

**APPENDIX 5-B**

# **Mandatory and Spring-Back Provisions for Concession Agreements**

*This Appendix 5-B sets forth those certain mandatory provisions which the Developer shall include, in substance but not necessarily in form, in each of its Concession Agreements with a Concessionaire (such mandatory provisions being, the “Mandatory Provisions”) as well as those certain spring-back provisions which the Developer shall include, in substance but not necessarily in form, in each of such Concession Agreements which provisions shall only become effective upon the termination of the Agreement (such spring-back provisions being, the “Spring-Back Provisions”). All Mandatory Provisions are included below in red text. All Spring-Back Provisions are included below in blue text.*



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**GREAT HALL CONCESSION AGREEMENT [Insert Contract Number]**

[Developer and Concessionaire to insert introductory paragraph]

**RECITALS:**

[To be inserted by Developer and Concessionaire]

**I. SUMMARY OF CONTRACT PROVISIONS****SECTION 1.01 SUMMARY OF CONTRACT PROVISIONS**

Developer's Address for Notices:		ATTN: Denver Great Hall LLC Address					
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:		[**]					
[Guarantor Name and Notice Address]:		[To the extent applicable] [**]					
Concession Location(s): See Exhibit A :							
Location	Space	Sq. Ft.	PVC Sq. Ft.	Min. Invest. per Sq. Ft.	Trade Name	Assets	Hours of Ops
<b>Sub-Totals:</b>							
Support Space(s):			See Exhibit A:				
			Space	Type Space	Sq. Ft.	Fd. Sq. Ft.	Crt. Rental Rate
<b>Sub-Total:</b>							
Premises Total:		[***]					
Effective Date:		[***]					
Commencement Date:		[***]					
Package Completion Date:		[***]					
Expiration Date:							
Support Space Rent		[***]					
Privilege Fee		Initial MAPF: \$***					
		Percentage Fee - **%					
Total Minimum Capital Investment:							

Joint Marketing Fee Rate:	[0.5] %	
[Surety]:	[\$[***] [complete as applicable]	
ACDBE Goal	Percent	[***] %
	Ownership Participation	[Partner A] [**%] [Partner B] [**%]
	Purchasing Participation	[
MWBE Goal	Percent	[***%]
	<b>Total ACDBE/MWBE Goal</b>	[***] %

## SECTION 1.01 MODIFICATIONS TO SUMMARY OF CONTRACT PROVISIONS

The Parties acknowledge and agree certain provisions stated in the Summary of Contract Provisions are, as of the Effective Date, unknown or estimates. The Parties further acknowledge and agree other provisions stated in the Summary of Contract Provisions are subject to change throughout the Term in accordance with the provisions of this Agreement. The Parties therefore agree to modify the Summary of Contract Provisions by letter executed by the Chief Executive Officer without formal amendment and notified to the City and to the Concessionaire.

## ARTICLE II. DEFINITIONS

### SECTION 2.01 DEFINITIONS

[Relevant definitions to be included from the Agreement in the actual Concession Agreement. To the extent that a definition is used in a Mandatory Provision, such definition shall be included in the Concession Agreement. To the extent that a definition is only used in a Spring-Back Provision, such definition shall be a spring-back definition that will be included in the applicable Concession Agreement but shall only become effective upon the termination of the Agreement.]<sup>1</sup>

### SECTION 2.02 CONTRACT CONSTRUCTION

#### A. Exhibits and Appendixes.

[The following Exhibits and Appendixes are attached hereto and are hereby incorporated and made a part of this Agreement:][Language and content of this Section subject to adjustment by Developer in actual Concession Agreement, but will at a minimum contain the following]

1. Exhibit A, Premises Description
2. Exhibit B, Permitted Uses and Price Listing
3. Exhibit C, Monthly Concession Report and Quarterly Income Statement

<sup>1</sup> To be provided under separate cover.

4. Exhibit D, Schedule of Assets and Amortization
5. Exhibit E, Certificate of Insurance for Aviation
6. Exhibit F, Credit, Debit and Charge Cards
7. Exhibit G, ACDBE Commitment Form and Disadvantage Business Programs
8. Appendix A, Compliance With Nondiscrimination Requirements
9. Appendix B Standard Federal Assurances and Nondiscrimination in Construction, Maintenance, Operation of Facilities
10. Appendix C, Standard Federal Assurances and Nondiscrimination in Construction, Use or Access to Facilities
11. Appendix D, Title VI List of Pertinent Nondiscrimination Authorities
12. Appendix E, Disadvantaged Business Enterprises- Required Statements
13. Appendix F, ACDBE Nondiscrimination and Assurance Requirements
14. Appendix G, ACDBE/DBE Policy and Objective Statements
15. [Such other Exhibits, Annexes or other attachments as Developer shall determine in its sole discretion.]

### **ARTICLE III. PREMISES**

#### **SECTION 3.01            PREMISES DESCRIPTION**

Developer hereby grants to Concessionaire, as of the first Shell Space Turnover Date under this Agreement, the right to occupy, improve, and use Premises within the Great Hall consisting of the Concession Location(s) and Support Spaces as listed and depicted in **Exhibit A**, Premises Description, including any improvements made or modifications made thereto. No other part of the Great Hall or the Airport shall be part of the Premises.

The Parties agree to modify the Summary of Contract Provisions and **Exhibit A** to incorporate such as-built areas, such modifications to be confirmed by letter executed by the Executive Director, without need for formal amendment to this Agreement. The Parties agree to modify the Summary of Contract Provisions and **Exhibit A and Exhibit B** as necessary, without need for formal amendment to this Agreement.

#### **SECTION 3.02            ADDITIONS TO AND DELETIONS FROM THE PREMISES**

Developer and Concessionaire may, during the Term and by mutual agreement, add additional space(s) or delete space(s) from the Premises. All space(s) added to the Premises pursuant to this Section 3.02 shall be subject to all the terms, conditions, covenants, and other provisions of this Agreement and Concessionaire shall pay to Developer all rents, fees, and charges applicable to the additional space(s) in accordance with this Agreement. In the case of additions



or deletions of space(s) from the Premises, Developer will make appropriate adjustments to, rents, fees, and charges paid to Developer by Concessionaire. The Parties agree to modify the Summary of Contract Provisions, Exhibit A and Exhibit B as necessary, to incorporate space additions to the Premises and space deletions from the Premises by letter executed by the Executive Director and acknowledged by Concessionaire, without need for formal amendment to this Agreement.

### **SECTION 3.03 RECLAIMING OF PREMISES FOR AIRPORT PURPOSES**

Developer reserves the right to reclaim the Premises or portions thereof, when, in the sole and absolute discretion of the City, such reclaiming is necessary for the development or operations of the Great Hall or is in the best interest of the Developer. Developer may, but will not be required to, identify and offer Replacement Premises to the Concessionaire.

Developer shall exercise such right to reclaim by giving Concessionaire not less than ninety (90) days prior written Notice of Intent to Reclaim Premises specifying the effective date of the reclaiming and identifying Replacement Premises, if any. Concessionaire shall, by written notice given to Developer no later than thirty (30) days after receipt of Notice of Intent to Reclaim Premises, notify Developer of its acceptance of the Replacement Premises, if any, whereupon, as of the effective date provided in Developer's Notice of Intent to Reclaim Premises:

1. All of the terms, covenants, conditions and provisions of this Agreement shall continue in full force and effect and apply to the Replacement Premises;
2. Concessionaire shall move from the Premises, or portion(s) thereof being reclaimed by Developer, into the Replacement Premises on or before the effective date stated in Developer's Notice of Intent to Reclaim Premises and shall vacate and surrender possession of the Premises or portion(s) thereof being reclaimed by Developer;
3. Subject to the other provisions of this Agreement, Concessionaire shall be deemed to have accepted possession of the Replacement Premises in its "as is" condition as of the effective date stated in Developer's Notice of Intent to Reclaim Premises; and
4. Developer will pay to Concessionaire moving expenses, limited to the moving of furniture, equipment, and other personal property into the Replacement Premises. Concessionaire shall pay all other costs to improve and fit out the Replacement Premises.

In addition, Developer will pay to Concessionaire, within fifteen (15) days of the effective date stated in Developer's Notice of Intent to Reclaim Premises, an amount equal to the Unamortized Investment to be determined by the Parties in the event of a City Step In.

Concessionaire shall not be compensated and Developer shall not be liable for any inconvenience to Concessionaire or for any interruption of Concessionaire's business, because of moving to Replacement Premises.

The Parties agree to modify, within ten (10) days of the effective date stated in Developer's Notice of Intent to Reclaim Premises, the Summary of Contract Provisions, **Exhibit A** and **Exhibit B**, as necessary, to delete the portion(s) of the Premises being vacated and incorporate

the Replacement Premises, if any. These modifications will be confirmed by letter executed by the Executive Director and acknowledged by Concessionaire, without need for formal amendment to this Agreement.

Notwithstanding any other provision to the contrary, if no Replacement Premise(s) are available or if Concessionaire fails to respond to Developer's Notice of Intent to Reclaim Premises within thirty (30) days after receipt of such notice or otherwise rejects the Replacement Premises, or if Developer deems the use(s) or concept(s) are not appropriate at the Replacement Premises, then this Agreement for the Premises or portion(s) thereof being reclaimed will terminate on the effective date provided in Developer's Notice of Intent to Reclaim Premises and provisions of this Agreement related to termination shall apply.

#### **SECTION 3.04            MINOR MODIFICATIONS TO PREMISES**

Developer shall have the right to make reasonable minor modifications to any portion of the Premises, to accommodate Developer's or the Airport's operations, security renovations, maintenance, or other work to be completed at the Great Hall. Minor modifications are subject to all provisions in Section 3.02.

#### **SECTION 3.05            INGRESS AND EGRESS**

Concessionaire will have the right of ingress to and egress from DEN and the Premises for Concessionaire's officers, authorized officials, employees, agents, and invitees, including customers, suppliers of materials, furnishers of services, equipment, vehicles, machinery, and other property. Right of ingress and egress will be subject to FAA Regulations, as amended, applicable Laws, and DEN's Rules and Regulations. Moreover, without exception, nothing in this Agreement shall be construed to prevent Developer 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. It is understood that Developer holds 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 3.06            PREMISES ACCEPTANCE AS IS**

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

#### **SECTION 3.07            NO WARRANTY FOR ECONOMIC VIABILITY**

The Developer makes no, and the City shall not be, in any way, deemed to make any warranty, promises, or representations as to the economic viability of the Premises, Concessionaire's business concept, or any other matter pertinent to the potential or likelihood for success or failure of Concessionaire's business operations. Concessionaire understands, acknowledges, and accepts that airline gate usage and other aspects of Great Hall and the Airport operations are subject to change during the Term without notice and that Developer makes no, and the City

shall not be, in any way, deemed to make any, warranty regarding the location of airline gate usage. Except as is specifically set forth herein, Developer shall not be, and City shall not, in any way, be deemed as, by virtue of the existence of this Agreement, constrained in connection with its operation of DEN and/or the Great Hall.

## **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 this Agreement shall begin on the Package Completion Date and continue through the Expiration Date, as stated in the Summary of Contract Provisions, unless sooner terminated as herein provided.

### **SECTION 4.02 HOLDOVER**

Any occupancy of Premises by Concessionaire with the prior written consent of Developer after the Expiration Date shall be on a month-to-month basis with all provisions of this Agreement, including rent, fees charges, insurance policies, Surety, and guarantees, if any, remaining in place until such time that Developer gives notice to Concessionaire to surrender the Premises. Notice to surrender or of surrender of the premises will be provided in writing not less than thirty (30) days prior to the anticipated surrender date.

Any occupancy of Premises by Concessionaire after the termination of this Agreement without the prior written approval of Developer constitutes a tenancy at sufferance. Developer will notify Concessionaire in writing that the tenancy is at sufferance, thereafter, Developer may exercise all remedies provided in this Agreement, at law, or in equity, without further notice, to recover possession of the Premises or portion(s) thereof. In the event of such tenancy at sufferance, Concessionaire shall indemnify Developer against all Damages arising out of the Concessionaire's tenancy at sufferance, including but not limited to, any costs incurred by Developer and the Developer to evict Concessionaire, regain possession of the Premises or any portion(s) thereof, and all insurance policies, Surety, and guarantees, if any, required to be obtained and maintained by Concessionaire as set forth in this Agreement shall continue in full force and effect.

## **ARTICLE V. RENTALS, FEES, OTHER CHARGES, REPORTING, AND ACCOUNTING RECORDS**

### **SECTION 5.01 SUPPORT SPACE RENT**

As consideration for the right and privilege to Support Space as granted herein, Concessionaire covenants to pay to Developer the rent for all Support Spaces as set forth herein or otherwise in a separate writing. Developer will establish the Support Space Rent. Support Space Rent will be paid in monthly installments, in advance and without demand, beginning on the Commencement Date and on the first day of each month thereafter throughout the Term.

The Support Space Rent to be paid *monthly* equals the total area of Support Spaces occupied by Concessionaire multiplied by *one-twelfth* (1/12) of the Support Space Rent Rate.

For any period of less than one month during the Term, the Support Space Rent will be calculated on a pro rata basis in the same proportion that the number of days in the payment

period bears to the total number of days in the month for which the Support Space Rent is payable. The initial Support Space Rent Rate is set forth in the Summary of Contract Provisions.

## **SECTION 5.02           PRIVILEGE FEE**

As consideration for the rights and privileges granted herein to operate the Concession at the Great Hall, beginning on the Commencement Date and continuing through the Term, Concessionaire covenants to pay to Developer for each *month*, or portion thereof, a Privilege Fee equal to the sum of the MAPF and the Percentage Fee.

- A. MAPF. MAPF shall equal:
1. For the period from the Commencement Date through the Package Completion Date, MAPF shall be abated.
  2. Beginning on the Package Completion Date and continuing through the Contract Year in which the Package Completion Date occurs, the initial MAPF amount in the Summary of Contract Provisions shall be pro-rated to include only the months from the Package Completion Date to the end of that Contract Year.
  3. Beginning with the Contract Year following the Contract Year in which the Package Completion Date occurs and each Contract Year thereafter, the MAPF will equal [\*\*\*] (\*\*)% of the Privilege Fee paid in the prior Contract Year, but never less than the initial MAPF set forth in the Summary of Contract Provisions. The MAPF applicable to the last Contract Year of this Agreement will be pro-rated if such Contract Year is less than twelve (12) months.
- B. Percentage Fee. In addition to the MAPF, Concessionaire covenants to pay a Percentage Fee in an amount equal to Gross Receipts for the *month* multiplied by the Percentage Fee Rate stated in the Summary of Contract Provisions, but only to the extent that such amount exceeds the MAPF for the Contract Year. If the Percentage Fee calculated in accordance with this Section 5.03 is an amount less than the MAPF, no Percentage Fee shall be payable.
- C. Payment of Privilege Fee. On or before the Package Completion Date, and the first day of each month thereafter, Concessionaire shall pay to Developer, in advance and without set off, deduction, prior notice, or demand, *one-twelfth (1/12th) of the MAPF*. For any payment period of less than one *month*, the MAPF payment shall be paid on a pro rata basis in the same proportion that the number of days in the payment period bears to the total number of days in the *month* for which the MAPF is payable.

Within [\*\*\*](\*\*) days after the end of each *month* during the Term, Concessionaire shall pay to Developer the Percentage Fee in the amount, if any, by which Gross Receipts for the *month* multiplied by the Percentage Fee Rate exceeds the sum of MAPF, as shown on the Monthly Concession Report required in Section 5.07.

## **SECTION 5.03           RECORD KEEPING, REPORTS, ANNUAL AUDIT, AND END OF YEAR ADJUSTMENT**

- A. Generally Accepted Accounting Principles. Concessionaire covenants to prepare and maintain, in accordance with Generally Accepted Accounting Principles in the United

States as in effect from time to time, complete and accurate books, including cost and management accounts, and records that include all financial, payment and purchase and sale transactions in the performance of this Agreement. Concessionaire's system of accounts shall allow each Concession Location(s) to be distinguished from all other Concession Location(s). Concessionaire shall maintain source documents sufficient to support its books, records, and reports. All monies related to this Agreement shall be deposited to and paid from a business bank account(s), the records for which shall be subject to review and audit in accordance with the provisions hereof.

B. Financial Reports.

1. Daily Gross Receipts. Upon request of Developer, Concessionaire agrees to report Gross Receipts for periods of less than one month in a format and frequency as requested by Developer.
2. Monthly Concession Report. No later than [\*\*\*] (\*\*\*) days after the end of each month after the Commencement Date, Concessionaire shall deliver to Developer a certified monthly concession report, in a form as set forth in **Exhibit C** attached hereto (the "Monthly Concession Report"), stating Gross Receipts (with any and all sales of liquor separately identified) for said month for each Concession Location(s), sales for said month by each Concessions Location with subtotals by type of Concession and category, calculation of Percentage Fee payable for said month, sales per square foot and per enplaned passenger with subtotals by type of Concession and category, and receipts per square foot and per enplaned passenger with subtotals by type of concession and category when information available. In addition, the Concessionaire shall provide an account of the total number of transactions during the immediately preceding calendar month broken down by category.
3. Quarterly Income Statements. No later than [\*\*\*] (\*\*) days after the end of each calendar quarter after the Commencement Date, excluding the fourth (4<sup>th</sup>) quarter, Concessionaire shall deliver to Developer a quarterly income statement signed by Concessionaire's chief financial officer or other duly authorized official of Concessionaire for each Concession Location(s), as well as for the total Premises, in a form as set forth in **Exhibit C** attached hereto (the "Quarterly Income Statement"). The Quarterly Income Statement must include current monthly sales compared to historical sales from the prior year with subtotals by Concession Location(s) and category; current number of transactions compared to historical transaction numbers from the prior year with subtotals by Concession Location(s) and category; year-to-date rolling monthly sales and transaction numbers compared to rolling historical sales and transaction numbers with subtotals by Concession Location and category; ACDBE sales compared to sales from the prior year; percentage of sales generated by ACDBE operators; and fees paid to Concessionaire's ACDBE firm(s) for the year-to-date.

- C. Annual Audit. No later than [\*\*\*\*] after the end of each year of operation after the Commencement Date, Concessionaire shall, at its sole cost and expense, provide an Annual Report to the Developer (for further distribution to the City) prepared by an Independent 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 Receipts and the reliability and credibility of the sources and systems implemented to disclose the relevant data set forth

therein and no qualifications of the Concessionaire's financial statements or otherwise. The engagement will include a Schedule of Gross Receipts 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 Developer. The engagement will be conducted in accordance with Generally Accepted Auditing Standards in the United States as in effect from time to time and shall include an opinion from the Independent CPA on whether the Schedule of Gross Receipts, 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. Developer reserves the right to reject Concessionaire's choice of Independent CPA, where in Developer's view the Independent CPA does not have the appropriate standing, reputation, or independence from the Concessionaire.

- D. Findings. City reserves the right to challenge any findings or conclusions of the Annual Report if it believes an error may have occurred or is otherwise reflected therein. In such event, City may conduct its own audit under the provisions in Section 5.10, or may require production of the supporting documentation used to reach the finding or conclusion in question. If the Developer and the Concessionaire agree on the results of City's audit, such results will be final and conclusive. If they do not agree on such results, an independent audit shall be carried out by an Independent CPA to be promptly selected by both Parties. If the Parties cannot agree on the identity of the CPA, then each Party shall appoint one Independent CPA of its choosing and such two selected CPAs shall appoint a third Independent CPA and the panel of these three Independent CPAs shall make the selection thereof promptly following a petition thereof by one of the Parties. The resolution by the Independent CPA auditors of any dispute, absent manifest error, will be final and conclusive.

Delivery of an Annual Report 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.

- E. End of Year Adjustment. If Concessionaire has paid to Developer 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 MAPF 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 Developer in the next payment of the MAPF.
- F. Form, Frequency, and Method of Reporting. Acceptance of monthly reports and payments by Developer does not constitute agreement by Developer with the amounts reported and paid. Developer reserves the right to change the form and frequency of reports and statements, including, but not limited to, the Monthly Concession Report, and to require the submission by Concessionaire of other statistics and information pertaining to the Gross Receipts hereunder. Concessionaire agrees to change the form of the required reports and statements as requested by Developer and to provide any additional statistics and information Developer may request.

- G. Developer shall have the right at any time to require that reports be delivered electronically using technology and procedures designated by Developer. If Developer instructs Concessionaire to deliver any reports and statements required hereunder by computer, e-mail, internet website, or transmission, Developer shall not be obligated to furnish Concessionaire with the equipment or systems necessary to do so.
- H. Notwithstanding any of the above, the Developer shall have the discretion to modify any of the reports (and the content thereof) or deliverables contemplated herein to the extent otherwise negotiated in the relevant concession agreement.

#### **SECTION 5.04 PLACE OF PAYMENT**

Concessionaire shall make payments required by this Agreement to the Developer or such other payee as the Developer may reasonably specify in writing from time to time, in immediately available funds.

Developer may change the designated place of payment upon ten (10) days' written notice to Concessionaire. Concessionaire assumes all risk of loss of payments.

#### **SECTION 5.05 FORM OF PAYMENT**

All payments due under this Agreement shall be paid in lawful money of the United States of America. Developer may accept payment without prejudice to its right to recover the balance of said amount due and to pursue any other remedies in this Agreement or otherwise.

All payments of Support Space Rent, MAPF, Percentage Fee, and all other Damages, fees, and/or charges shall be made by Automated Clearing House or Electronic Fund Transfer or other method as designated in writing by Developer. Concessionaire shall provide Developer with necessary information and authorizations as needed to facilitate such payments.

#### **SECTION 5.06 DEVELOPER'S RIGHT TO PERFORM AUDITS, INSPECTIONS, ATTESTATION ENGAGEMENTS**

Notwithstanding Concessionaire's requirement to submit the Annual Report set forth herein, Developer, or its representative, will have the right through the expiration of the fifth (5th) year after the expiration or termination of this Agreement, through its representatives, to review all books, records, and contracts of Concessionaire and where applicable, all individuals or other business entities who are party to this Agreement, requested by Developer's representatives to substantiate the accuracy of reported Gross Receipts and Concessionaire's compliance with other provisions of this Agreement. This includes, but is not limited to, financial statements, general ledgers, sales journals, daily or periodic summary reports, inventory and purchasing records, cash register or computer terminal tapes or reports, bank deposit slips, bank statements, cancelled checks, tax reports/returns filed with state or federal entities, discount or rebate/allowance contracts, records of refunds or voids, and joint venture or partnership contracts. Such right of examination shall include cooperation by Concessionaire personnel (including, but not limited to, cooperation in sending confirmations to Concessionaire's suppliers or others, assisting Developer in obtaining from governmental entities official copies of tax reports/returns, and disclosing all bank or other accounts into which Gross Receipts are deposited) as reasonably considered necessary by Developer, or its representative, to complete the engagement. There may be no limitation in the scope of the engagement that would hinder Developer in testing the accuracy and completeness of the reported Gross Receipts. All such

books, records, and contracts shall be kept for a minimum period of five (5) years after the close of each Contract Year. Concessionaire waives any claim of confidentiality that it may have in connection to its books, records, and contracts for the sole purpose of allowing Developer to use said documents in the course of an engagement. If Developer requests and Concessionaire fails to furnish any records in a timely manner, Developer 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 Developer 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 at the Airport. However, if agreed to by Developer, the engagement can be conducted at another location, in which event Concessionaire shall reimburse Developer for transportation, food, and lodging costs associated with the engagement, accrued in accordance with Developer's policy relating to travel expenses. Concessionaire shall allow Developer's representatives to photocopy any records the representatives determine to be necessary to conduct and support the engagement. Concessionaire shall provide Developer's representatives with retrievals of computer-based record or transactions the representatives determine to be necessary to conduct the engagement. Concessionaire shall not charge Developer for reasonable use of Concessionaire's photocopy machine while conducting the engagement, nor for any cost of retrieving, downloading to storage media and/or printing any records or transactions stored in magnetic, optical microform or other media. Concessionaire shall provide all records and retrievals requested within seven (7) days of the request. Parties recognize that Developer 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, Parties agree Developer may collect liquidated Damages, as set forth in Article VIII, for the records requested and not received. Such Damages may be assessed beginning on the [\*] ( [\*] ) day following the date the request was made. Accrual of such Damages will continue until specific performance is accomplished, which includes, but is not limited to, reconstruction of documents that cannot be produced. Payment of liquidated Damages will be due within [\*] ( [\*] ) days from the date of invoice.

If, because of any engagement, it is established that Concessionaire owes additional rents, fees, or charges to Developer, Concessionaire will pay the reasonable costs of the engagement and such additional rents, fees, and charges, and Developer may assess interest in accordance with Section 5.05. If it is established that Concessionaire underreported Gross Receipts or underpaid fees related to Gross Receipts by three percent (3%) or less for the period under consideration, the entire expense of the engagement will be billed to Concessionaire. Any additional payments due shall be paid plus interest, no later than Concessionaire's next payment of the MAPF, to Developer. Developer reserves the right to terminate this Agreement for cause, if Concessionaire fails to pay the amount owed, per the engagement's findings, by Concessionaire's next payment. If it is established that Concessionaire underreported Gross Receipts or underpaid fees related to Gross Receipts by more than three percent (3%) for the period under consideration, in addition to the remedies described above, Developer shall be entitled to terminate this Agreement for cause upon thirty (30) days written notice, regardless of whether the deficiency is paid. If Concessionaire willfully or fraudulently underreported Gross Receipts or underpaid fees related to Gross Receipts, in addition to the rights described above, Developer shall be entitled to terminate this Agreement for cause upon thirty (30) days written notice, regardless of whether the deficiency is paid.



City and the FAA or their representatives, will be entitled to initiate and perform audits, inspections, or attestation engagements. In addition, Concessionaire will include a provision providing Developer 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.

#### **SECTION 5.07 NON-EXCLUSIVE OR EXCLUSIVE RIGHTS**

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

#### **SECTION 5.08 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 Great Hall other than its Premises. All rights and privileges not specifically granted to Concessionaire for its use of and operations at Great Hall pursuant to this Agreement are hereby reserved for and to Developer.

#### **SECTION 5.09 PERMITS AND LICENSES**

Concessionaire will obtain and maintain throughout the Term 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 within the Premises and forwarded to Developer upon issuance and each renewal.

#### **SECTION 5.10 QUALITY OF GOODS AND SERVICES**

Concessionaire shall ensure that all customers are provided First Class Goods and Services, and Concessionaire shall keep in stock and have ready for sale at all times of operation, a sufficient supply and variety of Goods and Services offered for sale at each Concession Location(s), consistent with the Pricing Policy established by the Developer to meet the demand of customers at the Great Hall.

#### **SECTION 5.11 DELIVERY OF GOODS**

- A. Concessionaire shall make all deliveries of money, coin, supplies, goods, products, and food and beverage items in such manner as specified by Developer and DEN's Rules and Regulations and at such times and locations as City may reasonably approve or require and Developer instruct. Emergency deliveries may be made at other times subject to prior arrangements with City through the Developer.
- B. Transporting Goods. Deliveries to Concession Location(s) and Concessionaire's Support Spaces will be handled as stated in the Airport Rules and Regulations. Concessionaire shall transport inventory among Concession Location(s) and Storage Spaces in the same building at such times and by such routes stated in the Airport Rules and Regulations. Concessionaire shall make every effort to avoid using the Commons Areas for large quantity deliveries during peak periods. Concessionaire shall use only

carts or conveyances for transporting goods that are City approved sealed, leak-proof, and equipped carts or conveyances, with pneumatic wheels suitable for operating on carpet or other flooring without damage thereto, for transporting good and which are approved by City.

## **SECTION 5.12 PERSONNEL**

- A. Staffing. Concessionaire shall hire, train, supervise, and deploy a sufficient number of Personnel to service customers in a timely and efficient manner and to meet Concessionaire's obligations herein. Concessionaire shall employ or contract with sufficient personnel and provide necessary equipment to keep the Premises and all furniture, furnishings, fixtures and equipment clean, neat, safe, and in good working order and condition at all times pursuant to maintenance obligations herein.
1. Concessionaire shall closely monitor Personnel to ensure First Class service to customers in compliance with this Agreement. Concessionaire shall take all proper steps to discipline Personnel who participate in acts of misconduct on or about the Premises.
  2. Concessionaire shall ensure that its workers are at all times properly and neatly attired (in the Concessionaire's uniforms if appropriate), and properly behaved.
  3. Concessionaire shall ensure that its workers wear the identity cards issued by the Developer or the Airport at all times whilst at the Airport, and that such cards are surrendered to the Developer or the Airport immediately upon the relevant member of staff ceasing to be employed and/or otherwise engaged by the Concessionaire at the Airport.
  4. Concessionaire shall ensure that it will conduct or provide any training for its workers as may be required by any fire certificate in force for the Airport.
  5. Concessionaire shall ensure that, if the Premises need to be evacuated, its workers are trained in the procedure for and will assist with such evacuation.
- B. City's Customer Service Training: If City establishes a customer service-training program for the employees of all Concessionaires at DEN, Developer, after first giving reasonable notice to Concessionaire, will require all of Concessionaire's employees to complete the training program.
1. Concessionaire's employees as of the date of implementation of City's customer service training program must complete the training within six (6) months of the date of notice from Developer.
  2. Concessionaire's employees hired after the date of implementation of City's customer service training program must complete the training within one (1) month of beginning employment.

If established, City customer service training program will be limited to no more than two (2) full working days per employee per year, will be conducted at the Airport, and will be evidenced by a "Certificate of Completion" issued to each employee upon successful completion. City's customer service training program will be offered at no cost to Concessionaire; however,

Concessionaire will be responsible for employees' wages, benefits, and other employment costs incurred during and because of the training.

- C. Additional Personnel Requirements. In addition to the Personnel requirements set forth herein, Concessionaire shall ensure that all Personnel engaged in the operation of the Concession shall conform to the applicable rules and procedures stated in Great Hall and DEN's Rules and Regulations and Operating Directives.

### **SECTION 5.13           BADGING AND SECURITY REQUIREMENTS**

All of Concessionaire's Personnel who work at the Airport must apply for and be issued a proper security identification badge prior to beginning work at the Airport. Concessionaire shall be responsible for ensuring Personnel, vendor, and contractor compliance with all security rules, regulations, and procedures including, but not limited to, those issued by the FAA, TSA, Great Hall and City. The rules, regulations, and procedures of the FAA, TSA, Great Hall and City regarding security matters may be modified during the Term and Concessionaire covenants to comply with all such modifications.

If any of Concessionaire's Personnel is terminated or leaves Concessionaire's employment, City and Developer must be notified immediately, and the security identification badge must be returned to City promptly.

Concessionaire's Personnel who are issued security identification badges shall only utilize such badges and access rights in connection with the operation of Concessionaire's business as outlined herein. Concessionaire's Personnel shall be informed of this requirement in writing from Concessionaire. Concessionaire's Personnel shall also be informed in writing from Concessionaire of the penalties for violating this requirement, which includes, but is not limited to, termination of a person's employment.

Concessionaire shall submit its written operating and security procedures for its operations hereunder to Developer for review at least thirty (30) days prior to the Package Completion Date, or if Concessionaire opens any Concessions Location for business earlier than the Package Completion Date, at least seven (7) days prior to opening. Concessionaire shall revise such operating and security procedures as necessary to obtain Developer's and City's approval.

### **SECTION 5.14           CASH HANDLING AND CREDIT CARD REQUIREMENTS**

Concessionaire shall at all times observe cash-handling and record-handling procedures in accordance with sound accounting and financial control practices and as necessary to provide timely and accurate reports to Developer. Developer may at any time during the Term request a copy of these procedures. Developer shall have the right to monitor and test all of Concessionaire's procedures and controls and require Concessionaire to make changes to its procedures.

Concessionaire shall comply with the most recent Payment Card Industry Data Security Standard requirements. Concessionaire's Independent CPA must yearly certify Concessionaire's operations are compliant with Payment Card Industry Data Security Standards. Developer reserves the right to receive reports required by the Payment Card Industry Security Standards Council.

Concessionaire shall accept the credit, debit and charge cards specified in **Exhibit F**.

## **SECTION 5.15            ADVERTISED SALES OR PROMOTIONS**

Concessionaire is not permitted to participate in or post any type of sign related to liquidations, going out of business, moving sales, or closeouts of particular goods or services. Concessionaire may not advertise in Great Hall, except with the Developer's prior written consent. Concessionaire shall not use nor permit Premises to be used as a medium for third party paid advertising, including sponsorships or any advertising material, sign, fixture, or equipment, whether paid for in-kind, by cash, or by credit unless approved in writing by the Developer. Concessionaire may not advertise in other areas of the Airport outside of the Great Hall, except with the City's prior written approval.

## **SECTION 5.16            OPERATING PROCEDURES AND STANDARDS**

- A. City Developer Requirements. The occupancy and use by Concessionaire of the Premises and the rights or privileges herein conferred upon Concessionaire shall be conditioned upon and subject to Great Hall and DEN's Rules and Regulations, and Operational Directives as are now or may hereafter be prescribed by City and/or Developer through the lawful exercise of their powers and contractual rights. Concessionaire covenants to operate the Concession in accordance with Great Hall and DEN's Rules and Regulations.
- B. Health and Safety Standards. Concessionaire shall comply with all health and sanitary regulations adopted by Developer, City, State of Colorado, and any other Governmental Authority with jurisdiction. Concessionaire shall give access for inspection purposes to any duly authorized representatives of all such persons or governing bodies. Concessionaire shall provide Developer with copies of all inspection reports by other health and sanitary governing bodies within 48 hours of receipt. This paragraph does not require Concessionaire to waive any applicable attorney-client or attorney work product privileges.
- C. Sustainability. Developer is committed to incorporating sustainable practices into all aspects of Great Hall operations. Concessionaire shall operate in a manner consistent with Great Hall and DEN's Sustainability Policy, and participate in the sustainability programs outlined in the Great Hall Concessions Handbook at its own cost and expense.
- D. Additional Compliance. Concessionaire shall comply with all applicable governmental Laws, ordinances, regulations, codes, and permits in the conduct of its operations under this Agreement including, but not limited to, TSA regulations regarding products or procedures.
- E. Concessionaire's Standards. Concessionaire shall submit to Developer a copy of its standards, plans, and manuals for customer service and operation, at least thirty (30) days prior to Commencement Date, and as updated during the Term. Concessionaire shall ensure continuous adherence to Concessionaire's own standards, in addition to other standards as set forth herein. These standards and plans shall be approved by Developer.

## SECTION 5.17            CLEANING AND ROUTINE MAINTENANCE

- A. General Obligations. Concessionaire shall ensure that the Concession is maintained and operated in a First Class manner and that the Premises are kept in a safe, clean, orderly and inviting condition at all times in a manner satisfactory to Developer. To comply with these requirements, Concessionaire must regularly review or cause to be reviewed the Premises and its operations at the Great Hall.
- B. Preventive and Routine Cleaning and Maintenance Program. Concessionaire shall be responsible for preventive and routine cleaning and maintenance of all assets after the demarcation point, whether built by Concessionaire, City or Developer, from the Commencement Date through the expiration of the Term.
1. Janitorial Service. Concessionaire, at its own cost and expense, shall provide all janitorial services for the Premises in accordance with the Great Hall Concessions Handbook. Concessionaire shall ensure that the Premises and the Common Areas adjacent to the Premises are kept clean and free from all rubbish and refuse.
  2. Pest Control. Concessionaire, at its own cost and expense, is responsible for pest control within the Premises. Concessionaire will contract with a professional pest control service to provide pest control services on a regular basis and at any other times as needed. Concessionaire will coordinate its pest control service with third parties as directed by Developer. Upon request, Concessionaire must furnish Developer a copy of its pest control contract, monthly service schedule, and monthly service reports. Concessionaire agrees to coordinate with Developer, Developer and other Concessionaires to provide the most effective pest control services for the Great Hall.
  3. Plumbing. Concessionaire, at its own cost and expense, shall provide routine plumbing services for the Premises in accordance with the Great Hall Concessions Handbook. Concessionaire shall ensure that activities within the Premises do not damage or harm the central water, plumbing, and sewer infrastructure at the Airport. Concessionaire shall properly maintain all water hook-ups within the Premises. Concessionaire must furnish Developer a copy of its plumbing contract, monthly service schedule, and monthly service reports, as directed by Developer. Concessionaire agrees to coordinate with Developer, Developer and other Concessionaires to provide the most effective plumbing services for the Great Hall. Concessionaire shall coordinate and comply with the cleaning and routine maintenance recommendations of Developer.
  4. Electricity. Concessionaire, at its own cost and expense, shall install and maintain all power circuits and connections required for equipment and mechanical systems used after the demarcation point. Concessionaire shall ensure that activities within or outside the Premises do not damage or harm the central Electricity or Natural Gas infrastructure at the Airport. Concessionaire shall coordinate and comply with the cleaning and routine maintenance recommendations of Developer.
  5. HVAC. Concessionaire, at its own cost and expense, shall install and maintain any ductwork and other HVAC connections for the Premises in accordance with the Great Hall Concessions Handbook. Concessionaire shall ensure that activities within the Premises do not damage or harm the central HVAC infrastructure at the Airport.

- Concessionaire shall coordinate and comply with the cleaning and routine maintenance recommendations of Developer.
6. Cleaning. Concessionaire shall coordinate and comply with the cleaning and routine maintenance recommendations of Developer.
  7. Trash, Waste, and Refuse. Concessionaire at its own cost and expense, shall comply with any DEN-wide waste diversion programs, including but not limited to recycling, composting, or any future programs for removal and disposal of all trash, waste and other refuse caused as a result of performance of this Agreement. Concessionaire shall use designated locations, containers, and transport routes for trash, waste, and refuse removal and disposal. Concessionaire shall ensure that storage, transportation, and disposal of all trash, wastes, and other refuse does not damage or harm any structures or infrastructure at the Airport.
  8. Lighting. Concessionaire, at its own costs and expense, shall install and maintain all lighting fixtures and wiring for general illumination of the Premises in accordance with the Great Hall Concessions Handbook. Concessionaire agrees to maintain the lighting fixtures wiring used for general illumination within the Premises. **Concessionaire shall ensure that activities within the Premises do not damage or harm the central Electricity infrastructure at the Airport.** Concessionaire shall coordinate and comply with the cleaning and routine maintenance recommendations of Developer.
- C. Routine Refurbishment. On or about the commencement of each Contract Year, representatives of Developer and Concessionaire shall tour the Premises and jointly agree upon what, if any, routine refurbishment is required to maintain the Premises in First Class condition. Concessionaire shall promptly undertake such refurbishment at its sole cost and expense. If Concessionaire and Developer cannot jointly agree upon the type and extent of routine refurbishment, Developer may determine the routine refurbishment required for that Contract Year to reasonably maintain the Premises in First Class condition. For purposes of this Section 7.15 only, "routine refurbishment" shall mean the routine repainting or redecoration of public areas within the Premises including, but not limited to, the replacement or repair of worn carpet, tile, furniture, furnishings, fixtures, or finishes.
- D. Judge of Maintenance. Developer, acting reasonably and justifying its position, will have discretion to judge the quality of Concessionaire's maintenance of the Premises. If Developer determines that maintenance is not satisfactory, Developer shall notify Concessionaire in writing. Concessionaire will perform the required maintenance, to Developer's satisfaction, within fifteen (15) days after receipt of written notice or Developer or its representative shall have the right to enter upon the Premises and perform the maintenance. However, where unsatisfactory maintenance threatens the safety, health, or welfare of the traveling public Great Hall and/or DEN's facilities, Concessionaire shall immediately perform the maintenance and the Developer will be entitled in such case to perform the maintenance immediately if the threat is not fully solved. Where Developer or its representative performs maintenance, Concessionaire agrees to reimburse Developer for the cost thereof, plus an administrative fee of fifteen percent (15%) of the maintenance costs without prior quote.

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

#### **SECTION 5.18            PAGING AUDIO, VIDEO SYSTEMS, AND FREQUENCY PROTECTION**

If Concessionaire installs, in accordance with the Tenant Work Great Hall Permit Handbook and DEN's Rules and Regulations with City's and Developer's approval, any type of radio transceiver or other wireless communications equipment, Concessionaire will provide frequency protection within the aviation air/ground VHF frequency band and the UHF frequency band in accordance with restrictions promulgated by the FAA for the vicinity of FAA Transmitter or Receiver facilities. Frequency protection will also be provided for all other frequency bands operating near Concessionaire's equipment. If frequency interference occurs because of Concessionaire's installation, it is understood that City holds and Developer reserves the right to shut down Concessionaire's installation until appropriate remedies to the frequency interference are made by Concessionaire. Remedies may include relocation of Concessionaire's equipment to another site. Concessionaire acknowledges and accepts that any paging or audio systems installed by Concessionaire maybe used by City to announce any notification or Emergency at DEN. City shall not be deemed to be and Developer shall not be liable to Concessionaire for any use of the paging or audio systems installed by Concessionaire.

#### **SECTION 5.19            PROHIBITED ACTS**

Concessionaire will not place excessive loads on the walls, ceilings, and floor or pavement areas of the Great Hall and will repair any area damaged by excessive loading to the satisfaction of Developer.

Unless approved in writing in advance by Developer, in its sole discretion, Concessionaire will not permit the active display or operation on the Premises of any display that flies, flashes, or emits a noise or odor.

Unless approved in writing in advance by Developer, in its sole discretion, Concessionaire will not keep or display any merchandise on or within, or otherwise obstruct, any part of the Airport outside of the Premises. Concessionaire shall keep all service corridors, hallways, stairways, doorways, or loading docks leading to and from the Premises free and clear of all obstructions.

Concessionaire will not interfere or permit interference with the use, operation, or maintenance of the Airport 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 the Airport. Concessionaire will not do or permit to be done anything that may interfere with free access and passage on the Premises or the public areas adjacent

thereto, or hinder police, firefighters, or other emergency personnel in the discharge of their duties. Further, 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 the Premises, including lines, pipes, wires, conduits, and equipment connected with or appurtenant thereto.

Concessionaire shall not place any additional lock of any kind upon any window or interior or exterior door in the Premises, or make any change in any existing door or window lock or the mechanism thereof, unless a key therefor is maintained on the portion of the Premises were furnished to or otherwise procured by Concessionaire.

Concessionaire will not engage in any activity prohibited by Great Hall and DEN's Rules and Regulations and Operating Directives as may be modified during the Term.

## **ARTICLE VI. FEDERAL AID REQUIREMENTS**

### **SECTION 6.01 NON DISCRIMINATION**

Concessionaire covenants 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 precluded from participating in any activity conducted with or benefiting from Federal assistance. This provision binds Concessionaire and sub tier contractors from the bid solicitation period through the completion of the Agreement. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

Concessionaire covenants it will comply with the Title VI List of Pertinent Nondiscrimination Statutes and Authorities, as they may be amended from time to time, which are attached hereto as Appendix D and herein incorporated by reference and made a part of this Agreement.

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

In all solicitations, either by competitive bidding, or negotiation made by 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 Concessionaire of the Contractor's obligations under this Agreement and the Federal Acts and Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

Concessionaire covenants it will provide all information and reports required by the Federal Acts, Regulations, and 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 Developer, City or the FAA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of Concessionaire is in the exclusive possession of another who fails or refuses to furnish the information, Concessionaire will so certify to City or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.



In the event of Concessionaire's noncompliance with the non-discrimination provisions of this Agreement, Developer will impose such sanctions as it, the City or the FAA may determine to be appropriate including, but not limited to:

- a. Withholding payments to Concessionaire under this Agreement until the Concessionaire complies; and/or
- b. Cancelling, terminating, or suspending this Agreement, in whole or in part, and re-enter the Premises as if this Agreement had never been made or issued.

This provision will not be effective until the procedures of 49 CFR Part 21 are followed and completed, including exercise or expiration of appeal rights.

Concessionaire covenants it will include the provisions of this section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Federal Acts, Regulations and directives issued pursuant thereto. Concessionaire covenants it will take action with respect to any subcontract or procurement as Developer, City or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Concessionaire becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Concessionaire may request City and/or Developer to enter into any litigation to protect the interests of City and or Developer. In addition, Concessionaire may request the City to enter into the litigation to protect the interest of the City. In addition, Concessionaire may request the United States to enter into the litigation to protect the interests of the United States.

Further, in connection with the performance of work under this Agreement, Concessionaire agrees not to refuse to hire, discharge, promote, demote, or to discriminate in matters of compensation against any person otherwise qualified solely because of race, creed, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, and/or physical and mental disability. Concessionaire further agrees to insert the foregoing provision in all subcontracts hereunder.

## **SECTION 6.02 CITY'S ACDBE POLICY**

As a condition of eligibility for financial assistance from the FAA, City through its Division of Small Business Opportunity ("DSBO") developed and implemented an ACDBE Program for DEN. The ACDBE Program was developed and implemented in accordance with the United States Department of Transportation's Final Rule 49 CFR Part 23.

The City's Manager of Small Business Opportunity has been delegated as the ACDBE Liaison Officer for DEN. In that capacity, the City's Manager of Small Business Opportunity is responsible for compliance with all aspects of the ACDBE Program. The City's Manager of Small Business Opportunity has established ACDBE goals for DEN and has established an ACDBE Project goal as a percentage of total annual Gross Receipts. The Developer may translate the Project specific goal into a concession specific ACDBE goal as a percentage of total annual Gross Receipts. The applicable concession specific ACDBE goal, if any, is stated in the Summary of Contract Provisions of this Agreement.

To carry out its ACDBE responsibilities as they are described in this Agreement, Concessionaire agrees to assign this responsibility to a high-level company official. Concessionaire acknowledges if its actions or failure to act violates its ACDBE responsibilities under this

Agreement or the applicable ACDBE regulations of the United States Department of Transportation as they may be adopted or amended from time to time, such actions shall constitute a material breach by Concessionaire of this Agreement and, in addition to all other remedies available to Developer, Developer may, in its sole discretion, terminate this Agreement.

### **SECTION 6.03 ACDBE NON-DISCRIMINATION**

- A. Concessionaire and any subcontractor of Concessionaire will not discriminate based on race, color, national origin, or sex in performance of this Agreement. Concessionaire will carry out applicable requirements of the United States Department of Transportation's regulations 49 CFR Part 23 and 26 in the award and administration of agreements. Failure by Concessionaire to carry out these requirements is a material breach of this Agreement, in addition to all other remedies available to Developer, Developer may, in its sole discretion, terminate this Agreement.
- B. This Agreement is subject to the applicable requirements of the United States Department of Transportation's regulations 49 CFR Part 23 and 26. Concessionaire agrees that it 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 and applicable requirements of Part 26.
- C. Concessionaire agrees to include the statements in paragraphs (A) and (B) above in any subsequent concessions agreement or contracts covered by 49 CFR Part 23 and applicable requirements of Part 26 that it enters and cause those businesses to include the statements in further agreements.

### **SECTION 6.04 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 amount established in the Summary of Contract Provisions, or clearly demonstrate in a manner acceptable to Developer its good faith efforts to do so. Concessionaire will contract with those ACDBEs as identified in **Exhibit G** to the extent that such ACDBEs are presented as part of the Concessionaire's response for the Concession and approved by Developer, or such other ACDBEs that are certified with City's DSBO and approved by Developer. Concessionaire is required to make good faith efforts to explore all available options to meet the goal to the maximum extent practicable.

Concessionaire shall not take any action during the term of this Agreement that may have a materially negative impact upon the Concessionaire's ability to meet its stated ACDBE goal.

- B. ACDBE Termination and Substitution. Concessionaire will not terminate an ACDBE for convenience without Developer's prior written consent. If an ACDBE is terminated by Concessionaire with Developer's consent or, if an ACDBE fails to complete its work on this Agreement for any reason, Concessionaire must make good faith efforts, in accordance with the applicable requirements of 49 CFR part 23 and 26, to find another ACDBE to substitute for the original ACDBE to provide the same amount of ACDBE participation. Concessionaire shall forthwith submit to the Developer's ACDBE Liaison a

modified ACDBE utilization report form together with a written request for review and approval, setting forth the circumstances in sufficient detail and with appropriate documentation to explain the necessity for the change. In every case, Concessionaire shall substitute a DSBO certified ACDBE, and if it cannot, then Concessionaire shall be required to document that it made good faith efforts to do so.

- C. Reporting Requirements. No later than [\*] (\*\*) days after the end of each calendar month during the Term, Concessionaire will submit to Developer, in Developer's online system (if any) or on Developer's monthly ACDBE utilization report form, a report of Concessionaire's total Gross Receipts during the month and the total dollar value of Gross Receipts earned by each ACDBE under this Agreement during the month, in each case calculated pursuant to the following formula (ACDBE % = (ACDBE Gross Receipts + ACDBE Supplier Costs) / Total Gross Receipts) and in accordance with the requirements of 49 CFR Part 23 and applicable portions of 49 CFR Part 26. Whenever a Joint Venture is used to meet ACDBE goals, Concessionaire shall submit to Developer an annual financial statement for the preceding year indicating compensation, profit sharing, capital contributions of ACDBE partners, or any other financial information as requested by Developer relevant to determining ACDBE compliance. Concessionaire shall also disclose annually the ACDBE partner's management involvement and its role in decision making. The annual financial statement shall be on a form satisfactory to Developer and delivered to Developer no later than [\*\*\*] of the following year. Concessionaire further agrees to submit any other report(s) or information that City or Developer are required by Law or regulation to obtain from Concessionaire, or which the ACDBE Liaison may request relating to Concessionaire's operations.
- D. Monitoring. DSBO and Developer's ACDBE Liaison will monitor the compliance and good faith efforts of Concessionaire in meeting the requirements of this Article. Concessionaire covenants to grant Developer, City and DSBO access to the necessary records to examine such information as may be appropriate for the purpose of investigating and determining compliance with this Article, including, but not limited to, records, records of expenditures, contracts between Concessionaire and the ACDBE participants, and other records pertaining to the ACDBE participation plan, which Concessionaire will maintain for a minimum of three (3) years following the termination of this Agreement. Concessionaire covenants to grant Developer, City and DSBO access to each Concession Location(s) under this agreement for purposes of DSBO monitoring. The extent of ACDBE participation will be reviewed prior to the exercise of any renewal, extension or material amendment of this Agreement to consider whether an adjustment in the ACDBE requirement is warranted with any such adjustment being mutually agreed upon by the Developer, the City and the DSBO.
- 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 and Developer. 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 G**. 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 Developer, Developer may, in its sole discretion, terminate this Agreement.

- G. Non-Compliance. In the event of Concessionaire's non-compliance with the Developer's ACDBE program or failure to meet the ACDBE goal set forth herein, or to demonstrate a good faith effort to do so, Developer 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 Developer 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 Developer, its compliance with the terms of the Developer's ACDBE program or this Article or its good faith efforts to comply.

#### **SECTION 6.05 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, to the extent provisions of the FLSA apply. The FLSA sets 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 6.06 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, to the extent such provisions of 29 C.F.R. Part 1910 apply. Concessionaire must comply with all Laws that require it to provide a safe and hazard free work environment. 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 VII. CONSTRUCTION**

#### **SECTION 7.01 DESIGN AND CONSTRUCTION STANDARDS**

In its design and construction work on the Premises, Concessionaire will fully comply with the standards and development guidelines identified in the Great Hall and DEN's Rules and Regulations. Developer reserves the right to amend DEN's Rules and Regulations during the Term. Concessionaire covenants to comply with Great Hall and DEN's Rules and Regulations in effect as of the date of any construction it undertakes.

## **SECTION 7.02 CONSTRUCTION**

All construction shall be performed in accordance with the requirements of this Agreement, the Tenant Work Great Hall Permit Handbook, and applicable Laws, regulations, ordinances, codes and permits including, but not limited to, worker's compensation requirements, City's prevailing wage ordinance, Denver Revised Municipal Code ("D.R.M.C."), §20-76, City's MBE/WBE participation requirements, D.R.M.C. Articles III and VII, and the Americans with Disabilities Act, 42 U.S.C. 12,000 et seq., and its regulations. Developer and its designees shall have the right from time to time to inspect each Approved Project.

## **SECTION 7.03 PREMISE IMPROVEMENTS**

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

## **SECTION 7.04 SIGNAGE**

Subject to the terms and conditions of Section 10.05, Concessionaire shall have the right to install and maintain signs on the Premises, if the design, installation, and maintenance of all signs shall be subject to the terms of this Section and comply with the Great Hall and DEN's Rules and Regulations. Concessionaire further acknowledges City and Developer's desire to maintain a high level of aesthetic quality in all concession facilities throughout the Great Hall. Therefore, Concessionaire covenants and agrees that in the exercise of its privilege to install and maintain appropriate signs on the Premises, as provided herein, it will submit to Developer, for its review and approval, the size, design, content, construction or fabrication, and intended location of every sign it proposes to install on or within the Premises. Concessionaire shall not install signs of any type on or within the Premises without prior written approval of Developer, which approval shall not be unreasonably withheld or denied if the proposal complies with Great Hall and DEN's Rules and Regulations governing signage.

## **ARTICLE VIII. FAILURE TO COMPLY WITH PERFORMANCE/OPERATING STANDARDS**

- A. Violations. Concessionaire acknowledges Developer's objective to provide the public and air travelers with the level and quality of service as described herein. Accordingly, Developer has established a series of liquidated damages, as set forth in the table below, that it may assess, in its sole discretion, as liquidated damages for various violations of the provisions of this Agreement and/or DEN's Rules and Regulations. Concessionaire and Developer agree that the damages set forth herein are reasonable estimates of the significant but difficult to predict harm, and Concessionaire further agrees to pay to Developer such liquidated damages in accordance with the rates or in the amounts specified herein upon each occurrence of the specified violation or written demand by Developer. Developer will, in its sole discretion, determine the classification of each violation as per day or per occurrence. Concessionaire further acknowledges that the liquidated damages are not exclusive remedies and Developer may pursue other additional remedies as allowed for in this Agreement and/or at law, in Developer's sole discretion. Developer'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.

<b>Liquidated Damages</b>	
Types of Infractions	Amounts
Comply with the required hours of operations set forth herein.	Minimum \$100 per day until corrected to Developer's satisfaction.
Comply with the materials handling requirements in accordance with Section 5.11 hereof.	Minimum \$100 per day until corrected to Developer's satisfaction.
Observe cash and credit card record handling procedures and Payment Card Industry Data Security Standards in accordance with Section 5.14 hereof.	Minimum \$100 per day until corrected to Developer's satisfaction.

B. Multiple Violations. Liquidated damages shall accrue immediately and be assessed as follows:

1. For the first and second violation of a requirement during any twelve (12) month rolling year, Developer will provide written notice to Concessionaire to correct the violation within thirty (30) days or other the time specified in the notice. After the time specified by Developer for cure, liquidated damages shall be assessed until Concessionaire corrects the violation. In the event the violation is not corrected within thirty (30) days of the time specified by Developer for cure, then such violation will be treated as a breach of this Agreement entitling Developer, in its discretion, to seek any other remedies available under this Agreement including, but not limited to, termination.
2. For the third and subsequent violations of the same requirement during any twelve (12) month rolling year commencing upon the first notice of violation, the liquidated damage shall be immediately assessed with no grace period.
3. Further, after two (2) violations of the same requirement within any twelve (12) month rolling period, Developer reserves the right, in its sole discretion, to deem the repeated violations a material breach of this Agreement and to seek any other remedies available to it under this Agreement including, but not limited to, termination of this Agreement.

C. Payment. Payment of liquidated damages will be due by the Concessionaire to the Developer within fifteen (15) days from the date of invoice.

D. City's Rights: Notwithstanding the forgoing, in the event City exercises its right under Article XLIII hereof, City shall have the right to reset the Liquidated Damages stated herein, in accordance with the liquidated damages provided in City's Concession Handbook, as amended.

## **ARTICLE IX. DISCLAIMER OF LIENS**

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

In the event any construction, mechanic's, laborer's, materialmen's or other lien, or notice of lien is filed against any portion of the Premises for any work, labor or materials furnished to the Premises, whether or not the same is made or done in accordance with an agreement between City and Developer 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 and Developer, security satisfactory to City and Developer to secure payment of such lien, if requested by City or Developer, while Concessionaire contests to conclusion the claim giving rise to such lien.

## **ARTICLE X. MAINTENANCE UTILITES AND REPAIRS**

### **SECTION 10.01 CONCESSIONAIRE'S MAINTENANCE OBLIGATIONS**

Concessionaire covenants and agrees that nothing shall be done or kept in the Premises that might impair the value of City's property or that would constitute waste. Any hazardous or potentially hazardous condition on the Premises shall be corrected immediately upon receipt of a verbal or written notice from Developer. At the sole discretion of Developer, Concessionaire shall close the Premises or affected portion thereof until the hazardous or potentially hazardous condition is corrected.

Concessionaire covenants to comply with all present and future Laws, orders, and regulations, including any rules, regulations and procedures promulgated by Developer and City regarding Developer and City provided maintenance within the Great Hall in which the Concession Location(s) is located.

In the event Developer terminates this Agreement or reclaims the Premises as per the terms hereof, Developer has no liability to Concessionaire for any Unamortized Investment.

## **ARTICLE XI. INDEMNIFICATION**

Concessionaire agrees that it shall protect, reimburse, defend, indemnify, and save harmless the City, the Developer and their officers, agents, officials, employees, shareholders, directors and affiliates from all claims, fines, and damages, (including but not limited to attorney's fees and court costs), suits, losses, costs, expenses, liability, causes of actions, penalties or proceedings of any kind or nature whatsoever, including worker's compensation claims, of or by anyone whomsoever, in any way resulting from, or arising out of, directly or indirectly, its operations incident to, or in connection herewith, its construction of the Concession Space or the Concessionaire's presence on or its use or occupancy of any portion of the Great Hall or the Airport. This includes Concessionaire's acts, omissions, negligence, activities, or operations; Concessionaire's performance, non-performance or purported performance of this Agreement; or any breach by Concessionaire of the terms of this Agreement, or any such acts and omissions negligence, activities, or operations of Concessionaire of Concessionaire's officers, employees, authorized officials, representatives, suppliers, invitees, contractors, subcontractors, and agents of Concessionaire, or any other person directly or indirectly employed or utilized by Concessionaire, that results in any bodily injury (including death) or any damage to any property, including loss of use, incurred or sustained by any party hereto, any agent or employee of any party hereto, any other person whomsoever, or any governmental agency, regardless of whether or not it is caused in whole or in part by the negligence of a party indemnified hereunder; provided, that Concessionaire need not release, indemnify, or save harmless the Developer, the City, and their officers, agents, officials, employees, shareholders, directors and affiliates from damages resulting from the sole negligence of the City's or Developer's officers, agents, officials, employees, shareholders, directors and affiliates. The minimum insurance requirements prescribed herein shall not be deemed to limit or define the obligations of Concessionaire hereunder.

In addition to the duty to indemnify and hold harmless, Concessionaire will have the duty to defend Developer, City, its agents, employees, officers, shareholders, directors and affiliates from all liabilities, Claims, expenses, losses, costs, fines, and damages (including but not limited to attorney's fees and court costs) and causes of action of every kind and character. The duty to defend under this Article is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of Concessionaire, Developer, City, and any indemnified party. The duty to defend arises immediately upon written presentation of a claim to Concessionaire.

This Article shall survive the termination of this Agreement. Compliance with insurance requirements under this Agreement shall not relieve Concessionaire of its liability or obligation to indemnify, hold harmless, and defend Developer and City as set forth in this Article.

## **ARTICLE XII. INSURANCE**

### **SECTION 12.01 INSURANCE TERMS AND CONDITIONS**

- A. Required Insurance. Concessionaire covenants and agrees to secure at its own expense and to keep in force at all times hereof, from the Effective Date, insurance against claims for injury to persons or damage to property that may arise from or in connection with the performance of obligations under this Agreement by Concessionaire, its agents,



representatives, or employees. The types and amounts of insurance coverage Concessionaire must procure are specified in the Certificate of Insurance for Aviation, attached hereto as **Exhibit E**, and incorporated herein by reference. Insurance requirements set forth on **Exhibit E** do not limit in any way the indemnity covenants contained in this Agreement or the amount or scope of liability of Concessionaire under this Agreement. The amounts listed indicate only the minimum amounts of insurance coverage that City is willing to accept to help insure full performance of all terms and conditions of this Agreement. Concessionaire specifically agrees to comply with each condition, requirement, or specification set forth in **Exhibit E** during all periods when the required coverage is in effect. Insurance must be maintained without any lapse in coverage during the entire Term. Insurance canceled without City's consent or failure by Concessionaire to provide evidence of renewal within forty-eight (48) hours after written notice by City is 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. If at any time any of the insurance policies shall be or become unsatisfactory to City as to form or substance, or if any of the carriers issuing such policies shall be or become unsatisfactory to City, Concessionaire shall promptly obtain a new and satisfactory replacement policy and give City an updated certificate of insurance that complies with the new insurance requirements of Developer.

- B. Liquor Liability. If alcoholic beverages are served or sold at the Great Hall by the Concessionaire, the Commercial General Liability insurance shall include Host Liquor Liability Coverage.
- C. Business Interruption Insurance. Concessionaire shall procure and maintain Business Interruption insurance in such amounts as will reimburse Concessionaire for direct or indirect loss of earnings attributable to the perils commonly covered by the Concessionaire's property insurance described in Section 15.02 (A), which shall include losses arising from mechanical failures on or interruption of services to City or Great Hall premises.
- D. Cyber Liability Insurance. Concessionaire shall procure and maintain Cyber Liability coverage in such amounts that will cover claims involving privacy violations, information theft, damage to, or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion, and network security.
- E. Commercial Crime Insurance. Concessionaire shall procure and maintain Commercial Crime insurance covering, but not limited to, Loss arising from employee theft, employee dishonesty, forgery or alteration, robbery, burglary, embezzlement, disappearance, destruction; money orders and counterfeit currency; depositor's forgery; computer fraud, on-premises and in-transit.
- F. Mutual Waiver of Subrogation. Concessionaire will waive any right of action that it and/or its insurance carriers might have against the Developer and/or City and County of Denver (including their respective employees, officers, commissioners, or agents) or against other Concessionaires of the Developer for any Loss, to the extent that such Loss is covered by any insurance policy or policies maintained or required to be maintained by Concessionaire pursuant to the Agreement and to the extent that such proceeds (which proceeds are free and clear of any interest of third parties) are received by the party claiming the Loss. Concessionaire will also waive any right of action it

and/or its insurance carrier might have against the Developer and/or City and County of Denver (including its respective employees, officers, commissioners, or agents) for any Loss, whether or not such Loss is insured. If any of Concessionaire's applicable insurance policies do not allow the insured to waive the insurer's rights of subrogation prior to a Loss, Concessionaire will cause it to be endorsed with a waiver of subrogation that allows the waivers of subrogation required by this Section

- G. Certificates Required. All certificates required by this Agreement shall be sent directly to the City at [Address]. City's control number for this Agreement shall be noted on each certificate of insurance. Certificates evidencing the existence of the policies, in such form as City may require, shall be delivered to City prior to the Shell Space Turn Over Date. Upon written request, Concessionaire agrees to furnish City, at any time thereafter during the Term, the original or a certified copy of said policy or policies.
- H. Concessionaire's Risk. City in no way warrants and/or represents that the minimum limits contained herein are sufficient to protect Concessionaire from liabilities that might arise out of the performance of the terms and conditions of this Agreement by Concessionaire, its agents, representatives, or employees. Concessionaire shall assess its own risks and as it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. Concessionaire is not relieved of any liability or other obligations assumed or pursuant to this Agreement because of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. In no event shall City be liable for any: (i) business interruption or other consequential damages sustained by Concessionaire; (ii) damage, theft, or destruction of Concessionaire's inventory, Improvements, or property of any kind; or (iii) damage, theft, or destruction of an automobile, whether or not insured.
- I. In the event Concessionaire has failed to remedy any lapse in coverage within ten (10) days after notice thereof from City, City may affect such coverage and recover the cost thereof immediately from the Surety or from Concessionaire. City reserves the right to modify any Insurance Requirements stated herein. The Parties agree to modify the Summary of Contract Provisions to reflect modifications in the Insurance Requirements. Any such modification will be confirmed by letter executed by the Executive Director, without need for formal amendment to this Agreement.

**SECTION 12.02 GOVERNMENTAL IMMUNITY.** The Parties understand and agree that City, its officers, officials, and employees are relying on and do not waive or intend to waive by any provisions of this Agreement, monetary limitations, or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., or otherwise available to City, its officers, officials, and employees.

### **ARTICLE XIII. SURETY FOR PERFORMANCE**

#### **SECTION 13.01 FORM OF SURETY**

To secure payment for rents, fees, charges and other payments required hereunder, Concessionaire will post with Developer a Surety.

The Surety will be maintained throughout the Term of this Agreement and any holdover or extension until released by Developer in accordance with Section 16.03 and will be in an amount equal to the sum of the Support Space Rent plus MAPF payable to Developer

hereunder for a period of six (6) months. The Surety will be issued by a bank or surety provider acceptable to Developer and authorized to do business in the State of Colorado, and will be in a form and content satisfactory to Developer. 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 Developer, 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 Developer in writing within forty-five (45) days of a determination that the Performance Surety is to be terminated and or is not going to be renewed.

Notwithstanding any provision herein to the contrary, if at any time during the Term Developer deems the amount of Surety insufficient to properly protect Developer 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 Developer, violated other terms of this Agreement, Concessionaire covenants that after receiving notice, it will increase the Surety to the amount required by Developer, provided however, the percentage increase shall not exceed five (5%) of the annual percentage increase that has occurred with respect to Concessionaire's rent, fees, and charges.

Concessionaire shall furnish the Surety within ten (10) days of the Effective Date as security for the full performance of every provision of this Agreement by Concessionaire. Failure to maintain the Surety as set forth herein shall be an event of Default hereunder.

#### **SECTION 13.02      APPLICATION OF SURETY**

In the event Concessionaire fails to perform the payment terms and conditions of this Agreement, Developer, 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. Developer 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 Developer, Developer may, in its sole discretion, terminate this Agreement.

#### **SECTION 13.03      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 throughout the entire Term. Upon termination of this Agreement, the release of Surety will not occur until all rents, fees, charges, and other payments due to Developer are satisfied and Developer has accepted the findings of Concessionaire's audit or has successfully conducted an audit in accordance with the provisions of Section 5.10 of this Agreement. In the event of a dispute as to the condition of the Premises, only the amount in dispute will be retained for remedy. Developer shall release the Surety without interest within thirty (30) days of meeting the above requirements.

## **ARTICLE XIV. PROPERTY DAMAGE**

### **SECTION 14.01 COMPLETE DESTRUCTION**

If Premises, the Terminal in which the Premises are located, or any portion thereof is destroyed or damaged to an extent that renders it unusable, City and/or Developer (as agreed upon between the City and the Developer in accordance with the terms of the Development Agreement), may rebuild or repair any portions of the building structure destroyed or damaged, and if the cause was beyond the control of Concessionaire, Concessionaire's obligation to pay the Compensation hereunder shall abate as to such damaged or destroyed portions during the time they are unusable. If City or Developer, as applicable, 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 (in respect of City's notice) Developer will communicate the decision to the Concessionaire. At its option, Concessionaire may then terminate this Agreement effective as of the date of such event.

### **SECTION 14.02 LIMITS OF CITY'S AND DEVELOPER'S OBLIGATIONS AND DEVELOPER'S OBLIGATIONS DEFINED**

Developer shall not be, and City shall not be deemed, liable for the following: (i) any damage to property of Concessionaire or others located on the Premises 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 the Premises or 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 Premises, 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 the Premises or in the building of which they form a part; and (viii) all property of Concessionaire kept or stored on the Premises is at the risk of Concessionaire only.

Further Concessionaire shall defend and hold Developer and City (and each of their agents, employees, officers, directors, shareholders and affiliates) 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 Developer and City in case of fire, casualty, or accidents in the Premises or in the building of which the Premises is a part, of defects therein, or in any fixtures or equipment. Concessionaire shall promptly thereafter confirm such notices 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. Developer and City will not be responsible to Concessionaire for any claims related to loss of use, loss of profits, or loss of business resulting from any partial, extensive, or complete destruction of the Premises regardless of the cause of damage.

### **SECTION 14.03 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 Developer and City and its directors, officers, agents, servants, employees, shareholders and affiliates for loss or damage to property.

#### **ARTICLE XV. DAMAGING ACTIVITIES**

No goods or materials will be kept, stored, or used in or on the Premises that are flammable, explosive, hazardous (as defined below), or that may be offensive or cause harm to the general public or cause damage to the Premises. Concessionaire is responsible for compliance and shall require its contractors to comply with all federal, state, and local environmental rules, regulations, and requirements. This includes compliance with Great Hall and DEN's Rule and Regulation, Rule 180 incorporated hereto by reference. Concessionaire shall obtain all necessary federal, state, local, and DEN permits and comply with all permit requirements. Nothing will be done on the Premises other than as provided in this Agreement that will increase the rate of or suspend the insurance on the Premises or on any structure of Developer or City. No machinery or apparatus will be used or operated on the Premises that will damage the Premises or adjacent areas; provided, however, that nothing in this Article will preclude Concessionaire from bringing or using on or about the Premises, with approval by Developer, such materials, supplies, equipment, and machinery as are appropriate or customary in the operation of Concessionaire's business under this Agreement. Concessionaire agrees that nothing shall be done or kept on the Premises that might impair the value of Developer or City's property or that would constitute waste.

The term "Hazardous" will mean:

1. Any substance the presence of which requires or may later require notification, investigation or remediation under any environmental Law; or
2. Any substance that is or becomes defined as a "hazardous waste", "hazardous material", "hazardous substance", "pollutant" or "contaminant" under any federal, state, or local environmental Law, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.), the Resources Conservation and Recovery Act (42 U.S.C. §6901 et seq.) and the associated regulations; or
3. Any substance that is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise harmful and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, any state of the United States, or any political subdivision within any state; or
4. Any substance that contains gasoline, diesel fuel, or other petroleum hydrocarbons or volatile organic compounds; or
5. Any substance that contains polychlorinated biphenyls, asbestos, or urea formaldehyde foam insulation; or
6. Any substance that contains or emits radioactive particles, waves or materials, including, without limitation, radon gas.

Concessionaire agrees that nothing shall be done or kept on the Premises and no improvements, changes, alterations, additions, maintenance, or repairs made that might impair

the structural soundness of the building; result in an overload of utility, plumbing, or HVAC systems serving the Terminal and/or concourses within the Airport; or interfere with electric, electronic, or other equipment at the Airport. In the event of violations hereof, Concessionaire agrees immediately to remedy the violation at Concessionaire's own cost and expense.

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

#### **ARTICLE XVI. 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 applicable federal, state, and local Laws and regulations, Great Hall and DEN's Rules and Regulations, policies, procedures and Operating Directives as are now or may hereinafter be prescribed by Developer and 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, or Developer 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 Great Hall and the Airport. 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 Great Hall as identified in both Great Hall DEN's Rules and Regulations, as amended from time to time. Concessionaire's failure to keep and observe said Laws, regulations, ordinances, rules, and handbooks shall constitute a material breach of the terms of this Agreement in the manner as if the same were contained herein as covenants.

#### **ARTICLE XVII. AIRPORT SECURITY**

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 Developer 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 Developer or City, then, in addition to any other remedies available to Developer or City, Concessionaire covenants to fully reimburse Developer or City any fines or penalties levied against Developer or City, and any attorney fees or related costs paid by Developer or 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.

Concessionaire understands and acknowledges that its ability to remain open and conduct operations under this Agreement is subject to changes in alert status as determined by TSA, which is subject to change without notice. If the security status of the Airport changes at any time during the Term of this Agreement, 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 XVIII. AMERICANS WITH DISABILITIES ACT**

Concessionaire will comply with the applicable requirements of the Americans with Disabilities Act ("ADA") 42 USC § 12000 et seq. and any similar or successor Laws, ordinances, rules, standards, codes, guidelines and regulations and will cooperate with Developer and 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.

#### **ARTICLE XIX. FAA APPROVAL**

To the extent FAA approval is required, the same will be obtained by the Parties to this Agreement as a condition to the execution hereof or as otherwise required. If the FAA disapproves this Agreement, it will not be valid and both Parties will bear their own expenses relative to this Agreement up to the date of disapproval.

#### **ARTICLE XX. RIGHT OF FLIGHT**

Concessionaire's right to use the Premises for the purposes set forth in this Agreement shall be secondary and subordinate to the operation of DEN. Concessionaire acknowledges that because of the location of the Premises at DEN, noise, vibrations, fumes, debris, and other interference with the Permitted Use(s) will be caused by DEN operations. Concessionaire hereby waives all rights or remedies against City arising out of any noise, vibration, fumes, debris, and/or interference that is caused by the operation of DEN. City specifically reserves for itself and for the public a right of flight for the passage of aircraft in the airspace above the surface of DEN. Additionally, City reserves for itself the right to cause in said airspace such noise, vibration, fumes, debris, and

other interference as may be inherent in the present and future operation of aircraft. Concessionaire expressly agrees for itself, its successors, and assigns, to prevent any use of the Premises, which would interfere with or adversely affect the operation or maintenance of DEN, or otherwise constitute an airport hazard.

#### **ARTICLE XXI. FEDERAL RIGHT TO RECLAIM**

In the event a United States governmental agency demands and takes over the entire facilities of DEN or the portion thereof wherein the Premises are located, for public purposes, for a period in excess of ninety (90) consecutive days, then this Agreement will terminate and Developer 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 rent 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.

**ARTICLE XXII. PROPERTY RIGHTS RESERVED**

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

**ARTICLE XXIII. ASSIGNMENT AND SUBCONTRACT**

Developer shall notify the City upon any assignment, subcontract and/or sublease of its rights, interests of obligations, in whole or in part, under this Agreement. Concessionaire may not assign, subcontract, and/or sublease its rights, interests, or obligations in whole or in part under this Agreement without the prior written consent of the City in the City's sole and absolute discretion. Concessionaire shall not grant any license or concession hereunder, or permit any other person or persons, company, or corporation to occupy the Premises without first obtaining written consent of the City in the 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 the City shall, at the option of the Executive Director, automatically terminate this Agreement and all rights of Concessionaire hereunder. Subject to the terms and conditions set forth in this Section, and only after it has received the City's written approval and consent, Concessionaire shall be permitted to subcontract with respect to all or any portions of the Premises.

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 the 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 rent, 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-lessees 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.



**ARTICLE XXIV. CORPORATE TENANCY**

If Concessionaire is a corporation, partnership, or limited liability business organization, the undersigned officer of Concessionaire hereby warrants and certifies to Developer 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.

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

**ARTICLE XXV. 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.

**ARTICLE XXVI. RIGHT TO DEVELOP AIRPORT**

Concessionaire recognizes that from time to time during the Term, 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, representatives, shareholders, affiliates and directors by way of such inconveniences. Concessionaire agrees to waive any right to claim Damages or other consideration therefrom.

It is covenanted and agreed that City holds and 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.

Further, Concessionaire agrees that no liability shall attach to City, its officers, agents, employees, shareholders, affiliates and officers 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 or the Developer, 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.

**ARTICLE XXVII. ADMINISTRATIVE HEARING**

Disputes arising out of this Agreement shall be resolved by administrative hearing before the CEO following the procedures outlined in D.R.M.C. §5-17, provided that City shall retain its right to obtain an order of eviction in accordance with applicable state Law. No cause of action shall be brought against City until there has been full compliance with the terms of this paragraph. The CEO's determination resulting from said administrative hearing shall be final, subject only to Concessionaire's right to appeal the determination under Colorado Rules of Civil Procedure, Rule 106 (a) (4).

**ARTICLE XXVIII. 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 in-house attorney time (fees) and appellate fees.

**ARTICLE XXIX. 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.

**ARTICLE XXX. NOTICES AND COMMUNICATIONS**

All notices or communication, whether to Developer or to City or to Concessionaire pursuant hereto, will be deemed validly given, served, or delivered upon receipt by the party by hand delivery, or 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:

<b>TO CITY (MAIL DELIVERY):</b>	<b>TO DEVELOPER (MAIL DELIVERY)</b>	<b>TO CONCESSIONAIRE (MAIL DELIVERY):</b>
Attn: Chief Executive Officer  Denver International Airport  8500 Pena Boulevard Denver, Colorado 80249-6340		
<b>(HAND DELIVERY)</b>	<b>(HAND DELIVERY)</b>	<b>(HAND DELIVERY)</b>
Attn: Chief Executive Officer  Denver International Airport  Airport Office Building, 9th Floor  8500 Pena Boulevard Denver, Colorado		

80249-6340		
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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.

**ARTICLE XXXIV. BOND ORDINANCES**

This Agreement is in all respects subject and subordinate to any City bond ordinances applicable to 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 rentals, 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 rentals, 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 rentals, 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 rentals, fees, and charges result in an increase of more than five percent (5%) in the dollar amount of Compensation paid by Concessionaire under Article V of this Agreement for the previous calendar year. In such a case, Concessionaire shall promptly advise the CEO of its intention to cancel and terminate this Agreement at least sixty (60) days prior to the proposed effective date of such schedule of rentals, fees, and charges. Upon such notice of intent to cancel and terminate, Concessionaire shall surrender the Premises upon a date specified by City within at least one hundred twenty (120) days after Concessionaire advised City. Should Concessionaire fail to give such notice of cancellation and termination, then Concessionaire shall be deemed to have accepted the new rate(s) of compensation as promulgated by City. Failure by City to reestablish the rentals, fees, and charges at a five (5) year interval date shall not waive City's right to reestablish the rentals, fees, and charges at any time thereafter.

**ARTICLE XXXI. 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 so as to allow Concessionaire to reduce or abate its obligation to pay the any obligation due herein.

#### **ARTICLE XXXII. DEVELOPER APPROVALS**

Except as otherwise indicated elsewhere in this Agreement, wherever in this Agreement approvals are required to be given or received by Developer, it is understood that the Executive Director, or a designee of the Executive Director, or any successor in function and/or title is hereby empowered to act on behalf of Developer. Further, except as otherwise indicated elsewhere in this Agreement, wherever in this Agreement approvals are required to be given by the Executive Director, it is understood that the Executive Director or any successor in function and/or title may further delegate such authority through the Great Hall Concessions Handbook and/or Tenant Work Great Hall Permit Handbook or otherwise.

#### **ARTICLE XXXIII. TIME IS OF THE ESSENCE**

Time is of the essence of this Agreement.

#### **ARTICLE XXXIV. TAXES**

Concessionaire will bear, at its own expense, all costs of operating its business including all applicable sales, use, intangible and possessory interest taxes of any kind, against Concessionaire's Premises, the real property and any improvements thereto, Trade Fixtures and other personal property used in the performance of the Concession or estate which are created herein, or which result from Concessionaire's occupancy or use of the Premises or assessed on any payments made by Concessionaire hereunder, whether levied against Concessionaire or Developer or City, as applicable. Concessionaire will also pay any other taxes, fees, or assessments against the Premises or estate created herein for which it is responsible. Concessionaire will pay any such taxes, fees, or assessments when due. Developer or City will attempt to cause the taxing authority to send the applicable tax bills directly to Concessionaire and Concessionaire will remit payment directly to the taxing authority, in such instance. In the event that tax is levied against the Developer or City with respect to property subject to multiple concession agreements, Concessionaire will accept the allocation of such tax as reasonably prepared by the Developer or City, and will remit reimbursement in accordance with a notice of the allocation from the Developer or City. Concessionaire may reserve the right to contest such taxes, fees, or assessments and withhold payment upon written notice to Developer or City, as corresponds, of its intent to do so, so long as the nonpayment does not result in a lien against the real property or any improvements thereon or a direct liability on the part of Developer or City. Concessionaire shall pay to Developer or City, with each payment of Premises Rent, Support Space Rent, Privilege Fee, Utilities Cost, Concession Services Fees, and any other payments under this Agreement to Developer or City, all sales or other taxes which may be due with respect to such payments, and upon receipt, Developer or City, as corresponds, shall remit such taxes to the applicable taxing authorities.

#### **ARTICLE XXXV. 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 Developer

or 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 Developer and 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. Concessionaire shall deliver to the Developer proof that any and all trade or entity names used by the Concessionaire in its operations under this agreement are duly registered with any applicable authorities, including but not limited to, with Colorado 1.

#### **ARTICLE XXXVI. 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 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. The same will apply to information exchanged with the Developer to the extent that Colorado Open Records Act is applicable.
- 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.

#### **ARTICLE XXXVII. DATA SECURITY**

Concessionaire will establish and maintain safeguards against the destruction, loss, or alteration of Developer data or City data or third party data that Concessionaire may gain access to or be in possession of in the performance of this Agreement. Concessionaire will not attempt to

access, and will not allow its personnel access to, Developer data or City data or third party data that is not require for the performance of the services of this Agreement by such personnel.

Concessionaire will adhere to and abide by the security measures and procedures established by Developer and City. In the event Concessionaire or Concessionaire's subcontractor (if any) discovers or is notified of a breach or potential breach of security relating to Developer data or City data or third party data, Concessionaire will promptly: (i) notify Developer or City of such breach or potential breach; and (ii) if the applicable Developer data or City data or third party data was in the possession of Concessionaire at the time of such breach or potential breach, Concessionaire will investigate and cure the breach or potential breach.

#### **ARTICLE XXXVIII. 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 Developer barring Concessionaire from City facilities or participating in City operations.

#### **ARTICLE XXXIX. HAZARDOUS SUBSTANCES**

No goods, merchandise, or material will be kept or stored by Concessionaire at DEN, which are explosive or hazardous; and no offensive or dangerous trade, business or occupation will be carried on therein or thereon. Nothing will be done in the performance of this Agreement that will increase the rate of or suspend any insurance policy or coverage of Developer or City. Concessionaire covenants that all materials, equipment, and all other items used in the performance of this Agreement are in compliance with Occupational Safety and Health Administration (OSHA).

#### **ARTICLE XL. CITY'S SMOKING POLICY**

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

#### **ARTICLE XLI. COMPLETE CONTRACT**

This Agreement 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.

**ARTICLE XLII. ORDER PRECEDENCE**

The documents listed below are a part of this Agreement and are hereby incorporated by reference. In the event of inconsistency between provisions of this Agreement or the documents, unless otherwise provided herein, the terms of the following documents will govern in the following order of precedence:

- A. Applicable Exhibits and Appendices to this Agreement;
- B. [RFP No. xxxxx], if applicable;
- C. Concessionaire's Response, and any subsequent information submitted by Concessionaire during the evaluation process, as modified and accepted by Developer.

**ARTICLE XLIII. CITY'S STEP IN RIGHTS**

The Parties understand and agree City expressly holds the right to exercise any rights and/or remedies available to Developer under this Agreement. If the City exercises its Step-in Rights or other such rights given to the City under the Development Agreement and assumes possession of the Concession Location(s) as a result of or in connection with a default by Developer under the Development Agreement, with or without terminating the Development Agreement, the rights of Developer under the Concession Agreement shall be considered assigned to the City and the Concessionaire shall be bound to the City under all of the terms, covenants and provisions of the Concession Agreement, including those springing terms and conditions appended to this Agreement. In such event, Concessionaire hereby agrees to attorn to the City and to recognize the City as the Developer under the Concession Agreement, such attornment to be self-operative and self-executing. Upon such an assignment to the City, the City agrees to be bound by the Concession Agreement and the City shall assume and perform Developer's obligations thereunder, provided that: (i) at the time of such assignment, Concessionaire has paid all amounts then due and payable and is not in default under any of the terms and conditions of the Concession Agreement, beyond any applicable notice and cure period; (ii) the City will be entitled to receive payment of all Concession fees and compensation accruing after the time of such assignment, whether or not Concessionaire has prepaid any of such fees to Developer; (iii) the City shall not be liable for any act or omission of the Developer prior to such assignment of the Concession Agreement to the City; (iv) the City shall not be bound by any material amendment or modification of the Concession Agreement made without its consent prior to such assignment of the Concession Agreement to the City; (v) the City shall not be subject to any offsets or defenses which Concessionaire might have against the Developer; (vi) the City shall not be liable for performance of obligations of the Developer arising prior to such assignment of the Concession Agreement to the City; and (iv) any subsequent amendment to this Agreement may only be made by written instrument signed by the Parties hereto, which shall be 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. 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 Developer) any right to claim damages or to bring any suit, action or other proceeding against either Developer or the Concessionaire because of any breach hereof or because of any of the terms, Covenants, agreements and conditions herein.

**ARTICLE XLIV. 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.

**ARTICLE XLV. SIGNATURES; AMENDMENTS**

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.

The Parties hereby acknowledge that certain provisions in the Summary of Contract Provisions, or other Sections of this Agreement, are unknown or estimates as of the Effective Date and thus are subject to change in accordance with the terms hereof, which modifications can be made by letter executed by the Chief Executive Officer without formal amendment and notified to the City and to the Concessionaire.



EXHIBIT A PREMISES DESCRIPTION

**EXHIBIT B PERMITTED USES AND PRICE LISTING**

EXHIBIT C MONTHLY CONCESSION REPORT AND QUARTERLY INCOME STATEMENT

**EXHIBIT D SCHEDULE OF ASSETS AND AMORTIZATION**

**EXHIBIT E CERTIFICATE OF INSURANCE FOR AVIATION**

**EXHIBIT F CREDIT, DEBIT AND CHARGE CARDS**

**EXHIBIT G ACDBE COMMITMENT FORM AND DISADVANTAGE BUSINESS PROGRAMS**

## APPENDIX A

### COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

NOTE: As used below the term “Contractor” shall mean and include Concessionaire, and the term “sponsor” shall mean the “Developer.”

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

1. **Compliance with Regulations.** The Contractor 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 Contractor, 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 Contractor 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 Contractor 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 Contractor of the Contractor’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 Contractor 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 Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor 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 Contractor’s noncompliance with the nondiscrimination provisions of this Agreement, the sponsor will impose such sanctions as it or the FAA may determine to be appropriate including, but not limited to:

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

6. **Incorporation of Provisions.** The Contractor 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 Contractor 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 Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor (who then may request the City) to enter into such litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

## APPENDIX B

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

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

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 C

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

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

- 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 D

### TITLE VI LIST OF PERTINENT NONDISCRIMINATION AUTHORITIES

As used below, the term “Contractor” will mean and include Concessionaire and the term “sponsor” will mean Developer.

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

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits’ discrimination on the basis of race, color, national origin);
- • 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation-Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601 ), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S. C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC§ 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 1 00-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, 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 E

### DISADVANTAGED BUSINESS ENTERPRISES- REQUIRED STATEMENTS

As used below, the term “Contractor” will mean and include Concessionaire, and the term “sponsor” will mean Developer.

**Contract Assurance (§ 26.13)** – The Contractor or subcontractor will not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor will carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts.

Failure by the Contractor 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.

**Prompt Payment (§26.29)** – The prime Contractor agrees to pay each subcontractor under this prime Agreement for satisfactory performance of its Agreement no later than thirty (30) days from the receipt of each payment the prime Contractor receives from Contractor. The prime Contractor agrees further to return retainage payments to each subcontractor within thirty (30) 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 the sponsor. This clause applies to both DBE and non-DBE subcontractors.

## **APPENDIX F**

### **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 or Contractor agrees that it 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.

## APPENDIX G

### ACDBE/DBE POLICY AND OBJECTIVE STATEMENTS:

This part 23 seeks to achieve several objectives:

- (a) To ensure nondiscrimination in the award and administration of opportunities for concessions by airports receiving DOT financial assistance;
- (b) To create a level playing field on which ACDBEs can compete fairly for opportunities for concessions;
- (c) To ensure that the Department's ACDBE program is narrowly tailored in accordance with applicable Law;
- (d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as ACDBEs;
- (e) To help remove barriers to the participation of ACDBEs in opportunities for concessions at airports receiving DOT financial assistance; and
- (f) To provide appropriate flexibility to airports receiving DOT financial assistance in establishing and providing opportunities for ACDBEs.

### **Policy Statement**

#### 26.23 Objectives/Policy Statement

City has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. City has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, City has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of City to ensure that DBEs are defined in part 26, have an equal opportunity to receive and participate in DOT-assisted Contracts. It is also our policy:

- 3. To ensure nondiscrimination in the award and administration of DOT- assisted Contracts;
- 4. To create a level playing field on which DBEs can compete fairly for DOT-assisted Contracts;
- 5. To ensure that the DBE Program is narrowly tailored in accordance with applicable Law;
- 6. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- 7. To help remove barriers to the participation of DBEs in DOT assisted Contracts; and



8. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

DSBO has been delegated as the DBE Liaison Officer. In that capacity, DSBO is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the sponsor in its financial assistance agreements with the Department of Transportation.

The City has disseminated this policy statement to the City and County of Denver and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT -assisted Contracts.

\_\_\_\_\_  
CHIEF EXECUTIVE OFFICER

\_\_\_\_\_  
DATE