

## **PARKS USE AGREEMENT**

This **PARKS USE AGREEMENT** (the "**Agreement**") is entered, as of the date the City signs this Agreement ("**Effective Date**"), by and between the **CITY AND COUNTY OF DENVER** (the "**City**"), a Colorado municipal corporation, and **DOWNTOWN DENVER EVENTS, INC.**, a Colorado nonprofit corporation ("**DDE**"), whose address is 511 16<sup>th</sup> Street, Suite # 200, Denver, Colorado 80202.

### **RECITALS**

**WHEREAS**, DDE desires to use, during the Term of this Agreement, a portion of Skyline Park owned by the City and operated by the City's Department of Parks and Recreation ("**DPR**"), at the location designated under this Agreement ("**DDE Event Site**") for holding an annual multi-day event for ice skating activity as described in this Agreement (the "**DDE Events**"); and

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

**WHEREAS**, the Parties believe that the DDE Events will generate favorable exposure as well as economic benefits for both the City and DDE and serve as a recreational and social occasion for the enjoyment of the entire community; and

**WHEREAS**, DDE hereby agrees to utilize the DDE Event Site for the DDE Events subject to the terms and provisions of this Agreement;

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

1. **DEFINITIONS.**

1.1 **Agreement.** "Agreement" shall mean this Parks Use Agreement, its exhibits, and all amendments and extensions thereto.

1.2 **Applicable Law.** "Applicable Law" shall mean any law, governmental rule, regulation or ordinance, or judicial order or decree, including without limitation the Denver Charter; Denver Revised Municipal Code; rules, regulations, and policies of the City departments and agencies; and executive orders of the City's Mayor, as the same may be amended from time to time, and as further provided in **Article 16.**

1.3 **City.** "City" shall mean the City and County of Denver and all of its departments and agencies.

- 1.4 City Liaison. “City Liaison” shall have the meaning set forth in Section 6.1(a) herein.
- 1.5 City Services. “City Services” shall have the meaning set forth in Section 6.1 herein.
- 1.6 Claims. “Claims” shall have the meaning set forth in Section 11.1 herein.
- 1.7 Clean Up Plan. “Clean Up Plan” shall have the meaning set forth in Section 12.5 herein.
- 1.8 Concession. “Concession” shall have the meaning set forth in Section 3.3 herein.
- 1.9 Concession Site. “Concession Site” shall have the meaning set forth in Section 3.3 herein.
- 1.10 Concession Plan. “Concession Plan” shall have the meaning set forth in Section 12.7 herein.
- 1.11 Confidential Information. “Confidential Information” shall have the meaning set forth in Section 13.2 herein.
- 1.12 Damage Deposit. “Damage Deposit” shall have the meaning set forth in Section 4.2 herein.
- 1.13 DDE Event. “DDE Event” shall have the meaning set forth in Section 2.1 herein.
- 1.14 DDE Event Dates. “DDE Event Dates” shall have the meaning set forth in Section 2.2 herein, and shall include such dates as agreed or modified by the Parties in accordance with this Agreement.
- 1.15 DDE Event Permit. “DDE Event Permit” shall have the meaning set forth in Section 3.1 herein.
- 1.16 DDE Event Site. “DDE Event Site” shall have the meaning set forth in Section 2.3 herein, and shall include such locations as agreed or modified by the Parties in accordance with this Agreement.
- 1.17 Default by DDE. “Default by DDE” shall have the meaning set forth in Section 8.1 herein.
- 1.18 Default by City. “Default by City” shall have the meaning set forth in Section 8.2 herein.
- 1.19 Effective Date. “Effective Date” shall have the meaning set forth in the first paragraph of this Agreement.

1.20 Fire Plan. “Fire Plan” shall have the meaning set forth in Section 12.2(a) herein.

1.21 Force Majeure. “Force Majeure” shall mean adverse acts of God, fires, floods, droughts, severe weather, unusually and persistently warm weather, epidemics, quarantine restrictions, water restrictions, strikes, failure of public utilities, court orders or similar significant disruption to the holding of the DDE Event (see Section 2.2) or the use and/or occupancy of the DDE Event Site (see Section 2.3).

1.22 Load-In. “Load-In” shall have the meaning set forth in Section 2.4 herein.

1.23 Load-Out. “Load-Out” shall have the meaning as set forth in Section 2.4 herein.

1.24 Manager. “Manager” shall mean the Manager of the City and County of Denver Parks and Recreation Department or the Deputy Manager for Parks and Recreation Department.

1.25 Parks Curfew. “Parks Curfew” shall mean 11:00 p.m. to 5:00 a.m. every day of the week.

1.26 Party/Parties. “Party” shall mean either the City or DDE individually, depending on the context, and “Parties” shall mean the City and DDE jointly.

1.27 Permitted Activities. “Permitted Activities” shall have the meaning set forth in Section 3.1 herein.

1.28 Permitted Alcohol. “Permitted Alcohol” shall have the meaning set forth in Section 3.4 herein.

1.29 Personal Property. “Personal Property” shall have the meaning set forth in Section 14.1 herein.

1.30 Security Plan. “Security Plan” shall have the meaning set forth in Section 12.2(c) herein.

1.31 Set Up Plan. “Set Up Plan” shall have the meaning set forth in Section 12.3 herein.

1.32 Signage Plan. “Signage Plan” shall have the meaning set forth in Section 12.4 herein.

1.33 Subcontractor. “Subcontractor” shall mean any subcontractor, independent contractor, supplier, vendor, concessionaire, caterer, or other entity or agent that DDE contracts with or engages to perform DDE’s responsibilities or services hereunder.

1.34 Term. “Term” shall have the meaning set forth in Section 7.1 herein.

1.35 Traffic Control Plan. “Traffic Control Plan” shall have the meaning set forth in Section 12.1 herein.

1.36 Transition Plan. “Transition Plan shall have the meaning set forth in Section 12.8 herein.

1.37 Water Plan. “Water Plan” shall have the meaning set forth in Section 12.6 herein.

## 2. DDE EVENTS.

2.1 DDE Event. DDE agrees to install, operate and maintain for free public use a skating rink in Skyline Park during the winter season over the next five years (“DDE Events”).

2.2 DDE Event Dates. Except as otherwise agreed in writing in accordance with this Section 2.2, the DDE Events will be held (including Load-In and Load-Out (see Section 2.4)), during the Term of this Agreement, from early November through mid-March (“DDE Event Dates”).

(a) The DDE Event for the winter of 2011-2012 shall take place from **November 1, 2011** through **March 15, 2012**, subject to modification as mutually agreed by the Manager and DDE in writing. This DDE Event Date shall include the necessary period for Load-In and Load-Out.

(b) The DDE Event Dates for the subsequent four years will be set as mutually agreed by the Manager and DDE in writing no later than June 30<sup>th</sup> of each year. The DDE Event Dates will typically occur between November 1<sup>st</sup> and March 15<sup>th</sup>, subject to modification as mutually agreed by the Manager and DDE in writing. The Manager shall be under no obligation to agree to DDE Event Dates until DDE cures any Default by DDE (see Section 8.1) under this Agreement.

(c) The City agrees to reserve the DDE Event Dates for the DDE Event Site (see Section 2.3) during the Term of this Agreement (see Section 7.1) unless the DDE Event Dates is modified as provided in this Section 2.2. Any modification of DDE Event Dates approved by the Manager shall be subject to terms and conditions the Manager deems necessary to accommodate and protect the rights of other scheduled permitted events in or near the DDE Event Site, and approval of any modification may be withheld until DDE cures any uncured Default by DDE (see Section 8.1) under this Agreement.

(d) There is no requirement that DDE present Permitted Activities (see Section 3.1) on each and every day during the DDE Event Dates, but DDE shall provide prior written notification to the Manager if DDE intends not to present all or certain Permitted Activities or anticipates not being able to present all or certain Permitted Activities for reasons other than Force Majeure (see Section 1.21) for five (5) or more consecutive days or fifteen (15) or more total days during the DDE Event Dates, excluding days for Load-In and Load-Out.

(e) The hours for public admission to the DDE Event Site for each day of the DDE Event shall be restricted to 6:00 a.m. through 11:00 p.m. during the DDE Event Dates unless otherwise approved in writing and in advance by the Manager. Maintenance crews and watchmen and other security assigned to the DDE’s property situated in the DDE Event Site are allowed to be on site in the park during Parks Curfew (see Section 1.25) for that purpose.

2.3 DDE Event Site. Except as otherwise agreed in writing in accordance with this Section 2.3, the DDE Event will be held, during the Term of this Agreement (see Section 7.1), in Block 2 of Skyline Park (“**DDE Event Site**”).

(a) The specific location of the DDE Event Site within Skyline Park shall be as depicted in the drawing contained in Exhibit A attached hereto and incorporated herein by reference, subject to modification through a revised drawing as mutually agreed in writing by the Manager and DDE.

(b) Any modification of DDE Event Sites shall be subject to terms and conditions the Manager deems necessary to accommodate and protect the rights of other scheduled permitted events in or near the DDE Event Sites, and approval of any modification may be withheld until DDE cures any uncured Default by DDE (see Section 8.1) under this Agreement.

2.4 Load-In and Load-Out. The dates and locations for delivering supplies, materials, and equipment on site and setting up for the DDE Event (“**Load-In**”) along with the dates and locations for dismantling, removing supplies, materials, and equipment, and cleaning up following the DDE Event Dates (“**Load-Out**”), including access to and use of the DDE Event Site and the surrounding park during Load-In and Load-Out, shall be as prescribed in the Set Up Plan (see Section 12.3). Load-in and Load-Out may occur during Parks Curfew provided that prior written permission is obtained from the City Liaison (see Section 6.1(a)). All dates, times and locations for Load-In and Load-Out must reasonably accommodate, and protect the rights of, other scheduled permitted events in or near the DDE Event Site.

### 3. **AUTHORIZATION**.

3.1 Permit & Permitted Activities. By this Agreement, the City grants a permit to DDE for the right to install, operate and maintain a skating rink, related equipment and associated amenities, to conduct the DDE Event at the DDE Event Site during the DDE Event Dates, to perform Load-In and Load-Out, and to engage in the activities and uses specified in this Article 3 (“**Permitted Activities**”) subject to the submittal and approval of the plans specified in Article 12 (collectively, the “**DDE Event Permit**”). No other permit otherwise issued by the Denver Department of Parks and Recreation shall be required. The DDE Event Permit is granted on the condition that DDE fully and faithfully performs all obligations specified in this Agreement. For the purposes of, and subject to, the DDE Event Permit, DDE shall assume possession and control of the DDE Event Site as of the date Load-In activities are authorized to start at the DDE Event Site subject to the City’s right to perform its services under Section 6.1 and take such actions as required by law.

3.2 Public Use. Access to and use of the skating rink shall be free to the public except for such sales and services as authorized in this Article 3. DDE shall regulate the public access and use to assure compliance with all occupancy and safety restrictions under Applicable Law. DDE may occasionally stage tournaments, fundraisers and other special activities where public access and use may be limited.

3.3 Concession. The DDE Event Permit includes the exclusive right of DDE to sell and serve, or contract with a Subcontractor to sell and serve, food, beverages and merchandise related to the DDE Event within the DDE Event Site during DDE Event Dates (“**Concession**”). This “exclusive” right shall not limit the authority of the City to permit other concessions or privileges to sell and serve food, beverages and merchandise within Skyline Park but outside of the DDE Event Site. The sale of alcohol beverages of any kind is strictly prohibited in the DDE Event Site, and the service and consumption of alcohol beverages shall be prohibited in the DDE Event Site except as provided in Section 3.4. The DDE Event Permit shall be conditional on DDE conducting the Concession in accordance with the Concession Plan (see Section 12.7) and DDE or its Subcontractor obtaining and complying with all necessary permits and licenses required for such Concession, such as sales tax licenses, health and safety permits, and whatever other authorizations may be required for the Concession by Applicable Law. The Concession’s sales shall be conducted within an enclosed or partially enclosed tent or canopy structure of such dimensions and at such location as depicted for the DDE Event in the Concession Plan (“**Concession Site**”). The secure storage for food and beverages is allowed outside of the Concession Site but within the DDE Event Site at a location depicted in the Concession Plan. The consumption of food and beverages may occur anywhere within the DDE Event Site except on the ice area of the skating rink. No glass bottles or containers are allowed with the service of food or beverages.

3.4 Service of Permitted Alcohol at the DDE Event Site.

(a) DDE shall have the right to engage in the service, but not the sale, of beer, wine, and hard liquor served as mixed drinks in a prepackaged or premixed form only for tournaments, fundraisers and other special activities (“**Permitted Alcohol**”). Otherwise, the sale and service of alcohol beverages of any kind at the DDE Event are strictly prohibited.

(b) The right of DDE to engage in the service of Permitted Alcohol to the public within the DDE Event Site shall be subject to DDE obtaining and complying with all relevant permits and approvals issued in accordance with Applicable Law and acting in accordance with this Section 3.4.

(c) DDE may enter into a separate agreement with a properly qualified Subcontractor to manage and operate service of Permitted Alcohol within the DDE Event Site during the DDE Event Dates. DDE shall be responsible for monitoring the activities of its Subcontractor with respect to the service of Permitted Alcohol at the DDE Event and assuring compliance by the Subcontractor with Applicable Law.

(d) No service or consumption of Permitted Alcohol shall be allowed outside of the designated DDE Event Site, and DDE shall provide the security necessary to assure that the public complies with this restriction.

(e) DDE shall, or require its Subcontractor to, obtain and maintain liquor liability insurance for the service of Permitted Alcohol during the DDE Event (see Section 10.9).

3.5 Advertising, Sponsorship and Signage. The DDE Event Permit includes the right to permit and sell temporary advertising and sponsorship rights and install temporary signage

related to the DDE Event during the DDE Event Dates and within the DDE Event Site and such other locations as approved in advance and in writing by the Manager and in accordance with Applicable Law and the approved Signage Plan under Section 12.4. All advertising and other signage must be promptly removed at the end of the DDE Event. DDE agrees and covenants that, with respect to the DDE Event, DDE shall not permit any sponsorship, advertising, promotional products, and marketing materials in the DDE Event Site or associated with the DDE Event for the sale or promotion of any of the following: (i) firearms; (ii) fireworks; (iii) pornography; and (iv) tobacco. DDE shall provide, upon request, copies of any sponsorship agreements DDE enters.

3.6 Equipment Rental. The DDE Event Permit includes the right to engage in the rental of skates, skating equipment, and other equipment, materials or supplies appropriate to the public's use of the skating rink.

#### 4. FEES AND DAMAGE DEPOSIT.

4.1 Fees. In consideration of DDE offering the DDE Event free to the public, no fees typically charged by Parks and Recreation under section 39-121, DRMC, shall be charged to DDE. This waiver shall not be applicable to fee and charges imposed and collected by other City departments.

4.2 Damage Deposit. DDE agrees to deposit with the City no later than fifteen (15) calendar days prior to the first day of Load-In a damage deposit in the amount of five thousand dollars (\$5,000.00) ("**Damage Deposit**"). The Damage Deposit is intended to assure that the DDE Event Site and surrounding property is properly and timely cleaned up of all waste, stains, litter and debris and that all damages within or near the DDE Event Site resulting from or associated with the DDE Event are paid for, either by adequate and timely repairs or by timely replacement of damaged items with items of equal or better quality. DDE agrees to perform all clean-up, repairs, and replacement without requiring the City to resort to claiming the Damage Deposit. Should DDE fail to perform as specified herein by the end of last day of the Load-Out, the City shall be entitled to retain such portions of the Damage Deposit as reasonably necessary to perform the clean-up, repairs, and replacement, and if the City's costs for such work exceed the amount of the Damage Deposit, the City shall not be limited by the Damage Deposit in its claim for actual damages. If the City has no claim against the Damage Deposit, the Damage Deposit shall be returned to DDE within thirty (30) calendar days following the last day of Load-Out, or if the entire amount of the Damage Deposit is not required for the City to perform clean-up, repairs, or replacement, the remaining portion of the Damage Deposit shall be returned to DDE within sixty (60) calendar days following the last day of Load-Out.

4.3 Walk-Through Inspections and Records. DDE shall appoint a representative authorized to act on behalf of DDE with respect to the duties and actions under this Section 4.3. The DDE representative and the City Liaison (see Section 6.1(a)) or other representative of the City designated by the Manager shall arrange times for walk-throughs on the day before the first day of Load-In and on the last day of Load-Out for any DDE Event. A report of the condition of the DDE Event Site and the surrounding park and adjoining right of way (if any) before and after the DDE Event and Load-In and Load-Out, including contemporaneous pictures, shall be prepared and signed by both representatives. This report shall provide the basis for determining

what clean-up, repairs and replacements are appropriate for DDE to perform or the City to seek reimbursement from the Damage Deposit under Section 4.2. In the event there is a dispute as to what clean-up, repairs and replacements are appropriate under Sections 4.2, the City and DDE may seek the opinion of an impartial but qualified third party to mediate the dispute. If that mediation should not resolve the dispute, the City and/or DDE may seek judicial recourse as provided in this Agreement.

4.4 Payment Method. The Damage Deposit shall be tendered by check made out to the Denver Manager of Finance and delivered to the Finance and Administration Division, Department of Parks and Recreation, 201 West Colfax, Department 602, Denver, Colorado 80202. The DDE Event Permit shall not be deemed to be in effect until the Damage Deposit has been submitted as required herein.

## 5. **DDE RESPONSIBILITIES.**

5.1 General. DDE shall be responsible for organizing, producing and holding the DDE Event and for the payment of all costs and expenses related thereto.

5.2 DDE Services. Except as expressly provided in Article 6, any service or action which is to be performed or taken in connection with the DDE Event shall be the responsibility of DDE. Without limiting and in furtherance of the foregoing, DDE shall be responsible, either directly or through its Subcontractor(s), for providing the following services related to or are associated with the DDE Event, in accordance with the approved Plans under Article 12 ("**DDE Services**"):

- (a) Promotion of the DDE Event, including advertising, sponsorships, and marketing;
- (b) Production of the DDE Event, including installation and operation of the skating rink and related equipment and associated amenities and the Concession, and the retention and supervision of work crews and volunteers to perform this work;
- (c) Contracting with and supervising all Subcontractors for the Concession, including those providing catering and other food service, waiting and bussing service, maintenance and cleaning, etc;
- (d) Staging and supervising Load-In and Load-Out for the DDE Event;
- (e) Obtaining, setting up, maintaining, and dismantling seating, bleachers, canopies, tents, chairs and tables, and related service facilities which are safe, serviceable, and of adequate numbers to serve the public coming to the DDE Event;
- (f) Installing and maintaining security and perimeter fencing and barricades as necessary to control access to the DDE Event Site and to provide for appropriate crowd control and public safety;
- (g) Providing public access to toilets and water supplies necessary for the operation of the DDE Event;

(h) Providing clean-up crews, washing equipment, garbage carts, trash receptacles, recycling containers, pick-up of trash and cleaning of debris generated by or associated with the DDE Event, and proper removal and disposal of trash and debris;

(i) Providing such security, public safety, crowd control, fire protection, and emergency medical services for the DDE Event and during Load-In and Load-Out;

(j) Repair and/or replacement of any damaged real or personal property owned or leased by the City within or in the vicinity of the DDE Event Site and the Load-In and Load-Out area, which damage was the result of or associated with the acts or omissions of DDE and/or its Subcontractor(s) with respect to the DDE Event; and

(k) Providing such other services, including guest services, as DDE shall deem desirable in conducting the DDE Event so long as the services support or directly relate to the Permitted Activities.

5.3 Costs and Expenses. Any cost or expense incurred by DDE in connection with the DDE Event shall be the responsibility of and paid by DDE, and shall be paid in a timely manner with documented evidence of such payment being provided to the City Liaison upon written request, including but not limited to the following:

(a) Costs and expenses of performing DDE's Services and other obligations hereunder;

(b) Charges and fees imposed by the City as provided in this Agreement; and

(c) Costs associated with any necessary sidewalk, street or public lane closures; and

(d) Costs associated with required police, fire, and medical services provided for the DDE Event.

#### 5.4 Electrical Service and Water Supply.

(a) DDE shall have access to the existing electrical panel in Skyline Park and, at its own expense, DDE shall arrange for electrical connection to the electrical panel and for sub-metering all electrical usage for the DDE Event. DDE shall reimburse the City for the costs of electricity for the DDE Event provided through the electrical panel. If DDE has to provide some portion the required electrical needs for the DDE Event through generators or other electrical connections provided by DDE at its expense, they must be installed and operated in a manner so that they do not damage, or impact or impede the public use of, the park or the streets.

(b) At its own expense, DDE shall arrange for and supply water from existing water line outlets, including fire hydrants, in and near the DDE Event Site to provide a water supply for the purposes of the DDE Event.

(c) DDE hereby expressly waives any and all claims for compensation from the City and the Denver Water Board for any and all loss or damage sustained by reason of any

defect, deficiency, failure or impairment of the water supply system, drainage system, or electrical system on, near or otherwise related to the DDE Event Site.

5.5 Reimbursement Obligations. From time to time, the Parties may mutually agree that the City will perform on behalf of DDE certain of DDE's services or provide other services requested by DDE which the Parties mutually agree that the City provide. DDE shall pay and/or reimburse the City, as mutually agreed upon, for performing such services.

5.6 Duty of Care. While exercising the rights granted herein, DDE shall use and occupy the DDE Event Site and the areas for Load-In and Load-Out in a safe and careful manner, follow all plans approved under Article 12, and shall comply with all Applicable Law. DDE shall not do any act or willfully suffer any act to be done during the Term of this Agreement that will in any way permanently damage any part of the park or other City-owned property or cause personal injury to, or damage the property of, attendees of the DDE Event, citizens utilizing the surrounding park or other City-owned property, or City employees.

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

5.8 Compliance with Parks Laws. Except as expressly modified herein or as otherwise modified by written directive of the Manager, the prohibitions and restrictions for uses and activities in a City-owned park set forth in Article I of Chapter 39 of the Denver Revised Municipal Ordinance shall be applicable and must be complied with.

## 6. CITY RESPONSIBILITIES.

6.1 City Services. The City will be responsible, at its own expense, for providing the following services with respect to the DDE Events ("City Services"):

(a) Appointment of a person or persons ("City Liaison") representing both the Denver Department of Parks and Recreation and the Department of Cultural Affairs who will assist DDE in its interactions with the City, including but not limited to: (i) attending key meetings with City personnel and departments; (ii) assisting DDE in obtaining permits and licenses; (iii) troubleshooting prior to, during, and after the DDE Events; (iv) coordinating and supporting Load-In and Load-Out activities (see Section 2.4); (v) supporting DDE in the implementation and enforcement of the approved Plans under Article 12; (vi) attending walk-throughs and working on property condition reports with DDE (see Section 4.3); (vii) reviewing payments made by DDE with respect to costs and expenses of the DDE Events (see Sections 5.3 and 5.4); and (viii) reviewing lien and payment claims for costs and expenses for DDE Events (see Section 9.4).

(b) Locating and shutting off irrigation system(s) where and when needed;

(c) Removing any readily removable items owned by the City which interfere with the DDE's use of the DDE Event Site; and

(d) Promoting the DDE Events on Channel 8 and the City website.

6.2 Permits and Licenses. The City agrees that during the term of this Agreement, it will act in good faith to assist DDE in obtaining permits and licenses necessary for DDE to take reasonable advantage of its rights under this Agreement; provided, however, that the assistance offered to DDE with respect to permitting and licensing does not constitute a waiver, limitation or restriction of the City's police and taxing powers.

## 7. **TERM, TERMINATION AND CANCELLATION**

7.1 Term. The term of this Agreement will commence on the Effective Date and expire five (5) thereafter (the "**Term**"), unless sooner terminated in accordance with the terms of this Agreement, including without limitation those provisions set forth in Article 8 herein.

### 7.2 Cancellation; Termination for Convenience; Mutual Termination.

(a) In the event that DDE should fail to secure sufficient sponsorships, as determined by DDE in its reasonable discretion, DDE may cancel, for convenience, the DDE Event for any year upon written notice to the Manager before October 15<sup>th</sup> of any year.

(b) This Agreement may be terminated at any time upon the written mutual agreement of DDE and the Manager.

(c) This Agreement may be unilaterally terminated, for convenience, by either Party upon providing the other Party with one hundred eighty (180) days prior written notice; provided that the terminating party is not in uncured breach or default as specified in Article 8 of this Agreement. If a DDE Event is in progress, DDE shall be responsible for complying with all requirements and schedules specified in this Agreement for properly concluding the Event.

7.3 Termination Due to Default. The City may, at its election, terminate this Agreement if DDE fails to cure a material breach or default as provided under Section 8.1 ("**Default by DDE**"). DDE may, at its election, terminate this Agreement if the City fails to cure a material breach or default by the City as provided under Section 8.2 ("**Default by City**"). Notice of termination under this Section 7.3 shall be sent to the defaulting or breaching Party as provided in Section 17.8.

7.4 Termination/Cancellation Due to Force Majeure. If the holding of the DDE Event, in whole or part, is not possible or if an DDE Event Site is damaged due to Force Majeure (see Section 1.17), the City and DDE are each hereby released from any damage so caused to the other party thereby, and the DDE Event scheduled may be cancelled or the DDE Event Dates reduced in number of days, as warranted due to the Force Majeure. Either Party may elect to exercise this termination or cancellation upon written notice to other Party along with a statement as to the specific Force Majeure causing the termination or cancellation.

## 8. **DEFAULT AND REMEDIES**

8.1 Default by DDE. The following shall constitute a "**Default by DDE**" under this Agreement:

(a) A failure to timely deliver the Damage Deposit due under Article 4, and such failure is not cured within five (5) business days after written notice thereof;

(b) A failure to secure or maintain insurance as required under Article 10, if not cured within ten (10) business days of written notice but no later than five (5) business days prior to the start of the DDE Event;

(c) Any material violation of a requirement or specification contain in a Plan approved under Article 12, if not cured within ten (10) business days of written notice but no later than two (2) calendar days during an DDE Event if the City deems the material violation to be a threat to the public health, safety and welfare in the City's written notice to DDE;

(d) Any assignment of DDE's rights and obligations under this Agreement in violation of Section 17.5 (this is not curable);

(e) A material breach or default (other than relating to payments, insurance, Article 12 Plans, and assignment) by DDE under the Agreement or the occurrence of the events listed in items (f) through (i) of this Section 8.1 and, if curable, such breach or default is not cured by DDE within ten (10) business days after written notice thereof; provided, however, that if a curable breach cannot be reasonably cured during such ten (10) day period but DDE commences in good faith to make a timely effort to cure within said ten (10) day period, then the time for cure may be extended for such period of time mutually agreed by the Parties but, if there is no mutual agreement, no longer than twenty (20) calendar days after the original written notice of default; provided, further, that a material breach or default cannot be cured by the cure period extending beyond the end of the DDE Event Dates and Load-Out;

(f) If DDE makes a general assignment for the benefit of creditors, or files for bankruptcy, reorganization or similar proceedings;

(g) A bankruptcy, reorganization or similar proceeding is filed by or against DDE and, if filed against DDE, is not vacated or discharged within forty-five (45) days after such filing;

(h) A receiver or trustee is appointed for all or any part of DDE's assets; or

(i) DDE or any of its officers are convicted, plead *nolo contendere*, enter into a formal agreement in which they admit guilt, enter a plea of guilty, or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature, in connection with DDE's business.

8.2 Default By City. At no time shall the City be deemed to be in material breach or default under this Agreement unless and until DDE shall have given to the City notice in writing, specifying such material breach or default and the City has failed to cure the material breach or default within ten (10) business days following said written notice or, if the breach or default cannot be reasonably cured during such ten (10) day period but the City commences in good faith to make a timely effort to cure within said ten (10) day period, then the time for cure may be extended for such period of time mutually agreed by the Parties but, if there is no mutual

agreement, no longer than twenty (20) calendar days after the original written notice of Default; provided, further, that a material breach or default existing at the time of Load-In which prevents DDE making full and effective use of the DDE Event Site must be cured within two (2) days of written notice being received by the City.

8.3 Damages. Both Parties expressly acknowledge that any damages sought for material breach or default of this Agreement are limited to actual damages arising under this Agreement. Both Parties expressly waive and agree not to seek any consequential, incidental and punitive damages arising from breach or default under this Agreement.

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

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

## 9. **TAXES, PERMITS, LICENSES AND LIENS**

9.1 Taxes, Permits and Licenses. DDE agrees to pay promptly all taxes, excise, or license fees of whatever nature applicable to its activities, uses, and sales associated with the DDE Event and to take out all municipal, state, or federal permits and licenses required under Applicable Law, and further agrees to furnish the City, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment of all taxes and fees above referred to and showing that all required permits and licenses are in effect. Appropriate records shall be maintained and made available in accordance with Applicable Law. DDE shall be responsible for seeing that any Subcontractor engaged by DDE to provide service(s) during the DDE Events shall likewise promptly pay all taxes, excise or licenses fees of whatever nature applicable to its activities, uses, and sales associated with the DDE Event and shall obtain all municipal, state, or federal permits and licenses required under Applicable Law.

9.2 Liens and Claims. DDE shall not permit any mechanic's or materialman's liens or any other liens to be imposed upon any City-owned property, or any part thereof, by reason of any work or labor performed or materials furnished by any person or legal entity to or on behalf of DDE, either pursuant to C.R.S. § 38-26-107 or by any other authority. DDE shall promptly pay when due, and shall require its Subcontractor(s) to pay when due, all bills, debts and obligations incurred in connection with this Agreement and the DDE Event and shall not permit the same to become delinquent. DDE shall not permit any lien, judgment, execution or adjudication of bankruptcy which will in any way impair the rights of the City under this Agreement or to the City's property. DDE shall timely obtain and submit all documentation or other certifications necessary to demonstrate, to the satisfaction of the City Liaison, that all liens and claims for labor, materials, equipment, or other services or goods have been released and waived or released upon DDE posting an appropriate and sufficient bond or other surety, and that all City-owned property is free of any liens or claims associated with work performed by or on behalf of DDE.

9.3 Survival. The provisions of this Article 9 shall survive the expiration or termination of this Agreement.

## 10. **INSURANCE**

10.1 General Conditions. DDE agrees to secure, on or before July 1<sup>st</sup> of each year during the Term of this Agreement, the following insurance covering all operations, activities, and services contemplated under this Agreement and provide the City with a written schedule of the intended insurance coverages required by this Agreement which shall include their effective starting dates (which must be satisfactory to Denver Risk Management) and the duration of the coverages which shall be no shorter than the period of time covering the Load-In, DDE Event Dates, and Load-Out during the Term of this Agreement and any extensions thereof. DDE shall keep the required insurance coverage in force at all times during the effective dates specified on the written schedule, as approved by Denver Risk Management. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as “A-VIII” or better. Each policy shall contain a valid provision or endorsement stating “Should any of the above-described policies be canceled or non-renewed before the expiration date thereof, the issuing company shall send written notice to Denver Risk Management, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202 and the Manager. 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.” Additionally, DDE shall provide written notice of cancellation, non-renewal and any reduction in coverage to the address above by certified mail, return receipt requested. If any policy is in excess of a deductible or self-insured retention, the City must be notified by DDE. DDE 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 DDE. DDE 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.

10.2 Proof of Insurance. DDE shall provide a copy of this Agreement to its insurance agent or broker. DDE may not commence any work at the DDE Event Site or any Load-In and Load-Out areas prior to placement of coverage. DDE certifies that a certificate of insurance, in compliance with this Article 10 shall be provided in final form no later than thirty (30) days prior to the DDE Event scheduled as provided in Section 2.2. The City requests that the City’s contract number be referenced on the Certificate. The City’s acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of DDE’s breach of this Agreement or of any of the City’s rights or remedies under this Agreement. The City’s Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

10.3 Additional Insureds. For Commercial General Liability and Business Auto Liability, the insurer(s) for DDE or its Subcontractor(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

10.4 Waiver of Subrogation. For all coverages, DDE’s insurer shall waive subrogation rights against the City.

10.5 Subcontractors and Subconsultants. All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services under this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the appropriate levels of coverages required by DDE. DDE 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. DDE agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

10.6 Workers' Compensation/Employer's Liability Insurance. DDE 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. DDE expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of DDE'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 DDE executes this Agreement.

10.7 Commercial General Liability. DDE 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.

10.8 Business Automobile Liability. DDE 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.

10.9 Liquor Liability. DDE shall maintain, or shall cause the Subcontractors who sell or serve alcohol beverages to maintain, Liquor Liability insurance policy with limits of \$1,000,000 for each occurrence claim.

10.10 Additional Provisions.

- (a) For Commercial General Liability, the policy must provide the following:
  - (i) That this Agreement is an Insured Contract under the policy;
  - (ii) Defense costs in excess of policy limits;
  - (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.
- (b) 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, whichever is earlier.

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

10.11 Survival. The provisions of this Article 10 shall survive the expiration or termination of this Agreement.

## 11. INDEMNIFICATION AND DEFENSE

11.1 Indemnification. DDE shall defend, release, indemnify, and save and hold harmless the City, its appointed and elected officials, agents and employees against any and all damage to property or injury to or death of any person or persons, including property and employees or agents of City, and shall defend, release, indemnify and save and hold harmless City, its appointed and elected officials, agents and employees from any and all claims, demands, suits, actions, liabilities, causes of action or legal or equitable proceedings of any kind or nature, including workers' compensation claims and claims related to copyright or trademark rights (collectively, "Claims"), of or by anyone whomsoever, in any way resulting from or arising out of DDE's operation, use or occupancy of the DDE Event Site, its activities or its performance in connection with this Agreement, including acts or omissions of DDE or its officers, employees, representatives, suppliers, invitees, licensees, subconsultants, Subcontractors, and agents. This indemnity shall be interpreted in the broadest possible manner to indemnify the City from Claims arising from or related to any acts or omissions of DDE or its officers, employees, representatives, suppliers, invitees, licensees, subconsultants, Subcontractors, and agents, either passive or active, irrespective of fault, including the City's concurrent negligence, whether active or passive, except for Claims determined by the trier of fact to be due to the sole negligence or willful misconduct of the City and its appointed and elected officials, agents and employees. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of DDE under the terms of this indemnification obligation.

11.2 Defense. DDE's duty to defend and indemnify the City shall arise at the time written notice of the Claims is first provided to the City regardless of whether an action has been filed in court on the Claims. DDE's duty to defend and indemnify the City shall arise even if the City is the only party sued and/or it is alleged that the City's negligence or willful misconduct was the sole cause of the alleged damages. DDE will defend any and all Claims which may be brought or threatened against the City and will 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 by the City in defending and investigating such Claims or seeking to enforce this indemnity obligation if DDE should fail to defend as required herein. Such payments on behalf of the City shall be in addition to any other legal remedies available to City and shall not be considered the City's exclusive remedy.

11.3 Copyright Indemnification. DDE warrants that all copyrighted material used or displayed in association with the DDE Event has been duly licensed and authorized by the

copyright owners or their representatives and agrees to indemnify and hold the City harmless from any and all claims, losses, or expenses incurred with regard thereto.

11.4 Survival. The provisions of this Article 11 shall survive the expiration or termination of this Agreement.

## 12. PLANS

12.1 Traffic Control Plan. After consultation with the City Liaison and the appropriate officials of the Denver Department of Public Works, DDE shall prepare, or arrange for the professional preparation of, the Traffic Control Plan (the "**Traffic Control Plan**"). The Traffic Control Plan shall be submitted by DDE to the Manager and to the Denver Manager of Public Works, for their review and approval. The Traffic Control Plan shall identify, in detail, all measures DDE shall take to comply with the directions and requirements of the Department of Public Works and Applicable Law, including proposed street and sidewalk closures, plans for re-routing or restricting traffic, meter bagging, pedestrian access to the DDE Event Site, and the obtaining of all required Public Works permits.

### 12.2 Public Safety Plans.

(a) Fire Safety Protection Plan. After consultation with the City Liaison and the appropriate officials of the Denver Fire Department, DDE shall prepare, or arrange for the professional preparation of, the Fire Safety Protection Plan (the "**Fire Plan**"). The Fire Plan shall be submitted by DDE to the Manager and to the Denver Manager of Safety, for their review and approval. The Fire Plan shall identify, in detail, all measures DDE shall take to comply with the directions and requirements of the Denver Fire Department and Applicable Law, including the provision of safe exits from the DDE Event Site, fire lanes to the DDE Event Site, and fire safety for the Concession Site.

(b) Emergency Services Plan. After consultation with the City Liaison and the appropriate officials of the Denver Fire Department, DDE shall prepare, or arrange for the professional preparation of, the Emergency Services Plan (the "**Emergency Services Plan**"). The Emergency Services Plan shall be submitted by DDE to the Manager and to the Denver Manager of Safety, for their review and approval. The Emergency Plan shall identify, in detail, all measures DDE shall take to comply with the directions and requirements of the Denver Fire Department and Applicable Law, including plans for the provision of ambulance service, EMT services, and a first aid station.

(c) Security Safety Protection Plan. After consultation with the City Liaison and the appropriate officials of the Denver Police Department, DDE shall prepare, or arrange for the professional preparation of, the Security Safety Protection Plan (the "**Security Plan**"). The Security Plan shall be submitted by DDE to the Manager and to the Denver Manager of Safety, for their review and approval. The Security Plan shall identify, in detail, all measures DDE shall take to comply with the directions and requirements of the Denver Police Department and Applicable Law, including the provision of adequate security, crowd control, and traffic control services during the DDE Event.

12.3 Set-Up Plan. After consultation with the City Liaison and the appropriate officials of the Denver Department of Parks and Recreation, DDE shall prepare, or arrange for the professional preparation of, the Set-Up Plan (the "**Set Up Plan**"). The Set Up Plan shall be submitted by DDE to the Manager and the Manager of Public Works, for their review and approval. The Set Up Plan shall identify, in detail, all measures DDE shall take to comply with the directions and requirements of the Managers and Applicable Law, including provisions for a phased Load-In and Load-Out procedure, dates and locations for the Load-In and Load-Out, installation plans and schedule for the skating rink and Concession Site, temporary fencing, heavy equipment requirements, storage of any materials and equipment, parking of hauling vehicles, proposed staking and other earth-disturbing activity in the DDE Event Site, measures to be taken to protect turf, irrigation systems, sidewalks and other hard surfaces, and measures to be taken to minimize, mitigate, and repair damage to the DDE Event Site and other City-owned property caused by the Load-In, Load-Out, and the DDE Event.

12.4 Signage Plan and Standards. After consultation with the City Liaison and the appropriate officials of the Denver Department of Parks and Recreation, DDE shall prepare, or arrange for the professional preparation of, the Signage Plan and Standards (the "**Signage Plan**") The Signage Plan shall be submitted by DDE to the Manager, for the Manager's review and approval. The Signage Plan shall identify, in detail, all measures DDE shall take to comply with the directions and requirements of the Manager and Applicable Law, including provisions for the standards and process for the installation and removal of all temporary signs and advertising and compliance with the terms and conditions of Section 3.4.

12.5 Trash, Recycling, and Site Clean Up Plan. After consultation with the City Liaison and the appropriate officials of the Denver Department of Parks and Recreation, DDE shall prepare, or arrange for the professional preparation of, the Trash, Recycling, and Site Clean Up Plan (the "**Clean Up Plan**"). The Clean Up Plan shall be submitted by DDE to the Manager, for the Manager's review and approval. The Clean Up Plan shall identify, in detail, all measures DDE shall take to comply with the directions and requirements of the Manager and Applicable Law, including provisions for litter pick-up, site cleaning, and trash removal (during Load-In, Load-Out, and the DDE Event) and for promoting waste materials recycling whenever possible.

12.6 Public Toilet Access and Water Supply Plan. After consultation with the City Liaison and the appropriate officials of the Denver Department of Parks and Recreation and the Denver Water Department, DDE shall prepare, or arrange for the professional preparation of, the Public Toilet Access and Water Supply Plan (the "**Water Plan**"). The Water Plan shall be submitted by DDE to the Manager, for the Manager's review and approval. The Manager may require Denver Water approval. The Water Plan shall identify, in detail, all measures DDE shall take to comply with the directions and requirements of the Manager and Applicable Law, including provisions for a water supply to serve the DDE Event, including the ice for the skating rink, and public access to toilet facilities to serve the attendees of the DDE Event.

12.7 Concession Plan. After consultation with the City Liaison and the appropriate officials of the Denver Department of Parks and Recreation and the Denver Department of Environmental Health, DDE shall prepare, or arrange for the professional preparation of, the Concession Plan (the "**Concession Plan**"). The Concession Plan shall be submitted by DDE to the Manager and the Manager of the Department of Environmental Health, for the Managers'

review and approval. The Concession Plan shall identify, in detail, all measures DDE shall take to comply with the directions and requirements of the Managers and Applicable Law, including provisions for depicting the location and size of the Concession Site, listing the types of Concession services to be provided, and the control and licensing requirements for the Concession and the Concession Site.

12.8 Transition Plan. After consultation with the City Liaison and the appropriate officials of the Denver Department of Parks and Recreation, DDE shall prepare, or arrange for the professional preparation of, the Transition Plan (the “**Transition Plan**”). The Transition Plan shall be submitted by DDE to the Manager for the Manager’s review and approval. The Transition Plan shall identify, in detail, all measures DDE shall take to comply with the directions and requirement of the Manager and Applicable Law, including provisions for protecting and restoring the DDE Event Site and the surrounding Skyline Park following Load-Out with respect to repairing or replacing any damaged or destroyed irrigation system, replacing any sod or other damaged or removed vegetation, protecting against erosion, employing appropriate stormwater management practices, and keeping the area clean and publicly accessible until such time as the area is restored to its original or better condition as part of Skyline Park.

12.9 Review and Approval Process. For each of the Plans identified in Sections 12.1 through 12.8, a complete Plan shall be submitted by DDE to the specified Manager(s) no later than thirty (30) calendar days prior to the first day of the Load-In for the DDE Event. A copy of all Plans shall be simultaneously provided to the City Liaison. The Manager(s) shall review and provide to DDE in writing no later than five (5) business days after DDE's submittal of such Plan either: (i) an approval of such Plan, or (ii) if not approved, a list of all requested modifications to the Plan. If the Manager(s) fails to provide such written approval or list of required modifications of the Plan to DDE by the above referenced date, such Plan shall be deemed approved as submitted. Upon receiving a modified Plan fully responsive to the changes previously identified by the Manager(s), the Manager(s) will review and respond in writing to the modified Plan within five (5) business days of DDE’s submission of such modified Plan, or the modified Plan as submitted by DDE shall be deemed approved.

### 13. **RECORDS**

13.1 Examination of Records. DDE agrees that any duly authorized representative of the City, including the City Auditor or his representative, during the Term of this Agreement and for three (3) years after the expiration or termination of this Agreement, shall, during reasonable business hours, have access to and the right to examine any directly pertinent books, documents, papers and records of DDE related to DDE’s obligations to the City under this Agreement. DDE waives any claim of confidentiality that it may have in connection therewith subject to Section 13.2 herein, and DDE agrees to make such items available within the City.

13.2 Confidential Information. As used in this Agreement, the term “**Confidential Information**” means all written information or documents, in hard copy or electronic form, that (i) is disclosed or provided by or through DDE to the City pursuant to performance of this Agreement; and (ii) has been clearly marked or indicated in writing as being confidential by DDE. Confidential Information will be treated by the City as confidential proprietary

information of DDE pursuant to the provisions of the Colorado Open Records Act and under any rule of court except as otherwise provided under this Section 13.2. The Parties understand that all the written information or documents provided or produced under this Agreement may be subject to the Colorado Open Records Act., § 24-72-201, *et seq.*, C.R.S. In the event of a request to the City for disclosure of any such information or documents deemed under this Agreement as Confidential Information, the City shall advise DDE of such request in order to give the DDE the opportunity to object to the disclosure of any of the DDE's Confidential Information. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such requested Confidential Information to the court for judicial determination of the issue of disclosure, and DDE agrees to intervene in such lawsuit to protect and assert the DDE's claims of privilege and against disclosure of such Confidential Information or waive the same. DDE further agrees to defend, indemnify and save and hold harmless the City, its elected and appointed officials, agents and employees, from any claim, damages, expense, loss or costs arising out of the DDE's intervention to protect and assert the DDE's claim of privilege against disclosure including, but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs and damages that the City may incur directly or may be ordered to pay by such court.

#### 14. **PERSONAL PROPERTY**

14.1 Use and Removal. All goods, wares, supplies, merchandise, equipment, vehicles, furnishings, facilities, and other personal property which are not owned by the City and which relate to DDE's use and occupancy of the DDE Event Site ("**Personal Property**") shall be promptly removed by DDE and its Subcontractor(s) on or before the last day of Load-Out. The City shall not be liable for any damage to or loss of Personal Property sustained during Load-In, Load-Out, or the DDE Event Dates. If use or removal of Personal Property causes any damage to DDE Event Site or any surrounding property, DDE shall be responsible for the prompt repair or replacement of the same in good and workmanlike manner. If DDE fails to remove any Personal Property by the last day of Load-Out, the City may, at its option, keep and retain said Personal Property or dispose of the same and retain any proceeds therefrom, and the City shall be entitled to recover from DDE any costs of the City in removing the same and in restoring City Park in excess of the actual proceeds, if any, received by the City from the disposition thereof.

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

14.3 Abandoned Property. The City shall have the sole right to collect and have custody of all items and articles left by attendees of the DDE Event.

## 15. **NAMES AND LOGOS AND PHOTOGRAPHIC RIGHTS**

15.1 Names and Logos of the City and Department of Parks and Recreation. The City grants to DDE the non-exclusive right to use the names and logos of the City and the Denver Department of Parks and Recreation in connection with producing the DDE Event; provided that such use of (i) the City's trademarked name, logo or flag shall be subject to the prior consent of the Director for the Mayor's Office of Economic Development – Denver Marketing Office, which consent shall not be unreasonably withheld; or (ii) the Denver Department of Parks and Recreation's trademarked name(s) or logo(s) shall be subject to the prior consent of the Manager, which consent shall not be unreasonably withheld. In no event shall DDE represent or indicate, or by the particular use of a name, flag or logo, that the City is a partner with DDE or engaged in any joint venture with DDE with respect to the DDE Event. No other intellectual property rights of the City other than those expressly identified herein are being licensed by the City for use by DDE.

15.2 Names and Logos of DDE. DDE grants to the City the non-exclusive right to use the names and logos of DDE and the DDE Event (if any); provided, the City may not use the name of DDE or any logos, trademarks, or trade names owned by or licensed to DDE without the prior written approval of DDE, which shall not be unreasonably withheld. DDE grants to the City the non-exclusive right to use the names and logos of DDE's sponsors and affiliates (if any); provided, the City may not use any logos, trademarks, or trade names owned by or licensed to DDE's sponsors or their affiliates without the prior written approval of DDE, which may be withheld as DDE deems appropriate. DDE agrees to indemnify and hold the City harmless from any and all claims, losses, or expenses asserted by DDE's sponsors or their affiliates with regard to the uses approved by DDE herein. No other intellectual property rights of DDE other than those expressly identified herein are being licensed by DDE for use by the City.

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

## 16. **APPLICABLE LAW; COMPLIANCE WITH LAWS**

16.1 General Compliance with Laws. DDE shall comply with all Applicable Law in connection with this Agreement. DDE shall use reasonable efforts to ensure that the attendees at the DDE Events and DDE's Subcontractor(s) shall comply with all Applicable Law in and around the DDE Event Site. The City shall not be required to take any action which is inconsistent with Applicable Law.

16.2 No Discrimination in Employment. In connection with the performance of work under this Agreement, DDE 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, age, military status, sexual orientation, marital status, or physical or mental disability; and DDE further agrees to insert the foregoing provision in all subcontracts hereunder.

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

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

## 17. MISCELLANEOUS

### 17.1 Legal Authority.

(a) DDE assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement.

(b) The person or persons signing and executing this Agreement on behalf of DDE, do hereby warrant and guarantee that they have been fully authorized by DDE to execute this Agreement on behalf of DDE and to validly and legally bind DDE to all the terms, conditions, obligations, and requirements herein set forth.

(c) The City shall have the right, at its option, to either temporarily suspend or permanently terminate this Agreement, if there is a dispute as to the legal authority of either DDE or the person signing the Agreement to enter into this Agreement.

17.2 City Financial Obligations. It is understood and agreed that any payment or performance obligation of the City hereunder, whether direct or contingent, shall extend only to funds appropriated by the Denver City Council in each year in which the Agreement is in effect, encumbered, paid into the Treasury of the City, and available for the purposes of this Agreement. DDE acknowledges that the (i) the City does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect financial obligation of the City.

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

17.4 No Agency or Partnership Relationship.

(a) Nothing in this Agreement is intended nor shall be deemed to create an agency, partnership or joint venture between DDE and the City.

(b) Nothing in this Agreement is intended nor shall be deemed to grant to DDE any power, right or authority to bind or otherwise contractually obligate the City.

(c) Nothing in this Agreement is intended nor shall be deemed to grant to the City any power, right or authority to bind or otherwise contractually obligate DDE.

(d) No employee of DDE shall be deemed an employee of the City.

(e) No employee of the City shall be deemed an employee of DDE.

17.5 Assignment and Subcontracting. The City is not obligated or liable under this Agreement to any party other than DDE. DDE understands and agrees that it shall not assign any of its material rights, benefits, obligations or duties under this Agreement except upon prior written consent and approval of the Manager; provided, however, DDE shall have the right to subcontract services and work as provided in this Agreement, including but not limited to subcontracting for Concession services and sales. Failure to obtain the prior written consent and approval of the Manager for any assignment, other than as provided herein, shall be grounds for termination of the Agreement at the discretion of the Manager. In the event any assignment or subcontracting shall occur, such action shall not be construed to create any contractual relationship between the City and such assignee or Subcontractor, and DDE shall remain fully responsible to the City according to the terms of this Agreement.

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

17.7 Disputes, Venue and Governing Law.

(a) It is mutually agreed by and between the parties hereto that, should any dispute arise regarding this Agreement and a judicial action or suit is deemed necessary by either Party, venue for such action shall lie solely in the District Court in and for the City and County of Denver, Colorado, and notices and summons and complaints may be served upon DDE by delivery of notices and service of process for summons and complaints to the address of DDE shown in this Agreement.

(b) This Agreement shall be construed and enforced pursuant to the laws of the State of Colorado and any applicable federal law, without regard to any statute or rule of law specifying a different choice of law, and pursuant to the City Charter, Denver Revised Municipal Code, the applicable rules, regulations, and policies of the City's departments and agencies, and executive orders of the City's Mayor.

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

If to City, to: Mayor  
City and County of Denver  
City and County Building  
1437 Bannock Street, Room 350  
Denver, CO 80202

With a copy to: Manager of Parks and Recreation  
City and County of Denver  
201 W. Colfax Ave., Dept. 601  
Denver, CO 80202

City Attorney  
City and County of Denver  
City and County Building  
1437 Bannock Street, Room 353  
Denver, CO 80202

If to DDE, to: Downtown Denver Partnership, Inc.  
Attention: Tamara Door  
511 16<sup>th</sup> Street, Suite # 200  
Denver, Colorado 80202

#### 17.9 Construction of this Agreement.

(a) 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.

(b) Time. The parties agree that in the performance of the terms, conditions and requirements of this Agreement, time is of the essence.

(c) Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of DDE as are permitted to succeed to DDE's rights under this Agreement.

(d) Singular and Plural. Whenever the context shall so require, the singular shall include the plural and the plural shall include the singular.

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

(f) Severability. It is understood and agreed by the Parties that if any part, term, or provision of this Agreement is held by a court of law (following all legal rights of appeal or the expiration of time therefore) to be illegal or in conflict with any law of the State of Colorado or the City Charter or City ordinance, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid; provided, however, if the invalidated term was a critical or material consideration of either Party in entering this Agreement, the Parties shall work together, in good faith, to come up with an amendment to this Agreement that substantially satisfies the previously intended consideration while being in compliance with any Applicable Law and the judgment of the court.

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

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

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

17.13 Electronic Signatures and Electronic Records. DDE 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.