

PARKS USE AGREEMENT

This **PARKS USE AGREEMENT** (the "**Agreement**") is entered, as of the date on the City's signature page below, by and between the **CITY AND COUNTY OF DENVER** (the "**City**"), a Colorado municipal corporation, and **DOWNTOWN DENVER EVENTS, INC.**, a Colorado nonprofit corporation (the "**User**"), whose address is 1515 Arapahoe St., Tower 3, Suite 100, Denver, Colorado 80202.

RECITALS

WHEREAS, the User desires to use, during the Term of this Agreement, Block 2 of Skyline Park owned by the City and operated by the City's Department of Parks and Recreation, at the location designated under this Agreement for holding a multi-day event as described in this Agreement; and

WHEREAS, the User also 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, at the location designated under this Agreement for holding annual multi-day events as described in this Agreement; and

WHEREAS, the City has determined that, in the exercise of the City's lawful functions, it is desirable to issue a permit to the User by means of this Agreement for each of the events, and that such use is compatible and appropriate with the uses allowed for City-owned parks; and

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

WHEREAS, the City and the User concur that this Agreement appropriately and fairly establishes the terms and conditions upon which the events will occur.

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 the User a permit for the right to use the Event Sites for the Events subject to the express terms and conditions as follows:

1. **DEFINITIONS** All capitalized terms and phrases used in this Agreement, if not a proper name, shall have the following meanings:

1.1 **Agreement**. "Agreement" shall mean this Parks Use Agreement, its exhibits, and all amendments and extensions thereto, and along with, where applicable as set forth herein, all Plans approved in accordance with Article 12.

1.2 **Applicable Law**. "Applicable Law" shall mean any federal, state or local 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 any of the

same may be amended from time to time; along with all applicable liquor laws and licensing requirements (state or local); and as further provided in Article 16.

1.3 Beer Garden Events. “Beer Garden Events” shall have the meaning given them in Section 2.2.2 herein.

1.4 “Beer Garden Event Dates. “Beer Garden Event Dates” shall have the meaning set forth in Section 2.2.2.1 herein.

1.5 City. “City” shall mean the City and County of Denver and all of its departments and agencies.

1.6 City Liaison. “City Liaison” shall have the meaning set forth in Section 6.1.1 herein.

1.7 City Services. “City Services” shall have the meaning set forth in Section 6.1 herein.

1.8 Claims. “Claims” shall have the meaning set forth in Section 11.1 herein.

1.9 Clean Up Plan. “Clean Up Plan” shall have the meaning set forth in Section 12.5 herein.

1.10 Concession. “Concession” shall have the meaning set forth in Section 3.3 herein.

1.11 Concession Site. “Concession Site” shall have the meaning set forth in Section 3.3.4 herein.

1.12 Concession Plan. “Concession Plan” shall have the meaning set forth in Section 12.8 herein.

1.13 Confidential Information. “Confidential Information” shall have the meaning set forth in Section 13.2 herein.

1.14 Damage Deposit. “Damage Deposit” shall have the meaning set forth in Section 4.2 herein.

1.15 Default by User. “Default by User” shall have the meaning set forth in Section 8.1 herein.

1.16 Default by City. “Default by City” shall have the meaning set forth in Section 8.2 herein.

1.17 Emergency Services Plan. “Emergency Services Plan” shall have the meaning set forth in Section 12.2.2 herein.

1.18 Entertainment. “Entertainment” shall have the meaning set forth in Section 3.8 herein.

1.19 Event. “Event” or “Events” shall mean individually or collectively one or more Skating Events and/or Beer Garden Events as and when the context so requires as described in Section 2.1 herein.

1.20 Event Dates. “Event Dates” shall mean the individually or collectively the Skating Event Dates and/or Beer Garden Event Dates as and when the context so requires as described in Section 2.2 herein, and shall include such dates as agreed or modified in accordance with this Agreement.

1.21 Event Permit. “Event Permit” shall have the meaning set forth in Section 3.1 herein.

1.22 Event Site. “Event Site” or “Event Sites” shall mean the individually or collectively the Skating Event Site and/or Beer Garden Event Site as and when the context so requires as described in Section 2.2.1.4 and/or Section 2.2.2.3 herein, and shall include such locations as agreed or modified in accordance with this Agreement.

1.23 Facilities. “Facilities” shall mean the temporary structures, platforms, stages, furnishings, equipment, restrooms, and associated items and amenities, including those used for a Concession, authorized under the Facilities Plan under Section 12.7.

1.24 Facilities Plan. “Facilities Plan” shall have the meaning set forth in Section 12.7 herein.

1.25 Fire Plan. “Fire Plan” shall have the meaning set forth in Section 12.2.1 herein.

1.26 Force Majeure. “Force Majeure” shall mean adverse acts of God, fires, floods, droughts, severe weather, unusually and persistently hot or cold weather, epidemics, quarantine restrictions, water restrictions, strikes, labor unrest, war, civil unrest, riots, terrorism, failure of public utilities, court orders or similar significant disruption to the holding of the Event or the use and/or occupancy of the Event Site.

1.27 Gross Revenues. “Gross Revenues” shall have the meaning set forth in Section 4.1.3 herein.

1.28 Load-In. “Load-In” shall have the meaning set forth in Section 2.2.1.6 herein.

1.29 Load-Out. “Load-Out” shall have the meaning as set forth in Section 2.2.1.6 herein.

1.30 Manager. “Manager” shall mean the Manager (or the Executive Director) of the City and County of Denver Parks and Recreation Department or the Deputy Manager (or Deputy Executive Director) for Parks and Recreation Department or the Manager’s designated representative(s).

1.31 Net Proceeds. “Net Proceeds” shall have the meaning set forth in Section 4.1.3 herein.

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

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

1.34 Permitted Activities. “Permitted Activities” shall have the meaning set forth in Article 3 herein.

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

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

1.37 Plans. “Plans” shall have the meaning set forth in Article 12.

1.38 Security Plan. “Security Plan” shall have the meaning set forth in Section 12.2.3 herein.

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

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

1.41 Site Drawing. “Site Drawing” shall have meaning set forth in Section 2.2.1.5 and Section 2.2.2.4 herein and, more specifically, Exhibit A to this Agreement.

1.42 Skating Events. “Skating Events” shall have the meaning set forth in Section 2.2.1 herein.

1.43 Skating Event Dates. “Skating Event Dates” shall have the meaning set forth in Section 2.2.1.1 herein.

1.44 Subcontractor. “Subcontractor” shall mean any and all subcontractors, independent contractors, suppliers, vendors, concessionaires, caterers, and/or other entities or agents that the User contracts with or engages to perform the User’s responsibilities or services under this Agreement or to provide for sales and services authorized under this Agreement.

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

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

1.47 User Services. “User Services” shall have the meaning set forth in Section 5.2 herein.

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

2. **EVENTS.**

2.1 Event. The User agrees to install, operate and maintain Facilities and Concession operations at the Event Site in Skyline Park and as otherwise specified in Section 2.2.1.4 for the Permitted Activities specified in Article 3 herein during the Term of this Agreement including the Event Dates specified in Section 2.2 herein (“**Event**”).

2.2 Event Dates. Except as otherwise agreed in writing by the Manager and the User, the Events will be held (including any Load-In and Load-Out (see Section 2.2.1.6), during the Term of this Agreement, as further specified below.

2.2.1 Skating. The Skating Events (“**Skating Events**”) under this Agreement shall take place from approximately November 1st through March 15th of each year of the Term (see Section 7.1), which shall include any Load-In and Load-Out; except that in the last year of the Agreement, Skating Events shall take place from approximately November 1st through February 28th, which shall include any Load-In and Load-Out.

2.2.1.1 The City agrees to reserve the skating event dates (“**Skating Event Dates**”) and Skating Event Site for Skating Events within the Term of this Agreement unless the Skating Event Dates are modified as provided in this Section 2.2. Any modification of Skating Event Dates approved by the Manager for Skating Events 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 Skating Event Site, and approval of any modification may be withheld until User cures any uncured Default by User under this Agreement.

2.2.1.2 There is no requirement that the User present Permitted Activities on each and every day during the Skating Event Dates, but the User shall provide prior written notification to the Manager if the User 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 for five (5) or more consecutive days or fifteen (15) or more total days during the Skating Event Dates, excluding days for Load-In and Load-Out.

2.2.1.3 Hours. The hours for public admission to the Skating Event Site for each day of the Skating Events under this Section 2 shall be restricted to 6:00 a.m. through 11:00 p.m. during the Skating Event Dates unless otherwise approved in writing and in advance by the Manager. Maintenance crews and other security assigned to the User’s property situated in the Skating Event Site are allowed to be on site in the park during Parks Curfew for their respective purposes.

2.2.1.4 Skating Event Site. Except as otherwise agreed in writing in accordance with this Agreement, Skating Events shall be conducted, within the Term of this Agreement, in Block 2 of Skyline Park, between 16th and 17th Streets along Arapahoe Street (“**Skating Event Site**”).

2.2.1.5 The specific boundaries of the Skating Event Site within Block 2 of

Skyline Park, and the location of all Facilities related to the Skating Events, shall be as depicted in **Exhibit A**, labeled “Downtown Denver Rink at Skyline Park”, attached hereto and incorporated herein by reference (“**Site Drawing**”), subject to modification through a revised drawing as mutually agreed in writing by the Manager and the User. Any modification of the Skating Event Site 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 Skating Event Site, and approval of any modification may be withheld until User cures any uncured Default by User under this Agreement.

2.2.1.6 Load-In/Load-Out. The dates and locations for delivering supplies, materials, and equipment on site and setting up for the Skating Events (“**Load-In**”) along with the dates and locations for dismantling, removing supplies, materials, and equipment, and cleaning up following the Skating Event Dates (“**Load-Out**”), including access to and use of the Skating Event Site and the surrounding park during Load-In and Load-Out of Skating Events shall be as prescribed in the Set-Up Plan (see Section 12.3). Load-In and Load-Out of Skating Events may occur during Parks Curfew provided that prior written permission is obtained from the City Liaison (see Section 6.1.1). All dates, times and locations for Load-In and Load-Out of Skating Events must reasonably accommodate, and protect the rights of, other scheduled permitted events in or near the Skating Event Site. Any installation that requires modification of any permanent City infrastructure or any City property requires the Manager’s prior, express, written approval.

2.2.2 Beer Garden. The Beer Garden Events (“**Beer Garden Events**”) under the Agreement shall take place from approximately June 1st through October 15th of each year of the Term (see Section 7.1), which shall include any Load-In and Load-Out.

2.2.2.1 There is no requirement that the User present Permitted Activities on each and every day during the beer garden event dates (the “**Beer Garden Event Dates**”), but the User shall provide prior written notification to the Manager if the User 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 for five (5) or more consecutive days or fifteen (15) or more total days during the Beer Garden Event Dates, excluding days for Load-In and Load-Out. The User shall remain responsible for maintaining and securing the Facilities and Personal Property at the Beer Garden Event Site despite the duration or reasons for not presenting Permitted Activities.

2.2.2.2 Hours. The hours for public admission to the Beer Garden Event Site for each day of the Beer Garden Events shall be restricted to 6:00 a.m. through 11:00 p.m. during the Beer Garden Event Dates unless otherwise approved in writing and in advance by the Manager. Maintenance crews and other security assigned to the User’s property situated in the Beer Garden Event Site are allowed to be on site in the park during Parks Curfew for their respective purposes.

2.2.2.3 Beer Garden Event Site. Except as otherwise agreed in writing in accordance with this Agreement the Beer Garden Events will be held, within the Term of this Agreement, in Block 2 of Skyline Park, between 16th and 17th Streets along Arapahoe Street (“**Beer Garden Event Site**”).

2.2.2.4 The specific boundaries of the Beer Garden Event Site within Block 2 of Skyline Park shall be as depicted in the drawing contained in **Exhibit A**, labeled “Skyline Beer Garden” (“**Site Drawing**”), and subject to modification through a revised drawing as mutually agreed in writing by the Manager and the User.

2.2.2.5 Any modification of the Beer Garden Event Site shall be subject to the prior written approval of the Manager and the terms and conditions the Manager deems necessary for the proper and safe operation of the Beer Garden Event and to accommodate and protect the rights of other scheduled permitted events or authorized uses in or near the Beer Garden Event Site and the patrons of the park. Approval of any modification may be withheld until User cures any uncured Default by User under this Agreement.

2.2.2.6 Load-In and Load-Out. The dates and locations for Load-In of the Beer Garden Event along with the dates and locations for Load-Out of the Beer Garden Event at the Beer Garden Event Site following the Beer Garden Event Dates, including access to and use of the Beer Garden Event Site and the surrounding park during Load-In and Load-Out, shall be as provided in the approved Set-Up Plan, with Load-In occurring approximately fourteen (14) days prior to the Beer Garden Event Dates each year and Load-Out occurring approximately fourteen (14) days following the end of the Beer Garden Event Dates each year. Load-In and Load-Out of Beer Garden Events may occur during Parks Curfew provided that prior written permission is obtained from the City Liaison. All dates, times, locations, and activities for Load-In and Load-Out out of the Beer Garden Events must reasonably accommodate, and protect the rights of, other scheduled or permitted events in or near the Beer Garden Event Site. Any installation that requires modification of any permanent City infrastructure or any City property requires the Manager’s prior, express, written approval.

2.2.3 Ancillary Activities. During the transition period between the Skating Event and the Beer Garden Event, the User may provide programming activities in the Skating Event Site and/or Beer Garden Event Site, as applicable. Any such activities shall be recreational in nature and consistent with activities that are typically conducted in a Denver park.

3. **AUTHORIZATION.**

3.1 Permit & Permitted Activities.

3.1.1 By this Agreement and subject to the terms and conditions of this Agreement, the City grants a permit to the User for the right:

- to install, operate and maintain a skating rink;
- to install, operate and maintain the beer garden;
- to install, operate and maintain the related equipment and associated amenities, along with other approved Facilities and the approved Concession at the Event Sites for the respective skating rink and beer garden;
- to conduct the Events at the Event Sites during the Event Dates;

- to perform Load-In and Load-Out, as provided in the Set-Up Plans and other applicable Plans;
- to perform all work and take all actions as contemplated by the approved Plans under Article 12;
- and to engage in the activities and uses specified in this Article 3 (the “**Permitted Activities**”) subject to the submittal and approval of the plans specified in Article 12 (collectively, the “**Permit**”).

No other permit otherwise issued by the Denver Department of Parks and Recreation will be required. The Permit is granted on the condition that the User fully and faithfully performs all obligations specified in this Agreement.

3.1.2 Notwithstanding User being granted the Permit herein, the User shall obtain and comply with any other permits, licenses or approvals required by other City departments or any other governmental entity with authority over any aspect of any of the Events or the use of City property. The User shall be solely responsible for paying in full and in a timely fashion any fees or charges charged by other City departments or any other governmental entity with authority over any aspect of the any of the Events or the use of City property.

3.1.3 For the purposes of, and subject to, the Permit, the User shall assume possession and control of the Event Sites as of the date Load-In activities are authorized to start for the Skating Rink at the Event Sites subject to the City’s rights to perform its services under Section 6.1, to enforce this Agreement, and to take such actions as required by law.

3.1.4 To the extent that the User retains or authorizes Subcontractors to perform any of the User’s obligations or to exercise any rights of the User under this Agreement, the User shall be solely responsible for assuring that the Subcontractor complies with this Agreement.

3.2 Public Use. Access to and use of the skating rink, the beer garden, and all parts of the Event Sites shall be free to the public except for such sales and services as authorized in this Article 3. The public shall have access to all portions of the Event Sites except for enclosed or secured Facilities and shall not be under any obligation to make any purchase from the User or its Subcontractors. The User shall regulate the public access and use to assure compliance with all occupancy and safety restrictions under Applicable Law and Denver Parks and Recreation Rules and Regulations.

3.3 Concession. The Permit includes the exclusive right of to sell and serve, or contract with or otherwise permit Subcontractors to sell and serve, food, beverages and merchandise related to the Events within the Event Sites during the Event Dates (“**Concession**”). However, Priority Events in accordance with the Public Events Policy shall be allowed to sell and serve food, beverages and merchandise related to the Priority Event. As of the execution of this Agreement, one event, the “Denver Day of Rock” event has attained Priority Event status as discussed herein. User shall be notified by City if any other proposed event attains Priority Event status and may be affected by this Section 3.3.

3.3.1 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, the surrounding park area, or other City-owned property but outside of the Event Sites.

3.3.2 The sale, service and consumption of alcohol beverages of any kind is strictly prohibited in the Event Sites, except as expressly provided in Section 3.4.

3.3.3 The Permit shall be conditional on the User conducting the Concession in accordance with the Concession Plan, and the User and its Subcontractors obtaining, paying for 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.

3.3.4 Concession sales and services shall be conducted within an enclosed or partially enclosed tent, booth or canopy structure of such dimensions and at such locations as depicted for the Event in the Concession Plan (“**Concession Site**”). The secure storage for food and beverages is allowed outside of the Concession Site but within the Event Site in secured Facilities located as depicted in the Concession Plan.

3.3.5 The consumption of food and beverages may occur anywhere within the Event Site and the surrounding park, except alcohol beverages which must be consumed as provided in Section 3.4.

3.3.6 Food and beverages shall be served by the User, or its Subcontractor or Subcontractors, as part of the Concession food and beverage service.

3.3.7 No glass bottles or containers are allowed for the service of food or beverages except as expressly authorized in the approved Concession Plan.

3.4 Sale and Service of Permitted Alcohol at the Event Site. Subject to the terms and conditions of this Section 3.4, the User shall have the right to engage in the on-site service, sale, and consumption of beer, wine, and hard liquor (“**Permitted Alcohol**”). Otherwise, the sale and service of alcohol beverages of any kind at the Event are strictly prohibited.

3.4.1 The right of the User or the User’s Subcontractors to engage in the service and sale of Permitted Alcohol to the public within the Event Site shall be subject to the User obtaining and complying with all relevant licenses, permits and approvals issued in accordance with Applicable Law and acting in accordance with this Section 3.4.

3.4.2 The User may enter into a separate agreement with a properly qualified Subcontractor to manage and operate service of Permitted Alcohol within the Event Site during the Event Dates. A copy of the separate agreement shall be provided to the City Liaison. The User shall be responsible for monitoring the activities of the Subcontractor with respect to the service of Permitted Alcohol at the Event and assuring compliance by the Subcontractor with Applicable Law.

3.4.3 No service or sale of Permitted Alcohol shall be allowed outside of the Concession Site and no consumption of Permitted Alcohol shall be allowed outside of the Event

Site. If any other regulation or licensing restriction should further limit the location for the sale, service and/or consumption of Permitted Alcohol, the User and the Subcontractor shall comply with said regulation or licensing restriction.

3.4.4 The User shall provide the security necessary to assure that the public complies with all requirements and restrictions set for this Section 3.4 and with Applicable Law. The security for alcohol sale and service is to be addressed in the approved Security Plan.

3.4.5 The User shall, or shall require its Subcontractor to, obtain and maintain liquor legal liability insurance for the sale and service of Permitted Alcohol during the Events as Event Dates and for sixty (60) days thereafter. The liquor legal liability insurance shall not lessen or limit the liability of the User as provided in Article 11.

3.5 Advertising, Sponsorship and Signage. The Permit includes the right to permit and sell temporary advertising and sponsorship rights and install temporary signage related to the Event during the Event Dates and within the 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. All advertising and other signage must be promptly removed at the end of the Event Dates for that year. The User shall provide, upon request by the City Liaison, copies of any sponsorship or similar agreements the User enters.

3.6 Equipment Rental. With regard to the Skating Event only, the 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. No rental is contemplated under this Agreement for the beer garden.

3.7 Sales & Services. The sale of goods and services are allowed as appropriate for the support of the Events and in a manner consistent with the nature of the Events and the use of the park. The User agrees and covenants that, with respect to the Events, the User shall not permit any sales of, or any sponsorship, advertising, promotional products, and marketing in the Event Sites or associated with the Events for the sale or promotion of, any of the following: (i) firearms; (ii) fireworks; (iii) pornography; (iv) marijuana; and (v) tobacco products.

3.8 Entertainment. The User may provide common and customary entertainment for the respective Events ("**Entertainment**"). The Entertainment must be family friendly and provided in a manner sensitive to the surrounding businesses and the public not attending the Events. The location of Entertainment within the Event Sites shall be as noted on the Facilities Plan. The City's noise ordinances and regulations shall be strictly adhered to by the User and its Subcontractors that provide the Entertainment. Complaints notifications, warning, citations issued by Park Rangers, the Department of Environmental Health, or other authorized City staff regarding noise shall be properly and promptly addressed by the User and the Subcontractors in a manner that adequately resolves the complaints. No Entertainment may be provided during Parks Curfew.

3.9 No Power, Right or Authority to Permit. This Agreement shall not confer any power, right or authority to User to grant a permit to any person or entity.

4. NET PROCEEDS AND DAMAGE DEPOSIT.

4.1 No Fees for Permit.

4.1.1 The User is not required to pay any permitting fees ordinarily charged by the Denver Department of Parks and Recreation for events in parks. This fee waiver shall not apply to City departments or any other governmental entity with authority over any aspect of the Event or the use of City property.

4.1.2 The City shall provide, without charge to the User, utilities needed to meet the reasonable needs of conducting the Events and associated activities, including water gas, and electricity. City shall not be responsible for User's costs related to disruption, interruption or discontinuation of utility service. This and any other commitments by the City to spend funds or provide services is contingent upon the necessary funds being appropriated and encumbered and the necessary discretionary actions being taken by the City Council and the Mayor.

4.1.3 For the Beer Garden Event, on or before the last business day of January each year, the User shall provide the Manager with a full accounting of the Gross Revenues and the Net Proceeds for that Event. For the Skating Event, on or before the last business day of June each year, the User shall provide the Manager with a full accounting of the Gross Revenues and the Net Proceeds for that Event.

4.2 Damage Deposit. City acknowledges and agrees that under the terms of a prior Park Use Agreement, User provided a damage deposit in the amount of Five Thousand Dollars (\$5,000.00) ("**Damage Deposit**"). The balance of that Damage Deposit shall carry forward to and is applied to this current Park Use Agreement. If at any time during this Agreement the balance of the Damage Deposit is less than \$5,000.00, User shall replenish the balance of the Damage Deposit to the total of \$5,000.00 within thirty (30) days of notice being provided by the City.

4.3 The Damage Deposit is intended to assure that adequate compensation for costs is available to the City to cover any costs the City incurs or may incur in the event that the User or the User's Subcontractors should fail to clean up the Event Site, the surrounding park and other nearby property as to all waste, stains, litter and debris resulting from or associated with the Events, or in the event that the User or the User's Subcontractor should fail to repair or replace (with items of equal or better quality) all property damaged in the Event Sites, the surrounding park or other nearby property which damages resulted from or were associated with the Events. The User shall perform all clean-up and shall make such repairs and replacement as authorized under Section 5.2.15 and 5.2.16 without requiring the City to resort to claiming the Damage Deposit. Should the User fail to perform as specified herein by the end of last day of the Load-Out of the Skating Events, 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 the User within sixty (60) calendar days following Termination or expiration of the Agreement; 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 the User within ninety (90) calendar days following Termination or expiration of the Agreement.

4.4 Walk-Through Inspections and Records. The User shall appoint a representative authorized to act on behalf of the User with respect to the duties and actions under this Section 4.3. The User's representative and the City Liaison or other representative of the City designated by the Manager shall arrange times for walk-throughs as specified herein. The initial walk-through will be conducted when Parks and Recreation representative deems appropriate for that year before the first day of Load-In for the respective Events; and a post-event walk-through will be conducted immediately (weather permitting) following the last day of Load-Out for both Events. A report of the condition of the Event Site and the surrounding park and adjoining right of way (if any) before and after the 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, if any, are appropriate for the User to perform or the City to seek reimbursement from the Damage Deposit under Section 4.3. In the event there is a dispute as to what clean-up, repairs and replacements are appropriate under Section 4.3, the City and the User 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 the User may seek judicial recourse as provided in this Agreement.

4.5 Payment Method. The Damage Deposit, and other reimbursable expenses, if any, 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 Permit shall not be deemed to be in effect until the Damage Deposit has been submitted as required herein and available funds are verified.

5. USER RESPONSIBILITIES.

5.1 General. The User shall be responsible for organizing, producing and holding the Events, including the installation, safety and care of the Facilities and the Concession in the Event Sites, and for the payment of all costs and expenses related thereto.

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

5.2.1 Promotion of the Events, including advertising, sponsorships, and marketing;

5.2.2 Production of the Events, including installation and operation of the Facilities and the Concession, and the retention and supervision of work crews and volunteers to perform this work;

5.2.3 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., and assuring complete faithful performance of the contracted duties and obligations;

5.2.4 Providing maintenance as set forth in this Section 5 and including maintenance of the fountains (except as related to the fountain's mechanical systems);

5.2.5 Staging, supervising and adequately controlling Load-In and Load-Out for the Events;

5.2.6 Obtaining, setting up, maintaining, and dismantling booths, seating, canopies, tents, chairs and tables, and related service facilities which are safe, serviceable, and of adequate numbers to serve the public coming to the Events;

5.2.7 Installing and maintaining security and perimeter fencing and barricades, the style and design of which must be approved by the Manager, as necessary to control access to the Event Sites, to maintain public access from 16th Street and 17th Street, and to provide for appropriate crowd control and public safety;

5.2.8 Providing for the installation and operation of portable toilets and water supplies necessary for the operation of the Events, including assured public access to and use of the toilets in accordance with the Americans with Disabilities Act (five (5) foot squared per Denver Department of Public Works requirements), with toilet facilities and cleaned daily and as needed;

5.2.9 Providing clean-up crews, washing equipment, garbage carts, trash receptacles, recycling containers, prompt pick-up of trash and cleaning of debris generated by or associated with the Events (use of City receptacles for disposal is not permitted), and proper removal and disposal of trash and debris, on a daily basis and as needed, including emptying trash and debris in City-owned trash receptacles inside the fencing and event footprint;

5.2.10 Cleaning of hardscapes, including plaza sweeping, power washing and any other appropriate and effective technique for cleaning of hardscapes;

5.2.11 Where applicable, providing for all snow and ice removal in and around the Concession Sites as necessary to provide for safe and adequate public access, with all snow and ice piles to be placed in such a manner and at such locations as approved by the City Liaison, but in no case may any snow or ice be removed and placed into fountains, public right-of-way or parkland;

5.2.12 Preventing on-site disposal or release of water, ice, and other liquids used for the Events at the Event Sites;

5.2.13 Providing, locating and shutting off or turning on lights where and when needed;

5.2.14 Providing such security, public safety, crowd control, fire protection, and access to emergency medical services for the Events and during Load-In and Load-Out as set forth in the approved Public Safety Plans;

5.2.15 Repairing and/or replacing, as authorized and directed by the Manager, including determination of the party that will perform the repair or replacement, and including payment of all related costs, expenses and fees, of any and all damaged real or personal property owned or leased by the City (except that City shall repair the fountain mechanical systems and irrigation systems regardless of fault or responsibility of costs) within the event footprint or on park property and public right-of-way related to, affecting or benefiting the Event activities;

5.2.16 Repairing and/or replacing any and all damage that is the result of or associated with the acts or omissions of the User and/or its Subcontractor(s) with respect to the Events, at the direction of the Manager, including determination of the party that will perform the repair or replacement, and including payment of all related costs, expenses and fees;

5.2.17 Observing all requirements under permits for bike lane and/or road closures at all times, as set forth in the approved Traffic Control Plan;

5.2.18 Engaging in such public outreach, as circumstances warrant, to address the impacts of the Event which are of concern to surrounding property owners and tenants; and

5.2.19 Providing such other services, including guest services, as the User shall deem desirable in conducting the Events so long as the services support or directly relate to the Permitted Activities.

5.3 Costs and Expenses. Any cost or expense incurred by the User in connection with the Event shall be the responsibility of and paid by the User, 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:

5.3.1 Costs and expenses of performing the User Services and other obligations hereunder;

5.3.2 Costs and expenses associated with the Concession and Entertainment;

5.3.3 Charges and fees imposed by the City as provided in this Agreement;

5.3.4 Costs associated with any necessary sidewalk, street or public lane closures; and

5.3.5 Costs associated with required police, fire, and medical services provided for the Event.

5.4 Electrical Service and Water Supply.

5.4.1 The User will have access to the electrical system in the park where the Event Sites are located and, at its own expense, the User shall arrange for any special electrical connection to said electrical system.

5.4.2 If the User has to provide some portion of the required electrical needs for Events through generators or other electrical connections provided by the User at its expense, the

User shall obtain and pay for any permits, licenses, or approvals for the installation and operation of the generators and other electrical connections, which must be installed and operated in a manner so that they meet applicable code requirements and do not damage, or adversely impact or impede the public use of, the park or the streets, including excessive noise and fumes.

5.4.3 The User shall arrange and pay for, and maintain, adequate clean water supplies for the Event in accordance with the approved Water Supply Plan.

5.4.4 The User 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 Event Sites.

5.5 Reimbursement Obligations. From time to time, the Parties may mutually agree that the City will perform on behalf of the User certain of the User Services or provide other services requested by the User, if deemed appropriate by the Manager. The User shall pay and/or reimburse the City, as mutually agreed upon, for performing such services as specified in Section 6.1.

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

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

5.8 Installation and Modification. Any installation or activity that may result in the modification of any infrastructure shall require the Manager's prior, express, written approval.

5.9 Priority Events. User shall allow and accommodate events that have attained Priority Event status in accordance with Section 3.9 of the Public Event Policy to utilize and occupy Block 2 of Skyline Park or the pertinent portions of Block 2 of Skyline to conduct its event. User may vacate Block 2 of Skyline Park for the Priority Event and suspend the Skating or Beer Garden Events, or it may make arrangements with the Priority Event to allow simultaneous use of Block 2 of Skyline Park. User shall provide the City notice of its election under this Section 5.9. As of the execution of this Agreement, one event, the "Denver Day of Rock" event has attained Priority Event status as discussed herein. User shall be notified by City if any other proposed event attains Priority Event status and may be affected by this Section 5.9.

5.10 Compliance with Parks Laws, Rules. 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 (“**DRMC**”), as well as DPR Park Use Rules and Regulations, as adopted May 11, 2012, and as amended and restated May 27, 2013, and DPR policies, shall be applicable and must be complied with. Smoking within any enclosure, tent (even if not fully enclosed), kitchen or dining area, or any location where patrons may congregate while drinking or eating within the Event Sites is a violation under section 39-10(e), DRMC.

5.11 City-issued Permits, etc. User shall abide by and accommodate any permits, licenses, easements or other permissions issued by the City, including but not limited to Temporary Construction Access Permits, for construction or other work or occupancy allowed or required by the City, none of which shall entitle User to cancel events, terminate this agreement, or entitle User to any incurred costs or lost revenue or profits. The foregoing notwithstanding, subject to the City’s police and taxing powers, and excluding those actions, activities or omissions necessary to address critical or emergency situations, the City shall neither do nor omit to do anything that would make User’s performance hereunder impossible or that would cause or result in an actual or constructive eviction of User from the Event Sites in a situation in which User is not otherwise in breach or default hereunder.

5.12 Safety Training. The User shall or shall require its Subcontractor(s) to attend required environmental, sharps, and glycol trainings for Skating Events prior to Event Dates (see Section 2.2.1). The User shall coordinate trainings with the appropriate officials of the Denver Department of Parks and Recreation and the Denver Department of Public Health and Environment.

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 Events (“**City Services**”):

6.1.1 Appointment of a person or persons representing the Denver Department of Parks and Recreation who will assist the User in its interactions with the City (“**City Liaison**”), including but not limited to: (i) attending key meetings with City personnel and departments; (ii) assisting the User in obtaining City permits and licenses; (iii) troubleshooting prior to, during, and after the Events; (iv) coordinating and supporting Load-In and Load-Out activities; (v) overseeing the provision of User Services; (vi) reviewing separate agreements with Subcontractors for the sale and service of Permitted Alcohol; (vii) attending walk-throughs and working on property condition reports with the User; (viii) reviewing lien and payment claims for costs and expenses for Events; and (xi) supporting and directing the User in the implementation and enforcement of the approved Plans;

6.1.2 Removing or relocating any readily removable items owned by the City which interfere with the User’s use of the Event Sites;

6.1.3 Maintaining, connecting, disconnecting and repairs of irrigation systems in and near the Event Sites;

6.1.4 Maintenance and upkeep of turf and grass including mowing, fertilizing and weed control;

- 6.1.5 Maintenance and upkeep of flower and planting beds;
- 6.1.6 Maintenance of fountain mechanical systems;
- 6.1.7 Maintenance of backflow; and
- 6.1.8 Providing utilities in accordance with Section 4.1.2.

6.2 Permits and Licenses. The City agrees that, during the Term of this Agreement, it will act in good faith to assist the User in obtaining permits and licenses necessary for the User to take reasonable advantage of its rights under this Agreement; provided, however, that the assistance offered to the User 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 March 1, 2020 and expire February 28, 2022 (the "**Term**"), unless sooner terminated in accordance with the terms of this Agreement, including without limitation those provisions set forth in Article 8 herein. If the time needed to complete performance of any provisions of this Agreement extends beyond the Term specified above (including, but not limited to, any payment of any applicable fee, the Damage Deposit, and inspections under Article 4 of this Agreement and any provisions that expressly survive the expiration or termination of this Agreement), this Agreement shall remain in full force and effect but only as to such provisions.

7.2 Mutual Termination; Termination for Convenience.

7.2.1 This Agreement may be terminated at any time upon the written mutual agreement of the User and the Manager.

7.2.2 This Agreement may be unilaterally terminated, for cause, by either Party upon providing the other Party with written notice; provided that the terminating party is not in uncured breach or default as specified in Article 8 of this Agreement. A termination shall be deemed "for cause" when it is based on a breach or default as specified in Article 8 which has not been corrected or resolved to the reasonable satisfaction of the non-defaulting Party within the time periods specified in Article 8. If an Event is in progress when such termination occurs, the User shall be responsible for complying with all requirements and schedules specified in this Agreement for properly concluding the Event.

7.2.3 Notice of termination shall be in writing and explaining the nature and extent of the default or breach and shall be sent to the defaulting or breaching Party as provided in Section 17.8.

7.3 Termination/Cancellation Due to Force Majeure. If the holding of either of the Events, in whole or part, is not possible or if an 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 Events scheduled may be cancelled or the 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 User. The following shall constitute a “**Default by User**” under this Agreement:

8.1.1 A failure to timely deliver the Damage Deposit due under Article 4, or a failure to deliver the full amount of the Damage Deposit when due, and such failure is not cured within five (5) business days of written notice prior to the start of the Event (otherwise not curable);

8.1.2 A failure to secure or maintain insurance as required under Article 10, if not cured within five (5) business days of written notice prior to the start of the Event (otherwise not curable);

8.1.3 Any material violation of a requirement or specification contained in a Plan approved under Article 12, if not cured within five (5) business days following written notice but no later than two (2) calendar days during an 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 the User (otherwise not curable);

8.1.4 Any assignment of the User’s rights and obligations under this Agreement in violation of Section 17.5 (this is not curable);

8.1.5 Any bankruptcy or insolvency on the part of the User that could result in the User being unable to financially perform under this Agreement, the rights and obligations of the User being assigned to another party or a trustee in bankruptcy, or any legal determination invalidating or limiting the rights of the City under this Agreement or the control by the City over any City property (this is not curable);

8.1.6 The User or any of its officers or directors 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 the User's business (this is not curable); or

8.1.7 A material breach or default by the User of any term or condition under this Agreement (other than those specified in Sections 8.1.1 through 8.1.6) if such breach or default is not cured by the User within ten (10) business days after written notice thereof or such other cure period specified in the City’s written notice to the User; provided, however, that if a curable breach cannot be reasonably cured during such ten (10) day period but the User commences in good faith and with due diligence an 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) business days after the original notice of default; provided, further, that a material breach or default cannot be cured by the cure period being extended beyond the end of the Event Dates and Load-Out.

8.1.8 Any cure rights set forth in this Section 8.1 shall not excuse the obligation of the User to take timely and proper action to prevent, stop, mitigate, or alleviate any recent or impending damage to the Event Site, City-owned property or neighboring property or any existing or imminent threat or danger to public health and safety.

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 the User 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) business 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 the User making effective use of the Event Site must be cured within two (2) calendar 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, indirect, special 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. The User shall pay promptly all taxes, excise, or license fees of whatever nature applicable to its activities, uses, and sales associated with the Event and to take out all municipal, state, or federal permits and licenses required under Applicable Law, and further shall 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. The User shall be responsible for seeing that any Subcontractor engaged by the User with respect to the Events shall likewise comply with the provisions of this Section 9.1.

9.2 Liens and Claims. The User 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 the User, either pursuant to C.R.S. § 38-26-107 or by any other authority. The User

shall promptly pay when due, and shall require its Subcontractors to pay when due, all bills, debts and obligations incurred in connection with this Agreement and the Events and shall not permit the same to become delinquent. The User 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. The User 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 the User 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 User.

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

10. **INSURANCE**

10.1 General Conditions. The User shall secure, within thirty (30) days of execution of this Agreement, all required 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 within thirty (30) days of the execution of this Agreement and extend to thirty (30) days subsequent to the end of Load-Out (or the Event if there is no Load-Out) during the Term of this Agreement and any extensions thereof. The User 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 requiring notification to the City in the event any of the required policies is to be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the City offices identified in Section 17.8 of this Agreement. Such notice shall reference the City contract number listed on the City's signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, the User shall provide written notice of cancellation, non-renewal and any reduction in coverage to the City offices identified in Section 17.8 by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the User. The User shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the User. The User shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

10.2 Proof of Insurance. The User shall provide a copy of this Agreement to its insurance agent or broker. The User may not commence any work or operations at the Event

Sites or any Load-In and Load-Out areas prior to placement of coverage as required under this Agreement. The User certifies that a current certificate of insurance, in compliance with this Article 10, shall be provided to the City in final form no later than thirty (30) days prior to the start of the Load-In (or the start of the Event if there is no Load-In). 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 the User's breach of this Agreement or of any of the City's rights or remedies under this Agreement. Denver Risk Management may require additional proof of insurance, including but not limited to policies and endorsements.

10.3 Additional Insureds. For Commercial General Liability, Business Auto Liability, and Liquor Legal Liability, the insurer(s) for the User or the User's Subcontractor(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insureds.

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

10.5 Subcontractors. All Subcontractors shall be subject to all of the requirements herein and shall procure and maintain the appropriate levels of coverages required by the User. The User shall include all such Subcontractors as additional insureds under its policies (with the exception of Workers' Compensation) or shall ensure that all such Subcontractors maintain the required coverages. The User agrees to provide proof of insurance for all such Subcontractors upon request by the City.

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

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

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

10.9 Liquor Legal Liability. The User shall maintain, or shall cause the Subcontractors who sell or serve Permitted Alcohol to maintain, Liquor Legal Liability

coverage with limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit. Liquor legal liability insurance shall be maintained for sixty (60) days thereafter the Event Dates.

10.10 Additional Provisions.

10.10.1 For Commercial General Liability, the policy must provide the following:

- (i) That this Agreement is an Insured Contract under the policy;
- (ii) Defense costs are outside the limits of liability;
- (iii) A severability of interests or separation of insureds provision (no insured vs. insured exclusion);
- (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City; and
- (v) Any exclusion for sexual abuse, molestation or misconduct has been removed or deleted.

10.10.2 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.

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

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

11. **INDEMNIFICATION AND DEFENSE**

11.1 Defense and Indemnification.

11.1.1 User hereby agrees to defend, indemnify, reimburse and hold harmless 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 relating 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 to indemnify City for any acts or omissions of User or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

11.1.2 User's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. User's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.

11.1.3 User will defend any and all Claims which may be brought or threatened against City and will pay on behalf of 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 City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

11.1.4 Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the User under the terms of this indemnification obligation. The User shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

11.1.5 This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

11.2 Copyright Indemnification. The User warrants that all copyrighted material used, performed, displayed or otherwise made public in association with the Events 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.

11.3 Alcohol. The indemnification and duty to defend provisions of this Article 11 shall particularly apply to any Claims arising from or associated with the sale, service and consumption of alcohol beverages, whether or not such sales, service or consumption is in compliance with the Permitted Alcohol provisions of this Agreement.

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

12. PLANS

All Plans listed below and required by the City's Department of Parks and Recreation for either Event (the "**Plans**") shall be incorporated into and made part of this Agreement upon final approval of the Plans by the specified Manager(s). Plans described in Sections 12.1 through 12.9 that impact the public right-of-way shall be submitted to the Office of Special Events as well as the agency stated in the respective section for approval. For the Term beginning March 1, 2020 Plans listed herein shall be submitted to the City for review and approval no less than sixty (60) days before the first day of the Beer Garden Event Load-In. In subsequent years of this Agreement, User will be required to resubmit the Plans listed herein only if there are changes to a Plan.

12.1 Traffic Control Plan. After consultation with the City Liaison and the appropriate officials of the Denver Department of Public Works, the User 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 the User 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 the User shall take to comply with the directions and requirements of the Department of Public Works and Applicable Law, including proposed street, bike and sidewalk closures, plans for re-routing or restricting traffic, meter bagging, pedestrian access to the Event Site, and the obtaining of all required Public Works permits.

12.2 Public Safety Plans. The User shall initiate coordination with the Department of Parks and Recreation, the Office of Special Events, and/or the Department of Safety to determine whether the User is required to prepare a Fire Safety Protection Plan, Emergency Services Plan or Security Safety Protection Plan ("**Safety Plans**"). The City and the Department of Parks and Recreation reserve the right to request additional information not set forth in the Agreement to assist coordination efforts. The criteria for requiring any Safety Plan will include but are not limited to anticipated attendance; type of Event; anticipated media coverage; and anticipated risks. Any Plans, requirements or directions provided to the User for the Event shall be regarded as a Plans, requirements or directions provided to the User for the Event shall be regarded as a material term of this Agreement and subject to all the City's rights and remedies for the User's failure to abide by any Plans, requirements or directions. If required, the User shall prepare the following Safety Plans.

12.2.1 Fire Safety Protection Plan. After consultation with the City Liaison and the appropriate officials of the Denver Fire Department, the User shall prepare, or arrange for the professional preparation of, the Fire Safety Protection Plan (the "**Fire Plan**"). The Fire Plan shall be submitted by the User to the Manager and to the Denver Manager of Safety, for their review and approval. The Fire Plan shall identify, in detail, all measures the User 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 Event Sites, fire lanes to the Event Site, and fire safety for the Concession Sites.

12.2.2 Emergency Services Plan. After consultation with the City Liaison and the appropriate officials of the Denver Fire Department, the User 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 the User to the Manager and to the Denver Manager of Safety, for their review and approval. The Emergency Plan shall identify, in detail, all measures the User 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 during the Events.

12.2.3 Security Safety Protection Plan. After consultation with the City Liaison and the appropriate officials of the Denver Police Department, the User shall prepare, or arrange for the professional preparation of, the Security Safety Protection Plan (the "**Security Plan**"). The Security Plan shall be submitted by the User to the Manager and to the Denver Manager of Safety, for their review and approval. The Security Plan shall identify, in detail, all measures the User 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 Events. It shall also identify, in detail, the measures the User will undertake to secure the Event Sites during Park Curfew, and security for alcohol sale and service.

12.3 Set-Up/Tear-Down Plan. After consultation with the City Liaison and the appropriate officials of the Denver Department of Parks and Recreation and the Denver Department of Public Works, the User shall prepare, or arrange for the professional preparation of, the Set-Up/Tear-Down Plan (the "**Set-Up Plan**"). The Set-Up Plan shall be submitted by the User to the Managers for their review and approval. The Set-Up Plan shall identify, in detail, all measures the User 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 including access and staging for Load-In and Load-Out, installation plans and schedule for the Facilities and Concession Sites, temporary fencing, heavy equipment requirements, storage of any materials and equipment, parking of hauling vehicles, proposed staking and other earth-disturbing activity in the Event Sites, measures to be taken to protect turf, irrigation systems, sidewalks and other amenities, and measures to be taken to minimize, mitigate, and repair damage to the Event Sites and other City-owned property caused by the Load-In and Load-Out. The Set-Up Plan shall also include a listing of lighting equipment, chairs, tables, food and beverage preparation facilities and other fixtures and equipment that User has or will obtain to operate the Events at the Event Sites.

12.4 Signage Plan and Standards. After consultation with the City Liaison and the appropriate officials of the Denver Department of Parks and Recreation, the User shall prepare, or arrange for the professional preparation of, the Signage Plan and Standards (the "**Signage Plan**") The Signage Plan shall be submitted by the User to the Manager, for the Manager's review and approval. The Signage Plan and approved signage shall include an acknowledgment of User's partnership with the Department of Parks and Recreations; and shall identify, in detail, all measures the User shall take to comply with the directions and requirements of the Manager and Applicable Law, including provisions for the sale of temporary advertising and sponsorship rights, and the standards and process for the installation and removal of all temporary signs and advertising and compliance with the terms and conditions of Section 3.5.

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, the User 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 the User to the Manager, for the Manager's review and approval. The Clean Up Plan shall identify, in detail, all measures the User 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 on a daily basis and as needed (during Load-In, Load-Out, and the Event) and for promoting waste materials recycling whenever possible. It shall also identify the process and commitments as to post-event clean-up, including but not limited to trash and debris disposal, building material removal, stain cleaning, and water and other liquid disposal from the Event Sites.

12.6 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,

the User shall prepare, or arrange for the professional preparation of, the Water Supply Plan (the “**Water Supply Plan**”). The Water Supply Plan shall be submitted by the User to the Manager, for the Manager’s review and approval. The Manager may require Denver Water approval. The Water Supply Plan shall identify, in detail, all measures the User shall take to comply with the directions and requirements of the Manager and Applicable Law, including provisions for a water supply to serve the Events.

12.7 Facilities Plan. After consultation with the City Liaison and the appropriate officials of the Denver Department of Parks and Recreation, the User shall prepare, or arrange for the professional preparation of, the Facilities Plan (the “**Facilities Plan**”). The Facilities Plan shall be submitted by the User to the Manager for the Manager’s review and approval. The Facilities Plan shall identify, in detail, the type, location and extent of Facilities to be installed or deployed at the Event Sites, and all measures the User shall take to comply with the directions and requirement of the Manager and Applicable Law with respect to protecting, managing and restoring the Event Sites and the surrounding park and other City-owned land with respect to the installation, operation and removal of the Facilities. These measures shall include but not be limited to active protection, maintenance, repair and replacement of landscaping, sod, irrigation system, and other City-owned property which may be impacted by and during the Event; employment of appropriate erosion control and storm water management practices; the installation, operation and removal of portable toilets and assurance of public access and use in accordance with the Americans with Disabilities Act; and maintenance of a clean, safe and sanitary conditions in and around the Facilities; and such other actions as are needed, based on the type of Event and its duration, to manage Facilities in order to protect and preserve the park so that it is restored, at a minimum, to its original condition. The Facilities Plan shall also identify the location of any Entertainment within the Event Sites.

12.8 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 Public Health and Environment (“DDPHE”), the User shall prepare, or arrange for the professional preparation of, the Concession Plan (the “**Concession Plan**”). The Concession Plan shall be submitted by the User to the Manager and the Manager of DDPHE, for the Managers’ review and approval. The Concession Plan shall identify, in detail, all measures the User shall take to comply with the directions and requirements of the Managers and Applicable Law, including provisions listing the types of Concession services to be provided and the control and licensing requirements for the Concession and the Concession Site, and tent, booth or canopy structure dimensions and location(s).

12.9 Environmental and Stormwater Plan. After consultation with the City Liaison and the appropriate officials of the Denver Department of Parks and Recreation and DDPHE, the User shall prepare, or arrange for the professional preparation of, the Environmental and Stormwater Plan (the “**Environmental Plan**”). The Environmental Plan shall be submitted by the User to the Manager and the Manager of DDPHE, for the Managers’ review and approval. The Environmental Plan shall identify, in detail, all measures the User shall take to comply with the directions and requirements of the Managers and Applicable Law, including provisions listing of materials brought onto park property that may adversely affect City land or water drainage, and discharge. User shall not violate the terms and conditions of the City’s municipal separate storm sewer system (MS4) permit issued by the Colorado Department of Public Health

and Environment. Spills or unauthorized discharges of liquids must be reported to DDPHE, following the City's Environmental Management System ("EMS")(Spill Response & Reporting for City Facilities, Properties & Rights-of-Way, Document ID CCD-301.20), attached as **Exhibit B**.

12.10 Review and Approval Process. For each of the Plans identified in Sections 12.1 through 12.9, a complete Plan shall be submitted by the User to the specified Manager(s) no later than thirty (30) calendar days prior to the first day of Load-In for each of the Events. A copy of all Plans shall be simultaneously provided to the City Liaison. The Manager(s) shall review and provide to the User in writing no later than fifteen (15) business days after the User's submittal of such Plan either: (i) an approval of such Plan, or (ii) if not approved, a list of all modifications required to the Plan. 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 the User's submission of such modified Plan. No Event Permit shall be effective until all required Plans are approved or, if further modifications to the Plans are authorized by the Manager(s) to be addressed by the User after the start of the Event, conditionally approved by the Manager(s).

13. **RECORDS**

13.1 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 User's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. User 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 the 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 paragraph shall require User to make disclosures in violation of state or federal privacy laws. User shall at all times comply with D.R.M.C. 20-276.

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 the User to the City pursuant to performance of this Agreement; and (ii) has been clearly marked or indicated in writing as being confidential by the User. Confidential Information does include this Agreement, any exhibits to this Agreement, any Certificate of Insurance submitted in accordance with Article 10, or any Plan submitted in accordance with Article 12. Confidential Information will be treated by the City as confidential proprietary information of the User 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 the User of such request in order to give the User the opportunity to object to the disclosure of any of the User'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 the User agrees to intervene in such lawsuit to protect and assert the User's claims of privilege and against disclosure of such Confidential Information or waive the same. The User 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 User's intervention to protect and assert the User'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, materials, supplies, merchandise, Facilities, and other personal property which are not owned by the City and which relate to the User's use and occupancy of the Event Sites ("**Personal Property**") shall be promptly removed by the User and its Subcontractors 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 Event Dates. If installation, use or removal of Personal Property causes any damage to Event Sites or any surrounding property, the User shall be responsible for the prompt repair or replacement of the same in good and workmanlike manner. If the User 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 the User 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 Personal Property. The City assumes no responsibility whatsoever for any Personal Property placed in the Event Sites, the surrounding park or other City-owned property, or any Load-In or Load-Out areas, and the User expressly releases and discharges the City from any and all liabilities for any loss, injury or damages to Personal Property that may be sustained by reason of the occupancy or use of any portion of the Event Sites, the surrounding park or other City-owned property, or Load-In and Load-Out areas under this Agreement. All watchmen or other protective service for securing such Personal Property shall be the sole responsibility of the User or its Subcontractors. In the receipt, handling, care or custody of Personal Property shipped or otherwise delivered to the Event Sites, the surrounding park or other City-owned property, or any Load-In and Load-Out areas, the City shall act solely for the accommodation of the User, 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 abandoned property of some appreciable value left by attendees of the Event or park patrons.

15. NAMES AND LOGOS AND PHOTOGRAPHIC RIGHTS

15.1 Names and Logos of the City and Department of Parks and Recreation. The City may grant to the User 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 Events; provided that such use of (i) the City's trademarked name, symbol, logo or flag shall be subject to the prior written consent of the Director for the Mayor's Office of Economic Development – Denver Marketing Office; and (ii) the Denver Department of Parks and Recreation's trademarked name, symbol or logo shall be subject to the prior written consent of the Manager. In no event shall the User represent or indicate, or by the particular use of a name, symbol, flag or logo, that the City is a partner with the User or engaged in any joint venture with the User with respect to the Events or that the City is a sponsor of the Events unless the Manager has agreed in writing that the Department of Parks and Recreation is a sponsor. No other intellectual property rights of the City other than those expressly identified herein are being licensed by the City for use by the User.

15.2 Names and Logos of the User. The User may grant to the City the non-exclusive right to use the trademarked names, symbols and logos of the User and the Events (if any); provided, the City may not use the name of the User or any trademarked names, symbols or logos owned by or licensed to the User without the prior written approval of the User. The User may grant to the City the non-exclusive right to use the trademarked names, symbols and logos of the User's sponsors and affiliates (if any); provided, the City may not use any trademarked names, symbols or logos owned by or licensed to the User's sponsors or their affiliates without the prior written approval of the User. The User agrees to indemnify and hold the City harmless from any and all claims, losses, or expenses asserted by the User's sponsors or their affiliates with regard to the uses approved by the User herein. No other intellectual property rights of the User other than those expressly identified herein are being licensed by the User for use by the City.

15.3 Photographic Rights Retained by the City. The City and the User acknowledge and agree that each party shall have a right make its own photographs, audio and video recordings of the Events in the Event Sites during the 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. The User shall comply with all Applicable Law in connection with this Agreement. The User shall use reasonable efforts to ensure that the attendees at the Events and the User's Subcontractor(s) shall comply with all Applicable Law in and around the Event Sites. The City shall not be required to take any action which is inconsistent with Applicable Law. Nothing in this Agreement is intended to supersede, modify, or replace Applicable Law unless such intent is expressly stated in this Agreement.

16.2 No Discrimination in Employment. In connection with the performance of work under this Agreement, the User agrees not to refuse to hire, discharge, promote, or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, gender identity or gender expression, marital status, or physical or mental disability; and the User 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 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. The User 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.

16.5 ADA-Americans with Disability Act Requirements. The Parties recognize that the City is subject to the provisions of Title II of the Americans with Disabilities Act ("ADA") and that the User is subject to the provisions of Title III of the ADA. Concerning compliance with the ADA and all regulations thereunder, the City is responsible for the permanent building access requirements; such as wheelchair ramps, elevators, restrooms, doors, walkways, and accessible seats. The User is responsible for the non-permanent accessibility standards and requirements, such as, but not limited to, seating accessibility, ticket pricing, sign language interpreters, signage and all other auxiliary aids and services customarily provided by the User. The City's sole responsibility with respect to sign language interpreters shall be to forward any requests for a sign language interpreter to the User. User shall comply with the ADA and all regulations thereunder. The User represents that it has viewed or otherwise apprised itself that such access to the Permitted Premises and common areas and accepts such access, common areas and other conditions of the Permitted Premises and common areas as adequate for the User's responsibilities under the ADA. The User shall be responsible for ensuring that the areas used by the User complies and continues to comply in all respects with the ADA. The User shall be responsible for any violations of the ADA that arise from the User's reconfiguration of the seating areas or modification of other portions of the Permitted Premises in order to accommodate the User's engagement. The User shall be responsible for: providing auxiliary aids and services that are ancillary to its use, ensuring that the policies, practices and procedures it applies in its production are in compliance with the ADA, and any costs related thereto.

17. MISCELLANEOUS

17.1 Legal Authority.

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

(b) The person or persons signing and executing this Agreement on behalf of the User do hereby represent and warrant that they have been fully authorized by the User to execute this Agreement on behalf of the User and to validly and legally bind the User 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 the User or the person signing the Agreement on behalf of the User 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 any year in which the Agreement is in effect, encumbered, paid into the Treasury of the City, and available for the purposes of this Agreement. The User 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 the User, 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 the Event. It is the express intention of the City and the User that any person or entity other than the City or the User receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

17.4 No Agency or Partnership Relationship. Nothing in this Agreement is intended nor shall be deemed to create an agency, partnership or joint venture between the User and the City. Nothing in this Agreement is intended nor shall be deemed to grant to the User any power, right or authority to contractually bind or obligate the City. Nothing in this Agreement is intended nor shall be deemed to grant to the City any power, right or authority to contractually bind or obligate the User. No employee of the User shall be deemed an employee of the City. No employee of the City shall be deemed an employee of the User.

17.5 Assignment and Subcontracting. The City is not obligated or liable under this Agreement to any party other than the User. The User 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. The User is granted no power, right or authority to issue permits to any person or entity. However, the User shall have the right to subcontract services and work as provided in this Agreement, including but not limited to subcontracting for Facilities installation and removal and 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 the User shall remain fully responsible to the City according to the terms of

this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the assigns and Subcontractors of the User as are permitted to succeed to the User's rights under 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.

17.7.1 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 the User by delivery of notices and service of process for summons and complaints to the address of the User shown in this Agreement.

17.7.2 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 applicable local law.

17.7.3 All Applicable Law shall be reviewed and applied in accordance with judicial standards for legislative and administrative acts, as appropriate under the circumstances, and not as a matter of contract law.

17.8 Notices. 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
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 the User, to: The address of the User stated in the first paragraph of this Agreement.

Notifications required to be provided to the City Liaison shall be provided by the User to the email address determined by the Manager and provided to the User. If written notification is not required, the City Liaison shall be contacted by telephone or email as agreed by the User and the City Liaison.

17.9 Construction of this Agreement.

17.9.1 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.

17.9.2 Time. The Parties agree that in the performance of the terms, conditions and requirements of this Agreement, time is of the essence.

17.9.3 Singular and Plural. Whenever the context shall so require, the singular shall include the plural and the plural shall include the singular.

17.9.4 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.

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

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SIGNATURE BLOCKS BEGIN ON THE NEXT PAGE.]**

Contract Control Number: PARKS-202053400-00
Contractor Name: DOWNTOWN DENVER EVENTS, INC.

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:

PARKS-202053400-00
DOWNTOWN DENVER EVENTS, INC.

By:  7197FEEF275443A...

Name: Sharon Alton
(please print)

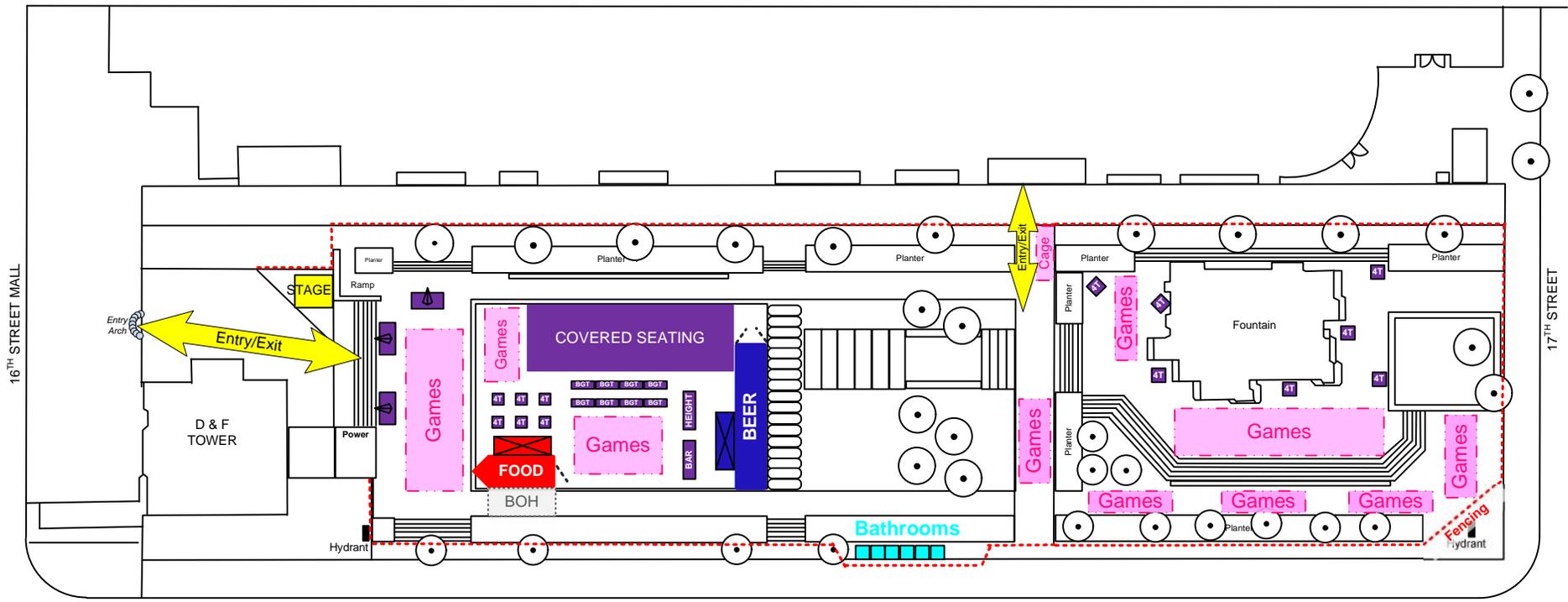
Title: Vice President, Downtown Experience
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



ARAPAHOE STREET

ARAPAHOE STREET

Downtown Denver Partnership

Skyline Beer Garden

KEY	
4' tall fence	-----
6' tall fence	-----

DRAFT
Updated
3/6/17

Downtown Denver Rink at Skyline Park

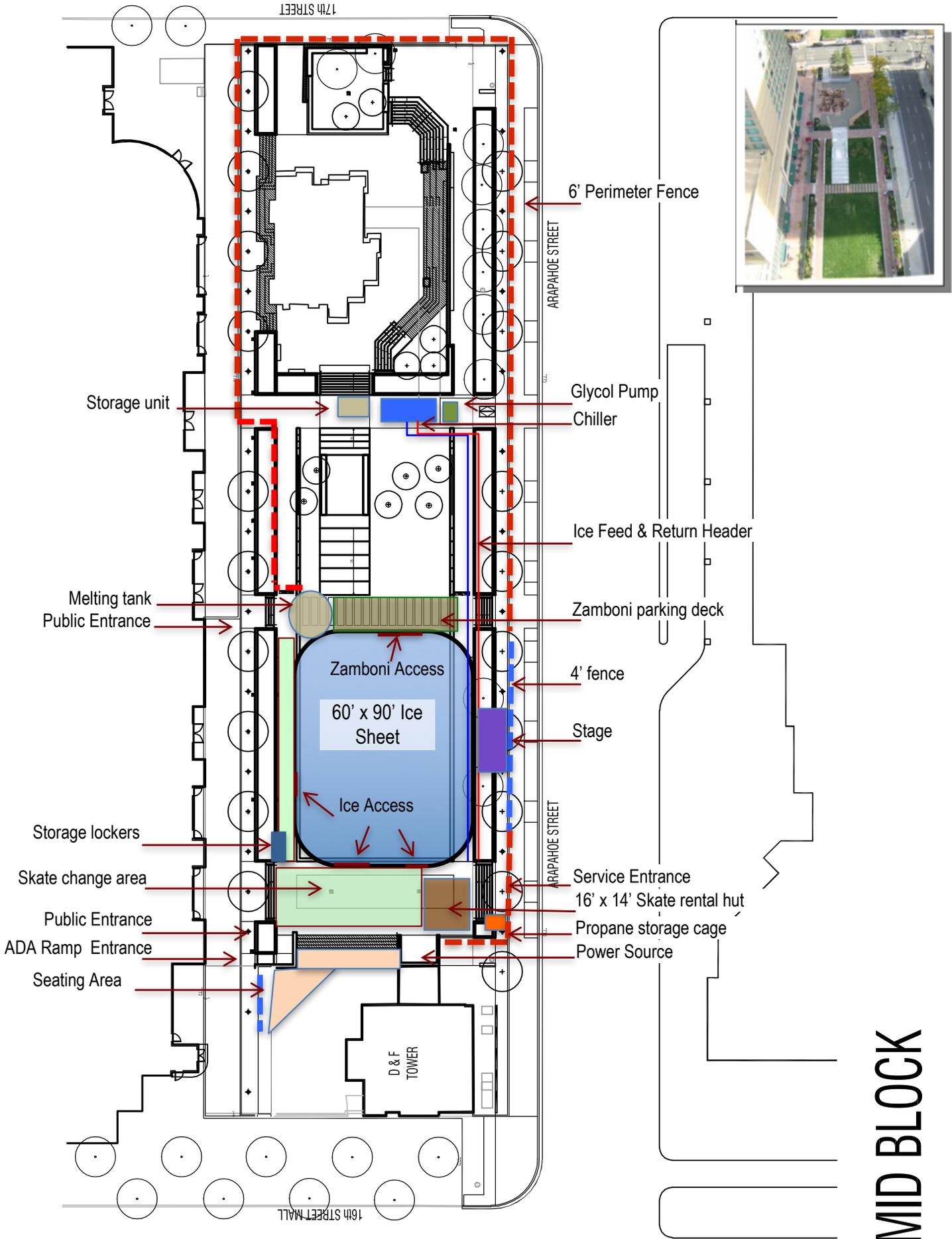


EXHIBIT B

 Environmental Management System	DOCUMENT ID: CCD-301.20
	DOCUMENT HOME: EMS SharePoint
DENVER <small>THE MILE HIGH CITY</small>	Environmental Procedure
TITLE: Spill Response & Reporting for City Facilities, Properties & Rights-of-Way	EXPIRATION DATE: June 2021

This Environmental Procedure (EP) applies to all City & County of Denver (CCD) employees and is meant as guidance only; it does not supersede any laws or legal requirements. Each employee with the potential to create or respond to a spill is responsible for understanding their duties and assignments and ability to act. They must be aware of what is and is not allowed by law and must act accordingly, per best judgment and their supervisor's direction.

RISKS

The following environmental concerns are associated with this activity:

- Contaminated land and groundwater
- Hazardous Waste
- Stormwater
- Solid Waste

INSTRUCTIONS

1. Quickly identify when a spill or leak has occurred and respond as quickly as possible.
2. Identify the spilled material and potential impacts.
3. Construct appropriate controls to contain and mitigate the spill impacts safely, e.g. secondary containment, spill kits, absorbent booms, etc.
 - a. Protect sewers, drains, and stormwater from spills and discharges.
 - b. Know the location of drains and spill control valve (if present) in the affected area.
4. Knowledgeable responders or a supervisor/manager must assess the spill site for safety and protect staff if spilled material is unknown or believed to present an immediate hazard.
5. Immediately notify the Denver Department of Public Health & Environment (DDPHE) of any hazardous material spill by calling DDPHE emergency response duty officer. Provide the following:
 - a. Name, telephone number, employer, and job title
 - b. Exact location of the spill
 - c. Describe or the name of the material spilled, and quantity spilled
 - d. Describe where the spill has traveled and what it has impacted
 - e. State the actions taken so far to stop the spill and begin clean-up
 - f. Specific needs for assistance
6. Contact the supervisor and agency safety officer as soon as possible.
7. For spills more than 5 gallons, the safety officer or a designated supervisor/manager must complete *Universal Spill Reporting Form* (at end of this EP) and submit it to DDPHE.
8. Work with DDPHE for the collection and disposal of spill residues and impacted materials.

Training

Training will be conducted as needed to inform employees of impacts associated with spills, illegal discharges, and improper waste disposal. Training records, if required, must be retained by facility or agency management.

Storage & Materials Management

- Store spill response materials where spills are believed to likely occur, e.g. bulk product/waste storage areas, mixing areas, fueling and maintenance areas. Make it accessible and store in properly labeled containers.

- Spill kits shall be at least two-thirds full and contain appropriate absorbent.
- DDPHE shall provide a filled spill kit to each site where the City maintains an Aboveground Tank of greater than or equal to 500-gallons capacity holding a low viscosity regulated substance in active service outdoors.
- Facility staff shall maintain existing spill kits at their facility. Facility staff shall:
 - Replenish spill kits with new absorbent immediately after contents have been consumed.
 - Routinely inspect spill kits routinely to ensure they are full and the contents are adequate for use.
 - Protect spill kits from deterioration and damage, including repainting and relabeling, and protecting from rain and snow and corrosion.
 - Notify DDPHE if a spill kit is completely deteriorated, and a new replacement spill kit is needed.
- Facility should determine if a spill kit is needed in a location based on their needs for tanks and other containers containing less than 500 gallons.
 - If the facility determines a spill kit is needed for a container of less than 500 gallons, then the facility shall be responsible for procuring, filling, and maintaining the spill kit with the proper materials as described above.

Planning

Facility managers should create and implement plans specific to spill prevention and response, and employee awareness as deemed necessary. Planning should include:

- Budget for spill prevention, containment and response supplies and infrastructure.
- Assign staff to specific duties.
- Post or make available the names and phone numbers of contacts should a spill occur.
- Plan with DDPHE for training and assistance.

Expected Records/Outputs

- Completed Universal Spill Report (spills greater than 5 gallons)
 - Communicate spill details and conditions to your supervisor and DDPHE.
- Formal Spill Notifications
 - DDPHE issues to state and federal authorities, as required.
- Waste Disposal profile, LDR, manifests & shipping forms
 - Obtain manifests and other forms from the disposal facility, contractor, or broker.
 - Provide all manifests to DDPHE for recordkeeping.
 - Maintain copies of manifests on file for at least three (3) years.

EMERGENCY RESPONSE

Control spills to minimize property damage and risk to human health and the environment. Containerize all collected wastes and evaluate for labeling, storage and disposal. Protect yourself and alert others.

1. Call 303-229-7943 immediately for all spills of 5+ gallons.
2. Call 911 if the event is life-threatening or if the spill is *catastrophic* (55+ gallons of a liquid chemical).

REFERENCES

DDPHE.....	720-865-5478
DDPHE Emergency Response Duty Officer (24 x 7 x 365)	303-229-7943
DDPHE Environmental Analyst.....	720-865-5368

Guidance Materials

- Safety Data Sheets (SDS)

Deviation from this document could result in environmental pollution. Consequences of deviating from this document may include disciplinary action or dismissal. Additionally, the City could be charged with violation of the law, fined and be subject to other legal action and penalties.

- North American Emergency Response Guidebook
- Facility specific spill response plans, instructions, and postings (as applicable)
- 40 CFR 311 Worker Protection Standard
- 29 CFR 1910.120 Hazardous Waste Operations and Emergency Response

Applicable Rules and Regulations

CCD-202 Compliance Obligations lists applicable regulations and other requirements, some of which pertain to this EP, especially CCD-202 Water Quality Requirements.

- 6 CCR 1007-3
- Colorado Revised Statute 25, article 15

Related EMS Documents

- CCD-202 Water Quality Requirements
- CCD-301 Fueling Vehicles and Worksite Equipment
- CCD-303 Illicit Discharge Interagency Notification

Universal Spill Reporting Form

Complete and submit to Manager & DDPHE within 12 hours of the spill / incident.

Please answer each of the following questions to the best of your ability and knowledge:

1. Your Name: _____

2. Your Office Phone #: _____ Mobile Phone #: _____

3. Department & Division in the City you work in: _____

4. Supervisor's / Manager's Name: _____

5. Supervisor's / Manager's Phone #: _____

6. Describe the source of the spill & the type of material spilled in this incident:

7. Estimate the total volume or quantity of spilled material, in gallons: _____ *Gallons*

8. When did the spill begin or happen? Date: _____ Time: _____

9. Has the spill ceased or been stopped? YES NO (Check One)

a. If 'YES,' when? Date: _____ Time: _____

10. Facility Name or Site Name where the spill / incident occurred: _____

11. Known or approximate street address of the Facility or Site where the spill / Incident occurred: _____

12. Describe where, in what part or area of the site the spill occurred: _____

13. If the material spilled on the ground, describe the physical size of the spill impacted area:

_____ *Feet Long* by _____ *Feet Wide*

14. Did the spill enter a storm sewer or waterway (e.g. ditch, creek, etc.)? YES NO (check one)

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Universal Spill Reporting Form - *continued*

15. Indicate what structures, surfaces and materials were impacted by the spill (check all that apply):

- | | |
|--|--|
| <input type="checkbox"/> Interior flooring (tile or carpet) | <input type="checkbox"/> Asphalt or concrete pavement in good condition |
| <input type="checkbox"/> Asphalt or concrete in poor condition | <input type="checkbox"/> Unpaved dirt, gravel, weedy, grassy, or landscaped area |
| <input type="checkbox"/> Puddle, pond, or pool of still water | <input type="checkbox"/> Creek, gulch or ditch containing flowing water |
| <input type="checkbox"/> Indoor floor drain, sink or sewer | <input type="checkbox"/> Outdoor storm drain or sewer |

16. Describe actions taken to protect people and the environment from the hazards of the incident:

17. Has anyone been sickened or injured because of this incident? YES NO (check one)
a. If 'YES,' how many? _____

18. Was this Facility or Site evacuated at any time because of the incident? YES NO (check one)

19. Was this incident reported to any other entity (State, Fire Dept, etc.)? YES NO (check one)
a. If 'YES,' who? A) _____
B) _____

20. Have any entities or services responded to provide safety and clean up? YES NO (check one)
a. If 'YES,' who? A) _____
B) _____

21. To what degree has the spill been cleaned-up? Check one, and complete the date and time:

- Spill was completely cleaned-up, no further action is needed. It was cleaned-up on:
Date: _____ Time: _____
- More time is needed to clean-up the spill. It will be cleaned up by:
Date: _____ Time: _____
- The spill has not been cleaned-up at this time.

22. If the spill has been partly or fully cleaned-up, describe how the clean-up waste has been contained and disposed of: _____

23. Describe the likely cause of, or reason the spill occurred: _____

Submit this completed form to your Division Manager
AND
FAX this form (BOTH PAGES) to: DDPHE / EQ Division at 720-865-5534, or
E-mail to: EPcomments@denvergov.org and put "SPILL" in the subject line