

PROJECT SUPPORT AGREEMENT

THIS PROJECT SUPPORT AGREEMENT ("Agreement") is made and entered into as of the Effective Date (as hereinafter defined), by and between the CITY AND COUNTY OF DENVER, a home-rule city and a municipal corporation of the State of Colorado (the "City"), and the NATIONAL WESTERN CENTER AUTHORITY, a Colorado nonprofit corporation (the "Authority").

RECITALS

A. The City is a home rule city and a municipal corporation duly organized and existing under and pursuant to Article XX of the Colorado Constitution and the Charter of the City ("Charter"). The City owns the property known as the "National Western Center" located in the City and County of Denver, Colorado.

B. The Western Stock Show Association, a Colorado nonprofit corporation (the "WSSA"), has held the National Western Stock Show annually at the historic site of the Denver Union Stockyards Company since 1906. The existing National Western Stock Show facilities are located on approximately one hundred and thirty (130) acres of land in Denver (the "Stock Show Property").

C. In 2013, the City, the WSSA, the Colorado State University System ("CSU"), the Denver Museum of Nature & Science, and the History Colorado Center entered into a Memorandum of Understanding to cooperate in the planning and redevelopment of the existing National Western Stock Show facilities to better integrate the Stock Show Property with surrounding neighborhoods and to build and operate a new approximately 250-acre multi-purpose campus (the "NWC Campus").

D. In 2015, the City approved the master plan for the NWC Campus (the "Master Plan") which outlines a multi-phased plan "to construct three million square feet of new, flexible facilities (the "Campus Facilities") supporting expanded capacity for educational, entertainment, and cultural programming events".

E. In 2017, the City, the WSSA, and CSU entered into the National Western Center Framework Agreement dated September 28, 2017, as amended (the "Framework Agreement") to provide for the funding, governance, design, construction, operation, and maintenance of the NWC Campus and create the joint formation of the Authority to govern, oversee, manage, operate and maintain the NWC Campus, and upon formation, become a party to the Framework Agreement.

F. Consistent with the vision of the Framework Agreement, the City and the Authority are pursuing the development of a hotel on the NWC Campus, together with completion of the Campus Facilities in accordance with the Master Plan.

G. In June 2023, the City and the Authority entered into a Cooperation Agreement ("Cooperation Agreement") for the procurement of a private development partner to undertake design, financing, and construction of the equestrian center project contemplated in the Framework Agreement and a hotel on the NWC Campus.

H. With the support of the City, pursuant to the Cooperation Agreement, the Authority undertook a procurement and entered into a pre-development agreement with a development team in May 2024 to provide initial design development for the Project.

I. Under the pre-development agreement, the Authority and the City have advanced the design and technical requirements for the Project (defined below), which generally consists of a 4,500 seat equestrian show arena, 48,000 square foot warm-up paddock, and 572-stall horse barn (the “Equestrian Center”); a 160-key full service hotel that includes adaptive reuse of the Armour & Company Administrative Building as part of the hotel operations (the “Hotel”); a parking garage including at least 580 spaces to support the NWC Campus in addition to Hotel parking (the “Parking Garage”); completion of the central pedestrian plaza that will serve as the centerpiece of Phases 1-2 of the NWC Campus (the “Main Campus Plaza”); landscaped pedestrian-friendly connections between the NWC Campus and the Riverfront, the 51st Avenue Bridge connecting to Globeville, the pedestrian bridge connecting to the RTD N-Line Station and Elyria-Swansea; construction of a 4,000 square foot building located along National Western Drive for use by the local community (the “Community Building”); and the development of a workforce housing project consisting of approximately 40 units of 100% income-restricted housing (the “Housing”), all on an approximately 18-acre site (the “Site”).

J. The design and construction of the Equestrian Center, Hotel, Parking Garage, Community Building, and Housing; operations and maintenance of the Hotel and (if directed by the City) the Housing; and expected programming of adjoining Campus Facilities in Phases 1-2 of the NWC Campus for events, together comprise the “Project.”

K. In order to assist with financing the Project, the City and Authority are pursuing financing through the United States Department of Transportation Build America Bureau (“BAB”) Railroad Rehabilitation and Improvement Financing Transit-Oriented Development (“RRIF TOD”) loan program as a low-cost financing option that may be made available to finance project costs (the “RRIF Loan” and the financing documents related thereto, the “RRIF Financing Documents”).

L. As reflected in the Framework Agreement, the City supports the goals and mission of the National Western Center generally and also supports the Project. In consideration of the benefits to be derived by the City and its residents as a result of the completion of the Project, the City deems it appropriate to provide to the Authority the requested commitment for payment of the Authority’s obligations under its various agreements related to the development, financing (including the RRIF Financing Agreements), delivery, and operations of the Project (the “Authority Agreements”), to the extent and upon the terms and conditions set forth herein, and contingent on appropriation therefor.

M. The Authority has agreed to pay the City revenue sharing payments from excess Hotel revenues and to repay Contingent Payments (as described below), on the terms and from the sources specified herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties do hereby agree as follows:

TERMS AND CONDITIONS

1. LINES OF AUTHORITY FOR CONTRACT ADMINISTRATION

1.1. For the City

Manager of the City’s Department of Finance, or her designee or successor in function (the “Manager”) shall administer and coordinate all activities contemplated under this Agreement and otherwise act on behalf of the City under this Agreement. The Manager may designate an individual to act on behalf of the City as the Manager’s authorized representative for this

Agreement (the “City Representative”). The Manager expressly reserves the right from time-to-time to designate another City Representative to perform on the Manager’s behalf by written notice to the Authority.

1.2. For the Authority

The Chief Executive Officer of the Authority or their designee or successor in function (the “CEO”) shall administer and coordinate all activities contemplated under this Agreement and otherwise act on behalf of the Authority under this Agreement. The CEO may designate an individual to act as the CEO’s authorized representative for this Agreement (the “Authority Representative”). The CEO shall not designate, change or replace the individual acting as the Authority Representative without obtaining the prior written approval of the Manager.

2. CITY PAYMENTS

2.1. Pre-Development Funding

Prior to commencement of construction of the Project, the City will pay up to \$9,976,000 to the Authority to be used for the continuation of further design development work on the Project. The City shall reimburse the Authority for the Authority’s actual costs incurred for any such work. The Authority shall submit any agreements for third-party reimbursable costs to the City for approval prior to incurring any costs under such agreements. For reimbursement of third-party costs, the Authority shall provide the City with a single monthly invoice for such costs in a format and with a level of detail acceptable to the City, including all supporting documentation required by the City. The City’s Prompt Payment Ordinance, §§ 20-107 to 20-118, D.R.M.C., applies to invoicing and payment for work performed under this Section 2.1. In the event the Authority anticipates the payment of third-party invoices in a given month will exceed available Authority cash on hand, the City may agree to advance certain funding to the Authority with release of payment to any third-party by the Authority subject to receipt of a monthly invoice for such costs in a format and with a level of detail acceptable to the City.

2.2. City Payments

2.2.1. Fixed Payments

On or before each March 1, June 1, September 1 and December 1 of each year, beginning June 1, 2028, and continuing, subject to Section 5.1, through the Term (as described in Section 8), the City shall pay to the Authority an amount up to, and not to exceed, Five Million Eight Hundred Twenty-Five Thousand Dollars (\$5,825,000) (the “Fixed Payment”) for deposit in the City Revenue Account (defined in Section 4), which amounts shall be used by the Authority solely for the financing and delivery of the Project as described in this Agreement and in accordance with the Authority Agreements.

2.2.2. Contingent Payments

The Authority shall cause the applicable Authority Agreements to require the establishment and funding at or before substantial completion of the Project of a reserve account (the “Project Financing Reserve”) in an amount equal to the maximum annual Contingent Payment projected under the Authority Agreements (the “Project Financing Reserve Target Balance”), which shall not exceed Three Million Dollars (\$3,000,000). In the event a draw is made from the Project Financing Reserve during the Term (as described in Section 7), the Authority may request from the City

pursuant to Section 3 an amount sufficient to refill the Project Financing Reserve to the Project Financing Reserve Target Balance. The City shall deposit such amount (a “Contingent Payment”) in the City Revenue Account, on or before March 1 of the applicable calendar year for which such request has been made.

2.2.3. Payment Instructions

Any amounts payable by the City to the Authority under this Agreement may be paid directly to a trustee, collateral agent, or other recipient identified by and contracted with the Bureau (defined below), and designated by the Authority to the City in writing. In the absence of any relevant Authority Agreement with the Bureau, such amounts may be paid directly to a trustee, collateral agent, or other recipient designated by the Authority to the City in writing, subject to the City’s prior written approval. Any payment instruction given to (and if required, approved by) the City shall survive any termination of the Authority Agreements as necessary to give effect to the payment obligations under this Agreement.

2.2.4. Unconditional Obligations

- a. The obligations of the City under this Agreement are independent of any other obligations of the City, and such obligations may be enforced against the City by the United States Department of Transportation, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau (the “Bureau”), as an express third-party beneficiary of this Agreement, solely in its role as lender under the Authority Agreements following a financial close under the same, irrespective of whether any action is brought against the Authority or whether any other entity is joined in any such action. Subject explicitly to the limitations on the City’s obligations under Section 5.1, the liability of the City hereunder shall be irrevocable and absolute, and the City hereby irrevocably waives any circumstance which constitutes a defense to, or legal or equitable discharge of, the City’s obligations under this Agreement other than satisfaction in full of such obligations.
- b. In furtherance of the foregoing and without limiting the generality thereof, the City agrees to waive defenses it may now or hereafter have to any claims brought by the Bureau in any way relating to any or all of the following:
 - i. any lack of validity or enforceability of any Authority Agreement previously approved by the City or any agreement or instrument relating thereto;
 - ii. any change in the time, manner, or place of payment under or as directed in accordance with, or any other amendment, waiver, or consent to departure from any of the terms of, any Authority Agreement previously approved by the City;
 - iii. subject to the limitations of the City’s obligations set forth in Section 5.2 of this Agreement, any change, insolvency, bankruptcy, reorganization, restructuring or termination of the corporate structure or existence of the Authority or its counterparties under any Authority Agreement previously approved by the City;
 - iv. any default (including any payment default) by the Authority or its counterparties under any Authority Agreement previously approved by the City or the termination of any Authority Agreement; and

- v. subject to Section 5.1, any contradiction or incompatibility among the City's obligations under this Agreement and any other obligations of the City.
- c. The obligations of the City hereunder shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the applicable obligations is rescinded or must otherwise be returned by the Authority or any other person or entity upon the insolvency, bankruptcy, or reorganization of the Authority or its counterparties under any Authority Agreement or otherwise, all as though such payment had not been made and, in such event, subject to Section 5.1, the City will promptly pay to the Authority, or such other person or entity designated by the Authority in accordance with this Agreement, an amount equal to any such payment that has been rescinded or returned.
- d. The provisions of this Section 2.2.4 will survive any release or termination of the City's obligations under this Agreement.

3. FUNDING REQUEST

- a. On or before July 1 of every year beginning July 1, 2027, the Authority shall prepare and submit to the City (in form and substance reasonably acceptable to the City) a detailed accounting (the "Annual Accounting") of all obligations under the Authority Agreements anticipated for the following calendar year, including Fixed Payment and Contingent Payment amounts, which Annual Accounting shall include a request for the applicable Fixed Payment and any Contingent Payment (a "Funding Request"). The City shall have the right to review and confirm the Annual Accountings submitted by the Authority to support the calculation of any Contingent Payment included in a Funding Request, and the Authority will meet, respond to, and cooperate with the City in completing the review and confirmation process.
- b. As part of the annual City budget process for any year in which the Authority submits a Funding Request, the City shall submit an Appropriation Request (as defined in Section 5) for the amount set forth in such Funding Request and, upon appropriation, advance such funds directly to the Authority in accordance with the schedule set forth in this Agreement for deposit in the City Revenue Account (defined below), or such other account designated by the Authority in accordance with Section 2.2.3, from legally available funds of the City.

4. ACCOUNTS

4.1. Establishment

- a. Within ninety (90) days after the Effective Date, the Authority shall set up and establish in the name of the Authority the following accounts (collectively the "Accounts"): (i) a City Revenue Account dedicated solely to the Fixed Payments and the Contingent Payments (together, the "City Payments"), which funds the Authority shall use solely in accordance with the Authority Agreements; (ii) an Authority Reimbursement Account dedicated solely to deposit payments to the Authority that are to be used to reimburse the City for any prior Contingent Payments made by the City in accordance with the Authority Agreements; and (iii) an Authority Excess Revenue Share Account, dedicated for the deposit of revenue sharing payments to the Authority from excess Hotel and Housing revenues, as well as any surplus moneys on deposit in the construction account and unspent allowances upon completion of construction of the Project, which may be used

to reimburse Fixed Payments made by the City, in each case to the extent permitted by the Authority Agreements.

- b. On each January 1, April 1, July 1, and October 1, the Authority shall transfer all amounts on deposit in the Authority Reimbursement Account and the Authority Excess Revenue Share Account to the City to reimburse Fixed Payments and Contingent Payments previously made.

4.2. Required Reports

- a. The Authority shall provide to the City quarterly statements on each January 15, April 15, July 15, and October 15, of all the Accounts showing all activity in such Accounts during the preceding quarter.
- b. The Authority shall, promptly upon receipt, provide to the City true and complete copies of all notices, financial reports, claims, and other material written work product such as letters, correspondence, studies, audits, reports, and similar items, given or received under or with respect to the Authority Agreements to the extent such items may cause, impact, or reflect a material change to the financial obligations of the Authority under such Authority Agreements.

5. APPROPRIATION

5.1. Annual Appropriation

The City and the Authority acknowledge and agree that any and all City payment obligations shall extend only to funds appropriated annually by the City Council of the City and County of 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. This Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City. Neither this Agreement nor the Authority Agreement shall obligate or compel the City to make City payments beyond those appropriated in the City's sole discretion. Notwithstanding the foregoing, the City hereby agrees that the Manager, or City Representative, or any other officer of the City at any time charged with the responsibility of formulating budget proposals, shall seek an appropriation (each, an "Appropriation Request") by the City Council in the amount of the Funding Request to be paid in the following calendar year. It is the intent of the City hereunder that the decision to appropriate or not appropriate funding for City payments from funds legally available to the City pursuant to this Agreement shall be made by the City Council acting by ordinance without compulsion and solely in the City's discretion.

5.2. Termination of Authority Agreements

The Authority shall not elect to terminate the Authority Agreements without City consent. In the event of a termination of the Authority Agreements that results in termination compensation payable by the Authority for costs incurred related to the financing and development of the Project, the City shall pay to the Authority all amounts that are owed as termination compensation as and when required by the Authority Agreements; provided, however, that in no event will the amount payable by the City in any quarter exceed the maximum amount of Fixed Payments and Contingent Payments payable by the City in the quarter prior to such termination. Such payments shall continue until the earlier of: (i) full satisfaction of the Authority's obligations under the

Authority Agreements (including with respect to termination compensation), or (ii) the end of the Term, as may be extended pursuant to Section 8.

6. MATTERS UNDER THE AUTHORITY AGREEMENTS

6.1. Required Community Benefits Provisions

The Authority shall ensure the Authority Agreements for the Project include the following:

- a. Compliance with the City's social ordinances and additional requirements set forth in Section 9.1 below;
- b. Completion of the Community Building, which will be dedicated for community-directed events, gathering, and other programming and maintained by the Authority;
- c. A direct pedestrian connection from 51st Avenue to the planned pedestrian bridge and the RTD N-line Station;
- d. Provision of publicly accessible open space;
- e. Compliance with the Workforce Ordinance and participation in the Denver Construction Career Program;
- f. A 1% fee on the base price of each room night in the proposed Hotel, the revenues from which will go into the Community Investment Fund;
- g. A mandatory fundraising day to support the Community Investment Fund;
- h. Promotion of local businesses to Hotel guests;
- i. Preferential access for the use of Hotel meeting facilities; and
- j. Programs for Hotel apprenticeships, internships and jobs.

6.2. Workforce Housing Units

All housing units contemplated under this Agreement shall be income restricted, at levels approved by the City, with an expected range between 50% and 100% of area median income at the time of income qualification, which shall occur for each unit on a periodic basis.

6.3. City Approval

The Authority shall not enter into any Authority Agreement, amend any Authority Agreement, or consent to the waiver of any provision of any Authority Agreement, without first obtaining the prior written approval of the City.

6.4. Approvals Given Under Authority Agreements

- a. The Parties hereby agree that any consent, approval, acceptance, or like assent, that is required to be given by the Authority under the Authority Agreements shall require prior written approval of the City. In giving such approvals, the City shall:
 - i. be subject to the same standard of review provided for in the applicable Authority Agreement; i.e. if the Authority's approval is not to be unreasonably withheld, the City's approval shall likewise not be unreasonably withheld; and

- ii. provide any required approvals within such timeframes as reasonably requested by the Authority in order to satisfy its obligations under the Authority Agreements.
- b. The Authority shall (i) promptly notify the City of each requested approval and provide the City with all relevant supporting information and documentation, (ii) advise and consult with the City prior to providing a response under the Authority Agreements, and (iii) provide a response in a manner consistent with the City's direction.
- c. With respect to any matters requiring City approval under the Authority Agreements, such approvals shall be given in writing by the Executive Director of the Mayor's Office of the National Western Center or their designee or successor in function.

7. REAL PROPERTY TRANSACTION

The City shall enter into a ground lease and such other leases, licenses, easements, or related agreements (collectively "Real Estate Agreements") with the Authority, its contractors, subcontractors, or other necessary parties as may be required for the accomplishment of the construction and operation of the Project. Consistent with current practice at the NWC Campus, and pursuant to Ordinance No. 0900, Series 2015, and Ordinance No. 0898, Series 2016, of the City Council, such Real Estate Agreements and any amendments thereto shall not require further action of City Council provided such land is within the boundaries legally described in such ordinances.

8. TERM OF OBLIGATIONS

This Agreement shall commence as of the Effective Date and shall continue until March 1, 2063 (the "Term"). The Term of this Agreement, unless otherwise terminated as provided herein, shall renew automatically and without further action be extended for a period not to exceed five (5) additional years as the Manager determines is required to discharge the Authority's financing obligations for the Project in accordance with the Authority Agreements or as required pursuant to Section 5.2. Notwithstanding the foregoing, the Parties may amend this Agreement at any time to extend its term for such additional years as may be agreed upon by the Parties, provided that any such extension is approved and executed in the same manner as this Agreement.

9. MISCELLANEOUS

9.1. Additional City Requirements

The Authority shall require compliance with the City's social ordinances and additional requirements in all procurement documents and Authority Agreements, as applicable, including, but not limited to, satisfying the following requirements:

- a. The Authority shall comply with the Prevailing Wages Ordinance, Chapter 20, Article IV, §§ 20-76 through 20-79 of the Denver Revised Municipal Code ("D.R.M.C.") and any determinations made by the City pursuant thereto as well as the City's Minimum Wage Protections, Chapter 20, Article IV, §§ 20-82 through 20-84, D.R.M.C, and any determinations made by the City pursuant thereto. In the event a covered worker falls under both ordinances, such worker shall be paid the greater of the two rates.

- b. Compliance with Minority/Women Owned Business Enterprise Requirements including all applicable provisions of Article III, Divisions 1 and 3 of Chapter 28 of the D.R.M.C. and all rules and regulations promulgated pursuant thereto.
- c. Applicable LEED certification requirements for all new buildings that are public elements and major renovations to buildings that are public elements in accordance with Denver Executive Order 123.
- d. Connecting to the existing district energy system to utilize recycled thermal energy in support of the sustainability and resiliency of the NWC Campus where technologically and financially practical as determined by the City in its discretion.
- e. Green Building Ordinance requirements pursuant to Chapter 10, Article XIII, §§ 10-300 et seq., D.R.M.C.
- f. Public art requirements pursuant to the City's Public Art Ordinance (Chapter 20, Article IV, §§ 20-85 et seq., D.R.M.C.
- g. In connection with the performance of work under this Agreement, the Authority may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The Authority shall insert the foregoing provision in the Authority Agreements and cause its counterparties to include the foregoing provision in all subcontracts.
- h. The City's Workforce Ordinance requirements pursuant to Chapter 28, Article XI, D.R.M.C.;
- i. Community support and outreach participation; and
- j. Collaboration with organized labor, such as negotiating collective bargaining agreements, if any, covering any Hotel employees, and determining and implementing personnel policies and practices relating to any applicable rights under the National Labor Relations Act or any applicable labor laws in relation to the operation of the Hotel.

9.2. Compliance With Denver Wage Laws

To the extent applicable to the Authority's provision of services hereunder, the Authority shall comply with, and agrees to be bound by, all rules, regulations, requirements, conditions, and City determinations regarding the City's Minimum Wage and Civil Wage Theft Ordinances, Sections 58-1 through 58-26 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid all earned wages under applicable state, federal, and city law in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, the Authority expressly acknowledges that the Authority is aware of the requirements of the City's Minimum Wage and Civil Wage Theft Ordinances and that any failure by the Authority, or any other individual or entity

acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.

9.3. City Standard Indemnification Provision

- a. To the fullest extent permitted by law, the Authority agrees to defend, indemnify, reimburse, and hold harmless the City, its appointed and elected officials, agents, and employees for, from, and against all liabilities, claims, judgments, suits, or demands for damages to persons or property arising out of, resulting from, or related to the work performed under this Agreement ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner consistent with the applicable law to indemnify the City for any acts or omissions of the Authority, its contractors or its subcontractors either passive or active, irrespective of fault, including the City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of the City.
- b. The Authority's obligation to defend and indemnify may be determined after the Authority's liability or fault has been determined by adjudication, alternative dispute resolution, or otherwise resolved by mutual agreement between the Parties. The Authority's duty to defend and indemnify the City shall relate back to the time written notice of the Claim is first provided to the City, regardless of whether suit has been filed and even if the Authority is not named as a defendant. The Authority's duty to defend and indemnify the City to the extent permitted by law shall arise even if the City is the only party sued by claimant and/or claimant alleges that the City's negligence or willful misconduct was the sole cause of claimant's damages.
- c. The Authority shall defend any and all Claims which may be brought or threatened against the City and shall pay on behalf of the City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of the City shall be in addition to any other legal remedies available to the City and shall not be considered the City's exclusive remedy.
- d. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Authority under the terms of this indemnification obligation. The Authority shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.
- e. This defense and indemnification obligation shall survive the expiration or termination of this Agreement. The Authority shall include this indemnity provision in the Authority Agreements and cause its counterparties to include the foregoing provision in all subcontracts.

9.4. Colorado Governmental Immunity Act

The Parties hereto understand and agree that each Party is relying upon, and has not waived, the monetary limitations and all other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.* (the "CGIA").

9.5. Insurance

- a. At all times during the term of this Agreement, including any renewals or extensions, the Authority shall maintain such insurance, by commercial policy or self-insurance, as outlined in the Framework Agreement, and as necessary to meet its liabilities under the CGIA. This obligation shall survive the termination of this Agreement.
- b. The Authority shall ensure the Authority Agreements require contractors and subcontractors at all tiers ("Contractors") to include such insurance policies and coverages as required by the City. The Authority agrees to provide proof of insurance for all such Contractors upon request by the City. Contractors shall be required to maintain, at their own expense, any additional kinds or amounts of insurance that they may deem necessary to cover their obligations and liabilities under this Agreement and the Authority Agreements.
- c. The Authority Agreements shall require all Contractor commercial general liability and business automobile insurance policies to include the Authority and the City and County of Denver, its elected and appointed officials, employees, and volunteers as additional insureds.

9.6. Taxes, Charges, and Penalties

The City is not liable for the payment of taxes, late charges, or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's prompt payment ordinance D.R.M.C. §§ 20-107, *et seq.* The Authority shall promptly pay when due, all taxes, bills, debts, and obligations it incurs performing the services under this Agreement and shall not allow any lien, mortgage, judgment, or execution to be filed against City property.

9.7. Examination of Records and Audits

Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy, and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers, and records related to the Authority's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement.

The Authority shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under this Agreement or expiration of the applicable statute of limitations.

When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this section shall require the Authority to make disclosures in violation of state or federal privacy laws. The Authority shall at all times comply with D.R.M.C. § 20-276.

9.8. Independent Contractor

The Authority shall at all times have the status of an independent contractor without the right or authority to impose tort or contractual liability upon the City, and nothing in this Agreement shall

create a joint venture or partnership between the City and the Authority. Neither the Authority nor any of its employees are employees or Directors of the City under Chapter 18 of the D.R.M.C, or for any purpose whatsoever.

9.9. No Authority to Bind City to Contracts

The Authority lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the D.R.M.C.

9.10. Conflict of Interest

- a. No employee of the City shall have any personal or beneficial interest in the services or property described in this Agreement. The Authority shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City's Code of Ethics, D.R.M.C. §§ 2-51, *et seq.* or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.
- b. The Authority shall not engage in any transaction, activity, or conduct that would result in a conflict of interest under this Agreement. The Authority represents that it 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 Authority by placing the Authority's own interests, or the interests of any party with whom the Authority has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate this Agreement if it determines a conflict exists, after it has given the Authority written notice describing the conflict.

9.11. Alcohol and Drugs Policy; Smoking Policy

- a. The Authority, and its officers, employees, and agents shall cooperate with the provisions of Executive Order No. 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 Authority from City facilities or participating in City operations. The Authority, as an employer, shall adhere to the federal, state, and local laws regarding alcohol and drug abuse. Further, the Authority shall, through its personnel rules and regulations, or otherwise, maintain a policy against the possession, use or sale of illegal drugs or the unauthorized use by employees of alcohol in the workplace in order to promote safe, healthful, and efficient operations. The Authority agrees not to use any funds received from the City under this Agreement for the purchase, acquisition, or receipt of consumable alcohol.
- b. The Authority agrees to adopt and enforce a "no smoking" policy in all areas of the Site, except for limited, designated areas available for employee smoking, during the development of the Project. The Authority's written smoking policy shall be in conformance with Executive Order No. 99 and any generally applicable rules, regulations, or policies adopted by the City.

9.12. Compliance with All Laws and Regulations

The Authority agrees not to use, or permit the Site to be used, for any purpose prohibited by the laws of the United States or the State of Colorado, or the ordinances or home rule charter of the City, or not otherwise authorized hereunder, and it further agrees that it will use the Site in

accordance with all applicable federal, state, and local laws and all general rules and regulations, as amended and adopted by the City. The Authority further agrees to submit any report(s) or information that the City is required by law or regulation to obtain from the Authority or that the City may reasonably request relating to the Authority's operations.

9.13. Amendments and Waivers

No amendment or waiver of any provision of this Agreement, nor consent to any departure herefrom, in any event, shall be effective unless the same shall be in writing and signed by the Parties hereto, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

9.14. Notices

All notices, certificates, or other communications given hereunder shall be deemed sufficiently given on the third day following the day on which the same have been mailed by first class, postage prepaid, addressed to the City and County and the Authority, at the address set forth for such party below. The City and the Authority, may, by notice given hereunder, designate any different addresses to which subsequent notices, certificates, or other communications shall be sent.

If to the City: City and County of Denver
Mayor
1437 Bannock Street
Denver, Colorado 80202

With copies to: Manager of Finance
City and County of Denver
201 W. Colfax Avenue
Department 1010
Denver, Colorado 80202

And:

City Attorney
City and County of Denver
1437 Bannock Street, Suite 353
Denver, Colorado 80202

If to the Authority: The National Western Center Authority
4701 Marion Street, Suite 401
Denver, Colorado 80216

9.15. Governing Law; Venue

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Colorado and shall be subject to the limitations, if any, that are applicable under the Charter or ordinances of the City on the date hereof. The venue for any litigation arising from this Agreement shall be in the state or federal courts in the City and County of Denver. The Authority shall insert

the foregoing provisions in the Authority Agreements and cause its counterparties to include the foregoing provision in all subcontracts.

9.16. Headings

Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

9.17. Counterparts and Effective Date

This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective upon approval of the City Council and upon all required signatures of the City and the Authority. As used herein, the term “Effective Date” shall mean the date appearing on the signature page of the City.

9.18. Severability

In case any one or more of the provisions contained in this Agreement should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. Furthermore, if any amendment to this Agreement should be invalid, illegal or unenforceable in any respect, the validity and enforceability of this Agreement as in effect prior to such amendment shall not in any way be affected or impaired thereby. The Parties shall endeavor in good faith negotiations to replace the invalid, illegal, or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal, or unenforceable provisions.

9.19. Entire Agreement

The Parties agree and expressly intend that this Agreement constitutes a single, non-severable, integrated agreement whose terms are interdependent and non-divisible. This Agreement contains the entire understanding of the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements, understandings, statements, representations and negotiations, in each case oral or written, between the Parties with respect to the subject matter of this Agreement.

9.20. Survival of Certain Provisions

The terms of this Agreement that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of this Agreement will survive this Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Authority’s obligations to provide insurance will 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.

9.21. Representations and Warranties

Each Party represents and warrants that:

- a. it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement;
- b. each person signing and executing this Agreement has been fully authorized to execute this Agreement on behalf of such Party, and this Agreement has been duly executed and delivered by such Party;

- c. this Agreement constitutes a legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms;
- d. the execution, delivery and performance of this Agreement by such Party does not and will not require the consent or approval of any person or entity, other than any consent or approval that has been obtained and is in full force and effect;
- e. the execution, delivery and performance by such Party does not and will not violate or otherwise contravene any:
 - i. law applicable to such Party that is in effect on the date of execution and delivery of this Agreement;
 - ii. the organizational, corporate or other governing documents of such Party; or
 - iii. any agreement, instrument, judgment or decree to which such Party is a party or is bound; and
- f. there is no criminal, civil, enforcement or other action, suit, proceeding, investigation or litigation pending or served on or against (or, to its knowledge, threatened against) the Party that challenges:
 - i. such Party's authority to execute, deliver or perform under this Agreement;
 - ii. the validity or enforceability of this Agreement; or
 - iii. the authority of any Party representative executing this Agreement,
 or could reasonably be expected to have a material and adverse effect on the ability of such Party to perform its obligations under this Agreement.

9.22. No Construction Against Drafting Party

The Parties and their respective counsel have had the opportunity to review this Agreement, and this Agreement will not be construed against any Party merely because any provisions of this Agreement were prepared by a particular Party.

9.23. Electronic Signatures and Electronic Records

The Parties consent to the use of electronic signatures. This Agreement, and any other documents requiring a signature hereunder, may be signed electronically. 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.

[Signature Pages Follow]

Contract Control Number:
Contractor Name:

FINAN-202579112-00
NATIONAL WESTERN CENTER AUTHORITY

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

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
Contractor Name:

FINAN-202579112-00
NATIONAL WESTERN CENTER AUTHORITY

By: 

Name: Brad Buchanan
(please print)

Title: CEO
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)