

APPENDIX 5-C-1
INITIAL ACDBE PLAN

(See attached.)

APPENDIX 5-C-1 ACDBE Compliance Plan

GR

A PROJECT THROUGH

Denver Great Hall LLC






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INTRODUCTION

As a condition of eligibility for financial assistance from the Federal Aviation Administration (“FAA”), the City, through its Division of Small Business Opportunity (“DSBO”), developed and implemented an ACDBE Program for the Airport. The ACDBE Program was developed and implemented in accordance with USDOT’s Final Rule 49 CFR Part 23.

The Developer submits this ACDBE Compliance Plan to the Director of the Division of Small Business Opportunity (“Director”) in accordance with the Development Agreement, between the Developer and the City (the “DA”).

This Compliance Plan aligns with the principles of 49 CFR Part 23, Part 26 and the City and County of Denver Small Business Office’s (“DSBO”). ~~The ACBDE Strategic~~ [This ACDBE Compliance](#) Plan relates to the operation of the concessions in the Great Hall, as contemplated in the DA.

The Parties will comply with and are subject to the provisions of 49 CFR Part 23 and the relevant provisions of 49 CFR Part 26. Capitalized terms used herein and not otherwise defined herein shall have the respective meanings ascribed to them in the DA.

Vision

The Developer embraces the vision of making the Great Hall a great place to work and supports DEN in its efforts to accomplish the goals set in its ACDBE Program.

Objectives

- To ensure that the Developer’s ACDBE ~~Strategic~~ [Compliance](#) Plan is narrowly tailored to best fit DEN’s ACDBE Program
- To ensure non-discrimination in the award and administration of opportunities for concessions
- To support DEN’s goals of removing barriers to the participation of ACBDEs within the framework of the Project

Goal

The City’s Manager of Small Business Opportunity has established the ACDBE goal for the Project (the “Project Goal”) as 26% of the total gross receipts for concessions that are part of the Denver Great Hall Project.

Developer shall use good faith efforts, and shall take measures designed to ensure that each Concessionaire utilizes good faith efforts, to meet the Project Goal.



Compliance Plan

Because of the delivery method used for this Project, the specific Concession opportunities are not known as of the Effective Date.

This Compliance Plan describes how the Developer will use its good faith efforts to meet the Project Goal both prior to and during the Project Operating Period.

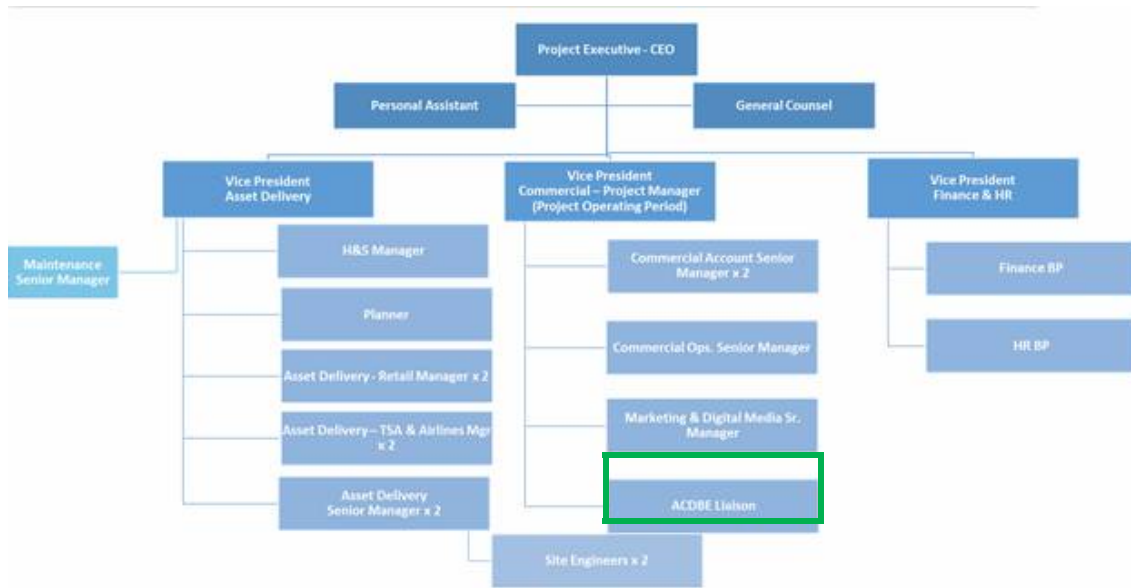
M/WBE Concessionaire Tenant Finish

M/WBE Concessionaire Tenant Finish goals, which are implemented by the DSBO, shall be directly communicated by the DSBO to the applicable Concessionaire and any implementation, enforcement or pursuit of the same shall be enforced in accordance with D.R.M.C. § 28-77 and taking into account the rights of the Developer under the DA.



KEY PERSONNEL

Organizational Structure¹ – ~~Pre-Project~~ ~~Operating~~ Construction Period



The Developer has designated a specific role for the implementation of this ACDBE Compliance Plan and for the coordination of communications between the Developer and DEN related to this matter (the job description for this position is included as part of Annex A).

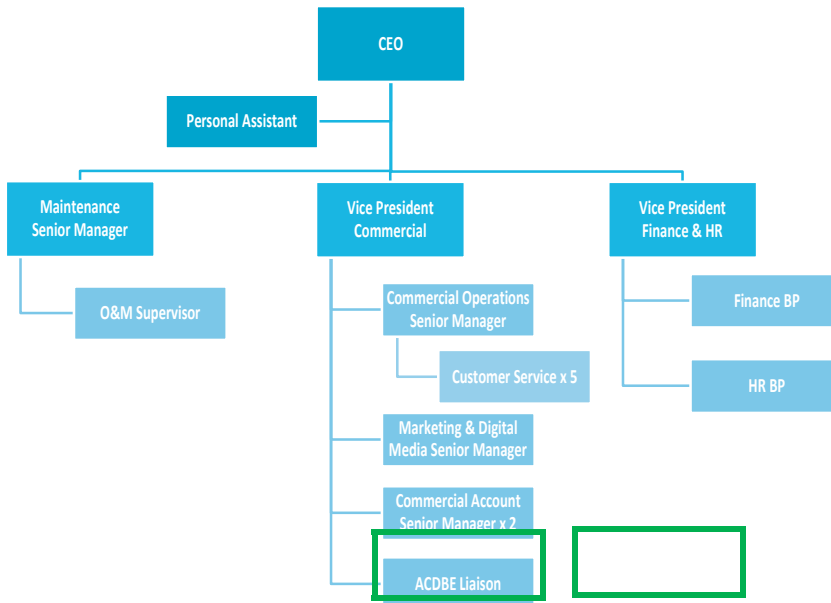
The ACDBE Liaison will lead and manage personnel management and programs related to the ACDBE agenda.

The ACDBE Liaison will report to the Vice President Commercial and will be responsible for planning, managing, organizing and coordinating the ACDBE ~~Program~~ program for the Developer by providing guidance and overseeing all of Developer’s ACDBE-related needs.

During the Project Construction Period, the ACDBE Liaison will be responsible for managing, administering and coordinating the Program’s major outreach, marketing and public relations strategies as well as presenting at seminars, meetings and civic functions to inform the public of contracting and procurement opportunities.

¹ Organization shown under these charts might be subject to change in the future

Organizational Structure² – Project Operating Period



During the Project Operating Period, the ACDBE Liaison will be responsible for planning, organizing and coordinating the [Developer's ACDBE Program](#) and implementing changes in approach, emphasis and use of resources to improve program efficiency and effectiveness. The ACDBE Liaison will analyse the good faith efforts that the Developer is utilizing to work toward achieving its ACDBE goal and will identify changes that could improve results.

Key Contacts

- Chief Executive Officer
 - Chris Butler: cbutler@ferrovial.com
- V.P. Commercial
 - To Be Appointed
- ACDBE Liaison
 - To Be Appointed

² Organization shown under these charts might be subject to change in the future



GOAL METHODOLOGY

ACDBE Goal

The Project Goal for the first 10 years of the Project is 26% of the total gross receipts for concessions that are part of the Denver Great Hall Project.

The allocation of the goal throughout the concession program, either through assignment to single concessions or packages, will be at the discretion of the Developer.

The Developer recognizes the following to be DEN's formula used to measure the goal:

- **ACDBE % = (ACDBE Gross Receipts + ACDBE Supplier Costs) / Total Gross Receipts**

All calculations will be done in accordance with the requirements of 49 CFR Part 23 and any applicable portions of 49 CFR Part 26.

Project Goals may only be met through the use of certified ACDBE ~~'s~~ [firms](#).

Goal Periods

The build out of the concession space under the DA will be completed by Functional Areas. Each Functional Area will include concessions that will begin operating prior to the Project Operating Period.

Although the Project Goal will apply during the Project Construction Period, the Airport recognizes that the Developer may not be able to meet the overall project goal during the Project Construction Period. Therefore, Developer shall be entitled to evidence its good faith efforts during the Project Construction Period by completing, on an annual basis, the form attached hereto as Annex C.

During the Project Operating Period, the Developer will document its good faith efforts in accordance with the checklist set forth in Section 6.1 hereof. Such checklist was developed in accordance with the relevant provisions of 49 CFR Parts 23 and 26.

Geographical market area

The Developer recognizes that the Airport draws from a national market area for concessions opportunities.

This is the geographical area in which the substantial majority of firms which seek to do concessions business with the Developer are located and the geographical area in which the firms that receive a substantial majority of concessions related revenue are located.

Goal adjustments

The [Project](#) Goal is to be reviewed and adjusted every 10 years.

POTENTIAL PACKAGES; CONTRACT STRUCTURE FOR PARTICIPATION

Potential Packages

Prior to advertising any package for bids or proposals, the Developer will review the activity in detail in order to determine the types of activity that could be performed by certified ACDBE firms.

Concessionaire Categories

The Developer has identified preliminary the following type of concessionaires:

CATEGORY
Food & Beverage
Retail
Services


Prior to advertising any concessionaire opportunity for bids, the Developer will review the DSBO database.

The business plan and CDMP (section 2) outline the Developer's plan for concession programs and ~~includes~~[include](#) a schedule for the commencement of service by new concessions.

Incubator

One of the main goals of the DSBO and [the](#) FAA is to provide opportunity for small business enterprises. Within its concession program, the Developer has identified a space that provides these firms with opportunities to test and develop skills within the airport concessions industry while also building capacity within the community. The preliminary parameters are:

- Kiosk concession space
- Tenants' requirements
 - No sales threshold requirement from previous operations
 - A relevant, innovative concept
 - Small business

- 
- Not existing airport concessionaires
 - Key terms
 - Base case is 6 months, unless the Developer is convinced that a longer period would be appropriate
 - No major capital investment (Developer provides tenant finish however; the concessionaire must have sufficient funding to customize the space)
 - Percentage fees commensurate with percentages being established for other spaces, but no Minimum Annual Privilege Fee (MAPF)

The Developer will encourage all potential applicants to become ACDBE certified during the bidding phase and before commencement of services.



COMMUNITY OUTREACH EFFORTS

The Developer will seek to maximize the diversity of participation in the Project and contribute to a sustainable and successful future for DEN. To do so, the Developer will work to implement several outreach events and efforts including:

- The Developer will use the City's **ACDBE directory** and encourage all non-[ACDBEs](#)-[ACDBE](#) concessionaires to use the directory when soliciting any of their own subcontractors or suppliers for the work
- Host **Open House/Outreach events** and attend DEN -hosted outreach events to leverage and build upon the relationships that have been established with the small business community and seek to engage new and diverse ACDBE firms
- If during outreach efforts, Developer locates a firm which appears to be eligible for City ACDBE certification but is not [so](#) certified, Developer will direct the firm to [the](#) DSBO and **encourage** the firm to pursue certification if eligible
- Develop a project **website** to provide an accessible location for interested firms to learn about opportunities for the Project
- **Advertise** Project notices and opportunities in local publications, trade-association publications and other websites-such as Flydenver.com, Airport Minority Advisory Council (AMAC) and the DIA Commerce Hub, which identify the subcontracting opportunities and specifically solicit City certified ACDBE [firm](#) participation
- Provide what it understands is adequate **information** to interested ACDBEs about the plans, specifications and requirements of the various concession opportunities in the Great Hall in a timely manner. The Developer intends to clearly communicate the details and specific requirements of the Project to operators and suppliers in an effort to improve Project efficiencies, schedule, quality control, operators' relations and owner relations
- Partner / [Contact](#)[contact](#) with **local community and industry organizations** to solicit and optimize ACDBE participation
- Provide training solutions through the **Great Hall Training Centre** to support ACDBEs along with other concessionaires

The Developer will take into account the emphasis on unique and best practice outreach efforts as it relates to maximizing participation in the Project.



ACDBE PARTICIPATION; MAINTAINING COMMITMENTS

ACDBE Participation

The Developer will utilize good faith efforts to meet the Project Goal.

The Developer will document its efforts to select appropriate goods and services, and functions and activities of the concession operation, to promote ACDBEs and achieve the Project Goal. During the Project Operating Period, the Developer will evidence its the good faith efforts by taking a series of measures which will consist of some or all of the following:

- Document ~~Pre~~pre-proposal meetings scheduled by the Developer at which ACDBEs may be informed of concession opportunities
- Document efforts to reach a sub concession agreement, consistent with industry and professional practice, with the ACDBE ~~whom~~firm that the Developer has contacted, or who has contacted the Developer, including:
 - The name, address and telephone number of all ACDBEs contacted
 - A description of efforts made to subcontract
 - A description of the information provided to ACDBEs regarding the scope of work to be performed by sub concessionaires and members of a joint venture
 - If attempts to subcontractor actually occurred, the dates and places of such process and a description of the outcome
- Document efforts, consistent with industry and professional practice, that the Developer did not discriminate against any competitor nor ACDBE on:
 - Access to data and time to review projected scopes of work and other documents
 - Time to prepare proposals and/or negotiate joint venture arrangements
 - The Developer will also give a statement as to why the Developer and the ACDBE did not succeed in reaching a subcontractor or joint venture agreement
- Document efforts that, reasonably consistent with industry and professional practice, the Developer took into consideration the structuring of the contract into economically feasible units to facilitate meaningful ACDBE participation

Developer will produce written documentation and supporting materials substantiating the measures taken by the Developer to satisfy all or a portion of the good faith efforts requirements which are listed above.

The good faith effort requirements set forth above will be reviewed and modified through the mutual agreement of the parties every 10 years.



Maintaining Commitments

The Developer will comply with the applicable provisions of 49 CFR part 23 as to the replacement, substitution or termination of an ACDBE in respect of the Project.

The Developer will comply with the applicable provisions of 49 CFR part 23 and 26 if the overall ACDBE participation goal is not met.

The Developer shall comply with the applicable provisions of 49 CFR part ~~23~~[23](#) and 26 and the DA if an ACDBE is terminated by Developer. In connection with the termination of any ACBDE, the Developer will make good faith efforts to find a substitute. If that is not possible, then the Developer will document that it made good faith efforts to do so.

COMPLIANCE DOCUMENTS AND REPORTING

Monthly Reporting

Developer shall organize and submit all reporting requirements for all Concessionaires to the DSBO.

The monthly report should include the following:

- Identify all ACDBE firms utilized to meet the ACDBE Goal and the dollar amounts earned by such firms during the preceding month. These reports shall be delivered to DSBO no later than the 10th day of the following month
- Developer shall submit to DSBO the following ACDBE information:
 - The names and addresses of ACDBE firms and/or suppliers that will participate in each relevant Concession
 - A description of the work that each ACDBE will perform
 - The dollar amount payable to each ACDBE firm that will participate
 - Written and signed commitment of the relevant Concessionaire to use an ACDBE whose participation meets a contract Goal
 - Written and signed confirmation of the ACDBE that it will participate in the Concession

	Total dollars (everyone)	Total number (everyone)	Total of ACDBE (dollars)	Total of ACDBEs (number)	% of dollars to ACDBEs
Prime Concessions					
Sub concessions					
Management Contracts					
Goods/ Services					
TOTAL					

In the future, DEN may elect to implement an electronic reporting system. DEN will bear the cost for the purchase of the electronic reporting system. Subject to the foregoing, ~~The~~[the](#) Developer agrees to work collaboratively to achieve the implementation of an electronic reporting system.

Joint Venture Reporting

Whenever a joint venture is used to meet the [ACDBE Project](#) Goal, Developer shall submit to [the](#) DSBO an annual financial statement for the preceding year indicating compensation, profit sharing, capital contributions of [partners in the ACDBE partner firm](#), or any other financial information as requested by [the](#) DSBO relevant to determining [ACDBE Compliance compliance with the Project Goal](#).

Developer shall also disclose annually the ACDBE partner's management involvement and their role in decision making. The annual financial statement shall be ~~on~~[in](#) a form satisfactory to [the](#) DSBO and ~~delivery to~~[the same shall be delivered to the](#) DSBO no later than February 28th of the following year.

~~7.2~~ Audits

DSBO has the right to audit revenue reports and request further documentation to verify the Developer's good faith efforts to comply with the Project Goal.





PLAN ADMINISTRATION; MONITORING; CLOSEOUT

Plan Administration

The complex nature of the Public Private Partnership (P3) delivery method will require the Developer team to regularly and periodically collaborate with the DSBO to customize the necessary documentation needed to track and monitor the utilization of ACDBE participation in respect of the Project.

The documentation to be provided by the Developer to the DSBO should include sufficient information for the DSBO to independently calculate [the](#) ACDBE participation percentage in accordance with the formula set forth herein.

Monitoring

The Developer will grant the City and the DSBO access to its necessary records to examine information as may be appropriate for the purpose of monitoring and determining compliance with this plan and the DA.

Developer will grant the City and the DSBO access to each sub concession location under the DA for purposes of DSBO monitoring.

The Developer's personnel identified in Section 2 above will be responsible for administering and monitoring the Developer's performance ~~of~~[with](#) this [ACDBE](#) Compliance Plan.

Closeout

The extent of ACDBE participation will be reviewed prior to the exercise of any renewal, extension, termination or material amendment to a sub concession agreement to consider whether an adjustment in the ACDBE requirement is warranted with any such adjustment being mutually agreed [upon](#) by the Developer, the City and the DSBO.



NON-COMPLIANCE; REMEDIATION PLAN; SANCTIONS

Compliance

At all times, DSBO shall monitor the Developer's compliance with this Plan and the applicable provisions of 49 CFR Part 23. The Developer shall fully cooperate with DSBO's compliance monitoring and auditing efforts, including DSBO's investigation of any discovered, alleged, or suspected non-compliance by the Developer.

Remediation Plan

If the DSBO has any reason to believe that the Developer has failed to make good faith efforts to meet the Project Goal, the DSBO shall give the Developer a written notice of non-compliance citing the reasons why the Developer is not in compliance and giving the Developer thirty days in which to submit a Remediation Plan for the DSBO's review and acceptance.

The Remediation Plan shall demonstrate how the Developer will work to cure such non-compliance.

A sample of the Remediation and Corrective Action Plan is included herein as Annex B.

Sanctions

~~The combination of Developer's failure to utilize good faith efforts to meet the Project Goal and a failure to receive approval for its Remediation and Corrective Action Plan from the DSBO~~ Certain failures of the Developer in respect of its ACDBE obligations shall constitute a Noncompliance Event as specified in Appendix 9 to the DA. Such failure may amount to a breach by the Developer of its obligations under the DA.

In the event that the Developer's non-compliance with ~~the~~its ACDBE ~~Program~~program and failure to demonstrate good faith efforts to do so causes the FAA or any other Federal Agency to initiate formal enforcement action or the FAA or such other Federal Agency suspends or terminates any Federal funds to DEN as a result of such failure, or refuses to approve projects, grants or contracts due to such failure by the Developer's ~~failure~~, such occurrence may constitute a failure by the Developer to comply with applicable Governmental Approvals and laws under the DA.



SUPPORTIVE SERVICES

The Developer's ACDBE supportive services program will focus on researching, developing, and implementing programs that will attract disadvantaged businesses to the Project.

The program will be managed by the ACDBE Liaison. This person will be the principal point of contact for all ~~the ACDBEs'~~ ACDBE applicants to the different initiatives and programs as included in the Developer's commercial business plan.

The ACDBE Liaison ~~Manager~~ will work closely with DEN to guarantee clear communication and to reinforce the Developer's commitment to the ACDBE plan.

The program aims are to:

- Eliminate and reduce barriers such as:
 - **Capacity Building** by keeping the ACDBE firms at the Denver Great Hall informed and updated about the "Capacity Building Programs" (USDOT West Central Small Business Transportation Resource Centre (SBTRC), The US Small Business Administration (SBA), The City & County of Denver SBEC (Small Business Enterprise Concessionaire), that increase the potential for growth, development, survivability and sustainability of the firms
 - **Project Orientation** which is expected to be especially helpful to firms new to the ~~airport~~ Airport's concession program and a refresher/update to renewing concessionaires. The training will help to ensure that they are informed about "the way we do business" and requirements that they must adhere to in order for the Developer to be in compliance with DEN and, more importantly, federal, regulations
 - **Administrative Support** to ensure that the day-to-day on going communication, reporting, and performance-related needs of the ACDBE are addressed
- Increase business self-sufficiency and the competitive position of ACDBEs in the concession industry
- Provide training to minority, women and socially and economically disadvantaged individuals to improve their potential for employment in the sector (Great Hall Training Center)
- Promote increased participation by these groups in the Great Hall concession program

Additionally, the Developer will consider the establishment of a Mentor Protégé program not only to give the ACDBE participant guidance during the Project but also to provide them with an opportunity to build capacity within their firms.

The Mentor Protégé program as currently envisioned would address issues such as conflict resolution and escalation processes, termination/substitution/replacement, prevailing wages, Certified Payroll, Prompt payment issues, change orders, and timely communication/reporting, ~~etc.~~





ANNEX: ACDBE LIAISON JOB DESCRIPTION

Overall Job Purpose


The ACDBE Liaison leads and manages personnel management and programs related to the Developer's ACDBE agenda.

Primary Focus of the Role

This role will report to the Vice President Commercial, and will be responsible for planning, managing organizing and coordinating ACDBE Programs for the ~~Great Hall~~ Project. In addition, this role will include providing guidance and ~~oversee~~overseeing all ACDBE requirements.

Specific Responsibilities

- Plan, organize and coordinate the Developer's ACDBE Program~~program~~, implementing changes in approach, emphasis and use of resources to improve program efficiency and effectiveness
- Develop, organize and coordinate the establishment of a Mentor Protégé program not only to give the ACDBE participant guidance during the Project but also to provide them with an opportunity to build capacity within their firms
- Supervise professional and support staff in assigned program areas
- Participate in the evaluation and selection of professional service consultants
- Analyse the Developer's progress toward goal attainment and identify actions intended to improve progress
- Gather and report statistical data and other information as required
- Assist in developing the ACDBE Program budget and monitoring and approving, or disapproving expenditures
- Manage, administer and coordinate the ACDBE Program's major outreach /marketing and public relation strategies
- Mediate conflicts regarding the ACDBE Program's policies and procedures
- Present at seminars, meetings and civic functions to inform the public of contracting and procurement opportunities

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- Provide and set up further education opportunities regarding the Project including to the Denver International Airport, City Council, Local and State Authorities, Chamber of Commerce, Retail Associations, Local Community,...
 - Act as liaison with Colorado ACDBE firms to understand capabilities and interest in the Project
 - Talk to ACDBE local brands that may be interested commercially in the Project in coordination with the Vice President Commercial
 - Identify contracts so that ACDBE goals are included in solicitations
 - Increase business self-sufficiency and the competitive position of ACDBE's in the concession industry
 - Provide training to minority, women and socially and economically disadvantaged individuals to improve their potential for employment in the sector
 - Promote increased participation by these groups in the Project's concession program

Qualifications and Experience

- Bachelor degree in Business or Public Administration, or related field preferred
- Minimum of five years of experience of progressively responsible experience administering disadvantaged/minority/woman business enterprise, equal opportunity/affirmation action, or minority economic development programs, including experience administering contractual provisions relating to these programs
- An ability to understand, analyse and interpret data, and strong analytical skills
- Meticulous attention to detail and accuracy in work product
- Ability to meet and establish deadlines
- Excellent interpersonal skills and a team player



ANNEX: REMEDIATION AND CORRECTIVE ACTION PLAN

Date

Department of Small Business Operations

City and County of Denver, Department of Aviation

RE: ACDBE Remediation and Corrective Action Plan

To: DEN-ACDBE Compliance Specialist

The Developer's ACDBE goal, achievements, and shortfall for ____ quarter of fiscal year (FY) ____ are as follows:

Concession goal: ____% Achievement: ____% Shortfall: ____%

The Developer has identified the reasons for the shortfall as.....

This section of the Remediation and Corrective Action Plan should include a detailed explanation of all the reasons for the shortfall.

To address these issues, Developer will use good faith efforts to:

This section of the Shortfall Analysis should include a detailed explanation of all corrective actions that the Developer has already begun to implement as well as all corrective actions the Developer plans to implement. This section should demonstrate how the proposed corrective actions constitute good faith efforts to address the reasons for the shortfall and include a timeline for implementation.

If you have any questions, concerns, or suggestions regarding Developers efforts to meet its ACDBE goals, please contact _____.

Sincerely,

_____ Developer



ANNEX: DEMONSTRATION OF GOOD FAITH EFFORTS DURING PROJECT CONSTRUCTION PERIOD

The Developer has satisfied the requirements of the DA in the following manner:

1. The Developer is committed to utilizing good faith efforts to achieve 26 % ACDBE utilization for the Project Operating Period.
2. The construction portion of the Project consists of, among other things, the build out of four (4) Functional Areas. The four Functional Areas are intended to be opened in accordance with the construction schedule. The final Functional Area is projected to be opened on or before _____. The goal for this Project includes all concessions in all Functional Areas; therefore, the Developer will utilize its good faith efforts to meet the 26% goal during the Project Operating Period.
3. As of the date hereof, the Developer has opened Functional Area(s) ____, of the total project Concessions, on _____, 20__, which collectively represent [__]% of the total concession space square footage for the Project. As of the date hereof, the Developer has achieved ____ % of the ACDBE goal. The Developer remains committed to utilizing good faith efforts to meet the 26% goal during the Project Operating Period.
4. As of the date hereof, the Developer plans to implement items [____] from the following list as part of its Good Faith efforts to meet the 26% ACDBE goal (and includes substantiation of the same herewith):
 - a. The Developer will solicit interest early in the acquisition process in order to provide ACDBE's with the ability to respond to future opportunities. The following ACDBEs have been identified as potential future concessionaires and suppliers, which the Developer intends to solicit:

- i. _____
- ii. _____
- iii. _____
- iv. _____
- v. _____
- vi. _____



- vii. _____
- viii. _____

b. The Developer has identified the following opportunities for ACDBE Concessionaires and Suppliers which are expected to increase the likelihood that the ACDBE goal will be met during the Project Operating Period.

- i. _____
- ii. _____
- iii. _____
- iv. _____
- v. _____
- vi. _____
- vii. _____
- viii. _____

- c. Developer will provide adequate information to ACDBEs about the future concession opportunities.
- d. The Developer will negotiate in good faith with interested ACDBEs and provide evidence of such negotiations.
- e. Developer will not reject ACDBEs as unqualified without sound reasons based on thorough investigation of their capabilities.
- f. Developer will provide a list to interested ACDBEs of potential sources for obtaining bonding, lines of credit, or insurance as required by the Airport.
- g. Developer will provide a list to interested ACDBEs of potential sources for obtaining necessary equipment, supplies, materials, or related assistance or services.
- h. Developer will liaise with the City’s Division of Small Business Opportunities to obtain a list of ACDBE business assistance offices and other organizations in the area which may consult in its recruitment of ACDBEs.

- 5. During the Project Construction Period, the Developer will produce a timeline that will show its expectations as to how the overall percentage is intended to be met as the various Functional Areas open.
- 6. Developer is committed to utilizing good faith effort to achieve 26% ACDBE utilization on the DA in accordance with the ACDBE Plan and, in respect of the submission of documentation, to submitting the same when required in accordance with the ACDBE Plan and 49 CFR Part 23 and the relevant provisions of 49 CFR Part 26.

Denver Great Hall LLC
