

PARKS USE AGREEMENT

This PARKS USE AGREEMENT (the “**Agreement**”) is entered as of the date on the City’s signature page below by and between the CITY AND COUNTY OF DENVER (the “**City**”), a Colorado municipal corporation, and GERMAN AMERICAN CHAMBER OF COMMERCE – COLORADO CHAPTER, a Colorado nonprofit corporation (the “**User**”), with an address of 4100 E. Mississippi Avenue, Suite 420, Denver, Colorado 80246, referred to herein jointly as the “**Parties**” and individually as a “**Party**”.

RECITALS

WHEREAS, the User desires to use, during the Term of this Agreement, and subject to DPR’s Public Event Permit Rules, Regulations and Policy (“**Permit Rules**”), a portion of Civic Center Park, a designated park owned by the City and operated by the City’s Department of Parks and Recreation (“**Event Site**”), for holding a multi-day event for the Permitted Activities as described in this Agreement (the “**Event**”); and

WHEREAS, the City has determined that, in the exercise of the City’s lawful functions, it is desirable to issue a permit to the User by means of this Agreement to use the Event Site for the Event, and that such use is compatible and appropriate with the uses allowed for City-owned parks; and

WHEREAS, the Parties believe that the Event provides a mutually beneficial use and activities, and serves as a recreational and social occasion for the enjoyment of the general public; and

WHEREAS, by signing this Agreement, the User acknowledges that it will utilize the Event Site for the Event subject to the terms and provisions of this Agreement and the Permit Rules;

NOW, THEREFORE, the City, for the Term specified below and in consideration of the recitals stated above and the terms and conditions stated in this Agreement, hereby grants to the User a permit for the right to use the Event Site for the Event subject to the express terms and conditions as follows:

1. **EVENTS.**

1.1. Event. The User agrees to install, operate and maintain any temporary structures, platforms, stages, furnishings, equipment, restrooms, and associated items and amenities, including those used for a Concession, authorized under an event permit (“**Facilities**”) (as defined in the Permit Rules) and concession operations in Civic Center Park for the Permitted Activities (“**Event**”) during the Event Dates specified in herein.

1.2. Event Dates. Except as otherwise agreed by the Department of Parks and Recreation Executive Director (“**Executive Director**”) and the User in writing, the Event will be held during the dates specified in the event permit (defined in Section 2.1.1, below) issued under the Permit Rules, from approximately November 7, 2023, through December 29, 2023 (“**Event Dates**”). The Event Dates will include Load-In and Load-Out, as defined in the Permit Rules. The

City is not obligated to issue any subsequent permits for future events or enter into a subsequent agreement, or amend this agreement, for any future years or events. There is no requirement that the User present Permitted Activities on each and every day during the Event Dates, but the User shall provide prior written notification to the Department of Parks and Recreation Parks Permitting division (“**Parks Permitting**”) if the User intends not to present all or certain Permitted Activities or anticipates not being able to present all or certain Permitted Activities for reasons other than Force Majeure, as defined in the Permit Rules and Section 6.4 below, during the Event Dates, excluding days for Load-In and Load-Out. The User shall remain responsible for maintaining and securing the Facilities and Personal Property at the Event Site despite the duration or reasons for not presenting Permitted Activities. The hours for public admission to the Event Site for each day of the Event shall be restricted as specified in the event permit or otherwise approved in writing and in advance by Parks Permitting. The User’s maintenance crews and security personnel assigned to protect the User’s Facilities and Personal Property situated in the Event Site are allowed to be on site in the park during parks curfew (defined under Part 7.3 of the Permit Rules) for that purpose.

1.3. Event Site. Except as otherwise agreed in writing, the Event will be held during the dates set forth in the event permit at the Event Site within Civic Center Park.

1.3.1. The specific boundaries of the Event Site within the Park shall be defined in the event permit and as depicted in the drawing contained in **Exhibit A** attached hereto and incorporated herein by reference, subject to modification through a revised drawing as mutually agreed in writing by Parks Permitting and the User. Any modification of Event Site shall be subject to approval by Parks Permitting and the terms and conditions Parks Permitting and the Executive Director deem necessary for the proper and safe operation of the Event and to accommodate and protect the rights of other scheduled permitted events or authorized uses in or near the Event Site and the patrons of the park.

2. AUTHORIZATION.

2.1. Permit & Permitted Activities.

2.1.1. By this Agreement, and subject to its terms and conditions, the City grants to the User a license for the use of the Event Site during the Event Dates and for the Term of this Agreement. The Agreement is conditioned upon the granting of an event permit to the User for the right to install, operate and maintain the approved Facilities and the approved concessions at and within the Event Site; to conduct the Event at the Event Site during the Event Dates; to perform Load-In and Load-Out; to perform all work and take all actions as contemplated under the event permit; and to engage in the activities and uses specified under the event permit (the “**Permitted Activities**”) (collectively, the “**Public Event Permit**”). The Public Event Permit is or will be granted on the condition that the User fully and faithfully performs all obligations specified in the Public Event Permit and this Agreement.

2.1.2 No other permit otherwise issued by the Department of Parks and Recreation will be required, unless otherwise notified. Notwithstanding this, the User shall obtain, pay for, and comply with any other permits, licenses or approvals required by other City departments or City agencies, including but not limited to the City’s Office of Special Events, or any other governmental entity with authority over any aspect of the Event or the use of City property. For the purposes of, and subject to, the Public Event Permit, the User shall assume possession and control of the Event Site as of the date Load-In activities are authorized to start at the Event Site subject to the City’s right to perform its services under Section 5, to enforce this

Agreement, and to take such actions as required by law. To the extent that the User retains or authorizes Subcontractors to perform any of the User's obligations or to exercise any rights of the User under the Public Event Permit and this Agreement, the User shall be solely responsible for assuring that the Subcontractor also complies with the Public Event Permit and this Agreement.

2.2. Public Use. Access to and use of the Event Site shall be subject to this Agreement for such sales and services and as authorized under the Permit Rules. The public shall have access to all portions of the Event Site except for enclosed or secured Facilities. The User shall regulate the public access and use to assure compliance with the Public Event Permit, the Permit Rules, and all occupancy and safety restrictions under any federal, state or local law, governmental rule, regulation or ordinance, or judicial order or decree, including without limitation the City Charter; Denver Revised Municipal Code; rules, regulations, and policies of the City; and executive orders of the City's Mayor, as any of the same may be amended or supplemented from time to time; along with all applicable liquor laws and licensing requirements (state or local); and as further provided in the Permit Rules ("**Applicable Law**") and as required by the Public Event Permit.

2.3. Concession.

2.3.1. The Public Event Permit includes the exclusive right to sell and serve, or contract with or otherwise permit a Subcontractor to sell and serve, food, beverages and merchandise related to the Event within the Event Site during Event Dates ("**Concession**"), all as required under the Public Event Permit and the Permit Rules (see Permit Rules Part 6.4). This exclusive right shall not limit the authority of the City to permit other concessions or privileges to sell and serve food, beverages and merchandise within the surrounding park or other City-owned property outside of the Event Site.

2.4. Sale and Service of Permitted Alcohol at the Event Site. Subject to the terms and conditions of the Public Event Permit and this Agreement, the User shall have the right to engage in the on-site service, sale, and consumption of beer, wine, and hard liquor as authorized and limited under Applicable Law ("**Permitted Alcohol**"). Otherwise, the sale and service of alcohol beverages of any kind at the Event are strictly prohibited. The right of the User or the User's Subcontractor to engage in the service and sale of Permitted Alcohol to the public within the Event Site shall be subject to the User obtaining and complying with all applicable licenses, permits and approvals issued in accordance with Applicable Law and acting in accordance with the Public Event Permit and this Agreement. The User may enter into a separate agreement with a properly qualified Subcontractor to manage and operate service of Permitted Alcohol within the Event Site during the Event Dates.

2.4.1. The User shall provide the security necessary to assure that the public complies with all requirements and restrictions under Applicable Law. The security for alcohol sale and service is to be addressed as required by the Public Event Permit and Parks Permitting, including any required plans or other procedures. The User shall, or require its Subcontractors to, obtain and maintain liquor legal liability insurance for the sale and service of Permitted Alcohol during the Event as provided in Section 9, Insurance.

2.5. Advertising, Sponsorship and Signage. The Public Event Permit includes the right to permit and sell temporary advertising and sponsorship rights and install temporary signage related to the Event during the Event Dates and solely within the Event Site and such other locations as approved in advance and in writing by Parks Permitting, in accordance with any applicable plans, and in accordance with Applicable Law. All advertising and other signage must be promptly removed at the end of the Event in accordance with the Permit Rules.

2.6. Sales & Services. The sale of goods and services are allowed as appropriate for the support of the Event and in a manner consistent with the nature of the Event, the use of the park and as authorized under the Permit Rules and the Public Event Permit. The User agrees and covenants that, with respect to the Event, the User shall not permit any sales of, or any sponsorship, advertising, promotional products, and marketing in the Event Site or associated with the Event for the sale or promotion of, any of the following: (i) firearms; (ii) fireworks; (iii) pornography; and (v) tobacco.

3. FEES AND DAMAGE DEPOSIT.

3.1. The User shall pay to the City those fees required by the Permit Rules and established by the City (“Fees”); and a damage deposit, also required by the Permit Rules and established by the City (“**Damage Deposit**”). Such Fees and Damage Deposit do not include, and are separate from, any other fees or charges set by other City departments applicable to the Event. The User shall be solely responsible for paying in full and in a timely fashion any fees or charges required by other City departments or any other governmental entity with authority over any aspect of the Event or the use of City property.

3.2 The User shall pay, in advance and without offset or reduction, to the Department of Parks and Recreation the fees set forth below (in lieu of fees normally charged for public events held in City-owned parks) for the 2023 Event during the Term of the Agreement, due twenty-one (21) calendar days prior to the first day of Load-In, according to the following payment schedule:

\$220.00 per Event Day
\$195.00 per Load-In and Load-Out Day
\$138.75 per Day for electrical service
\$5,000.00 Damage Deposit (refundable)

Failure to meet this deadline may result in the late fees and denial of the Public Event Permit. The Fees paid by the User for the Public Event Permit shall be refunded if the entire Event is cancelled due to Force Majeure or is terminated due to Default by the City.

3.3 Payment Method. The Damage Deposit and Fees shall be tendered by check made out to the Denver Manager of Finance and delivered to the Parks Permitting Office or paid online.

4. USER RESPONSIBILITIES.

4.1. The User shall be responsible for organizing, producing and holding the Event, including the installation, safety and care of the Facilities and the Concession in the Event Site, and for the payment of all costs and expenses related thereto, all in accordance with the Public Event Permit and the Permit Rules. Except as otherwise expressly provided, any action or activity performed or taken in connection with the Event shall be the responsibility of the User. The User shall be responsible, either directly or through its Subcontractor(s), for providing the services related to or are associated with the Event, in accordance with the Public Event Permit and this Agreement.

4.2. Costs and Expenses. Any cost or expense incurred by the User in connection with the Event shall be the responsibility of and paid by the User, and shall be paid in a timely manner with documented evidence of such payment being provided to Parks Permitting, and as directed by Parks Permitting.

4.3. Duty of Care. While exercising the rights granted herein, the User shall use and

occupy the Event Site and the areas for Load-In and Load-Out in a safe and careful manner, follow all plans required by Parks Permitting, and shall comply with all Applicable Laws. The User shall not do any act or willfully allow any act to be done during the Term of the Public Event Permit or this Agreement that will in any way damage the Event Site or any part of the surrounding park or other City-owned or private property, or cause personal injury to, or damage the property of, attendees of the Event, citizens utilizing the surrounding park or other City-owned property, the owners of nearby private property, or City employees. User is subject to the liability provisions of Part VIII of the Permit Rules.

4.4. Utility Locate. Prior to engaging in any earth-disturbing activity in or near the Event Sites, the User shall be responsible for arranging for utility locations, at its sole expense and in accordance with Applicable Law. The User shall be liable for failure to comply with Applicable Law with respect to digging activities in or near utility locations.

4.5. Compliance with Parks Laws. Except as may be expressly set forth, the prohibitions and restrictions for uses and activities in a City-owned park set forth in Article I of Chapter 39 of the Denver Revised Municipal Ordinance shall be applicable and must be complied with.

5. CITY RESPONSIBILITIES.

5.1. City Services. The City will be responsible, at its own expense and within its sole discretion, for providing the following services with respect to the Event (“**City Services**”) including but not limited to:

5.1.1. Appointment of a Parks Permitting designee to assist with key meetings with City staff and departments; troubleshoot prior to, during, and after the Event; coordinate and support Load-In, Load-Out and other activities; review separate agreements with Subcontractors (if necessary and only upon request); attend walk-throughs and assist with property condition reports with the User; providing billings for utility reimbursements from the User (if applicable); and support the User in the implementation and enforcement of the approved plans.

5.1.2. Walk-Through Inspections and Records. The User’s representative and Parks Permitting or other representative of the City shall arrange times for walk-throughs as required by the Permit Rules. Walk-throughs may include a pre-Event walk-through, post-Event walk-throughs, or any other walk-throughs or inspection directed by Parks Permitting. A report of the condition of the Event Site and the surrounding park and adjoining right of way (if any) before and after the Event and Load-In and Load-Out, including contemporaneous pictures, shall be prepared and signed by both representatives. This report shall provide the basis for determining what clean-up, repairs and replacements are appropriate for the User to perform or the City to seek reimbursement from the Damage Deposit.

5.2. Permits and Licenses. The City agrees that it may in its discretion assist the User in obtaining permits and licenses necessary for the User to take reasonable advantage of its rights under the Public Event Permit and this Agreement; provided, however, that the assistance offered to the User with respect to permitting and licensing does not constitute a waiver, limitation or restriction of the City’s police and taxing powers.

6. TERM, TERMINATION AND CANCELLATION.

6.1. Term. The term of this Agreement will commence upon execution and expire at 11:59 p.m. on December 29, 2023 (the “**Term**”), unless sooner terminated in accordance with the terms of this Agreement, including without limitation the termination provisions herein, or the

expiration of the Public Event Permit. If the time needed to complete performance of any provisions of this Agreement extends beyond the Term of this Agreement or the Public Event Permit (including, but not limited to, any payment of Fees, the Damage Deposit, and inspections and any provisions that expressly survive the expiration or termination of this Agreement), this Agreement shall remain in full force and effect but only as to such provisions.

6.2. Mutual Termination; Termination for Convenience.

6.2.1. This Agreement may be terminated at any time upon the written mutual agreement of the User and the Executive Director.

6.2.2. This Agreement may be unilaterally terminated, for convenience, by either Party upon providing the other Party with thirty (30) days prior written notice; provided that the terminating Party is not in uncured breach or default of this of the Public Event Permit or Agreement. If an Event is in progress, the User shall be responsible for complying with all requirements and schedules specified in this Agreement for properly concluding the Event.

6.3. Termination Due to Rule Violation or Default. The City may, at its election, terminate this Agreement if the User fails to cure a violation of the Permit Rules or other default. Notice of termination under this Section 6.3 shall be sent to the User as provided in Section 16.8, below.

6.4. Termination or Cancellation Due to Force Majeure. If the holding of the Event, in whole or part, is not possible in accordance with the Force Majeure provisions of the Permit Rules, Part 8.3, the City and the User are each hereby released from any damage so caused to the other Party thereby, and the Event scheduled may be cancelled or the Event Dates reduced in number of days, as warranted due to the Force Majeure. Either Party may elect to exercise this termination or cancellation upon written notice to other Party along with a statement as to the specific Force Majeure causing the termination or cancellation.

7. DEFAULT AND REMEDIES.

7.1. Default by User. Along with violations under the Permit Rules, User may also be found in default of this Agreement for the following:

7.1.1. A failure to secure or maintain insurance as required under Part 8.4.3 of the Permit Rules, if not cured after written notice prior to the start of the Event;

7.1.2. Any material violation of a requirement or specification under the Permit Rules, including failure to timely pay Fees or Damage Deposit, or in a plan approved by Parks Permitting, if not cured after written notice but no later than two (2) calendar days during an Event if the City deems the material violation to be a threat to the public health, safety and welfare in the City's written notice to the User;

7.1.3. Any unapproved transfer of the Public Event Permit under Part 8.10 of the Permit Rules or other unapproved assignment of the User's rights and obligations under this Agreement (this is not curable);

7.1.4. Any bankruptcy or insolvency on the part of the User that could result in the User being unable to financially perform under this Agreement, the rights and obligations of the User being assigned to another party or a trustee in bankruptcy, or any legal determination invalidating or limiting the rights of the City under this Agreement or the control by the City over

any City property (this is not curable);

7.1.5. The User or any of its officers or directors are convicted, plead *nolo contendere*, enter into a formal agreement in which they admit guilt, enter a plea of guilty, or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature, in connection with the User's business (this is not curable); or

7.2. A material breach or default by the User of any term or condition under this Agreement if such breach or default is not cured by the User within ten (10) business days after written notice thereof or such other cure period specified in the City's written notice to the User.

7.3. Default By City. At no time shall the City be deemed to be in material breach or default under this Agreement unless and until the User shall have given to the City notice in writing, specifying such material breach or default and the City has failed to cure the material breach or default within ten (10) business days following said written notice or, if the breach or default cannot be reasonably cured during such ten (10) day period but the City commences in good faith to make a timely effort to cure within said ten (10) day period, then the time for cure may be extended for such period of time mutually agreed by the Parties but, if there is no mutual agreement, no longer than twenty (20) calendar days after the original written notice of Default; provided, further, that a material breach or default existing at the time of Load-In which prevents the User making full and effective use of the Event Site must be cured within two (2) days of written notice being received by the City.

7.4. Cumulative Rights and Remedies. Unless otherwise provided, the rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any Party shall not preclude or waive the right to use any other remedy.

7.5. Non-Waiver. No Party shall be excused from complying with any provision of this Agreement by the failure of the other Party to insist upon or to seek compliance. No assent, expressed or implied, to any failure by a Party to comply with a provision of this Agreement shall be deemed or taken to be a waiver of any other failure to comply by said Party.

8. TAXES, PERMITS, LICENSES AND LIENS.

8.1. Taxes, Permits and Licenses. The User shall pay promptly all taxes, excise, or license fees of whatever nature applicable to its activities, uses, and sales associated with the Event and to take out all municipal, state, or federal permits and licenses required under Applicable Law, and further shall furnish the City, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment of all taxes and fees above referred to and showing that all required permits and licenses are in effect. Appropriate records shall be maintained and made available in accordance with Applicable Law. The User shall be responsible for seeing that any Subcontractor engaged by the User with respect to the Event shall likewise comply with the provisions of this Section 8.1.

8.2. Liens and Claims. The User shall not permit any mechanic's or materialman's liens or any other liens to be imposed upon any City-owned property, or any part thereof, by reason of any work or labor performed or materials furnished by any person or legal entity to or on behalf of the User, either pursuant to C.R.S. § 38-26-107 or by any other authority. The User shall promptly pay when due, and shall require its Subcontractor(s) to pay when due, all bills, debts and obligations incurred in connection with this Agreement and the Event and shall not permit the

same to become delinquent. The User shall not permit any lien, judgment, execution or adjudication of bankruptcy which will in any way impair the rights of the City under this Agreement or to the City's property. The User shall timely obtain and submit all documentation or other certifications necessary to demonstrate, to the satisfaction of Parks Permitting, that all liens and claims for labor, materials, equipment, or other services or goods, if any were filed, have been released and waived or released upon the User posting an appropriate and sufficient bond or other surety, and that all City-owned property is free of any liens or claims associated with work performed by or on behalf of User.

8.3. Survival. The provisions of this Section 8 shall survive the expiration or termination of this Agreement.

9. INSURANCE.

9.1. General Conditions. The User shall secure, at least thirty (30) days in advance of the Event, the following insurance covering all operations, activities, and services contemplated under this Agreement and provide the City with a written schedule of the intended insurance coverages required by this Agreement which shall include their effective starting dates (which must be satisfactory to the City's Risk Management Department) and the duration of the coverages which shall be no shorter than thirty (30) days prior to the start of Load-In and thirty (30) days subsequent to the end of Load-Out during the Term of this Agreement and any extensions thereof. The User shall keep the required insurance coverage in force at all times during the effective dates specified on the written schedule, as approved by the City's Risk Management Department. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as A- VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies is to be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the City offices identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the City's signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, the User shall provide written notice of cancellation, non-renewal and any reduction in coverage to the City offices identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the User. The User shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the User. The User shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

9.2. Proof of Insurance. The User shall provide a copy of this Agreement to its insurance agent or broker. The User may not commence any work or operations at the Event Site or any Load-In and Load-Out areas prior to placement of coverage as required under this Agreement. The User certifies that the certificate of insurance attached as **Exhibit B**, preferably an ACORD form, complies with all insurance requirements of this Agreement. User shall provide an updated or renewed certificate of insurance by no later than the time indicated in Section 11.2, below. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of the User's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk

Management Department may require additional proof of insurance, including but not limited to policies and endorsements.

9.3. Additional Insureds. For Commercial General Liability, Business Auto Liability, and Liquor Legal Liability, the insurer(s) for the User or the User's Subcontractor(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insureds.

9.4. Waiver of Subrogation. For all coverages required under this Agreement, the User's insurer shall waive subrogation rights against the City.

9.5. Subcontractors. All Subcontractors (including sub-consultants, independent contractors, suppliers or other entities providing goods or services under this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the appropriate levels of coverages required by the User. The User shall include all such Subcontractors as additional insureds under its policies (with the exception of Workers' Compensation) or shall ensure that all such Subcontractors maintain the required coverages. The User agrees to provide proof of insurance for all such Subcontractors upon request by the City.

9.6. Workers' Compensation/Employer's Liability Insurance. The User shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. The User expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the User's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date the User executes this Agreement.

9.7. Commercial General Liability. The User shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

9.8. Business Automobile Liability. The User shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired, and non-owned vehicles used under this Agreement.

9.9. Liquor Legal Liability. The User shall maintain, or shall cause the Subcontractors who sell or serve Permitted Alcohol to maintain, Liquor Legal Liability coverage with limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

9.10. Survival. The provisions of this Section 9 shall survive the expiration or termination of this Agreement.

10. INDEMNIFICATION AND DEFENSE.

10.1. User hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or

relating to the work performed under this Agreement (“**Claims**”), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of User or its Subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

10.2. User’s duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. User’s duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City’s negligence or willful misconduct was the sole cause of claimant’s damages.

10.3. User will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City’s exclusive remedy.

10.4. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the User under the terms of this indemnification obligation. The User shall obtain, at its own expense, any additional insurance that it deems necessary for the City’s protection.

10.5. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

10.6. Copyright Indemnification. The User warrants that all copyrighted material used, performed, displayed or otherwise made public in association with the Event has been duly licensed and authorized by the copyright owners or their representatives and agrees to indemnify and hold the City harmless from any and all claims, losses, or expenses incurred with regard thereto.

10.7. Survival. The provisions of this Section 10 shall survive the expiration or termination of this Agreement.

11. PLANS.

11.1. All Plans required in accordance with Permit Rules for the Event (the “**Plans**”) and the requirements of the Plans shall be a material condition of this Agreement upon final approval of the Plans by Parks Permitting.

11.2 Review and Approval Process. For each of the Plans required under the Permit Rules, a complete Plan shall be submitted by the User to Parks Permitting no later than the number of days set by Parks Permitting prior to the first day of the Load-In for the Event. Parks Permitting shall review and provide to the User in writing by the date set by the City either: (i) an approval of such Plan; or (ii) if not approved, a list of all modifications required to the Plan. Upon receiving a modified Plan fully responsive to the changes previously identified by Parks Permitting, Parks Permitting will review and respond in writing to the modified Plan at a time set by the City. No Public Event Permit shall be effective until all required Plans are approved or, if further modifications to the Plans are authorized by Parks Permitting to be addressed by the User after the

start of the Event, conditionally approved by Parks Permitting.

12. RECORDS.

12.1. Examination of Records and Audits. Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to User's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. User shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require User to make disclosures in violation of state or federal privacy laws. User shall at all times comply with D.R.M.C. 20-276.

12.2. Confidential Information. As used in this Agreement, the term Confidential Information means all written information or documents, in hard copy or electronic form, that (i) is disclosed or provided by or through the User to the City pursuant to performance of this Agreement; and (ii) has been clearly marked or indicated in writing as being confidential by the User. Confidential Information does include this Agreement, any exhibits to this Agreement, any Certificate of Insurance submitted in accordance with Section 9, or any Plan submitted in accordance with Section 11. Confidential Information will be treated by the City as confidential proprietary information of the User pursuant to the provisions of the Colorado Open Records Act and under any rule of court except as otherwise provided under this Section 12.2. The Parties understand that all the written information or documents provided or produced under this Agreement may be subject to the Colorado Open Records Act., § 24-72-201, et seq., C.R.S. In the event of a request to the City for disclosure of any such information or documents deemed under this Agreement as Confidential Information, the City shall advise the User of such request in order to give the User the opportunity to object to the disclosure of any of the User's Confidential Information. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such requested Confidential Information to the court for judicial determination of the issue of disclosure, and the User agrees to intervene in such lawsuit to protect and assert the User's claims of privilege and against disclosure of such Confidential Information or waive the same. The User further agrees to defend, indemnify and save and hold harmless the City, its elected and appointed officials, agents and employees, from any claim, damages, expense, loss or costs arising out of the User's intervention to protect and assert the User's claim of privilege against disclosure including, but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs and damages that the City may incur directly or may be ordered to pay by such court.

13. PERSONAL PROPERTY.

13.1. Use and Removal. All goods, wares, materials, supplies, merchandise, Facilities, and other personal property which are not owned by the City and which relate to the User's use and occupancy of the Event Site ("Personal Property") shall be promptly removed by the User and its Subcontractor(s) on or before the last day of Load-Out. The City shall not be liable for any damage to or loss of Personal Property sustained during Load-In, Load-Out, or the Event Dates. If installation, use or removal of Personal Property causes any damage to Event Site or any

surrounding property, the User shall be responsible for the prompt repair or replacement of the same in good and workmanlike manner. If the User fails to remove any Personal Property by the last day of Load-Out, the City may, at its option, keep and retain said Personal Property or dispose of the same and retain any proceeds therefrom, and the City shall be entitled to recover from the User any costs of the City in removing the same and in restoring City Park in excess of the actual proceeds, if any, received by the City from the disposition thereof.

13.2. City Not Liable for Personal Property. The City assumes no responsibility whatsoever for any Personal Property placed in the Event Site, the surrounding park or other City-owned property, or any Load-In or Load-Out areas, and the User expressly releases and discharges the City from any and all liabilities for any loss, injury or damages to Personal Property that may be sustained by reason of the occupancy or use of any portion of the Event Site, the surrounding park or other City-owned property, or Load-In and Load-Out areas under this Agreement. All security and other protective services securing such Personal Property shall be sole responsibility of the User or its Subcontractor(s). In the receipt, handling, care or custody of Personal Property shipped or otherwise delivered to the Event Site, the surrounding park or other City-owned property, or any Load-In and Load-Out areas, the City shall act solely for the accommodation of the User, and not as a bailment, and the City and its elected and appointed officials, agents, or employees shall not be liable for any loss, damage, or injury to such Personal Property, except that said officials, agents, or employees (but not the City itself) may be personally liable for any deliberate and malicious acts of damage or injury to Personal Property including theft.

13.3. Abandoned Property. The City shall have the sole right to collect and have custody of abandoned property of some appreciable value left by attendees of the Event or park patrons.

14. NAMES AND LOGOS AND PHOTOGRAPHIC RIGHTS.

14.1. Names and Logos of the City and Department of Parks and Recreation. The City may grant to the User the non-exclusive right to use the names and logos of the City and the Department of Parks and Recreation in connection with producing the Event; provided that such use of (i) the City's trademarked name, symbol, logo or flag shall be subject to the prior written consent of the Denver Marketing and Media Services Office; and (ii) the Department of Parks and Recreation's trademarked name, symbol or logo shall be subject to the prior written consent of the Executive Director. In no event shall the User represent or indicate, or by the particular use of a name, symbol, flag or logo, that the City is a partner with the User or engaged in any joint venture with the User with respect to the Event or that the City is a sponsor of the sponsor of the Event unless the Executive Director has agreed in writing that the Department of Parks and Recreation is a sponsor. No other intellectual property rights of the City other than those expressly identified herein are being licensed by the City for use by the User.

14.2. Names and Logos of the User. The User may grant to the City the non-exclusive right to use the trademarked names, symbols and logos of the User and the Event (if any); provided, the City may not use the name of the User or any trademarked names, symbols or logos owned by or licensed to the User without the prior written approval of the User. The User may grant to the City the non-exclusive right to use the trademarked names, symbols and logos of the User's sponsors and affiliates (if any); provided, the City may not use any trademarked names, symbols or logos owned by or licensed to the User's sponsors or their affiliates without the prior written approval of the User. The User agrees to indemnify and hold the City harmless from any and all claims, losses, or expenses asserted by the User's sponsors or their affiliates with regard to the uses approved by the User herein. No other intellectual property rights of the User other than those expressly identified herein are being licensed by the User for use by the City.

14.3. Photographic Rights Retained by the City. The City and the User acknowledge and agree that each Party shall have a right make its own photographs, audio and video recordings of the Event in the Event Site during the Event Dates for that Party's sole use for customary advertising and publicity and other non-commercial uses; provided, however, that the Parties shall not engage in photographing or recording in violation of copyright laws.

15. APPLICABLE LAW; COMPLIANCE WITH LAWS.

15.1. General Compliance with Laws. The User shall comply with all Applicable Law in connection with this Agreement. The User shall use reasonable efforts to ensure that the attendees at the Events and the User's Subcontractor(s) shall comply with all Applicable Law in and around the Event Site. The City shall not be required to take any action which is inconsistent with Applicable Law. Nothing in this Agreement is intended to supersede, modify, or replace Applicable Law unless such intent is expressly stated in this Agreement.

15.2. No Discrimination in Employment. In connection with the performance of work under this Agreement, the User agrees not to refuse to hire, discharge, promote, or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, gender expression or gender identity, age, military status, sexual orientation, marital status, source of income, protective hairstyles, or disability; and the User further agrees to insert the foregoing provision in all subcontracts hereunder.

15.3. Colorado Governmental Immunity Act. The Parties hereto understand and agree that the City is relying upon, and has not waived, the monetary limitations (presently \$150,000 per person, \$600,000 per occurrence) and all other rights, immunities and protection provided by the Colorado Governmental Act, § 24-10-101, et seq., C.R.S. and other law. All notice requirements provided by such laws shall be strictly complied with.

15.4. Conflicts of Interest. The Parties agree that no employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein. The User further agrees not to hire, or contract for services with, any employee or officer of the City in violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics or Denver City Charter provisions 1.2.9 and 1.2.12.

16. MISCELLANEOUS.

16.1. Legal Authority.

16.1.1. The User assures and guarantees that it possesses the legal authority to enter into this Agreement. The person or persons signing and executing this Agreement on behalf of the User do hereby warrant and guarantee that they have been fully authorized by the User to execute this Agreement on behalf of the User and to validly and legally bind the User to all the terms, conditions, obligations, and requirements herein set forth. The City shall have the right, at its option, to either temporarily suspend or permanently terminate this Agreement, if there is a dispute as to the legal authority of either the User or the person signing the Agreement to enter into this Agreement.

16.2. City Financial Obligations. It is understood and agreed that any payment or performance obligation of the City hereunder, whether direct or contingent, shall extend only to funds appropriated by the Denver City Council in each year in which the Agreement is in effect,

encumbered, paid into the Treasury of the City, and available for the purposes of this Agreement. The User acknowledges that the (i) the City does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect financial obligation of the City.

16.3. No Third Party Beneficiary. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the User, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third person, including but not limited to Subcontractors and attendees to the Event. It is the express intention of the City and the User that any person or entity other than the City or the User receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

16.4. No Agency or Partnership Relationship. Nothing in this Agreement is intended nor shall be deemed to create an agency, partnership or joint venture between the User and the City. Nothing in this Agreement is intended nor shall be deemed to grant to the User any power, right or authority to contractually bind or obligate the City. Nothing in this Agreement is intended nor shall be deemed to grant to the City any power, right or authority to contractually bind or obligate the User. No employee of the User shall be deemed an employee of the City. No employee of the City shall be deemed an employee of the User.

16.5. Assignment and Subcontracting. The City is not obligated or liable under this Agreement to any party other than the User. The User understands and agrees that it shall not assign any of its material rights, benefits, obligations or duties under this Agreement except upon prior written consent and approval of the Executive Director; provided, however, the User shall have the right to subcontract services and work as provided in this Agreement, including but not limited to subcontracting for Facilities installation and removal and Concession services and sales. Failure to obtain the prior written consent and approval of the Executive Director for any assignment, other than as provided herein, shall be grounds for termination of the Agreement at the discretion of the Executive Director. In the event any assignment or subcontracting shall occur, such action shall not be construed to create any contractual relationship between the City and such assignee or Subcontractor, and the User shall remain fully responsible to the City according to the terms of this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the assigns and Subcontractors of the User as are permitted to succeed to the User's rights under this Agreement.

16.6. Further Assurances. Each Party shall execute and deliver such other reasonable documents, instruments and agreements, and take such actions as are reasonably necessary or desirable to effectuate the terms and conditions of this Agreement or as required by Applicable Law.

16.7. Disputes, Venue and Governing Law.

16.7.1. If any dispute arises regarding this Agreement and a judicial action or suit is deemed necessary by either Party, venue for such action shall lie solely in the District Court in and for the City and County of Denver, Colorado, and notices and summons and complaints may be served upon the User by delivery of notices and service of process for summons and complaints to the address of the User shown in this Agreement.

16.7.2. This Agreement shall be construed and enforced pursuant to the laws of the State of Colorado and any applicable federal law, without regard to any statute or rule of law

specifying a different choice of law, and pursuant to the City Charter, Denver Revised Municipal Code, the applicable rules, regulations, and policies of the City's departments and agencies, and executive orders of the City's Mayor.

16.8. Notices. Notices, demands or other communications required or permitted to be given under this Agreement shall be in writing and any and all such items shall be deemed to have been duly delivered upon (i) personal delivery; or (ii) as of the third business day after mailing by United States mail, certified, return receipt requested, postage prepaid, addressed as follows; or (iii) as of 12:00 Noon, MST, on the immediately following business day after deposit with Federal Express or a similar overnight courier service that provides evidence of receipt, addressed as follows:

If to City: Executive Director of Parks and Recreation
City and County of Denver
201 W. Colfax Ave., Dept 601
Denver, Colorado 80202

With copy to: City Attorney's Office
City and County of Denver
City and County Building
1437 Bannock St., Room 353
Denver, Colorado 80202

If to User: The German American Chamber of Commerce Colorado Chapter
Attn: Executive Director
4100 E. Mississippi Ave., Suite 420
Denver, Colorado 80246

Notifications required to be provided to Parks Permitting shall be provided by the User to the email address determined by the Executive Director and provided to the User. If written notification is not required, Parks Permitting shall be contacted by telephone at the telephone number(s) determined by the Executive Director.

16.9. Construction of this Agreement.

16.9.1. Paragraph Headings. The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.

16.9.2. Reasonableness of Consent or Approval. Unless otherwise specifically provided to the contrary, all decisions, approvals or consents shall be made in the reasonable discretion of the Party making the same. Further, unless a specific time frame is provided herein, any approval or consent shall not be unreasonably withheld or delayed. Whenever under this Agreement reasonableness is the standard for the granting or denial of the consent or approval of either Party hereto, such Party shall be entitled to consider public and governmental policy, moral and ethical standards as well as business and economic considerations.

16.9.3. Severability. It is understood and agreed by the Parties that if any part, term, or provision of this Agreement is held by a court of law (following all legal rights of appeal or the expiration of time therefore) to be illegal or in conflict with any law of the State of Colorado or the City Charter or City ordinance, the validity of the remaining portions or provisions shall not

be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid; provided, however, if the invalidated term was a critical or material consideration of either Party in entering this Agreement, the Parties shall work together, in good faith, to come up with an amendment to this Agreement that substantially satisfies the previously intended consideration while being in compliance with any Applicable Law and the judgment of the court.

16.9.4. Agreement as Complete Integration; Amendments. This Agreement is intended as the complete integration of all understandings between the Parties pertaining to the subject matter of this Agreement. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion or any other amendment hereto shall have any force or effect unless embodied in a written amendatory or other Agreement properly executed by the Parties. This Agreement and any amendments shall be binding upon the Parties, their successors and assigns.

16.9.5. Final Approval. This Agreement is expressly subject to and shall not be or become effective or binding on the City until approval by the City Council and fully executed by all signatures of the City and County of Denver.

16.9.6. Counterparts. This Agreement shall be executed in two (2) or more counterparts, each of which shall be deemed to be an original but all of which shall together constitute one and the same instrument.

16.9.7. Electronic Signatures and Electronic Records. The User consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

[Signature pages to follow]

Contract Control Number:
Contractor Name:
COLORADO CHAPTER

PARKS-202369815-00
GERMAN AMERICAN CHAMBER OF COMMERCE

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

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
Contractor Name:
COLORADO CHAPTER

PARKS-202369815-00
GERMAN AMERICAN CHAMBER OF COMMERCE

By: DocuSigned by:
Peter F. Einsle
42CE0C4B8AE2483... _____

Name: Peter F. Einsle
(please print)

Title: President-Board of Directors
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

EXHIBIT A



