

**CITY AND COUNTY OF DENVER**

**DEPARTMENT OF PARKS AND RECREATION**

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**CONCESSION LICENSE**

The City and County of Denver, hereinafter referred to as the “City”, acting by and through its Executive Director of Parks and Recreation, hereinafter referred to as the “Executive Director,” pursuant to the authority granted in Section 2.4.4(A) and (C) of the Charter of the City and County of Denver, and pursuant to these terms and conditions, hereby grants to Concessionaire specified below a license for the operation of a concession for selling goods and providing services in the park or recreational facilities hereinafter described. Concessionaire, by execution of this Concession License, has accepted all of the terms and conditions thereof and agrees to comply with the same. Furthermore, the Concessionaire agrees to pay such compensation to the City and to perform such duties and responsibilities for the Term of the Concession License, all as specified herein.

I. CONCESSION SITES: The Concession Site(s) are situated within:

- (a) Washington Park near Smith Lake (South Downing Street at East Louisiana Avenue); and
- (b) City Park near Ferril Lake (2001 Steele Street),

in Denver, Colorado (collectively, the “Parks”). The Concession Site(s) will be established within the vicinity of the locations depicted in **Exhibit A**, attached to this Concession License and incorporated herein by reference. Exact Concession Site locations and facilities, including kiosks, storage structures and boat docks, must be clearly identified in site plans submitted to the Executive Director for prior written approval. For purposes of this License, “Executive Director” shall include the Executive Director’s representative (“**DPR Representative**”). The location, configuration, and use of the Concession Site(s) and facilities are subject to modification, at the reasonable discretion of the Executive Director and upon reasonable notice, during the Term of this Concession License depending on changing needs and uses of the Parks and the Concession. Concessionaire’s use of the Concession Site(s) shall not be exclusive to the extent that ordinary park use and access by patrons, including access to paths and waterfronts (but excluding docks) and park maintenance, repairs and improvements by Park staff and contractors must be allowed and cannot be significantly impeded.

**NOTICE: The lakes in the Parks are at risk for water quality issues that may impact business operations, and Concessionaire accepts these risks and shall make no claim against the City based on any water quality of the lakes. The City cannot guarantee that water issues that may negatively impact operations of Concessionaire will not arise and result in a loss of revenue, regardless of the water treatment the City chooses to administer.**

II. CONCESSIONAIRE: CONCESSIONAIRE’S ADDRESS:

TeamFun, LLC 11181 Sweet Cicely Dr., Parker, CO 80134

III. PURPOSE: Recreational equipment rental, food and beverage service for park patrons, and merchandise sales in the Parks, as specified herein (“**Concession Services**”).

IV. CONCESSIONAIRE’S DUTIES & RESPONSIBILITIES: The primary obligation of Concessionaire is to serve the needs of park patrons. All other customer service activities for which Concessionaire may be engaged shall be subordinate to this primary obligation.

a. Food & Beverage Service: Concessionaire shall have the nonexclusive right to engage in the sale of food and beverages (not including alcohol beverages) in the Parks; however, all such sales must be conducted exclusively within the defined Concession Sites unless otherwise approved in advance and in writing by the Executive Director. The menu of foods and beverages to be served shall be submitted to the Executive Director in writing and shall be subject to the prior approval of the Executive Director. Such service shall be tailored to and appropriate for the typical patrons of the Parks and shall be provided in a customer friendly manner. Only good quality, fresh food and beverage products shall be served, with any cooked foods being prepared by 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 provided to the Executive Director or DPR Representative upon request. All safety and sanitation laws and regulations shall be complied with. No glass food or beverage containers are allowed.

b. Recreational Equipment Rental and Lessons: Concessionaire shall have the exclusive right to rent pedal vehicles (typically limited to bicycles and other non-electric pedal vehicles) and watercraft at the Concession Site(s) for use in the Park(s) and to provide lessons, for free or at an additional reasonable charge to the public, for proper and effective use of such pedal vehicles and watercraft. Recreational equipment rental shall be limited to, unless otherwise authorized in writing by the Executive Director, pedal vehicles suitable for patron usage within a Park and watercraft suitable for patron usage in the designated lakes and ponds within the Park. Concessionaire is prohibited from renting electric bicycles, electric scooters, or any other electric vehicles or electric mobility devices; and is prohibited from renting any motorized, motor powered or engine powered watercraft. Unless changes are authorized in writing by the Executive Director, the type of rental equipment and fixtures to be provided by Concessionaire, at Concessionaire’s sole expense, for use at each of the Concession Sites shall be as listed for each Park in **Exhibit B**, attached to this Concession License and incorporated herein by reference. Concessionaire must be willing to work with the Department of Parks and Recreation with respect to any public process, including public meetings, telephone calls, and written comments, with regard to any ongoing Concession operation or proposed expansion of equipment rental at a given Concession Site and to address neighborhood or patron concerns on the types, quantities, or condition of rental equipment or operation or use of rental equipment in the Parks. All patron and other complaints about equipment or rental procedures received by Concessionaire shall be handled in a prompt and courteous manner. Concessionaire may, at its own expense, install buoys at a safe distance from shore, as approved by the Executive Director, for the purpose of mooring watercraft during all non-operating hours.

Concessionaire is prohibited from renting bicycles during permitted events in either of the parks. Concessionaire may request the current year’s event schedule from the Department of Parks and

Recreation.

Concessionaire will cease use of paddleboards on days designated by the City as high risk for water contact. This would include situations such as: (1) within forty-eight (48) hours following a significant rainfall (more than 0.25 inches in the Montclair storm water basin); (2) elevated bluegreen algae blooms which can result in increased cyanotoxin risks; or (3) other occasions the City deems the public risk is elevated and therefore not conducive to activities such as paddleboarding.

c. Merchandise Sale: Concessionaire may engage in the sale of such merchandise and novelty items at the Concession Site as are appropriate for the needs and interests of park patrons. Said merchandise and novelties will consist of such items as pre-approved in writing by the Executive Director. The sale of merchandise and novelties that compete with sale of similar items at Denver recreation centers will not be allowed. The sale of the following is strictly prohibited: tobacco products; e-cigarettes; marijuana; packaged liquor, wine, or beer; adult materials; fireworks; and food or beverages in glass bottles or glass containers.

d. Safety: All equipment made available for patron usage shall be kept in a good and safe condition, and Concessionaire shall conduct routine maintenance and safety checks on all such equipment. Helmets shall be provided for free to patrons renting pedal vehicles, and life preservers shall be provided for free to patrons renting watercraft. Use of helmets shall be required for all pedal vehicles and life preservers for all watercraft used by children under sixteen (16) years of age. All rental requirements and guidelines shall be prominently posted for rental patrons. Boating regulations adopted by the Director shall be applicable and enforced in accordance with § 39-21 of the Denver Revised Municipal Code (“**D.R.M.C.**”), and bicycle and other human-powered or wheeled devices regulations adopted by the Executive Director shall be applicable and enforced in accordance with § 39-18, D.R.M.C. Concessionaire shall comply with any safety requirements that may reasonably be requested by the Director of Safety at the Department of Parks and Recreation. Concessionaire agrees to have Concession employees trained by Park Rangers in safety and emergency contact procedures. A non-motorized safety boat shall be maintained in operable and ready condition at each Concession Site.

e. Release & Waiver Form: Concessionaire shall require all rental patrons to sign a release and waiver form, approved by the City Attorney’s Office and the City’s Risk Management Office. Parents or guardians are required to sign the release and waiver form for all patrons under the age of sixteen (16) years. Said form shall expressly include a release and waiver with respect to liability claims against the City and County of Denver arising from or related to the use of the rented pedaled vehicles or watercraft.

f. Service Area: All pedaled vehicles and watercraft rentals, along with all food and beverage service and merchandise sales, shall be conducted in the area depicted in **Exhibit A**, as further delineated by the Executive Director under Section I above, and shall be conducted from facilities approved by the Executive Director.

g. Schedule & Hours of Operation: Unless otherwise agreed to in writing by the Executive Director, Concessionaire shall operate the concession from March 1 to October 31 of each year of the term. Concessionaire shall submit to the DPR Representative by no later than January 1 of each year of the term, its schedule for the March to September season. Concession Services are to be provided between 10 a.m. to 10 p.m., seven (7) days a week from Memorial Day weekend through Labor Day weekend and between 11 a.m. and 10 p.m. on weekends and legal holidays

between Labor Day weekend and Memorial Day weekend, and as early as 9 a.m. during the specified periods as the Concessionaire may elect, weather permitting. Weather conditions that could result in temporary closure or suspension of services are hail, heavy rain, strong winds, lightning, accumulating snow fall, freezing sleet, severe cold (under 35 degrees F.), and any similar conditions that makes patron use of the Parks and the Concession impractical.

h. Parking & Storage: Vehicles and trailers shall be parked off site in a lawful manner and not at the Concession Sites other than during short-term pick up and drop off of equipment and materials when the vehicles and trailers shall be located so as not to impede access or use of the Parks or park facilities by park patrons. All storage of equipment and materials used for Concession Services shall be done in an orderly and secure manner in authorized facilities within the Concession Sites. Only those spaces as determined by the DPR Representative may be used for storage of Concessionaire's equipment, materials and supplies. Concessionaire shall maintain storage areas in a clean and safe manner, and shall properly manage and track Concessionaire's inventory. Any such items left in unauthorized areas must be promptly removed. Any additional storage outside of the Concession Sites or approved storage spaces is prohibited. City retains the right to remove, at Concessionaire's expense, any items that are not City property from unauthorized storage areas. Equipment and materials not needed for the performance of Concession Services shall not be kept or stored in the Concession Sites or the Parks. Concessionaire has the option to request additional storage space. Such additional storage space shall require prior written authorization by the Executive Director, and will only be granted if it is demonstrated that the additional storage benefits the concession operation.

i. Signage: All signage used at the Concession Sites shall be subject to the prior written authorization by the Executive Director and subject to the restrictions set forth in Sub-section 3-5 of the Terms and Conditions (*see* Section X below). No additional displays shall be allowed at City Park.

j. Trash Pick-up & Cleaning: Any trash generated by the Concession Services, whether found within or without the Concession Sites, shall be collected and properly disposed of by Concessionaire; all concrete or asphalt surfaces in the Concession Sites and adjoining areas shall be spot swept and/or washed by Concessionaire in order to clean up any spills, leaks, or waste from the Concession Sites; and any graffiti, whether it be stickers, markers, or paint, on Temporary Structures, such as sheds and similar movable structures, shall be removed by Concessionaires; all to be done on a regular and as-needed basis in order to assure that the Concession Sites and nearby areas remain in a clean and tidy condition. All trash shall be placed in barrels or other acceptable and designated trash receptacles and ultimately placed in City-owned dumpsters in the Parks for collection by the City. All cleaning materials and equipment shall be provided by Concessionaire at Concessionaire's sole expense. All tools, equipment, and cleaning and janitorial supplies kept on site for maintaining the Concessions Sites shall be stored in safe and secured location, not accessible by the public, and shall be operated or used in a manner that protects the public, storm drains, and natural areas from any injury or harm. No hazardous or strongly acidic or caustic chemicals shall be used for such cleaning or graffiti removal unless pre-approved by the Executive Director and proper storage, access control and usage standards are provided for.

k. Other Maintenance: Concessionaire shall maintain and repair existing structural elements of the building or other structures at the Concession Site, including roof, roof support, walls, floor substructure, concrete foundations, brick facades, patios, patio covers, fences, storage or maintenance buildings, boat dock maintenance including but not limited to power washing, paint repair, and anti-slip adhesive, and similar or related features ("**Structural Elements**").

Concessionaire’s proposal to improve, expand, or replace the Structural Elements shall require the City’s prior approval.

l. Utilities: Electrical, water, and sanitation service will be paid by the City; however, subject to prior approval by the Executive Director, the installation and connection, including costs, of such service for Concession Services shall be arranged by Concessionaire at Concessionaire’s sole expense. Telephone and internet service, including installation and connection costs, shall also be paid by Concessionaire.

m. Contact: Concessionaire shall provide the DPR Representative with a telephone number(s) at which Concessionaire can be reached at all times. A full-time representative of the Concessionaire responsible for operations must be designated, and emergency contact telephone number(s) provided to the DPR Representative. Whenever Concessionaire is not able to operate the Concession on a particular day, Concessionaire shall contact the DPR Representative.

n. Monitoring & Reporting: When reasonable, Concessionaire will report park activities that may appear dangerous or unsafe or conditions to the DPR Representative or Park Rangers. Concessionaire will notify the DPR Representative of any needed maintenance or repairs within the Parks that are evident to Concessionaire. Concessionaire shall make best efforts to report activity and conditions, but such reporting is not a material requirement of this Concession License.

o. Special Events: Periodically throughout the year, both private and public events will be staged in the Parks. Concessionaire shall cooperate with and support such events. Concessionaire may at its option provide Concession Services during such events. As part of agreements with event promoters, the Executive Director may allow said promoters to sell or distribute food and beverages and to sell merchandise and novelty items at the Parks during the events.

p. Capital Improvements: Any Capital Improvements proposed by Concessionaire and approved by the Executive Director and as specified by City Charter shall be constructed or installed in accordance with Sub-section 2-1 of the Terms and Conditions (*see* Section X below), including payment and performance bonds. Upon installation or construction and acceptance by the Executive Director, the Capital Improvements shall belong to the City but shall be maintained and repaired by Concessionaire as provided in Sub-section 2-4 of the Terms and Conditions (*see* Section X below).

q. Terms & Conditions: Concessionaire shall comply with and satisfy the applicable Terms and Conditions (*see* Section X below).

V.	<u>TERM:</u>	<u>EFFECTIVE DATE:</u>	<u>EXPIRATION DATE:</u>
		January 1, 2023	Three (3) years from Effective
	Date		

a. The Term of the License shall be as set forth above unless revoked in accordance with Section 7 of the Terms and Conditions (Section X below).

b. Commencement of Operations: Concessionaire shall commence its services by no later than March 1 of each year under this Concession License, unless unfavorable weather or conditions of *Force Majeure* (Terms and Conditions, 3-1.c.) prevents commencement.

Concessionaire shall end its services for the applicable year by no later than September 30.

VI. COMPENSATION TO BE PAID TO CITY: In the manner prescribed below, Concessionaire shall pay to the City: 1) a Guaranteed Annual Minimum Payment (“**GAMP**”) of Twenty Thousand Dollars and Zero Cents (\$20,000.00); **AND** 2) Eleven and a half percent (11.5%) of Gross Revenues from the operation of the Concession Services at both Concession Sites (“**Percentage Payment**”) to the extent that the Percentage Payments exceed GAMP. Said Compensation shall be paid in accordance with Section 4 of the Terms and Conditions (*see* Section X below) and as follows:

a. GAMP shall be paid to the City no later than June 1<sup>st</sup> of each year of the Term of this Concession License.

b. The Percentage Payments shall be paid to the City each month on the 20<sup>th</sup> day of the month for Gross Revenues received in the previous month; however, no percentage payment need be paid until the amount of Percentage Payment otherwise due and payable exceeds total GAMP for that year.

c. Concessionaire shall provide on a monthly basis true and complete records and accounts of all Gross Revenue and business transacted, including daily bank deposits and quarterly sales tax statements (“**Monthly Report**”). Monthly Reports shall be provided to the City on the 20<sup>th</sup> of each month for Gross Revenues received in the previous month. Not later than March 31<sup>st</sup> of each and every year during the Term of the Concession License, Concessionaire shall furnish to the City a true and accurate statement of the total of Gross Revenues during the preceding calendar year or any part thereof (unless a different reporting period is specified in the Concession License) that the Concession operated (“**Annual Report**”). The Annual Report shall itemize the authorized deductions and exclusions in computing the amount of such Gross Revenues and shall include a breakdown of Gross Revenues on a month-by-month basis. The Annual Report shall also include the rental rates charged at both Concessions. The Annual Report shall be prepared and certified by an independent certified public accountant who has audited the Gross Revenues in accordance with generally accepted accounting procedures for special reports. The above requirements for the Annual Report may be modified by the Executive Director, in the Executive Director’s discretion, if such modification is in the best interests of the City. All Concession sales and receipts shall be recorded on a cash register or computer system designed to record all sales and receipts. Paper and electronic records of all transactions and bank deposits shall be maintained along with appropriate bookkeeping and accounting practices to document Gross Revenues. All bookkeeping, accounting and reporting shall be maintained and submitted separately as to each Concession Site.

VII. PAYMENT AND PERFORMANCE BOND: The Concession License shall not be effective until Concessionaire delivers to the Executive Director a satisfactory performance bond with an approved corporate surety or an irrevocable letter of credit with an approved financial institution in the amount of Four Thousand Dollars (\$4,000.00). The surety must be otherwise in conformance with the requirements of Sub-Section 5-4.a. of the Terms and Conditions (*see* Section X below). If Concessionaire should propose any capital improvements or major repairs to the concession site which are approved in accordance with Charter requirements, a satisfactory performance and payment bond or letter of credit to assure all contracted work and all financial obligations associated with said work, as specified in Sub-section 2-4.f. and Sub-section 5-4.a. of the Terms and Conditions (*see* Section X below), must be approved by the Executive Director in

writing.

- VIII. INSURANCE COVERAGE: In accordance with Section 5-2 of the Terms and Conditions (*see* Section X below), the following amounts of insurance coverage are required and shall be maintained by Concessionaire during the entire Term of the Concession License:

Commercial General Liability	\$1,000,000.00 per occurrence \$2,000,000.00 general aggregate limit \$1,000,000.00 products-completed operations aggregate limit
Worker's Compensation	\$1,000,000.00 personal & advertising injury \$300,000.00 fire damage legal Colorado statutory requirements
Personal Auto Liability	\$300,000.00/\$500,000.00
Watercraft Liability	\$300,000.00/\$700,000.00 Excess Liability

Concessionaire agrees and covenants that it and any employees or other agents utilizing motorized vehicles for the performance of responsibilities under this Concession License will keep in full force for the duration of this Concession License, Personal Automobile Liability coverage for use of insured personal vehicle for Concession business. The Concessionaire further agrees to secure and deliver to the Executive Director at or before the time of execution of this Concession License and at any other time requested, proof of said insurance coverage in the form of either an authorized Certificate(s) of Insurance or proof of insurance card(s) along with a copy of the policy declaration page(s), stating these minimum limits of liability and coverage. The amounts and types of insurance coverage required above shall be subject to review upon any renewal of this Concession License. If it is determined by Risk Management for the City that changes in the amounts or types of insurance coverage are needed in order to address changed conditions or inflationary conditions, Concessionaire shall be notified, in writing, to make the required changes in insurance coverage within ninety (90) days of notification. Concessionaire shall maintain such personal property insurance coverage as specified in Sub-section 5-3 of the Terms and Conditions (*see* Section X below).

- IX. PREVAILING WAGES: Concessionaire acknowledges and agrees that certain work performed in connection with the Concession License may be subject to the prevailing wage requirements of § 20-76, D.R.M.C. Concessionaire shall include a prevailing wage provision, as prescribed by the City, in each and every contract with a contractor or subcontractor entered for purposes of performing this Concession License. As a result, Concessionaire and its contractor(s) or subcontractor(s) agree to cooperate fully with the Denver Auditor's Office in implementing, administering, and enforcing all applicable requirements of § 20-76, D.R.M.C. Failure to comply with the requirements of this paragraph shall be legal grounds under this Concession License for work to be ordered to cease or to be restricted, as deemed appropriate by the City, until compliance is achieved and any unpaid claims are resolved.
- X. TERMS AND CONDITIONS: The Terms and Conditions hereto attached and hereby incorporated into this Concession License, are applicable to this Concession License. In the event of any conflicts or inconsistencies between the specific provisions of the Concession License set out above and the attached Terms and Conditions, the specific provisions of the Concession License above shall control.

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**CONCESSION LICENSE  
TERMS AND CONDITIONS**

The terms and conditions stated herein, as modified and supplemented by the specific provisions of the Concession License to which these Terms and Conditions are attached, shall constitute the terms and conditions of the Concession License to the extent specified in the Concession License, Section X.

**NOTE: The granting of a Concession License to a Concessionaire allows the use of the Concession Site for the operation of a Concession. The Concession License does not create or recognize, nor shall it be construed to create or recognize, any obligation on the part of the City or the Department of Parks and Recreation to provide the Concessionaire with an operating business or to guarantee the success of the business operated by the Concessionaire on the Concession Site.**

**SECTION 1 -- DEFINITIONS**

As used throughout, the following definitions shall apply:

- 1-1. "Auditor" shall mean the City Auditor or the Auditor's authorized representative.
- 1-2. "City" shall mean the City and County of Denver.
- 1-3. "Compensation" shall mean the amount of money due the City during or following the Term of the Concession License from Concessionaire in accordance with any payment schedule and other requirements in the Concession License and subject to any adjustments in amount provided for in the Concession License.
- 1-4. "Concessionaire" shall mean the party identified in the Concession License and the Concessionaire's successors and permitted assigns, subcontractors, and transferees.
- 1-5. "Concession" shall mean the right to operate sales, service and other concession activities as expressly authorized by the Concession License.
- 1-6. "Concession License" shall mean the Concession License to which these Terms and Conditions are attached and any exhibits and attachments to that Concession License including these Terms and Conditions, and any duly approved amendments to the Concession License.
- 1-7. "Concession Site" or "Premises" shall mean the entire real property and structures covered by the Concession License, including any Improvements and Fixtures.
- 1-8. "Fixture" shall mean any goods, items and other articles, other than Improvements, which are securely affixed to the Concession Site and which ultimately becomes the property of the City because they cannot be removed without obvious damage to the Concession Site.
- 1-9. "Gross Revenues" shall mean the aggregate of fees, receipts, sales, and income of any kind derived directly or indirectly from the operation of the Concession after deducting any discount at the point of sale, but before deducting any costs, expenses, or losses, except applicable excise taxes collected from customers on behalf of government agencies and

tips and gratuities may be deducted. If Concessionaire provides discounts the amount of which the Concessionaire is later reimbursed, then the discount shall not be deducted from Gross Revenues, but shall be included in the reported Gross Revenues.

- 1-10. “Guaranteed Annual Minimum Payment” (“**GAMP**”) shall mean a minimum dollar amount, which the Concessionaire agrees to annually pay, as specified in the Concession License.
- 1-11. “Improvement” shall mean any permanent improvement, other than a Fixture, constructed or installed on or in the Concession Site which becomes the property of the City upon construction or installation.
- 1-12. “Executive Director” (referred to as “Manager” in City Charter and Denver Revised Municipal Code (*see* Executive Order 140)) shall mean the Executive Director of Parks and Recreation of the City or the Executive Director’s designee or authorized representative (“**Representative**”).
- 1-13. “Term” shall mean the time period between and including the effective date and the expiration date provided in the Concession License and any extension thereto as approved by amendment to the Concession License.

## **SECTION 2 – IMPROVEMENTS; OWNERSHIP AND USE; MAINTENANCE AND REPAIR; AND PERSONAL PROPERTY**

### **2-1. CONSTRUCTION OF IMPROVEMENTS BY CONCESSIONAIRE:**

a. Concessionaire may but is not required to, at no cost to the City and subject to the requirements of this Sub-Section 2-1, design, construct or install in or on the Concession Site Improvements, subject to prior review and written approval of the Executive Director.

b. Concessionaire agrees that any proposed permanent improvements to the Concession Site must receive the prior written approval of the Executive Director, including approval of all designs, plans, drawings and specifications, which will not be unreasonably withheld provided the proposed improvement serves the stated purposes of the Concession License. Any construction or installation may also require approval of the Department of Transportation and Infrastructure. Concessionaire further acknowledges and agrees that, except as expressly provided in the Concession License, the Concessionaire shall not be entitled to any reimbursement, reduction in Compensation paid to the City, or any additional extension of the Term or increase in rights or privileges under the Concession License based on any improvements made by Concessionaire to the Concession Site. Upon construction or installation, the additional improvement shall be regarded as an Improvement or Fixture, as appropriate under the Concession License.

c. If any construction or installation work is performed by the Concessionaire on the Concession Site, Concessionaire shall generally be required to obtain and maintain, or require the contractor(s) and subcontractor(s) to obtain and maintain, insurance and payment and performance bonds all as appropriate for the proposed work. Any contracts with contractors or subcontractors

shall require appropriate and sufficient insurance, require appropriate bonds, and shall require contractors and subcontractors to indemnify the City and include the City as additional insureds.

d. In performance of work under this Sub-Section 2-1 (if any), Concessionaire agrees to comply with and be bound by all requirements and conditions of the City's Payment of Prevailing Wages Ordinance, §§ 20-76 *et seq.*, Denver Revised Municipal Code (“**D.R.M.C.**”), including but not limited to the applicable dates of wage rate adjustments, and any determinations made by the City pursuant thereto. Concessionaire shall require every contractor and subcontractor of any tier performing work under this Sub-Section 2-1 to pay all workers, mechanics, and laborers in accordance with the rates and classifications established under the federal Davis-Bacon Act and § 20-76 of the Denver Revised Municipal Code and require that employees be paid weekly. Concessionaire shall require every contractor and subcontractor to fully familiarize themselves with all the terms, conditions, and requirements of said § 20-76, D.R.M.C., which is part of the Concession License.

e. The terms and conditions of proposed work under this Sub-Section 2-1 shall be subject to a separate Assignment Agreement, which will set for all of Concessionaire’s requirements and those requirements applicable to any contractors and subcontractors.

## 2-2. OWNERSHIP AND USE OF CITY REAL PROPERTY:

a. Concessionaire acknowledges and agrees the City shall have or shall be given unencumbered title to all Improvements and Fixtures, other than any items expressly excluded in the Concession License, after construction or installation on the Concession Site. Upon written request by the City and for no additional consideration, Concessionaire shall execute and deliver any instruments necessary and appropriate to convey all title and interest, completely unencumbered, to any Improvements or Fixtures Concessionaire constructs or installs or has constructed or installed on or in the Concession Site. Concessionaire shall be entitled to use such Improvements and Fixtures upon completion of their construction or installation in accordance with the provisions of the Concession License.

b. Concessionaire shall use the Concession Site only for those purposes specified in the Concession License and for no other purposes, unless authorized by the Executive Director in writing. Concessionaire may not sell or offer goods or provide or offer services on Department of Parks and Recreation property outside of the Premises, unless otherwise so permitted in the Concession License or authorized by the Executive Director in writing. Concessionaire shall use the Premises in a careful, safe, and proper manner and shall not use or permit the Premises to be used for any purpose prohibited by the laws of the United States of America, the State of Colorado, the Charter or ordinances of the City and County of Denver, or the written policies and rules and regulations of the Denver Department of Parks and Recreation.

c. The rights or privileges granted by the Concession License to Concessionaire do not create or recognize, nor shall they be construed as creating or recognizing, a property interest in the Concession Site, the Improvements, or the Fixtures.

## 2-3. INSPECTIONS & CONDITION OF CITY REAL PROPERTY:

a. Just prior to or shortly after commencement of the Concession License, Concessionaire agrees to mutually inspect Concession Site with City to document the existing condition of said property. Concessionaire agrees to accept the condition of the property “as is” and “where is” without any improvements or alterations, unless otherwise provided in the Concession License. Concessionaire agrees to make no demands upon the City for any improvements or alterations thereto other than those agreed to in writing.

b. The City reserves a full right of entry on and into the Premises for any purpose necessary, incidental to or in connection with the City’s rights and obligations in the Concession License, or in the exercise of the City’s governmental functions, or for the purpose of making any inspection the City deems necessary for health and safety purposes. The City will make a reasonable effort to notify Concessionaire of any impending inspection and to coordinate such inspection so as to minimize any disruption to the operation of the Concession. The Concessionaire agrees not to take any action to prevent or hinder authorized City employees or agents from entering at any time, with or without advance notice, upon the Premises for inspection purposes. Furthermore, the City shall have the right to enter the property, with advance notice, to show the Premises to parties that may or will be future concessionaires and to allow for such parties to evaluate and plan for future uses of the Premises.

2-4. MAINTENANCE & REPAIR OF FACILITIES:

a. Unless otherwise provided in the Concession License and subject to the terms and conditions of this Sub-Section 2-4 and the availability of appropriated funds, the City will perform maintenance, landscaping and other upkeep of the park and grounds outside of the Concession Site. The City may, at its sole discretion perform improvements or construction in the park and the areas around the Concession Site.

b. The City or its contractors and agents shall have the right to enter upon the Concession Site at all reasonable times to take such actions as may, in the opinion of the City, be deemed necessary or advisable to perform such work as provided in paragraphs a and b of this Sub-Section 2-4. Except for emergency situations, the City will make every reasonable effort to timely notify Concessionaire of any pending work and to coordinate such work so as to minimize any disruption to the Concession. Paragraphs a and b of this Sub-Section 2-4 is not intended, nor shall be construed, to impose upon the City any obligation to maintain, repair, replace, or alter any part of the park at a specific time, in any particular manner, or to the satisfaction of Concessionaire nor to provide a basis for liability for failure to do so.

c. Notwithstanding any other provision in this Sub-Section 2-4 but subject to any modifications specified in the Concession License, and with the understanding that it is responsibility of the Concessionaire to keep and maintain the Concession Site in good physical and working condition, Concessionaire shall, at its own expense, maintain, repair, or replace any of the following damaged, broken, or worn out items: 1) windows and window frames; 2) doors and door frames; 3) handles and locks; 4) cabinets, counters, and bars; 5) carpet, floor tiles, and other flooring; 6) paints and stains; 7) woodwork, wall paneling and tiles, drywall, and plastering; 8) plumbing items, including sinks, toilets, urinals, garbage disposals, dishwashers, and associated above-floor or below-ceiling pipes and drains; 9) light switches, plugs, and lighting; 10) ceiling tiles; 11) all built-in or attached electrical fans, stove or grill venting systems, kitchen hood, and fire suppression system; 12) refrigerators or refrigeration units and freezers or freezing units; 13)

stoves, ovens, cooktops, ranges and grills; 14) drinking fountains; 15) televisions, video games, and computer systems; and 16) items of similar character or use. Replacements shall be of at least equal quality and functionality as the replaced items were when they were new.

d. Upon execution of the Concession License, Concessionaire shall promptly procure, pay for and maintain for the Term of the Concession License, a payment bond or letter of credit which shall guarantee that all those performing labor or furnishing materials, supplies, rental items, tools, and equipment in carrying out these maintenance, repair and replacement obligations shall be paid. The form of the bond or letter of credit must be acceptable to and approved by the Executive Director. This bond or letter of credit shall be in the amount specified in the Concession License and shall comply with the requirements of Section 20-53 of the Denver Revised Municipal Code. If the cost of any work under paragraph e of Sub-Section 2-4 is anticipated to exceed the amount specified in the Concession License, then any supplemental bond, letter of credit or other financial assurance acceptable to the Executive Director must be provided prior to commencement of work.

e. For any work performed under paragraph e of Sub-Section 2-4, Concessionaire shall comply with paragraph d of Sub-Section 2-1 regarding payment of prevailing wages and may be required to provide lien waivers or releases. The City shall have the right of recovery and other remedies should the City have to pay a claim.

f. Notwithstanding any other provision in this Sub-Section 2-4, Concessionaire shall be responsible for any repairs or replacements City owned land, property or facilities damaged or broken by the willful or negligent actions of Concessionaire, its owners, shareholders, members, officers, employees, servants, contractors, invitees, suppliers and agents, including the failure to properly monitor or supervise public use of the Concession Site that result in such damage. Such repairs or replacements shall be performed by Concessionaire within a reasonable time period specified in a written notice from the City and, if necessary, in accordance with Sub-Section 2-1.

g. Concessionaire shall provide, at its own expense, for all cleaning, janitorial services and sanitation for the Concession Site. Concessionaire shall comply, in carrying out these obligations, with paragraph d of Sub-Section 2-1 regarding payment of prevailing wages and any applicable living wage requirements set forth in the Denver Revised Municipal Code.

## 2-5. PERSONAL PROPERTY:

a. Concessionaire shall supply all personal property, including furnishings and equipment, as necessary or prudent to operate the Concession unless such items are readily available for Concessionaire's use at the Concession Site. Concessionaire and the City acknowledge and agree that, unless provided otherwise in the Concession License, all personal property and equipment which 1) are not affixed to the Concession Site so as to constitute Fixtures, and 2) are owned or leased by Concessionaire, shall remain the property of Concessionaire. All personal property, including furnishings and equipment, owned by Concessionaire shall be maintained in good physical and working condition. The City reserves the right to require the removal or replacement, or both, of inoperable or physically deteriorated personal property and equipment owned by Concessionaire.

b. Concessionaire shall keep and maintain all City personal property, including furnishings and equipment, used by Concessionaire at the Concession Site in good physical and working condition, except for ordinary wear and tear resulting from uses allowed under the Concession License.

c. Concessionaire shall not keep, maintain, store, or use any booths, stands, mobile units, furnishings, equipment, vehicles, supplies or materials at the Concession Site not needed for the operation of the Concession or not permitted by the Concession License or that would impair the use or value of the Concession Site or any adjoining City-owned property.

### SECTION 3 – CONCESSION OPERATION

#### 3-1. COMMENCEMENT OF OPERATIONS; FAILURE TO OPERATE:

a. Unless otherwise provided in the Concession License or a later date is approved by the Executive Director in writing and subject to *force majeure*, the provision of goods and services by the Concessionaire shall commence on the effective date of the Concession License. Failure to commence operations when required may result in the revocation of the Concession License as provided in Sub-Section 7-1. All specified Compensation shall be paid by Concessionaire when due, notwithstanding failure to commence operation of the Concession, and if the Compensation is based, in whole or part, on Gross Revenues, Concessionaire covenants and agrees to pay Three Hundred Dollars (\$300.00) a day in lieu of the specified percentage of Gross Revenues then due, in addition to any other Compensation or Guaranteed Annual Minimum Payment due, until Concessionaire commences operations or the Concession License is revoked. This remedy shall be in addition to any other remedies provided in the Concession License or by law to the City.

b. Subject to any exceptions in the Concession License and *force majeure*, Concessionaire is expected to operate the Concession according to the schedule under the Concession License. Failure to operate when required may result in the revocation of the Concession License as provided in Sub-Section 7-1. All specified Compensation shall be paid by Concessionaire when due, notwithstanding the fact that the Concession is not operating, and if the Compensation is based, in whole or part, on Gross Revenues, Concessionaire covenants and agrees to pay Three Hundred Dollars (\$300.00) a day in lieu of the specified percentage of Gross Revenues then due in addition to any other Compensation or Guaranteed Annual Minimum Payment due, until Concessionaire restarts operations or the Concession License is revoked. This remedy shall be in addition to any other remedies provided in the Concession License or by law to the City.

c. *Force majeure* shall mean circumstances where it is impossible, for reasons beyond the control of Concessionaire and for which Concessionaire is not responsible, including strikes, boycotts, labor disputes, unforeseeable natural events or disasters, acts of the public enemy, closure or suspension of operations by regulatory order of a governmental entity, other weather disasters, floods, riots, rebellion, sabotage, or national calamity, for Concessionaire to sell goods or provide services as contemplated in the Concession License.

#### 3-2. BASIC OPERATION REQUIREMENTS:

a. Concessionaire shall provide the food, beverage, goods and other services to the extent and in the manner provided in the Concession License subject to seasonal public demand and within the hours of operation, and any exceptions thereto, provided in the Concession License and subject to any reasonable orders, rules and regulations concerning conduct and management that may be made by the Executive Director.

b. Concessionaire shall maintain the Premises in a neat, clean, safe, and sanitary condition. All trash, debris, junk, waste, or packing boxes or materials shall not be allowed to accumulate or to be stored for more than a week at the Concession Site or any adjoining City-owned property and must be containerized, if possible, and regularly removed from the Premises and disposed of in accordance with law. Spills of any nature shall be promptly cleaned up.

c. Concessionaire shall conduct its operations in an orderly and proper manner so as not to commit or maintain any nuisance at the Concession Site or annoy, disturb or be offensive to others and shall take all reasonable measures to eliminate any unusual, noxious, or objectionable noise, gases, vapors, odors, and vibrations and to maintain the lowest possible sound level in its operations. Concessionaire shall not commit or suffer to be committed any waste or damage upon the Premises or the adjoining City-owned property.

d. Concessionaire agrees that no improvements, changes, alterations, additions, or repairs shall be made to the Concession Site or any use of the Concession Site which might impair the structural soundness of the Concession Site; result in an overload of utility, plumbing, or HVAC systems serving the Concession Site or other City-owned property; or interfere with electric, electronic, or other equipment of the City. In the event of violations hereof, Concessionaire agrees to immediately remedy the violation at Concessionaire's sole expense.

e. Concessionaire shall give personal supervision and direction to the operation of the Concession and, when absent, keep competent personnel in charge. Concessionaire shall staff the Concession with qualified, trained, and courteous staff in sufficient numbers to meet reasonable needs or demands of patrons during hours of operation.

### 3-3. RATES – GOODS & SERVICES:

Concessionaire agrees to provide for the public at the Concession Site food, beverage, goods and other services equivalent in quality and price to that generally furnished to the public at similar places of comparable size and scope in the Denver metropolitan area. All menus and prices shall be subject to the reasonable approval of the Executive Director unless the Executive Director waives, in whole or part, this right of approval. Prices of all merchandise sold shall be posted in a conspicuous place at the Concession Site, including making available menus.

### 3-4. ALCOHOL & DRUGS POLICY; SMOKING POLICY; SALE OF TOBACCO PRODUCTS PROHIBITED

a. Concessionaire and its directors, officers, agents, and employees shall cooperate with the provisions of Executive Order No. 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Refusal to cooperate with implementation of the policy can result in the City barring Concessionaire or any offending directors, officers, agents, and employees from City facilities or participating in City operations. Concessionaire, as an employer,

shall adhere to the federal, state, and local laws regarding alcohol and drug abuse. Concessionaire shall, through its personnel rules and regulations, or otherwise, maintain a policy against the possession, use or sale of illegal drugs or the unauthorized use by employees of alcohol in the workplace in order to promote safe, healthful, and efficient operations.

b. Concessionaire agrees to adopt and enforce a “no smoking” policy in all areas of the Premises. Concessionaire’s written smoking policy shall be in conformance with Executive Order No. 99 and any rules, regulations, or policies adopted by the Executive Director and generally applicable to specified facilities under the auspices of Parks and Recreation. Concessionaire shall comply with D.R.M.C. Section 24-301 *et seq.* concerning Environmental Tobacco Smoke Control.

c. Concessionaire is prohibited from selling or permitting the sale of tobacco products on Premises. “Sale” includes promotional distribution, whether for consideration or not, as well as commercial transactions for consideration.

3-5. ADVERTISING; SIGNAGE:

a. Advertising signs on Premises are prohibited; provided, however, that this prohibition shall not apply to advertising of products sold on Premises or to advertising by sponsors of an authorized event held on or in City-owned facilities. “Advertising” includes the display of commercial and noncommercial promotion of products for sale through any medium whatsoever.

b. All signage (other than directional or labeling signs that are small, discrete, and not lighted) visible to, and intended for viewing by, persons located off-site from the Concession Site shall be subject to prior approval by the Executive Director. Such signage shall conform to any standards established by the Executive Director and to all zoning and other code requirements for signs. Any sign promoting the Concession shall recognize, in a manner acceptable to the Executive Director, the Denver Parks and Recreation Department as owner of the Concession Site.

3-6. ACCESS:

a. Concessionaire shall not do or permit to be done anything which might interfere with the effectiveness or accessibility of any utility, heating, ventilating, or air conditioning systems, or portions thereof, on or in the Concession Site or on adjoining City-owned property.

b. Concessionaire shall not do or permit to be done anything which might interfere with free access and passage in, to, or by the Concession Site or public-accessible areas adjacent thereto, or hinder police, firefighting, or other emergency personnel, or the Department of Parks and Recreation Rangers or other staff, in the discharge of their duties.

d. Concessionaire must consult with Department of Parks and Recreation’s staff for Concessionaire’s vehicular access into and out of either park.

e. Concessionaire shall not place any additional lock of any kind upon any window or interior or exterior door on or in the Concession Site, or make any change in any existing door or window lock or the mechanism thereof, unless a key therefore is maintained on the Concession Site, nor refuse, upon the expiration, revocation, or termination of the Concession License, to



surrender to the City any and all keys to windows and doors in and on the Concession Site, whether said keys were furnished to or otherwise procured by Concessionaire. If any keys furnished to Concessionaire by the City are lost, Concessionaire shall pay the City, on demand, the cost of replacement thereof.

3-7. BACKGROUND CHECKS:

a. Concessionaire shall be responsible for conducting background checks on all employees and other persons that Concessionaire assigns to, or allows to work at, a Concession Site. Concessionaire shall not assign or allow any person to work at a Concession Site if that person has been convicted or released from confinement following conviction within the preceding five years, anywhere in the United States, for one or more of the following:

1. Sexually-related crimes: prostitution, pandering, procuring, and pimping; sexual assault; incest; indecent exposure or public indecency; stalking; harassment; obscenity or the promotion, sale, distribution, or possession of obscene materials; any of the foregoing related to a child or children, including trafficking in child pornography, sexual exploitation of a child, or providing sexually explicit material to a child; and any criminal attempts, solicitations, or conspiracies, including racketeering, involving any of the foregoing; or

2. Drug-related crimes: the unlawful manufacture, transportation, promotion, distribution, dispensing, sale or possession with intent to distribute narcotics, stimulants, depressants, or other controlled substances; the unlawful manufacture, transportation, promotion, distribution, dispensing, or sale of alcohol beverages, including the dispensing or sale to a person under twenty-one years of age or a visibly intoxicated person; and any criminal attempts, solicitations, or conspiracies, including racketeering, involving any of the foregoing; or

3. Any criminal act or violation of local government ordinance or regulation, which criminal act or violation was punished, following conviction, by incarceration and was directly related to the operation, or committed upon the premises, of a concession licensed by the City or any similar business operated elsewhere in the United States; or

4. Any criminal act or violation of local government ordinance or regulation, which resulted in a conviction or judicial determination directly ordering or causing the permanent closure or forfeiture of any business owned or managed by the person and licensed as a concession by the City or any similar business owned or managed by the person elsewhere in the United States.

b. The Executive Director may also consider criminal convictions for lesser crimes that are sexually-related or drug-related but are not listed in paragraph a. of this Sub-Section 3-8 under either of the following circumstances: There have been multiple convictions (3 or more) within the past ten-year period *or* the conviction for a lesser crime appears, based on competent evidence, to have resulted from a plea bargain and that the original charge or indictment was for a criminal act listed in paragraph a. of this Sub-Section 3-8.

c. If such a criminal or ordinance violation conviction or judgment exists and Concessionaire believes there are extenuating circumstances that should be considered, Concessionaire may request, in writing, that the Executive Director waive the restrictions of this

Sub-Section 3-8 in light of policies set forth in C.R.S. Section 24-5-101, as amended, pertaining to the effect of criminal convictions on employment rights.

d. The words “convicted” or “conviction” as used in Sub-Sections 3-8 and 3-9 shall mean a plea of guilty, a plea of nolo contendere, a finding of guilty, a default judgment, or a deferred judgment and sentence.

3-8. CRIMINAL ACTS:

During the Term of the Concession License, a conviction of Concessionaire or any of its owners, shareholders, members, officers or employees for any felony or misdemeanor involving bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, misappropriation, theft, racketeering, extortion, or any offense of a similar nature, in connection with Concessionaire’s business may result in the revocation of the Concession License as provided in Sub-Section 7-1, unless, upon knowledge of Concessionaire, such owner, shareholder, member, officer or employee is promptly terminated or the relation with Concessionaire’s business is severed.

3-9. PATENTS, TRADEMARKS, COPYRIGHT, AND LICENSES:

Concessionaire represents that it is the owner of or fully authorized to use any and all services, processes, equipment, articles, business programs, computer applications, URLs, domain names, web pages, software, marks, logos, names or slogans used by it in its operations under or in any way connected with this Concession. Any and all services, processes, equipment, articles, business programs, computer applications, URLs, domain names, web pages, software, marks, logos, names or slogans owned or authorized for use by Concessionaire prior to the execution of the Concession License shall remain the sole property of Concessionaire. Any computer applications, URLs, domain names, web pages, software, marks, logos, names or slogans created or developed by the Concessionaire with respect to the operation of the Concession or provided or authorized by the City for the Concessionaire’s use shall be promptly returned to the City upon the expiration, revocation or termination of this Concession License and all rights and interests thereto released by Concessionaire. Concessionaire shall save and hold the City, its officers, employees, agents and representatives, free and harmless of and from any loss, liability, expense, suit or claim for damages in connection with any actual or alleged infringement or violation of any patent, trademark, copyright, or license or arising from any alleged or actual unfair competition or other similar claim arising out of the operations of Concessionaire under or in any way connected with this Concession. If the City determines that Concessionaire is in violation of this Section 3-10, the City may seek any remedy available at law or equity or under this Concession License, including suspension or revocation of the Concession License and any remedy consistent with United States patent, trademark, or copyright laws or applicable licensing restrictions.

3-10. CONFIRMATION OF LAWFUL EMPLOYMENT:

a. This Concession License is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the “Certification Ordinance”).

b. Concessionaire certifies that:

1) At the time of its execution of this Concession License, it does not knowingly employ or contract with a worker without authorization who will perform work under this Concession License, nor will it knowingly employ or contract with a worker without authorization to perform work under this Concession License in the future.

2) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., and confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Concession License.

3) It will not enter into a contract with a subconsultant or subcontractor that fails to certify to the Concessionaire that it shall not knowingly employ or contract with a worker without authorization to perform work under this Agreement.

4) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under this Agreement, and it is required to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

5) If it obtains actual knowledge that a subconsultant or subcontractor performing work under this Agreement knowingly employs or contracts with a worker without authorization, it will notify such subconsultant or subcontractor and the City within three (3) days. The Concessionaire shall also terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the worker without authorization, unless during the three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with a worker without authorization.

6) It will comply with a 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., or the City Auditor, under authority of D.R.M.C. 20-90.3.

c. Concessionaire is liable for any violations as provided in the Certification Ordinance. If the Contractor violates any provision of this section or the Certification Ordinance, the City may terminate this Concession License for a breach of the Concession License. If this Concession License is so terminated, the Concessionaire shall be liable for actual and consequential damages to the City. Any termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying the Concessionaire from submitting bids or proposals for future contracts with the City.

### 3-11. ENVIRONMENTAL PROTECTION:

a. Concessionaire shall comply with the applicable federal, state, and local laws, regulations, and standards that are or may become applicable to Concessionaire's activities on the Concession Site.

b. Concessionaire shall be solely responsible for obtaining at its cost and expense any environmental permits required for its operation under this Concession License, independent of any existing permits.

c. Concessionaire shall save, indemnify and hold harmless the City from any damages, costs, expenses, liabilities, fines, or penalties resulting from releases, discharges, emissions, spills, storage, disposal, or any other acts or omissions by Concessionaire, its officers, agents, employees, contractors or sublessees, giving rise to City liability, civil or criminal, or responsibility under federal, state or local environmental laws. This provision shall survive the expiration or revocation of the Concession License, and Concessionaire's obligations hereunder shall apply whenever the City incurs costs or liabilities for Concessionaire's actions of the types described in this Sub-Section 3-12.

d. The City's rights under the Concession License specifically include the right for City officials to inspect, upon reasonable notice, the Concession Site for compliance with environmental, safety, and occupational health laws and regulations, whether or not the City is responsible for enforcing them. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections. The City normally will give Concessionaire twenty-four (24) hours prior notice of its intention to enter the Concession Site for an inspection pursuant to this paragraph unless it determines the entry is required for safety, environmental, or security purposes.

e. The City is not responsible for any removal or containment of asbestos unless such responsibility is so provided in the Concession License. If any improvement plans for the Concession Site require the removal of asbestos, an asbestos removal and disposal plan must be submitted concurrently with the improvement plans. The asbestos removal and disposal plan must identify the proposed disposal site for the asbestos.

f. Concessionaire agrees that the City assumes no liability to Concessionaire should hazardous waste cleanup requirements, whether imposed by law or regulatory agencies, interfere with Concessionaire's use of the Concession Site. Concessionaire shall have no claim on account of any such interference against the City or any officer, agent, employee or contractor thereof.

g. Concessionaire must comply with all federal, state, and local laws, regulations, orders, and other requirements relating to occupational safety and health, the handling and storage of hazardous materials, and the proper generation, handling, accumulation, treatment, storage, disposal, and transportation of hazardous wastes.

h. Concessionaire shall strictly comply with the hazardous waste permit requirements under the Resource Conservation and Recovery Act (RCRA), or its state equivalent and any other applicable laws, rules or regulations. Concessionaire must provide at its own expense such hazardous waste storage facilities which comply with all laws and regulations as it may need for such storage. Any violation of the requirements of this provision shall be deemed a material violation of the Concession License. Notwithstanding any other provisions of this License, neither Concessionaire nor any of its contractors or subcontractors shall store or otherwise allow its hazardous waste to remain on the Concession Site in excess of ninety (90) days without the express written consent of the Executive Director.

i. Concessionaire must maintain and make available to the City all records, inspection logs, and manifests that track the generation, handling, storage, treatment and disposal of hazardous waste, as well as all other records required by applicable laws and requirements. The City reserves the right to inspect the Concession Site, Concessionaire records for compliance with federal, state, and local laws, regulations, orders and other requirements relating to the generation, handling, storage, treatment and disposal of hazardous waste, as well as to the discharge or release of hazardous substances. Violations will be reported by the City to appropriate regulatory agencies, as required by applicable law. Concessionaire will be liable for the payment of any fines and penalties, which may accrue as a result of the actions of Concessionaire.

j. Concessionaire shall comply with all requirements of the Federal Water Pollution Control Act, the National Pollutant Discharge Elimination System (NPDES), and any applicable state or local requirements.

k. Concessionaire shall not conduct any subsurface excavation, digging, drilling or other disturbance of the surface without the prior written approval of the Executive Director. Failure to adhere to federal and state regulations concerning underground storage tanks at the Concession Site, if any, shall be sufficient grounds for revoking the Concession License after appropriate notice. Such revocation shall not release Concessionaire from any liability resulting from a release which occurred while the Concession License was in effect, including any fines, civil penalties or damages. Concessionaire shall be responsible for permanent closure and any remedial action required by the Colorado Department of Health or the Environmental Protection Agency.

l. Concessionaire must notify the Executive Director of Concessionaire's intent to possess, store, or use any licensed or licensable source or byproduct materials, as those terms are defined under the Atomic Energy Act and its implementing regulations; of Concessionaire's intent to possess, use, or store radium; and of Concessionaire's intent to possess or use any equipment producing ionizing radiation and subject to specific licensing requirements or other individual regulation, at least sixty (60) days prior to the entry of such materials or equipment upon the Concession Site. Upon notification, the Executive Director may impose such requirements, including prohibition of possession, use, or storage, as the Executive Director deems necessary to adequately protect health and the human environment. Thereafter, Concessionaire must notify the Executive Director of the presence of all licensed or licensable source or byproduct materials, of the presence of all radium, and of the presence of all equipment producing ionizing radiation and subject to specific licensing requirements or other individual regulation; provided; however, that Concessionaire need not make either of the above notifications to the Executive Director with respect to source and byproduct material which is exempt from regulation under the Atomic Energy Act. Concessionaire shall not, under any circumstances, use, own, possess or allow the presence of special nuclear material on the Concession Site.

m. Concessionaire acknowledges that lead-based paint may be present in and on facilities and equipment within the Concession Site. The City may conduct surveys to determine the existence and extent of any possible lead-based paint. Concessionaire will be notified if the City determines there is lead-based paint in or on the licensed facilities or equipment. Prior to beginning any alteration or modification, Concessionaire or City must test any paint which would be disturbed unless a conclusive determination has been made that lead-based paint is not present. If the paint is lead-based, Concessionaire is required to handle it in accordance with all applicable

federal, state, and local laws and regulations at its own expense. Concessionaire is required to ensure that any lead-based paint left in place is maintained in good condition.

3-12. COMPLIANCE WITH LAW:

a. Concessionaire shall comply with all applicable laws of the United States, the State of Colorado, and the Charter and Ordinances of the City and County of Denver, and all rules and regulations issued pursuant thereto.

b. Unless otherwise provided in the Concession License, a Concession shall be operated in conformance with the Rules and Regulations of the Department of Parks and Recreation, and Concessionaire shall require all employees, servants, contractors, invitees, suppliers, agents, customers and patrons of the Concession to comply with said Rules and Regulations.

**SECTION 4 – COMPENSATION & ACCOUNTING**

4-1. COMPENSATION & OTHER PAYMENTS:

a. Concessionaire covenants and agrees, without offset, deduction or abatement, to pay the City, as consideration for the rights and privileges granted in the Concession License, 1) the Compensation provided for in the Concession License; 2) any Guaranteed Annual Minimum Payment provided for in the Concession License; and 3) any other payments or reimbursements specified in the Concession License. Said obligation to make said specified payments shall commence on the effective date of the Concession License and continue through the Term.

b. All payments shall be made at Parks Finance, at 201 West Colfax Ave., Dept. 602, Denver, Colorado 80202, or at such other office as may hereafter be substituted hereafter by notice to Concessionaire, and made payable to the Denver Manager of Finance.

c. Upon failure to make prescribed payments by the date provided in the Concession License, interest of 15% per annum shall accumulate and be paid for all amounts past due.

4-2. BOOKS OF ACCOUNT AND AUDITING:

a. Bookkeeping System. Concessionaire agrees to establish and maintain a system of bookkeeping satisfactory to the City Auditor. Such system shall be kept in a manner that distinguishes each concession that is operated by Concessionaire from all other concessions operated by Concessionaire.

b. Records Maintenance. Concessionaire shall maintain, in accordance with GAAP, accurate books and records in connection with the business conducted by Concessionaire hereunder. Concessionaire shall retain such books and records for a period in accordance with this Concession License and shall make such books and records available for inspection by representatives of the City, including, without limitation, the City's Auditor and independent auditors hired by the City. Such books and records shall include, without limitation, all sales slips, cash register tapes, stand sheets, sales books, bank books or duplicate deposit slips, and all other evidence of total receipts, Gross Receipts, Direct Operating Expenses, Net Operating Profits, Net

Operating Losses, Minimum Guaranteed Payments, City Commissions, Monthly Reports, Weekly Reports, Annual Reports, and CCC Business Incentive Fund, Marketing Fund, Additional Expenditures, and Reserve Fund balances (collectively, the “Financial Records”).

c. Examination of Records. Any authorized agent of the City, including the City Auditor, his or her representative, or independent auditors hired by the City, has the right to access and the right to examine and/or audit any Financial Records and other pertinent books, documents, papers and records of Concessionaire (together with the Financial Records, the “Records”), involving transactions related to this Concession License until the later of three (3) years after the final payment under this Concession License or expiration of any applicable statute of limitations. Concessionaire shall make its Records available to the City within fourteen (14) calendar days of its receipt of a written request from the City for the same. Concessionaire may satisfy this requirement by either: (i) making the Records available for examination within the Denver metropolitan area; or (ii) paying the City, in full and in advance, travel and related expenses for a City representative to travel to any location outside the Denver metropolitan area for such examination. Upon completing such travel, expenses shall be reconciled, and any difference between the advance payment and the actual expenses shall be paid by or refunded to Concessionaire as appropriate.

d. Audit Deficiencies. If the City determines after an audit for any Contract Year that any payment(s) made to the City were understated or materially misstated in the Annual Report, Concessionaire shall pay the amount of the deficiency plus interest at 2% per month compounded daily computed from the date due until the date paid. If such payments were understated or materially misstated by more than 1%, Concessionaire shall pay to the City the cost of the audit in addition to the deficiency and interest. If the City determines after an audit that the City was overpaid, the City shall have the option to either credit an overpayment against a subsequent amount due or provide a refund to Concessionaire.

e. Inspection of Records. Concessionaire agrees that the City, and any of the City’s agents including the City’s Auditor or an authorized representative of the Auditor, may inspect any document, return, data or report filed pursuant to Chapter 53 of the Denver Revised Municipal Code by Concessionaire 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 the Manager of Finance in connection with any investigation or audit of Concessionaire by the City’s Department of Finance. Concessionaire authorizes and permits the inspection of such documents, data, returns, reports and information by the City and any of its agents, including but not limited to the City’s Auditor or an authorized representative of the Auditor, and waives any claim of confidentiality that it may have in connection with such documents, returns, data, reports and information.

f. Required Onsite Records. Concessionaire shall keep within the Concession Site proper, adequate, and accurate accounting books and records prepared in accordance with a bookkeeping system approved in writing by the City documenting all business and transactions engaged in by Concessionaire pursuant to this Concession License. Such onsite books and records shall include, without limitation, daily receipts and expenses, daily bank deposits, daily sales records, and copies of all business tax returns filed with the State of Colorado and all federal income tax returns.

g. Cash Registers and Inventory Sheets. At each location where cash registers are used, cash register tapes shall be balanced with the inventory to determine the Gross Receipts from that location. At each location where cash registers are not used, the Inventory Method shall be used to determine Gross Receipts. Concession shall retain all cash register receipts and stand inventory sheets in accordance with this Concession License; and these documents are subject to audit by the City in accordance with this Concession License.

## **SECTION 5 – INDEMNIFICATION, INSURANCE, SURETIES AND FINANCIAL OBLIGATIONS**

### 5-1. DEFENSE, INDEMNIFICATION & IMMUNITY:

a. Concessionaire 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 work or activities performed under this Concession License (“Claims”), unless and until such Claims have been specifically determined by the trier of fact to be due to 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 Concessionaire or its employees, agents, contractors or consultants 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, its appointed and elected officials, agents or employees.

b. Concessionaire’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. Concessionaire’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.

c. Concessionaire 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 and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of the City shall be in addition to any other legal remedies available to City and shall not be considered the City’s exclusive remedy.

d. Insurance coverage requirements specified in the Concession License or these Terms and Conditions shall in no way lessen or limit the liability of Concessionaire under the terms of this indemnification obligation. Concessionaire shall obtain, at its own expense, any additional insurance that it deems necessary for the City’s protection.

e. In addition, 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.

f. This defense and indemnification obligation shall survive the expiration, revocation, or termination of the Concession License.



5-2. INSURANCE:

a. General Conditions: Concessionaire agrees to secure, at or before the time of execution of this Concession License, insurance covering all operations, activities, and services provided pursuant to the Concession License in the types and amounts of coverage specified in the Concession License. Concessionaire shall keep the required insurance coverage in force at all times during the Term of the Concession License and for the time period specified in Sub-Section 8-8. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies is canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties as provided in Sub-Section 8-1. Such notice shall reference the City contract number listed on the signature page of this Concession License. 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, Concessionaire shall provide written notice of cancellation or non-renewal as well as any reduction in coverage to the parties as provided in Sub-Section 8-1 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 Concessionaire. Concessionaire shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in the Concession License are the minimum requirements, and these requirements do not lessen or limit the liability of Concessionaire.

b. Proof of Insurance: Concessionaire shall provide a copy of the Concession License, including these insurance requirements, to its insurance agent or broker. Concessionaire certifies that the certificate of insurance provided to the City, preferably an ACORD certificate, shall comply with all insurance requirements of the Concession License. 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 which does not comply with all insurance requirements set forth herein shall not act as a waiver of any of the City's rights or remedies under the Concession License. The City's 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 Automobile Liability, Concessionaire's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

d. Waiver of Subrogation: For all coverages required herein, Concessionaire's insurer shall waive subrogation rights against the City.

e. Contractors and Consultants: All Contractors and Consultants (including independent contractors, subcontractors, sub-consultants, suppliers or other entities providing goods or services required by this Concession License) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of Concessionaire. Concessionaire shall include all such Contractors and Consultants as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such Contractors and Consultants maintain the required coverages. Concessionaire agrees to provide proof of insurance for all such Contractors and Consultants upon request by the City.

f. Workers' Compensation/Employer's Liability Insurance: Unless other

requirements are specified in the Concession License, Concessionaire 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.

g. Commercial General Liability: Unless different coverage amounts are specified in the Concession License, Concessionaire 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, and \$2,000,000 policy aggregate. Aggregate limits must be "per location," if applicable under the Concession License.

h. Business Automobile Liability: Unless different coverage amounts are specified in the Concession License, Concessionaire 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 under the Concession License.

i. Failure to Insure. Failure to obtain, keep, renew, or replace, or pay premiums for, insurance policies required under the Concession License may result in the revocation of the Concession License, as provided in Sub-Section 7-1, upon failure to provide proof that the required insurance policies are in effect and fully paid within fifteen (15) days of notice from the City that such proof is required. The City reserves the right to suspend Concession operations, at Concessionaire's cost, during any time period that the required insurance policies are not available or have not been provided.

### 5-3. PERSONAL PROPERTY INSURANCE:

a. Concessionaire agrees to carry property insurance on an all-risk basis, including flood and earth movement, for the replacement cost of Concessionaire's personal property, including furnishings and equipment, used in the operation of the Concession. Concessionaire hereby expressly waives and releases any claim or cause for right of recovery which Concessionaire may have hereafter against the City for any loss or damage to the Premises or contents therein belonging to either party, caused by fire, windstorm, explosion, and other Acts of God or by third persons. Any and all risks covered by Concessionaire's property insurance shall contain a waiver of subrogation rights against the City.

b. The City may secure and maintain all-risk fire and extended peril property insurance provided on a replacement cost basis for City-owned personal property. Such coverage may be placed on a blanket basis. The City may also insure on a self-funded basis. To the extent that such property insurance is obtained and covers all losses or damages and any losses or damages are not the direct result of the gross negligence or willful or wanton acts of Concessionaire or Concessionaire's officers, employees, contractors or agents, the City waives and releases any subrogation rights which the City may have against Concessionaire for any loss or damage to the affected Premises, or to the contents thereof belonging to either party, caused by a covered cause of loss or damage.

### 5-4. PAYMENT & PERFORMANCE GUARANTEES:

Without limiting or waiving any other obligations or liabilities of Concessionaire under the Concession License, Concessionaire shall provide any bonds or other payment or performance guarantees or surety specified in the Concession License, subject to the following requirements and subject to the review and approval of the Denver City Attorney:

a. Performance Assurances for Operations: Concessionaire shall deliver to the Representative, prior to the execution of the Concession License, a performance bond or a letter of credit, as specified in the Concession License and in a form acceptable to and approved by the Executive Director, to assure performance of the duties and obligations under the Concession License, including payment of Compensation (the "Surety"). Said Surety shall be in the amounts specified in the Concession License. The Surety must be issued from a surety corporation or bank authorized to do business in the State of Colorado. Such Surety shall be payable without condition to the City and shall guarantee to the City full and faithful performance of the Concession License. The Surety shall state that 1) if it is subject to annual renewal or cancellation, that written notice of non-renewal or cancellation must be provided to the Executive Director at least thirty (30) days in advance of non-renewal or cancellation, and any claims the City has against the Surety prior to termination or cancellation shall survive; and 2) the Surety will remain in effect for a ninety (90) day period following the expiration of the Term of the Concession License or the revocation or termination of the Concession License. If a bond or letter of credit is to be cancelled or not renewed during the Term of the Concession License, Concessionaire must provide a satisfactory replacement of the bond or letter of credit prior to the effective date of cancellation or non-renewal.

b. Failure to comply with this Sub-Section 5-4 may result in the revocation of the Concession License under Sub-Section 7-1, upon failure to provide proof that the required sureties are in effect and fully paid within fifteen (15) days of notice from the City that such proof is required. The City reserves the right to suspend Concession operations, at Concessionaire's cost, during any time period that the required sureties are not available or have not been provided.

#### 5-5. TAXES, LICENSES, EMPLOYEE TAXES, INSURANCE & LIENS:

a. Concessionaire shall pay promptly all taxes, excises, and license or permit fees of whatever nature applicable to the Concession, and take out and keep current all licenses or permits, municipal, state or federal, required for the conduct of the concession, and further shall not permit any of said taxes, excises, or license or permit fees to become delinquent and shall pay any fine or penalty should there be a delinquency or violation of law. Upon request, Concessionaire shall provide proof to the City of payment of all taxes, excises, license and permit fees, fines or penalties.

b. Concessionaire also shall not permit any legitimate mechanic's or materialman's or any other lien to become attached to or be foreclosed upon the Concession Site or any Improvements or Fixtures, or any part or parcel thereof, by reason of any work or labor performed or materials furnished by any person, partnership, association of persons, firm, company, or corporation at, in or upon the Concession Site or regarding the Concession herein granted, either pursuant to C.R.S. section 38-26-107, as amended, or by other authority.

c. Upon request, Concessionaire shall provide to the City proof sufficiently demonstrating the prompt and full payment of Social Security taxes, unemployment insurance, and worker's compensation insurance for all officers and employees of Concessionaire.

d. Concessionaire shall pay promptly when due all bills, debts and obligations incurred in connection with the operation of the Concession so as to not permit same to become delinquent and suffer no lien, mortgage, judgment, execution or adjudication in bankruptcy which will in any way impair the rights and title of the City to the Concession Site or under the Concession License.

e. If Concessionaire elects, in good faith, to defend against or legally contest any claims, demands, liens or orders that arise under this Sub-Section 5-5, Concessionaire shall take prompt and sufficient measures to do so, shall at all times protect the interests of the City in the Premises and in this Concession License, shall notify the Executive Director of what measures and other actions Concessionaire is taking in this regard, and, if Concessionaire is not completely successful in its efforts, shall promptly and fully pay any financial obligations as specified by order, judgment, decree or as otherwise provided in this Sub-Section 5-5.

5-6. UTILITIES:

All charges, connection fees, taxes, and excises for public utilities and cable television used or consumed at the Concession Site, including but not limited to gas and electric, telephone, water, and garbage and waste disposal, shall be the sole responsibility of Concessionaire, unless otherwise provided in the Concession License.

**SECTION 6 – ASSIGNMENT; TRANSFER OF CONTROL; ENCUMBRANCES**

6-1. ASSIGNMENT:

Concessionaire covenants and agrees not to assign, subcontract, or otherwise transfer any rights, benefits, obligations, or duties under the Concession License, in whole or in part, without the prior written consent of the City. The Executive Director may require documented evidence that the proposed assignee, subcontractor, sub-concessionaire, or transferee has the skills and financial ability to fully perform the Concession License and may require that the proposed assignee, subcontractor, sub-concessionaire, or transferee unequivocally agree, in a signed document satisfactory to the Executive Director and in compliance with the City Charter, (1) to assume the obligations and duties of Concessionaire under the Concession License; and (2) to be bound by all of the terms, covenants and conditions contained in the Concession License. If the City consents, then any assignment, subcontract, sub-concession, or transfer may be permitted only if Concessionaire pays all amounts due and owing to the City before any assignment, subcontract, sub-concession, or transfer is effective. Concessionaire shall be responsible in all respects for the work assigned, subcontracted, or transferred unless a release is consented to by the City in writing. Every assignment, subcontract, sub-concession, or transfer shall make the Concession License subject to suspension unless and until the City consents in writing thereto and subject to revocation if the City does not consent. The consent of the City shall be evidenced by City Council approval and the signature of the Mayor.

6-2. TRANSFER OF CONTROL:

Any transfer of fifty percent (50%) or more of the outstanding voting stock of Concessionaire or of fifty percent (50%) or more of the equity interest in Concessionaire, including transfer by merger, consolidation, or liquidation, or other change in ownership of Concessionaire,

shall constitute a Transfer of Control by Concessionaire under this Sub-Section 6-2; provided, however, that transfer of such stock or equity interest to an existing shareholder or owner resulting from the death of another shareholder or owner with a 50% or more interest shall not constitute a Transfer of Control under this Sub-Section 6-2. Concessionaire shall promptly notify the Executive Director of any proposed Transfer of Control. The Executive Director may require documented evidence that the transferee has the skills and financial ability to fully perform the Concession License and may require the transferee, in a signed document satisfactory to the Executive Director, (1) to assume the obligations and duties of Concessionaire under the Concession License; and (2) to be bound by all of the terms, covenants and conditions contained in the Concession License. Every Transfer of Control shall make the Concession License subject to suspension unless and until the City consents in writing thereto and subject to revocation if the City does not consent. The consent of the City shall be evidenced by City Council approval and the signature of the Mayor.

6-3. ENCUMBRANCE OF INTERESTS:

Concessionaire shall not, under any circumstances, encumber or hypothecate any rights or interests in the Concession License, the Concession Site, Improvements, Fixtures, or any personal property owned by the City. This prohibition shall not pertain to equipment, furnishings or other personal property owned or leased by Concessionaire.

**SECTION 7 – REVOCATION, CURE, TERMINATION & REMISE OF PREMISES**

7-1. DISCRETIONARY REVOCATION:

a. If any one or more of the following events shall occur, then the Executive Director may, at the Executive Director's option, revoke the Concession License by sending written notice of revocation, by registered or certified mail, return receipt requested, to Concessionaire at the most currently provided address for the Concessionaire, which notice shall be deemed given when mailed:

1. Concessionaire becomes insolvent, or takes the benefit of any present or future insolvency statute, or makes a general assignment for the benefit of creditors, or files a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under this federal bankruptcy laws or under any other law or statute of the United States or any State thereof, or consents to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property; or

2. By order or decree of a court, Concessionaire is adjudged bankrupt or an order is made approving a petition filed by any of its creditors or by any of its stockholders, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or any State thereof; or

3. A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute is filed against Concessionaire and is not dismissed within sixty (60) days after the filing thereof; or

4. By or pursuant to, or under authority of, any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer, a receiver, trustee, or liquidator takes possession or control of all or substantially all of the property of Concessionaire and such possession or control continues in effect for a period of sixty (60) days; or

5. Concessionaire becomes a corporation in dissolution or liquidation; or

6. The interests of or rights of Concessionaire hereunder are transferred to, passed to, or devolve upon, by operation of law or otherwise, any other person, firm, corporation, or other entity, by, in connection with or as a result of any bankruptcy, insolvency, trusteeship, liquidation, or other proceeding or occurrence described in paragraphs a.1, 2, 3, 4, or 5 of this Sub-Section 7-1; or

7. In violation of Sub-Section 3-1, Concessionaire fails to commence Concession operations or discontinues Concession operations for a period of thirty (30) days or more when no exclusions or exceptions under the Concession License are applicable or no time extension or waiver has been granted by the Executive Director; or

8. Concessionaire is in violation of Sub-Section 3-9; or

9. The Concessionaire notifies the City or takes action to abandon or vacate the Concession prior to the expiration of the Term of the Concession License; or

10. There is substantial evidence that it has been or will be impossible for Concessionaire to sell goods or provide services as contemplated in the Concession License for a period of one hundred-eighty (180) days or more due to strikes, boycotts, labor disputes, unforeseen natural events or disasters, acts of the public enemy, closure or suspension of operations by regulatory order of a governmental entity, court orders, other weather disasters, floods, riots, rebellion, sabotage, or national calamity; or

11. Concessionaire fails or refuses to obtain, renew, or maintain insurance coverage or provide proof of insurance as required under Sub-Section 5-2 or causes or is at fault for damage to property or injury to persons that is not covered or not adequately covered by insurance and Concessionaire fails to remedy situation to the Executive Director's reasonable satisfaction; or

12. Concessionaire fails or refuses to comply with or perform any obligations set forth in Section 5 regarding defense and indemnification, insurance, financial assurances, and financial and liability obligations despite notification from the City; or

13. Concessionaire assigns, transfers control or encumbers interests, or attempts to do so, in violation of Section 6; or

14. The Premises or any part or portion thereof is destroyed or substantially damaged as a result of a casualty that renders the Premises wholly or substantially unusable in the opinion of the City. In the alternative, the City may elect to enter a separate agreement with

Concessionaire to use any property insurance proceeds and other funding that the parties, at their individual discretion, elect to make available for the reconstruction or repair of the Premises.

b. If Concessionaire is a privately owned corporation or partnership, and any of the events enumerated in paragraphs a.1, 2, 3, 4, 5 or 6 of this Sub-Section 7-1 hereof occurs with respect to a principal shareholder or owner of Concessionaire, or said shareholder's or owner's estate, and such event adversely affects the operation of the Concession, then upon the occurrence of any such event or at any time thereafter during the continuance thereof, the City may, at its option, revoke the Concession License by sending written notice of revocation, by registered or certified mail, return receipt requested, to Concessionaire at the most currently provided address for the Concessionaire, which notice shall be deemed given when mailed.

#### 7-2. VIOLATION, CURE & REVOCATION:

a. In the event Concessionaire fails to perform or, improperly or incompletely performs, any of its duties or obligations under the Concession License or violates or breaches any term or condition of this Concession License ("Non-Performance") and provided the Non-Performance is not a basis for immediate revocation under the Concession License or discretionary revocation under Sub-Section 7-1 so that the Executive Director has revoked or intends to revoke the Concession License, then the City shall provide Concessionaire with a notice of Non-Performance which shall set forth specifically the Non-Performance. Concessionaire shall have thirty (30) days from the date of receipt of such notice, unless a shorter time period is otherwise provided in the Concession License and except as provided below, within which to correct the Non-Performance. Should Concessionaire cure the Non-Performance within the thirty (30) day period, it shall notify the City in writing of when and how the cure was accomplished and provide any required documentation of said cure. Notwithstanding the foregoing, Concessionaire agrees that it will undertake all good-faith measures to cure the Non-Performance as promptly as commercially practicable, and Concessionaire will not take thirty (30) days to cure the Non-Performance if such can be cured in a shorter period. In the event the Non-Performance is not cured within such thirty (30) day period, the City may, at its option, revoke the Concession License by sending written notice of revocation, by registered or certified mail, return receipt requested, to Concessionaire at the most currently provided address for the Concessionaire, which notice shall be deemed given when mailed. Such revocation notice shall not extend further the cure period afforded to Concessionaire.

b. Notwithstanding the foregoing, if the Non-Performance cannot be cured through the exercise of reasonable diligence within the thirty (30) day period, then such thirty (30) day period may be extended to a time as is reasonable to cure the Non-Performance, provided Concessionaire has proceeded and is continuing to proceed in a diligent and reasonable manner to cure, in the opinion of the Executive Director. Concessionaire shall, if the Non-Performance cannot be cured within the thirty (30) day period through the exercise of reasonable diligence, so advise the City in writing as soon as reasonably possible and include in said writing a detailed listing of what measures that Concessionaire has undertaken to cure the Non-Performance and Concessionaire's best estimate of when and how such Non-Performance will be cured. The City reserves the right to reject any time extension if, in the opinion of the Executive Director, Concessionaire has not proceeded in a diligent and reasonable manner to cure or any further delays in curing the Non-Performance would substantially damage the City's interests under the Concession License. In the alternative, the Executive Director may, as a condition of approving

any time extension for cure, specify, within reason, certain actions Concessionaire must undertake in order to cure or specify a shorter or longer cure period than that indicated in Concessionaire's writing. If a time extension is approved, Concessionaire shall advise the City in writing when and how the cure was accomplished and provide any required documentation of said cure. In the event the Non-Performance is not cured within the specified time extension, the City may, at its option, revoke the Concession License by sending written notice of revocation, by registered or certified mail, return receipt requested, to Concessionaire at the most currently provided address for the Concessionaire, which notice shall be deemed given when mailed.

c. The foregoing cure provisions shall not apply if Concessionaire fails to timely pay any Compensation or any other sums of money due and owing to the City under the Concession License ("Payment Non-Performance"). In lieu thereof, the cure period shall be five (5) days following receipt of notice of such Payment Non-Performance. If full payment is not received within five (5) days, the City may, at its option, revoke the Concession License by sending written notice of revocation, by registered or certified mail, return receipt requested, to Concessionaire at the most currently provided address for the Concessionaire, which notice shall be deemed given when mailed.

d. Concessionaire will be allowed only two (2) notices of Non-Performance in any twelve (12) month period which it may cure within the time specified. The third such notice in any twelve (12) month period shall be final, and all of Concessionaire's rights under the Concession License shall be immediately revoked without any right on the part of Concessionaire to cure such Non-Performance after receiving notice.

e. A failure by the City to take any action with respect to any Non-Performance by Concessionaire shall not in any respect limit, prejudice, diminish, or constitute a waiver of any rights of the City to act with respect to any prior, contemporaneous, or subsequent Non-Performance or with respect to any continuation or repetition of the original Non-Performance. The acceptance by the City of Compensation for any period or periods after Non-Performance shall not constitute a waiver or diminution, nor create any limitation upon any right of the City pursuant to the Concession License to revoke the Concession License. However, if Concessionaire timely and fully cures the Non-Performance after receipt of notice, said Non-Performance shall be deemed resolved and the forgoing non-waiver provisions shall not apply, except as provided in paragraph d. of this Sub-Section 7-2.

7-3. RIGHT OF RE-ENTRY:

The City shall, as an additional remedy, have the right to re-enter the Concession Site and every part thereof upon the effective date of revocation without further notice of any kind, and may regain and resume possession either with or without the institution of summary or any other legal proceedings or otherwise. Such re-entry, or regaining or resumption of possession, however, shall not in any manner affect, alter or diminish any of the obligations of Concessionaire under the Concession License, shall in no event constitute an acceptance of surrender, and shall not affect any other remedies, equitable or legal, available to the City under law.

7-4. TERMINATION:



a. At any time, upon written and mutual consent of the City and Concessionaire, the Concession License may be terminated.

b. For good cause shown by Concessionaire in writing and satisfactory to the Executive Director, the Concession License may be terminated. "Good cause shown" shall be limited to circumstances where it is impossible for Concessionaire to sell goods or provide services as contemplated in the Concession License for a period of sixty (60) days or more for reasons beyond the control of Concessionaire and for which Concessionaire is not responsible, including strikes, boycotts, labor disputes, unforeseen natural events or disasters, acts of the public enemy, closure or suspension of operations by regulatory order of a governmental entity, other weather disasters, floods, riots, rebellion, sabotage, or national calamity, and destruction or significant damage to the Premises not caused by Concessionaire or its employees, agents or contractors.

c. For such other reasons and upon such conditions expressly stated in the Concession License, the Concession License may be terminated.

d. Subject to any adjustments the Executive Director may deem appropriate, all Compensation and other payments due and owing the City and any other financial obligations arising from the Concession shall be paid by Concessionaire as a condition precedent to any termination.

7-5. REMISE OF PREMISES:

At the expiration of the Term of the Concession License or upon revocation or termination of the Concession License:

a. Concessionaire will promptly deliver the Premises and any Improvements and Fixtures to the City in as good condition and state of repair as when received except for ordinary wear and tear or loss or damage caused by an unforeseen natural event or disaster. Delivery shall include the return of all keys and security codes.

b. Subject to any requirements of the Concession License to the contrary, Concessionaire shall promptly remove from said Premises, all personal property and equipment which are not Improvements or Fixtures or not otherwise owned by the City and which are currently owned or leased by Concessionaire, subject however, to any valid lien or claim which the City may have for unpaid Compensation or other amounts owed to the City or any other financial obligations of the Concessionaire arising out of the Concession which remain unpaid. If said removal causes any damage to the Premises, said Concessionaire shall promptly repair the same in a good and workmanlike manner at its own expense. If Concessionaire fails to remove any of Concessionaire's personal property and equipment upon expiration, revocation, or termination of the Concession License, the City may, at its option, keep and retain said items or dispose of the same and retain any proceeds therefrom, and the City shall be entitled to recover from Concessionaire any costs of the City in removing the same and in restoring the Concession Site in excess of the actual proceeds, if any, received by the City from the disposition thereof.

7-6. HOLDING OVER:

a. If Concessionaire holds over after expiration of the Term of the Concession License, Concessionaire's occupancy thereafter shall be deemed a periodic tenancy from month-to-month at a monthly rental equal to twice 1) the amount of Compensation provided in the Concession License which is in effect as of the final month of the Term; or 2) the highest amount of Compensation paid for any equivalent month during the last year of the Term, whichever is higher. Concessionaire shall be subject to all other terms and conditions of the Concession License. Upon 10 days written notice by the City or Concessionaire, such holding over shall be immediately terminated.

b. Nothing herein shall be construed to give Concessionaire the right to hold over, and the City may exercise any remedy at law or in equity to recover possession of the Premises, as well as any damages incurred by City on account of such holding over.

7-7. REMEDIES:

In addition to other specific remedies provided elsewhere in this Concession License:

a. The equitable remedy of specific performance or declaratory judgment may be sought by either the City or Concessionaire due to a material breach or default by the other party under this Concession License for which the equitable remedy would provide substantial relief.

b. Both the City and the Concessionaire expressly acknowledge and agree that any damages sought for a material violation or default of this Concession License are limited to actual damages and reasonable attorney fees, and both parties hereby expressly waive and agree not to waive any rights to consequential, incidental and punitive damages arising from a violation or breach of this Concession License, unless otherwise expressly provided in this Concession License. Actual damages shall include the costs to the City of finding and contracting with a new concessionaire or operator for the Concession.

c. The remedies or other rights of recovery provided in this Concession License shall be cumulative and shall in no way affect any other remedy available to the City under law or equity.

**SECTION 8 -- GENERAL PROVISIONS**

8-1. NOTICES:

a. Any notice from the City to Concessionaire shall be deemed validly and sufficiently rendered or given if the same be in writing and personally delivered, by the Executive Director's representative or a courier, to Concessionaire or sent by registered or certified return receipt mail to Concessionaire. Notice shall be delivered or sent to the Concessionaire's address in the Concession License or the latest address provided by Concessionaire in writing to the Executive Director. The date of mailing or personal delivery of such notice or communication shall be deemed to be the date when the same is received.

b. Any notice from Concessionaire to the City shall be validly and sufficiently rendered or given if the same be in writing and personally delivered, by Concessionaire's representative or a courier, to the Executive Director or sent by registered or certified return receipt

mail addressed to the Executive Director, Department of Parks and Recreation, 201 West Colfax Ave., Dept. 601, Denver, Colorado 80202, or at such other address as the City shall hereafter designate in writing to Concessionaire.

8-2. GOVERNING LAW; VENUE:

a. The Concession License shall be governed by the laws of the State of Colorado, the Charter and Revised Municipal Code of the City and County of Denver. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are expressly incorporated as if fully set out herein, by this reference.

b. Venue for any and all legal action regarding the Concession License shall lie in the District Court in and for the City and County of Denver, State of Colorado.

c. Concessionaire agrees that any and all notices, pleadings and process that cannot be delivered personally to Concessionaire may be made by serving a copy of the same upon the agent registered by Concessionaire with the Colorado Secretary of State at the Secretary's office in Denver, Colorado or serving a copy of the same upon Concessionaire's legal counsel, if such counsel is known to the Executive Director, and by mailing by registered or certified return request mail, an additional copy of the same to Concessionaire at the last address provided by Concessionaire in accordance with Sub-Section 8-1; that said service shall be considered as valid personal service, and judgment may be taken if, within the time prescribed by Colorado law or Rules of Civil Procedure, response is not made.

8-3. PARTIAL INVALIDATION; OTHER AGREEMENTS; AMENDMENTS:

a. If for any reason, any term, covenant, or condition herein is to any extent held or rendered invalid, unenforceable, or illegal, then such term, covenant, or condition shall be deemed to be independent of the remainder of the Concession License and to be severable and divisible therefrom, and its invalidity, unenforceability, or illegality shall not affect, impair, or invalidate the remainder of the Concession License or any part thereof, which remainder shall continue to be applicable and enforceable unless the Executive Director shall determine, in the Executive Director's sole discretion, that the purpose and intent of the Concession License can no longer be fulfilled or satisfied.

b. The City shall not be bound by any statements, agreements or representations, oral or written, express or implied, not contained herein.

c. The Concession License shall not be modified or amended in any manner other than the same manner the Concession License was approved or as expressly provided in the Concession License.

8-4. NON-DISCRIMINATION:

In connection with the performance of work under the Concession License, Concessionaire agrees to comply with all applicable laws concerning non-discrimination against persons with respect to hiring, discharging, promoting or demoting, and with respect to matters of compensation, and shall not discriminate against any person otherwise qualified, solely because of

race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and Concessionaire further agrees to insert the foregoing provision in all contracts, subcontracts, or agreements it may enter with respect to the Concession. Concessionaire further agrees to comply with all applicable laws concerning non-discrimination against persons because of their race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, protective hairstyle, or physical or mental disability in connection with such persons' access to and use of the Concession and the provision of any services at the Concession.

8-5. STATUS AND AUTHORITY OF CONCESSIONAIRE:

a. Independent Contractor. Concessionaire understands and agrees that Concessionaire is an independent contractor. This means, among other things, that Concessionaire and its officers, employees, and agents are not entitled to workers' compensation benefits that the City makes available to its employees and that Concessionaire is obligated to pay, and is personally liable for paying, federal and state income tax on any moneys Concessionaire earns pursuant to this Concession License and any payroll taxes and charges for Concessionaire's officers and employees.

b. Limited Authority. The scope of authority Concessionaire may exercise shall be as expressly allowed under, or necessarily implied in, this Concession License. Concessionaire shall have no authority to avoid, modify, or waive any applicable City ordinances or regulatory requirements enacted or adopted under the City's police or taxing powers.

c. Contracts. This Concession License shall not be construed to grant Concessionaire the right or power to bind, or to impose liability upon, the City through any contracts or agreements Concessionaire may make, unless expressly provided herein or unless the prior, written approval of the Executive Director is obtained and the contract or agreement is in accordance with all applicable City ordinances and regulatory requirements. All contracts or agreements made by Concessionaire shall be in its own name and not in the name of the City, and Concessionaire shall be solely liable for assuring that Concessionaire does not breach or default under such contracts and that all moneys owed to vendors and other contracting parties are timely and fully paid.

8-6. CONFLICT OF INTEREST:

No employee or officer of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and Concessionaire further agrees not to hire or contract for the services of any employee or officer of the City which would be in violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics, or Denver City Charter provisions 1.2.8 through 1.2.12.

8-7. THIRD PARTIES:

The Concession License does not, and shall not be deemed or construed to, confer upon or grant to any third party or parties, except as permitted for assignments or transfers of control under Section 6, any right to claim damages or to bring any suit, action, or other proceeding against the

City or Concessionaire because of any non-compliance with or violation of the Concession License or because of any of the terms, covenants, and conditions contained in the Concession License.

8-8. SURVIVAL OF CERTAIN PROVISIONS:

The City and the Concessionaire understand and agree that all terms and conditions of this Concession License which, by reasonable implication, contemplate continued performance or compliance beyond the expiration or revocation of this Concession License shall survive such expiration or revocation and shall continue to be enforceable as provided herein. Without limiting the generality of the foregoing, the Concessionaire's obligations for the provision of insurance and sureties and to indemnify the City shall survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period. All remedies available to the City under this Concession License shall likewise survive the expiration or revocation of this Concession License.

8-9. APPROPRIATION:

Notwithstanding any provision of this Concession License to the contrary, any financial obligation of the City, if any, under this Concession License is contingent upon all funds necessary for performance under this Concession License being budgeted, appropriated and otherwise made available. It is acknowledged and agreed that this Concession License is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

8-10. SECTION HEADINGS:

The section headings herein are for convenience in reference only and are not intended to define or limit the scope of any provision of the Concession License.

8-11. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:

Concessionaire consents to the use of electronic signatures by the City. The Concession License, 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 Concession License 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 Concession License 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.

8-12. LEGAL AUTHORITY:

Concessionaire assures and guarantees that Concessionaire possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to execute this Concession License. The person or persons signing and executing this Concession License on behalf of Concessionaire, does hereby warrant and guarantee that he/she or they have been fully authorized to execute this Concession License on behalf of Concessionaire and to validly and legally bind Concessionaire to all the terms, performances and provisions herein set forth. The City shall have the right, at its option, to either temporarily suspend or permanently

terminate this Concession License, if there is a dispute as to the legal authority of either Concessionaire or the person(s) signing the Concession License to execute this Concession License.

8-13. CITY EXECUTION OF CONCESSION LICENSE:

This Concession License shall not be or become effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver.

**Contract Control Number:** PARKS-202367187  
**Contractor Name:** TeamFun, LLC

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:

\_\_\_\_\_

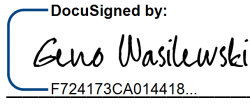
\_\_\_\_\_

By:

\_\_\_\_\_

**Contract Control Number:**  
**Contractor Name:**

PARKS-202367187  
TeamFun, LLC

By:  \_\_\_\_\_  
F724173CA014418...

Name: Geno wasilewski  
(please print)

Title: owner  
(please print)

ATTEST: [if required]

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

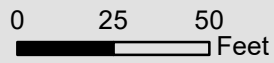
Title: \_\_\_\_\_  
(please print)



# EXHIBIT A



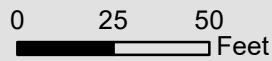
**City Park**  
Wheel Fun Rentals Use Area





# Washington Park

Wheel Fun Rentals Use Area



# 3 Approach

## A. PROPOSED CONCESSION SERVICE LOCATION(S)

This proposal is based on operating recreational rentals at both Washington Park and City Park.

## B. SERVICES - BIKE AND BOAT RENTALS WITH PRICING



**Surrey**  
Hourly: \$28



**Double Surrey**  
Hourly: \$38



**Deuce Coupe**  
Hourly: \$28



**Chopper/  
Quad Sport**  
Hourly: \$14



**Electric Bike**  
Hourly: \$20  
Half Day: \$49  
Full Day: \$75



**Cruiser Bike**  
Hourly: \$12  
Half Day: \$24  
Full Day: \$30



**Kayak**  
Hourly: \$16



**Water Trike**  
Washington Park location only  
Hourly: \$28



**Double Kayak**  
Hourly: \$26



**Stand Up  
Paddleboard**  
Hourly: \$16



**Canoe**  
Hourly: \$26

**Swan Boats**  
(Up to 5 people)

**1 HOUR  
CHILD**  
(12 yrs and under)

**\$6** Per Child

**1 HOUR  
ADULT**

**\$11** Per Adult





Effective Date: April 10th, 2023

# Western Surety Company

## LICENSE AND PERMIT BOND

KNOW ALL PERSONS BY THESE PRESENTS:

Bond No. 72546200

That we, Teamfun, LLC dba Wheel Fun Rentals

of Golden, State of CO, as Principal,  
and WESTERN SURETY COMPANY, a corporation duly licensed to do surety business in the State of  
Colorado, as Surety, are held and firmly bound unto the

City & County of Denver, State of Colorado, as Obligee, in the penal

sum of Four Thousand and 00/100 DOLLARS (\$4,000.00),  
lawful money of the United States, to be paid to the Obligee, for which payment well and truly to be made,  
we bind ourselves and our legal representatives, firmly by these presents.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas, the Principal has been  
licensed Concession

by the Obligee.

NOW THEREFORE, if the Principal shall faithfully perform the duties and in all things comply  
with the laws and ordinances, including all amendments thereto, pertaining to the license or permit  
applied for, then this obligation to be void, otherwise to remain in full force and effect until  
December 31st, 2023, unless renewed by Continuation Certificate.

This bond may be terminated at any time by the Surety upon sending notice in writing, by First Class  
U.S. Mail, to the Obligee and to the Principal at the address last known to the Surety, and at the expiration  
of thirty-five (35) days from the mailing of said notice, this bond shall ipso facto terminate and the Surety  
shall thereupon be relieved from any liability for any acts or omissions of the Principal subsequent to said  
date. Regardless of the number of years this bond shall continue in force, the number of claims made  
against this bond, and the number of premiums which shall be payable or paid, the Surety's total limit of  
liability shall not be cumulative from year to year or period to period, and in no event shall the Surety's total  
liability for all claims exceed the amount set forth above. Any revision of the bond amount shall not be  
cumulative.

Dated this 10th day of April, 2023.

Teamfun, LLC dba Wheel Fun Rentals  
Principal

Principal  
WESTERN SURETY COMPANY

By Paul T. Bruffat  
Paul T. Bruffat, Vice President

# Western Surety Company

## POWER OF ATTORNEY

### KNOW ALL MEN BY THESE PRESENTS:

That WESTERN SURETY COMPANY, a corporation organized and existing under the laws of the State of South Dakota, and authorized and licensed to do business in the States of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming, and the United States of America, does hereby make, constitute and appoint

Paul T. Bruflat of Sioux Falls, State of South Dakota, its regularly elected Vice President, as Attorney-in-Fact, with full power and authority hereby conferred upon him to sign, execute, acknowledge and deliver for and on its behalf as Surety and as its act and deed, the following bond:

One Concession City & County of Denver

bond with bond number 72546200

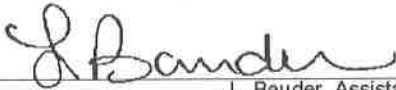
for Teamfun, LLC dba Wheel Fun Rentals as Principal in the penalty amount not to exceed: \$4,000.00

Western Surety Company further certifies that the following is a true and exact copy of Section 7 of the by-laws of Western Surety Company duly adopted and now in force, to-wit:

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys-in-Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.

In Witness Whereof, the said WESTERN SURETY COMPANY has caused these presents to be executed by its Vice President with the corporate seal affixed this 10th day of April, 2023.

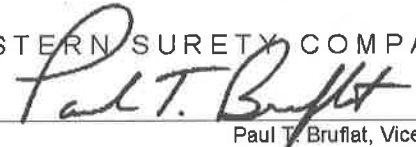
ATTEST



L. Bauder, Assistant Secretary

WESTERN SURETY COMPANY

By



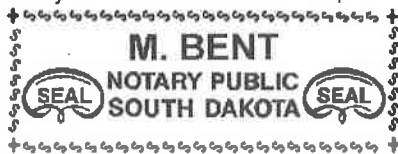
Paul T. Bruflat, Vice President



STATE OF SOUTH DAKOTA }  
COUNTY OF MINNEHAHA } ss

On this 10th day of April, 2023, before me, a Notary Public, personally appeared Paul T. Bruflat and L. Bauder

who, being by me duly sworn, acknowledged that they signed the above Power of Attorney as Vice President and Assistant Secretary, respectively, of the said WESTERN SURETY COMPANY, and acknowledged said instrument to be the voluntary act and deed of said Corporation.



Notary Public

My Commission Expires March 2, 2026

To validate bond authenticity, go to [www.cnasurety.com](http://www.cnasurety.com) > Owner/Obligee Services > Validate Bond Coverage.



ACKNOWLEDGMENT OF SURETY  
(Corporate Officer)

STATE OF SOUTH DAKOTA }  
COUNTY OF MINNEHAHA } ss

On this 10th day of April, 2023, before me, the undersigned officer, personally appeared Paul T. Bruflat, who acknowledged himself to be the aforesaid officer of WESTERN SURETY COMPANY, a corporation, and that he as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



*S. Green*  
Notary Public — South Dakota

My Commission Expires February 12, 2027

ACKNOWLEDGMENT OF PRINCIPAL  
(Individual or Partners)

STATE OF \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ } ss

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me personally appeared \_\_\_\_\_

known to me to be the individual \_\_\_\_\_ described in and who executed the foregoing instrument and acknowledged to me that \_\_\_\_\_ he \_\_\_\_\_ executed the same.

My commission expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public

ACKNOWLEDGMENT OF PRINCIPAL  
(Corporate Officer)

STATE OF \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ } ss

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me personally appeared \_\_\_\_\_

who acknowledged himself/herself to be the \_\_\_\_\_ of \_\_\_\_\_, a corporation, and that he/she as such officer being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself/herself as such officer.

My commission expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public



License or Permit No. \_\_\_\_\_

LICENSE AND PERMIT  
BOND  
As

\_\_\_\_\_ of \_\_\_\_\_

State of \_\_\_\_\_

Name of Applicant

Address

Filed \_\_\_\_\_

Approved this \_\_\_\_\_

day of \_\_\_\_\_

