



**Sponsorship Management
Concession Agreement
202368409**

Parties and Addresses:

City and County of Denver:

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

Concessionaire:

The Superlative Group
2843 Franklin Blvd
Cleveland, OH 44113

**SPONSOR MANAGEMENT
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 **THE SUPERLATIVE GROUP**, a corporation organized and existing under and by virtue of the laws of 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

SECTION 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	Attn: Kyle Canter The Superlative Group 2843 Franklin Blvd Cleveland, OH 44113 canter@superlativegroup.com	
Term	5 Years	
Effective Date	Date of Execution by the City	
Commencement Date	To Be Determined	
Expiration Date	5th Anniversary of Effective Date	
Privilege Fee	80%	
Surety	TBD	
MWBE Goal	0%	
ACDBE Goal	Percent	1.7%

SECTION 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 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

SECTION 2.01 DEFINITIONS

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

- A. **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.
- B. **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.
- C. **Approved Project:** A Sponsorship Contract for the applicable Asset as reviewed and approved by the City and in accordance with the Guidelines for Signage and Advertising on Airport Property, as amended from time to time.
- D. **Asset:** A distinct property, location, event, or other concept or thing of value at DEN identified for Sponsorship opportunities, as individually listed in **Exhibit B**.
- E. **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.
- F. **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.
- G. **City's Fiscal Year:** The twelve-month period beginning January 1st of a calendar year through December 31st of the calendar year.
- H. **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 XIV of this Agreement.
- I. **Commencement Date:** The first date any Sponsorship Contract is approved and executed under this Agreement.
- J. **Concession:** The privileges granted to Concessionaire by City to procure and operate revenue-producing sponsorships for designated Assets at DEN, in accordance with the terms and conditions of this Agreement.
- K. **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. Not all requirements in the Concessions Handbook are applicable to the operation of the Concession contemplated in this Agreement, but Concessionaire agrees to comply with those requirements that the City reasonably directs Concessionaire to comply with.

- L. **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 under this Agreement with City's written consent or pursuant to City pre-approved subcontracts 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.

- M. **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.

- N. **Contract Year:**
 - 1. With respect to the first Contract Year during the Term, the period commencing on the Effective Date and continuing through the end of City's Fiscal Year in which the Effective 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.

- O. **Contract:** See definition of Agreement.

- P. **Covenant:** Any agreement, undertaking, commitment, guarantee, warrant, pledge, and/or promise made under this Agreement.

- Q. **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.

- R. **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.

- S. **D.R.M.C.** The Denver Revised Municipal Code.
- T. **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.
- U. **Effective Date:** The date of full execution of this Agreement by City, as set forth on City's signature page.
- V. **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.
- W. **Expiration Date:** The 5th anniversary of the Effective Date.
- X. **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.
- Y. **First Class:** A manner or quality that is vigorous, lively, vital, and of the highest quality, which is to be determined by the City in its reasonable discretion.
- Z. **Gross Revenue:** The total amount of monies paid to or earned by Concessionaire at or from its performance of the Concession, as further described in Section 5.01.
- AA. **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.
- BB. **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.
- CC. **Loss:** Any expense, cost, or damage to person or property.
- DD. **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.

- EE. **Privilege Fee:** The fee paid by Concessionaire to City, as consideration for the privilege of operating a concession(s) at DEN, which is equal to eighty percent (80%) of the Gross Revenue Concessionaire receives from Sponsors pursuant to Sponsorship Contracts.
- FF. **Sponsor:** An entity with whom Concessionaire executes a Sponsorship Contract.
- GG. **Sponsorship:** The financial support for an Asset in return for consideration pursuant to an applicable Sponsorship Contract.
- HH. **Sponsorship Contract:** The applicable agreement executed between Concessionaire and a Sponsor, and approved by the City, providing for Sponsorship of an Asset.
- II. **Summary of Contract Provisions:** The statement of key provisions of this Agreement located in Article I of this Agreement.
- JJ. **Surety** An irrevocable letter of credit, bond, or other instrument as first approved in writing by City, generally in a form consistent with Section 16.01 *infra*, drawn on behalf of City.
- KK. **Term:** The period of time beginning on the Effective Date and ending on the Expiration Date.
- LL. **TSA:** The U.S. Department of Homeland Security's Transportation Security Administration, or any successor thereto.

SECTION 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, Scope of Work
 - 2. Exhibit B, Schedule of Assets and Sponsors
 - 3. Exhibit C, [Reserved]
 - 4. Exhibit D, Insurance Requirements
 - 5. Exhibit E, ACDBE Commitment Form
 - 6. Exhibit F, City's Guidelines for Signage and Advertising on Airport Property
 - 7. Exhibit G, Equity, Diversity, and Inclusion Plan
 - 8. Appendix A, General Civil Rights Provisions
 - 9. Appendix B, Compliance with Nondiscrimination Requirements
 - 10. Appendix C, Standard Federal Assurances and Nondiscrimination in Construction,

Maintenance, Operation Of Facilities

11. Appendix D, Standard Federal Assurances and Nondiscrimination in Construction, Use, Or Access To Facilities
12. Appendix E, Title VI List of Pertinent Nondiscrimination Authorities
13. Appendix 1, Disadvantaged Business Enterprises- Required Statements
14. 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, and operational or performance standards 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.

SECTION 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 retains 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.

SECTION 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.

SECTION 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 as her representative and delegated her 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 Senior Vice President of Concessions ("**SVP**"). 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. PRIVILEGES

SECTION 3.01 PRIVILEGES GRANTED

City hereby grants to Concessionaire, as of the Effective Date, the non-exclusive revocable privilege to inventory, evaluate, sell, manage, and operate Sponsorships in accordance with **Exhibit A** and this Agreement. Notwithstanding the foregoing and subject to DEN's approval and the specific designation of applicable Assets under Exhibit B, Concessionaire shall have the exclusive right to inventory, evaluate, procure, sell, manage, and operate Sponsorships for Assets that have not previously been utilized for advertisement or sponsorship by the City or the City's contractors. City reserves the right to reject or terminate any Sponsorship, at any time and without

advance notice, that in the City's sole discretion violates **Exhibit F** or any other material term of this Agreement, causes harm to the reputation of the City or DEN, or otherwise is in the City's best interest to reject or terminate. Further, DEN has no obligation to accept any given Sponsorship Contract and may utilize any criteria in its determinations regarding its approval or disapproval of Sponsorship Contracts.

The Assets for which Concessionaire is authorized to procure, implement, manage, and sell Sponsorships for are listed in **Exhibit B**. The Parties acknowledge that the Assets will be determined by Concessionaire and City after the Effective Date, and therefore the form and substance of **Exhibit B** will be determined by the Parties after the Effective Date and updated and incorporated in this Agreement automatically upon the City's consent and without formal amendment. Further, the Parties acknowledge that the scope of Concessionaire's privileges and obligations under this Agreement may change or require updating from time to time upon mutual agreement of the Parties. Therefore, the Parties may modify **Exhibit A** and **Exhibit B** by letter executed by the EVP or SVP and acknowledged by Concessionaire, without the need for formal amendment. The Parties, by mutual agreement, will make appropriate adjustments to compensation, fees, and charges paid to City by Concessionaire if necessary after such modification. Additionally, **Exhibit F** is a policy document that is subject to change at the City's sole discretion. Any modifications to the policies in **Exhibit F** will automatically be incorporated in this Agreement upon the City's adoption, without need for formal amendment.

Nothing in this Agreement provides Concessionaire with the right to possession or tenancy of any portion of DEN, though the City may grant Concessionaire a license to utilize certain portions of DEN to perform under this Agreement.

SECTION 3.02 INGRESS AND EGRESS

Concessionaire will have the privilege of ingress to and egress from DEN 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 and TSA 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.

SECTION 3.03 NO WARRANTY FOR ECONOMIC VIABILITY

City makes no warranty, promises, or representations as to the economic viability Concessionaire's business plan or any other matter pertinent to the potential or likelihood for success or failure of Concessionaire's 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.

SECTION 3.04 RIGHTS NOT EXCLUSIVE

City reserves the right to allow others to conduct operations and/or sell advertising in other locations at DEN that are the same, similar, or even identical to those described herein. Concessionaire understands, acknowledges, and agrees its privileges granted herein are not exclusive, except to the extent exclusivity is permitted for certain Assets in Section 3.01, and its use of the Assets is restricted by all applicable rules, regulations, statutes, or ordinances promulgated by any federal, state, or municipality having jurisdiction over DEN.

Nothing in this Agreement shall be construed to prevent City from advertising or promoting DEN, the City and County of Denver, or any events that may occur in, or are sponsored by, the City and County of Denver, in any medium of its choice, using any of DEN's facilities. Additionally, nothing herein shall prohibit any airline, tenant or other concessionaire at DEN from engaging in display advertising of their own or related businesses within their demised premises in accordance with their agreement with City.

ARTICLE IV. TERM

SECTION 4.01 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 Effective Date and continue through the Expiration Date, unless this Agreement is earlier terminated or extended as provided herein. Notwithstanding the foregoing, if the Term expires prior to Concessionaire completing the work under this Agreement, including, but not limited to in the event any Sponsorship Contracts remain in effect, subject to the prior written approval of the CEO, this Agreement shall remain in full force and effect until the completion of any such services commenced prior to the Expiration Date. Concessionaire has no right to continue operating under this Agreement after the Expiration Date without such express approval from the CEO.

SECTION 4.02 PRIVILEGES AND OBLIGATIONS UPON EXPIRATION OR TERMINATION

- A. Concessionaire covenants that, upon expiration or termination of this Agreement with or without cause, it will surrender any constructed improvements to the City peaceably, quietly, and in as good order and condition as the same may be hereafter improved by Concessionaire or City, unless the City otherwise directs Concessionaire to remove the improvements at Concessionaire's cost.
- B. Upon expiration or termination of this Agreement, Concessionaire shall remove all its unaffixed property, inventory and other personal property.
- D. 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.

SECTION 4.03 END OF TERM TRANSITION

During the final Contract Year, City may award and transition to a new concession agreement that may include privileges granted herein. Alternatively, the City may elect to assume the same or similar duties as Concessionaire after expiration or earlier termination of this Agreement. If Concessionaire is not selected for a new agreement, Concessionaire will cooperate fully with the

City and any successor to ensure an effective and efficient transition of operations to the successor. Concessionaire understands, acknowledges, and accepts its responsibility to perform the Concession in a First Class manner during the transition to the successor.

ARTICLE V. COMPENSATION, FEES, OTHER CHARGES, REPORTING, AND ACCOUNTING RECORDS

SECTION 5.01 GROSS REVENUE

Gross Revenue includes all amounts paid or payable to Concessionaire or due or received for Sponsorships procured by Concessionaire as consideration for the Sponsorships of Assets, pursuant to any Sponsorship Contract executed during the Term of this Agreement by and with Concessionaire. Gross Revenue shall not include:

1. Verifiable, documented direct event costs applicable to customer experience event activations. Such exclusions from Gross Revenue are subject to the City's approval and do not apply to traveling costs or for costs associated with naming rights or other traditional sponsorship activities.
2. Federal, State, and local excise, sales, and use taxes on Sponsorships sold by Concessionaire that are separately stated, passed through to and collected from the Sponsor, and remitted to the taxing authority by the Concessionaire.
3. Insurance proceeds received from the settlement of claims for the loss of or damages to Concessionaire's property at DEN other than the proceeds from business interruption insurance.
4. Uniforms or clothing purchased by employees where such uniforms or clothing are required to be worn by employees.

If any Sponsor shall, pursuant to the Sponsorship Contract, provide any "in-kind" consideration (including, but not limited to, products and services, but excluding advertising commitments), then such in-kind consideration shall be considered "Gross Revenue" and shall be commissionable to Concessionaire. In-kind consideration shall be first approved by the City and valued at the valuation set forth in the relevant Sponsorship Contract..

SECTION 5.02 PRIVILEGE FEE

As consideration for the privileges granted herein to operate the Concession at DEN, Concessionaire covenants to pay the Privilege Fee to City. Concessionaire is solely responsible for and will directly collect all Gross Revenue on behalf of the City. Concessionaire will remit the Privilege Fee within thirty (30) days of receipt of Gross Revenue. At the time of payment to the City, Concessionaire will supply the City with an itemized statement in a form approved or provided by the City showing the identity of the Sponsor that made payment, the applicable Asset and Sponsorship Contract, the amount paid, the applicable period covered by the payment, the date of receipt, the calculation of the commission retained by Concessionaire, and line items for any permitted exclusions from Gross Revenue. Concessionaire will modify the form, frequency, or contents of such itemized statements at the direction of the City.

SECTION 5.03 FAILURE TO MAKE TIMELY PAYMENTS

- A. Immediately upon Concessionaire's receipt of monies from sales, services, or doing business under this Agreement, the 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, 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 13.01, 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.

SECTION 5.04 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.

- 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. **Financial Reports.** After the Commencement Date, Concessionaire will provide financial reports and statements in the form and frequency requested by the City. Concessionaire agrees to change the form and frequency of the required reports and statements as requested by City and to provide any additional statistics and information City may request.
- D. **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.
- E. **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 5.06 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.
- F. **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 Privilege Fee 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 Privilege Fee.

- G. **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.

SECTION 5.05 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 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.

SECTION 5.06 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 VIII, 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 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 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 VI. PERMITTED USES

SECTION 6.01 EXECUTING SPONSORSHIP CONTRACTS

Concessionaire is permitted to negotiate, execute, and manage Sponsorship Contracts to effectuate Concessionaire's obligations under this Agreement. The form and contents of every Sponsorship Contract must be reviewed and approved by the City prior to execution. Concessionaire will include, remove, or modify any terms and conditions of a Sponsorship Contract as directed by the City. All Sponsorship Contracts will be subordinate to this Agreement.

SECTION 6.02 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 as applicable to the Assets. 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.

SECTION 6.03 PERMITS AND LICENSES

Concessionaire will obtain and maintain all permits, certificates, licenses, or other authorizations required in connection with the operation of the Concession. Copies of all required permits, certificates, licenses, or other authorizations will be appropriately displayed and forwarded to City upon issuance and each renewal.

ARTICLE VII. PERFORMANCE AND OPERATING STANDARDS

SECTION 7.01 CITY'S RIGHT TO MONITOR PERFORMANCE

- A. **First Class Requirement.** Concessionaire's business will be conducted in a manner that will reflect positively upon the Concessionaire and City. The Concessionaire will execute its services to City and manage every Sponsorship in a First Class manner that reflects professionalism and recognition of DEN's unique standing as a government enterprise and importance to the traveling public and the local and regional communities.
- B. **Objections.** City in its sole discretion shall have the right to raise reasonable objections to Concessionaire's performance of its duties in managing any Sponsorship or effecting its obligations to the City. Such objections will be documented in writing and allow for a cure period of thirty (30) days. More than three documented objections to Concessionaire's performance in any Calendar Year that fail to be cured may be cause, at City's sole discretion, to terminate this Agreement.
- C. **Annual Review.** No later than ninety (90) days after the end of each Contract Year, Concessionaire and City may, at City's option, meet to review and evaluate the financial and operational performance of the Concession.
- D. **Remediation Plan.** If City determines, in its reasonable discretion and based on financial or performance metrics, that the 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. If no acceptable remediation plan is provided by Concessionaire or if after six (6) months of implementation of an approved remediation plan the City determines that the Concession is still performing in an unsatisfactory manner, City may in its discretion allow Concessionaire to provide a new remediation plan or terminate this Agreement.
- E. Concessionaire will appoint a general manager or other management-level employee to serve as the direct point of contact and manager for Concessionaire's operations at DEN under this Agreement. This manager will be available to promptly receive or respond to inquiries and concerns by City personnel and attend meetings, walkthroughs, and presentations that are requested by the City for the manager to attend. Concessionaire will otherwise employ sufficient personnel to adequately and professionally perform Concessionaire's obligations under this Agreement to City's satisfaction.

SECTION 7.02 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.

SECTION 7.03 BADGING AND SECURITY REQUIREMENTS

Concessionaire is responsible for ensuring Personnel, vendor, Sponsor, 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.

SECTION 7.04 ADVERTISING GUIDELINES

All Sponsorships shall conform to the Guidelines for Signage and Advertising on Airport Property, as amended from time to time, which shall be incorporated into any Sponsorship Contracts with Sponsors. The City expressly reserves the right to reject or discontinue displaying, at any time and without advance notice, any sign or advertisement, in whole or in part, that in City's sole and absolute discretion violates the Guidelines for Signage and Advertising on Airport Property or any other material term of this agreement.

The Parties agree, nothing in this Agreement is intended or shall be construed to create a public forum at DEN.

SECTION 7.05 PROHIBITED ACTS

Concessionaire will not interfere or permit interference with the use, operation, or maintenance of DEN including, but not limited to, the effectiveness or accessibility of the drainage, sewerage, water, communications, fire protection, utility, electrical, or other systems installed or located from time to time at DEN. Concessionaire shall not do or permit to be done anything that might interfere with the effectiveness or accessibility of elevators or escalators in or adjacent to areas of DEN, including lines, pipes, wires, conduits, and equipment connected with or appurtenant thereto.

Concessionaire will not engage in any activity prohibited by DEN's Rules and Regulations and Operating Directives as may be modified during the Term. 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 VIII until such prohibited act is ended. Payment of liquidated damages will be due within fifteen (15) days from the date of invoice. Moreover, if the prohibited act is not corrected as directed by City, City or its representative shall have the right to take corrective or preventive action as determined by the City, and Concessionaire agrees to promptly reimburse City for any related costs and an administrative fee equal to fifteen percent (15%) of the corrective action costs.

ARTICLE VIII. FAILURE TO COMPLY WITH PERFORMANCE/OPERATING STANDARDS

SECTION 8.01 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 § 7.01;	If not cured within thirty day cure period, then \$100 per day dating back to the date of Notice, for each day until corrected.
Prohibited Acts	Contract § 7.05; Handbook § 14.43	\$100 per day until corrected.
Security Infraction	Contract § 7.03; Handbook § 14.29	\$500 per occurrence for violations not otherwise addressed in TSA or DEN's Rules and Regulations.
Late 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 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.
Violation of Handbook Not Otherwise Specified	Handbook § 15.08	First Violation: \$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. Second Violation: \$150 per day until corrected. Third Violation: \$200 per day until corrected.
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 VIII are found to be unenforceable, any affected violation shall then be immediately covered by Article XIII, and City shall have a right to all remedies available at law, including but not limited to the remedies provided in Article XIII.

ARTICLE IX. NON-DISCRIMINATION, SMALL BUSINESS, AND FEDERAL AID REQUIREMENTS

SECTION 9.01 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.

SECTION 9.02 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 Commerce Hub ("**Director**," as used in this Article IX 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 the Summary of Contract Provisions of this Agreement. The stated goal was included in a competitive solicitation process in which Concessionaire was recommended. 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.

SECTION 9.03 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 and requirements of DEN's Commerce

Hub. 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. 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 9.02 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.

SECTION 9.04 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 DSBO. 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.

SECTION 9.05 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.

SECTION 9.06 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 X. CONSTRUCTION AND CAPITAL INVESTMENT

SECTION 10.01 CONSTRUCTION BY CONCESSIONAIRE

Concessionaire shall not make any improvements or modifications, do any construction work, 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 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.

SECTION 10.02 DESIGN AND CONSTRUCTION STANDARDS

In any permitted design and construction work, 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.

SECTION 10.03 DEVELOPMENT SCHEDULE

The development schedule for any approved construction work will be coordinated with the City. 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 any applicable area of DEN 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.

SECTION 10.04 SUBMITTAL AND APPROVAL OF PLANS

- A. **Submittal of Plans.** Prior to Concessionaire's commencement of any construction activities, 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. 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 or Sponsor, shall be responsible, at its sole cost and expense, for the costs of design and permitting of all improvements 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.

SECTION 10.05 CONSTRUCTION

- A. **Procedures.** Concessionaire or Sponsor 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, worker's 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 or Sponsor 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 approved project no later than the date established in the applicable development schedule, subject to any extensions that may be approved by City.
- D. **Liquidated Damages for Failure to Meet Date.** Concessionaire acknowledges that if it fails complete construction by the date provided in the development schedule, the delay will cause the City to suffer substantial damages that are extremely difficult to ascertain or prove. Therefore, if Concessionaire fails to complete construction by a required date, Concessionaire's failure shall be subject to liquidated damages in accordance with Article VIII.

SECTION 10.06 COMPLETION OF CONSTRUCTION

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

SECTION 10.07 TITLE TO IMPROVEMENTS

All improvement made 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.

SECTION 10.08 SIGNAGE

Subject to the terms and conditions of Section 10.05, **Exhibit F**, and City's prior approval, Concessionaire may install and maintain signs on or within an Asset in accordance with a Sponsorship Contract that contemplates such signage. Concessionaire shall not install signs of any type without prior written approval of City.

ARTICLE XI. DISCLAIMER OF LIENS

SECTION 11.01 LIENS

- A. The interest of City in any area or improvement of DEN will not be subject to liens for any work, labor, materials, or improvements made by or for Concessionaire or a Sponsor, 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 any Asset 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 or a Sponsor. 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 any Asset 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 any Asset or portion of DEN, or City, including attorney fees incurred by City. Concessionaire will provide notice of this disclaimer of liens to all Sponsors, other contractors, or subcontractors providing any materials or making any improvements to DEN.

- 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 DEN or an Asset for any work, labor or materials furnished, 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 XIII. TERMINATION RIGHTS

SECTION 13.01 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. 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. Prior to termination, with respect to Sponsorship Contracts that are in effect at the time of termination, City will select which, if any, Sponsorship Contracts Concessionaire will assign to City and Concessionaire will so assign; all other effective Sponsorship Contracts will terminate immediately by their own terms upon the effective date of the termination of this Agreement. Cause for termination includes, but is 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, where such failure, omission, or material breach is not cured within fifteen (15) days of receipt by Concessionaire of City's written notice.
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 (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 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 fifteen (15) 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 any part of 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's 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 failure to pay any fees or charges required hereunder after the expiration of the (10) day cure period as prescribed hereunder.
14. 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.
15. Any other breach of this Agreement by Concessionaire that is not cured within thirty (30) 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.

SECTION 13.02 RESERVED.

Reserved.

SECTION 13.03 CITY'S REMEDIES IN LIEU OF TERMINATION

In the event of any of the foregoing events listed in Section 13.01, 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 may 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.

No delay, failure, or omission of City 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 any rights. 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, City has no liability to Concessionaire for any unamortized investment or any other costs or expenses incurred by Concessionaire.

ARTICLE XIV. INDEMNIFICATION

SECTION 14.01 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 XV. INSURANCE

SECTION 15.01 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. Notwithstanding what is set forth in Exhibit D, the City understands and agrees that the requirement set forth in Section F of Exhibit D which requires waiver of subrogation for all coverages required under this Agreement, shall not apply to Concessionaire's Workers Compensation policy.
- 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 XVI.SURETY FOR PERFORMANCE

SECTION 16.01 FORM OF SURETY

- A. To secure payment for compensation, fees, charges, and other payments required hereunder, the City may, in its discretion and after valuation of Assets and consulting with Concessionaire, require Concessionaire to post with City a Performance Surety in a reasonable amount based upon asset valuation and past or expected annual revenue. The Surety will be maintained throughout the Term of this Agreement and any holdover or extension until released by City in accordance with Section 16.03. 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 (5%) of the annual percentage increase that has occurred with respect to Concessionaire's compensation, fees, and charges.
- C. If, after the valuation of Assets and consulting with Concessionaire, the City sets an amount of Surety for this Agreement, Concessionaire shall furnish the Surety within thirty (30) days of such notice by the City. Failure to maintain the Surety as set forth herein shall be a material breach of this Agreement.

SECTION 16.02 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.

SECTION 16.03 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 XVII. PROPERTY DAMAGE

SECTION 17.01 COMPLETE DESTRUCTION

If an Asset, the Concourse in which an Asset 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 Privilege Fee for the affected Asset shall abate to the extent that any revenue from the applicable Sponsorship Contract is reduced by such damaged or destroyed portions. 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, and City will not be liable for any resulting loss in revenue or other claims or damages whatsoever.

SECTION 17.02 LIMITS OF CITY'S OBLIGATIONS DEFINED

City shall not be liable for the following: (i) any damage to property of Concessionaire or others located on or in DEN; (ii) the loss of or damage to any property of Concessionaire or of others by theft or otherwise; (iii) any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, or snow; (iv) leaks from any part of DEN; from the pipes, appliances, or plumbing works; from the roof, street, subsurface, or from any other place; or from dampness or by any other cause of whatsoever nature; (v) any such damage caused by other Concessionaires, persons in the or around an Asset, occupants of adjacent property, of DEN, or of the public; (vi) damages caused by operations in construction of any private, public, or quasi-public work; (vii) any latent defect in DEN or in the building of which they form a part; and (viii) all property of Concessionaire kept or stored at DEN is at the risk of Concessionaire only.

Further, 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 at an Asset under Concessionaire's care or responsibility, or in the building of which Concessionaire does business at DEN, 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 Welcome Sign regardless of the cause of damage.

SECTION 17.03 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 XVIII. DAMAGING ACTIVITIES

SECTION 18.01 PROTECTION OF INFRASTRUCTURE

Concessionaire agrees that nothing shall be done or kept at DEN 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.

SECTION 18.02 DAMAGE CAUSED BY OPERATIONS

Concessionaire shall be responsible for any damage caused by Concessionaire to an Asset, 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. 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 XIX. COMPLIANCE WITH LAWS, REGULATIONS, ORDINANCES, AND RULES

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 XX. AIRPORT SECURITY

SECTION 20.01 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.

SECTION 20.02 CHANGES IN REQUIREMENTS

Concessionaire understands and acknowledges that its ability to 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 XXI. GENERAL PROVISIONS

SECTION 21.01 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.

SECTION 21.02 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.

SECTION 21.03 RIGHT OF FLIGHT

Concessionaire's privileges set forth in this Agreement shall be secondary and subordinate to the operation of DEN. Concessionaire acknowledges that because of the location of the Assets at DEN, noise, vibrations, fumes, debris, and other interference with the Concession 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 activity relating to this Agreement which would interfere with or adversely affect the operation or maintenance of DEN, or otherwise constitute an airport hazard.

SECTION 21.04 FEDERAL RIGHT TO RECLAIM

In the event a United States governmental agency demands and takes over the entire facilities of DEN or a material number of Assets, for public purposes, for a period in excess of ninety (90) consecutive days, then this Agreement may terminate by 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.

SECTION 21.05 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** 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.

SECTION 21.06 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 perform on behalf of the City or Concessionaire 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 its obligations under this Agreement to a third party.
- 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.

SECTION 21.07 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.

SECTION 21.08 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.

SECTION 21.09 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.

SECTION 21.10 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.

SECTION 21.11 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.

SECTION 21.12 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):
Attn: Chief Executive Officer Denver International Airport 8500 Pena Boulevard Denver, CO 80249-6340 CC: Senior Vice President Concessions Denver International Airport 8500 Pena Boulevard Denver, CO 80249-6340	Attn: Kyle Canter The Superlative Group 2843 Franklin Blvd Cleveland, OH 44113 canter@superlativegroup.com

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.

SECTION 21.13 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 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, 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.

SECTION 21.14 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.

SECTION 21.15 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.

SECTION 21.16 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.

SECTION 21.17 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.

SECTION 21.18 TIME IS OF THE ESSENCE

Time is of the essence of this Agreement.

SECTION 21.19 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 applicable to Concessionaire's operations under this Agreement. 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 any portion of property or any improvements thereon or a direct liability on the part of City.

SECTION 21.20 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.

SECTION 21.21 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.

SECTION 21.22 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.

SECTION 21.23 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.

SECTION 21.24 CITY'S SMOKING POLICY

Concessionaire agrees that it will prohibit smoking by its employees, agents, contractors, and other parties at DEN. 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.

SECTION 21.25 WAIVERS

No waiver by either Party 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 the other Party. No delay, failure or omission of a Party 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 a Party will be required to restore or revive time as being of the essence hereof after waiver by that Party or breach in one or more instances. No option, right, power, remedy, or privilege of a Party 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 a Party 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 a Party will not impair its rights to any other right, power, option or remedy.

SECTION 21.26 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.

SECTION 21.27 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.

SECTION 21.28 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.

SECTION 21.29 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.

SECTION 21.30 OWNERSHIP OF PROPRIETARY INFORMATION

Notwithstanding anything in this Agreement to the contrary, this Agreement does not constitute and shall not be construed as constituting the transfer or assignment of any proprietary information from Concessionaire to the City. Concessionaire shall retain the ownership rights to all proprietary information that it owned (in whole or in part) prior to entering into this Agreement, including, but not limited to, trade secrets, technology, formulas, calculations, algorithms, or information pertaining to business operations and strategies, and information pertaining to customers and pricing.

SECTION 21.31 INTELLECTUAL PROPERTY RIGHTS

This Agreement does not constitute and shall not be construed as constituting the transfer or assignment of any intellectual property between the Parties, unless set forth otherwise in this Agreement. The Parties shall retain ownership right, title, and interest to all intellectual property that they owned (in whole or in part) prior to entering into this Agreement, including, but not limited to, copyrights, patents, trademarks, and service marks.

[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 that are applicable to operating the Concession, 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 VIII 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: The Superlative Group, Inc.

kyle canter

Name Signed by:

kyle canter

Signature

COO

Title

7/23/2024 | 1:52 PM PDT

Date

Contract Control Number: PLANE-202368409-00
Contractor Name: THE SUPERLATIVE GROUP

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-202368409-00
THE SUPERLATIVE GROUP

DocuSigned by:
Kyle Canter
By: EC7191A1A0174E6...

Name: Kyle Canter
(please print)

Title: COO
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

EXHIBIT A
Scope of Work

Exhibit A

This Agreement will NOT include any advertising currently handled by DEN's contracted partners. DEN is looking to develop longer term sponsorship partnerships for key assets and activations.

ASSET INVENTORY AND VALUATION

Concessionaire will provide a comprehensive inventory and valuation report of recommended assets at Denver International Airport (DEN) to be considered for sponsorships inclusive of digital, temporary, and permanent structures, both inside and outside the airport building(s), inclusive of all of DEN property.

The following tasks will be included as a part of the asset inventory and valuation report:

1. Site Visit/Kickoff Meeting: Complete a site visit and kickoff meeting at the beginning of the contract. travel costs (if applicable) should be included as a part of this contract.
2. Asset Identification: Identify assets, both inside and outside of DEN, that merit inclusion in an integrated corporate partnership and/or sponsorship program.
3. Asset Inventory: Provide a complete written inventory that may include corporate partnerships and sponsorships, naming rights, exclusive providers and category partnership opportunities.

The inventory will include:

- a. Name of asset
- b. Location of asset
- c. Any known benefits and/or challenges for marketing opportunities with the asset
- d. Photos/videos/renderings of asset
- e. Recommended improvements to certain assets, including cost (if applicable), which might increase the potential revenue associated with the asset
- f. Recommendations for future assets
- g. Any other relevant information

4. Contract Review: Complete a review of any existing sponsorship, corporate partnership, naming rights, and exclusive provider contracts that Denver International Airport is currently engaged in at the time that this contract commences. The review will include an audit of those existing agreements as well as a summary of how these existing contracts could reduce or limit the value of the revenue generating opportunities identified by the Concessionaire.

5. Asset Valuation/Report: As a part of the valuation, the Concessionaire will provide an analysis including a market valuation of the identified assets that will be included in a final valuation report delivered to DEN. Certain assets at DEN are subject to revenue limitations depending on the type of bonds that were used to fund such assets, and Concessionaire will work with DEN personnel to ensure such limitations are carefully considered and managed. A draft valuation report will be delivered to DEN for review and DEN will be provided an opportunity to provide feedback and comments back to the Concessionaire. Upon agreement between the Concessionaire and DEN, the Concessionaire will implement feedback and deliver

Exhibit A

a final valuation report. DEN reserves the right to approve or reject any asset the Concessionaire recommends for a potential sponsorship.

6. Presentation of Report: The Concessionaire will present its findings and valuations to key stakeholders at DEN. This presentation will include:

- Overview of market valuation methodology
- Presentation of assets evaluated and their suggested market-value
- Recommendations on which assets should be marketed first
- Recommendations for future assets
- Recommendations for asset restoration or enhancements
- Outline of the strategic sales strategy

STRATEGIC SALES INITIATIVE

Following the completion and approval of the assets and valuations, the Concessionaire will recommend a strategic sales approach. The following tasks and deliverables will be included, but are not limited to:

1. Strategic Sales Campaign Kickoff Meeting: The Concessionaire and DEN will complete a kickoff meeting to commence the sales campaign(s). This may be in person or video conference. If in person, the Concessionaire will be responsible for travel costs associated with attending this meeting (if applicable). The goal of this meeting is to solidify the strategy, timelines, deliverables, and the final reporting structure associated with the sales campaign(s).

2. Prospecting List: The Concessionaire will create a list of DEN-approved target entities and prospects for partnerships and sponsorships, exclusive provider arrangements, naming rights and other opportunities as identified in the asset/valuation report. This list will include recommendations by prospect for specific assets that may meet their branding and marketing requirements (when this can be identified).

3. Sales and Marketing Collateral: The Concessionaire will create sales and marketing materials that will help communicate the value of partnering with DEN and utilizing assets available. At minimum, sales and marketing materials will include sales presentations, one sheet executive summaries, and other collateral (both digital and traditional). DEN can assist with brand photography, but asset photography will be the responsibility of the Concessionaire and should be captured for marketing purposes during the asset gathering phase. If other photography or videography is needed for sales materials, it will be at the expense of the Concessionaire unless otherwise negotiated with DEN at the time the asset photography/videography is needed. This material must be approved by DEN prior to distribution.

4. Prospecting Status Reports: The Concessionaire and DEN shall mutually agree on frequency and structure of sales reports and open inventory reports throughout the length of the contract. At a minimum, reports shall include target companies contacted, who from the entity was contacted, brief on which asset is of interest or most appropriate for the entity, notes from most recent communication and an open inventory report including information on latest pitches and upcoming pitches. DEN also requires feedback from the Concessionaire on why opportunities

Exhibit A

are lost. This information is valuable as DEN assesses the assets that are available for sponsorship and allows DEN to make improvements or changes in order to make these assets more appealing to potential sponsors.

5. Negotiate and Complete Agreement(s): The Concessionaire shall lead negotiations with prospective entities to secure revenue generating partnerships on behalf of DEN. Once the Concessionaire has secured interest from a corporate entity and negotiated deliverables and cost of the opportunity, the Concessionaire will attend any required DEN meetings to facilitate approval of the partnership opportunity. The Concessionaire will follow all DEN and City and County of Denver guidelines when facilitating contracts with prospects. DEN reserves the right to approve or reject any potential sponsorship. Some sponsorship agreements may have requirements from DEN for payment from the sponsor directly or through the Concessionaire to third parties for hard costs as a part of sponsorship package(s). This is a stipulation that DEN will alert the Concessionaire to in advance of an opportunity being pitched. The concessionaire will contract directly with as well as manage the relationship with the sponsor.

6. Manage Passenger Facing Event Activations in coordination with the DEN Events team: The concessionaire will manage the following event related tasks either directly or, at Concessionaire's sole cost and engagement, through a 3rd party event management company:

- A. Preliminary Event Planning - Conducting site visits and inspections and obtaining necessary permits and developing an event timeline and schedule
- B. Vendor Management - Identifying and securing necessary vendors, working with preferred vendors as directed - Negotiating and managing vendor contracts
- C. Logistics Coordination - Overseeing setup and teardown logistics - Coordinating necessary transportation and parking arrangements
- D. Guest Services - Registration and check-in procedures as applicable
- E. Emergency Preparedness - Developing and implementing emergency response plans - Coordinating with relevant authorities
- F. As applicable, manage event activation staffing either directly or through a 3rd party event management company. Event activation hours to be determined by DEN and will notify the Concessionaire in advance of an opportunity being pitched.

7. Asset Checks: DEN will assist the Concessionaire with period checks of all assets that are sold and unsold to check for wear and tear, changes in condition and any potential visual disruption caused by construction or other issues. A report will be filled out at an agreed upon cadence and any issues will be documented on the report including photographs.

Exhibit A

RESTRICTIONS ON SOME ASSETS

Certain DEN Assets are funded by the issuance of municipal bonds. Municipal bonds are typically issued as taxable or tax-exempt. Tax-exempt issuances are further categorized as subject to the Alternative Minimum Tax (AMT) or exempt from the AMT (non-AMT). Depending on the tax status of each issuance, IRS regulations limit the amount of revenue such Assets may produce under this Agreement to maintain the tax status of the issuance. Generally, those Assets are hotel, transit center, DEN Plaza, roadways, and airfield, but other specific designations may apply. Concessionaire and City will work together to identify whether any Assets identified by Concessionaire for Sponsorship are subject to such revenue limitations. Concessionaire will follow City directives regarding the Sponsorship Contracts and the allowable revenue for all such Assets. Concessionaire further agrees to modify any applicable Sponsorship Contracts and this Agreement at any time and in the City's discretion to ensure that revenue under this Agreement does not violate any federal law, rule, regulation, guidance, or order. The City and County of Denver, including its Department of Aviation, does not provide tax, legal or accounting advice, but maintains sole authority in determinations regarding this paragraph.

EXHIBIT B
Schedule of Assets and
Sponsors

[To Be Created and Implemented Per Section 3.01]

EXHIBIT C
MONTHLY CONCESSION REPORT

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

Month: _____
 TENANT NAME: _____
 DBA NAME: _____

AGREEMENT YEAR: _____
 AGREEMENT TYPE: _____
 CONTRACT NUMBER: _____

MONTHLY SUBMISSIONS														
Months in Period	GROSS REVENUE						PERCENTAGE RENT RATE(S) AND BREAKPOINT(S).				Monthly Minimum Guarantee Rent	Monthly Percent Rent Due	Marketing Fund = 1% times Total Reportable Receipts (If Applicable)	Total Due
	Number of Transactions	GRS	Reportable F&B	Reportable ALC	Reportable MERC/SVC	Total	LESS THAN	BETWEEN	GREATER THAN	Total Percent Rent				
							0%	0%	0%					
January						0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
February						0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
March						0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
April						0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
May						0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
June						0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
July						0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
August						0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
September						0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
October						0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
November						0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
December						0.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
TOTALS	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

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.

 Signature Title

 Date

EXHIBIT D

**CITY AND COUNTY OF DENVER
INSURANCE REQUIREMENTS FOR DEPARTMENT OF AVIATION
PROFESSIONAL SERVICES 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: contractadmininvoices@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 aggregate; if policy contains a general aggregate, a minimum limit of \$2,000,000 annual per policy 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.

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. **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, materials, tools, equipment, vehicles, furnishings, structures and personal property of its employees and subcontractors unless caused by the sole, gross negligence of the City. 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.
5. **Professional Liability (Errors and Omissions) Insurance**
Contractor shall maintain a minimum limit of \$1,000,000 each claim and annual policy aggregate, providing coverage for all applicable professional services outlined in this Agreement.
6. **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.

If Contractor and its employees performing services under this Agreement are domiciled in a monopolistic state this requirement shall not apply to Workers' Compensation policy(ies) issued by a state fund. However, Contractor understands any subrogation against the City from its state-funded Workers' Compensation insurer arising from a claim related to this Agreement shall become the responsibility of the Contractor under Section 14.01 Defense and Indemnification of this Agreement subject to the terms, conditions and limitations therein.

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.

K. Applicability of ROCIP Requirements

The City and County of Denver and Denver International Airport (hereinafter referred to collectively as "DEN") has arranged for certain construction activities at DEN to be insured under an Owner Controlled Insurance Program (OCIP) or a Rolling Owner Controlled Insurance Program (ROCIP) (hereinafter collectively referred to as "ROCIP"). A ROCIP is a single insurance program that insures DEN, the Contractor and subcontractors of any tier, and other designated parties (Enrolled Parties), for work performed at the Project Site. **Contractor is NOT eligible for or provided insurance coverage under a ROCIP program. Contractor must provide its own insurance as specified in this Agreement. If Contractor is assigned work to be conducted within a ROCIP Project Site it must comply with the provisions of the DEN ROCIP Safety Manual, which is part of the Contract Documents and which is linked below to the most recent manual.**

[DEN ROCIP Safety Manual](#)

DEN is additionally providing links to the DEN ROCIP Insurance Manual and the DEN ROCIP Claims Guide solely for Contractor's information.

[DEN ROCIP Insurance Manual](#)

[DEN ROCIP Claims Guide](#)

Notice of Change to ROCIP: DEN reserves the right to assign work per task order to a specific ROCIP program, if more than one is active, as well as terminate or modify a DEN ROCIP or any portion thereof. Further, dependent on factors including, but not limited to, the official timing and duration of the ROCIP project for which services are provided or related to under this Agreement, DEN may need to transition from one ROCIP program to another and introduce corresponding requirements for contractors. DEN will provide Contractor notice of changes regarding a ROCIP program as applicable to Contractor's work or responsibilities under the ROCIP Safety Manual.

EXHIBIT E
ACDBE Commitment Form



DENVER INTERNATIONAL

8500 Peña Blvd. | Denver, Colorado 80249-6340 | (303) 342-2000

LETTER OF INTENT – GOODS AND SERVICES

Name of Concession: DEN Airport Wide Asset Sponsorship

Name of Concessionaire: The Superlative Group

Address: 2943 Franklin Blvd.

City: Cleveland State: OH Zip: 44113

Telephone: 216-592-9400 Email: reddy@superlativegroup.com

Name of ACDBE Firm: B Public Relations

Address: 2930 Umatilla St #200

City: Denver State: CO Zip: 80211

Telephone: (307) 272-8610 Email: jordan@WEAREBPR.COM


Description of goods or services to be purchased from ACDBE firm:
Public Relations


The Concessionaire is committed to purchasing the goods or services from the ACDBE as described above.

The estimated percentage of this purchase is 1.7 % of total purchases.

AFFIRMATION

The above-named ACDBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: <u></u>	<u>CEO & President</u>	<u>09/29/2023</u>
Concessionaire Signature	Title	Date

By: <u></u>	<u>Principal and Owner</u>	<u>09/29/2023</u>
ACDBE Signature	Title	Date

For Questions: DEN Commerce Hub | (303) 342-2185 | mark.white@flydenver.com

DENVER INTERNATIONAL AIRPORT
8500 Peña Blvd. | Denver, Colorado 80249-6340 | (303) 342-2000



January 19, 2023

Jordan Blakesley
B PUBLIC RELATIONS, LLC DBA B Public Relations
3630 Navajo St.
Ste. 200
Denver, CO 80211

Dear Jordan Blakesley:

SUBJECT: Airport Concessionaire Disadvantaged Business Enterprise (ACDBE) Certification, Pursuant to 49 CFR Part 23 of the U.S. Department of Transportation's Regulations.

The Denver International Airport (DEN) Commerce Hub is pleased to inform you that B PUBLIC RELATIONS, LLC DBA B Public Relations is certified as an Airport Concessionaire Disadvantaged Business Enterprise (ACDBE) pursuant to the US Department of Transportation's Regulation 49 CFR Part 23. Your firm will be listed on the Colorado Unified Certification Program's (UCP) on-line directory of eligible ACDBEs at www.coloradodbe.org.

B PUBLIC RELATIONS, LLC DBA B Public Relations is eligible to participate as an ACDBE on airport concession opportunities in the NAICS work codes appearing below.

NAICS CODES:
NAICS 541613: MARKETING CONSULTING SERVICES
NAICS 541820: PUBLIC RELATIONS SERVICES

Your business enterprise is required to maintain accurate mailing address, email address, and telephone number information with the Commerce Hub. In addition, if you wish to add additional NAICS Codes to your certification, you must submit the request in B2G with applicable supporting documentation. If any changes occur in the firm's legal structure, ownership, management, or control, you must notify the Commerce Hub within thirty (30) days of such change. Notifications regarding ownership changes must be submitted to dencommercehub@flydenver.com. Please follow-up to ensure your notification was received. Failure to report any of these changes may result in removal of your firm's certification eligibility and listing in the certification directory.

The anniversary date of your firm's ACDBE certification is December 31, 2023. It is your responsibility to annually submit the required No Change Affidavit and applicable supporting documentation by completing the ACDBE Annual No Change Affidavit application in B2G. Note that every third anniversary requires submittal of the 3-year review application. The three-year anniversary of your firm's certification is December 31, 2025. Pursuant to 49 CFR 26.83(i), submittal of this information is required to ensure that there is no interruption of your firm's status as a certified ACDBE.

You may visit <http://business/flydenver.com/bizops/smallBus.asp> to view upcoming concession opportunities. This letter must be attached to your Letter of Intent (LOI) for proposal opportunities in which you may be utilized for goal participation.

Sincerely,

A handwritten signature in black ink that reads "Mark White".

Mark White
ACDBE Program Manager
Denver International Airport – Commerce Hub



DENVER INTERNATIONAL

8500 Peña Blvd. | Denver, Colorado 80249-6340 | (303) 342-2000

DEN COMMERCE HUB | ACDBE COMMITMENT FORM

Program Benefit for: 202368409

DEN Airport Wide Asset Sponsorship

Concession Type

Name of Concession Opportunity

SECTION A – CONCESSIONAIRE INFORMATION

Name of Firm: The Superlative Group, Inc.

Address: 2843 Franklin Blvd.

City: Cleveland

State: OH

Zip: 44113

Email: reddy@superlativegroup.com

Is your firm ACDBE Certified? Yes (If yes, attach certification letter) No

SECTION B – ACDBE COMMITMENT

The ACDBE goal on this concession is 1.7 %.

NOTE: DEN will only credit ACDBE participation that is certified as such by the DEN Commerce Hub or the Colorado Department of Transportation.

The undersigned Concessionaire has satisfied the ACDBE concession requirements in the following manner (please check the appropriate space).

- The Concessionaire is committed to a minimum of 1.7 % ACDBE goal utilization on this concession contract which meets or exceeds the ACDBE goal on this concession opportunity. The amount and type of participation proposed will become a firm commitment in the Concessions Lease Agreement.
- The concessionaire, is unable to meet the ACDBE goal, is committed to a minimum of _____ % ACDBE utilization on this Concession Agreement contract and submits its documentation demonstrating good faith efforts.
- The Concessionaire is unable to meet the ACDBE goal and submits documentation demonstrating good faith efforts.



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Identify ACDBE Sub-Concessionaire, ACDBE joint venture partner, ACDBE equity partnership or other legal ACDBE business arrangement that meets ACDBE goal and eligibility standards in 49 CFR Part 23

Name and Address of ACDBE Firm	Role of ACDBE	% Level of Participation
B Public Relations: 2930 Umatilla St #200, Denver, CO 80211	Public Relations	1.7%

(Use Additional Sheets if Necessary)

ACDBE UTILIZATION – VENDOR/SUPPLIERS OPPORTUNITIES

NOTE: An ACDBE Letter of Intent must be submitted for all ACDBE suppliers listed below. Attach copy of the ACDBE Certification Letter for all ACDBEs, regardless of participation type. Complete only if suppliers will be used to meet any portion of the ACDBE goal

List all actual and anticipated major vendors/suppliers; include both ACDBE and non-ACDBE, to be utilized on the concession (use additional sheets if necessary). Examples: Janitorial services, accounting services, HR services, etc.

NOTE: DEN will only credit ACDBE participation that is certified as such by the DEN Commerce Hub or the Colorado Department of Transportation.

Name and Address of Company	Business Area	Work to be Performed or Goods/Services to be Provided	Estimated Amount (\$)	ACDBE		LOI & Cert. Letter Attached
				Y	N	
B Public Relations: 2930 Umatilla St #200,	Public Relations	Public Relations	1.7% of total annual gross revenue.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Yes
				<input type="checkbox"/>	<input type="checkbox"/>	
				<input type="checkbox"/>	<input type="checkbox"/>	
				<input type="checkbox"/>	<input type="checkbox"/>	

(Use Additional Sheets if Necessary)



DENVER INTERNATIONAL

8500 Peña Blvd. | Denver, Colorado 80249-6340 | (303) 342-2000

SECTION D - AFFIRMATION

I HEREBY AFFIRM THAT THE ABOVE INFORMATION IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE. I FURTHER UNDERSTAND AND AGREE THAT, THIS DOCUMENT SHALL BE ATTACHED THERTO AND BECOME A BINDING PART OF THE CONCESSION AGREEMENT.

Name and Title of Authorized Official: Myles Gallagher, CEO & President

Signature:

Date: 09/29/2023

[Handwritten signature of Myles Gallagher]

For Questions:

Denver International Airport
DEN Commerce Hub
Airport Office Building | 9th Floor
8500 Peña Boulevard | Denver, CO 80249-6340
303-342-2185 | mark.white@flydenver.com

EXHIBIT F

City's Guidelines for Signage and Advertising
on Airport Property

(Subject to City Modification)



GUIDELINES FOR SIGNAGE AND ADVERTISING ON AIRPORT PROPERTY



1.1 PURPOSE

The primary purpose of advertising at the City and County of Denver International Airport (“DEN”) is to generate non-aeronautical revenue to make the airport self-sustaining through commercial advertising and to enhance travel and business in the state of Colorado. The airport premises at DEN are a non-public forum. The status of DEN as a non-public forum is well-settled by case law and this policy. DEN seeks to avoid controversial advertising topics through the adoption of these guidelines. Avoiding controversy will preserve the marketing potential of DEN’s advertising program, thus maximizing revenue, while also minimizing disruption to passenger experience at the airport. In doing so, all advertising at the airport must be consistent with the nature of the airport as a business enterprise and shall be limited narrowly to advance the permitted advertising set forth below in Section 1.6.

DEN recognizes that signage and advertising is an essential part of airport leaseholds, concessions, information, and identity programs, but must also be aesthetically consistent with DEN’s design and architecture and not interfere with operational efficiencies and safety. A balance between informational signage and advertising must be maintained in order to preserve visual continuity and avoid clutter and message overload.

1.2 AUTHORITY

This directive is being issued under the authority delegated to the Manager of Aviation in Article II, Part 11 of the Denver Charter and provided by Chapter 5, Article II of the Denver Revised Municipal Code.

1.3 APPLICABILITY

- A. All existing and future signs must comply with Section 1.6 of these guidelines. All other sections of these guidelines will not apply to existing signs until the time that existing signs are modified, changed, replaced or removed at which time such signs shall comply with these guidelines as modified from time to time.
- B. These guidelines are not intended to restrict in any way DEN and its Chief Executive Officer or the CEO’s designee (collectively “CEO”), to erect signage, display advertisements, inform the public, promote or otherwise identify DEN facilities, services, or tenants, or market DEN.
- C. Not including the DEN Welcome Sign, no outdoor advertising device will be permitted outdoors on DEN property until such time DEN has adopted a land plan and/or comprehensive signage plan.
- D. No advertising signs of any type are permitted within an area known as the “Pena Boulevard Transportation Corridor Scenic Buffer” (map attached), which is subject to



development restrictions under the terms of a 1988 Intergovernmental Agreement, as amended, between the City of Denver and Adams County ("IGA").

- E. Pena Boulevard Transportation Corridor information signs are governed by Procedures and Standards, Specific Information Signs and Business Logos in the Transportation Corridor (copy attached).
- F. These guidelines supplement existing Signage Guideline documents utilized by DEN for exterior and interior signs including the:
 - 1. Tenant Development Guidelines;
 - 2. Procedures and Standards for Specific Information Signs and Business Logos on Pena Blvd;
 - 3. Roadway and Wayfinding Signage Guidelines currently under development by Airport Infrastructure Management; and,
 - 4. Concessions Guidelines.

If this document conflicts with any of these existing signage documents the existing signage document controls.

- G. These Guidelines may be amended from time to time by the DEN CEO for any reason.



1.4 GENERAL RULES

- A. Signs and/or advertisements shall be designed and constructed to withstand a wind pressure according to AASHTO Standards.
- B. Signs and/or advertisements must be limited in height and design as to not constitute a hazard or obstruction per 14 CFR Part 77 and FAA Airport Design and Engineering Standards.
- C. Signs and/or advertisements must comply with any applicable safety standards including ADA Guidelines.
- D. All leaseholds and advertisers will indemnify and hold harmless the City and County of Denver and DEN, its officers and agents, against all expenses and losses resulting from failure to comply with these guidelines; publication of the contents of advertisement, including claims for libel, violation of privacy, copyright infringement, or plagiarism; or claims for personal injury caused by defective construction, installation, or maintenance of a sign.

1.5 PROHIBITIONS

- A. Pole signs that have a display face larger than 8 feet high by 15 feet wide are prohibited.
- B. Signs and/or advertisements shall not be permitted on the exterior of the Terminal building, or exterior of the concourses, with the exception of passenger loading bridges, upon which they will be permitted.
- C. Signs and/or advertisements shall not emit any sound, contain strobe, laser lighting, exposed neon, backwash or be flashing.
- D. Signs and/or advertisements shall not cause beams or rays of light to be directed at any portion of a roadway, which beams or rays are of such intensity or brightness as to cause glare or to impair the vision of the driver of any motor vehicle or otherwise interfere with the operation of a motor vehicle. Signs and/or advertisements shall also not cause beams or rays of light to be directed at any aircraft or the FAA air traffic control tower.
- E. Signs and/or advertisements shall not interfere with, imitate or resemble any traffic control sign or device, or attempt to appear to attempt to direct the movement of traffic.
- F. Signs and/or advertisements shall not obscure or otherwise interfere with a motor vehicle operator's view of approaching, merging or intersecting traffic.
- G. Except as noted herein, advertising is prohibited along roadways except for tenant ground or wall signs identifying their on-site businesses.



1.6 ADVERTISING CONTENT REGULATIONS

A. **Permitted Advertising Content.** All advertisements must fall within one of the following categories:

1. **Commercial and promotional advertising.** Advertising that promotes or solicits the sale, rental, distribution, or availability of goods, services, food, entertainment, events, programs, transactions, products, property (real or personal) for commercial purposes, or more generally promoting an entity that engages in such activities.

2. **Noncommercial advertising.** Advertising made available by a governmental agency or a 501(c)(3) entity as registered with the Internal Revenue Service or similar nonprofit entity (1) related to tourism or business development, (2) for an aviation-related message, or (3) for a message identifying an organization in the education, or public health, public safety, or public welfare sector. All Public Service Advertising shall include in readily visible typeface at the bottom of the page the following: "The views expressed in this advertisement are those of the sponsoring organization and do not necessarily reflect the view of the City and County of Denver," shall identify the sponsoring organization by name and website, and shall comply with Section B below.

3. **Advertising made available by the City and County of Denver for any purposes.**

B. **Prohibited Advertising Content.** DEN prohibits advertisements, or displays of weblinks or QR codes that lead to a webpage, that fall within one or more of the following categories:

1. **Public Issue.** Advertising that expresses or advocates opinions, positions, or viewpoint on matters of public debate about economic, political, religious or social issues.

a. **Political.** Advertising that contains political campaign speech that refers to a specific ballot question, initiative petition or referendum, refers to a candidate for public office, promotes or opposes a political party, or directly or indirectly implicates the action, inaction, prospective action, or policies of a government entity.

b. **Religious.** Advertising that promotes the existence or non-existence of deities, that promotes a specific religion, religious beliefs or lack thereof. This prohibition also covers the depiction of text, symbols, or images commonly associated with any religion or deities.

c. **Social.** Advertising that depicts a group or groups within society about or between which controversy or disparity exists as a result of real or perceived current or historical societal conditions.



- d. **Economic.** Advertising that addresses controversial issues relating to the financial status of businesses, individuals, groups, or organizations, including but not limited to the issues of wages, taxes, trade, labor conditions, the financial system, entitlements, health insurance coverage, and subsidies.
2. **Profanity, hatred, bigotry, disparagement and violence.** Advertising that includes any profane language, portrays images or descriptions of violence, or that promotes hatred, bigotry, disparagement or violence towards individuals, groups, businesses, organizations or government entities.
3. **Obscenity, nudity, and adult oriented goods or services.** Advertising that promotes or encourages adult book stores, adult video stores, adult telephone services, adult internet sites, escort services, nude dance clubs, nudity, sexual conduct, sexual excitement, sexual innuendo, or obscene material or images.
4. **Alcoholic products.** Unless a content management agreement entered into with the City and County of Denver provides otherwise, no advertising that promotes consumption or purchase of alcoholic beverages or spirits, including but not limited to beer, wine, liquor, and other alcoholic substances.
5. **Tobacco or marijuana products.** Advertising that promotes tobacco or marijuana products, tobacco or marijuana related products, including e-cigarettes, vapor pens, and other substitute forms of tobacco or marijuana products.
6. **Firearms.** Advertising that promotes or solicits the sale, rental, distribution, discharge, or availability of firearms, firearms related products, or services.
7. **Illegal or unlawful goods, services, and conduct.** Advertising that promotes or encourages the use or possession of illegal, goods, services, or illegal behavior or activities under federal, state, or local law.
8. **False or misleading.** Advertising that is false, misleading, or deceptive.
9. **Libelous speech or trademark or copyright infringement.** Advertising that is libelous or infringes on any copyright, trademark or service mark. Moreover, neither DEN's name, logo, and designations, nor testimonials by current DEN employees, may be used in advertisements to endorse non-airport products or services, unless the CEO has specifically contracted with a particular advertiser to promote or endorse a product or service apart from the purposes of the advertising program.



10. Directly competing with the enterprise. Advertising that promotes or encourages services in direct competition with DEN's business objectives or promotes or encourages services that detract from the mission of DEN to provide a comfortable, pleasant passenger experience.

11. Harmful or disruptive to airport operations. Advertising that is so objectionable to contemporary community standards as to be reasonably foreseeable that it will result in harm to, disruption of, or interference with the safe and secure operation of the airport.

1.7 SUBMISSION AND APPROVAL PROCESS

A. SUBMISSION

Sign applicants are required to provide a completed submission application as well as an electronic version (PDF) of the submittal package for review prior to the final submission. Written review comments and notes will be given and feedback may include a conference call with the applicant and/or their design team to review the package. All comments must be addressed prior to submitting the Applicant package to the DEN Design Review Committee (DRC) Coordinator. Submittal Package Concept submittals shall consist of a complete electronic (PDF) version of documents/materials board for submission to the DRC for review and approval.

Submissions shall be made to Design Review Committee Coordinator. For more information regarding the Design Review Committee and Process please visit <https://business.flydenver.com/bizops/documents/denDesignReview.pdf>

A sign submission shall include the following:

1. Detailed plans of proposed signage/graphics for new construction, or revisions to existing signage/graphics.
2. A sign location plan or site plan to scale showing the building footprint (if applicable) and the location of the proposed signs.
3. A minimum of two (2) high-quality 3D renderings (more recommended) in electronic format (PDF) are required to show the Applicant's design intent. Renderings should be taken from at least two vantage points to demonstrate context.
4. Sign components and materials.
5. An elevation plan in scale showing sign graphics in place. For wall signs provide building elevation showing the proposed sign with dimensions of sign and method of lighting the sign.
6. For wall signs provide illustration of the method of attachment to the building.



7. A detail scale drawing of the sign showing letter style, dimensions, and specifications describing materials and color.
8. Illumination specifications and diagram.
9. Project Design Report and Schedule detailing the proposed Scope of Work, summarize major design issues and state the basic design criteria used to accomplish various project elements. The report shall present a schedule of performance, including design and review periods, project fabrication and installation times.
10. All drawing documents a minimum of 11"x17" in PDF format.
11. Animated and/or full motion video sign submissions must include a traffic impact analysis and video renderings showing the following: context, content, luminance and transition speed in real time.

Once a submittal is determined to be complete, the Design Review Committee will set a meeting to discuss preliminary approval of the submission at the next available scheduled meeting.

B. APPROVAL

1. In reviewing any application for a sign permit, the DEN Design Review Committee shall take into account the following criteria:
 - a. Signs shall comply with these guidelines;
 - b. Signs shall protect the public health, safety, and welfare;
 - c. Signs shall enhance the high quality design and style of airport;
 - d. Signs shall relate to the site, surrounding buildings, landscaping, and adjacent areas;
 - e. Signs shall be appropriate in scale and enhance their graphic impact to pedestrians, public, and the flying public, where applicable;
 - f. Signs shall be constructed with high quality materials that are durable and take into consideration maintenance.
2. After receiving the DEN Design Review Committee approval the DEN CEO will make the final sign permit approval of the submittal.
3. Every sign permit issued shall expire 180 calendar days from the date of issuance if the work permitted thereunder has not commenced, or if the work started has been suspended for a period of 180 days or more.
4. Any changes to submitted design or plans after DEN approval must be resubmitted to the DRC Coordinator.
5. For other sign types not specifically addressed within this guideline document, review and approval of signs will be based on those portions of this signage guideline deemed to be most applicable to the sign presented for approval.


Adopted by  Date 22 DEC 2016

EXHIBIT G
Equity, Diversity, and Inclusion Plan

EQUITY, DIVERSITY & INCLUSION PLAN

Diversity, equity, and inclusion are fundamental values of The Superlative Group. Diversity, equity, and inclusion are related and equally important concepts. Diversity includes, but is not limited to, differences in race, ethnicity, sex, gender, sexual orientation or identity, disability, religion, age, national origin, military or veteran status, and citizenship status. Diversity also includes differences in backgrounds, experiences, perspectives, thoughts, interests, and ideas. Equity and inclusion mean ensuring that all employees are valued, heard, engaged, and involved at work and have full opportunities to collaborate, contribute, and grow professionally.

The Superlative Group is an equal opportunity employer committed to complying with all applicable anti-discrimination laws. Our team is compelled to do business with historically underutilized multicultural businesses and to ensure that they are effectively partaking in new business opportunities.

As part of Superlative's policy, we are committed to a workplace culture that values and promotes diversity, equity, inclusion, equal employment opportunities, and a work environment free of harassment and hostility.

This includes:

- Applying principles of equity and social justice to achieve equal employment opportunities for qualified individuals of all backgrounds.
- Attracting, recruiting, retaining, engaging, supporting, developing, and advancing underrepresented and diverse employees, including women, people of color, LGBTQIA+ individuals, and any other underrepresented employees.
- Promoting respectfulness, cultural awareness, and inclusivity by:
 - fostering a collaborative work environment in which all employees participate and contribute;
 - empowering and providing a safe space for all employees to express themselves, exchange ideas, and feel heard; and
 - encouraging employees to be open and curious about others' experiences and perspectives.

While The Superlative Group strives for equitable representation of employees, the purpose of our EDI Plan is not to favor certain individuals or groups or have the effect of excluding other individuals or groups. All leaders, managers, and employees play a role in making The Superlative Group a diverse and inclusive place to work for everyone.

EQUITY, DIVERSITY & INCLUSION PLAN

The Superlative Group is committed to developing and implementing programs and initiatives to promote diversity, equity, and inclusion in all areas of employment, procurement, and guidance & support efforts.

As part of this commitment, some of the initiatives and tactics The Superlative Group has developed include:

- Recognizing and celebrating all holidays and religious days of observation;
- Providing diversity, equity, and inclusion resources to employees and subconsultants;
- Ensuring diversity in the hiring pool for potential employees and subconsultants by implementing diverse interview panels for all candidates;
- Researching certified disadvantaged, minority and historically underutilized multicultural businesses for every appropriate contract opportunity where a subconsultant can be additive to the services we provide;
- Partnering with colleges and universities that have a large body of students from underrepresented classes;
- Engaging diverse student bodies for seasonal internship opportunities;
- Collaborating with local historically underutilized multicultural businesses within our community to allow them to have meaningful engagement on a community level;
- Placing greater emphasis on supporting minority owned businesses in the local community by, by way of example and without limitation, purchasing office supplies or meals for the office from minority owned businesses;
- Highlighting charities and other groups that employees and subconsultants support with the intent of involving Superlative (for example, contributing to events in the future such as clothing and food drives); and
- Updating all work documents and signage to be gender-neutral, as well as encouraging all employees and subconsultants to identify using the pronouns of their choosing.

The Superlative Group recognizes that we must continue to challenge ourselves to ensure that our values are upheld.

The Superlative Group always welcomes suggestions about how we can be more inclusive and address and improve diversity, equity, and inclusion. As such, employees are encouraged to contact a member of the Diversity, Equity, and Inclusion Committee (as set forth below) if they have any comments, concerns, or suggestions. The Superlative Group prohibits retaliation against employees who make good faith suggestions or complaints regarding The Superlative Group's diversity, equity, and inclusion efforts.

EQUITY, DIVERSITY & INCLUSION PLAN

To support, effectuate, and carry out the objectives of this plan, The Superlative Group has established a Diversity, Equity, and Inclusion Committee. The Diversity, Equity, and Inclusion Committee is comprised of Claire Reddy (Vice President of Client Services) and Brian Moracz (Director of Legal and Client Services).

As we continue to progress, our team is committed to evaluating existing programs and adapting or introducing new initiatives as our diversity, equity, and inclusion goals evolve.

Although the work our firm does is specialized, we strive to make a concerted effort to involve historically underutilized multicultural businesses to increase their participation in contracting opportunities where it is most logical. Prior to engaging in a contract, our team thoroughly assesses potential subconsultants to be sure that not only do the proposed services and scope of work align, but our values do as well. Our team takes advantage of certified vendor databases to research potential subconsultants and initiate conversations with historically underutilized multicultural businesses with the objective of further collaboration.

When engaging a historically underutilized multicultural business, our team members reach out directly via phone call or email to describe the scope of work and gauge interest in potentially working together. We have successfully implemented working relationships in the past with historically underutilized multicultural businesses.

Our Diversity, Equity, and Inclusion Committee meets periodically to discuss our EDI Policy to examine how we can better reinforce our strategies and practices, educate and provide resources to our employees, and promote our EDI initiatives. We are always working to better incorporate disadvantaged business enterprises and historically underutilized multicultural businesses. Our goal is to continuously work to eliminate obstacles in order to promote equity, diversity, and inclusion, both internally and externally.

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 100-209), (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.