, and any additions and alterations thereto made by Concessionaire, including approved changes and renovations affixed to the realty, shall become the property of City upon their completion and acceptance by City.

9.10 SIGNAGE

Subject to the terms and conditions of Section 9.05, Concessionaire shall have the privilege to install and maintain signs on or within the Premises, if the design, installation, and maintenance of all signs shall be subject to the terms of this Section and comply with the Concessions Handbook. Concessionaire shall not install signs of any type on or within the Premises without prior written approval of City.

9.11 REFURBISHMENT

- A. Concessionaire shall, at its sole cost and expense, construct and install all approved Mid-Term Refurbishment improvements no later than the Mid-Term Refurbishment Completion Date. The Mid-Term Refurbishment shall exclude improvements or maintenance performed as routine maintenance in accordance with the Agreement. City and Concessionaire shall jointly determine the scope and extent of the Mid-Term Refurbishment for the Premises. If Concessionaire and City cannot jointly agree upon the necessary scope and extent of the Mid-Term Refurbishment, City may, at its sole discretion, determine the refurbishment required and Concessionaire agrees to be bound by City's determination.
- B. Concessionaire's plans, specifications, and timeline for work needed for the Mid-Term Refurbishment must be in accordance with the Concessions Handbook. Concessionaire shall submit its plan specifications for refurbishment to City for review and approval in accordance with the procedures stated in the Concessions Handbook.

ARTICLE X: DISCLAIMER OF LIENS

10.01 LIENS

- A. The interest of City in the Premises will not be subject to liens for any work, labor, materials, or improvements made by or for Concessionaire to the Premises, whether

or not the same is made or done in accordance with an agreement between City and Concessionaire. It is specifically understood and agreed by Concessionaire that in no event will City or the interest of City in the Premises be liable for or subject to any mechanic's, laborer's or materialmen's liens for materials furnished, improvements, labor or work made by or for Concessionaire to the Premises. Concessionaire is specifically prohibited from pledging, liening, or otherwise encumbering any assets located at DEN or any interest in this Agreement without prior, written approval by City. Concessionaire is specifically prohibited from subjecting City's interest in the Premises to any mechanic's, materialmen's, or laborers' liens for improvements made by or for Concessionaire or for any materials, improvements or work for which Concessionaire is responsible for payment. Concessionaire will indemnify, defend, and hold City harmless for any expense or cost associated with any lien or claim of lien that may be filed against the Premises or City, including attorney fees incurred by City. Concessionaire will provide notice of this disclaimer of liens to all contractors or subcontractors providing any materials or making any improvements to the Premises.

- B. In the event any construction, mechanic's, laborer's, materialmen's or other lien, or notice of lien is filed against any portion of the Premises for any work, labor or materials furnished to the Premises, whether or not the same is made or done in accordance with an agreement between City and Concessionaire, Concessionaire will cause any such lien to be discharged of record within thirty (30) days after notice of filing thereof by payment bond or otherwise or by posting with a reputable title company or other escrow agent acceptable to City, security satisfactory to City to secure payment of such lien, if requested by City, while Concessionaire contests to conclusion the claim giving rise to such lien.

ARTICLE XI: MAINTENANCE UTILITIES AND REPAIRS

11.01 CONCESSIONAIRE'S MAINTENANCE OBLIGATIONS

- A. Except for such maintenance of the Premises as is to be provided by City hereunder, Concessionaire shall, at its own cost and expense, maintain the Premises and every part thereof, including Trade Fixtures personal property, in good appearance and repair, in a safe First-Class condition, and in accordance with Sections 6.15 and 6.16. Concessionaire shall maintain, repair, replace, paint, or otherwise finish all Premises Improvements on the Premises, including, without limitation, walls, partitions, floors, ceilings, windows, doors, glass and all furnishings, fixtures, and equipment therein, whether installed by Concessionaire or by City. All of the maintenance, repairs, finishing and replacements shall be of quality equal to or better than the original in materials and workmanship. All work, including finishing colors, shall be subject to the prior written approval of City.
- B. If it is determined the maintenance does not comply with this Agreement, City will follow the procedures identified in the Concessions Handbook.

- C. Concessionaire covenants and agrees that nothing shall be done or kept in the Premises that might impair the value of City's property or that would constitute waste. Any hazardous or potentially hazardous condition on the Premises shall be corrected immediately upon receipt of a verbal or written notice from City. At the sole discretion of City, Concessionaire shall close the Premises or affected portion thereof until the hazardous or potentially hazardous condition is corrected.
- D. Concessionaire covenants to comply with all present and future laws, orders, and regulations, including any rules, regulations, and procedures promulgated by City regarding City provided maintenance within DEN. If any system for City provided maintenance is put in place that can allocate to Concessionaire its proportional share of the cost, Concessionaire must pay its proportional share of the actual costs for City provided maintenance, in accordance with amounts in Section 1.01.

11.02 COMMON MAINTENANCE SERVICES AND UTILITY OBLIGATIONS

- A. City shall provide structural maintenance of DEN and, except as provided below, maintain and repair the exterior windows and walls of the Premises in DEN. However, maintenance of all interior and exterior walls constructed or remodeled by Concessionaire shall be Concessionaire's responsibility.
- B. Further, City has established Common Maintenance Services at DEN. Concessionaire consents to pay its proportionate share of the Common Maintenance Services provided by City, in amounts stated in Section 1.01.
- C. City provides utility mains and lines throughout DEN. Concessionaire, at its sole cost, shall tie into the utility mains and lines at the locations as specified by City. Supplemental heated or cooled air, electrical or other utilities required by Concessionaire in excess of what is customarily available in DEN will be, if approved by City, at the expense of Concessionaire.
- D. City may, at City's sole discretion, maintain the utilities within the Premises and in doing so shall be permitted to enter upon the Premises at all times to make any repairs, replacements and alterations when and as may, in the opinion of City, be deemed necessary. Furthermore, Concessionaire will permit City or its representatives access to construct or install over, on, in, or under the Premises, new systems, pipes, lines, mains, wires, conduits, ducts and equipment; provided, however, that City shall exercise such right in a manner that minimizes interference with Concessionaire's operations. Moreover, during an emergency, City, or its agents, may enter the Premises forcibly, if necessary.
- E. Concessionaire understands, accepts, and agrees that City shall not be liable for Concessionaire's loss for failure to supply any utility services. City reserves the right to temporarily discontinue utility services at such time as may be necessary by reason of accident, unavailability of employees, repairs, alterations, or improvements or whenever by reason of strikes, lockouts, riots, acts of God, or any other happenings beyond the control of City and causes City to be unable to furnish

such utility services. City shall not be liable for damages to persons or property for any such discontinuance due to causes beyond the control of City, nor shall such discontinuance in any way be construed as cause for abatement of Compensation or operate to release Concessionaire from any of its obligations hereunder.

- F. City owns and maintains DEN's cabling infrastructure supporting telephone and data transmission generated within, to and from the Premises (hereinafter referred to as "**Data Network Distribution System**"). Concessionaire may use City's Data Network Distribution System for voice and data connectivity. Concessionaire is required to pay City, or pay a competitive local exchange carrier, for dial tone or internet access for its telephone services and communication systems. City will provide annual maintenance and any needed repairs for the fiber optic cable within the Data Network Distribution System. Relocation of the fiber cable or additional strands of fiber cable will be at Concessionaire's expense. If Concessionaire installs Electronic Visual Information Display systems ("**EVIDS**"), Concessionaire will be required to use City's Data Network Distribution System. Installation and ongoing maintenance of EVIDS will be at Concessionaire's expense and, at Concessionaire's discretion, may be performed by City or an outside vendor approved by City, subject to a Tenant Work Permit.

11.03 CITY'S PERFORMANCE OF COMMON MAINTENANCE SERVICES

Concessionaire agrees that City shall not be liable for Concessionaire's loss for failure to supply any Common Maintenance Services. City reserves the right to temporarily discontinue any Common Maintenance Services at such time as may be necessary by reason of accident, unavailability of employees, repairs, alterations, or improvements or whenever by reason of strikes, lockouts, riots, acts of God, or any other happenings beyond the control of City and causes City to be unable to furnish such services. City shall not be liable for damages to persons or property for any such discontinuance due to causes beyond the control of City, nor shall such discontinuance in any way be construed as cause for abatement of Compensation or operate to release Concessionaire from any of its obligations hereunder, except as otherwise provided in Article XVI. The Parties agree to modify the Summary of Contract Provisions to reflect modifications in the Common Maintenance Services. As noted in Section 1.02, any such modification will be confirmed by letter executed by the CEO, without need for formal amendment to this Agreement.

ARTICLE XII: TERMINATION RIGHTS

12.01 TERMINATION FOR CAUSE

Subject to any cure period(s) set forth in this Agreement, City may terminate this Agreement for cause due to the actions or inactions of the Concessionaire upon fifteen (15) business days written notice to Concessionaire. In doing so, City will not be deemed to have thereby accepted a surrender of the Premises, and Concessionaire will remain liable for all payments or other sums due under this Agreement up to and including the date of termination, and for all damages suffered by City because of Concessionaire's breach of any of the covenants of

this Agreement including, but not limited to, all cost of relicensing, reasonable attorney's fees, repairs, and improvements. Cause for termination includes, but are not limited to the following:

1. The failure or omission by Concessionaire to perform any material obligations under this Agreement or the material breach of any terms, conditions, and covenants required herein.
2. The failure to pay, in full, to City within five (5) days of when due any fees, costs, expenses damages, or other charges applicable hereunder except where such failure is cured within ten (10) days after written notice by City of Concessionaire's failure to pay.
3. Concessionaire's material breach under any other agreement with City at DEN that is not cured within any applicable cure period set forth therein.
4. The appointment of a Trustee, custodian, or receiver of all or a substantial portion of Concessionaire's assets.
5. The divestiture of Concessionaire's estate herein by operation of law, by dissolution, or by liquidation, not including a merger or sale of assets.
6. The insolvency of Concessionaire; or if Concessionaire will take the benefit of any present or future insolvency statute, will make a general assignment for the benefit of creditors, or will seek a reorganization or the readjustment of its indebtedness under any law or statute of the United States or of any state thereof including the filing by Concessionaire of a voluntary petition of bankruptcy or the institution of proceedings against Concessionaire for the adjudication of Concessionaire as bankrupt pursuant thereto.
7. Concessionaire's cancellation or other expiration of the Surety without City's prior written consent, and not reestablished promptly after written notice by City.
8. An assignment, sublicense, or transfer of Concessionaire's interest under this Agreement by reason of death, operation of law, assignment, sublease, sale in bulk of any of its assets, or otherwise to any other person or business entity other than in compliance with the provisions of this Agreement.
9. If Concessionaire abandons, deserts, vacates, or ceases operations under this Agreement for five (5) consecutive business days, unless undergoing repairs or renovations first approved by City.
10. Concessionaire's failure to maintain any type of insurance or level of insurance coverage required hereunder (and in the event Concessionaire has failed to remedy such failure within ten (10) days after notice thereof from City, City may affect such coverage and recover the cost thereof immediately from the Surety or from Concessionaire.)

11. Any lien or attachment to be filed against the Premises, DEN, or other City property because of any act or omission of Concessionaire, and such lien or attachment is not discharged or contested by Concessionaire in good faith by proper legal proceedings within fifteen (15) days after receipt of notice thereof by Concessionaire.
12. Concessionaire use, permission to use, or failure to prevent use of any portion of DEN made available to Concessionaire for its use under this Agreement for any illegal purpose.
13. Concessionaire's license or franchise agreement related to the Concession it is authorized to operate at DEN is terminated, expires, or is amended so that compliance with the amended provisions will cause Concessionaire to be in breach of its obligations under this Agreement.
14. Concessionaire's failure to pay any fees or charges required hereunder after the expiration of the ten (10) day cure period as proscribed hereunder.
15. The conduct of any business or performance of any acts at DEN not specifically authorized in this Agreement or by any other agreement between City and Concessionaire, and Concessionaire's failure to discontinue that business or those acts within thirty (30) days of receipt by Concessionaire of City's written notice to cease said business or acts.
16. Any other breach of this Agreement by Concessionaire that is not cured within thirty days of receipt by Concessionaire of City's written notice.

Nothing in this Section shall be construed to grant a right to Concessionaire to cure a material breach, which by its nature is not capable of being cured. City reserves the right, in its sole discretion, to treat each Concessions Location individually for the purpose of declaring a material breach and terminating this Agreement for Cause.

12.02 CITY'S REMEDIES IN LIEU OF TERMINATION

In the event of any of the foregoing events listed in Section 12.01, and following fifteen (15) days' notice by City and Concessionaire's failure to remedy, City, at its election, may in lieu of termination for cause exercise any one or more of the following remedies, the exercise of any of which will not be deemed to preclude the exercise of any other remedy herein listed or otherwise provided by statute or general law. Unless the cause for termination, as stated in such notice, is by its nature curable and shall have been cured within such fifteen (15) days. City Remedies are as follows:

1. Allow this Agreement to continue in full force and effect and enforce City's right to collect Compensation as it becomes due together with past due interest and draw upon the Surety in any amount necessary to satisfy the damages sustained or reasonably expected from Concessionaire's material breach; and/or

2. Treat this Agreement as remaining in existence, and reenter and take possession of the Premises and expel Concessionaire and those claiming through or under Concessionaire and remove the effects of as may be necessary with or without process of law, without liability for trespass, using such force as may be necessary, and without prejudice to any remedies for damages or breach. No such reentry shall be construed as an election on City's part to terminate this Agreement. City reserves the right to terminate the Agreement at any time after reentry. Following reentry, City may relicense the Premises, and make alterations, repairs or improvements as City deems appropriate for relicensing. City shall not be responsible for any failure to relicense the Premises or any failure to collect compensation due for such relicensing. City shall not be liable to Concessionaire for any claim for damages resulting from remedial action by City. Concessionaire shall continue to be liable for all amounts due as under this Agreement on the dates specified plus interest thereon at the Past Due Interest Rate together with such amounts as would be payable, including costs, attorney's fees, repairs, and improvements.

No delay, failure, or omission of City to re-enter the Premises or to exercise any right, power, privilege, or option arising from any material breach nor subsequent acceptance of fees or charges then or thereafter accrued will impair any such right, power, privilege, or option, or be construed to be a waiver of any such breach or relinquishment, or acquiescence of the Premises. No option, right, power, remedy, or privilege of City will be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed each and all of the rights, powers, options, or remedies given to City by this Agreement are cumulative and that the exercise of one right, power, option, or remedy by City will not impair its rights to any other right, power, option, or remedy available under this Agreement or provided by law. In the event City terminates this Agreement or reclaims the Premises, City has no liability to Concessionaire for any Unamortized Investment or any other costs or expenses incurred by Concessionaire.

ARTICLE XIII: INDEMNIFICATION

13.01 DEFENSE AND INDEMNIFICATION

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

- B. Concessionaire's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Concessionaire's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.
- C. Concessionaire will defend any and all Claims which may be brought or threatened against City and will pay on behalf of 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 City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.
- D. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Concessionaire under the terms of this indemnification obligation. The Concessionaire 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.

ARTICLE XIV: INSURANCE

14.01 INSURANCE REQUIREMENTS

- A. Concessionaire shall obtain and keep in force all of the minimum insurance coverage forms and amounts set forth in **Exhibit D ("Insurance Requirements")** during the entire Term of this Agreement, including any holdover periods, extensions of the Agreement, or other extended period stipulations stated in **Exhibit D**. All certificates of insurance must be received and accepted by the City before any airport access or work commences.
- B. Concessionaire shall ensure and document that all subcontractors performing services or providing goods hereunder procure and maintain insurance coverage that is appropriate to the primary business risks for their respective scopes of performance. At minimum, such insurance must conform to all applicable requirements of DEN Rules and Regulations Part 230 and all other applicable laws and regulations.
- C. The City in no way warrants or represents the minimum limits contained herein are sufficient to protect Concessionaire from liabilities arising out of the performance of the terms and conditions of this Agreement by Concessionaire, its agents, representatives, employees, or subcontractors. Concessionaire shall assess its own risks and maintain higher limits and/or broader coverage as it deems appropriate and/or prudent. Concessionaire is not relieved of any liability or other obligations

assumed or undertaken pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types.

- D. In no event shall the City be liable for any of the following: (i) business interruption or other consequential damages sustained by Concessionaire; (ii) damage, theft, or destruction of Concessionaire's inventory, or property of any kind; or (iii) damage, theft, or destruction of an automobile, whether or not insured.
- E. The Parties understand and agree that the City, its elected and appointed officials, employees, agents and volunteers are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations and any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 to 120, or otherwise available to the City, its elected and appointed officials, employees, agents and volunteers.
- F. City reserves the right to modify any Insurance Requirements stated herein. The Parties agree to modify **Exhibit D** by written notice executed by DEN to reflect any such modifications, without need for formal amendment to this Agreement.

ARTICLE XV: SURETY FOR PERFORMANCE

15.01 FORM OF SURETY

- A. To secure payment for compensation, fees, charges and other payments required hereunder, Concessionaire will post with City a Surety in the form specified in and the amount calculated in accordance with the Concessions Handbook. The Surety will be maintained throughout the Term of this Agreement and any holdover or extension until released by City in accordance with Section 15.03. The Surety will be issued by a bank or surety provider acceptable to City and authorized to do business in the State of Colorado. The Surety may be issued for a one (1) year period, provided however, Concessionaire covenants and agrees that evidence of renewal or replacement of the Surety must be submitted annually by Concessionaire to City, without prompt, at least sixty (60) days prior to the expiration date of the instrument. The Surety shall contain language that the issuing financial institution shall notify City in writing within forty-five (45) days of a determination that the Surety is to be terminated and or is not going to be renewed.
- B. Notwithstanding any provision herein to the contrary, if at any time City deems the amount of Surety insufficient to properly protect City from loss hereunder because Concessionaire is or has been in arrears with respect to such monetary obligations or because Concessionaire has, in the opinion of City, violated other terms of this Agreement, Concessionaire covenants that after receiving notice, it will increase the Surety to the amount required by City, provided however, the percentage increase shall not exceed five percent (5%) of the annual percentage increase that has occurred with respect to Concessionaire's compensation, fees, and charges.

- C. Concessionaire shall furnish the Surety at least thirty (30) days prior to the Required Opening Date as security for the full performance of every provision of this Agreement by Concessionaire. Failure to maintain the Surety as set forth herein shall be a material breach of this Agreement.

15.02 APPLICATION OF SURETY

In the event Concessionaire fails to perform the payment terms and conditions of this Agreement, City, in addition to any other rights and remedies available by law or in equity, may, at any time, apply the Surety or any part thereof toward the payment of Concessionaire's obligations under this Agreement. In such an event, within thirty (30) days after notice, Concessionaire will restore the Surety to its original amount. City will not be required to pay Concessionaire any interest on the Surety. Concessionaire understands and agrees that failure to maintain or replenish the Surety shall constitute a material breach of this Agreement and, in addition to all other remedies available to City, City may, in its sole discretion, terminate this Agreement.

15.03 RELEASE OF SURETY

The release of the Surety will be subject to the satisfactory performance by Concessionaire of all terms, conditions, and covenants contained herein. Concessionaire acknowledges and agrees release of the Surety shall be in accordance with the procedures identified in the Concessions Handbook. In the event of a dispute between the Parties, only the amount in dispute will be retained for remedy.

ARTICLE XVI: PROPERTY DAMAGE

16.01 COMPLETE DESTRUCTION

- A. If Premises, the Concourse in which the Premises is located, or any portion thereof is destroyed or damaged to an extent that renders it unusable, City may rebuild or repair any portions of the building structure destroyed or damaged, and if the cause was beyond the control of Concessionaire, Concessionaire's obligation to pay the Compensation hereunder shall abate as to such damaged or destroyed portions during the time they are unusable. If City elects not to proceed with the rebuilding or repair of the building structure, it shall give notice of its intent within ninety (90) days after the destruction or damage. At its option, Concessionaire may then terminate this Agreement effective as of the date of such event.
- B. If City elects to rebuild, Concessionaire must replace all Premises Improvements at its sole cost and in accordance with the Capital Investment, subject to increase for inflation. Such replacements must be in accordance with the performance standards set forth herein. City and Concessionaire shall cooperate with each other in the collection of any insurance proceeds that may be payable in the event of any loss or damage.

16.02 DAMAGE TO CONCESSION

Concessionaire shall defend and hold City harmless from and hereby waives any claims arising out of damage to the same or damage to Concessionaire's business, including subrogation claims by Concessionaire's insurance carrier. Concessionaire shall give immediate telephone notice to City in case of fire, casualty, or accidents in the Premises or in the building of which the Premises is a part, of defects therein, or in any fixtures or equipment. Concessionaire shall promptly thereafter confirm such notice in writing. Redecoration, replacement, and refurbishment of furniture, fixtures, equipment, and supplies will be the responsibility of, paid for by Concessionaire, and will be of equivalent quality to that originally installed hereunder. City will not be responsible to Concessionaire for any claims related to loss of use, loss of profits, or loss of business resulting from any partial, extensive, or complete destruction of the Premises regardless of the cause of damage.

16.03 ALTERNATE SPACE

City will use its best efforts to provide Concessionaire with alternate areas acceptable to Concessionaire to continue its operation while City makes repairs to the Premises, in accordance with the terms of this Article, except for damages caused by Concessionaire's acts, omissions, or negligence.

16.04 WAIVER OF SUBROGATION

To the extent insurance permits, and then only to the extent collected or collectable by Concessionaire under its property insurance coverage, Concessionaire waives any and all claims against City and its directors, officers, agents, servants and employees for loss or damage to property.

ARTICLE XVII: DAMAGING ACTIVITIES

17.01 PROHIBITED STORAGE OR USE OF CERTAIN GOODS, MATERIALS, MACHINERY, OR HAZARDOUS SUBSTANCES.

- A. No goods or materials will be kept, stored, or used in or on the Premises that are flammable, explosive, hazardous, or that may be offensive or cause harm to the general public or cause damage to the Premises.
- B. Concessionaire is responsible for compliance and shall require its contractors to comply with all federal, state, and local environmental rules, regulations, and requirements, including as they may be amended after the Effective Date. This includes compliance with DEN's Rule and Regulation, Rule 180 incorporated hereto by reference.
- C. Concessionaire shall obtain all necessary federal, state, local, and DEN permits and comply with all permit requirements.

- D. Nothing will be done on the Premises other than as provided in this Agreement that will increase the rate of or suspend the insurance on the Premises or on any structure of City.
- E. No machinery or apparatus will be used or operated on the Premises that will damage the Premises or adjacent areas; provided, however, that nothing in this Article will preclude Concessionaire from bringing or using on or about the Premises, with approval by City, such materials, supplies, equipment, and machinery as are appropriate or customary in the operation of Concessionaire's business under this Agreement.
- F. Concessionaire agrees that nothing shall be done or kept on the Premises that might impair the value of City's property or that would constitute waste.
- G. Concessionaire covenants that all materials, equipment, and all other items used in the performance of this Agreement will be kept in compliance with Occupational Safety and Health Administration (OSHA).

17.02 PROTECTION OF INFRASTRUCTURE

Concessionaire agrees that nothing shall be done or kept on the Premises and no improvements, changes, alterations, additions, maintenance, or repairs made that might impair the structural soundness of the building; result in an overload of utility, plumbing, or HVAC systems serving the Terminal and/or Concourses; or interfere with electric, electronic, or other equipment at DEN. In the event of violations hereof, Concessionaire agrees immediately to remedy the violation at Concessionaire's own cost and expense.

17.03 DAMAGE CAUSED BY OPERATIONS

Concessionaire shall be responsible for any damage caused by Concessionaire to the Premises, other DEN property or operations, other City property or operations, or the property of any other concessionaire, person, or entity, either by act, omission, or because of the operations of Concessionaire. In the event of such damage, Concessionaire will give City immediate notice thereof, and Concessionaire will immediately make the necessary repairs at its own cost and expense. Concessionaire shall be required to comply with the obligations set forth in Article IX with respect to all work required to be performed in accordance with this Section. City reserves the right, if in the best interest of City, to perform the necessary repairs immediately itself. Concessionaire covenants to reimburse City, for the costs and expenses associated with necessary repairs plus an administrative fee of fifteen percent (15%). If Concessionaire causes the same type of damage, such as a water leakage, electrical service interruption, or other damage, more than once in a twelve (12) month period, then Concessionaire shall submit a Remediation Plan, as set forth in Section 7.01.

ARTICLE XVIII: COMPLIANCE WITH LAWS, REGULATIONS, ORDINANCES, AND RULES

18.01 COMPLIANCE

Concessionaire, its officers, authorized officials, employees, agents, subcontractors, or those under its control, will at all times comply with all applicable existing and future federal, state, and local laws and regulations, DEN's Rules and Regulations, Policies, Procedures and Operating Directives as are now or may hereinafter be prescribed by City, all applicable health rules and regulations and other mandates whether existing or as promulgated from time to time by the federal, state, or local government, or City including, but not limited to, permitted and restricted activities, security matters, parking, ingress and egress, environmental and storm water regulations and any other operational matters related to the operation of DEN, including as these authorities may be amended after the Effective Date. Concessionaire covenants to faithfully observe and comply with the standards, procedures, requirements, directives, delegations of authority, directions, and instructions governing the operations of concessions at DEN as identified in the Concessions Handbook. Concessionaire's failure to keep and observe said laws, regulations, ordinances, rules, and Handbook shall constitute a material breach of the terms of this Agreement in the same manner as if these were stated directly in this Agreement.

ARTICLE XIX: AIRPORT SECURITY

19.01 FAA AND TSA REQUIREMENTS

Concessionaire, its officers, authorized officials, employees, agents, subcontractors, and those under its control, will comply with safety, operational, or security measures required of Concessionaire or City by the FAA or TSA. If Concessionaire, its officers, authorized officials, employees, agents, subcontractors or those under its control fail or refuse to comply with said measures and such non-compliance results in a monetary penalty being assessed against City, then, in addition to any other remedies available to City, Concessionaire covenants to fully reimburse City any fines or penalties levied against City, and any attorney fees or related costs paid by City as a result of any such violation. This amount must be paid by Concessionaire within fifteen (15) days from the date of the invoice or written notice.

19.02 CHANGES IN REQUIREMENTS

Concessionaire understands and acknowledges that its ability to remain open and conduct operations under this Agreement is subject to changes in alert status as determined by TSA, which is subject to change without notice. If the security status of DEN changes, Concessionaire shall take immediate steps to comply and assist its employees, agents, independent contractors, invitees, successors, and assigns in complying with security modifications that occur as a result of the changed status. At any time, Concessionaire may obtain current information from DEN's Security Office regarding DEN's security status in relation to Concessionaire's operations at the DEN.

ARTICLE XX: GENERAL PROVISIONS

20.01 AMERICANS WITH DISABILITIES ACT

Concessionaire will comply with the applicable requirements of the Americans with Disabilities Act of 1990 (“ADA”) 42 USC § 12101 *et seq.*, and any similar or successor laws, ordinances, rules, standards, codes, guidelines and regulations and will cooperate with City concerning the same subject matter. In the event that compliance cannot be achieved, Concessionaire shall proceed formally to the federal, state, or local agency having jurisdiction for a waiver of compliance.

20.02 FAA APPROVAL

This Agreement may be subject to approval of the FAA. If the FAA disapproves this Agreement, it will become invalid, and both Parties will bear their own expenses relative to this Agreement, up to the date of disapproval.

20.03 RIGHT OF FLIGHT

Concessionaire’s privilege to use the Premises for the purposes set forth in this Agreement shall be secondary and subordinate to the operation of DEN. Concessionaire acknowledges that because of the location of the Premises at DEN, noise, vibrations, fumes, debris, and other interference with the Permitted Use(s) will be caused by DEN operations. Concessionaire hereby waives all rights or remedies against City arising out of any noise, vibration, fumes, debris, and/or interference that is caused by the operation of DEN. City specifically reserves for itself and for the public a right of flight for the passage of aircraft in the airspace above the surface of DEN. Additionally, City reserves for itself the right to cause in said airspace such noise, vibration, fumes, debris, and other interference as may be inherent in the present and future operation of aircraft. Concessionaire expressly agrees for itself, its successors, and assigns, to prevent any use of the Premises, which would interfere with or adversely affect the operation or maintenance of DEN, or otherwise constitute an airport hazard.

20.04 FEDERAL RIGHT TO RECLAIM

In the event a United States governmental agency demands and takes over the entire facilities of DEN or the portion thereof wherein the Premises are located, for public purposes, for a period in excess of ninety (90) consecutive days, then this Agreement will terminate and City will be released and fully discharged from any and all liability hereunder. In the event of such termination, Concessionaire’s obligation to pay compensation will cease; however, nothing herein will be construed as relieving either Party from any of its liabilities relating to events or claims of any kind whatsoever prior to this termination.

20.05 PROPERTY RIGHTS RESERVED

This Agreement is subject and subordinate to the terms, reservations, restrictions, and conditions of any existing or future agreements between City and the United States, when the

execution of such agreements has been or may be required as a condition precedent to the transfer of federal rights or property to City for DEN purposes and the expenditure of federal funds for the extension, expansion, or development of DEN. The provisions of the attached **Appendices 1 and 2** are incorporated herein by reference and in the event that the FAA or its successors requires modifications or changes to this Agreement as a condition precedent to the granting of funds for the improvement of DEN, or otherwise. Concessionaire understands, accepts, and agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required to satisfy the FAA requirements.

20.06 ASSIGNMENT AND SUBCONTRACT

- A. Concessionaire may not assign, subcontract, and/or sublease its privileges, interests, or obligations in whole or in part under this Agreement without the prior written consent of City in City's sole and absolute discretion. Concessionaire shall not grant any license or concession hereunder, or permit any other person or persons, company, or corporation to occupy the Premises without first obtaining written consent of City in City's sole and absolute discretion. Any attempt by Concessionaire to in any way directly transfer all or part of its interest in this Agreement (including any attempt to transfer ownership of the equity or voting interest in the stock of Concessionaire if Concessionaire is a corporate entity or the ownership interest in such other entity or control of Concessionaire or Concessionaire's operations through sale, exchange, merger, consolidation, or other such transfer) without prior written consent of City shall, at the option of the CEO, automatically terminate this Agreement and all privileges of Concessionaire hereunder. Subject to the terms and conditions set forth in this Section, and only after it has received City's written approval and consent, Concessionaire shall be permitted to subcontract with respect to all or any portions of the Premises.
- B. Each party to a subcontract and each subcontract, and any contemporaneous or subsequent addendum, amendment, modification or other agreement relating to any such subcontract, must be approved in advance by City. The subcontract must contain substantially the same business terms and conditions as those found in this Agreement, and the subcontract must acknowledge the existence of this Agreement and that the subcontracting parties are jointly bound by the terms and conditions of this Agreement, and state that the subcontracting parties shall comply with the satisfy the requirements and obligations of Concessionaire hereunder. All compensation, fees, charges, or other monies due and payable hereunder which are, pursuant to any subcontract, to be paid by a subcontractor shall not be marked-up by Concessionaire. Sub-contractors must independently operate any subcontracted premises, adhere to, and comply with all of the terms, conditions, requirements, restrictions, obligations and standards set forth herein, including without limitation, all audit standards incorporated herein. Subleasing parties shall be jointly bound by the terms and conditions of this Agreement, and the subcontracting parties shall comply with the requirements and obligations of Concessionaire hereunder.

20.07 CORPORATE TENANCY

If Concessionaire is a corporation, partnership, or limited liability business organization, the undersigned officer of Concessionaire hereby warrants and certifies to City that Concessionaire is a corporation in good standing, is authorized to do business in the State of Colorado, and the undersigned officer is authorized and empowered to bind the corporation to the terms of this Agreement by his or her signature thereto.

Further, if Concessionaire is a partnership or other business organization, each member shall be deemed to be jointly and severally liable if such members are subject to personal liability.

No director, officer, or employee of City shall be held personally liable under this Agreement because of its good faith execution or attempted execution.

20.08 NON-EXCLUSIVE RIGHTS

This Agreement will not be construed to grant or authorize the granting of an exclusive right within the meaning of 49 USC 40103(e) or 49 USC 47107(a), as may be amended from time to time, and related regulations.

20.09 RIGHT TO DEVELOP AIRPORT

- A. Concessionaire recognizes that from time to time, it may be necessary for City to commence or complete extensive programs of construction, expansion, relocation, maintenance, and repair in order for DEN and its facilities to be maintained, improved, completed, and operated in accordance with any present or future master layout plan. Further, Concessionaire acknowledges that such construction, expansion, relocation, maintenance, and repair may inconvenience Concessionaire in its operation at DEN. Concessionaire agrees that no liability shall attach to City, its officers, agents, employees, contractors, subcontractors, and representatives by way of such inconveniences. Concessionaire agrees to waive any right to claim damages or other consideration therefrom.
- B. It is covenanted and agreed that City reserves the right to further develop or improve DEN and all landing areas and taxiways as it may see fit, regardless of the desires or views of Concessionaire or its subcontractors and without interference or hindrance.
- C. Further, Concessionaire agrees that no liability shall attach to City, its officers, agents, and employees due to any efforts or action toward implementation of any present or future Master Layout Plan for DEN. Concessionaire agrees that no liability shall attach to City, its officers, agents, and employees due to any efforts or action toward implementation of any present or future Concessions Master Plan for DEN. Concessionaire waives any right to claim damages or other consideration arising therefrom.

20.10 ATTORNEY’S FEES AND COSTS

In the event legal action is required by City to enforce this Agreement, City will be entitled to recover costs and attorneys’ fees, including but not limited to time expended by the City Attorney Staff, whose costs shall be computed at the rate of two hundred dollars and no cents (\$200.00) per hour of City Attorney time. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City’s exclusive remedy.

20.11 RIGHT TO AMEND

In the event that the FAA or its successors requires amendments, modifications, revisions, supplements, or deletions in this Agreement as a condition precedent to the granting of funds for the improvement of DEN, Concessionaire agrees to consent to such amendments, modifications, revisions, supplements, or deletions to this Agreement as may be required to obtain such funds.

20.12 NOTICES AND COMMUNICATIONS

All notices or communication, whether to City or to Concessionaire pursuant hereto, will be deemed validly given, served, or delivered upon receipt by the party by three (3) days after depositing such notice or communication in a postal receptacle, return receipt requested, or one (1) day after depositing such notice or communication with a reputable overnight courier service, and addressed as follows:

TO CITY (MAIL DELIVERY):	TO CONCESSIONAIRE (MAIL DELIVERY):
<p>Attn: Chief Executive Officer Denver International Airport 8500 Peña Boulevard Denver, CO 80249-6340</p> <p>cc: Senior Vice President Concessions Denver International Airport 8500 Peña Boulevard Denver, CO 80249-6340</p>	<p>Attn: Roderick McOwan InMotion DEN-B, LLC 3755 West Sunset Road, Suite A Las Vegas, NV 89118</p>

or to such other address or parties within the State of Colorado as either party may designate in writing by notice to the other Party delivered in accordance with the provisions of this Article.

If the notice is sent through a mail system, a verifiable tracking documentation, such as a certified return receipt or overnight mail tracking receipt, is encouraged.

20.13 BOND ORDINANCES

This Agreement is in all respects subject and subordinate to any City bond ordinances applicable to the DEN, and to any other bond ordinances, which should amend, supplement, or

replace such bond ordinances. The Parties to this Agreement acknowledge and agree that all property subject to this Agreement that was financed by the net proceeds of tax-exempt bonds is owned by City. Concessionaire agrees not to take any action that would impair or omit to take any action required to confirm the treatment of such property as owned by City for purposes of § 142(b) of the Internal Revenue Code of 1986, as amended. In particular, Concessionaire agrees to make and hereby makes an irrevocable election (binding on itself and all successors in interest under this Agreement) not to claim depreciation or an investment credit with respect to any property subject to this Agreement that was financed by the net proceeds of tax-exempt bonds. Concessionaire shall execute such forms and take such other action as City may request in order to implement such election.

At City's sole discretion, through its CEO, City may from time to time reestablish the compensation, fees, and charges provided for herein at intervals of not more than five (5) years and are subject to the requirements of any outstanding bond ordinance pertaining to DEN. City agrees that such reestablished schedule of compensation, fees, and charges shall be reasonable in relation to the cost of providing, operating, and maintaining property, services, and facilities of DEN. If City proposes any changes in the schedule of compensation, fees, and charges, City will give notice thereof to Concessionaire no less than ninety (90) days before the same is to become effective. Concessionaire may decline to pay Compensation at the new rate(s) if such proposed compensation, fees, and charges result in an increase of more than five percent (5%) in the dollar amount of Compensation paid by Concessionaire under Article IV of this Agreement for the previous calendar year. In such a case, Concessionaire shall promptly advise the CEO of its intention to cancel and terminate this Agreement at least sixty (60) days prior to the proposed effective date of such schedule of compensation, fees, and charges. Upon such notice of intent to cancel and terminate, Concessionaire shall surrender the Premises upon a date specified by City within at least one hundred twenty (120) days after Concessionaire advised City. Should Concessionaire fail to give such notice of cancellation and termination, then Concessionaire shall be deemed to have accepted the new rate(s) of compensation as promulgated by City. Failure by City to reestablish the compensation, fees, and charges at a five (5) year interval date shall not waive City's right to reestablish the compensation, fees, and charges at any time thereafter.

20.14 FORCE MAJEURE

Neither Party hereto shall be liable to the other for any failure, delay, or interruption in the performance of any of the terms, covenants, understandings, or conditions of this Agreement due to causes beyond the control of that Party, including without limitation strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage, or any other circumstance for which such Party is not responsible or which is not in its power to control. A lack of funds, however, will never be deemed beyond a Party's power to control, and in no event shall this paragraph be construed to allow Concessionaire to reduce or abate its obligation to pay the any obligation due herein.

20.15 RELATIONSHIP OF THE PARTIES

Concessionaire is and will be deemed an independent contractor and operator responsible to all parties for its respective acts or omissions, and City will in no way be responsible therefore.

It is further expressly understood and agreed that City shall not be construed by a third party or held by Concessionaire to be a partner, associate, or joint venture partner of Concessionaire in the conduct of its business.

20.16 CITY APPROVALS

Except as otherwise indicated elsewhere in this Agreement, wherever in this Agreement approvals are required to be given or received by City, it is understood that the CEO, or a designee of the CEO, is hereby empowered to act on behalf of City. Further, except as otherwise indicated elsewhere in this Agreement, wherever in this Agreement approvals are required to be given by the CEO, it is understood that the CEO may further delegate such authority through the Concession Handbook and/or Tenant Work Permit Handbook.

20.17 INVALIDITY OF CLAUSES

The invalidity of any part, portion, article, paragraph, provision, or clause of this Agreement will not have the effect of invalidating any other part, portion, article, paragraph, provision, or clause thereof, and the remainder of this Agreement will be valid and enforced to the fullest extent permitted by law.

20.18 TIME IS OF THE ESSENCE

Time is of the essence of this Agreement.

20.19 TAXES

Concessionaire will bear, at its own expense, all costs of operating its business including all applicable sales, use, intangible and possessory interest taxes of any kind, against Concessionaire's Premises, the real property and any improvements thereto, Trade Fixtures and other personal property used in the performance of the Concession or estate which are created herein, or which result from Concessionaire's occupancy or use of the Premises or assessed on any payments made by Concessionaire hereunder, whether levied against Concessionaire or City. Concessionaire will also pay any other taxes, fees, or assessments against the Premises or estate created herein. Concessionaire will pay the taxes, fees, or assessments reflected in a notice Concessionaire receives from City within thirty (30) days after Concessionaire's receipt of that notice or within the period prescribed in the tax bill. City will attempt to cause the taxing authority to send the applicable tax bills directly to Concessionaire and Concessionaire will remit payment directly to the taxing authority, in such instance. Concessionaire may reserve the right to contest such taxes, fees, or assessments and withhold payment upon written notice to City of its intent to do so, so long as the nonpayment does not result in a lien against the real property or any improvements thereon or a direct liability on the part of City. Concessionaire shall pay to City, with each payment of Premises Compensation, Support Space Compensation, Privilege Fee, and Concession Services Fees to City, all sales or other taxes which may be due with respect to such payments, and upon receipt, City shall remit such taxes to the applicable taxing authorities.

20.20 PATENTS AND TRADEMARKS

Concessionaire covenants, warrants, and represents that it is the owner of or fully authorized to use any services, processes, machines, articles, marks, names, or slogans used by it in its operations under this Agreement. Concessionaire will not utilize any protected patent, trademark, or copyright, including any patents, trademarks, or copyrights owned by City, in its operations under this Agreement, unless it has obtained prior proper permission, all releases, and other necessary documents. Concessionaire agrees to indemnify, defend, and hold harmless City, its officers, employees, agents, and representatives from any loss, liability, expense, suit, or claim for damages in connection with any actual or alleged infringement of any patent, trademark, or copyright arising from any alleged or actual unfair competition or other similar claim arising out of the operations of Concessionaire under this Agreement.

20.21 AGENT FOR SERVICE OF PROCESS

It is expressly agreed and understood that if Concessionaire is not a resident of the State of Colorado, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation, then in any such event Concessionaire does designate an agent for the service of process with the Secretary of State, State of Colorado, in any court action between it and City arising out of or based upon this Agreement, service will be made as provided by the laws of the State of Colorado for service upon a non-resident. It is further expressly agreed, covenanted, and stipulated that if for any reason service of such process is not possible, and Concessionaire does not have a duly noted resident agent for service of process, as an alternative method of service of process, Concessionaire may be personally served with such process out of this State, by the registered mailing of such complaint and process to Concessionaire at the address set out in this Agreement. Such service will constitute valid service upon Concessionaire as of the date of mailing. Concessionaire will have thirty (30) days from date of mailing to respond thereto. It is further expressly understood that Concessionaire hereby agrees to the process so served, submits to the jurisdiction of the court, and waives any and all obligation and protest thereto, any laws to the contrary notwithstanding.

20.22 COMPLIANCE WITH PUBLIC RECORDS LAW

- A. **Agreement Subject to Colorado Open Records Act.** Concessionaire acknowledges, understands, and accepts that City is subject to the provisions of the Colorado Open Records Act, Colorado Revised Statutes § 24-72-201 *et seq.* Concessionaire agrees that it will fully cooperate with the City in the event of a request or lawsuit arising under such act for the disclosure of any materials or information which Concessionaire asserts is confidential or otherwise exempt from disclosure. Concessionaire acknowledges all documents prepared or provided by Concessionaire under this Agreement may be subject to the provisions of the Colorado Open Records Act. Any other provision of this Agreement notwithstanding, including Exhibits, Attachments, and other documents incorporated into this Agreement by reference, all materials, records, and information provided by Concessionaire to City shall be considered confidential by City only to the extent provided in the Open Records Act, and Concessionaire agrees that any disclosure of information by City consistent with the provisions of

the Open Records Act shall result in no liability of City. Concessionaire agrees to defend, indemnify, hold harmless, and fully cooperate with City in the event of a request for disclosure or legal process arising under such act for the disclosure of any documents or information, which Concessionaire asserts is confidential and exempt from disclosure.

- B. Indemnification in Event of Objection.** In the event of a request to City for disclosure of such information, time, and circumstances permitting, City will make a good faith effort to advise Concessionaire of such request in order to give Concessionaire the opportunity to object to the disclosure of any material Concessionaire may consider confidential, proprietary, or otherwise exempt from disclosure. In the event Concessionaire objects to disclosure, City, in its sole and absolute discretion, may file an application to the Denver District Court for a determination of whether disclosure is required or exempted. In the event a lawsuit to compel disclosure is filed prior to City's application, City will tender all such material to the court for judicial determination of the issue of disclosure. In both situations, Concessionaire agrees it will either waive any claim of privilege or confidentiality or intervene in such legal process to protect materials Concessionaire does not wish disclosed. Concessionaire agrees to defend, indemnify, and hold harmless City, its officers, agents, and employees from any claim, damages, expense, loss, or costs arising out of Concessionaire's objection to disclosure including prompt reimbursement to City of all reasonable attorney fees, costs, and damages that City may incur directly or may be ordered to pay by such court, including but not limited to time expended by the City Attorney Staff, whose costs shall be computed at the rate of two hundred dollars and no cents (\$200.00) per hour of City Attorney time.

20.23 USE, POSSESSION, OR SALE OF ALCOHOL OR DRUGS

Concessionaire, its officers, agents, and employees shall cooperate and comply with the provisions of the Federal Drug-Free Workplace Act of 1988 and Denver Executive Order No. 94, or any successor thereto, concerning the use, possession, or sale of alcohol or drugs. Except as may be otherwise authorized by this Agreement, Concessionaire shall also prohibit consumption of alcohol within the Concession Space. Violation of these provisions or refusal to cooperate with implementing this alcohol and drug policy can result in City barring Concessionaire from City facilities or participating in City operations.

20.24 CITY'S SMOKING POLICY

Concessionaire agrees that it will prohibit smoking by its employees and the public in the Premises. Concessionaire further agrees to not sell or advertise tobacco products. Concessionaire acknowledges that smoking is not permitted in DEN buildings and facilities except for designated areas. Concessionaire and its officers, agents, and employees shall cooperate and comply with the provisions of City's Executive Order No. 99 dated December 1, 1993, Executive Order No. 13 dated July 31, 2002, the provisions of D.R.M.C., §§ 24-301 to 317 *et seq.*, and the Colorado Clean Indoor Air Act, C.R.S. §§ 25-14-201 *et seq.* and DEN's Rules and Regulations Rules 30 and 40.

20.25 WAIVERS

No waiver by City at any time of any of the terms, conditions, covenants, or agreements of this Agreement, or noncompliance therewith, will be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof by Concessionaire. No delay, failure or omission of City to exercise any right, power, privilege or option arising from any breach, material breach, nor subsequent payment of charges then or thereafter accrued, will impair any such right, power, privilege or option, or be construed to be a waiver of any such breach or material breach, or relinquishment thereof or acquiescence therein. No notice by City will be required to restore or revive time as being of the essence hereof after waiver by City or breach in one or more instances. No option, right, power, remedy, or privilege of City will be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options, or remedies given to City by this Agreement are cumulative and no one of them will be exclusive of the other or exclusive of any remedies provided by law, and that the exercise of one right, power, option or remedy by City will not impair its rights to any other right, power, option or remedy.

20.26 COMPLETE CONTRACT

This Agreement, together with the Concession Handbook and the Tenant Work Permit Handbook, including as they may be amended, represents the complete understanding between the Parties, and any prior Contracts or representations, whether written or verbal, are hereby superseded. This Agreement may subsequently be amended only by written instrument signed by the Parties hereto, unless provided otherwise within the terms and conditions of this Agreement. In the event of any conflict between this Agreement and any other document incorporated herein, this Agreement will control.

20.27 BROKER'S COMMISSION

Concessionaire represents and warrants that it has not caused nor incurred any claims for brokerage commissions or finder's fees in connection with the execution of this Agreement. Concessionaire shall defend, indemnify, and hold City harmless against all liabilities arising from any such claims caused or incurred by it (including the cost of attorney fees in connection therewith).

This Agreement does not, and shall not be deemed or construed to, confer upon or grant to any Third Party or parties (except parties to whom the Concessionaire may assign this Agreement in accordance with the terms hereof, and except any successor to City) any right to claim damages or to bring any suit, action or other proceeding against either City or the Concessionaire because of any breach hereof or because of any of the terms, covenants, agreements and conditions herein.

20.28 NO LIMIT ON CITY'S POWERS

Nothing in this Agreement shall limit in any way the power and right of City to exercise its governmental rights and powers, including its powers of eminent domain.

20.29 SIGNATURES

This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed one instrument. This Agreement is expressly subject to and shall not be or become effective or binding on City until approved by City Council, if so required by City's Charter, and fully executed by all signatories of City and County of Denver. The Parties, in the manner specified by City, may sign this Agreement electronically.

[SIGNATURE PAGES, EXHIBITS, AND APPENDICES FOLLOW]

CONCESSIONS HANDBOOK
[INCORPORATED BY REFERENCE]

ACKNOWLEDGMENT AND AGREEMENT

As the Owner/Operator/Regional Manager/General Manager or other designee, I hereby acknowledge and agree to abide by all the terms stated in the Concessions Handbook, including as it may be amended from time to time, per Article XIX of the Agreement.

It is the responsibility of each Concessionaire to communicate the information contained in the Concessions Handbook to all personnel, contractors, and third-party vendors. Violations will be handled via Article VII and/or other applicable provisions of the Agreement.

The City reserves the right to amend the Concessions Handbook at any time. Concessionaires will be informed of such updates via letter sent to the email provided.

ACKNOWLEDGED AND AGREED:

Concessionaire: CFO

Kevin Gotthard

Name
Signed by:

Signature
OF5AA79FB5FE4E0...

CFO

Title

3/26/2025 | 6:44 PM MDT

Date

Contract Control Number: PLANE-202371357-00
Contractor Name: InMotion DEN-B, LLC

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

SEAL **CITY AND COUNTY OF DENVER:**

ATTEST: By: _____

APPROVED AS TO FORM: **REGISTERED AND COUNTERSIGNED:**
Attorney for the City and County of Denver
By: _____ By: _____

By: _____

Contract Control Number:
Contractor Name:

PLANE-202371357-00
InMotion DEN-B, LLC

By:

Signed by:

Kevin Gotthard

0F5AA79FB5FE4E0...

Name: Kevin Gotthard
(please print)

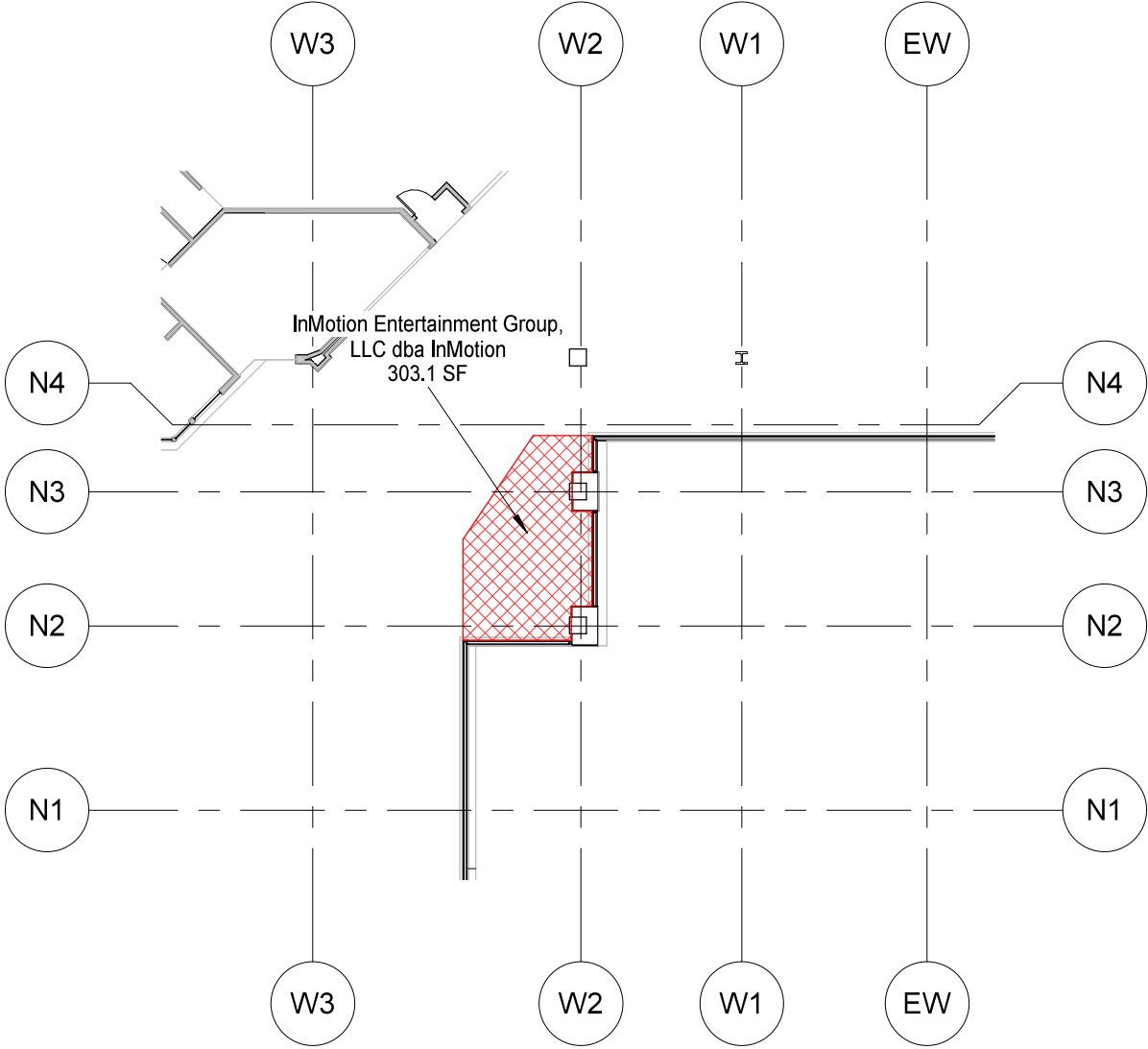
Title: CFO
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



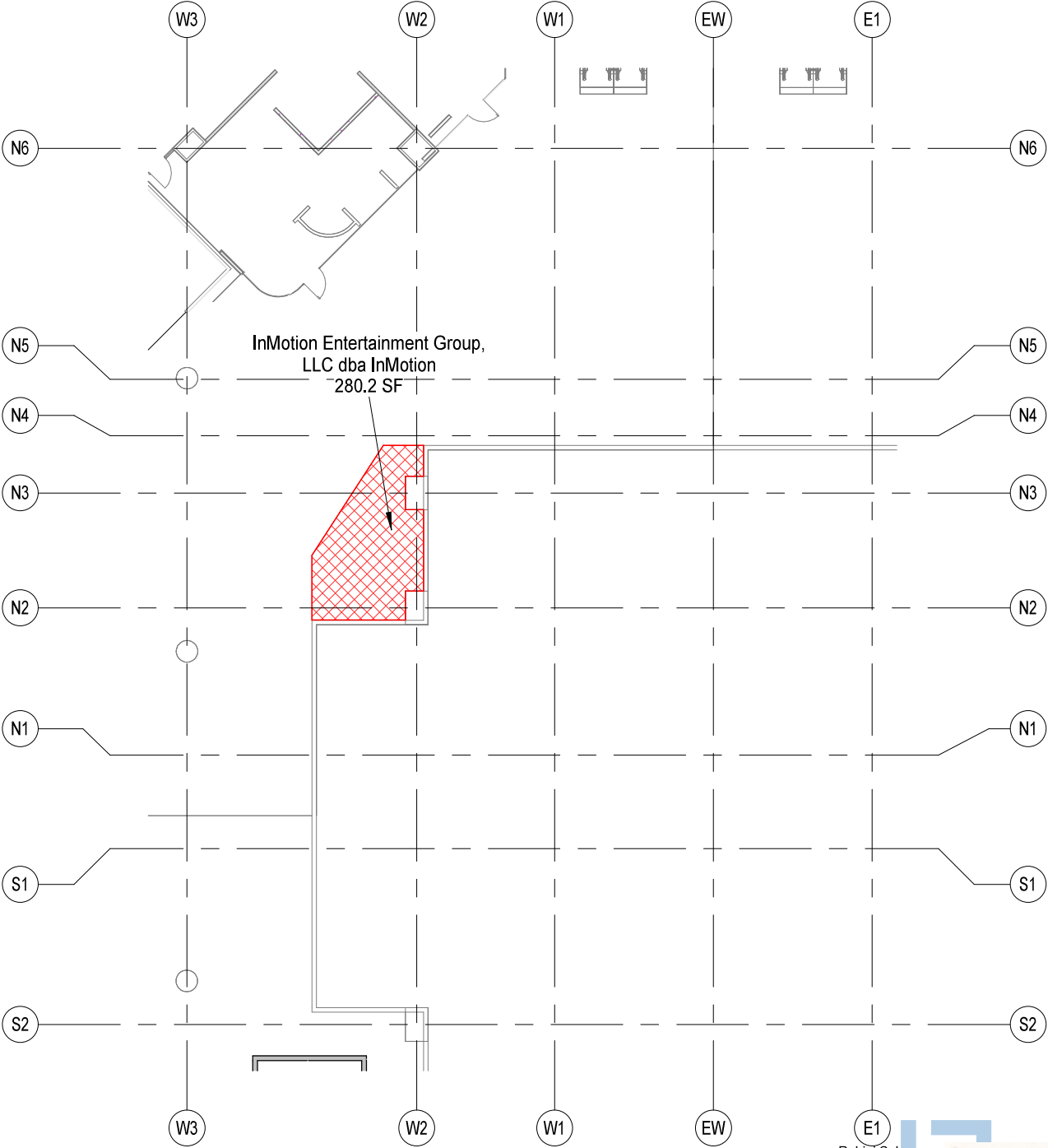
SCALE: 1" = 20'-0"

NOTE: THIS EXHIBIT SHOWS DIMENSIONS AND SQUARE FOOTAGE OF LEASED AREA BASED UPON PLANNING DATA AND IS NOT INTENDED TO DEPICT DIMENSIONS FOR CONSTRUCTION DETAILS. IT IS THE RESPONSIBILITY OF THE LEASEE TO FIELD VERIFY EXISTING CONDITIONS. ADDITIONALLY, IT IS THE RESPONSIBILITY OF THE LEASEE AND DESIGNERS OF RECORD TO FOLLOW ALL APPLICABLE BUILDING CODES AND REQUIREMENTS.

Rohini Saksena
2025.01.22 16:27:18-07'00'
Rohini S.

DEN Planning and Design

<p>KEY PLAN CONCOURSE C</p> <p>CCC-02</p>	<div data-bbox="865 1759 1112 1990"></div> <div data-bbox="1125 1759 1539 1990"><p>DENVER INTERNATIONAL AIRPORT</p><p>EXHIBIT A</p><p>R19-1-3-W3-S1</p><p>InMotion Entertainment Group, LLC dba InMotion</p><table border="1"><tr><td>CC#: C</td><td>DATE: 10/16/24</td></tr></table></div>	CC#: C	DATE: 10/16/24
CC#: C	DATE: 10/16/24		



Rohini Saksena
2025.01.22
16:28:31-07'00'
Rohini S.

SCALE: 1" = 20'-0"

NOTE: THIS EXHIBIT SHOWS DIMENSIONS AND SQUARE FOOTAGE OF LEASED AREA BASED UPON PLANNING DATA AND IS NOT INTENDED TO DEPICT DIMENSIONS FOR CONSTRUCTION DETAILS. IT IS THE RESPONSIBILITY OF THE LEASEE TO FIELD VERIFY EXISTING CONDITIONS. ADDITIONALLY, IT IS THE RESPONSIBILITY OF THE LEASEE AND DESIGNERS OF RECORD TO FOLLOW ALL APPLICABLE BUILDING CODES AND REQUIREMENTS.

DEN Planning and Design

KEY PLAN CONCOURSE A

CCA-02

DENVER INTERNATIONAL AIRPORT

EXHIBIT B

R17-1-3-W3-N2

KIOSK - InMotion

CC#: CCA

DATE: 10/16/2024

EXHIBIT B PERMITTED USES

The specialty retail concept will operate a first-class retail concession at Denver International Airport, offering for sale only the following items: noise-canceling headphones, wireless headphones, speakers, tablets, digital action cameras, fitness trackers, portable power, and mobile accessories. Accessories may include headphones, batteries, cases, computer accessories, media content storage, and other accessories for related technology.

The City is developing a Sustainability Master Plan and encourages Proposer to incorporate sustainability practices in its facility design and operations that are consistent with the City's objectives.

For no other purpose whatsoever, unless approved in advance by the City, examples of which are listed in the initial offering and approved pricing list may be sold at the location.

EXHIBIT C

Denver International Airport
MONTHLY CERTIFIED STATEMENT OF GROSS REVENUE AND MONTHLY INSTALLMENTS OF RENTS DUE

Month: _____

TENANT NAME: _____

DBA NAME: _____

AGREEMENT YEAR: _____

AGREEMENT TYPE: _____

SPACE NUMBER: _____

MONTHLY SUBMISSIONS														
Months in Period GROSS REVENUE <														

I hereby certify to the City and County of Denver that this is a true and accurate statement of Gross Revenues, Rents Due, and all payments made, and that each of the following is in accordance with the provisions of the Concession Agreement and all statements were prepared in accordance with GAAP.

SignatureTitle

Date

EXHIBIT D

**CITY AND COUNTY OF DENVER
INSURANCE REQUIREMENTS FOR DEPARTMENT OF AVIATION
CONCESSION AGREEMENT**

A. Certificate Holder and Submission Instructions

Contractor must provide a Certificate of Insurance as follows:

Certificate Holder: CITY AND COUNTY OF DENVER
Denver International Airport
8500 Peña Boulevard
Denver CO 80249
Attn/Submit to: DEN-Concessions@flydenver.com

- ACORD Form (or equivalent) certificate is required.
- Contractor must be evidenced as a Named Insured party.
- Electronic submission only, hard copy documents will not be accepted.
- Reference on the certificate must include the City-assigned Contract Number, if applicable.

The City may at any time modify submission requirements, including the use of third-party software and/or services, which may include an additional fee to the Contractor.

B. Defined Terms

1. "Agreement" as used in this exhibit refers to the contractual agreement to which this exhibit is attached, irrespective of any other title or name it may otherwise have.
2. "Contractor" as used in this exhibit refers to the party contracting with the City and County of Denver pursuant to the attached Agreement.

C. Coverages and Limits

1. Commercial General Liability

Contractor shall maintain insurance coverage including bodily injury, property damage, personal injury, advertising injury, independent contractors, and products and completed operations in minimum limits of \$1,000,000 each occurrence, \$2,000,000 products and completed operations annual aggregate; if policy contains a general aggregate, a minimum limit of \$2,000,000 annual per location aggregate must be maintained.

- a. Coverage shall include Contractual Liability covering liability assumed under this Agreement (including defense costs assumed under contract) within the scope of coverages provided.
- b. Coverage shall include Mobile Equipment Liability, if used to perform services under this Agreement.
- c. If a "per location" policy aggregate is required, "location" shall mean the entire airport premises.
- d. Coverage shall include Fire Damage Legal Liability in a minimum limit of \$100,000 per fire.
- e. Coverage shall include Liquor Legal Liability in minimum limits of \$2,000,000 each occurrence, \$2,000,000 annual aggregate, if Concessionaire serves or sells alcoholic beverages in its operations. This coverage may also be provided under a separate Liquor Legal Liability policy.

2. Business Automobile Liability

Contractor shall maintain a minimum limit of \$1,000,000 combined single limit each occurrence for bodily injury and property damage for all owned, leased, hired and/or non-owned vehicles used in performing services under this Agreement.

- a. If operating vehicles unescorted airside at DEN, a \$10,000,000 combined single limit each occurrence for bodily injury and property damage is required.

- b. If Contractor does not have blanket coverage on all owned and operated vehicles and will require unescorted airside driving privileges, then a schedule of insured vehicles (including year, make, model and VIN number) must be submitted with the Certificate of Insurance.
 - c. If transporting waste, hazardous material, or regulated substances, Contractor shall carry a Broadened Pollution Endorsement and an MCS 90 endorsement on its policy.
 - d. If Contractor does not own any fleet vehicles and Contractor's owners, officers, directors, and/or employees use their personal vehicles to perform services under this Agreement, Contractor shall ensure that Personal Automobile Liability including a Business Use Endorsement is maintained by the vehicle owner, and if appropriate, Non-Owned Auto Liability by the Contractor. This provision does not apply to persons solely commuting to and from the airport.
 - e. If Contractor will be completing all services to DEN under this Agreement remotely and not be driving to locations under direction of the City to perform services this requirement is waived.
3. Workers' Compensation and Employer's Liability Insurance
- Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits no less than \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.
- a. Colorado Workers' Compensation Act allows for certain, limited exemptions from Worker's Compensation insurance coverage requirements. It is the sole responsibility of the Contractor to determine their eligibility for providing this coverage, executing all required documentation with the State of Colorado, and obtaining all necessary approvals. Verification document(s) evidencing exemption status must be submitted with the Certificate of Insurance.
4. Builder's Risk Insurance or Installation Floater:
- During the duration of any tenant buildout activity, Contractor shall provide, coverage on a Completed Value Replacement Cost Basis, including value of subsequent modifications, change orders, and cost of material supplied or installed by others, comprising total value of the entire project at the site. Such insurance shall:
- a. apply from the time any covered property becomes the responsibility of the Contractor, and continue without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation site, or awaiting installation, whether on or off site;
 - b. be maintained until formal acceptance of the project by DEN or the placement of permanent property insurance coverage, whichever is later;
 - c. include interests of the City and if applicable, affiliated, or associate entities, the General Contractor, subcontractors, and sub-tier contractors in the project;
 - d. be written on a Special Completed Value Covered Cause of Loss form and shall include theft, vandalism, malicious mischief, collapse, false-work, temporary buildings, transit, debris removal, demolition, increased cost of construction, flood (including water damage), earthquake, and if applicable, all below and above ground structures, piping, foundations including underground water and sewer mains, pilings including the ground on which the structure rests and excavation, backfilling, filling and grading;
 - e. include a Beneficial Occupancy Clause, specifically permitting occupancy of the building during construction. Commercial Operator shall take reasonable steps to obtain consent of the insurer and delete any provisions with regard to restrictions within any Occupancy Clauses within the Builder's Risk Policy;
 - f. include Equipment Breakdown Coverage (a.k.a. Boiler & Machinery), if appropriate, which shall specifically cover insured equipment during installation and testing (including cold and hot testing).

5. Commercial Crime

Contractor shall maintain a minimum limit of \$1,000,000 per occurrence covering, but not limited to, loss arising from employee theft, employee dishonesty, forgery or alteration, robbery, burglary, embezzlement, disappearance, destruction; money orders and counterfeit currency; depositor's forgery; computer fraud, on premises and in transit.

6. Property Insurance

Contractor is solely responsible for any loss or damage to its real or business personal property located on DEN premises including, but not limited to, tenant improvements and betterments, materials, supplies, tools, equipment, vehicles, inventory, furnishings, structures and any personal property of its employees, subcontractors or other entities on DEN premises on behalf of Contractor. If Contractor carries property insurance on its property located on DEN premises, a waiver of subrogation as outlined in Section F will be required from its insurer.

7. Property Insurance – Contractor Improvements and Betterments

Contractor shall maintain All-Risk Form Property Insurance on a replacement cost basis. If leased property is located in a flood or earthquake zone (including land subsidence), flood and/or earthquake insurance shall be provided separately or within the property policy.

- a. City shall be included as First Loss Payee, as its interests may appear.
- b. The City and County of Denver shall maintain All-Risk Form Property Insurance coverage for the real property occupied by Contractor.

8. Property Insurance – Business Interruption Coverage

Business Interruption Coverage in such amounts as will reimburse Contractor for direct or indirect loss of earnings attributable to the perils commonly covered by business interruption insurance, which shall include losses arising from mechanical failures on or interruption of services to DEN premises.

9. Excess/Umbrella Liability

Combination of primary and excess coverage may be used to achieve minimum required coverage limits. Excess/Umbrella policy(ies) must follow form of the primary policies with which they are related to provide the minimum limits and be verified as such on any submitted Certificate of Insurance.

D. Reference to Project and/or Contract

The City Project Name, Title of Agreement and/or Contract Number and description shall be noted on the Certificate of Insurance, if applicable.

E. Additional Insured

For all coverages required under this Agreement (excluding Workers' Compensation, Employer's Liability and Professional Liability, if required), Contractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, successors, agents, employees, and volunteers as Additional Insureds by policy endorsement.

F. Waiver of Subrogation

For all coverages required under this Agreement (excluding Professional Liability, if required), Contractor's insurer(s) shall waive subrogation rights against the City and County of Denver, its elected and appointed officials, successors, agents, employees, and volunteers by policy endorsement.

If Contractor will be completing all services to the City under this Agreement remotely and not be traveling to locations under direction of the City to perform services, this requirement is waived specific to Workers' Compensation coverage.

G. Notice of Material Change, Cancellation or Nonrenewal

Each certificate and related policy shall contain a valid provision requiring notification to the Certificate Holder in the event any of the required policies be canceled or non-renewed or reduction in required coverage before the expiration date thereof.

1. Such notice shall reference the DEN assigned contract number related to this Agreement.
2. Such notice shall be sent thirty (30) calendar days prior to such cancellation or non-renewal or reduction in required coverage unless due to non-payment of premiums for which notice shall be sent ten (10) calendar days prior.
3. If such written notice is unavailable from the insurer or afforded as outlined above, Contractor shall provide written notice of cancellation, non-renewal and any reduction in required coverage to the Certificate Holder within three (3) business days of receiving such notice by its insurer(s) and include documentation of the formal notice received from its insurer(s) as verification. Contractor shall replace cancelled or nonrenewed policies with no lapse in coverage and provide an updated Certificate of Insurance to DEN.
4. In the event any general aggregate or other aggregate limits are reduced below the required minimum per occurrence limits, Contractor will procure, at its own expense, coverage at the requirement minimum per occurrence limits. If Contractor cannot replenish coverage within ten (10) calendar days, it must notify the City immediately.

H. Cooperation

Contractor agrees to fully cooperate in connection with any investigation or inquiry and accept any formally tendered claim related to this Agreement, whether received from the City or its representative. Contractor's failure to fully cooperate may, as determined in the City's sole discretion, provide cause for default under the Agreement. The City understands acceptance of a tendered claim does not constitute acceptance of liability.

I. Additional Provisions

1. Deductibles or any type of retention are the sole responsibility of the Contractor.
2. Defense costs shall be in addition to the limits of liability. If this provision is unavailable that limitation must be evidenced on the Certificate of Insurance.
3. Coverage required may not contain an exclusion related to operations on airport premises.
4. A severability of interests or separation of insureds provision (no insured vs. insured exclusion) is included under all policies where Additional Insured status is required.
5. A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City under all policies where Additional Insured status is required.
6. If the Contractor procures or maintains insurance policies with coverages or limits beyond those stated herein, such greater policies will apply to their full effect and not be reduced or limited by the minimum requirements stated herein.
7. All policies shall be written on an occurrence form. If an occurrence form is unavailable or not industry norm for a given policy type, claims-made coverage will be accepted by the City provided the retroactive date is on or before the Agreement Effective Date or the first date when any goods or services were provided to the City, whichever is earlier, and continuous coverage will be maintained or an extended reporting period placed for three years (eight years for construction-related agreements) beginning at the time work under this Agreement is completed or the Agreement is terminated, whichever is later.
8. Certificates of Insurance must specify the issuing companies, policy numbers and policy periods for each required form of coverage. The certificates for each insurance policy are to be signed by an authorized representative and must be submitted to the City at the time Contractor signed this Agreement.
9. The insurance shall be underwritten by an insurer licensed or authorized to do business in the State of Colorado and rated by A.M. Best Company as A- VIII or better.
10. Certificate of Insurance and Related Endorsements: The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements 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. All coverage requirements shall be enforced unless waived or otherwise modified in writing by DEN Risk Management. Contractor is solely responsible for ensuring all formal policy endorsements are issued by their insurers to support the requirements.

11. The City shall have the right to verify, at any time, all coverage, information, or representations, and the insured and its insurance representatives shall promptly and fully cooperate in any such audit the City may elect to undertake including provision of copies of insurance policies upon request. In the case of such audit, the City may be subject to a non-disclosure agreement and/or redactions of policy information unrelated to verification of required coverage.
12. No material changes, modifications, or interlineations to required insurance coverage shall be allowed without the review and written approval of DEN Risk Management.
13. Contractor shall be responsible for ensuring the City is provided updated Certificate(s) of Insurance prior to each policy renewal.
14. Contractor's failure to maintain required insurance shall be the basis for immediate suspension and cause for termination of this Agreement, at the City's sole discretion and without penalty to the City.

J. Part 230 and the DEN Airport Rules and Regulations

If the minimum insurance requirements set forth herein differ from the equivalent types of insurance requirements in Part 230 of the DEN Airport Rules and Regulations, the greater and broader insurance requirements shall supersede those lesser requirements, unless expressly excepted in writing by DEN Risk Management. Part 230 applies to Contractor and its subcontractors of any tier.

EXHIBIT E**ACDBE GOALS REQUEST FORM**

Date: 6/30/2023	Contact Person: James Kim	Phone: 303-342-2558
Action to be Taken: Other If Other, provide additional information:		
Current Tenant: N/A	Current Term End Date: N/A	
Concession Location: Other Additional Location Information (if needed): Multiple locations which are located on Concourse A, B and C.	Current Concession Type: Retail If Other, provide additional information:	
Current MAG: N/A		
Construction Costs: Are they estimated to exceed \$150,000? If not, SBE Goals may apply. <input checked="" type="checkbox"/> Over \$150,000 <input type="checkbox"/> Under \$150,000. NOTE: Construction goal requests will need to be submitted to DSBO		
Current ACDBE Goal: N/A	Current ACDBE Participation: N/A	
PROPOSED TERMS AND MINIMUM REQUIREMENTS		
Proposed Concession Type: Retail If Other, provide additional information:	Description of Project: Specialty Retail that will manage 4 kiosk locations on Concourse A, B and C totaling roughly 1,200 square feet.	
Projected Sales: \$10.4 Annually	Proposed Term: 5 years	
Proposed Minimum MAG: TBD based on Proposals	Proposed Minimum Investment: Estimated at approximately \$1,000,000 based on similar past projects. Subject to change and revision.	
Proposed Years of Experience: TBD	Proposed Minimum Gross Revenues Earned Per Qualifying Year: TBD	

Signature needed by the Director of the DEN Commerce Hub.

DEN Commerce Hub Internal Use	Request received on: 6/30/2023
Revenue paid to the City (most recent rolling 12 months): Note: Sales are for a rolling 12-month period beginning NA and ending NA Total Concession Sales: \$ NA ____% ACDBE: \$ NA ____% Non-ACDBE: \$ NA ____%	
ACDBE Goal Assigned: * 27.3%	Methodology Used: The goal is based on the availability of certified firms in the appropriate category (Retail)

EXHIBIT E



Director of DEN Commerce Hub

Date 6/30/2023

EXHIBIT F

EcoPass

Program

1. The City may, in its discretion, annually execute a contract (the “**RTD Master Contract**”) with the Regional Transportation District (“**RTD**”) to allow Concessionaire and other eligible DEN concessionaires to enroll their Eligible Employees in RTD’s EcoPass Program (as the terms “**Eligible Employee**” and “**EcoPass Program**” are defined in the applicable RTD Master Contract). The City will execute these contracts for the benefit of the concessionaires who the City and RTD determine are eligible to participate in the EcoPass Program, on the condition that each eligible concessionaire participates in the EcoPass Program and compensates the City for its proportional number of Eligible Employees. The City is under no obligation to execute an RTD Master Contract and may at its sole discretion elect not to.

2. Every RTD Master Contract that the City executes for the above purpose will by its existence obligate the Concessionaire to participate in the EcoPass Program under the terms of this Exhibit. Concessionaire will enroll all Eligible Employees at DEN in the EcoPass Program. Concessionaire agrees that this obligation extends to all Eligible Employees that are employed by Concessionaire at DEN, including Eligible Employees that work at concession locations that are not under this Agreement, regardless of whether these obligations are found in the respective contracts for such other concession locations.

3. Any terms or conditions from an RTD Master Contract that by their nature implicate Concessionaire and require certain performance by Concessionaire for the City to fulfill its obligations under the RTD Master Contract are by reference incorporated in this Exhibit. Any dispute or ambiguity regarding Concessionaire’s obligations in connection with any RTD Master Contract will be resolved by the City in the City’s reasonable discretion.

4. Within 30 days after notice from the City, Concessionaire will provide the City with the total number of Eligible Employees to be enrolled in the following year’s EcoPass Program.

5. Concessionaire will pay in full the amount billed for its Eligible Employees within 30 days from the date of the City’s invoice. Late payments are subject to accrued interest according to the Agreement’s terms for late payment. Payments that are over 10 days late may be treated as a default, permitting the City to draw from the applicable Surety, Performance Bond, or Letter of Credit, or exercise any other right or remedy available for default under the Agreement.

6. Concessionaire will promptly provide any relevant documentation requested by the City or RTD in connection with Concessionaire’s Eligible Employees’ participation in the EcoPass Program.

7. Concessionaire is solely responsible for administering the EcoPass Program for its Eligible Employees in accordance with RTD’s guidance and requirements.

8. The City makes no guarantee or warranty regarding Concessionaire’s satisfaction with or use of the EcoPass Program. Concessionaire will hold the City harmless for any loss, damage, injury, or claim that may arise from Concessionaire’s participation in the EcoPass Program, including but not limited to early termination by the City or RTD of the EcoPass Program.

EXHIBIT F

9. Because the form and substance of a given RTD Master Contract and the EcoPass Program may change over time, if any ambiguity arises in this Exhibit due to changes in party names, program titles, definitions, or other terms in an RTD Master Contract, the ambiguity will be resolved by the City in its reasonable discretion.

10. The Parties agree that unforeseen changes to the EcoPass Program or the terms and conditions of the RTD Master Contract may require the Parties to modify their obligations under this Exhibit to give effect to its intent. Therefore, the Parties agree that the City may amend this Exhibit by letter executed by the CEO or the CEO's Authorized Representative, without the need for formal amendment.

Exhibit G

Tab

TWO

MWBE EQUITY,
DIVERSITY, AND
INCLUSION PLAN

Minority/Women-owned Business Enterprise (“MWBE”) Equity Diversity & Inclusion (“EDI”) Plan

At InMotion, our commitment to diversity, equity, and inclusion forms the core of our identity and is reinforced by our history, strategic partnerships, and our team's dedication to fostering an environment of transparency, compliance, and open communication. This plan represents our comprehensive strategy to advance Equity, Diversity, and Inclusion (EDI) for Minority/Women-Owned Businesses (MWBEs) at Denver International Airport (DEN). As a subsidiary of WHSmith, InMotion commits to full compliance with all provisions within Article III of the Denver Revised Municipal Code (DRMC) during the term of the contract. **We are dedicated to surpassing the 25% MWBE participation goal for this project.**



MWBE COORDINATOR
Jean-Michel Dos Remedios
*Divisional Vice President,
Environmental and Social
Governance (ESG) and
Strategic Sourcing*

Jean-Michel Dos Remedios will act as the MWBE Coordinator on this project. Jean-Michel will ensure adherence to MWBE program requirements, oversee compliance and reporting protocols, and facilitate effective collaboration among key project personnel. He will act as the direct liaison for the **Denver Small Business Office (DSBO)** and maintain close contact with our **Project Manager, Ryan Winterfield**, and our **Chief Retail Officer, Missy Sage**.

In his role, Jean-Michel is tasked with orchestrating the company's MWBE requirements, ensuring stringent compliance with reporting standards, and delineating the responsibilities of essential personnel concerning project execution, certified business engagement, and issue escalation. Jean-Michel will spearhead initiatives to enhance outreach and development for disadvantaged businesses, aiming to augment sub-contracting and sub-consulting opportunities, in addition to managing the administration of the MWBE EDI Plan.

Before joining our organization, Jean-Michel contributed significantly to Environmental and Social Governance efforts within the food industry at Bel Brands, joining the company in 2013 and working his way up to Vice President of Strategic Sourcing for North America. His prior responsibilities included:

- Initiating and leading a supplier diversity program aimed at identifying and promoting diverse suppliers across various classifications such as Small, Woman-Owned, Disability-Owned, Veteran-Owned, Minority-Owned, LGBTQ-Owned, and NSMDC-Affiliated businesses.
- Evaluating and enhancing the diversity of the supplier base, setting strategic priorities for service engagement, and optimizing business division for improved diversity integration.
- Directing specialized outreach efforts towards minority and woman-owned entities.

Jean-Michel has exhibited proficiency in managing subcontracting and sub-consulting requirements, including compliance with local regulations and standards, ensuring the program alignment with municipal requirements and reporting obligations. He also has experience in development and execution of outreach strategies aimed at fostering growth and collaboration opportunities for small and local businesses, thereby contributing to economic development and diversity in the corporate supply chain. Jean-Michel's extensive background in ESG initiatives, coupled with his experience in fostering inclusive business environments and managing compliance frameworks, positions him as an invaluable asset to our team and the successful execution of our MWBE EDI Plan.

KEY PERSONNEL RESPONSIBLE FOR EXECUTING THE MWBE EDI PLAN

Name	Title	Email	Phone	Duties as it relates to MWBE EDI
Jean-Michel Dos Remedios	Divisional Vice President, Environmental and Social Governance (ESG) and Strategic Sourcing	jean-michel.remedios@whsmith.com	(312) 420-7996	MWBE Coordinator, 2Gnow User, Primary DSBO Contact Related to B2G (reporting, payment, discrepancies, etc.), Contact for Technical Assistance and Support Services
Star Somilleda	Director, Business Diversity & Partner Relations	star.somilleda@whsmith.com	(561) 324-1105	B2Gnow User, Back up MWBE Coordinator
Ryan Winterfield	New Store Development Project Manager, Construction	ryan.winterfield@whsmith.com	(702) 949-8872	Project Manager, Primary DSBO Contact for Prompt Payment
Alea LaRocque	Divisional VP, Business Development	alea.larocque@whsmith.com	(417) 849-9887	Strategy & Communication, Primary DSBO Contact
Paul Heflin	Vice President of Design & Construction	Paul.heflin@whsmith.com	(702) 949-8765	Oversees Project Manager
Toby Keir	CEO Development Officer	toby.keir@whsmith.com	(702) 949-8787	Strategy
Roderick McOwan	Chief Development Officer	roderick.mcowan@whsmith.com	(702) 949-8777	Strategy
Kevin Gotthard	Chief Financial Officer	kevin.gotthard@whsmith.com	(702) 949-8765	Controller
Missy Sage	Chief Retail Officer	missy.sage@whsmith.com	(702) 949-8765	Store Operations
Alysa Zawistowski	SVP, Human Resources	alysa.zawistowski@whsmith.com	(702) 949-8711	Strategy
Rob van Snik	Senior VP, Business Development	robert.vansnik@whsmith.com	(213) 200-5662	Strategy

MWBE UTILIZATION STRATEGIES

Anticipated Work for MBWEs

To meet Denver International Airport's 25% MWBE participation goal, we empower our project manager and general contractor to identify and engage MWBE businesses, including suppliers, subcontractors, and subconsultants. Specific to this project, we intend to engage with White Construction Group, a Denver-based general contractor with extensive experience at Denver International Airport. Anticipated work for MWBEs includes construction-related work (e.g. demolition, dry wall, rough contractors).

Estimated Value of Work: \$279,036

The total construction cost is estimated to be approximately \$1,116,146. With a 25% goal, our estimated value of work is \$279,036.

Timeframe Subcontracts will be Signed

MWBEs contracts will be signed within 20 days after award to the GC.

Strategies & Tactics for Increasing Participation

To increase MWBE participation, we will leverage the City and County of Denver's list of MWBE certified companies. Our MWBE Coordinator, in partnership with our project manager and general contractor, will organize targeted communication to those certified MWBEs and introduce our project and highlight opportunities for MWBEs. Our business development team will continue to volunteer for and participate in Meet the Primes events at DEN. We collectively maintain an internal list of MWBE certified firms we have worked with on past projects.

TECHNICAL ASSISTANCE & SUPPORT SERVICES

InMotion's project managers collaborate closely with the selected general contractor to ensure the identification and provision of technical assistance to MWBE companies.

- **Technical Assistance:** We advocate for MWBE companies to access support and guidance from local organizations, such as the Colorado Small Business Development Center (SBDC) network, the Colorado Office of Economic Development and International Trade, and the Denver Metro Chamber of Commerce. These organizations offer training, free consulting, and ongoing programs to assist MWBE businesses in their development.
- **Prompt Payment:** In accordance with DEN's policies, we agree to pay each subcontractor under this agreement for satisfactory performance of its contract no later than ten (10) calendar days from the receive of each invoice and acceptance of work or services. We further agree to release retainage payments to each subcontractor within ten (10) calendar days after the subcontractor's work is satisfactorily completed.
- **Access to Capital:** We are actively working on a company-wide relationship with Lendistry, a small business lending company that provides access to affordable small business loans. This program will be advertised and made available to our partners.
- **Mentor Program:** We are also working on the development of a Mentor Program, which we share more about in the Future Initiatives section of this plan.

• Subcontractor Pre-Qualification Program:

The GC we have identified on this project, White Construction Group, has a Subcontractor Pre-Qualification Program that allows MWBE firms to be pre-vetted prior to a project, increasing the chances of award to the MWBE.

PROCUREMENT PROCESS

Our procurement process commences with the identification of procurement needs and the creation of a comprehensive procurement plan. We then draft a solicitation document that outlines the requirements, evaluation criteria, and terms and conditions, which is shared with potential subcontractors, subconsultants, and suppliers. Proposals received undergo a fair and transparent evaluation process based on predetermined criteria. Working alongside our general contractor, our project manager ensures the existence of policies and procedures that guarantee fairness, transparency, and equal opportunity for all companies. Once the successful subcontractor, subconsultant, or supplier is selected, a contract is negotiated and executed.

Post-procurement, **InMotion** adheres to the City and County of Denver Division of Small Business Opportunity's (DSBO) procedures for monitoring and reporting MWBE participation. We provide a list of proposed subcontractors, subconsultants, and suppliers, along with letters of intent for MWBE firms. InMotion will adhere to Article III, Section 28-73 Reduction, Substitution and Termination of the DRMC. Should a reduction, substitution or terminal occur, we will consult DSBO for approval.

As the prime concessionaire on this agreement, **InMotion** will meet all requirements of the DRMC, including those on prompt pay, termination/reduction/substitution, and any other areas regardless of the subcontractor tier. We understand that InMotion, as the prime concessionaire, is solely responsible for compliance with the provisions of the DRMC Article III, including the 25% MWBE utilization commitment, as indicated on the DSBO Commitment to Participation form. Through these principles and policies, InMotion's procurement process champions equal opportunities for all subcontractors, subconsultants, and suppliers, irrespective of their background or size, contributing to a more diverse and equitable supplier base.

COMMUNICATION AND VENDOR MANAGEMENT

To ensure effective communication with MWBE businesses, our project manager and general contractor maintain clear expectations and alignment in their contract work. The general contractor takes responsibility for effective communication, scheduling, safety requirements, terms and conditions, performance expectations, document control, and dispute resolution. Regular and transparent communication with our subcontractors, subconsultants, and suppliers is a cornerstone of our approach. In the event of disputes, payment discrepancies, or personnel issues with MWBE subcontractors, subconsultants, and suppliers, **InMotion** will adhere to Article III, Chapter 20 of the DRMC.

Dispute Resolution

If a dispute arises between **InMotion** and an MWBE company regarding prompt payment, termination, reduction, performance of work, provision of services or supplies, or any other areas related to this project, the presentation writing by one party to the other shall commence the dispute resolution process. The parties shall attempt to resolve the dispute within 30 days in good faith. If the parties fail to resolve the dispute, the matter shall be elevated to upper management/directors who shall attempt to resolve the dispute within an additional 30 days. If the matter is still not resolved informally between the parties after those 60 days, **InMotion** will present the dispute to DSBO in writing, at which time InMotion will follow the DRMC's process for request of a dispute review.

PAST PERFORMANCE

In 2023, our parent company, WHSmith, initiated construction on three new locations at DEN. Collaborating with the Division of Small Business Opportunity, WHSmith submitted the required list of subcontractors, subconsultants, and suppliers. MWBE participation reached 20.13%, or \$115,984, with DSBO verifying compliance with Article III, Chapter 28 of the DRMC.

Based on LOI submissions for Certified Vendors, our general contractor initially fell short of the 25% MWBE goal. Subsequently, the general contractor submitted a GFE, addressing reasons for not meeting the goal,

as outlined in Article III, Chapter 28, section 28-60 of the DRMC. DSBO reviewed and approved the GFE, permitting their continued involvement in the Tenant finish project.

This experience reinforced our understanding of the submission process, and we commit to ongoing compliance with DSBO processes and procedures, upholding Article III of the DRMC.

On this project, we intend to work with a different general contractor, White Construction Group, who has more experience at DEN meeting the MWBE airport goals. Over the last three years, White construction Group has hit all MWBE goals set forth by DEN.

CONCESSIONAIRE'S CULTURE

InMotion's company culture is characterized by inclusivity, diversity, and a unique identity. We embrace and celebrate individual skills that collectively form a multi-dimensional presence internally. From our diverse workforce and ACDBE/MWBE partnerships to our evolving programs, we maintain an open and inclusive workplace. We believe in creating a safe, generous, accepting environment where individuals can be their authentic, best selves. We host events to celebrate diversity, including Mental Health Awareness Month, Black History Month, Asian American Pacific Islander Heritage Month, International Women's Day, Pride Month, and more.

TAB 2**Exhibit G**

We are committed to hiring a diverse workforce and engage with community partners to provide employment opportunities in underrepresented communities. Our partnerships with local schools, colleges, trade schools, and other community resource partners underscore our dedication to these efforts.

To promote equality, diversity, and inclusion, we continually review employment demographic data, including gender, race/ethnicity, education, and women in leadership roles. This data helps us understand our employees' needs and desires related to learning and development, career progression, and overall job satisfaction.

Our culture of equity, diversity, and inclusivity extends to our MWBE partners. We actively work to foster the growth of small businesses, exemplified through our strong joint venture partnerships and past collaborations with MWBE companies in the procurement process.

FUTURE INITIATIVES

InMotion is developing a roadmap to further our efforts in equity, diversity, and inclusion. This plan focuses on setting clear objectives and measuring progress against these objectives. It includes leadership and employee training, expanded community partnerships, such as those with local organizations offering technical assistance, the continuation of our Mentor Program, and ongoing assessment of organizational needs.

In 2023, **InMotion** created a new role within the company, Divisional Vice President of Environmental, Social and Governance (ESG) and Strategic Sourcing, filled by Jean-Michel

Don Remedios, responsible for supporting core components of the company's environmental, social and governance strategy, including achieving our supplier diversity, ethical sourcing, and environmental impact goals. This role also leads our indirect sourcing and procurement strategy and execution with the goal of improving governance.

Additionally, we have recently piloted a Mentor Program with a woman-owned supplier and retail operator. This program aims to provide MWBE and/or ACDBE companies with on-the-ground experience in airport operations through interaction with our store operations and corporate department heads. This initiative aims to enhance MWBE and/or ACDBE development and foster future collaborations. This program is led by **Star Somilleda, Director of Business Diversity and Partner Relations**. Stay tuned for updates on the rollout and implementation of this program.



Finally, our Chief Financial Officer, Kevin Gotthard, is working toward building a partnership with Lendistry, a minority-led small business lender that helps small businesses grow by offering loans as well as administering government and private grant programs. This relationship with Lendistry will extend to our MWBE partners.

As we add new initiatives to advance equity, diversity, and inclusion within our company, we will collaborate with DSBO to share these plans and ensure alignment with our EDI goals.



EXHIBIT H
DEVELOPMENT SCHEDULE

<u>Key Milestone</u>	<u>Date</u>
Effective Date	2/3/2025
DRC Submittal #1	2/28/2025 (Friday before)
DRC Submittal #2	3/14/2025 (Friday before)
DRC Approval	3/19/2025
Submit 60% drawings to DEN for review	4/11/2025
DEN review returned (2 week review)	4/25/2025
Submit 90% drawings to DEN for review	5/9/2025
DEN review returned (2 week review)	5/23/2025
Submit 100% drawings to DEN for review	6/6/2025
DEN Construction Drawing Approval	6/20/2025
Second 100% drawings to DEN for review (if first submittal not approved)	7/7/2025
DEN Construction Drawing Approval	7/21/2025
Denver Building Department Submittal	6/20/2025
Denver Building Department Approval	9/20/2025
Contractor Award	7/8/2025
Construction Contract Negotiation	7/22/2025
Construction Contract Executed	8/6/2025
MWBE Compliance Plan Submitted to DSBO	8/20/2025
DSBO Approval of MWBE Plan	10/1/2025 (6 weeks)
NTP Documents Submitted to Airport	10/2/2025
Construction Duration	10/6/2025
Fire Alarm Pre-Test Inspection	12/6/2025 (60 day duration as provided)
Denver Fire Department Inspections	12/17/2025
Final Building Inspection	12/18/2025
Training	5-days
Soft Opening	12/23/2025
Grand Opening – Open for Business	12/24/2025
Required Opening Date (330 days from Contract Effective Date)	12/30/2025

*Note: Key Milestones, and duration between each milestone, are based on the Design and Construction Schedule provided in the Awarded Proposal. The Milestone dates have been modified to reflect anticipated contract effective date.

*Dates are subject to change upon actual contract execution date (effective date).

*Required Opening Date (ROD) = 450-days from contract execution date.

APPENDIX A

GENERAL CIVIL RIGHTS PROVISIONS

The Concessionaire agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Concessionaire transfers its obligation to another, the transferee is obligated in the same manner as the Concessionaire.

This provision obligates the Concessionaire for the period during which the property is owned, used or possessed by the Concessionaire and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

APPENDIX B

COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

NOTE: As used below, the term "sponsor" shall mean the "City."

During the term of this Agreement, the Concessionaire, for itself, its assignees and successors in interest (hereinafter referred to as the "Concessionaire") agrees as follows:

1. **Compliance with Regulations.** The Concessionaire will comply with the Title VI List of Pertinent Non-Discrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made part of this Agreement.

2. **Nondiscrimination.** The Concessionaire, with regard to the work performed by it during this Agreement, will not discriminate on the grounds of race, creed, color, national origin, or sex in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Concessionaire will not participate directly or indirectly in the discrimination prohibited by the Acts and Regulations, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

3. **Solicitations for Subcontractors, Including Procurements of Materials and Equipment.** In all solicitations, either by competitive bidding or negotiation, made by the Concessionaire for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier will be notified by the Concessionaire of the Concessionaire's obligations under this Agreement and the Acts and Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. **Information and Reports.** The Concessionaire will provide all information and reports required by the Acts, Regulations, or directives issued pursuant thereto and will permit access to its books, records, accounts other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Concessionaire is in the exclusive possession of another who fails or refuses to furnish this information, the Concessionaire shall so certify to the sponsor or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance.** In the event of a Concessionaire's noncompliance with the nondiscrimination provisions of this Agreement, the sponsor will impose such Contract sanctions as it or the FAA may determine to be appropriate including, but not limited to:

- a. Withholding of payments to the Concessionaire under this Agreement until the Concessionaire complies; and/or
- b. Cancelling, terminating, or suspending this Agreement, in whole or in part.

6. **Incorporation of Provisions.** The Concessionaire will include the provisions of paragraphs one (1) through six (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations or directives issued pursuant thereto. The Concessionaire will take action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Concessionaire becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Concessionaire may request the sponsor to enter into such litigation to protect the

interests of the sponsor. In addition, the Concessionaire may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX C

STANDARD FEDERAL ASSURANCES AND NONDISCRIMINATION IN CONSTRUCTION, MAINTENANCE, OPERATION OF FACILITIES

As used below, the term “sponsor” will mean City.

Concessionaire, for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as part of consideration hereof, does hereby covenant and agree, as a covenant running with the land that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a FAA activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Concessionaire will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities, as may be amended from time to time, such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
2. With respect to this Agreement, in the event of breach of any of the above Nondiscrimination covenants, sponsor will have the right to terminate this Agreement, and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if this Agreement had never been made or issued.

APPENDIX D

STANDARD FEDERAL ASSURANCES AND NONDISCRIMINATION IN CONSTRUCTION, USE, OR ACCESS TO FACILITIES

As used below, the term “sponsor” will mean City.

- A. Concessionaire for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Concessionaire will use the Premises in compliance with all other requirements imposed by or pursuant to the List of Pertinent Nondiscrimination Authorities.
- B. With respect this Agreement, in the event of breach of any of the above nondiscrimination covenants, sponsor will have the right to terminate this Agreement and to enter, re-enter, and repossess said land and the facilities thereon, and hold the same as if this Agreement had never been made or issued.

APPENDIX E

TITLE VI LIST OF PERTINENT NONDISCRIMINATION AUTHORITIES

As used below, the term "sponsor" will mean City.

During the performance of this Agreement, the Concessionaire, for itself, its assignees, and successors in interest (hereinafter referred to as the "Concessionaire") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits' discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation-Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S. C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC§ 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 1 00-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and Concessionaires, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 -12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S. C. 1681 et seq).

APPENDIX 1

DISADVANTAGED BUSINESS ENTERPRISES- REQUIRED STATEMENTS

49 CFR Part 26

As used below, the term "recipient" will mean City.

Contract Assurance (§ 26.13) – The Concessionaire and any subcontractor will not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Concessionaire will carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the Concessionaire to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy, as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the Concessionaire from future bidding as non-responsible.

APPENDIX 2

ACDBE NONDISCRIMINATION AND ASSURANCE REQUIREMENTS

(1) This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations 49 CFR part 23. Concessionaire and any subcontractor agree that they will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management Contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR part 23.

(2) The Concessionaire or Contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR part 23, that it enters and cause those business to similarly include the statements in further agreements.