

**Concession Agreement  
for  
Food and Beverage Concession  
at  
City Venues**

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## CONCESSION AGREEMENT

This Concession Agreement (this “**Agreement**”) is entered into by and between the **City and County of Denver**, a municipal corporation organized and existing by virtue of Article XX of the *Constitution of the State of Colorado*, hereinafter called “**City**,” and **ARAMARK Sports and Entertainment Services, LLC**, a Delaware limited liability company, hereinafter called the “**Concessionaire**”.

### WITNESSETH:

**WHEREAS**, City is the owner of the Red Rocks Amphitheatre and the Denver Coliseum, and the operator of Crossroads Theatre located in the City and County of Denver, Colorado; and

**WHEREAS**, Concessionaire is engaged in the business of providing food, alcoholic and non-alcoholic beverages, and retail service, including concession, banquet and catering services, and consignment services; and

**WHEREAS**, except as specifically provided otherwise in this Agreement, City wishes to grant to Concessionaire the sole and exclusive right to conduct the aforesaid business at the City Venues.

**NOW, THEREFORE**, in consideration of the mutual covenants, terms, conditions, privileges and obligations herein set forth, and intending themselves to be legally bound hereby, City and Concessionaire mutually agree as follows:

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#### *1 Definitions*

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Unless otherwise specifically indicated in this Agreement, the following words and phrases shall be defined as follows:

**Accounting Period** - shall mean two (2) accounting periods of four (4) weeks each and one (1) accounting period of five (5) weeks which occur in each calendar quarter. Each calendar quarter shall contain three (3) “Accounting Periods” and each fiscal year shall contain twelve (12) “Accounting Periods”. Notwithstanding the foregoing, Concessionaire’s annual reporting to the City (including, its annual Statement of Receipts and Expenses) shall include January 1 through and including December 31 for each Contract Year.

**Agreement** – is this Concession Agreement by and between City and Concessionaire.

**AVD - Arts & Venues Denver** - is defined as an agency for the City and County of Denver that manages or oversees the City-owned or managed facilities of the Denver Coliseum, Red Rocks Amphitheatre, Crossroads Theater, Denver Performing Arts Complex, and Colorado Convention Center. The facilities managed by Arts and Venues Denver may be modified from time to time by either adding or deleting property.

**Backstage Catering** – shall mean City-approved Catering Services (defined below) for performers and crew at the Facilities.

**Catering Services** - shall mean the preparation and serving of food and beverage at a per-plate, per-person charge, where payment for the entire function rests with one individual or company.

**Certification Ordinance** - shall have the meaning provided in Section 35.A of this Agreement.

**City** - refers to the City and County of Denver.

**City-Provided Equipment** - shall have the meaning provided in Section 7.U of this Agreement.

**City Venues** – see definition of Facilities below.

**Concessionaire** – shall mean ARAMARK Sports and Entertainment Services, LLC, a Delaware limited liability company, and its employees, agents, and legal representatives.

**Concession Services** - shall refer to all sales of food and beverage from permanent or portable concession stands, sales of food and beverage in the City Venues before, during, or after events, and sales of food and beverage by roving vendors in the City Venues.

**Contract Year** - is a calendar year.

**Concessionaire Fee** – shall mean the amount of money paid to the Concessionaire for Services performed at City Venues as provided in Section 4.B.

**Cost of Sales** – shall mean and include all costs and expenses incurred by Concessionaire in the operation of the Services at the Facilities, including, but not limited to, the direct product costs, payroll and personnel costs of Concessionaire's employees assigned to the Facilities (including bonuses, gratuities and the costs of fringe benefits of the type customarily provided by Concessionaire and its affiliates to its employees, workers' compensation costs and payroll taxes, but not including regional or general corporate management personnel), the Concessionaire Fee, allocated insurance costs (including, without limitation, liquor liability insurance), permitting and licensing fees (including, without limitation, liquor licensing fees and any related attorney's fees, provided that such attorney's fees have been approved by the City in accordance with Section 7.F), taxes (including, without limitation, state and local sales taxes), costs of required employee uniforms, costs of utilities and all other costs of supplies and services used or attributable to the provision of the Concession Services, including, but not limited to, costs which are reimbursable pursuant to the terms of this Agreement, costs of alcohol awareness training (e.g. TIPS or TEAM), costs of training of staff and management, costs of annual health examinations required under this Agreement for Concessionaire's employees, costs of installation of cash and product computerized control systems, costs of any maintenance of equipment and smallwares, cleaning costs, maintenance, repair and replacement expenses contemplated by the Agreement, disposal of grease costs, vending operation costs, extermination costs and permitted bad debt expense contemplated by this Agreement. Cost of

Sales shall not include the fees set forth in Sections 4.D and 4.E of this Agreement. For purposes of determining direct product costs, local trade discounts will be credited to direct product costs but cash discounts or discounts not exclusively related to Concessionaire's operations at the Facilities shall not be credited to such direct product costs. Without limitation of the foregoing, in the event Concessionaire's costs increase due to increases in employee health and welfare benefits costs for Concessionaire's employees assigned to the Facilities, including, but not limited to, an increase in required employer contributions to social security or payroll taxes (including retroactive changes to such contributions), such increased costs shall automatically be included in Cost of Sales, such adjustment to be retroactive to the date of such increase. Notwithstanding the foregoing and anything to the contrary contained in this Agreement, Cost of Sales shall not include costs or expenses necessitated as a direct result and to the extent of the negligence or willful misconduct of Concessionaire.

**Daily Report** - shall have the meaning provided in Section 5.B of this Agreement.

**Director** - shall mean the Director of AVD, as from time to time appointed by the Mayor of Denver, and shall include his or her designee(s) and such person or persons as may from time to time be authorized to represent the City with respect to any or all matters pertaining to this Agreement. Except as otherwise required by law or rules of the City, any matter under this Agreement that requires or permits the action or approval of the City may be acted upon or approved by the Director.

**Environmental Laws** - shall have the meaning provided in Section 36 of this Agreement.

**Facilities** - shall mean Red Rocks Amphitheatre (including the Visitor Center and Trading Post), The Denver Coliseum and The Crossroads Theater; provided, however, that in the event that the City's lease of The Crossroads is not renewed, for any reason, Facilities shall mean Red Rocks Amphitheatre (including the Visitor Center and Trading Post) and The Denver Coliseum.

**GAAP** - generally (industry wide) accepted accounting procedures

**Gross Receipts** - shall refer to the total amount of money, administrative (or service) and rental charges received or charged by the Concessionaire, or any agent, employee of the Concessionaire for all sales, cash or credit, whether collected or not, derived at the City Venues as a result of the service rights granted under the Agreement, excluding applicable sales taxes. Gross Receipts shall also include Miscellaneous Gross Receipts and one hundred percent (100%) of any commissions actually paid by Subcontractors and third party vendors to Concessionaire. For the avoidance of doubt, Gross Receipts shall not include any sums retained by Subcontractors or third party vendors and not paid to Concessionaire. Gross Receipts shall also not include (i) gratuities to the extent that those gratuities are paid by Concessionaire directly to its employees or (ii) ordinary and customary credit card fees paid.

**Gross Sales** - shall mean the total revenue (cash and credit) actually received by Concessionaire from the operation of the Services at the Facilities less (i) sales taxes and other direct taxes imposed upon receipts collected from consumers, (ii) tips and gratuities, which are disbursed to employees, (iii) any administrative charge (or service charge) for private events, which is not

intended to be a tip or gratuity for the benefit of service employees, (iv) credit/debit/gift card transaction fees and charges and (v) any sums retained by Subcontractors or third party vendors and not paid to Concessionaire.

**Gross Profit** – shall mean all Gross Receipts less the Cost of Sales.

**HACCP** – Federal guideline program entitled “Hazard Analysis Critical Control Point” dealing with correct holding temperatures and handling methodologies required for various food products.

**Hazardous Materials** - shall have the meaning provided in Section 36 of this Agreement.

**Incentive Compensation** – shall mean the compensation paid to Concessionaire in addition to the Concessionaire Fee as described in Section 4.C.

**Incentive Criteria** – shall have the meaning provided in Section 4.C of this Agreement.

**Inventory Method** – shall mean the system used to count product before and after a sales period to determine the sold units of each product. The sold units, exclusive of any spoilage, are multiplied by the unit pricing to determine the total sales for a Location. Spoilage shall be kept at a minimum and shall include employee meals; without limiting the generality of the foregoing, for each Accounting Period, any cost associated with spoilage that exceeds 0.5 percent of the total food cost for the subject Accounting Period shall be borne solely by Concessionaire and shall not be considered a Cost of Sales.

**Location, Locations, Space or Spaces** - shall mean the area or areas of the City Venues designated by this Agreement and its exhibits as the place or places where the business of Concessionaire may be conducted. Areas may change periodically as directed by the Director.

**Minimum Guaranteed Payment** – shall mean the minimum amount of money paid to the City by the Concessionaire as called for in this Agreement.

**Miscellaneous Gross Receipts** – shall mean the monies retained by Concessionaire from the provision of automated teller machine (“ATM”) and Vending Equipment services, less any direct costs incurred by Concessionaire.

**Monthly Financial Report** – shall have the meaning provided in Section 5.A of this Agreement.

**Non-performance** - shall have the meaning provided in Section 19.D of this Agreement.

**Novelties** - shall mean any merchandise, programs, souvenir books, CD’s, t-shirts, etc. that are made available for sale at the Facilities.

**Novelties Services** – shall refer to all sales of Novelties in the City Venues before, during, or after events.

**Operating Loss** – shall have the meaning provided in Section 4.I of this Agreement.

**Payment Non-performance** - shall have the meaning provided in Section 19.D of this Agreement.

**Prompt Payment Ordinance** – shall have the meaning provided in Section 4.B of this Agreement.

**Records** - shall have the meaning provided in Section 6.C of this Agreement.

**Release** - shall have the meaning provided in Section 36 of this Agreement.

**Remaining Reserve Funds** – shall have the meaning provided in Section 15.G of this Agreement.

**Reserve Funds** – shall have the meaning provided in Section 15.G of this Agreement.

**Services** – shall refer collectively to the Concession Services, the Catering Services, and the Novelties Services.

**Sponsors** – shall refer to all entities that have entered into or will be entering into an agreement with City for some consideration in return for sponsorship of their product. Where a Sponsor's product is related to food and beverage, Concessionaire will be obligated to provide that Sponsor's product to the extent permitted by applicable law and provided that such products are available to Concessionaire at equivalent prices, terms, quality and quantity as are generally available to Concessionaire from its major supplier of similar products.

**Statement of Receipts and Expenses** - shall have the meaning provided in Section 6.A of this Agreement.

**Subcontractor** – shall refer to a food, beverage and merchandise purveyor contracted by Concessionaire to provide a unique and specialized product for sale to the general public attending events at the City Venues. Use of any Subcontractors by Concessionaire must be preapproved by Director. Any commissions paid to Concessionaire by its Subcontractors shall be included in Gross Receipts.

**Tenant** – refers to any person or entity that may from time to time enter into any agreement with City for the use of the City Venues for a particular purpose.

**Term** – shall refer to November 1, 2012 to October 31, 2017.

**TIPS, TEAM** – programs related to alcoholic beverage management control systems and certain procedures to be implemented by the Concessionaire when serving guests.

**Vending Equipment** – shall mean all automatic vending machine equipment that serves canned, cartoned, and/or pre-packaged foods in an automated manner.

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## 2 Premises, Uses and Privileges

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- A. The Concessionaire shall use and occupy the Spaces shown on the drawings, attached hereto as **Exhibit A** and made a part hereof, only for the purpose of conducting and operating, within the City Venues, as an independent contractor and not as an employee of City, the Services described in Section 7, and Concessionaire's associated rights and obligations described in this Agreement, consistent with the terms and conditions as set forth in this Agreement. It is further agreed and understood that Concessionaire shall be permitted to occupy and use other common use areas such as, but not limited to, the concourses and the aisles in the seating areas in connection with the operation of its rights granted hereunder.
- B. Concessionaire shall use and occupy the Spaces described in **Exhibit A** solely for the business and purpose described in Section 2.A and for no other business or purpose whatsoever except as otherwise approved by the Director.
- C. The Director may limit or eliminate those portable concession cart sites identified on **Exhibit A** to accommodate event requirements. The location of any and all portable concession cart sites and storage spaces required by Concessionaire shall be approved by Director; provided, however, that Concessionaire shall acquire no rights to the location of such sites or spaces, it being understood by the parties that the City reserves the right to require Concessionaire to eliminate or relocate such sites and spaces and/or to relocate or remove items and equipment from storage spaces to accommodate event requirements.

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## 3 Term

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The term of this Agreement shall commence November 1, 2012 and continue through and including October 31, 2017.

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## 4 Payments

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In consideration of the rights and privileges herein granted, Concessionaire and City agree to the following:

- A. **Minimum Guaranteed Payment to City** – Concessionaire shall pay monthly to the City an amount equal to fifty-percent (50%) of the Gross Sales for each Accounting Period. The Minimum Guaranteed Payment shall be paid to the City at the same time that Concessionaire provides the City with its Monthly Financial Report for the subject Accounting Period.
- B. **Concessionaire Fee** – City shall pay monthly to Concessionaire an amount equal to one and one-half percent (1.5%) of the Gross Sales for each Accounting Period (the "Concessionaire Fee"). The Concessionaire Fee shall be paid to Concessionaire upon the City's receipt of an invoice and the Monthly Financial Report for the subject Accounting Period in accordance with the City's Prompt Payment Ordinance, §§ 20-107



through 20-118, Denver Revised Municipal Code (D.R.M.C.) (the "**Prompt Payment Ordinance**"). Further, notwithstanding Section 4.I below, the City shall continue to pay Concessionaire the Concessionaire Fee in the event of an Operating Loss.

- C. **Incentive Compensation** – City shall pay annually to Concessionaire after each Contract Year compensation in addition to the Concessionaire Fee in an amount equal to up to seven percent (7%) of Gross Profit ("Incentive Compensation"); provided that Concessionaire shall receive Incentive Compensation only to the extent (i) the City shall have received from the Concessionaire all due and owing Minimum Guaranteed Payments; (ii) the Minimum Guaranteed Payments are not reduced as a result of payment of Incentive Compensation; and (iii) the incentive criteria attached hereto and incorporated herein Exhibit B (the "Incentive Criteria") shall have been satisfied by Concessionaire as demonstrated by the auditable report described in Section 6.A below. Concessionaire shall pay to the City at the time of its delivery of the Statement of Receipts and Expenses an amount equal to the Gross Profit set forth on such Statement. Upon the City's receipt thereof, City shall pay to Concessionaire the maximum amount of Incentive Compensation payable hereunder calculated in accordance with the Incentive Criteria and paid in accordance with the City's Prompt Payment Ordinance. City may, in its sole discretion, waive or deduct any Cost of Sales from the calculation of Incentive Compensation.
- D. **Document Preparation Fee** - As a contract condition, the Concessionaire shall pay a fee of Twenty-Three Thousand and No/100 Dollars (\$23,000.00) to the City at the time of execution of this Agreement.
- E. **Bonus Fee** – Concessionaire shall pay to City a one-time bonus fee of Fifty-Thousand and No/100 Dollars (\$50,000.00) by the later of: (i) within ten (10) business days of execution by each of the City and Concessionaire of (1) this Agreement and (2) a facilities services agreement for the Red Rocks Amphitheatre, the Denver Coliseum, and the Denver Performing Arts Complex with a scheduled expiration date of at least October 31, 2015 (with an additional two (2) year option to extend); or (ii) after January 1, 2013 but on or before January 15, 2013.
- F. **Taxes** – Concessionaire shall collect and promptly disburse all taxes required by federal, state and local authorities for any sales conducted by Concessionaire in the City Venues and shall pay any applicable taxes relating to food service operations, equipment, or inventory (other than with respect to City owned/purchased equipment and smallwares as described in this Agreement).
- G. **Miscellaneous Promotional Agreements** - From time to time, in the best interests of the City, the City may direct Concessionaire to adopt promotional or marketing efforts to increase sales of food, beverage or other services. When these marketing/promotional efforts occur, Concessionaire and City shall in writing mutually agree on terms and document the effort with the details including, among other things, a description of the effort and pricing.

- H. Annual Appropriations.** The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of this Agreement. The City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years, and this Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.
- I. Operating Losses.** City, and not Concessionaire, shall be responsible for all Cost of Sales. Concessionaire will fund, on City's behalf and to the extent of available Gross Receipts as provided in this Section 4.I, all Cost of Sales. If the Cost of Sales for a given Accounting Period exceed the Gross Receipts for a given Accounting Period (which difference shall be referred to herein as "**Operating Loss**"), the Operating Loss shall be carried forward and reported as a separate line item in the Monthly Financial Report for the next Accounting Period (and for each subsequent Accounting Period that an Operating Loss exists), and City shall not be required to pay Concessionaire for the Operating Loss unless and until an Operating Loss remains at the end of the Contract Year (as provided below). In the event of an Operating Loss during any Accounting Period, Concessionaire shall nonetheless pay to City the Minimum Guaranteed Payment for the subject Accounting Period and City shall nonetheless pay to Concessionaire the Concessionaire Fee for the subject Accounting Period. If at the end of a Contract Year, there exists an Operating Loss, City shall pay Concessionaire the amount of such Operating Loss upon its receipt of an invoice and the Statement of Receipts and Expenses in accordance with the City's Prompt Payment Ordinance.
- J. Termination Payment.** Upon expiration of the Term or sooner termination of this Agreement, for any reason, City shall, upon receipt of an invoice in a format and with a level of detail and supporting documentation that are reasonably acceptable to City, pay Concessionaire amounts due and payable for Services rendered under this Agreement in accordance with the City's Prompt Payment Ordinance.

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*5 Reports and Records*

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- A. Monthly Report** - On or before the close of business on the third (3<sup>rd</sup>) business day after the end of each Accounting Period during the term of this Agreement, Concessionaire shall deliver to the authorized officer of City, as determined by City, a summary statement of Concessionaire's operations at the City Venues for the Accounting Period (the "**Monthly Financial Report**"). Notwithstanding the foregoing, Concessionaire acknowledges and understands that City's reporting processes operate on a calendar month basis; as such, if requested by City, Concessionaire shall include in the Monthly Financial Report(s) estimates with respect to the days of the subject calendar month that are not included in the subject Accounting Period. The Monthly Financial Report shall be signed by an authorized representative of Concessionaire and shall include, among other things as specified by City: all total receipts, Gross Receipts, Gross Sales, Cost of Sales (including Concessionaire Fee), Gross Profit margin, Minimum Guaranteed Payment and Incentive Compensation. A sample Monthly Financial Statement is attached hereto as Exhibit C.

- B. Daily Report** – By noon following the close of each event at a City Venue, Concessionaire shall generate and remit to City, through Director, a report (each, a “**Daily Report**”) indicating any and all total receipts, Gross Receipts, Gross Sales, and per capita event receipts for each sales category shown on the sample Daily Report attached hereto as **Exhibit D**. Reports are only required for days that any Gross Receipts are made. The Daily Reports are informational and should be used to roll up into a consolidated Monthly Financial Report by event for each event during the month.
- C. Acceptance of Payment** - The acceptance by City of any statement by Concessionaire or of any Minimum Guaranteed Payment shall not be deemed a waiver of the right of City to claim any additional payment after a review and inspection of Concessionaire’s books and records.
- D. Cash Registers and Inventory Sheets** - At all locations where cash registers are used, cash register tapes shall be balanced with the inventory to determine the sales and Gross Receipts from that location. In locations where cash registers are not in use, the Inventory Method will be used to determine sales and Gross Receipts. Concessionaire shall retain all cash register receipts and stand inventory sheets in accordance with this Agreement; these documents are subject to audit by City by provisions of this Agreement.

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*6 Books of Account and Auditing*

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- A. Annual Reports** - Not later than forty-five (45) calendar days of the close of each Contract Year during the Term hereof, Concessionaire shall furnish to City a true and accurate (i) audited financial statement of Gross Receipts, Gross Sales, and Cost of Sales in the general form attached hereto as **Exhibit E** (the “**Statement of Receipts and Expenses**”), and (ii) audited report of Concessionaire’s compliance with the Incentive Criteria (to the extent applicable based on the requirements set forth in Exhibit B herein). The Statement of Receipts and Expenses shall contain and include (without limitation) a breakdown of Gross Receipts, Gross Sales, Cost of Sales, Minimum Guaranteed Payments, and amounts payable to Concessionaire (including the Incentive Compensation and Concessionaire Fee, as applicable) on a month-by-month basis and shall be prepared and certified by an independent certified public accountant that has audited the same in accordance with GAAP for special reports. Such statement shall be furnished for every Contract Year in which business was transacted under this Agreement during the whole or any part of the year. The report of Concessionaire’s compliance with the Incentive Criteria shall be audited by an independent third party. At City’s sole discretion, and at City’s sole cost and expense, City may conduct a review of Concessionaire’s books and records with respect to the Statement of Receipts and Expenses through City’s Auditor or by hiring an independent CPA and the Incentive Criteria report through City’s Auditor or an independent third party agreed to by the parties.

- B. Bookkeeping System** - Concessionaire agrees to establish and maintain a system of bookkeeping satisfactory to City Auditor. Such system shall be kept in a manner as to allow each Location of Concessionaire's operations hereunder to be distinguished from all other Locations or operations of Concessionaire.
- C. Records Maintenance** - Concessionaire shall maintain, in accordance with GAAP, accurate books and records in connection with the business conducted by Concessionaire hereunder. Concessionaire shall retain such books and records for a period of three (3) years following the end of the Contract Year to which they pertain and shall make such books and records available for inspection by representatives of City and any of its agents, including City's Auditor. Such books and records shall include, without limitation, all sales slips, cash register tapes, stand sheets, sales books, bank books or duplicate deposit slips, and all other evidence of total receipts, Gross Receipts, Gross Sales, Cost of Sales, Minimum Guaranteed Payments, Concessionaire Fees, Incentive Compensation, Monthly Financial Statements, Daily Reports, Statements of Gross Receipts and Expenses, and audited reports regarding compliance with the Incentive Criteria (to the extent applicable based on the requirements set forth in Exhibit B herein) (collectively, the "Records"). City and any of its agents including City's Auditor, at City's sole cost and expense, shall have the right at all reasonable times to inspect or audit all such Records.
- D. Examination of Books** - Concessionaire upon written request shall make the Records available for examination within the Denver metropolitan area; or, if elected by Concessionaire, Concessionaire shall pay to City in full, in advance, travel and related expenses of a City representative to travel to any location outside the Denver metropolitan area for such examination. Following the travel, if applicable, expenses shall be reconciled, and any difference between the advance payment and the actual expenses shall be paid by or refunded to Concessionaire as appropriate. Such documents shall be available to City representative within fourteen (14) calendar days of the date of the written request. The parties agree that any delay in furnishing such records to City will cause damages to City which the parties agree are liquidated in the amount of Three Hundred and Fifty Dollars (\$350.00) per day for each day the records are unavailable beyond the date established as City's notice.
- E. Audit Deficiencies** - If City determines after an audit for any year that the payments made to the City were understated or materially misstated in the Statement of Receipts and Expenses, Concessionaire shall pay the amount of the deficiency plus interest at the Past Due Interest Rate (2% per month compounded daily computed from the date due until the date paid). If such payments were understated or materially misstated by more than 1%, Concessionaire shall pay to City the cost of the audit, in addition to the deficiency and interest. If City determines after an audit that the City was overpaid, the City shall have the option to either credit an overpayment against a subsequent amount due or provide a refund to Concessionaire. City's right to perform such an audit shall expire three (3) years after Concessionaire's statement for that year has been delivered to City.

**F. Inspection of Records** - The Concessionaire agrees that City and any of its agents including City's Auditor, or an authorized representative of the City's Auditor, may inspect any document, return, data or report filed pursuant to Chapter 53 of the Denver Revised Municipal Code by Concessionaire with City's Manager of Finance and any related reports, document, data or other information generated by City's Manager of Finance or employees under the control of such Manager of Finance in connection with any investigation or audit of Concessionaire by City's Department of Finance. The Concessionaire authorizes and permits the inspection of such documents, data, returns, reports and information by City and any of its agents including City's Auditor, or an authorized representative of the City's Auditor, and, further, waives any claim of confidentiality that it may have in connection with such documents, returns, data, reports and information.

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*7 Concession Rights and Obligations*

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- A. Exclusive Rights** - Except where stated in this Agreement, Concessionaire shall have exclusive right to provide Concession Services, Novelties Services, and Catering Services within the Facilities, as they presently exist. City shall not permit non-Concessionaire portable concession stands and carts or transient vendors of food and beverage items to be located in City-owned parking lots adjacent to the City Venues on event days. City reserves the right to allow such transient vendors or portable concession stands to be located in such adjacent parking lots on non-event days in the City Venues to serve activities or gatherings held in such parking lots only; provided, however, City shall have such right after first allowing Concessionaire to provide food and beverage services on such non-event days and Concessionaire has declined to do so. Concessionaire may be allowed to have Concession Services, Catering Services, or Novelties Services in the parking lots on event days at the discretion of City. Concessionaire shall coordinate its activities hereunder as they relate to this Agreement with City and Director.
- B. Non-Exclusive Rights** - Director may require and/or Concessionaire may request that Concessionaire, either directly or by subcontract, provide non-exclusive Vending Equipment and ATM services. Vending Equipment and ATM services shall not be used except with the prior written approval of Director. Without limiting the generality of the foregoing, any proposal for Vending Equipment that is submitted for Director's approval shall describe, without limitation: the items to be sold, pricing, type and style of the equipment, and locations. Concessionaire shall be responsible for accounting for receipts and expenses in accordance with Sections 5 and 6 of this Agreement.
- C. Exclusive Rights Exceptions**
1. Concessionaire acknowledges that (i) certain agreements have been made in the past at the Facilities, granting rights to certain Tenants such as National Western Stock Show and Ringling Brothers Circus and more recently to the Denver Cutthroats (a member of the Central Hockey League), to sell special products; and (ii) it is common industry practice to permit on a limited basis the sales of particular concession items by a Tenant. Where there is historic precedent at the

Facilities for a Tenant to sell special products, where the Denver Cutthroats are selling special products, or where special sales arrangements would be common and accepted industry practice, the City may permit a Tenant or user of the Facilities a limited exemption from the rights granted Concessionaire herein. In all other cases where a Tenant desires to sell products (“Other Tenants”), exemptions are subject to the approval of Concessionaire and such conditions as Concessionaire may reasonably impose, such as the payment of an outside concession fee (or buyout payment), and such other terms and conditions as would be standard in such agreements. Without otherwise limiting the foregoing, the City agrees to require Other Tenants that are granted rights to sell products at the Facilities, by agreements entered into after Concessionaire and the City have both executed this Agreement, to indemnify and hold harmless Concessionaire with respect to such selling of products to the same extent of the indemnification provided to the City. Notwithstanding the foregoing, (1) Concessionaire shall have no approval authority over the terms of the insurance, indemnification, and hold harmless agreements between the City and the Other Tenants and (2) nothing herein shall affect Concessionaire’s obligations to maintain insurance and to indemnify, defend, and hold harmless the City pursuant to the terms of this Agreement (it being understood and agreed by the parties hereto that such obligations of Concessionaire do not include coverage of or responsibility for any acts, omissions or services provided by Other Tenants or third party service providers). The City’s obligation to require Other Tenants to indemnify and hold Concessionaire harmless shall apply only to those agreements entered into by the City after Concessionaire and the City have both executed this Agreement. The amount of any outside concession fee (or buyout payment) actually received by Concessionaire shall be included in the Gross Receipts.

2. City and Concessionaire agree that Concessionaire has an exclusive right to provide Catering Services within the City Venues except as follows: When City’s Tenant for a special event requests the use of an outside caterer and City agrees; provided, however, that Concessionaire shall sell or serve alcoholic beverages within the City Venues and, if any of Concessionaire’s equipment or exclusive area must be used by the outside caterer, the use of such equipment or area shall be negotiated between Concessionaire and the outside caterer, which agreement may include, without limitation, liability insurance and indemnification and hold harmless agreements by the applicable third party service provider, as applicable, in a form acceptable to Concessionaire for the benefit of City and Concessionaire. Concessionaire shall be notified reasonably in advance of any intent to use any of the food service facilities of the City Venues by anyone other than Concessionaire.

**D. Applicable Laws** - Concessionaire shall at all times comply with all applicable laws, rules, regulations and orders of the federal, state and local governments, and also abide by all rules, regulations and directives prescribed by the Director for the operation of the City Venues.

- E. **Food Safety** – Concessionaire is solely responsible for complying with all industry standard food safety procedures, including HACCP, and for any health issues arising from the service of food by Concessionaire or any of its employees or agents.
- F. **Liquor Law Compliance** - The privilege to sell alcoholic beverages shall be subject to the provision of all laws of the State of Colorado and the City and County of Denver applicable to the sale of liquor, wine and beer. Concessionaire shall be responsible for obtaining all necessary licenses for the sale of such beverages. The fees and costs incurred for such licenses shall be included in the Cost of Sales; provided that Concessionaire shall provide for the Director's prior written approval an estimate of related attorneys' fees, which approval shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, the Director's prior written approval of an attorneys' cost estimate shall not be required if the circumstances reasonably require the prompt assistance of an attorney, in which event Concessionaire shall make reasonable efforts to promptly contact the Director (including, by telephone or electronic means) to explain the circumstances and, as soon as reasonably practicable thereafter, shall provide for the Director's approval an estimate of attorneys' fees, which approval shall not be unreasonably withheld, conditioned or delayed. Liquor sales shall be confined to the areas of the City Venues designated and approved by the licenses held by Concessionaire for the sale of liquor.
- G. **Suspension of Liquor License** – In the event that Concessionaire's liquor licenses(s) is lost or suspended and, as a result, Concessionaire is prevented from selling alcoholic beverages at the applicable Facilities under the terms of this Agreement (a "**Material License Impairment**"), then Concessionaire shall use its best efforts to obtain a new license or reinstatement of its existing license. Further, in such an event, City may engage another entity to operate the alcoholic beverage service at the affected Locations (a "**Replacement Provider**") and Concessionaire agrees to yield the occupancy of those portions of the Locations that the Director shall determine as necessary for the Replacement Provider to adequately provide alcoholic beverage service at the affected Locations; provided that Concessionaire shall continue to provide the Services in all other respects. In the event the loss or suspension of Concessionaire's license is the result of the negligence or willful misconduct of Concessionaire, Concessionaire shall pay to City an amount equal to the reasonably anticipated lost Gross Receipts relating to alcohol sales for each event during the occurrence of the Material License Impairment on which Concessionaire would have had an opportunity to sell any alcoholic beverage, which amount shall be reduced by (i) City's net receipts relating to the services of the Replacement Provider (accounting for the actual costs incurred by the City to obtain the Replacement Provider) and (ii) such other amount as the City may elect in its sole discretion (collectively, the "**Liquidated Damages**"). For avoidance of doubt, the "reasonably anticipated lost Gross Receipts" shall take into account historical events of a similar nature and attendance at the subject Facility on a per capita basis. In the event of a Material License Impairment, each of City and Concessionaire shall use commercially reasonable efforts to mitigate losses resulting from the same. If a Material License Impairment continues for a period of thirty (30) days or more, or if Concessionaire is finally advised by the applicable licensing authorities that it will not receive a reinstatement of its liquor license or a new liquor license for the affected Facilities,

Concessionaire shall have the right (but not the obligation) to terminate this Agreement upon one hundred and eighty (180) days' notice to the City (such notice date being referred to herein as "**Concessionaire's Termination Notice**"). Further, each of the following shall constitute a default of this Agreement and shall provide the City the right to terminate this Agreement upon thirty (30) days prior written notice (such notice date being referred to herein as "**City's Termination Notice**"): (1) the suspension of a liquor license or any other license necessary for the full performance of Concessionaire's obligations hereunder during a Contract Year (i) on three (3) separate occasions or (ii) for a total period in excess of thirty (30) days during the Contract Year, or (2) the loss of any such license. In the event that Concessionaire is liable for payment of Liquidated Damages pursuant to the terms herein, such liability shall in no event exceed Liquidated Damages calculated from the date of the Material License Impairment to the earlier of (y) the date one hundred and eighty (180) subsequent to the date of the Concessionaire's Termination Notice or City's Termination Notice, as applicable, and (z) the scheduled expiration date of the term of this Agreement (i.e. October 31, 2017).

- H. Liquor Sales** - City shall designate the type of activity at which liquor and/or beer and/or wine may be sold. The final decision as to when, where, if and which types of alcoholic beverages may be sold rests within the sole discretion of City to the extent permitted by applicable law. It is agreed and understood that there shall be no adjustment of the Minimum Guaranteed Payment to be paid by Concessionaire should City restrict or prohibit the sale of alcoholic beverages at events, such as, but not limited to, concerts, religious based activities, high school and college events. Notwithstanding the foregoing, in the event that sale of alcoholic beverages is prohibited or restricted at a Facility as a result of a programmatic policy change or regulatory change by the City (including the AVD), and such change in policy or regulation results in a material decrease in alcohol sales from historical precedent, the parties agree to negotiate an equitable adjustment in the Minimum Guaranteed Payment in good faith and in a commercially reasonable manner.
- I. Training and Operations** - Concessionaire shall provide the merchandise and personnel necessary to fully and adequately provide the Services under this Agreement. Concessionaire shall provide the number of points of sale that is adequate for each event and consistent with industry standards when and where possible. On premises management (which shall mean, a minimum of a general manager, concession manager and warehouse manager) and service personnel are required for a smooth and efficient operation while service and food preparation employees shall be available to receive deliveries, properly store same and begin or continue preparation of food and beverage to be sold or served in a timely manner. In addition, supervisory personnel shall be on duty during preparation, serving, sales and clean-up periods to ensure an adequate, pleasant and prompt operation. Concessionaire shall select, employ, train, furnish, and deploy in the optimum number (to match work requirements), in each work classification, employees who are proficient, productive, and courteous to patrons. Concessionaire shall conduct regularly scheduled training classes for all employees and management throughout the Term. This training schedule and its content shall be approved by the Director in writing and, at a minimum, shall include customer service training, positional skills training, banquet service training, buffet set up, bartending and serving techniques,



food and wine service techniques, food handling, and other facility operations. Without limiting the generality of the foregoing, Concessionaire shall provide:

1. Training to employees regarding Title I of the Americans with Disabilities Act of 1990, as amended, as it pertains to providing quality food, beverage and retail services under this Agreement to customers with a disability. Concessionaire shall ensure that all employees are trained in accordance with Concessionaire's corporate standards.
2. An alcohol awareness training program for all alcohol service and monitoring staff sufficient to ensure an understanding of all requirements of serving alcoholic beverages pursuant to applicable laws, rules, regulations, and one or more professional courses in alcohol awareness (i.e. TIPS Training). The alcohol awareness and training program shall be provided to all new alcohol service and monitoring staff during their new employee orientation and to all other alcohol service and monitoring staff at least once per year.

A detailed record of all trainings required of and offered to staff shall be provided to the Director. Upon request from City, Concessionaire shall supply a copy to City of Concessionaire's operating procedures and manual, which include detailed staffing plans for a variety of event activities. Concessionaire shall adjust staffing levels if in the opinion of the Director the staffing levels do not provide adequate service to the general public.

- J. Uniforms and Appearance** – Concessionaire shall ensure that employees maintain a professional appearance while performing the duties associated with this Agreement. Concessionaire shall provide Director-approved uniforms for all staff working during events (except management personnel).
- K. City Approval of Personnel** - Director shall approve Concessionaire's personnel and reserves the right to request and have Concessionaire comply with personnel changes to the extent permitted by applicable law. If at any time, any personnel are unsatisfactory to Director, Concessionaire shall make a change in such personnel acceptable to Director within ten (10) days of written notice from Director. Director must give appropriate reasons for requesting the personnel change that do not discriminate against any individuals based on race, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, or physical or mental disability. Personnel supplied by Concessionaire shall be employees of Concessionaire and shall not at any time or for any purpose be considered employees or agents of the City.
- L. Sales Manager** - Concessionaire shall have available, upon reasonable notice, a qualified representative who shall, upon request of City, meet with City Venues users and prospective City Venues users and assist in explaining and planning food and beverage services as well as the marketing of the City Venues' food service facilities.
- M. Non-Exclusive Backstage Catering** – Backstage Catering is non-exclusive and non-commissionable (i.e. not included in Gross Sales or Gross Receipts) provided that

Backstage Catering is provided at cost plus ten percent (10%). Notwithstanding the foregoing to the contrary, except for Backstage Catering events at Red Rocks Amphitheatre, Concessionaire shall exclusively provide alcoholic beverages for Backstage Catering events at cost plus 10%; Concessionaire shall not serve alcohol in, nor include in its liquor license, the backstage area at Red Rocks Amphitheatre. For purposes of clarity, the "cost" includes cost of product and any direct cost associated with the product (including direct labor and delivery costs) and the "plus ten percent (10%)" is based upon the applicable costs and shall be applied as a credit to Cost of Sales herein.

- N. Novelties Negotiation** - City grants to Concessionaire the right to negotiate a split of Novelties receipts with the consignor of each exclusive event, except for those pre-existing events that have historically maintained their own Novelties' rights, Denver Cutthroat events, and events where it is common industry practice to permit on a limited basis the sales of particular concession items by a Tenant. The Concessionaire will negotiate for the most favorable return and City will support Concessionaire's efforts to secure a favorable split. City will retain the right of final decision if an impasse occurs. Sums received by Concessionaire as a result of such split with the consignor shall be included in Gross Receipts. Concessionaire and City acknowledge and agree certain shows are designed to have booths displaying merchandise for sale similar to a public show at a convention center, which examples include the National Western Stock Show, the March Pow Wow and The Super Sale, and for such shows or events, Concessionaire shall not have rights to sales from the booths at these events, but shall retain rights to sales of merchandise related to the event such as t-shirts and cd's, except when exempted under terms of this Agreement.
- O. Notice of Event Schedule** - City will give Concessionaire advance notice of the nature of scheduled events and such information, as is available, regarding the probable attendance at each event. City will notify Concessionaire of the cancellation of previously scheduled events of which due notice has been given City, but City shall not be liable to Concessionaire for failure to deliver notice of such cancellation. Concessionaire shall be held strictly accountable for furnishing full and adequate service for the full period of time required for any event for which it has received notice.
- P. Product Pricing** - Concessionaire's product offering and pricing shall be pre-approved by the Director during the term of this Agreement. At a minimum, Concessionaire will conduct an annual pricing survey of local and national venues, which survey shall be provided along with a pricing proposal for Director to review and approve. Concessionaire shall submit an initial pricing proposal to Director for review and approval prior to the commencement of this Agreement. Final decisions on all product offering and pricing rest solely with City.
- Q. Wholesale Sales** - Concessionaire shall provide food and beverage services, when reasonably requested and approved in writing by Director, for the City's official business use. Such sales shall be non-commissionable (i.e. not included in Gross Sales or Gross Receipts) provided that such sales are provided at cost plus ten percent (10%). For purposes of clarity, the "cost" includes cost of product and any direct cost associated with

the product (including direct labor and delivery costs) and the “plus ten percent (10%)” is based upon the applicable costs and shall be applied as a credit to Cost of Sales herein.

- R. **Smallwares** - Smallwares necessary to the efficient operation of the Facilities shall be provided by the City and Concessionaire as set forth in Exhibit F.
- S. **Additional Services** - City may require Concessionaire to supply, on a non-exclusive basis, housekeeping, box office, or other services at a predetermined rate per hour per employee, subject to Concessionaire’s ability to provide such services. Payments by City for such services are not to be included in Gross Receipts, Gross Sales, or Cost of Sales.
- T. **Sponsorship and Sampling** - Nothing in this Agreement shall be construed so as to prohibit a Tenant or Sponsor of the Facilities or an event from exhibiting any merchandise or article in connection with the same, or from dispensing free samples of merchandise. Such sampling is subject to the approval of the Director and shall be restricted to two-ounce portions of food items and four-ounce portions of beverages; provided that if alcoholic beverages are being sampled, such sampling shall be coordinated with and conducted by Concessionaire. Any such exhibiting or sampling shall be only with the approval of the Director, who shall use discretion in granting such approval, taking into account Concessionaire’s rights and obligations; without limiting the foregoing, the City agrees to require Tenants and Sponsors that are granted rights to sample food and/or beverages at the Facilities, by agreements entered into after Concessionaire and the City have both executed this Agreement, to indemnify and hold harmless Concessionaire with respect to such serving and/or sampling of food and beverages to the same extent of the indemnification provided to the City. The City’s obligation to require Tenants and Sponsors to indemnify and hold Concessionaire harmless shall apply only to those agreements entered into by the City after Concessionaire and the City have both executed this Agreement. Notwithstanding the foregoing, (1) Concessionaire shall have no approval authority over the terms of the insurance, indemnification, and hold harmless agreements between the City and the Tenants and Sponsors and (2) nothing herein shall affect Concessionaire’s obligations to maintain insurance and to indemnify, defend, and hold harmless the City pursuant to the terms of this Agreement (it being understood and agreed by the parties hereto that such obligations of Concessionaire do not include coverage of or responsibility for any acts, omissions or services provided by Tenants or Sponsors).
- U. **City Provided Equipment** - City owns and maintains the basic concession equipment listed in Exhibit F of this Agreement and permanently located at the City Venues specified in Exhibit F, which equipment (the “**City-Provided Equipment**”) City will provide for Concessionaire’s use without charge; provided, however, that the City-Provided Equipment shall remain the property of City. Concessionaire shall provide for the maintenance and repair of the City-Provided Equipment as required for the normal operations of Concessionaire; the cost and expense of such repair and maintenance treated as a Cost of Sales. Concessionaire shall not be responsible for replacing any such City-Provided Equipment unless Concessionaire’s negligence or willful misconduct shall have been the cause necessitating such replacement (in such instance, the replacement cost shall not be deemed a Cost of Sales). Similarly, any maintenance and repair costs

necessitated by Concessionaire's negligence or willful misconduct shall be at Concessionaire's sole cost and expense and not be deemed a Cost of Sales. The equipment may not be removed, relocated or discarded without written permission of the Director. If Concessionaire desires to locate or install additional equipment for use in the food/service areas of the Facilities, Concessionaire shall obtain the prior written approval of the same from the City.

**V. City's Rights** - City retains and reserves all rights, including advertising and sponsorships, at the Facilities not expressly conferred upon Concessionaire.

**W. Services Description** - The Services to be provided by Concessionaire pursuant to this Section 7 and Concessionaire's associated rights and obligations set forth in this Agreement are further described in **Exhibit G** attached hereto and incorporated herein.

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*8 Inspection and Testing by City*

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**A. Operations Observations** - City shall have the right to observe any transaction or transactions between Concessionaire and the public involving any sales authorized hereunder for the purposes of determining the quality and quantities of food, beverages and facilities offered to the public, the prices charged therefor and the accountability of the Gross Receipts received therefrom. City shall also have the right to make any and all examinations, tests, measurements, weighings, etc. as it may desire of all materials, food and supplies in Concessionaire's possession and to be sold by Concessionaire, in order to determine their quality and quantity.

**B. Facilities Inspections** - City shall have the right at any time and as often as the Director considers necessary to inspect the Locations and places of operation of Concessionaire and to advise Concessionaire of the existence of any conditions which the Director determines to be unsafe, unsanitary or detrimental to the public or the operation of the City Venues. Concessionaire agrees to correct all such conditions promptly after notice.

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*9 Right of Entry Reserved*

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City, through its agents and/or employees, representatives, and contractors, shall have the continual right to enter upon and under all portions of the Locations to inspect the same, to observe the performance of Concessionaire of its obligations under this Agreement, to conduct inspections and/or audits as indicated in Sections 6 and 8 hereof, and to install, remove, adjust, repair, replace or otherwise handle any equipment, utility lines, or other matters in, on, or about the premises, or to do any act or thing which City may be obligated or has the right to do under this Agreement or otherwise. Nothing contained in this Section is intended or shall be construed to limit any other rights of City under this Agreement.

No abatement of any payments by Concessionaire shall be claimed by or allowed to Concessionaire by reason of the exercise of any of the rights set forth in this Section; provided, however, that in the exercise of the foregoing rights, City shall not interfere in Concessionaire's

business activities nor shall City assert any nonperformance by Concessionaire of its responsibilities hereunder as a result of the exercise by City of such rights.

Nothing in this Section shall impose or shall be construed to impose upon City any obligations to construct or maintain or make repairs, replacements, alterations, additions, or improvements or shall create any liability for any failure to do so.

City agrees that it will make ordinary inspections and undertake other non-emergency activities only at reasonable times, provided, however, that nothing in this Section shall be construed to limit or diminish City's right of entry at any time in an emergency, as determined by the Director.

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*10 Ingress and Egress*

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If Concessionaire shall comply with the terms and conditions of this Agreement, then Concessionaire shall have the right of ingress to and egress from the Locations provided for herein through such ways provided by City.

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*11 Permits and Licenses*

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Concessionaire shall procure any permits and licenses required and pay all charges and fees necessary for the business to be conducted by it hereunder; provided, however, that such charges and fees shall be included as Cost of Sales. Concessionaire shall deliver copies of all such permits or licenses to the Director.

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*12 Governmental Compliance*

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Concessionaire, its officers, agents, servants, employees, invitees, licensees, and any other persons over which Concessionaire has control or right of control shall comply with all present and future laws, ordinances, orders, directives, rules and regulations of the United States of America, State of Colorado, and the City and County of Denver and their respective agencies, departments, authorities, or commissions of the foregoing, applicable to or affecting directly or indirectly Concessionaire or its operations and activities on or in connection with the premises of the City Venues.

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*13 No Discrimination in Employment*

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

The Concessionaire shall develop a written policy statement to inform all employees, job applicants, service recipients, and applicants for services of the organization's commitment to ensuring equal opportunity. The policy statement shall be signed by the organization's executive officer and be consistent with corporate objectives of Concessionaire and the Director.

Concessionaire shall comply with all employment laws and practices and conduct its operations within the requirements of all federal, state and municipal jurisdictions having authority.

Additionally, Concessionaire agrees to make a reasonable attempt to hire from the greater Denver area.

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#### 14 Utilities

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- A. **City Supplied Utilities** - City shall furnish, at no cost for consumption, all electric, gas, heat, water, and drainage utilities necessary for the food service operations. Concessionaire shall make best efforts to practice prudent energy management satisfactory to the Director.
- B. **Concessionaire Supplied Utilities** - The Concessionaire shall be responsible for providing only such utility lines and electrical service lines as are necessary for the delivery of the Services under this Agreement. Concessionaire is responsible for its telephone lines and service. The cost and expense incurred by Concessionaire under this Section 14.B shall be considered a Cost of Sales.
- C. **Utility Maintenance** - Concessionaire shall be responsible for maintaining and repairing all utility lines and utility service equipment within Concessionaire's Locations as it pertains to Concessionaire's Locations; provided, however, that the cost and expense incurred by Concessionaire for the foregoing shall be considered a Cost of Sales, and provided further that City shall be responsible for the cost of maintaining and repairing those utility lines and utility service equipment found within the Locations occupied by Concessionaire to the extent any utility lines and utility service equipment for which City is responsible necessitate such maintenance and repair. For the purposes of this Section, the point at which responsibility shall pass from the City to Concessionaire is the point at which the utility service line enters into the wall of the Location.
- D. **City Limited Liability** - Anything herein to the contrary notwithstanding, City shall not be liable or responsible for any failure to furnish utility services, whether occasioned by strike or other work stoppage; federal, state or local government action; breakdown or failure of apparatus, equipment or machinery employed in supplying the said services; any temporary stoppage for the repairs, improvements or enlargement thereof or any act or condition beyond its reasonable control. City shall not be responsible for any goods, products or equipment stored at the City Venues, nor will City be responsible for damage resulting from a power failure, flood, fire, explosion and/or other causes.
- E. **Trash Services** - City is responsible for emptying of the trash compactor(s) and recycling compactor(s) and removal of trash and recycling materials from the building provided

that Concessionaire must maintain and remove the trash and recycling materials from the Spaces or other areas designated by Director and place the same in locations designated by Director. Concessionaire will comply with all laws and City policies concerning recycling and environmental issues that are in effect during the term of this Agreement.

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### 15 Repairs and Maintenance

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- A. **Concessionaire's Obligation** - Concessionaire is responsible for maintaining the Spaces in a clean and presentable condition as specified by Director.
- B. **Signage** - Any signage used to display product information and pricing shall be maintained in good and working order. All signage must be preapproved prior to installation and shall not conflict with any sponsorship arrangement entered into by City and shall be expressly used to advertise a product for sale at the Location that the sign is being displayed.
- C. **Locations and Equipment** - Concessionaire shall be responsible for keeping the Locations clean, safe, and in good working order and for the routine repair and maintenance of equipment (including City-Provided Equipment) used in the operation of the Services.
- D. **Concessionaire's Repairs** - Concessionaire shall, prior to making any routine repairs at the Locations, other than repairs to its own equipment, or emergency repairs, consult with the Director to determine whether City wishes to make the repairs with its own personnel and charge Concessionaire its standard rates for such service including such overhead charges as shall be determined from time to time by the Director. In the event City elects not to make repairs, Concessionaire shall, proceed to do so; provided, however, it will not take any action or refrain from any action which will cause any labor problem which will affect City directly as a result of the action of Concessionaire, its employees, agents or contractors. All work done by Concessionaire, or on its account, shall be of first class quality in both materials and workmanship. All routine repairs and maintenance will be made in conformity with the laws and rules and regulations prescribed from time to time by any Federal, State or municipal authority having jurisdiction over the location of the work.
- E. **Reparations** - In the event that Concessionaire refuses or neglects to make the routine repairs and maintenance specified in this Section 15, to the extent Concessionaire is obligated to do so under this Agreement and after receipt of written notice by City to Concessionaire regarding the same, or if City is required to make any repairs necessitated by the negligent acts or omissions of Concessionaire, its employees, agents, servants, or licensees, City shall have the right, but shall not be obligated, to make such repairs on behalf of or for the account of Concessionaire. In the event that City shall make such repairs, such work shall be paid for by Concessionaire upon receipt of a statement therefor in the amount of City's cost plus an amount for overhead as shall be determined from time to time by the Director.

- F. **Cost and Expense** – Except as otherwise provided in Section 15.F, the cost and expense incurred by Concessionaire under Sections 15.A, B, and C shall be considered a Cost of Sales except to the extent that any such routine repairs or maintenance are necessitated by the negligence or willful misconduct of Concessionaire in which event such cost and expense shall be borne by Concessionaire and shall not be considered a Cost of Sales. In addition, in the event damage to the Facilities or equipment outside of the Locations occurs as a result of Concessionaire’s negligence or willful misconduct in its operations, the cost and expense for such repairs shall be borne by Concessionaire and shall not be considered a Cost of Sales. Notwithstanding the foregoing, the obligation to pay for, and authority to perform, direct, and supervise capital repairs, improvements, and replacements shall remain with the City and the cost and expense for the same will not be considered Cost of Sales.
- G. **Repair and Maintenance Fund.** Concessionaire and City are parties to that certain Concession Agreement, dated May 1, 2003, under which Concessionaire provided food, beverage, retail, catering, and concession services at Red Rocks Amphitheatre (“**Previous Agreement**”). Under said agreement, an equipment replacement and enhancement fund (the “**Reserve Fund**”) was established and funded by Concessionaire at the rate of one and one-half percent (1.5%) of gross receipts as defined in the Previous Agreement. Concessionaire and City agree to determine the amount of funds remaining in the Reserve Fund as of the commencement date of this Agreement (the “**Remaining Reserve Fund**”). The parties agree that (i) the Remaining Reserve Funds shall be utilized pursuant to this Agreement for the purposes set forth the Previous Agreement and under the terms described therein and (ii) in no event shall any use of Remaining Reserve Funds be deemed a Cost of Sales under this Agreement.

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*16 Alterations and Repairs by Concessionaire*

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- A. **Conditions of Alterations and Repairs-** Concessionaire may alter, modify, or make non-routine repairs to or installations at the Locations or install any fixtures therein, including signage and graphics, only with the prior written permission of the Director. In the event Concessionaire is required or permitted by the Director to make alterations, non-routine repairs, modifications, or installations at or to the Locations, such work shall be built or made strictly in accordance with the following terms and conditions, and no such work or contracts or subcontracts for the same shall be entered until Concessionaire has established to the Director’s reasonable satisfaction that the following terms and conditions have been fully and appropriately satisfied.
1. Before the commencement of such work, (i) conceptual/schematic, preliminary and final detailed plans (which shall include samples of colors and materials), and specifications shall be filed with and approved by the Director and all governmental departments or authorities having jurisdiction or design review thereover, (ii) all such work shall be done subject to and in accordance with the requirements of law and applicable regulations of all such governmental departments and authorities and, when required, each affected public utility



company, and (iii) all work shall be fully coordinated with scheduled City Venues' events and with the construction, remodeling, repair and other work being performed by others at the City Venues.

2. Before the commencement of such work, Concessionaire shall obtain, and provide to the City Attorney for approval, payment and performance bonds to the extent required by and in accordance with the laws of the State of Colorado, the City Charter and ordinances of the City and County of Denver.
3. Concessionaire shall pay and ensure that its construction contractors and subcontractors pay any and all prevailing wage rates to laborers and workmen, as set forth in sections 20-76 through 20-79 of the Denver Revised Municipal Code ("DRMC"), as the same may be amended or recodified from time to time.
4. Concessionaire shall obtain insurance as required by the City's Office of Risk Management, and provide evidence thereof to the City Attorney, against all liabilities and claims potentially arising out of or related to the work contemplated by this Section 16. The City's Risk Management Office shall be notified of all such work prior to commencement of the work and, upon receipt of notice thereof, will require appropriate insurance of the Concessionaire and/or Concessionaire's subcontractors. Insurance requirements may include, without limitation, Builders' Risk and an Installation Floater covering the property and equipment, with the City and County of Denver listed as an Additional Insured, and professional insurance covering all engineering and architectural work. Per Section 18.B.1, all subcontractors and subconsultants are required to procure and maintain the same coverages required of the Concessionaire, as applicable to the scope of work. All coverages related to the subject work shall be kept in full force at all times during the work, warranty period, and for eight (8) years after termination of this Agreement. Evidence of coverage must be submitted to the City Attorney before commencement of such work. Neither the obligation to obtain such insurance nor the obtaining of such insurance shall relieve or lessen Concessionaire's indemnification of City, except to the extent of payment under policies of such insurance.
5. Such work shall be performed in compliance with the provisions for small business enterprise, equal employment opportunity, and minority and women business enterprise participation that are contained in sections 28-31 through 28-90, DRMC, as the same may be amended or recodified from time to time.
6. Such work shall be performed in a first class workmanlike manner and in accordance with the plans and specifications approved for the same and by contractors satisfactory to the Director. Concessionaire shall redo or replace, at its sole cost and expense, prior to or after completion of such work, any work as determined by the Director which is not done in accordance with such plans and specifications as approved by the Director.

7. Concessionaire shall, at its sole cost and expense, submit to the Director as soon as practicable following final completion of such work as described hereinabove, the following in separate submissions for each Location and for each category of investment: (i) written notice of completion indicating the effective date of completion of said work; (ii) an itemized statement of the costs incurred by Concessionaire for such work with invoices attached and showing a breakdown of costs in fixed or movable improvements and/or equipment; (iii) one set of as built plans showing the improvements as constructed; and; (iv) a schedule of equipment listing serial numbers and location of each item.
8. Unless otherwise approved in writing by the Director, no fixtures, equipment or other personal property shall be purchased, leased, hired under any purchase agreement, bailment lease, conditional sale or other agreement unless such lease, conditional sale or other agreement provides for a waiver of exemption of distraint or other proceeding which may be available to City against such fixtures, equipment, or other personal property.
9. The risk of loss or damage to all such required or permitted repairs, alterations, modifications or installations prior to completion thereof shall be upon Concessionaire and Concessionaire shall, at its own cost and expense, replace and repair any and all such damage in accordance with the provisions of this Section

Notwithstanding anything to the contrary contained in this Section 16, Concessionaire may not undertake the construction, reconstruction, or remodeling of general public improvements. Furthermore, City shall retain the discretion to determine whether and to what level to fund the work contemplated by this Section 16.

- B. **Concessionaire's Property** - All moveable equipment and furnishings purchased by Concessionaire shall remain the property of Concessionaire.
- C. **Lien Waivers** - Concessionaire shall cause each contractor with whom it contracts for construction of fixed improvements to execute and file with the Director, a waiver of the right to file a mechanics' lien which shall be effective against claims by contractor and all subcontractors, materialsmen and workmen arising out of any work done by Concessionaire or by Concessionaire's contractors. Concessionaire will indemnify, hold harmless and defend City from any and all claims, liens or charges of any nature whatsoever relating to defects in the work done by Concessionaire or its contractors.
- D. **Landlord's Lien** - It is understood and agreed that, notwithstanding any other provisions of this Agreement, City shall at all times have the right to assert a landlord's lien on any and all property of Concessionaire or any other person or entity, in or around the Facilities.
- E. **Cost and Expenses**. In the event Concessionaire is required or permitted by the Director to alter, modify, or make non-routine repairs at or to the Locations as provided in this Section 16, the cost and expenses incurred by Concessionaire therefor shall not be

considered a Cost of Sales but shall remain fully reimbursable by City to Concessionaire upon provision to City of an invoice in format and with a level of detail reasonably acceptable to City and including reasonable supporting documentation as may be requested by City. Payment by the City for such work shall be subject to Section 4.H of this Agreement and the City's Prompt Payment Ordinance.

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*17 Damage to or Destruction of Premises*

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Concessionaire shall, at its own cost and expense (which shall not be treated as a Cost of Sales), replace and repair any and all damage or destruction to the Locations which is the result of Concessionaire's negligence or willful misconduct, such replacement and repair to be performed in accordance with the provisions of Section 16, hereof; provided, however, that said duty to replace and repair shall not apply to the extent of damage caused by the negligence or willful misconduct of employees of City.

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*18 Insurance, Liability and Bonds*

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**A. Performance Bond** - Concessionaire shall provide upon execution of this Agreement and keep in effect during the term of the Agreement, a performance bond with corporate surety in the amount of One Million (\$1,000,000) dollars, guaranteeing the faithful performance of all conditions contained herein. The form and content of the bond as well as the identity of the surety are subject to the approval of City. In lieu of a bond, City may, in its sole discretion, accept as security an irrevocable letter of credit in a form and with a bank satisfactory to City.

**B. Insurance Requirements**

1. **General Conditions:** Concessionaire agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Concessionaire shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. 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. Notice of cancellation of any insurance policies required herein shall be subject to ACORD Certificate of Liability standards and will be delivered, as applicable, with policy provisions. Additionally, Concessionaire shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in Section 34 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 Concessionaire. Concessionaire 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 Concessionaire. The Concessionaire 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.

2. **Proof of Insurance:** Concessionaire may not commence services or work relating to the Agreement prior to placement of coverage. Concessionaire certifies that the certificate of insurance attached as Exhibit H, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. 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 Concessionaire's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including proof of endorsements. In addition, in the event a claim results in a dispute over coverage under a policy required by this Agreement, Concessionaire shall provide the City with a copy of the relevant provisions of the subject policy. Concessionaire understands that all material provided or produced under this Agreement may be subject to the Colorado Open Records Act, § 24-72-201, et seq., C.R.S. (2006); however, in the event of a request to the City for disclosure of such information, the City shall advise Concessionaire of such request in order to give Concessionaire the opportunity to object to the disclosure of any of its proprietary or confidential material. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and Concessionaire agrees to intervene in such lawsuit to protect and assert its claims of privilege and against disclosure of such material or waive the same. Concessionaire further agrees to defend, indemnify and save and hold harmless the City, its officers, agents and employees, from any claims, damages, expenses, losses or costs arising out of Concessionaire's intervention to protect and assert its claim of privilege against disclosure under this Section 18.B.2.
3. **Additional Insureds:** For Commercial General Liability and Auto Liability, Concessionaire and subcontractors' insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.
4. **Waiver of Subrogation:** For all coverages, Concessionaire's insurer shall waive subrogation rights against the City.
5. **Subcontractors and Subconsultants:** All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein. Concessionaire shall require all of its subcontractors and subconsultants to provide insurance coverage in types and amounts required by the Concessionaire, but in amounts of at least \$1,000,000 Commercial General Liability, Business Auto insurance of \$1,000,000 combined single limit, statutory Workers' Compensation coverage and \$1,000,000 professional liability for any

sobcontractor performing design or engineering work. Concessionaire shall include all such subcontractors and subconsultants as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Concessionaire agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

6. **Workers' Compensation/Employer's Liability Insurance:** Concessionaire 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. Concessionaire expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Concessionaire'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 Concessionaire executes this Agreement.
7. **Commercial General Liability:** Concessionaire 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.
8. **Liquor Legal Liability:** Concessionaire shall maintain limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit, which coverage may be provided pursuant to the Commercial General Liability insurance policy described above provided that a limit of \$1,000,000 specific to liquor liability is included in said policy.
9. **Business Automobile Liability:** Concessionaire shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement
10. **Property Insurance:** Concessionaire shall maintain All Risk/Special Cause of Loss Form Property Insurance on a replacement basis including coverage for tenant improvements, betterments and contents.
11. **Additional Provisions:**
  - (a) For Commercial General Liability, the policies must provide the following:
    - (i) That this Agreement is an Insured Contract under the policy;
    - (ii) Defense costs are in excess of policy limits;

- (iii) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
  - (iv) A provision that coverage is primary with other coverage or self-insurance maintained by the City.
- (b) For claims-made coverage:
- (i) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier
- (c) Concessionaire shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Concessionaire will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.
- (d) Any insurance coverage (additional insured or otherwise) that Concessionaire provides for the City shall only cover insured liability assumed by Concessionaire by this Agreement; such insurance coverage shall not otherwise cover liability in connection with or arising out of the negligent acts or willful misconduct of the City.

**C. Indemnification** - Concessionaire shall indemnify and hold harmless and defend City, its officers, agents and employees from any and all claims, liability or loss of any nature whatsoever arising out of or relating to the Concessionaire's occupancy of the premises and operation of the Services. This indemnity shall be interpreted to indemnify City for any acts or omissions of Concessionaire, its agents, employees, contractors, invitees, or licensees, whether passive or active, irrespective of fault, including City's concurrent negligence, whether active or passive; provided however, that the Concessionaire shall not be required to indemnify or save harmless the City, its officers, agents and employees, from liability or damages to the extent arising from the negligence or willful misconduct of the City's officers, agents and employees. Defense costs coverage must be included in the liability coverage provided for the City and County of Denver, its officers, officials and employees as additional insureds.

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*19 Termination by City*

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**A. Grounds for Termination** - If any one or more of the following shall occur, then, City may at its option terminate this Agreement by sending written notice of termination, by registered or certified mail, to Concessionaire at its address set forth herein, which notice shall be deemed given when received.

- 1. Concessionaire shall become insolvent, or shall take the benefit of any present or future insolvency statute; or shall make a general assignment for the benefit of

creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property; or

2. By order or decree of the court Concessionaire shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of its stockholders, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or any State thereof; or
  3. A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against Concessionaire and shall not be dismissed or stayed within thirty (30) calendar days after the filing thereof; or
  4. By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court of governmental board, agency or officer, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of Concessionaire and such possession or control shall continue in effect for a period of thirty (30) calendar days; or
  5. Concessionaire shall become a corporation in dissolution; or
  6. Interests of or rights of Concessionaire hereunder shall be transferred to, passed to, or devolve upon, by operation of law or otherwise, any other person, firm, corporation, or other entity, by, in connection with or as a result of any bankruptcy, insolvency, trusteeship, liquidation, or other preceding or occurrence described in Subsection 1, 2, 3, 4, or 5 of this Section; or
  7. Concessionaire shall voluntarily discontinue its operation at the City Venues; or
  8. Any lien is filed against the Facilities or any portion thereof because of any act or omission of Concessionaire and is not discharged within twenty (20) calendar days, unless Concessionaire shall within the aforesaid twenty (20) calendar days furnish to City such bond as the Director in his/her discretion determines to be adequate to protect the interests of City; or
  9. City shall determine in its sole and absolute discretion that the City Venues shall be closed, abandoned, or razed; or
  10. Concessionaire loses its liquor license.
- B. If Concessionaire is a privately owned corporation, and any of the events enumerated in Subsection 1, 2, 3, 4, 5 or 6 of this Section 19.A. occur with respect to the principle shareholder or his or her estate, then upon the occurrence of any such event or at any time

thereafter during the continuance thereof, City may, at its option terminate this Agreement by sending written notice of termination, by registered or certified mail, to Concessionaire at its address set forth herein, which notice shall be deemed given when mailed.

- C. If Concessionaire shall become a successor or merged corporation in a merger, or a constituent corporation in a consolidation, then such merger or consolidation shall not be grounds for termination of the Agreement and of Concessionaire's rights hereunder if the successor corporation shall have and shall acknowledge in writing to the Director that it has assumed all of the obligations of Concessionaire under this Agreement, and shall provide written notice to the parties set forth in Section 34 of this Agreement. If the successor corporation shall not have, or shall fail to give written acknowledgment to the Director that it has assumed all of the obligations of Concessionaire, then City may, at its sole option, terminate this Agreement by sending written notice of the termination, by registered or certified mail, to Concessionaire at its address set forth herein, which notice shall be deemed given when mailed.
  
- D. In the event Concessionaire shall fail to perform or, improperly performs any of its obligations hereunder ("**Non-performance**"), then City shall have the right to provide Concessionaire with a notice of default which shall set forth specifically the Non-performance. Concessionaire shall have thirty (30) calendar days from the date of receipt of such notice, except as provided below, within which to correct the Non-performance. Should Concessionaire cure the Non-performance within the thirty (30) calendar day period, it shall notify City in writing of such cure. In the event the Non-performance is not cured within such thirty (30) calendar day period, City may then terminate this Agreement by giving Concessionaire fifteen (15) calendar days' written notice of its decision to do so which notice shall specify the exact date of termination. Such termination notice shall not extend further the cure period afforded to Concessionaire. Notwithstanding the foregoing, if the Non-performance cannot be cured through the exercise of reasonable diligence within the thirty (30) day period, then such thirty (30) day period shall be extended to a time as is reasonable to cure the Non-performance, provided Concessionaire has proceeded and is continuing to proceed in a diligent and reasonable manner to cure. Concessionaire shall, if the Non-performance cannot be cured within the thirty (30) day time period through the exercise of reasonable diligence so advise City in writing and also provide its best estimate of when such Non-performance will be cured and shall further advise City of such cure when accomplished. The foregoing period to cure shall not apply if Concessionaire fails to timely pay the Minimum Guaranteed Payment for any Accounting Period or any other payment owed to City ("**Payment Non-performance**"); the cure period for Payment Non-Performance shall be five (5) calendar days following receipt of notice of such Payment Non-performance. Notwithstanding the foregoing thirty (30) day and five (5) day cure periods set forth above, Concessionaire agrees that it will cure defaults as promptly as commercially practicable and Concessionaire will not take the full cure period to cure defaults if such defaults can be cured in a shorter period.
  
- E. **Right of Re-entry** - City shall, as an additional remedy upon the giving of notice of termination, have the right to re-enter the Locations upon the effective date of termination



without further notice of any kind, and may regain and resume possession either with or without the institution of summary or any other legal proceedings or otherwise. Such re-entry, or regaining or resumption of possession, however, shall not in any manner affect, alter or diminish any of the obligations of Concessionaire under this Agreement, and shall in no event constitute an acceptance of surrender.

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*20 Non-Waiver by City*

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A failure by City to take any action with respect to any default or violation by Concessionaire of any of the terms, covenants, or conditions of this Agreement shall not in any respect limit, prejudice, diminish, or constitute a waiver of any rights of City to act with respect to any prior, contemporaneous, or subsequent violation or default or with respect to any continuation or repetition of the original violation or default. The acceptance by City of payment for any period or periods after a default or violation of any of the terms, conditions, and covenants of this Agreement shall not constitute a waiver or diminution of, nor create any limitation upon any right of City pursuant to this Agreement to terminate this Agreement for such violation or default or for continuation or repetition of the original violation or default.

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*21 Agreement Not Assignable*

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This Agreement shall not be assigned, transferred, sublet or otherwise disposed of by either party hereto without the express written approval of the other party, provided no such approval shall be required in the event of an assignment by Concessionaire to an affiliate of Concessionaire controlled by, or under common control with, Concessionaire. Notwithstanding the foregoing, any assignment by Concessionaire to an affiliate of Concessionaire that is controlled by, or under common control with, Concessionaire shall not be effective until written notice of such assignment is received by City and the City Attorney in accordance with Section 34 below. In addition, no assignment by Concessionaire shall release Concessionaire of its obligations hereunder unless expressly released in writing by City.

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*22 Concessionaire Independent Contractor*

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It is understood and agreed that nothing herein contained is intended or shall be construed to in any way create or establish the relationship of co-partners between City and Concessionaire or as constituting Concessionaire, as a representative or agent of City for any purpose whatsoever.

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*23 Surrender of Premises*

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Concessionaire covenants and agrees to yield and deliver peaceably to City possession of the Locations occupied herein and alteration, additions, or improvements thereof upon the termination or expiration of this Agreement promptly and in good condition, order and repair, except for reasonable wear and tear from the last necessary repair, replacement, restoration or renewal of such locations made by Concessionaire pursuant to Concessionaire's obligations under this Agreement.

If Concessionaire fails or neglects to remove all or any portion of its movable furniture, movable personal property and/or removable trade fixtures within thirty (30) calendar days after the termination or expiration of this Agreement or expiration of any renewal thereof, such items shall, at the sole option of City, become the property of City and if such option is exercised by City, Concessionaire shall have no further or equitable right, title or interest therein.

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*24 No Personal Liability*

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No elected official, director, officer, agent or employee of City nor any director, officer, or employee of Concessionaire, shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.

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*25 Representations, Warranties, Damages*

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No representations or warranties, whether oral or written, express or implied, made prior to the execution of this Agreement shall be part of this Agreement. Except as may otherwise be expressly provided in Sections 7.G and 35 of this Agreement, the City agrees to waive Concessionaire's liability for all damages arising out of Concessionaire's breach of this Agreement and/or early termination of this Agreement, including, consequential, punitive, and incidental damages, except for and provided that Concessionaire shall be liable for: (i) any failure to pay any sum due and payable under the express terms of this Agreement, (ii) the City's loss of actual net revenues during such time periods that Concessionaire fails to provide the Services under this Agreement through and until a replacement provider for all the Services is obtained by the City, and (iii) the actual costs incurred by the City to obtain a replacement provider for all the Services under this Agreement. Under no circumstances whatsoever shall the City be liable to Concessionaire for any punitive, incidental or consequential damages (except for any failure to pay any sum due and payable under the express terms of this Agreement), arising out of this Agreement or any other transaction(s) between the parties hereto. Each party shall use commercially reasonable efforts to mitigate losses resulting from a breach or early termination of this Agreement.

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*26 Operating Standards*

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All of Concessionaire's activities hereunder shall be subject to the policies and standards of City, as the same may be amended from time to time by the City.

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*27 Conflict of Interest by City Officer*

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Concessionaire represents that to the best of its information and belief that no elected official or employee of City is either directly or indirectly a party to or in any manner interested in this Agreement except as such interest may arise as a result of the lawful discharge of the responsibilities of such elected official or employee.

- A. Subject to Section 28.E., neither party hereto shall be liable to the other for any failure, delay, or interruption in performing its obligations hereunder due to causes or conditions beyond its control, including without limitation acts of God; provided, that nothing in this Section is intended or shall be construed to abate, postpone, or in any respect diminish Concessionaire's obligations to make any payments due to City pursuant to this Agreement.
- B. Neither party hereto shall be under any obligation to supply any service or services if and to the extent and during any period that the supplying of any such service or services or the use of any component necessary therefore shall be prohibited by any Federal, State, County or municipal law, rule, regulation, order or directive.
- C. Except as otherwise expressly provided in this Agreement, no abatement, diminution or reduction of the Minimum Guaranteed Payment or other payments or charges payable by Concessionaire shall be claimed by or allowed to Concessionaire for any inconvenience, interruption, cessation, or loss of business or other loss caused, directly or indirectly, by any present or future laws, rules, requirements, orders, directives, ordinances or regulations of the United States of America, or of the State, or City, or any other lawful authority whatsoever, or by priorities, rationing, or curtailment of labor or materials, or by war or any matter or thing resulting therefrom, or by any other cause or causes beyond the control of City, nor shall this Agreement be affected by any such causes.
- D. In the event of the destruction of a City Venue by reason of fire, storm or other casualty or occurrence of any nature, Concessionaire may suspend services to be performed under this Agreement with respect to such City Venue or terminate this Agreement with respect to such City Venue. In the event Concessionaire elects not to terminate this Agreement, Concessionaire may suspend its service with respect to such City Venue until such time, not to exceed twelve (12) months, as City shall have substantially completed the reconstruction of the City Venue.
- E. Concessionaire may suspend services to be performed under this Agreement or terminate this Agreement with respect to a City Venue in the event any act or occurrence, including without limiting the generality of the foregoing, acts of God or other occurrences beyond Concessionaire's control, which act or occurrence is of such effect and duration as to effectively curtail the use of the subject City Venue for its intended purposes so as to effect a substantial reduction in the need for the services provided by Concessionaire for a period in excess of ninety (90) calendar days; provided, however, for the purposes of this Section 28.E., Concessionaire shall have the right terminate this Agreement with respect to the subject City Venue on a retroactive basis effective as of the date the use of the subject City Venue was effectively curtailed.

If Concessionaire requires the use of or desires to use any patented design, device, material, process, mark, copyright, trademark, name, slogan, or other legally protected property right, or to sell, vend or distribute any item or product which is subject to a copyright, patent, trademark, license, or other form of legal protection, it shall provide for such use, sale or distribution in an approved legal manner by making a proper agreement with the patentee, owner or lessee or such design, device, material, process, mark, copyright, trademark, name, slogan, or other legally protected property right, for such use. Concessionaire shall protect, defend and save harmless City, its officers, agents, and employees, against any and all claims for damages or otherwise by reason of infringement of such design, device, material, process, mark, copyright, trademark, name, slogan, or other legally protected property right, and shall indemnify City, its officers, agents, and employees for any loss it or they may sustain due to such infringement. Concessionaire shall not sell, vend or distribute items or products deceptively similar to those subject to copyright, patent, trademark, or license to avoid payment of appropriate royalties or fees.

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*30 No Liability for Water Damage*

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City shall not be liable to Concessionaire for any damage to property of Concessionaire at any time due to water, rain, snow, or any other substance which may leak into, issue, or flow from any part of the City Venues or from the pipes or plumbing works of same or from any other place.

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*31 Interpretation*

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- A. **In General** - It is the intention of the parties hereto that the language hereof, and in all parts of this Agreement shall be in all cases construed simply according to their fair meaning and not strictly for or against either City or Concessionaire.
- B. **Law Governing Interpretation** - Concessionaire and City agree that any litigation filed by either as a result of any breach of contract or other matter arising out of this Agreement shall be filed exclusively in the Denver District State Court or in the United States District Court for the District of Colorado and that the interpretation of this Agreement shall be in all respects governed by the laws of the State of Colorado, without regard to any statute or rule of law purporting to provide for a different choice of law.
- C. **Section and Paragraph Headings** - The Section and/or Paragraph headings herein and through this Agreement are for the convenience of City and Concessionaire in reference only, and are not intended and shall not be used to construe the intent of this Agreement or any part thereof, or to modify, amplify, or aid in the interpretation or construction of the provisions thereof.
- D. **Gender and Number** - The use of any gender herein shall include any or all genders, and use of any number shall be construed as the singular and/or the plural, all as the context may require.

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*32 Severability*

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City and Concessionaire agree that, except for the provisions of this Agreement requiring appropriation of funds and limiting the total amount payable by the City, if any section or provision of this Agreement, or any portion of any Section or provision, shall for any reason be held to be void, illegal or otherwise enforceable, all other portions of this Agreement shall nevertheless remain in full force and effect.

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*33 Quiet Enjoyment*

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Except for such rights and acts of City authorized by this Agreement, City covenants that Concessionaire, upon paying all payments, fees, and other charges due hereunder and performing and complying with all covenants, agreements, provisions, obligations and duties incumbent upon Concessionaire under this Agreement, shall and may peaceably have, hold and enjoy the Locations in the manner described herein during the term of this Agreement. In the event that City shall in any manner convey the premises or assign this Agreement, with the consent of Concessionaire, or if the operations of the City Venues shall pass from City by operation of law or otherwise, then City shall have no personal obligation to Concessionaire with respect to the foregoing covenant after such conveyance, assignment, or passing.

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*34 Notices*

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- A. Notices to City** - All notices required to be given by Concessionaire to City pursuant to this Agreement shall be in writing and sent by overnight, registered or certified mail, to:

Mayor of the City of Denver  
Room 350, City and County Building  
Denver, Colorado 80202-5375

And:

Director, Arts & Venues Denver Division  
1245 Champa Street, First Floor  
Denver, Colorado 80204

With copies to:

City Attorney  
City and County of Denver  
Room 353, City and County Building  
Denver, Colorado 80202-5375

or to such other place as City may from time to time designate in writing.

- B. Notices to Concessionaire** - Except as otherwise provided in this Section with regard to day to day operational and management matters, all notices required to be given by City

to Concessionaire pursuant to this Agreement shall be directed in writing and sent by overnight, registered or certified mail to:

ARAMARK Sports and Entertainment Services, LLC  
ARAMARK Tower  
1101 Market Street  
Philadelphia, PA 19107  
Attn: President – Sports and  
Entertainment

with a required copy to:

ARAMARK Sports and Entertainment Services, LLC  
ARAMARK Tower  
1101 Market Street  
Philadelphia, PA 19107  
Attn: Vice President and Associate  
General Counsel – Sports and  
Entertainment

or to such other place as Concessionaire may from time to time designate in writing. Notwithstanding the foregoing, notice provided by the City to Concessionaire at the following address shall be sufficient for matters involving day to day operational and management issues (including by way of example, the matters and notice addressed in Sections 4.G, 6.D, 7.K, 7.L, 7.O, 8.B, and 15.E):

ARAMARK Sports and Entertainment Services, LLC  
6595 South Dayton, Suite 2200  
Greenwood Village, CO 80111  
Attn: Regional Director – Central Region

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*35. No Employment of Illegal Aliens to Perform Work Under the Agreement*

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- A. The Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, as may be amended hereafter (the “**Certification Ordinance**”) and Concessionaire is liable for any violations as provided in the Certification Ordinance.
- B. Concessionaire certifies that:
1. At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.
  2. It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

C. Concessionaire also agrees and represents that:

1. It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
2. It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to Concessionaire that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
3. It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.
4. It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and it is required to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all programs requirements related to employee notification and preservation of employee rights.
5. If it obtains actual knowledge that a subconsultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three (3) days. Concessionaire will also then terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.
6. It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S., or the City Auditor, under authority of D.R.M.C. § 20-90.3.
7. Concessionaire is liable for any violations as provided in the Certification Ordinance. If Concessionaire violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of this Agreement. If the Agreement is so terminated, Concessionaire shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this Section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Concessionaire from submitting bids or proposals for future contracts with the City.

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*36 Environmental Requirements*

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As used in this Agreement, the following terms shall have the following definitions: (a) "Environmental Laws" means any federal, state, and local statute, law, ordinance, regulation,

rule, resolution, order, determination, writ, injunction, common law ruling, award, judgments and decrees, relating to the remediation, generation, production, installation, use, storage, treatment, transportation, Release, threatened Release, or disposal of Hazardous Materials, or the protection of human health, safety, natural resources, animal health or welfare, or the environment; (b) "Hazardous Materials" means any substance, chemical, compound, product, solid, gas, liquid, waste, byproduct, pollutant, contaminant or material that is listed, classified or regulated pursuant to any Environmental Law; and (c) "Release" means any presence, emission, spill, seepage, leak, escape, leaching, discharge, injection, pumping, pouring, emptying, dumping, disposal, migration, or release of Hazardous Materials from any source into or upon the environment, including the air, soil, improvements, surface water, groundwater, the sewer, septic system, storm drain, publicly owned treatment works, or waste treatment, storage, or disposal systems. Contractor, in performing the Services and its associated rights and obligations under this Agreement, shall comply with all Environmental Laws, including but not limited to Environmental Laws regarding the storage, use, and disposal of Hazardous Materials and regarding Releases or threatened Releases of Hazardous Materials into the environment.

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*37 Entire Agreement*

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This Agreement, including the Exhibits hereto, supersedes any prior Agreement on the subject of the operation of the Services at the City Venues. This Agreement constitutes the entire Agreement of the parties in the subject matter thereof, and may not be changed, modified, discharged or extended by oral agreement or representation or otherwise except by written amendment duly executed by an authorized representative of Concessionaire and City.

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*38 Exhibits*

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The following Exhibits and Attachments are attached hereto and incorporated herein by reference and the rights and obligations contained therein are hereby incorporated into and shall be a part of this Agreement as if contained in the main body of this Agreement:

Exhibit A	-	Spaces / Locations
Exhibit B	-	Incentive Criteria
Exhibit C	-	Sample Monthly Financial Report
Exhibit D	-	Sample Daily Report
Exhibit E	-	Sample Statement of Receipts and Expenses
Exhibit F	-	City-Provided Equipment
Exhibit G	-	Services Description
Exhibit H	-	Certificate of Insurance

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*39 Legal Authority*

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Concessionaire represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement. Each person signing and executing this Agreement on behalf of Concessionaire represents and warrants that he or she has been fully authorized by Concessionaire to execute this Agreement on behalf of Concessionaire and to validly and legally bind Concessionaire to all



the terms, performances and provisions of this Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate this Agreement if there is a dispute as to the legal authority of either Concessionaire or the person signing this Agreement to enter into this Agreement.

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*40 Use, Possession, or Sale of Alcohol or Drugs*

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Concessionaire, its officers, agents, contractors, subcontractors, and employees shall cooperate and comply with the provisions of Executive Order 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City's barring Concessionaire, its officers, agents, contractors, subcontractors, and employees from City facilities or participating in City operations.

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*41 No Sale or Advertising of Tobacco Products; No Smoking*

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Concessionaire shall cooperate and comply with the provisions of Executive Order No. 13, which prohibits the sale or advertisement of tobacco products on City owned property and in facilities owned or operated or controlled by the City. "Sale" includes promotional distribution, whether for consideration or not, as well as commercial transactions for consideration. "Advertising" includes the display of commercial and noncommercial promotion of the purchase or use of tobacco products through any medium whatsoever, but does not include any advertising and sponsoring which is a part of a performance or show or any event displayed or held in City facilities.

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*42 Colorado Governmental Immunity Act*

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In relation to this Agreement, the City is relying upon and has not waived the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, C.R.S. § 24-10-101, et seq.

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*43 Electronic Signatures and Electronic Records*

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Concessionaire consents to the use of electronic signatures by the City. This 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 this 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 this 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.

**The remainder of this page left blank intentionally.**

**Contract Control Number:** THTRS-201205498-00

**Contractor Name:** ARAMARK SPORTS AND ENTERTAINMENT SERVICES

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:

DOUGLAS J. FRIEDNASH, Attorney  
for the City and County of Denver

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



Contract Control Number: THTRS-201205498-00

Contractor Name: ARAMARK SPORTS AND ENTERTAINMENT SERVICES, LLC

By: Mark Adams

Name: MARK R ADAMS  
(please print)

Title: VP Finance + CFO  
(please print)

~~ATTEST: [if required]~~

~~By: \_\_\_\_\_~~

~~Name: \_\_\_\_\_  
(please print)~~

~~Title: \_\_\_\_\_  
(please print)~~

