

FIRST AMENDMENT TO COOPERATIVE AGREEMENT
(Civic Center Conservancy)

THIS FIRST AMENDMENT TO COOPERATIVE AGREEMENT (“Amendment”) is made and entered into this ____ day of _____, 2010, by and between **THE CITY AND COUNTY OF DENVER**, a Colorado municipal corporation (the “City”) and the **CIVIC CENTER CONSERVANCY**, a Colorado non-profit corporation (the “Conservancy”), referred to herein jointly as the “Parties” and individually as a “Party”.

RECITALS

A. The City and the Conservancy entered into a cooperative agreement on June 13, 2006 (City Clerk Filing # 06-521) (the “Cooperative Agreement”) regarding the common goals of the City and the Conservancy to enhance, restore and revitalize Civic Center Park (“Civic Center”) through the implementation of the Civic Center Park Master Plan (the “Master Plan”) and through fundraising efforts by the Conservancy for the benefit and development of Civic Center in accordance with the Master Plan.

B. Based on the benefits and public good served by the activities of the Conservancy to date under the Cooperative Agreement, the City and the Conservancy now wish, subject to the terms and conditions of this Amendment, to extend the authority of the Conservancy to enter, monitor and enforce contracts with vendors who will provide certain support services in Civic Center for the care of the park and service to park patrons.

C. The City and the Conservancy are of a common belief that the public use and enjoyment of Civic Center would be further activated and enhanced, in a manner consistent with the Master Plan, through the provision of mobile food, beverage and merchandise sales to park patrons and through certain maintenance and customer relations services supporting the use and functionality of Civic Center.

D. The City and the Conservancy acknowledge and affirm that the sales and services described above shall be limited to those which are consistent with the park purposes of Civic Center and the intent and goals of the Master Plan.

NOW, THEREFORE, in consideration of the above premises, and the terms, promises and conditions set forth in the Amendment below, it is mutually agreed by the City and the Conservancy as follows:

06-521-A

1. **EFFECT OF AMENDMENT.** This Amendment is not intended, and shall not be construed, to replace, limit or change the terms and conditions of any portion of the Cooperative Agreement, as it currently exists. This Amendment sets forth an independent addition to the Cooperative Agreement which is to be interpreted, applied and enforced as provided in this Amendment, except that the following sections of the Cooperative Agreement shall be regarded as being incorporated into, and applicable under, this Amendment: Sections 5 “Conservancy Governance,” 6 “Status and Authority of Conservancy,” 7 “Reports,” 9 “Political Activity,” 10 “Insurance,” 11 “Immunity,” 12 “Claims,” 14 “Non-Discrimination,” 15 “Assignment,” 16 “Amendments,” 17 “Integration,” 18 “Severability,” 19 “Compliance with Laws; Venue,” 20 “Notices,” 22 “No Third Party Beneficiary,” 23 “Use, Possession or Sale of Alcohol or Drugs,” and 24 “Legal Authority.”

2. **FOOD AND BEVERAGE; MERCHANDISE.** Subject to the terms and conditions of this Amendment, the Conservancy shall have the right to enter contracts with vendors allowing the sale and service of food, beverages and merchandise in Civic Center.

A. **Service Sites:** Attached to this Amendment as **Exhibit A** and incorporated herein by reference is a site map for Civic Center depicting the locations where such food, beverage and merchandise sales and service may occur (“**Service Sites**”), and this site map may be modified and replaced on an annual basis (by January 1st) at the discretion of the Manager of Parks and Recreation or the Manager’s designated representative (the “**Manager**”) following consultation with the Conservancy (the “**Service Sites Map**”). All vendors contracted by the Conservancy shall strictly limit the food, beverage and merchandise sales and service to the interior of the Service Sites designated on the Service Sites Map. Any issues as to the geographical limits or boundaries of the Service Sites shall be determined solely by the Manager. No more than one vendor shall operate in a designated Service Site, and no more than two (2) vendors at any given time shall provide services in Civic Center; provided, however, at the discretion of the Manager and upon the Manager’s written approval, the number of vendors providing services in Civic Center at any given time may be increased up to four (4) vendors. In the event that the number of vendors providing services in Civic Center exceeds the authorized number, the Conservancy shall, upon notification by the Manager, take prompt action to reduce the number of vendors in Civic Center to or below the authorized number.

B. Food and Beverage Service. Any vendor contracted by the Conservancy to provide food and beverage sales and service in Civic Center shall have the non-exclusive and non-transferable right to engage in the sale and service of food and beverages within the Service Site specified by the Conservancy. All food and beverage sales and service shall be provided by means of mobile facilities, such as a food service truck or carts or under tents or canopies, situated or set up within a Service Site ("**Mobile Facilities**"). The Mobile Facilities must be removed daily from Civic Center during curfew hours for Civic Center. The sale or service of alcohol beverages of any kind is strictly prohibited. No products shall be sold or served in glass containers. Good quality, fresh food and beverage products shall be served and shall be provisioned on a daily basis. All cooked foods shall be prepared either in the Mobile Facilities within the Service Sites by qualified and experienced cooks or at an approved commissary or other food preparation center authorized to cook and dispense foods for public consumption (no home-cooked foods). Prepackaged food products must be provided in individual servings, labeled as to ingredients, dated for expiration of product, transported in individual servings, and stored under proper conditions. All state and local laws, regulations, and orders regarding food handling shall be complied with, and all required food service permits shall be obtained, kept current and shown to the Manager upon request. The right of access to, and inspection of, all Mobile Facilities shall not be denied to City inspectors acting in the course of their authorized duties.

C. Merchandise Sales. The Conservancy may, through contract, authorize vendors to engage in the sale of such merchandise and novelty items in Mobile Facilities within a Service Site as are appropriate for the needs and interests of the patrons of Civic Center. Said merchandise and novelties will consist of such items as pre-approved in writing by the Manager. The sale or public distribution of the following is strictly prohibited: tobacco products; packaged liquor, wine, or beer; prescription medications, illegal drugs or narcotics, or medical marijuana; adult materials; and fireworks.

D. Sanitation; Trash; Recycling. All Mobile Facilities, Service Sites and surrounding areas in Civic Center shall be maintained by the vendors in a clean, safe and sanitary condition. The vendors shall actively police the area within one hundred feet (100') of their Service Sites in order to remove trash and clean up any waste, and shall cooperate with the City, the Conservancy and other vendors in assuring that Civic Center remains a clean and inviting

place for the public. The vendors shall provide, and maintain within their Service Sites, sufficient trash and recycling receptacles to adequately serve the needs of their sales and service, and the vendors shall remove and lawfully dispose of all such collected trash, waste and debris from Civic Center on a daily basis. The vendors should be encouraged by the Conservancy to use their best efforts to implement sustainable practices including but not limited to composting, reducing waste stream, and recycling packaging and other trash generated by their businesses.

E. Common Seating Area. The Conservancy may arrange or work with its vendor(s) to arrange for chairs and tables to be acquired and set out in Civic Center for the public's use in a common seating area near the Service Sites. The chairs and tables shall be properly maintained and cleaned, set up and taken down on a daily basis, properly secured by the Conservancy or the vendors, and repaired, replaced or removed when needed, all as arranged by the Conservancy or by the Conservancy through its vendor(s). The number and type of chairs and tables, the location of the common seating area, and any after-hours retention and/or securing of the tables and chairs on-site in Civic Center, and any changes in this regard, shall be subject to the prior, written approval of the Manager. Unless otherwise agreed by the Manager in writing, the Conservancy and/or its vendor(s) shall be solely responsible for, and liable for the costs of, acquiring, maintaining, securing, repairing, replacing, and removing any chairs and tables authorized in this section and for promptly removing any graffiti, including markers, paint and stickers, from the chair and tables. The Manager may require the immediate removal of any chairs or tables which are not usable, unsafe or a detriment to the public's use or which are located outside of the approved common seating area.

F. Utilities. Vendors shall arrange and pay for their own utilities.

G. Signs and Materials. All signage and promotional materials posted or distributed in Civic Center by the Conservancy or its vendor(s) must be approved in writing and in advance by the Manager. Signs and materials not directly related to the services provided or the products sold in Civic Center under this Amendment will not likely be approved. All signage must be of a temporary, readily removable nature, removed on a daily basis when the Mobile Facilities are removed, and posted in the manner set forth by established standards and criteria and so as not to cause any damage to Civic Center.

H. Outdoor Market & Cafe. In more recent times, an outdoor market and café has been held one day weekly during the summer months in Civic Center. This event has been

authorized through parks permitting and shall continue to be handled in this manner unless otherwise agreed by the Manager in writing.

I. Permitted Events. A vendor(s) shall not be allowed to operate in Civic Center during permitted events where the entire area of Civic Center is subject to the permit (e.g., People's Fair and Taste of Colorado) unless the vendor(s) makes separate arrangements with the event organizer. If only a portion of Civic Center is permitted for an event and a vendor's Service Site is within the permitted area, then the vendor must relocate during the event to another approved but unutilized Service Site shown on the Service Sites Map or make arrangements with the event organizer. Subject to the prior, written approval of the Manager, alternative operating sites with Civic Center may be used during the permitted event.

J. Parks Rules and Regulations. All vendors must comply, and require their employees, agents and contractors to comply, with all applicable policies, rules and regulations adopted by the Denver Department of Parks and Recreation now and in the future, including curfew and any design or appearance standards applicable to vendors operating in Denver parks.

K. Damages. Vendors shall be liable to the City for any damages the vendors, their employees, agents or contractors cause to Civic Center or are otherwise caused by the operations or activities of the vendors' businesses. Vehicles permitted in Civic Center to support the vendors' businesses must be driven on hard surfaces, and any costs incurred by the City to repair damage to turf, vegetation or park amenities caused by vendors' vehicles shall be promptly paid by the vendors.

L. Fees and Charges. The Conservancy may establish a fair and uniform set of fees and charges to be collected from vendors for the right to provide food, beverage and merchandise sales and service in Civic Center under Vendor Contracts. Such fees and charges must be approved in advance and in writing by the Manager and must be stated, including any right to increase such fees and charges, in the Vendor Contracts. All permit or related fees that the Department of Parks and Recreation might typically charge vendors for operations and activities in parks are hereby waived for any vendors with which the Conservancy has entered into Vendor Contracts and from which the Conservancy is collecting fees and charges. All fees and charges collected shall be retained by the Conservancy solely for use in programs, operations and improvements to benefit the Civic Center consistent with the Master Plan. The Conservancy shall maintain complete and accurate record and accounting of all fees and charges as assessed

against and as actually collected from the vendors, and as expended for the benefit of Civic Center, and shall report such records and accounting in its reports to the City required under section 7 of the Cooperative Agreement.

3. **MAINTENANCE AND CUSTOMER RELATIONS.** In addition to the food, beverage, and merchandise sales and services addressed in section 2 above, and subject to the terms and conditions of this Amendment, the Conservancy shall have the right to enter contracts with these same vendors identified in section 2 or with other vendors or other non-profit or quasi-governmental entities to provide for maintenance and/or customer relation services in Civic Center. Any proposal by the Conservancy to enter such a maintenance or customer relation services in Civic Center should be discussed with the Manager prior to initiating negotiations with a vendor or other entity on a maintenance and/or customer relations contract.

4. **VENDOR CONTRACT.** Prior to entering any contract with a vendor under section 2 or a vendor or other entity under section 3, a copy of this Amendment and the Cooperative Agreement shall be provided to the prospective vendor or entity. No vendor shall be allowed to provide for the sale or service of food, beverages or merchandise in a designated Service Site in Civic Center and no vendor or other entity shall be allowed to provide maintenance or customer relation services in Civic Center unless and until a written and signed contract is entered by the Conservancy with the vendor or entity in compliance with the terms and conditions of this Amendment including the right of the Manager to approve or disapprove of the contract before it becomes legally effective (“**Vendor Contract**”). A copy of the Vendor Contract shall be provided to the Manager no less than ten (10) calendar days prior to the commencement of any activity by the vendor in Civic Center. The Manager shall have the right to reject the Vendor Contract, and deny the vendor access to Civic Center, if the terms and conditions of the Vendor Contract are contrary to or not consistent with any requirements or restrictions set forth in this Amendment. If the Manager should not respond to the Vendor Contract within ten (10) calendar days following receipt, the vendor may commence operations in Civic Center; provided, however, any term or condition in the Vendor Contract which is contrary to or not consistent with any requirements or restrictions set forth in this Amendment, as determined by the Manager in the Manager’s reasonable discretion, shall be invalid and shall be regarded as being replaced by the appropriate requirement or restriction set forth in this

Amendment. The Conservancy shall be responsible for enforcing the Vendor Contracts and making certain the vendors comply with the requirements and restrictions of this Amendment.

5. **VENDOR TERM.** The term of a Vendor Contract may not exceed one (1) year in duration. At least ninety (90) calendar days prior to the proposed extension or other amendment of the Vendor Contract, the Conservancy shall inform the Manager of the Conservancy's intent to extend or otherwise amend the Vendor Contract and consult with the Manager about the prior performance of the vendor or other entity under the Vendor Contract. The Conservancy shall not extend or amend the Vendor Contract if so requested by the Manager and shall include any such additional terms and conditions in the extended or amended Vendor Contract if requested by the Manager.

6. **VENDOR INSURANCE.** The Conservancy shall require each vendor or other entity to obtain and maintain insurance in the amounts and types of coverages appropriate for the services and activities the vendor or other entity will undertake in Civic Center. The insurance requirements shall be those specified in **Exhibit B** attached to and incorporated by reference into this Amendment unless otherwise agreed to or specified by the Denver Risk Management Office. The City and the Conservancy shall be named as additional insured on all insurance coverages, except workers' compensation coverage. Failure to comply with the requirements of this section shall be legal grounds under this Amendment for work to be ordered to cease or to be restricted, as deemed appropriate by the Manager until compliance is achieved and any unpaid claims are resolved to the reasonable satisfaction of the Manager. The obligations set out in this section shall survive the termination of this Amendment.

7. **DEFENSE, INDEMNIFICATION, VENDORS, INSURANCE, IMMUNITY and CLAIMS.**

A. **Indemnification.** The Conservancy hereby agrees to defend, indemnify, and hold harmless the City, its appointed and elected officials, agents and employees against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the performance of this Amendment or operations or activities at Civic Center by the Conservancy or any vendors or other entities entering a Vendor Contract with the Conservancy under this Amendment ("**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 the Conservancy or the Conservancy's employees, agents, volunteers, vendors or contractors either passive or active, irrespective of fault, including the City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of the City.

B. Defense. The Conservancy's duty to defend and indemnify the City shall arise at the time written notice of the Claim is first provided to the City regardless of whether an action has been filed in court on the Claim. The Conservancy's duty to defend and indemnify the City shall arise even if the City is the only party sued and/or it is alleged that the City's negligence or willful misconduct was the sole cause of the alleged damages. The Conservancy will defend any and all Claims which may be brought or threatened against the City and will pay on behalf of the City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of the City shall be in addition to any other legal remedies available to City and shall not be considered the City's exclusive remedy.

C. Vendors. The Conservancy agrees and covenants to require any vendor or other entity with which it enters a Vendor Contractor to provide the same indemnification and defense protections to the City and the Conservancy as contained in this section.

D. Insurance. Insurance coverage requirements specified in this Amendment shall in no way lessen or limit the liability of the Conservancy under the terms of this indemnification obligation. The Conservancy shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection. This defense and indemnification obligation shall survive the expiration or termination of this Amendment.

E. Immunity. The Conservancy understands and agrees that the City is relying upon, and has not waived, the monetary limitations (presently \$150,000 per person, \$600,000 per occurrence) and all other rights, immunities and protection provided by the Colorado Governmental Act, § 24-10-101, *et seq.*, C.R.S., and any other applicable law.

F. Claims. In the event that any claim, demand, suit or other action is made or brought in writing by any person, firm, corporation or other entity against the Conservancy related in any way to this Amendment or the activities or operations of vendors under Vendor Contracts, the Conservancy shall give written notice thereof to the City within five (5) working days after being notified of such claim, demand, suit or other action. Such notice shall state the date and hour

of notification and shall include a copy of any such claim, demand, suit, or other action received by the Conservancy. Such written notice shall be submitted, as provided in the Cooperative Agreement, to the Manager and the City Attorney, 1437 Bannock Street, Room 353, Denver, Colorado 80202.

8. **TAXES, LICENSES, LIENS, and ADJUDICATION.**

A. Taxes. The Conservancy shall require the vendors with which it enters Vendor Contracts to collect and remit all sales taxes and other taxes as required by law (local, state, or federal), shall require the vendors to promptly pay all taxes and excise and license fees of whatever nature applicable to this Amendment, and shall not permit any of said taxes and excise and license fees to become delinquent.

B. Licenses. The Conservancy shall require the vendors and other entities with which it enters Vendor Contractors to take out, keep current, and comply with all licenses, permits, or other authorizations (local, state, or federal) required for the performance of this Amendment.

C. Liens. The Conservancy shall promptly pay, when due, and require its vendors and other entities with which it enters Vendor Contractors to promptly pay, when due, all bills, debts, and obligations incurred in connection with the performance of this Amendment and activities and operations of the vendors and other entities in Civic Center, and shall not permit the same to become delinquent. The Conservancy shall suffer no lien, mortgage, security interest, judgment, execution, or adjudication of bankruptcy that would, in any way, impair the rights of the City under this Amendment or its title to Civic Center. The Conservancy shall not permit any lien to be imposed and remain for more than ninety (90) days upon the property of the City, or any part or parcel thereof, by reason of any failure by the Conservancy or the vendors or other entities with which it enters Vendor Contracts to pay moneys owed, financial obligations, or other debts.

D. Final Adjudication; Security. The Conservancy may, diligently and in good faith, resist or contest the application or imposition of any such tax, fee, lien, debt, or obligation, in which case the same shall not be considered due, owing or imposed for the purposes of this Amendment until final adjudication of validity. The Conservancy may likewise, diligently and in good faith, appeal any judgment, order, or execution in which case the same shall not be regarded as impairing the City's rights until final adjudication. Nevertheless, if at any time the City should determine that its rights under the Amendment or title to Civic Center is

unduly at risk, the City may require the Conservancy to post such bond or other security acceptable to the City Attorney's Office in order to protect the City's rights and interests.

9. **NON-WAIVER.** No Party shall be excused from complying with any provision of this Amendment 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 Amendment shall be deemed or taken to be a waiver of any other failure to comply by said Party.

10. **BOOKS OF ACCOUNT and AUDITING.**

A. **Records; Annual Statement.** The Conservancy shall keep and make available, upon request, true and complete records and accounts of all fees and charges receivable and collected from vendors under this Amendment along with any other revenues owed and received by the Conservancy in relation to this Amendment ("**Gross Revenues**") and all expenditures, actual or owing, paid or to be paid out of Gross Revenues ("**Expenditures**"). Not later than April 30th of every other year (2012, 2014, etc.) during the duration of the Amendment, the Conservancy shall furnish to the Manager a true and accurate statement of the total of Gross Revenues and Expenditures during the preceding two calendar years. The statement shall itemize the authorized deductions and exclusions in computing the amount of such Gross Revenues and Expenditures and shall include a breakdown of Gross Revenues and Expenditures on a month-by-month basis. Such statement shall be prepared and certified by an independent certified public accountant who has audited the Gross Revenues and Expenditures in accordance with generally accepted accounting procedures for special reports. The above requirements for the annual statement may be modified by the Manager, in the Manager's discretion, if such modification is in the best interests of the City.

B. **Bookkeeping; Audit.** The Conservancy agrees to establish and maintain a system of bookkeeping satisfactory to the Auditor. Such system shall be kept in a manner as to allow the Conservancy's operations under the Amendment to be distinguished from all other operations of the Conservancy. The Conservancy shall keep and preserve for at least three years, or until sooner audited by City, all evidence of Gross Revenues and Expenditures for such period. The Auditor or Manager shall have the right at any time to inspect or audit all of the books of account, bank statements, documents, records, returns, papers and files of the Conservancy relating to the Gross Revenues and Expenditures. The City's right to perform such

an audit will expire three (3) years after the Conservancy's statement for that year has been delivered to the City.

D. Travel. The Conservancy, upon written request, shall make all such documents available for examination within the Denver metropolitan area or shall pay to the City, in full and in advance, travel and related expenses of a City representative to travel to any location outside the Denver area for such examination. Following the travel, expenses shall be reconciled, and any difference between the advance payment and the actual expenses shall be paid by or refunded to the Conservancy as appropriate.

E. Understatement. If the City determines, after an audit for any year, that the Gross Revenues and the Expenditures shown by the Conservancy's statement for such year are understated by more than 3%, the Conservancy shall pay to the City the cost of the City's audit, in addition to the deficiency and interest.

F. Tax Records. The Conservancy agrees that the Manager or the Auditor may inspect any document, return, data or report filed pursuant to Chapter 53 of the Denver Revised Municipal Code by the Conservancy with the City's Manager of Finance and any related reports, document, data or other information generated by the City's Manager of Finance or employees under the control of such Manager of Finance in connection with any investigation or audit of the Conservancy by the City's Department of Finance. The Conservancy authorizes and permits the inspection of such documents, data, returns, reports and information by the Manager or Auditor, and, further, waives any claim of confidentiality that it may have in connection with such documents, returns, data, reports and information.

11. **TERMINATION**. This Amendment may be terminated only as follows:

A. Conservancy Default. In the event that the Conservancy or one of its vendors or other entities with which it enters a Vendor Contract shall default or breach, on its part, in the performance or fulfillment of one or more material terms, promises, or conditions of this Amendment ("**Conservancy Default**") and shall fail to cure such Conservancy Default within thirty (30) calendar days following delivery of written notice from the Manager specifying the Conservancy Default and the date on which the City may exercise its right to terminate this Amendment if such Conservancy Default is not cured, the City may terminate this Amendment. If the Conservancy Default is not cured or some other resolution is not reached at

least five (5) calendar days prior to the termination date or any extension date agreed to in accordance with sub-section 9.D., the Manager shall so notify the Conservancy that the provisions of sub-section 9.E shall be effective on the termination date or the agreed extension date, whichever is later, if the Conservancy Default is not cured.

B. City Default. In the event that the City shall default or breach, on its part, in the performance or fulfillment of one or more material terms, promises, or conditions of this Amendment (“**City Default**”) and shall fail to cure such City Default within thirty (30) days following delivery of written notice from the Conservancy specifying the City Default and the date on which the Conservancy may exercise its right to terminate this Amendment if such City Default is not cured. If the City Default is not cured or some other resolution is not reached at least five (5) days prior to the termination date or any extension date agreed to in accordance with sub-section 9.D., the Conservancy shall so notify the Manager that the provisions of sub-section 9.E. shall be effective on the termination date or the agreed extension date, whichever is later, if the City Default is not cured.

C. Other. Upon mutual agreement of the Parties, the time to cure any Conservancy Default or City Default may be extended to a date certain and the manner and extent of cure may be modified. The deadline for any cure under this section 9 shall not excuse the obligation of any defaulting party to take timely and proper action to prevent, stop, mitigate, or alleviate any recent or impending damage to Civic Center or any existing or imminent threat to public health and safety.

D. Termination for Convenience. Either Party may unilaterally terminate this Amendment, with or without cause, with at least six (6) months’ prior written notice to the other Party. The Conservancy shall be responsible for terminating and concluding all Vendor Contracts on the date specified in the written notice.

E. Effect of Termination. Upon termination of this Amendment, all Vendor Contracts shall be terminated by the Conservancy and Civic Center shall be restored to its condition prior to the Effective Date of this Amendment, subject to ordinary wear and tear. Any fees or charges collected by the Conservancy from the vendors and any related funds or interest which have not been used by the Conservancy in accordance with this Amendment and are not needed to cover the Conservancy’s remaining obligations incurred in performing under this Amendment shall be promptly returned to the City.

12. MISCELLANEOUS.

A. Appropriation. Notwithstanding any provision of this Amendment to the contrary, any financial obligation of the City, if any, under this Amendment is contingent upon all funds necessary for the City's performance under this Amendment being budgeted, appropriated and otherwise made available, and any commitments by the City to provide services is contingent upon the necessary funds being budgeted, appropriated, and otherwise made available and the necessary discretionary actions being taken by the City Council and the Mayor. The Parties acknowledge that this Amendment is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

B. Good Faith. The City and the Conservancy agree to work diligently and in good faith to perform and fulfill the duties and obligations and achieve the purposes of this Amendment and to resolve any unforeseen issues or disputes under this Amendment as quickly and fairly as possible.

C. Applicable Laws. The City and the Conservancy agree to comply with all federal, state, and local laws applicable in the context of the specific matter addressed in this Amendment, including but not limited to: 1) the constitutions, laws, and rules and regulations of the United States of America and the State of Colorado; 2) the City Charter, the Denver Revised Municipal Code, and building, fire, and other applicable codes, as they may be amended from time to time; 3) rules and regulations promulgated or amended by the Denver Department of Parks and Recreation governing the public's utilization of City parks and recreational facilities; 4) any rules and regulations promulgated by other City departments and agencies applicable to the Conservancy's operations and activities under this Agreement; 5) executive orders issued by the Mayor; 6) any applicable court order, judgment, or decree or any appellate decision; 7) any federal, state, or local administrative decision or order applicable to this Amendment, the City or the Conservancy; and 8) the terms and conditions of any grant agreements entered in order to obtain funding for improvements or other benefit to Civic Center.

D. No Employment of Illegal Aliens:

1) The Amendment is subject to Article 17.5 of Title 8, Colorado Revised Statutes, and as amended hereafter (the "**Certification Statute**").

2) The Conservancy certifies that:

(A) At the time of its execution of this Amendment, it does not knowingly employ or contract with an illegal alien who will perform work under this Amendment.

(B) It will participate in either the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., or the employment verification program established by the Colorado Department of Labor and Employment under § 8-17.5-102(5)(c), C.R.S. (the “**Department Program**”), to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Amendment.

3) The Conservancy also agrees and represents:

(A) It shall not knowingly employ or contract with an illegal alien to perform work under the Amendment.

(B) It shall not enter into a contract with a contractor or a vendor that fails to certify to the Conservancy that it shall not knowingly employ or contract with an illegal alien to perform work under the Amendment.

(C) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Amendment, through participation in either the E-Verify Program or the Department Program.

(D) It is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Amendment.

(E) If it obtains actual knowledge that a contractor or a vendor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such contractor or vendor and the City within three days. The Conservancy will then terminate such contractor or vendor if within three days after such notice the contractor or vendor does not stop employing or contracting with the illegal alien, unless during such three day period the contractor or vendor provides information to establish that the contractor or vendor has not knowingly employed or contracted with an illegal alien.

(F) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S.

E. No Construction against Drafting Party. The Parties acknowledge that each of them and their respective counsel have had the opportunity to review this Amendment and that this Amendment shall not be construed against any Party merely because this Amendment or any of its provisions have been prepared by a particular party.

F. Headings for Convenience. Headings and titles contained herein are intended for the convenience and reference of the Parties only and are not intended to combine, limit, or describe the scope or intent of any provision of this Amendment.

G. Execution of Amendment. This Agreement shall not be or become effective or binding until it has been approved by ordinance and it has been fully executed by all signatories of the Parties.

H. Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one Amendment.

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IN WITNESS WHEREOF, the City and the Conservancy have executed this Amendment as of the day, month and year first above written.

ATTEST:

CITY AND COUNTY OF DENVER

By: _____
Stephanie Y. O'Malley, Clerk &
Recorder, Ex-Officio Clerk of the
City and County of Denver

By: _____
MAYOR

APPROVED AS TO FORM:

David R. Fine
Attorney for the City & County of Denver

By: _____
Assistant City Attorney

RECOMMENDED AND APPROVED:

By: _____
Manager of Parks and Recreation

REGISTERED & COUNTERSIGNED:

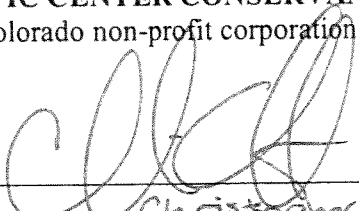
By: _____
Manager of Finance

Contract Control No. XC6A055(1)

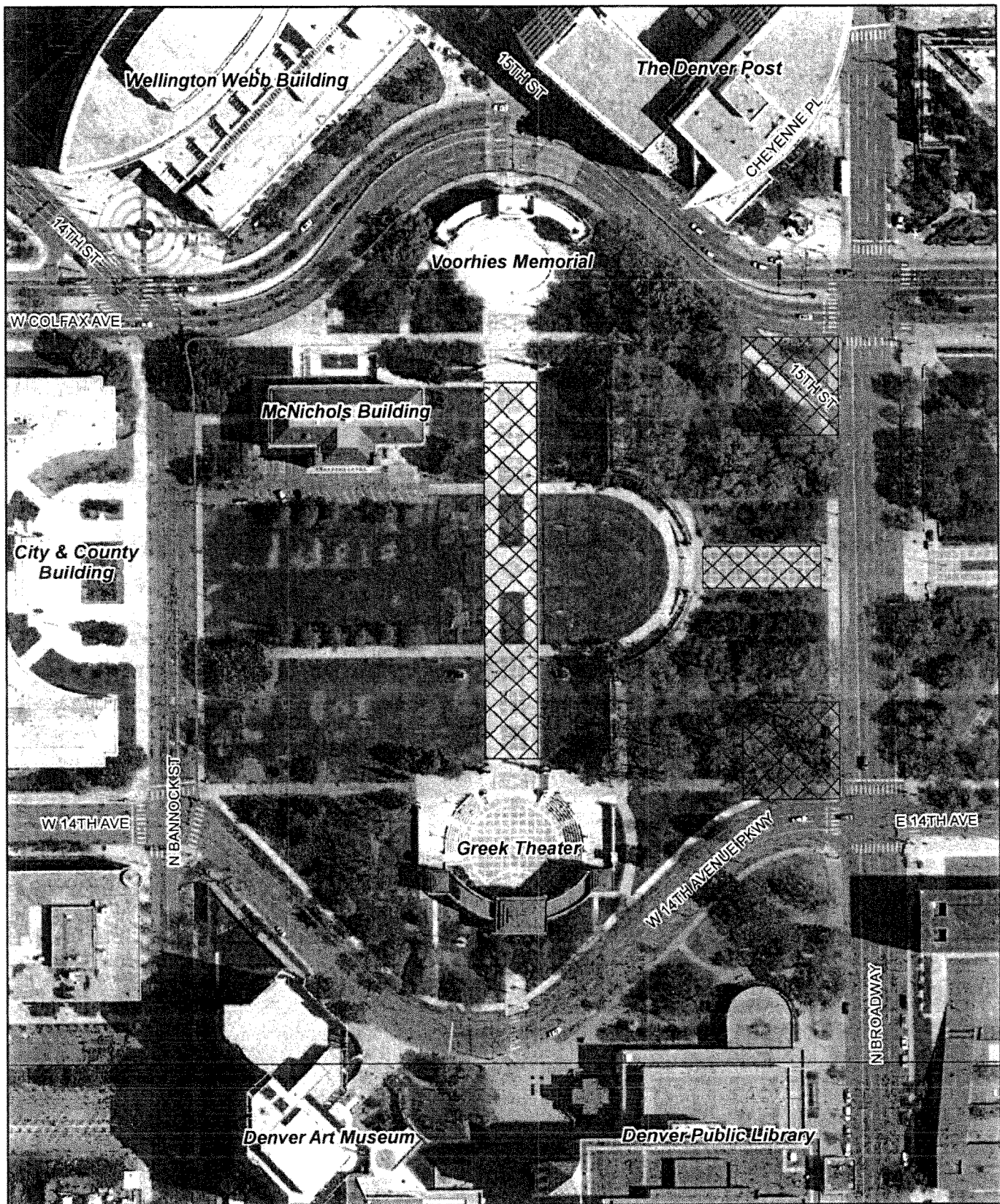
By: _____
Auditor

The "City"

CIVIC CENTER CONSERVANCY,
a Colorado non-profit corporation

By:  _____
Christopher E. Frampton
President

The "Conservancy"



Civic Center Park

Permissible Concession Locations



The City and County of Denver shall not be liable for damages arising out of the use of this information. The information is provided "as is" without warranty of any kind, expressed or implied, including, but not limited to the fitness for a particular use.

EXHIBIT B
VENDOR INSURANCE

A. General Conditions: The Vendor agrees to secure, at or before the time of execution of a Vendor Contract as provided in the First Amendment to Cooperative Agreement ("First Amendment") between the City and County of Denver ("City") and the Civic Center Conservancy ("CCC"), the following insurance covering all operations, goods or services provided pursuant to the First Amendment and the Vendor Contract. The Vendor shall keep the required insurance coverage in force at all times during the term of the Vendor Contract, or any extension thereof, and for three (3) years after termination of the Vendor Contract. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement stating "Should any of the above-described policies be canceled or non-renewed before the expiration date thereof, the issuing company shall send written notice to the Civic Center Conservancy, 1560 Broadway, Suite 2250, Denver, Colorado 80210 and Denver Risk Management, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202. Such written notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior." Additionally, the Vendor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the addresses above by certified mail, return receipt requested. If any policy is in excess of a deductible or self-insured retention, CCC and the City must be notified by the Vendor. The Vendor 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 Vendor. The Vendor 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 the First Amendment and the Vendor Contract.

B. Proof of Insurance: The Vendor shall provide a copy of these insurance requirements to its insurance agent or broker. The Vendor may not commence sales, services or work in Civic Center Park prior to placement of coverage. The Vendor certifies that the certificate of insurance provided to CCC and the City, preferably an ACORD certificate, complies with all insurance requirements herein. The City requests that the City's contract number (XC6A055) be referenced on the certificate of insurance. The acceptance by CCC or the City of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth herein shall not act as a waiver of Vendor's breach of this Agreement or of any of the rights or remedies of CCC and the City. CCC or the Denver Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

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

D. Waiver of Subrogation: For all coverages, the Vendor's insurer shall waive subrogation rights against CCC and the City.

E. Subcontractors and Subconsultants: All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Vendor. The Vendor shall include all such subcontractors and subconsultants as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. The Vendor agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by CCC or the City.

F. Workers' Compensation/Employer's Liability Insurance: The Vendor 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 Vendor expressly represents to CCC and the City, as a material representation upon which CCC and the City are relying, that none of the Vendor'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 the Vendor Contract, and that any such rejections previously effected, have been revoked as of the date the Vendor executes the Vendor Contract.

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

H. Business Automobile Liability: The Vendor shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under the Vendor Contract.

I. Additional Provisions:

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

(i) That the Vendor Contract is an Insured Contract under the policy;

(ii) Defense costs in excess of policy limits;

(iii) A severability of interests, separation of insureds or cross liability provision; and

(iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by CCC or the City.

(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.

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