

USER AGREEMENT

THIS USER AGREEMENT (“Agreement”) is made and entered effective as of the date set forth on the City’s signature page, between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”), and **DOWNTOWN DENVER BUSINESS IMPROVEMENT DISTRICT**, a Title 32, Article I Special District, with its office located at 511 16th Street, Suite 200, Denver, CO 80202 (“DDBID” or “User”).

RECITALS

WHEREAS, the City is the owner of a certain park known as Skyline Park, a designated City park, located in part along Arapahoe Street, between 15th Street and 18th Street, which includes a space and pavilion located within block 1 of the park as depicted in the drawing attached as Exhibit “A” hereto (“Kiosk”), which User intends to occupy; and

WHEREAS, DDBID was created by City and County of Denver in order to provide certain services, facilities and improvements; and

WHEREAS, DDBID has developed the Downtown Denver Security Plan, which allows DDBID to implement certain initiatives for the good of the City, and particularly downtown Denver; and

WHEREAS, DDBID and the City wish for DDBID to provide security and monitoring and, from time to time, to disseminate public information and provide other public services to park patrons; and

WHEREAS, User is actively involved in activation of Skyline Park through various activities and services; and

WHEREAS, the Executive Director of the City’s Department of Parks and Recreation (the “Director”) finds and determines this an appropriate use of the park adjacent to the Kiosk;

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the parties hereto agree as follows:

1. OCCUPANCY AND USE OF KIOSK: The City does hereby authorize the User to use and occupy the Kiosk in the north space of the pavilion located in Skyline Park, a Denver designated park (the “Park”), block 1, subject to the terms and conditions of this Agreement. Nothing in this Agreement is intended, nor shall it be construed, to create or grant a lease or other property interest in the Kiosk or Skyline Park. Furthermore, nothing in this Agreement grants a concession license under section 2.4.4(C) of the City Charter. The use and

occupancy of the Kiosk is strictly contingent upon the User faithfully and consistently providing certain services, set forth elsewhere in this Agreement. The User agrees not to use the Kiosk, or permit the use of the Kiosk, for any purpose prohibited by or contrary to the laws of the United States, the State of Colorado, the City's Charter or ordinances, or the rules and regulations of the Department of Parks and Recreation (the "Department"). The User shall not use the Kiosk, or permit the use of the Kiosk, in any manner that results in waste of or damage to the Kiosk or that causes a nuisance.

2. **DURATION**: The term of the Agreement is from February 1, 2018, through February 1, 2021, subject to termination as provided in paragraph 7.

3. **OBLIGATIONS OF USER**:

A. **In General**: In consideration of the City authorizing the use and occupancy of the Kiosk in accordance with Section 3(C), below, the User agrees, and hereby obligates itself, to operate, maintain, repair, and clean the interior Kiosk, which shall include regular and periodic removal of trash; to assist the City with the security and safety of the Park by, among other efforts, providing security staff for the monitoring of the Park; to provide adequate and qualified staff to fulfill the operation and security obligations; and to perform such other related services as may be desirable to the parties, in accordance with this Agreement. The User's staff shall be uniformed, easily identifiable as User staff, and adequately trained. User staff shall provide helpful, accurate information on park operations and rules. The City shall provide supporting information including copies of applicable rules upon User request.

B. **Repairs**: User is responsible for repairs to the interior of the Kiosk only. Director, or the Director's designee, shall approve any and all proposed repairs or related modifications to any part of the interior that User intends to perform. No improvements to the Kiosk shall be undertaken, nor any of the costs pertaining to such improvements incurred, without prior written approval by the Director or designee. All improvements shall be governed and controlled by such limitations and provisions, including applicable City Charter provisions or provisions of the Denver Revised Municipal Code ("D.R.M.C."), or applicable State or Federal laws or regulations, as may be required as conditions to the Director's or designee's approval. All improvements, including permanently attached fixtures, to the Kiosk are the property of the City and shall not be removed or replaced without the prior written approval by the Director or designee. No exterior improvements or repairs are permitted under this Agreement unless Director or designee are first consulted and such approval is granted.

C. **Operation:**

1) *Access to City:* The User agrees that the Kiosk and the north space of the pavilion shall be accessible at all times to the Department and its staff, and any authorized City official or staff. The hours of User's use and operation shall be designated by the User. All operating times so designated shall be provided to the Director or designee upon request. The User shall provide a minimum of two (2) keys or copies of all keys utilized for entry and securing of the Kiosk. The User is not authorized to change any locks or install new locks without the express written consent of the City. The User shall, prior to termination of this agreement and vacating the kiosk, either change the locks back to the original locks, or the City shall retain possession of the keys provided under this Section 3.C(1).

2) *Security and Public Assistance:* Along with security services provided consistent with the Downtown Denver Security Action Plan, the User shall also greet and provide information and assistance to the general public and park patrons.

3) *Utilities:* The User shall be responsible for twenty-five percent (25%) of the cost of electrical utility service used in the operation and maintenance of the Kiosk. The City will bill the User on a quarterly basis for 25% of the electrical service charges for the Kiosk during the prior quarter, and the User agrees to remit the amount due to the Department within thirty (30) days following receipt of the invoice. The City shall be responsible for all other utility costs.

4) *Staffing:* The User shall assure that the Kiosk is appropriately monitored, staffed, and maintained for the purposes and responsibilities under this Agreement. Upon request by the Department, background checks on all staff retained by the User shall be conducted, at the User's sole expense, through the Colorado Bureau of Investigation or such other reliable source of information on criminal histories as acceptable to the Department. Upon request, copies of said background checks shall be provided to the Department, at no cost to the Department. The City reserves the right to require the User to remove any employee or other staff who has a criminal history deemed unacceptable by the Director.

5) *Equipment and Materials:* The User shall provide such equipment and materials as necessary and appropriate for the operation, maintenance, and repair of the Kiosk and security responsibilities. Equipment and materials put in or about the Kiosk at the User's sole expense, including any fixtures temporarily affixed to the Kiosk and easily removable without damage to the Kiosk, shall remain the property of the User. The City shall

provide those materials needed to allow User staff to provide the general public with assistance and information.

D. Maintenance and Repair: Except as expressly provided in paragraph 4 below, the User agrees that it shall be its responsibility to keep and maintain the Kiosk in good physical and working condition. The User shall provide, at its own expense, for all cleaning and sanitation for the Kiosk. All garbage and trash shall be regularly removed from the Kiosk and properly disposed. The grounds within fifty (50) feet of the Kiosk shall be policed daily for litter. The User shall be responsible for wall paneling and tiles, drywall, plastering; floor tiles and other flooring; handles and locks; doors; windows and window frames; cabinets and counters; sinks; light switches, plugs, and lighting; ceiling tiles; computer systems and TVs; and items of similar character or use; and the User shall, at its own expense, maintain, repair, or replace any of the preceding items if damaged or broken. Replacements shall be of at least equal quality and functionality as the replaced items were when they were new. The User shall be responsible for any repairs or replacements of Structural Elements or Systems, as defined in paragraph 4 below, that are damaged or broken by the willful or negligent actions of the User or his employees, servants, other users, invitees, suppliers and agents, including the failure to properly monitor or supervise the use of the Kiosk. Upon written approval of the City, such repairs or replacements shall be performed by the User within a reasonable time period specified in a written notice from the City and in accordance with subparagraph 3.B. above.

E. City Access & Use: The User acknowledges and agrees that the City shall have a right of entry on and in the Kiosk for any purpose necessary, incidental to or in connection with the City's rights and obligations in the User Agreement, or in the exercise of the City's governmental functions, or for the purpose of making any inspection the City deems necessary for health and safety purposes and for the protection of the City's asset. The City will make a reasonable effort to notify User of any impending entry and to coordinate such entry so as to minimize any disruption to the User's operation. The User agrees not to take any action to prevent or hinder authorized City employees or agents from entering at any time, with or without advance notice, upon the Kiosk for inspection or other valid purposes.

4. OBLIGATIONS OF THE CITY:

A. Structural Elements: Subject to the availability of appropriated funds, the City will maintain and repair existing structural elements of the Kiosk, including roof, floor substructure, and similar or related features ("Structural Elements"). The City may, at its

sole discretion, improve, expand, or replace said Structural Elements. The City shall manage and maintain the restrooms located in the pavilion.

B. Systems: Subject to the availability of appropriated funds, the City will maintain and repair existing heating, water, sewer, drainage, electrical, plumbing, natural gas, fire protection, and telephone systems, including associated tubes, ducts, pipes, lines, mains, wires, conduits, boxes, grates, valves, meters, and associated equipment and appurtenances (“Systems”) located at or in the Kiosk. The City may, at its sole discretion, improve, expand, or replace said Systems. Only authorized City staff shall access the electric panel, unless permission is otherwise granted to the User by the City.

C. Inspection and Repair: The City or its contractors and agents shall have the right to enter into or on the Kiosk at all reasonable times to inspect the Kiosk and/or take such actions as may, in the opinion of the City, be deemed necessary or advisable to perform such work as provided in subparagraphs A and B of this paragraph 4. Except for emergency situations, the City will make every reasonable effort to timely notify the User of any pending work and to coordinate such work so as to minimize any disruption to the User’s activities.

5. COMPENSATION: No monetary compensation or other consideration other than as expressly stated in this Agreement is expected or required by either party to this Agreement.

6. RELATIONSHIP: It is understood and agreed that the status of the User shall be that of an independent entity contracting for the use of the Kiosk. It is not intended, nor shall it be construed, that the User or its employees, volunteers, agents, or subcontractors are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code or for any purpose whatsoever. The User is responsible for the operational management, errors and omissions of the User’s employees, volunteers, agents and contractors. Without limiting the foregoing, the User understands and acknowledges that the User and its employees, volunteers, agents and contractors: a) are not entitled to workers’ compensation benefits through the City; b) are not entitled to unemployment insurance benefits unless unemployment compensation coverage is provided by the User or some other entity besides the City; and c) are obligated to pay federal and state taxes on any monies earned by working for the User. Furthermore, it is understood and agreed that nothing in this Agreement is intended, or shall be construed, to constitute a joint venture or an agency relationship between the parties.

7. TERMINATION:

A. Mutual Rights: Both the City and the User shall have the unilateral right to terminate this Agreement, without cause, upon ninety (90) days written notice to other party. At any time, upon written and mutual consent of the City and the User, the Agreement may be terminated. The Director may unilaterally terminate the Agreement in the event that the Kiosk or any part thereof is destroyed or substantially damaged as a result of a casualty that renders the Kiosk wholly or substantially unusable in the opinion of the Director.

B. Discretionary Termination by the City: If any one or more of the following events occurs, the Director or designee may, at the Director's option, immediately terminate this Agreement, with cause, upon written notice to the User:

1) The User becomes insolvent, files for bankruptcy, is adjudged bankrupt, or becomes disqualified for sponsoring or engaging in amateur boxing;

2) The User's interests in this Agreement are transferred to or devolve upon, by operation of law or otherwise, any other person, firm, corporation, or other entity by or in connection with any bankruptcy, insolvency, or other proceeding, judicial or administrative;

3) The User fails to undertake its obligations under this Agreement within thirty (30) days of the effective date of this Agreement;

4) The User fails to remove any employee or staff working at the Kiosk after the City has requested that said employee or staff be removed due to the criminal history of said person or any criminal activity engaged in by said person or after the User is aware of such criminal history or criminal activity and fails to report it to the City;

5) The User has made an assignment or transfer of, or subcontracts, its responsibilities and obligations under this Agreement without obtaining the Director's permission; or

6) The User fails to obtain, renew, or maintain the insurance coverage specified in paragraph 10 below or fails to comply with paragraph 14 below.

C. Non-Performance & Cure: In the event the User fails to perform or, improperly performs, any of its responsibilities or obligations under this Agreement ("Non-Performance") and provided the Non-Performance is not a basis for discretionary termination under paragraph 7.B. above, then the following provisions shall be applicable:

1) The Department shall provide the User with a notice of Non-Performance which shall set forth specifically the Non-Performance. The User shall have

seven

(7) calendar days from the date of receipt of such notice, except as provided below, within which to correct the Non-Performance. Should the User cure the Non-Performance within the seven (7) calendar day period, it shall notify the Department in writing of such cure. Notwithstanding the foregoing, the User agrees that it will undertake all good-faith measures to cure the Non- Performance as promptly as commercially practicable. In the event the Non-Performance is not cured within such seven (7) calendar day period, the Director may, at the Director's option, terminate this Agreement, with cause, by sending written notice of termination, including a date by which the Kiosk will be vacated by the User, to the User at the most currently provided address for the User, which notice shall be deemed given when mailed.

2) Notwithstanding the foregoing, if the Non-Performance cannot be cured through the exercise of reasonable diligence within the seven (7) calendar day period, then such period may be extended by the Director, at the Director's discretion, to a specific date as is reasonable to cure the Non-Performance, provided the User has proceeded and is continuing to proceed in a diligent and reasonable manner to cure, in the opinion of the Director. The User shall, if the Non-Performance cannot be cured within the seven (7) calendar day time period through the exercise of reasonable diligence, so advise the Director in writing as soon as reasonably possible and include in said writing a detailed listing of what measures that the User has undertaken to cure the Non-Performance and the User's best estimate of when and how such Non-Performance will be cured. The City reserves the right to reject any time extension if, in the opinion of the Director, the User has not proceeded in a diligent and reasonable manner to cure or any further delays in curing the Non-Performance would substantially damage the City's interests under the Agreement. In the alternative, the Director may, as a condition of approving any time extension for cure, specify, within reason, certain actions the User must undertake in order to cure or specify a shorter or longer cure period than that indicated in the User's writing. If a time extension is approved, the User shall advise the Director in writing when and how the cure was accomplished and provide any required documentation of said cure.

D. Waiver: In no event shall any action or inaction by the City under this paragraph 7 constitute or be construed to be a waiver by the City of any breach or default which may then exist on the part of the User, and no assent, expressed or implied, to any breach of the

Agreement by the User shall be deemed or taken to be a waiver of any other breach.

8. EXAMINATION OF RECORDS; REPORTS: The User agrees that any duly authorized representative of the City, including the City Auditor, shall, until the expiration of three (3) years after the final payment under this Agreement, have access to and the right to examine any books, documents, papers and records of the User, involving transactions related to this Agreement. The User shall submit a quarterly written report to the Department which shall include data and information pertaining to the User's security obligations in the Park, including the number of incidents, nature of the incidents, dates of the incidents, location of the incidents, and other useful information related to improving safety in the Park.

9. REMEDIES & WAIVER: The parties understand and agree that the rights of specific performance and to punitive or consequential damages have been expressly waived and released by both parties by this paragraph.

10. INSURANCE:

A. General Conditions: The User agrees and covenants to secure, at its own expense, at or before the time of execution of this Agreement, the following insurance covering all operations, activities, occupancies uses and services associated with the Kiosk under this Agreement. The User shall keep the required insurance coverage in force at all times during the Term of this Agreement or any extension thereof. 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. The User shall provide written notice of cancellation, non-renewal and any reduction in coverage to Denver Risk Management, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202 by certified mail, return receipt requested. Such written notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the User. The User shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the User. The User shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

B. Proof of Insurance: The User shall provide a copy of this Agreement to its insurance agent or broker. The City's acceptance of a certificate of insurance or other

proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of the User's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require, and the User shall promptly provide, additional proof of insurance, including but not limited to policies and endorsements, at any time.

C. Additional Insureds: For Commercial General Liability and Business Auto Liability, the User's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

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

E. Subcontractors and Subconsultants of Lessee: All subcontractors and subconsultants of the User (including independent contractors, suppliers or other entities providing goods or services to the User on the Leased Premises) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the User. The User 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. The User agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

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

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

aggregate, and \$2,000,000 policy aggregate.

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

I. Fire and Extended Coverage Insurance on all of the User's personal property located in or about the Kiosk in the minimum amount of \$50,000.00.

J. Additional Provisions:

(1) For Commercial General Liability, the policy must provide the following:

- (i) That the Agreement is an Insured Contract under the policy;
- (ii) Defense costs are outside the limits of liability;
- (iii) A severability of interests, separation of insureds or cross liability provision; and
- (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City and County of Denver.

For claims-made coverage, 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.

(2) The User shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At the User's own expense, where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the User shall procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

11. LIABILITY: Each party to this Agreement shall be liable for the actions and omissions of its respective officers, agents, employees, and subcontractors, to the extent provided by the Colorado Governmental Immunity Act. This obligation shall survive termination of this Agreement.

12. COLORADO GOVERNMENTAL IMMUNITY ACT: The parties hereto understand and agree that each party is relying upon, and has not waived, the monetary limitations (presently \$150,000 per person, \$600,000 per occurrence) and all other rights, immunities and protection provided by the Colorado Governmental Act, § 24-10-101, *et seq.*, C.R.S.

13. TAXES, CHARGES AND PENALTIES: The User shall pay all federal, state,

and local taxes, late charges and penalties applicable under this Agreement. The City shall not be liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts which the City may be required to pay under D.R.M.C. § 20-107 to § 20-115.

14. LIENS AND OTHER ENCUMBRANCES: The User shall not permit any mechanic's or materialman's liens or any other liens to be imposed and remain for more than ninety (90) days upon any City-owned property, or any part thereof, by reason of any worker labor performed or materials furnished by any person or legal entity to or on behalf of the User, either pursuant to C.R.S. § 38-26-107 or by any other authority. The User shall promptly pay when due all bills, debts and obligations incurred in connection with this Agreement and shall not permit the same to become delinquent. The User shall not permit any lien, mortgage, judgment, execution or adjudication of bankruptcy which will in any way impair the rights of the City under this Agreement or to the Kiosk. The User's obligations set out in this paragraph shall survive the termination of this Agreement.

15. HAZARDOUS SUBSTANCES: The User shall not cause or permit any Hazardous Substance to be used, stored, generated, or disposed of on or in the Kiosk by the User, the User's agents, employees, contractors, or invitees. If Hazardous Substances are used, stored, generated, or disposed of on or in the Kiosk, or if the Kiosk becomes contaminated in any manner due to the actions or inactions of the User, the User shall indemnify and hold harmless the City from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses (including, without limitation, a decrease in value of the premises, damages caused by loss or restriction of rentable or usable space, or any damages caused by adverse impact on marketing of the space, and any and all sums paid for settlement of claims, attorneys' fees, consultant, and expert fees) arising during or after the Term of the Agreement and arising as a result of those actions or inactions by the User. This indemnification includes, without limitation, any and all costs incurred because of any investigation of the site or any cleanup, removal, or restoration mandated by a federal, state, or local agency or political subdivision. Without limitation of the foregoing, if the User causes or permits the presence of any Hazardous Substance on or in the Kiosk and that results in contamination, the User shall promptly, at its sole expense, take any and all necessary actions to return the Kiosk to the condition existing prior to the presence of any such Hazardous Substance on the premises. The User shall first obtain City's approval for any such remedial action. As used herein, "Hazardous Substance" means any substance that is toxic, ignitable, reactive, or corrosive and that is regulated by any local government, the State of Colorado, or the United States Government. "Hazardous

Substance” includes any and all material or substances that are defined as “hazardous waste”, “hazardous materials”, “extremely hazardous waste”, or a “hazardous substance” pursuant to state, federal, or local governmental law. “Hazardous Substance” includes but is not restricted to asbestos, asbestos-containing materials, and asbestos-contaminated soils, special wastes, polychlorinated biphenyls (PCBs), any petroleum products, natural gas, radioactive source material, pesticides, any hazardous waste as defined at 42 U.S.C. § 6903(5) of the Solid Waste Disposal Act, any hazardous substance as defined at 42 U.S.C. § 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act, chemical substance as defined at 15 U.S.C. § 2602(2) of the Toxic Substances Control Act, and state statute counterparts to these federal statutes, any guidelines issued and rules or regulations promulgated pursuant to federal or state statutes, and any other applicable federal or state statute.

16. ASSIGNMENT; SUBCONTRACT: The User covenants and agrees that it will not assign, transfer, or subcontract its rights and obligations hereunder without first obtaining the written consent of the Director. Any attempts by the User to assign, transfer, or subcontract its rights or obligations hereunder without such prior written consent of the Director may, at the option of said Director, terminate this Agreement and all rights of the User hereunder. Such consent may be granted or denied at the sole and absolute discretion of said Director.

17. NO THIRD PARTY BENEFICIARY: It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the User, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on this Agreement. It is the express intention of the City and the User that any person other than the City or the User receiving benefits under this Agreement shall be deemed to be an incidental beneficiary only.

18. NO AUTHORITY TO BIND CITY TO CONTRACTS: The User has no authority to bind the City on any contractual matters. Final approval of all contractual matters which obligate the City must be by the City, as required by Charter and ordinance.

19. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS: This Agreement is intended as the complete integration of all understandings between the parties. No prior contemporaneous or subsequent addition, deletion, or other amendment hereto shall have any force or effect, unless embodied herein in writing, and executed in the same manner as this Agreement.

20. **SEVERABILITY:** The parties agree that if any provision of this Agreement or any portion thereof is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity of the remaining portions or provisions shall not be affected.

21. **CONFLICT OF INTEREST:** The parties agree that no employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and the User further agrees not to hire or contract for services any employee or officer of the City which would be in violation of the Denver Revised Municipal Code, Chapter 2, Article IV, Code of Ethics, or Denver City Charter §§ 1.2.8, 1.2.9, and 1.2.12.

The User agrees that it will not engage in any transaction, activity or conduct which would result in a conflict of interest under this Agreement. The User represents that he has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the User by placing the User's own interests, or the interests of any party with whom the User has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement in the event such a conflict exists after it has given the User written notice which describes the conflict. The User shall have eliminate or cure the conflict of interest in a manner which is acceptable to the City within the time and process set forth in paragraph 7.C. above.

22. **NOTICES:** Written notices required or allowed under this Agreement shall be made by certified or registered mail, return receipt requested:

By the User to: Executive Director of Parks and Recreation
 City and County of Denver
 201 West Colfax Avenue, Dept. 601
 Denver, Colorado 80202

By the City to: Downtown Denver Business Improvement District
 1515 Arapahoe Street, Tower 3, Suite 100
 Denver, CO 80202

Changes in notification addresses by either party can be made by written notice.

23. **DISPUTES:** All disputes of whatsoever nature between the City and the User regarding this Agreement shall be resolved by administrative hearings pursuant to the procedure established by Denver Revised Municipal Code, § 56-106(b), *et seq.* For the purposes of that procedure, the City official rendering a final determination shall be the Director.

24. **GOVERNING LAW; VENUE:** This Agreement shall be construed and

enforced in accordance with the laws of the State of Colorado, and the Charter and Revised Municipal Code of the City and County of Denver, and the ordinances, regulations and Executive Orders enacted and/or promulgated pursuant thereto, including any amendments. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver.

25. NO DISCRIMINATION IN EMPLOYMENT: In connection with the performance of this Agreement, the User agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, gender identity or gender expression, age, military status, sexual orientation, marital status, or physical or mental disability; and the User further agrees to insert the foregoing provision in all subcontracts hereunder.

26. PREVAILING WAGES; LIVING WAGES: The User or the User's contractors may be subject to the payment of prevailing wages pursuant to D.R.M.C. § 20-76 and/or living wages pursuant to D.R.M.C. § 20-80, depending upon the nature of their work. By executing this Agreement, the User covenants that the User is familiar with these Code sections and is prepared to pay or cause to be paid prevailing wages or living wages, if any, required by the scope of work of the User or the User's contractor's employees and comply with all reporting requirements established by ordinance.

27. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS: The User 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 barring the User from City facilities or participating in City operations.

29. OPEN RECORDS: The parties understand that all the material provided or produced under this Agreement may be subject to the Colorado Open Records Act., § 24-72-201, *et seq.*, 7B C.R.S. (2003), and that in the event of a request to the City for disclosure of such information, the City shall advise the User of such request in order to give the User the opportunity to object to the disclosure of any of 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 the User agrees to intervene in such lawsuit to protect and assert its claims of privilege and against disclosure of such material or waive the same. The User further agrees to defend, indemnify and save and hold harmless the City, its officers, agents and employees, from any claim, damages, expense, loss or costs arising out of the User's intervention to protect and assert its claim of privilege against disclosure under this Article including, but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs and damages that the City may incur directly or may be ordered to pay by such court.

29. LEGAL AUTHORITY: The User assures and guarantees that it possesses the legal authority to enter into this Agreement. The City shall have the right, at its option, to either temporarily suspend or permanently terminate this Agreement, if there is a dispute as to the legal authority of the User to enter into this Agreement.

30. NO CONSTRUCTION AGAINST DRAFTING PARTY: Each of the parties acknowledge that each of them and their respective counsel have had the opportunity to review this Agreement and that this Agreement shall not be construed against any party merely because this Agreement or any of its provisions, have been prepared by a particular party.

31. SURVIVAL OF CERTAIN PROVISIONS: The parties understand and agree that all terms and conditions of this Agreement, together with the exhibits and attachments hereto, which, by reasonable implication, contemplate continued performance or compliance beyond the termination of this Agreement (by expiration of the term or otherwise), shall survive such termination and shall continue to be enforceable as provided herein. Without limiting the generality of the foregoing, the User's obligations for the provision of insurance and to indemnify the City shall survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

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

33. CITY EXECUTION OF AGREEMENT: This Agreement is expressly subject to, and shall not be or become effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver.

34. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: The User consents to the use of electronic signatures by the City. The Agreement, and any other

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

[REMAINDER OF PAGE DELIBERATELY LEFT BLANK.]

Contract Control Number:

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:

By _____

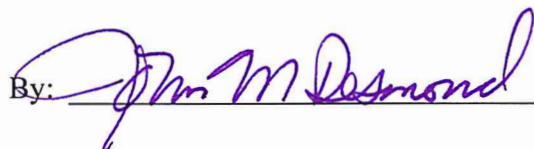
By _____

By _____



Contract Control Number: PARKS-201841556-00

Contractor Name: Downtown Denver Business Improvement District

By: 

Name: JOHN M. DESMOND
(please print)

Title: EXECUTIVE DIRECTOR
(please print)

ATTEST: [if required]

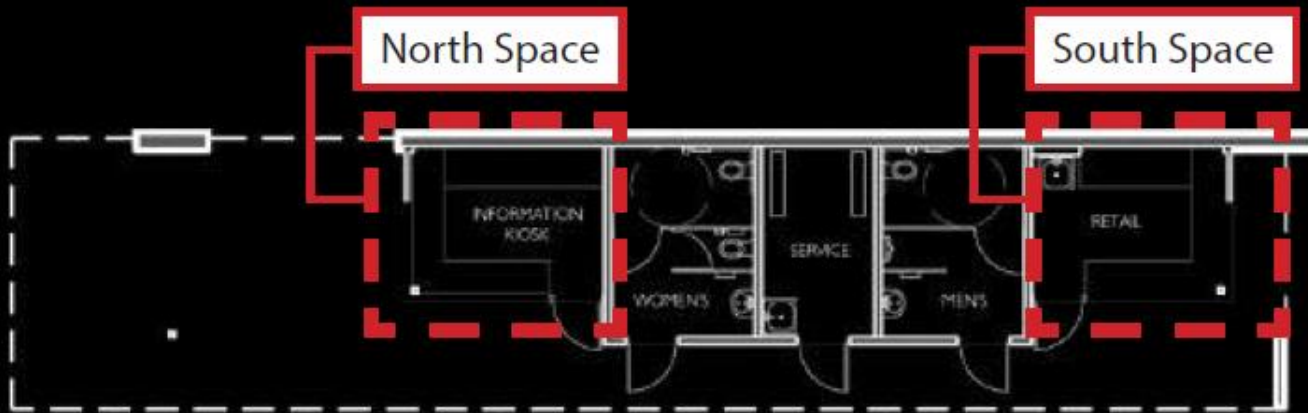
By: _____

Name: _____
(please print)

Title: _____
(please print)



EXHIBIT A



CERTIFICATE OF COVERAGE

Certificate #: 4140

Administrator

Colorado Special Districts Property and Liability Pool
PO Box 1539
Portland, OR 97207-1539

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER OTHER THAN THOSE PROVIDED IN THE COVERAGE DOCUMENT. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE COVERAGE DOCUMENTS LISTED HEREIN.

COMPANIES AFFORDING COVERAGE

NAMED MEMBER

Downtown Denver Business Improvement District
c/o Downtown Denver Partnership
1515 Arapahoe St., Tower II, Suite 400
Denver, CO 80202

- COMPANY A Colorado Special Districts Property and Liability Pool
- COMPANY B General Reinsurance Corporation
- COMPANY C Colorado Special Districts Property and Liability Pool
- COMPANY D

COVERAGES

This is to certify that coverage documents listed herein have been issued to the Named Member herein for the Coverage period indicated. Notwithstanding any requirement, term or condition of any contract or other document with respect to which the certificate may be issued or may pertain, the coverage afforded by the coverage documents listed herein is subject to all the terms, conditions and exclusions of such coverage documents.

| CO LTR | Type of Coverage | Coverage # | Effective Date | Expiration Date | Limits | |
|---------|--|---|----------------|-----------------|--------------------------|-------------|
| A, B | General Liability | 31C60669-1401 | 1/1/2018 | 1/1/2019 | General Aggregate | Unlimited |
| | <input checked="" type="checkbox"/> Commercial General Liability | * Except that for claims, occurrences or suits to which the monetary limits of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et. seq., as amended, apply, there shall be a further sublimit of (a) \$350,000 for an injury to any one person in any single occurrence; and (b) \$990,000 for an injury to two or more persons in any single occurrence; but in the event of an injury to two or more persons in any single occurrence, the sublimit shall not exceed \$350,000 for each injured person. | | | Each Occurrence * | \$2,000,000 |
| | <input checked="" type="checkbox"/> Public Officials Liability | | | | | |
| | <input checked="" type="checkbox"/> Employment Practices | | | | | |
| | <input checked="" type="checkbox"/> Occurrence | | | | | |
| A, B | Automobile Liability | 31C60669-1401 | 1/1/2018 | 1/1/2019 | Each Occurrence * | \$2,000,000 |
| | <input type="checkbox"/> Scheduled Autos | | | | | |
| | <input checked="" type="checkbox"/> Hired Autos | | | | | |
| A, C | Auto Physical Damage | 31C60669-1401 | 1/1/2018 | 1/1/2019 | See below if applicable. | |
| | <input checked="" type="checkbox"/> Hired Autos | | | | | |
| B | Excess Liability | 31C60669-1401 | 1/1/2018 | 1/1/2019 | General Aggregate | Unlimited |
| | <input checked="" type="checkbox"/> Other Than Umbrella Form | | | | Each Occurrence * | \$4,000,000 |
| | Property | | | | | |

DESCRIPTION:

Evidence of Coverage only.

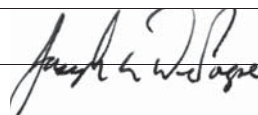
CERTIFICATE HOLDER

City of Denver - Parks and Recreation
201 W. Colfax Ave, Dept. 601

Denver, CO 80202

CANCELLATION: SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

By: Joseph E. DePaepe



Date: 10/24/2017