

**Concession Agreement  
for  
Food and Beverage Concession  
at  
City Venues**

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## CONCESSION AGREEMENT

This Concession Agreement (this “**Agreement**”) is entered into by and between the **City and County of Denver**, a municipal corporation organized and existing by virtue of Article XX of the *Constitution of the State of Colorado*, hereinafter called “**City**,” and **ARAMARK Sports and Entertainment Services, LLC**, a Delaware limited liability company, hereinafter called the “**Concessionaire**”.

### WITNESSETH:

**WHEREAS**, City is the owner of the Red Rocks Amphitheatre and the Denver Coliseum, and the operator of Crossroads Theatre located in the City and County of Denver, Colorado; and

**WHEREAS**, Concessionaire is engaged in the business of providing food, alcoholic and non-alcoholic beverages, and retail service, including concession, banquet and catering services, and consignment services; and

**WHEREAS**, except as specifically provided otherwise in this Agreement, City wishes to grant to Concessionaire the sole and exclusive right to conduct the aforesaid business at the City Venues.

**NOW, THEREFORE**, in consideration of the mutual covenants, terms, conditions, privileges and obligations herein set forth, and intending themselves to be legally bound hereby, City and Concessionaire mutually agree as follows:

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#### 1 Definitions

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Unless otherwise specifically indicated in this Agreement, the following words and phrases shall be defined as follows:

**Accounting Period** - s shall mean two (2) accounting periods of four (4) weeks each and one (1) accounting period of five (5) weeks which occur in each Contract Year quarter. Each Contract Year quarter shall contain three (3) “Accounting Periods” and each Contract Year shall contain twelve (12) Accounting Periods.

**Agreement** – is this Concession Agreement by and between City and Concessionaire.

**AVD - Arts & Venues Denver** - is defined as an agency for the City and County of Denver that manages or oversees the City-owned or managed facilities of the Denver Coliseum, Red Rocks Amphitheatre, Denver Performing Arts Complex, McNichols Building, and Colorado Convention Center. The facilities managed by Arts and Venues Denver may be modified from time to time by either adding or deleting property.

**Backstage Catering** – shall mean City-approved Catering Services (defined below) for performers and crew at the Facilities.

**Catering Services** - shall mean the preparation and serving of food and beverage at a per-plate, per-person charge, where payment for the entire function rests with one individual or company.

**Certification Ordinance** - shall have the meaning provided in Section 35.A of this Agreement.

**City** - refers to the City and County of Denver.

**City-Provided Equipment** - shall have the meaning provided in Section 7.U of this Agreement.

**City Venues** – see definition of Facilities below.

**Concessionaire** – shall mean ARAMARK Sports and Entertainment Services, LLC, a Delaware limited liability company, and its employees, agents, and legal representatives.

**Concession Services** - shall refer to all sales of food and beverage from permanent or portable concession stands, sales of food and beverage in the City Venues before, during, or after events, and sales of food and beverage by roving vendors in the City Venues.

**Contract Year** - is successive periods of twelve months, the first of which commences on November 1, 2017 and extends to and includes October 31, 2018.

**Concessionaire Fee** – shall mean the amount of money paid to the Concessionaire for Services performed at City Venues as provided in Section 4.B.

**Cost of Sales** – shall mean and include all costs and expenses incurred by Concessionaire in the operation of the Services at the Facilities, including, but not limited to, the direct product costs, payroll and personnel costs of Concessionaire's employees assigned to the Facilities (including bonuses, gratuities and the costs of fringe benefits of the type customarily provided by Concessionaire and its affiliates to its employees, workers' compensation costs and payroll taxes, but not including regional or general corporate management personnel), the Concessionaire Fee, allocated insurance costs (including, without limitation, liquor liability insurance), permitting and licensing fees (including, without limitation, liquor licensing fees and any related attorney's fees, provided that such attorney's fees have been approved by the City in accordance with Section 7.F), taxes (including, without limitation, state and local sales taxes), costs of required employee uniforms, costs of utilities and all other costs of supplies and services used or attributable to the provision of the Concession Services, including, but not limited to, costs which are reimbursable pursuant to the terms of this Agreement, costs of alcohol awareness training (e.g. TIPS or TEAM), costs of training of staff and management, costs of annual health examinations required under this Agreement for Concessionaire's employees, costs of installation of cash and product computerized control systems, costs of any maintenance of equipment and smallwares, cleaning costs, maintenance, repair and replacement expenses contemplated by the Agreement, disposal of grease costs, vending operation costs, extermination costs and permitted bad debt expense contemplated by this Agreement. Cost of

Sales shall not include the fees set forth in Sections 4.D and 4.E of this Agreement. For purposes of determining direct product costs, local trade discounts will be credited to direct product costs but cash discounts or discounts not exclusively related to Concessionaire's operations at the Facilities shall not be credited to such direct product costs. Without limitation of the foregoing, in the event Concessionaire's costs increase due to increases in employee health and welfare benefits costs for Concessionaire's employees assigned to the Facilities, including, but not limited to, an increase in required employer contributions to social security or payroll taxes (including retroactive changes to such contributions), such increased costs shall automatically be included in Cost of Sales, such adjustment to be retroactive to the date of such increase. Notwithstanding the foregoing and anything to the contrary contained in this Agreement, Cost of Sales shall not include costs or expenses necessitated as a direct result and to the extent of the negligence or willful misconduct of Concessionaire.

**Daily Report** - shall have the meaning provided in Section 5.B of this Agreement.

**Director** - shall mean the Director of AVD, as from time to time appointed by the Mayor of Denver, and shall include his or her designee(s) and such person or persons as may from time to time be authorized to represent the City with respect to any or all matters pertaining to this Agreement. Except as otherwise required by law or rules of the City, any matter under this Agreement that requires or permits the action or approval of the City may be acted upon or approved by the Director.

**Environmental Laws** - shall have the meaning provided in Section 36 of this Agreement.

**Facilities** - shall mean Red Rocks Amphitheatre (including the Visitor Center and Trading Post), The Denver Coliseum and The Crossroads Theater; provided, however, that in the event that the City's lease of The Crossroads is not renewed, for any reason, Facilities shall mean Red Rocks Amphitheatre (including the Visitor Center and Trading Post) and The Denver Coliseum.

**GAAP** - generally (industry wide) accepted accounting procedures

**Gross Receipts** – shall refer to the total amount of money, administrative (or service) and rental charges received or charged by the Concessionaire, or any agent, employee of the Concessionaire for all sales, cash or credit, whether collected or not, derived at the City Venues as a result of the service rights granted under the Agreement, excluding applicable sales taxes. Gross Receipts shall also include Miscellaneous Gross Receipts and one hundred percent (100%) of any commissions actually paid by Subcontractors and third party vendors to Concessionaire. For the avoidance of doubt, Gross Receipts shall not include any sums retained by Subcontractors or third party vendors and not paid to Concessionaire. Gross Receipts shall also not include (i) gratuities to the extent that those gratuities are paid by Concessionaire directly to its employees or (ii) ordinary and customary credit card fees paid.

**Gross Sales** - shall mean the total revenue (cash and credit) actually received by Concessionaire from the operation of the Services at the Facilities less (i) sales taxes and other direct taxes imposed upon receipts collected from consumers, (ii) tips and gratuities, which are disbursed to employees, (iii) any administrative charge (or service charge) for private events, which is not

intended to be a tip or gratuity for the benefit of service employees, (iv) credit/debit/gift card transaction fees and charges and (v) any sums retained by Subcontractors or third party vendors and not paid to Concessionaire.

**Gross Profit** – shall mean all Gross Receipts less the Cost of Sales.

**HACCP** – Federal guideline program entitled “Hazard Analysis Critical Control Point” dealing with correct holding temperatures and handling methodologies required for various food products.

**Hazardous Materials** - shall have the meaning provided in Section 36 of this Agreement.

**Incentive Compensation** – shall mean the compensation paid to Concessionaire in addition to the Concessionaire Fee as described in Section 4.C.

**Incentive Criteria** – shall have the meaning provided in Section 4.C of this Agreement.

**Inventory Method** – shall mean the system used to count product before and after a sales period to determine the sold units of each product. The sold units, exclusive of any spoilage, are multiplied by the unit pricing to determine the total sales for a Location. Spoilage shall be kept at a minimum and shall include employee meals; without limiting the generality of the foregoing, for each Accounting Period, any cost associated with spoilage that exceeds 0.5 percent of the total food cost for the subject Accounting Period shall be borne solely by Concessionaire and shall not be considered a Cost of Sales.

**Location, Locations, Space or Spaces** - shall mean the area or areas of the City Venues designated by this Agreement and its exhibits as the place or places where the business of Concessionaire may be conducted. Areas may change periodically as directed by the Director.

**Marketing Fund** - shall have the meaning provided in Section 7.X of this Agreement..

**Minimum Guaranteed Payment** – shall mean the minimum amount of money paid to the City by the Concessionaire as called for in this Agreement.

**Miscellaneous Gross Receipts** – shall mean the monies retained by Concessionaire from the provision of automated teller machine (“ATM”) and Vending Equipment services, less any direct costs incurred by Concessionaire.

**Monthly Financial Report** – shall have the meaning provided in Section 5.A of this Agreement.

**Non-performance** - shall have the meaning provided in Section 19.D of this Agreement.

**Novelties** - shall mean any merchandise, programs, souvenir books, CD’s, t-shirts, etc. that are made available for sale at the Facilities.

**Novelties Services** – shall refer to all sales of Novelties in the City Venues before, during, or after events.

**Operating Loss** – shall have the meaning provided in Section 4.I of this Agreement.

**Payment Non-performance** - shall have the meaning provided in Section 19.D of this Agreement.

**Prompt Payment Ordinance** – shall have the meaning provided in Section 4.B of this Agreement.

**Records** - shall have the meaning provided in Section 6.C of this Agreement.

**Release** - shall have the meaning provided in Section 36 of this Agreement.

**Reserve Funds** – shall have the meaning provided in Section 15.G of this Agreement.

**Services** – shall refer collectively to the Concession Services, the Catering Services, and the Novelties Services.

**Sponsors** – shall refer to all entities that have entered into or will be entering into an agreement with City for some consideration in return for sponsorship of their product. Where a Sponsor's product is related to food and beverage, Concessionaire will be obligated to provide that Sponsor's product to the extent permitted by applicable law and provided that such products are available to Concessionaire at equivalent prices, terms, quality and quantity as are generally available to Concessionaire from its major supplier of similar products.

**Statement of Receipts and Expenses** - shall have the meaning provided in Section 6.A of this Agreement.

**Subcontractor** – shall refer to a food, beverage and merchandise purveyor contracted by Concessionaire to provide a unique and specialized product for sale to the general public attending events at the City Venues. Use of any Subcontractors by Concessionaire must be preapproved by Director. Any commissions paid to Concessionaire by its Subcontractors shall be included in Gross Receipts.

**Tenant** – refers to any person or entity that may from time to time enter into any agreement with City for the use of the City Venues for a particular purpose.

**Term** – shall refer to November 1, 2017 to October 31, 2022.

**TIPS, TEAM** – programs related to alcoholic beverage management control systems and certain procedures to be implemented by the Concessionaire when serving guests.

**Vending Equipment** – shall mean all automatic vending machine equipment that serves canned, cartoned, and/or pre-packaged foods in an automated manner.

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## *2 Premises, Uses and Privileges*

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- A. The Concessionaire shall use and occupy the Spaces shown on the drawings, attached hereto as **Exhibit A** and made a part hereof, only for the purpose of conducting and operating, within the City Venues, as an independent contractor and not as an employee of City, the Services described in Section 7, and Concessionaire's associated rights and obligations described in this Agreement, consistent with the terms and conditions as set forth in this Agreement. It is further agreed and understood that Concessionaire shall be permitted to occupy and use other common use areas such as, but not limited to, the concourses and the aisles in the seating areas in connection with the operation of its rights granted hereunder.
- B. Concessionaire shall use and occupy the Spaces described in **Exhibit A** solely for the business and purpose described in Section 2.A and for no other business or purpose whatsoever except as otherwise approved by the Director.
- C. The Director may limit or eliminate those portable concession cart sites identified on **Exhibit A** to accommodate event requirements. The location of any and all portable concession cart sites and storage spaces required by Concessionaire shall be approved by Director; provided, however, that Concessionaire shall acquire no rights to the location of such sites or spaces, it being understood by the parties that the City reserves the right to require Concessionaire to eliminate or relocate such sites and spaces and/or to relocate or remove items and equipment from storage spaces to accommodate event requirements.

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## *3 Term*

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The term of this Agreement shall commence November 1, 2017 and continue through and including October 31, 2020. The term of this Agreement may be extended by the City under the same terms and conditions for up to two (2) additional one (1) year renewal terms by a written amendment to this Agreement.

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## *4 Payments*

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In consideration of the rights and privileges herein granted, Concessionaire and City agree to the following:

- A. **Minimum Guaranteed Payment to City** – Concessionaire shall pay monthly to the City an amount equal to fifty-percent (50%) of the Gross Sales for each Accounting Period. The Minimum Guaranteed Payment shall be paid to the City at the same time Concessionaire provides the City with its Monthly Financial Report for the subject Accounting Period regardless of whether there is a Gross Profit or Operating Loss for the subject Accounting Period. If the Gross Profit for a given Accounting Period, after payment of any accrued Operating Loss, is not sufficient to cover the Minimum Guaranteed Payment for the subject Accounting Period, then Concessionaire shall be responsible for paying the difference (the “**Concessionaire Out-of-Pocket Costs**”) so



that the City receives the full Minimum Guaranteed Payment for the subject Accounting Period. Concessionaire may recoup the Concessionaire Out-of-Pocket Costs over the course of the subject Contract Year whenever Gross Receipts in an Accounting Period exceed the aggregate of Cost of Sales and accrued Operating Loss (i.e., when there remains a Gross Profit after deduction of any accrued Operating Loss). If at the end of a Contract Year Concessionaire has not recouped all of the Concessionaire Out-of-Pocket Costs, Concessionaire shall bear such loss. Concessionaire Out-of-Pocket Costs shall be reported as a separate line item in the Monthly Financial Reports.

- B. Concessionaire Fee** – City shall pay monthly to Concessionaire an amount equal to one and one-half percent (1.5%) of the Gross Sales for each Accounting Period (the “**Concessionaire Fee**”). The Concessionaire Fee shall be paid to Concessionaire upon the City’s receipt of an invoice and the Monthly Financial Report for the subject Accounting Period in accordance with the City’s Prompt Payment Ordinance, §§ 20-107 through 20-118, Denver Revised Municipal Code (D.R.M.C.) (the “**Prompt Payment Ordinance**”). Further, notwithstanding Section 4.I below, the City shall continue to pay Concessionaire the Concessionaire Fee in the event of an Operating Loss.
- C. Incentive Compensation** – City shall pay annually to Concessionaire after each Contract Year compensation in addition to the Concessionaire Fee in an amount equal to up to five percent (5%) of Gross Profit (“**Incentive Compensation**”); provided that Concessionaire shall receive Incentive Compensation only to the extent (i) the City shall have received from the Concessionaire all due and owing Minimum Guaranteed Payments; (ii) the Minimum Guaranteed Payments are not reduced as a result of payment of Incentive Compensation; and (iii) the incentive criteria attached hereto and incorporated herein Exhibit B (the “**Incentive Criteria**”) shall have been satisfied by Concessionaire as demonstrated by the auditable report described in Section 6.A below. Concessionaire shall pay to the City at the time of its delivery of the Statement of Receipts and Expenses an amount equal to the Gross Profit set forth on such Statement. Upon the City’s receipt thereof, City shall pay to Concessionaire the maximum amount of Incentive Compensation payable hereunder calculated in accordance with the Incentive Criteria and paid in accordance with the City’s Prompt Payment Ordinance. City may, in its sole discretion, waive or deduct any Cost of Sales from the calculation of Incentive Compensation.
- D. Reserved.**
- E. Reserved.**
- F. Taxes** – Concessionaire shall collect and promptly disburse all taxes required by federal, state and local authorities for any sales conducted by Concessionaire in the City Venues and shall pay any applicable taxes relating to food service operations, equipment, or inventory (other than with respect to City owned/purchased equipment and smallwares as described in this Agreement).

- G. Miscellaneous Promotional Agreements** - From time to time, in the best interests of the City, the City may direct Concessionaire to adopt promotional or marketing efforts to increase sales of food, beverage or other services. When these marketing/promotional efforts occur, Concessionaire and City shall in writing mutually agree on terms and document the effort with the details including, among other things, a description of the effort and pricing.
- H. Annual Appropriations.** The City’s payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of this Agreement. The City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years, and this Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.
- I. Operating Losses.** City, and not Concessionaire, shall be responsible for all Cost of Sales. Concessionaire will fund, on City’s behalf and to the extent of available Gross Receipts as provided in this Section 4.I, all Cost of Sales. If the Cost of Sales for a given Accounting Period exceed the Gross Receipts for a given Accounting Period (which difference shall be referred to herein as “**Operating Loss**”), the Operating Loss shall be carried forward and reported as a separate line item in the Monthly Financial Report for the next Accounting Period (and for each subsequent Accounting Period that an Operating Loss exists), and City shall not be required to pay Concessionaire for the Operating Loss unless and until an Operating Loss remains at the end of the Contract Year (as provided below). In the event of an Operating Loss during any Accounting Period, Concessionaire shall nonetheless pay to City the Minimum Guaranteed Payment for the subject Accounting Period and City shall nonetheless pay to Concessionaire the Concessionaire Fee for the subject Accounting Period. If at the end of a Contract Year, there exists an Operating Loss, City shall pay Concessionaire the amount of such Operating Loss upon its receipt of an invoice and the Statement of Receipts and Expenses in accordance with the City’s Prompt Payment Ordinance.
- J. Termination Payment.** Upon expiration of the Term or sooner termination of this Agreement, for any reason, City shall, upon receipt of an invoice in a format and with a level of detail and supporting documentation that are reasonably acceptable to City, pay Concessionaire amounts due and payable for Services rendered under this Agreement in accordance with the City’s Prompt Payment Ordinance.

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*5 Reports and Records*

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- A. Monthly Report** - On or before the close of business on the seventh (7th) business days after the end of each Accounting Period during the term of this Agreement, Concessionaire shall deliver to the authorized officer of City, as determined by City, a summary statement of Concessionaire’s operations at the City Venues for the Accounting Period (the “**Monthly Financial Report**”). Notwithstanding the foregoing, Concessionaire acknowledges and understands that City’s reporting processes operate on a calendar month basis; as such, if requested by City,

Concessionaire shall include in the Monthly Financial Report(s) estimates with respect to the days of the subject calendar month that are not included in the subject Accounting Period. The Monthly Financial Report shall be signed by an authorized representative of Concessionaire and shall include, among other things as specified by City: all total receipts, Gross Receipts, Gross Sales, Cost of Sales (including Concessionaire Fee), Gross Profit margin, Minimum Guaranteed Payment and Incentive Compensation. A sample Monthly Financial Statement is attached hereto as **Exhibit C**.

- B. Daily Report** – By noon following the close of each event at a City Venue, Concessionaire shall generate and remit to City, through Director, a report (each, a “**Daily Report**”) indicating any and all total receipts, Gross Receipts, Gross Sales, and per capita event receipts for each sales category shown on the sample Daily Report attached hereto as **Exhibit D**. Reports are only required for days that any Gross Receipts are made. The Daily Reports are informational and should be used to roll up into a consolidated Monthly Financial Report by event for each event during the month.
- C. Acceptance of Payment** - The acceptance by City of any statement by Concessionaire or of any Minimum Guaranteed Payment shall not be deemed a waiver of the right of City to claim any additional payment after a review and inspection of Concessionaire’s books and records.
- D. Cash Registers and Inventory Sheets** - At all locations where cash registers are used, cash register tapes shall be balanced with the inventory to determine the sales and Gross Receipts from that location. In locations where cash registers are not in use, the Inventory Method will be used to determine sales and Gross Receipts. Concessionaire shall retain all cash register receipts and stand inventory sheets in accordance with this Agreement; these documents are subject to audit by City by provisions of this Agreement.

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*6 Books of Account and Auditing*

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- A. Annual Reports** - Not later than forty-five (45) calendar days of the close of each Contract Year during the Term hereof, Concessionaire shall furnish to City a true and accurate (i) audited financial statement of Gross Receipts, Gross Sales, and Cost of Sales in the general form attached hereto as **Exhibit C** (the “**Statement of Receipts and Expenses**”), the Marketing Fund and the Reserve Fund, (ii) audited report of Concessionaire’s compliance with the Incentive Criteria (to the extent applicable based on the requirements set forth in **Exhibit B** herein) and (iii) Statement on Standards for Attestation Engagements No.16, Reporting on Controls Service Organization Controls (“SOC” ) I, Type II and SOC 2 assurance reports. The Statement of Receipts and Expenses shall contain and include (without limitation) a breakdown of Gross Receipts, Gross Sales, Cost of Sales, Minimum Guaranteed Payments, and amounts payable to Concessionaire (including the Incentive Compensation and Concessionaire Fee, as applicable) on a month-by-month basis and shall be prepared and certified by an independent certified public accountant that has audited the same in accordance with

GAAP for special reports. Such statement shall be furnished for every Contract Year in which business was transacted under this Agreement during the whole or any part of the year. The report of Concessionaire's compliance with the Incentive Criteria shall be audited by an independent third party. At City's sole discretion, and at City's sole cost and expense, City may conduct a review of Concessionaire's books and records with respect to the Statement of Receipts and Expenses through City's Auditor or by hiring an independent CPA and the Incentive Criteria report through City's Auditor or an independent third party agreed to by the parties.

- B. Bookkeeping System** - Concessionaire agrees to establish and maintain a system of bookkeeping satisfactory to City Auditor. Such system shall be kept in a manner as to allow each Location of Concessionaire's operations hereunder to be distinguished from all other Locations or operations of Concessionaire.
- C. 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 of three (3) years following the end of the Contract Year to which they pertain and shall make such books and records available for inspection by representatives of City and any of its agents, including City's Auditor. 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, Gross Sales, Cost of Sales, Minimum Guaranteed Payments, Concessionaire Fees, Incentive Compensation, Monthly Financial Statements, Daily Reports, Statements of Gross Receipts and Expenses, and audited reports regarding compliance with the Incentive Criteria (to the extent applicable based on the requirements set forth in Exhibit B herein) (collectively, the "**Records**"). City and any of its agents including City's Auditor, at City's sole cost and expense, shall have the right at all reasonable times to inspect or audit all such Records.
- D. Examination of Books** - Concessionaire upon written request shall make the Records available for examination within the Denver metropolitan area; or, if elected by Concessionaire, Concessionaire shall pay to City in full, in advance, travel and related expenses of a City representative to travel to any location outside the Denver metropolitan area for such examination. Following the travel, if applicable, 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. Such documents shall be available to City representative within fourteen (14) calendar days of the date of the written request. The parties agree that any delay in furnishing such records to City will cause damages to City which the parties agree are liquidated in the amount of Three Hundred and Fifty Dollars (\$350.00) per day for each day the records are unavailable beyond the date established as City's notice.
- E. Audit Deficiencies** - If City determines after an audit for any year that the payments made to the City were understated or materially misstated in the Statement of Receipts and Expenses, Concessionaire shall pay the amount of the deficiency plus interest at the Past Due Interest Rate (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 City the cost of the audit, in addition to the deficiency and interest. If 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. City's right to perform such an audit shall expire three (3) years after Concessionaire's statement for that year has been delivered to City.

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

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*7 Concession Rights and Obligations*

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**A. Exclusive Rights** - Except where stated in this Agreement, Concessionaire shall have exclusive right to provide Concession Services, Novelties Services, and Catering Services within the Facilities, as they presently exist. City shall not permit non-Concessionaire portable concession stands and carts or transient vendors of food and beverage items to be located in City-owned parking lots adjacent to the City Venues on event days. City reserves the right to allow such transient vendors or portable concession stands to be located in such adjacent parking lots on non-event days in the City Venues to serve activities or gatherings held in such parking lots only; provided, however, City shall have such right after first allowing Concessionaire to provide food and beverage services on such non-event days and Concessionaire has declined to do so. Concessionaire may be allowed to have Concession Services, Catering Services, or Novelties Services in the parking lots on event days at the discretion of City. Concessionaire shall coordinate its activities hereunder as they relate to this Agreement with City and Director.

**B. Non-Exclusive Rights** – Director may require and/or Concessionaire may request that Concessionaire, either directly or by subcontract, provide non-exclusive Vending Equipment and ATM services. Vending Equipment and ATM services shall not be used except with the prior written approval of Director. Without limiting the generality of the foregoing, any proposal for Vending Equipment that is submitted for Director's approval shall describe, without limitation: the items to be sold, pricing, type and style of the equipment, and locations. Concessionaire shall be responsible for accounting for receipts and expenses in accordance with Sections 5 and 6 of this Agreement.

### C. Exclusive Rights Exceptions

1. Concessionaire acknowledges that (i) certain agreements have been made in the past at the Facilities, granting rights to certain Tenants such as National Western Stock Show and Ringling Brothers Circus, to sell special products; and (ii) it is common industry practice to permit on a limited basis the sales of particular concession items by a Tenant. Where there is historic precedent at the Facilities or where special sales arrangements would be common and accepted industry practice, the City may permit a Tenant or user of the Facilities a limited exemption from the rights granted Concessionaire herein. In all other cases where a Tenant desires to sell products ("Other Tenants"), exemptions are subject to the approval of Concessionaire and such conditions as Concessionaire may reasonably impose, such as the payment of an outside concession fee (or buyout payment), and such other terms and conditions as would be standard in such agreements. Without otherwise limiting the foregoing, the City agrees to require Other Tenants that are granted rights to sell products at the Facilities, by agreements entered into after Concessionaire and the City have both executed this Agreement, to indemnify and hold harmless Concessionaire with respect to such selling of products to the same extent of the indemnification provided to the City. Notwithstanding the foregoing, (1) Concessionaire shall have no approval authority over the terms of the insurance, indemnification, and hold harmless agreements between the City and the Other Tenants and (2) nothing herein shall affect Concessionaire's obligations to maintain insurance and to indemnify, defend, and hold harmless the City pursuant to the terms of this Agreement (it being understood and agreed by the parties hereto that such obligations of Concessionaire do not include coverage of or responsibility for any acts, omissions or services provided by Other Tenants or third party service providers). The City's obligation to require Other Tenants to indemnify and hold Concessionaire harmless shall apply only to those agreements entered into by the City after Concessionaire and the City have both executed this Agreement. The amount of any outside concession fee (or buyout payment) actually received by Concessionaire shall be included in the Gross Receipts.
2. City and Concessionaire agree that Concessionaire has an exclusive right to provide Catering Services within the City Venues except as follows: When City's Tenant for a special event requests the use of an outside caterer and City agrees; provided, however, that Concessionaire shall sell or serve alcoholic beverages within the City Venues and, if any of Concessionaire's equipment or exclusive area must be used by the outside caterer, the use of such equipment or area shall be negotiated between Concessionaire and the outside caterer, which agreement may include, without limitation, liability insurance and indemnification and hold harmless agreements by the applicable third party service provider, as applicable, in a form acceptable to Concessionaire for the benefit of City and Concessionaire. Concessionaire shall be notified reasonably in advance of any intent to use any of the food service facilities of the City Venues by anyone other than Concessionaire.

- D. Applicable Laws** - Concessionaire shall at all times comply with all applicable laws, rules, regulations and orders of the federal, state and local governments, and also abide by all rules, regulations and directives prescribed by the Director for the operation of the City Venues.
- E. Food Safety** – Concessionaire is solely responsible for complying with all industry standard food safety procedures, including HACCP, and for any health issues arising from the service of food by Concessionaire or any of its employees or agents.
- F. Liquor Law Compliance** - The privilege to sell alcoholic beverages shall be subject to the provision of all laws of the State of Colorado and the City and County of Denver applicable to the sale of liquor, wine and beer. Concessionaire shall be responsible for obtaining all necessary licenses for the sale of such beverages. The fees and costs incurred for such licenses shall be included in the Cost of Sales; provided that Concessionaire shall provide for the Director’s prior written approval an estimate of related attorneys’ fees, which approval shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, the Director’s prior written approval of an attorneys’ cost estimate shall not be required if the circumstances reasonably require the prompt assistance of an attorney, in which event Concessionaire shall make reasonable efforts to promptly contact the Director (including, by telephone or electronic means) to explain the circumstances and, as soon as reasonably practicable thereafter, shall provide for the Director’s approval an estimate of attorneys’ fees, which approval shall not be unreasonably withheld, conditioned or delayed. Liquor sales shall be confined to the areas of the City Venues designated and approved by the licenses held by Concessionaire for the sale of liquor.
- G. Suspension of Liquor License** – In the event that Concessionaire’s liquor licenses(s) is lost or suspended and, as a result, Concessionaire is prevented from selling alcoholic beverages at the applicable Facilities under the terms of this Agreement (a “**Material License Impairment**”), then Concessionaire shall use its best efforts to obtain a new license or reinstatement of its existing license. Further, in such an event, City may engage another entity to operate the alcoholic beverage service at the affected Locations (a “**Replacement Provider**”) and Concessionaire agrees to yield the occupancy of those portions of the Locations that the Director shall determine as necessary for the Replacement Provider to adequately provide alcoholic beverage service at the affected Locations; provided that Concessionaire shall continue to provide the Services in all other respects. In the event the loss or suspension of Concessionaire’s license is the result of the negligence or willful misconduct of Concessionaire, Concessionaire shall pay to City an amount equal to the reasonably anticipated lost Gross Receipts relating to alcohol sales for each event during the occurrence of the Material License Impairment on which Concessionaire would have had an opportunity to sell any alcoholic beverage, which amount shall be reduced by (i) City’s net receipts relating to the services of the Replacement Provider (accounting for the actual costs incurred by the City to obtain the Replacement Provider) and (ii) such other amount as the City may elect in its sole discretion (collectively, the “**Liquidated Damages**”). For avoidance of doubt, the “reasonably anticipated lost Gross Receipts” shall take into account historical events of a similar nature and attendance at the subject Facility on a per capita basis. In the event of

a Material License Impairment, each of City and Concessionaire shall use commercially reasonable efforts to mitigate losses resulting from the same. If a Material License Impairment continues for a period of thirty (30) days or more, or if Concessionaire is finally advised by the applicable licensing authorities that it will not receive a reinstatement of its liquor license or a new liquor license for the affected Facilities, Concessionaire shall have the right (but not the obligation) to terminate this Agreement upon one hundred and eighty (180) days' notice to the City (such notice date being referred to herein as "**Concessionaire's Termination Notice**"). Further, each of the following shall constitute a default of this Agreement and shall provide the City the right to terminate this Agreement upon thirty (30) days prior written notice (such notice date being referred to herein as "**City's Termination Notice**"): (1) the suspension of a liquor license or any other license necessary for the full performance of Concessionaire's obligations hereunder during a Contract Year (i) on three (3) separate occasions or (ii) for a total period in excess of thirty (30) days during the Contract Year, or (2) the loss of any such license. In the event that Concessionaire is liable for payment of Liquidated Damages pursuant to the terms herein, such liability shall in no event exceed Liquidated Damages calculated from the date of the Material License Impairment to the earlier of (y) the date one hundred and eighty (180) subsequent to the date of the Concessionaire's Termination Notice or City's Termination Notice, as applicable, and (z) the scheduled expiration date of the term of this Agreement (i.e. October 31, 2017).

**H. Liquor Sales** - City shall designate the type of activity at which liquor and/or beer and/or wine may be sold. The final decision as to when, where, if and which types of alcoholic beverages may be sold rests within the sole discretion of City to the extent permitted by applicable law. It is agreed and understood that there shall be no adjustment of the Minimum Guaranteed Payment to be paid by Concessionaire should City restrict or prohibit the sale of alcoholic beverages at events, such as, but not limited to, concerts, religious based activities, high school and college events. Notwithstanding the foregoing, in the event that sale of alcoholic beverages is prohibited or restricted at a Facility as a result of a programmatic policy change or regulatory change by the City (including the AVD), and such change in policy or regulation results in a material decrease in alcohol sales from historical precedent, the parties agree to negotiate an equitable adjustment in the Minimum Guaranteed Payment in good faith and in a commercially reasonable manner.

**I. Training and Operations** - Concessionaire shall provide the merchandise and personnel necessary to fully and adequately provide the Services under this Agreement. Concessionaire shall provide the number of points of sale that is adequate for each event and consistent with industry standards when and where possible. On premises management (which shall mean, a minimum of a general manager, concession manager and warehouse manager) and service personnel are required for a smooth and efficient operation while service and food preparation employees shall be available to receive deliveries, properly store same and begin or continue preparation of food and beverage to be sold or served in a timely manner. In addition, supervisory personnel shall be on duty during preparation, serving, sales and clean-up periods to ensure an adequate, pleasant and prompt operation. Concessionaire shall select, employ, train, furnish, and deploy in the optimum number (to match work requirements), in each work classification,



employees who are proficient, productive, and courteous to patrons. Concessionaire shall conduct regularly scheduled training classes for all employees and management throughout the Term. This training schedule and its content shall be approved by the Director in writing and, at a minimum, shall include customer service training, positional skills training, banquet service training, buffet set up, bartending and serving techniques, food and wine service techniques, food handling, and other facility operations. Without limiting the generality of the foregoing, Concessionaire shall provide:

1. Training to employees regarding Title I of the Americans with Disabilities Act of 1990, as amended, as it pertains to providing quality food, beverage and retail services under this Agreement to customers with a disability. Concessionaire shall ensure that all employees are trained in accordance with Concessionaire's corporate standards.
2. An alcohol awareness training program for all alcohol service and monitoring staff sufficient to ensure an understanding of all requirements of serving alcoholic beverages pursuant to applicable laws, rules, regulations, and one or more professional courses in alcohol awareness (i.e. TIPS Training). The alcohol awareness and training program shall be provided to all new alcohol service and monitoring staff during their new employee orientation and to all other alcohol service and monitoring staff at least once per year.

A detailed record of all trainings required of and offered to staff shall be provided to the Director. Upon request from City, Concessionaire shall supply a copy to City of Concessionaire's operating procedures and manual, which include detailed staffing plans for a variety of event activities. Concessionaire shall adjust staffing levels if in the opinion of the Director the staffing levels do not provide adequate service to the general public.

**J. Uniforms and Appearance** – Concessionaire shall ensure that employees maintain a professional appearance while performing the duties associated with this Agreement. Concessionaire shall provide Director-approved uniforms for all staff working during events (except management personnel).

**K. City Approval of Personnel** - Director shall approve Concessionaire's personnel and reserves the right to request and have Concessionaire comply with personnel changes to the extent permitted by applicable law. If at any time, any personnel are unsatisfactory to Director, Concessionaire shall make a change in such personnel acceptable to Director within ten (10) days of written notice from Director. Director must give appropriate reasons for requesting the personnel change that do not discriminate against any individuals based on race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability. Personnel supplied by Concessionaire shall be employees of Concessionaire and shall not at any time or for any purpose be considered employees or agents of the City.

- L. Sales Manager** - Concessionaire shall have available, upon reasonable notice, a qualified representative who shall, upon request of City, meet with City Venues users and prospective City Venues users and assist in explaining and planning food and beverage services as well as the marketing of the City Venues' food service facilities.
- M. Non-Exclusive Backstage Catering** – Backstage Catering is non-exclusive and non-commissionable (i.e. not included in Gross Sales or Gross Receipts) provided that Backstage Catering is provided at cost plus ten percent (10%). Notwithstanding the foregoing to the contrary, except for Backstage Catering events at Red Rocks Amphitheatre, Concessionaire shall exclusively provide alcoholic beverages for Backstage Catering events at cost plus 10%; Concessionaire shall not serve alcohol in, nor include in its liquor license, the backstage area at Red Rocks Amphitheatre. For purposes of clarity, the “cost” includes cost of product and any direct cost associated with the product (including direct labor and delivery costs) and the “plus ten percent (10%)” is based upon the applicable costs and shall be applied as a credit to Cost of Sales herein.
- N. Novelties Negotiation** - City grants to Concessionaire the right to negotiate a split of Novelties receipts with the consignor of each exclusive event, except for those pre-existing events that have historically maintained their own Novelties' rights, and events where it is common industry practice to permit on a limited basis the sales of particular concession items by a Tenant. The Concessionaire will negotiate for the most favorable return and City will support Concessionaire's efforts to secure a favorable split. City will retain the right of final decision if an impasse occurs. Sums received by Concessionaire as a result of such split with the consignor shall be included in Gross Receipts. Concessionaire and City acknowledge and agree certain shows are designed to have booths displaying merchandise for sale similar to a public show at a convention center, which examples include the National Western Stock Show, the March Pow Wow and The Super Sale, and for such shows or events, Concessionaire shall not have rights to sales from the booths at these events, but shall retain rights to sales of merchandise related to the event such as t-shirts and cd's, except when exempted under terms of this Agreement.
- O. Notice of Event Schedule** - City will give Concessionaire advance notice of the nature of scheduled events and such information, as is available, regarding the probable attendance at each event. City will notify Concessionaire of the cancellation of previously scheduled events of which due notice has been given City, but City shall not be liable to Concessionaire for failure to deliver notice of such cancellation. Concessionaire shall be held strictly accountable for furnishing full and adequate service for the full period of time required for any event for which it has received notice.
- P. Product Pricing** - Concessionaire's product offering and pricing shall be pre-approved by the Director during the term of this Agreement. At a minimum, Concessionaire will conduct an annual pricing survey of local and national venues, which survey shall be provided along with a pricing proposal for Director to review and approve. Concessionaire shall submit an initial pricing proposal to Director for review and approval prior to the commencement of this Agreement. Final decisions on all product offering and pricing rest solely with City.

- Q. Wholesale Sales** - Concessionaire shall provide food and beverage services, when reasonably requested and approved in writing by Director, for the City's official business use. Such sales shall be non-commissionable (i.e. not included in Gross Sales or Gross Receipts) provided that such sales are provided at cost plus ten percent (10%). For purposes of clarity, the "cost" includes cost of product and any direct cost associated with the product (including direct labor and delivery costs) and the "plus ten percent (10%)" is based upon the applicable costs and shall be applied as a credit to Cost of Sales herein.
- R. Smallwares** - Smallwares necessary to the efficient operation of the Facilities shall be provided by the City and Concessionaire as set forth in **Exhibit F**.
- S. Additional Services** - City may require Concessionaire to supply, on a non-exclusive basis, housekeeping, box office, or other services at a predetermined rate per hour per employee, subject to Concessionaire's ability to provide such services. Payments by City for such services are not to be included in Gross Receipts, Gross Sales, or Cost of Sales.
- T. Sponsorship and Sampling** - Nothing in this Agreement shall be construed so as to prohibit a Tenant or Sponsor of the Facilities or an event from exhibiting any merchandise or article in connection with the same, or from dispensing free samples of merchandise. Such sampling is subject to the approval of the Director and shall be restricted to two-ounce portions of food items and four-ounce portions of beverages; provided that if alcoholic beverages are being sampled, such sampling shall be coordinated with and conducted by Concessionaire. Any such exhibiting or sampling shall be only with the approval of the Director, who shall use discretion in granting such approval, taking into account Concessionaire's rights and obligations; without limiting the foregoing, the City agrees to require Tenants and Sponsors that are granted rights to sample food and/or beverages at the Facilities, by agreements entered into after Concessionaire and the City have both executed this Agreement, to indemnify and hold harmless Concessionaire with respect to such serving and/or sampling of food and beverages to the same extent of the indemnification provided to the City. The City's obligation to require Tenants and Sponsors to indemnify and hold Concessionaire harmless shall apply only to those agreements entered into by the City after Concessionaire and the City have both executed this Agreement. Notwithstanding the foregoing, (1) Concessionaire shall have no approval authority over the terms of the insurance, indemnification, and hold harmless agreements between the City and the Tenants and Sponsors and (2) nothing herein shall affect Concessionaire's obligations to maintain insurance and to indemnify, defend, and hold harmless the City pursuant to the terms of this Agreement (it being understood and agreed by the parties hereto that such obligations of Concessionaire do not include coverage of or responsibility for any acts, omissions or services provided by Tenants or Sponsors).
- U. City Provided Equipment** - City owns and maintains the basic concession equipment listed in **Exhibit F** of this Agreement and permanently located at the City Venues specified in **Exhibit F**, which equipment (the "**City-Provided Equipment**") City will provide for Concessionaire's use without charge; provided, however, that the City-Provided Equipment shall remain the property of City. Concessionaire shall provide for the maintenance and repair of the City-Provided Equipment as required for the normal

operations of Concessionaire; the cost and expense of such repair and maintenance treated as a Cost of Sales. Concessionaire shall not be responsible for replacing any such City-Provided Equipment unless Concessionaire's negligence or willful misconduct shall have been the cause necessitating such replacement (in such instance, the replacement cost shall not be deemed a Cost of Sales). Similarly, any maintenance and repair costs necessitated by Concessionaire's negligence or willful misconduct shall be at Concessionaire's sole cost and expense and not be deemed a Cost of Sales. The equipment may not be removed, relocated or discarded without written permission of the Director. If Concessionaire desires to locate or install additional equipment for use in the food/service areas of the Facilities, Concessionaire shall obtain the prior written approval of the same from the City.

**V. City's Rights** - City retains and reserves all rights, including advertising and sponsorships, at the Facilities not expressly conferred upon Concessionaire.

**W. Services Description** – The Services to be provided by Concessionaire pursuant to this Section 7 and Concessionaire's associated rights and obligations set forth in this Agreement are further described in **Exhibit G** attached hereto and incorporated herein.

**X. Marketing Fund.** Concessionaire will establish and fund a marketing fund (the "Marketing Fund") at the rate of One Hundred Thousand Dollars (\$100,000.00) per Contract Year. The parties agree that (i) the Marketing Funds shall be utilized pursuant to this Agreement for the purpose of maximizing Gross Sales and (ii) in no event shall any use of Marketing Funds be deemed a Cost of Sales under this Agreement. Upon expiration of the Term or sooner termination of this Agreement, for any reason, Concessionaire shall pay any amounts in the Marketing Fund to the City.

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*8 Inspection and Testing by City*

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**A. Operations Observations** - City shall have the right to observe any transaction or transactions between Concessionaire and the public involving any sales authorized hereunder for the purposes of determining the quality and quantities of food, beverages and facilities offered to the public, the prices charged therefor and the accountability of the Gross Receipts received therefrom. City shall also have the right to make any and all examinations, tests, measurements, weighings, etc. as it may desire of all materials, food and supplies in Concessionaire's possession and to be sold by Concessionaire, in order to determine their quality and quantity.

**B. Facilities Inspections** - City shall have the right at any time and as often as the Director considers necessary to inspect the Locations and places of operation of Concessionaire and to advise Concessionaire of the existence of any conditions which the Director determines to be unsafe, unsanitary or detrimental to the public or the operation of the City Venues. Concessionaire agrees to correct all such conditions promptly after notice.

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*9 Right of Entry Reserved*

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City, through its agents and/or employees, representatives, and contractors, shall have the continual right to enter upon and under all portions of the Locations to inspect the same, to observe the performance of Concessionaire of its obligations under this Agreement, to conduct inspections and/or audits as indicated in Sections 6 and 8 hereof, and to install, remove, adjust, repair, replace or otherwise handle any equipment, utility lines, or other matters in, on, or about the premises, or to do any act or thing which City may be obligated or has the right to do under this Agreement or otherwise. Nothing contained in this Section is intended or shall be construed to limit any other rights of City under this Agreement.

No abatement of any payments by Concessionaire shall be claimed by or allowed to Concessionaire by reason of the exercise of any of the rights set forth in this Section; provided, however, that in the exercise of the foregoing rights, City shall not interfere in Concessionaire's business activities nor shall City assert any nonperformance by Concessionaire of its responsibilities hereunder as a result of the exercise by City of such rights.

Nothing in this Section shall impose or shall be construed to impose upon City any obligations to construct or maintain or make repairs, replacements, alterations, additions, or improvements or shall create any liability for any failure to do so.

City agrees that it will make ordinary inspections and undertake other non-emergency activities only at reasonable times, provided, however, that nothing in this Section shall be construed to limit or diminish City's right of entry at any time in an emergency, as determined by the Director.

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### *10 Ingress and Egress*

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If Concessionaire shall comply with the terms and conditions of this Agreement, then Concessionaire shall have the right of ingress to and egress from the Locations provided for herein through such ways provided by City.

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### *11 Permits and Licenses*

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Concessionaire shall procure any permits and licenses required and pay all charges and fees necessary for the business to be conducted by it hereunder; provided, however, that such charges and fees shall be included as Cost of Sales. Concessionaire shall deliver copies of all such permits or licenses to the Director.

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### *12 Governmental Compliance*

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Concessionaire, its officers, agents, servants, employees, invitees, licensees, and any other persons over which Concessionaire has control or right of control shall comply with all present and future laws, ordinances, orders, directives, rules and regulations of the United States of America, State of Colorado, and the City and County of Denver and their respective agencies, departments, authorities, or commissions of the foregoing, applicable to or affecting directly or indirectly Concessionaire or its operations and activities on or in connection with the premises of the City Venues.

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*13 No Discrimination in Employment*

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In connection with the performance of work under this Agreement, Concessionaire agrees not refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability; and Concessionaire further agrees to insert the foregoing provision in all subcontracts hereunder.

The Concessionaire shall develop a written policy statement to inform all employees, job applicants, service recipients, and applicants for services of the organization's commitment to ensuring equal opportunity. The policy statement shall be signed by the organization's executive officer and be consistent with corporate objectives of Concessionaire and the Director.

Concessionaire shall comply with all employment laws and practices and conduct its operations within the requirements of all federal, state and municipal jurisdictions having authority.

Additionally, Concessionaire agrees to make a reasonable attempt to hire from the greater Denver area.

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*14 Utilities*

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- A. City Supplied Utilities** - City shall furnish, at no cost for consumption, all electric, gas, heat, water, and drainage utilities necessary for the food service operations. Concessionaire shall make best efforts to practice prudent energy management satisfactory to the Director.
- B. Concessionaire Supplied Utilities** - The Concessionaire shall be responsible for providing only such utility lines and electrical service lines as are necessary for the delivery of the Services under this Agreement. Concessionaire is responsible for its telephone lines and service. The cost and expense incurred by Concessionaire under this Section 14.B shall be considered a Cost of Sales.
- C. Utility Maintenance** - Concessionaire shall be responsible for maintaining and repairing all utility lines and utility service equipment within Concessionaire's Locations as it pertains to Concessionaire's Locations; provided, however, that the cost and expense incurred by Concessionaire for the foregoing shall be considered a Cost of Sales, and provided further that City shall be responsible for the cost of maintaining and repairing those utility lines and utility service equipment found within the Locations occupied by Concessionaire to the extent any utility lines and utility service equipment for which City is responsible necessitate such maintenance and repair. For the purposes of this Section, the point at which responsibility shall pass from the City to Concessionaire is the point at which the utility service line enters into the wall of the Location.

- D. City Limited Liability** - Anything herein to the contrary notwithstanding, City shall not be liable or responsible for any failure to furnish utility services, whether occasioned by strike or other work stoppage; federal, state or local government action; breakdown or failure of apparatus, equipment or machinery employed in supplying the said services; any temporary stoppage for the repairs, improvements or enlargement thereof or any act or condition beyond its reasonable control. City shall not be responsible for any goods, products or equipment stored at the City Venues, nor will City be responsible for damage resulting from a power failure, flood, fire, explosion and/or other causes.
- E. Trash Services** - City is responsible for emptying of the trash compactor(s), compost containers, and recycling compactor(s) and removal of trash, compost, and recycling materials from the building provided that Concessionaire must maintain and remove the trash and recycling materials from the Spaces or other areas designated by Director and place the same in locations designated by Director. Concessionaire will comply with all laws and City policies concerning recycling and environmental issues that are in effect during the term of this Agreement.

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*15 Repairs and Maintenance*

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- A. Concessionaire's Obligation** - Concessionaire is responsible for maintaining the Spaces in a clean and presentable condition as specified by Director.
- B. Signage** - Any signage used to display product information and pricing shall be maintained in good and working order. All signage must be preapproved prior to installation and shall not conflict with any sponsorship arrangement entered into by City and shall be expressly used to advertise a product for sale at the Location that the sign is being displayed.
- C. Locations and Equipment** - Concessionaire shall be responsible for keeping the Locations clean, safe, and in good working order and for the routine repair and maintenance of equipment (including City-Provided Equipment) used in the operation of the Services.
- D. Concessionaire's Repairs** - Concessionaire shall, prior to making any routine repairs at the Locations, other than repairs to its own equipment, or emergency repairs, consult with the Director to determine whether City wishes to make the repairs with its own personnel and charge Concessionaire its standard rates for such service including such overhead charges as shall be determined from time to time by the Director. In the event City elects not to make repairs, Concessionaire shall, proceed to do so; provided, however, it will not take any action or refrain from any action which will cause any labor problem which will affect City directly as a result of the action of Concessionaire, its employees, agents or contractors. All work done by Concessionaire, or on its account, shall be of first class quality in both materials and workmanship. All routine repairs and maintenance will be made in conformity with the laws and rules and regulations prescribed from time to time by any Federal, State or municipal authority having jurisdiction over the location of the work.

- E. Repairs** - In the event that Concessionaire refuses or neglects to make the routine repairs and maintenance specified in this Section 15, to the extent Concessionaire is obligated to do so under this Agreement and after receipt of written notice by City to Concessionaire regarding the same, or if City is required to make any repairs necessitated by the negligent acts or omissions of Concessionaire, its employees, agents, servants, or licensees, City shall have the right, but shall not be obligated, to make such repairs on behalf of or for the account of Concessionaire. In the event that City shall make such repairs, such work shall be paid for by Concessionaire upon receipt of a statement therefor in the amount of City's cost plus an amount for overhead as shall be determined from time to time by the Director.
- F. Cost and Expense** – Except as otherwise provided in Section 15.F, the cost and expense incurred by Concessionaire under Sections 15.A, B, and C shall be considered a Cost of Sales except to the extent that any such routine repairs or maintenance are necessitated by the negligence or willful misconduct of Concessionaire in which event such cost and expense shall be borne by Concessionaire and shall not be considered a Cost of Sales. In addition, in the event damage to the Facilities or equipment outside of the Locations occurs as a result of Concessionaire's negligence or willful misconduct in its operations, the cost and expense for such repairs shall be borne by Concessionaire and shall not be considered a Cost of Sales. Notwithstanding the foregoing, the obligation to pay for, and authority to perform, direct, and supervise capital repairs, improvements, and replacements shall remain with the City and the cost and expense for the same will not be considered Cost of Sales.
- G. Repair and Maintenance Fund.** Concessionaire will establish and fund an equipment replacement and enhancement fund (the “**Reserve Fund**”) at the rate of Fifty Thousand Dollars (\$50,000.00) per Contract Year. The parties agree that (i) the Reserve Funds shall be utilized pursuant to this Agreement for the purpose of repairing, maintaining and replacing equipment (including City-Provided Equipment) with the mutual approval of the City and the Concessionaire and (ii) in no event shall any use of Reserve Funds be deemed a Cost of Sales under this Agreement. Upon expiration of the Term or sooner termination of this Agreement, for any reason, Concessionaire shall pay any amounts in the Reserve Fund to the City.

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*16 Alterations and Repairs by Concessionaire*

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- A. Conditions of Alterations and Repairs-** Concessionaire may alter, modify, or make non-routine repairs to or installations at the Locations or install any fixtures therein, including signage and graphics, only with the prior written permission of the Director. In the event Concessionaire is required or permitted by the Director to make alterations, non-routine repairs, modifications, or installations at or to the Locations, such work shall be built or made strictly in accordance with the following terms and conditions, and no such work or contracts or subcontracts for the same shall be entered until Concessionaire has established to the Director's reasonable satisfaction that the following terms and conditions have been fully and appropriately satisfied.



1. Before the commencement of such work, (i) conceptual/schematic, preliminary and final detailed plans (which shall include samples of colors and materials), and specifications shall be filed with and approved by the Director and all governmental departments or authorities having jurisdiction or design review thereover, (ii) all such work shall be done subject to and in accordance with the requirements of law and applicable regulations of all such governmental departments and authorities and, when required, each affected public utility company, and (iii) all work shall be fully coordinated with scheduled City Venues' events and with the construction, remodeling, repair and other work being performed by others at the City Venues.
2. Before the commencement of such work, Concessionaire shall obtain, and provide to the City Attorney for approval, payment and performance bonds to the extent required by and in accordance with the laws of the State of Colorado, the City Charter and ordinances of the City and County of Denver.
3. Concessionaire shall comply with, and agrees to be bound by, all requirements, conditions and City determinations regarding the Payment of Prevailing Wages Ordinance, Sections 20-76 through 20-79, D.R.M.C. including, but not limited to, the requirement that every covered worker working on a City owned or leased building or on City-owned land shall be paid no less than the prevailing wages and fringe benefits in effect on the date the bid or request for proposal was advertised. In the event a request for bids, or a request for proposal, was not advertised, Concessionaire shall pay every covered worker no less than the prevailing wages and fringe benefits in effect on the date funds for the contract were encumbered.

Date bid or request for qualifications/proposals was advertised July 31, 2017.

Prevailing wage and fringe rates will adjust on, and only on, the anniversary of the date this Agreement was fully executed. Unless expressly provided for in this Agreement, Concessionaire will receive no additional compensation for increases in prevailing wages or fringe benefits.

Concessionaire shall provide the Auditor with a list of all subcontractors providing any services under the contract.

Concessionaire shall provide the Auditor with electronically-certified payroll records for all covered workers employed under the contract.

Concessionaire shall prominently post at the work site the current prevailing wage and fringe benefit rates. The posting must inform workers that any complaints regarding the payment of prevailing wages or fringe benefits may be submitted to the Denver Auditor by calling 720-913-5000 or emailing [auditor@denvergov.org](mailto:auditor@denvergov.org).

If Contractor fails to pay workers as required by the Prevailing Wage Ordinance, Concessionaire will not be paid until documentation of payment satisfactory to the Auditor has been provided. The City may, by written notice, suspend or terminate work if Contractor fails to pay required wages and fringe benefits.

4. Concessionaire shall obtain insurance as required by the City's Office of Risk Management, and provide evidence thereof to the City Attorney, against all liabilities and claims potentially arising out of or related to the work contemplated by this Section 16. The City's Risk Management Office shall be notified of all such work prior to commencement of the work and, upon receipt of notice thereof, will require appropriate insurance of the Concessionaire and/or Concessionaire's subcontractors. Insurance requirements may include, without limitation, Builders' Risk and an Installation Floater covering the property and equipment, with the City and County of Denver listed as an Additional Insured, and professional insurance covering all engineering and architectural work. Per Section 18.B.1, all subcontractors and subconsultants are required to procure and maintain the same coverages required of the Concessionaire, as applicable to the scope of work. All coverages related to the subject work shall be kept in full force at all times during the work, warranty period, and for eight (8) years after termination of this Agreement. Evidence of coverage must be submitted to the City Attorney before commencement of such work. Neither the obligation to obtain such insurance nor the obtaining of such insurance shall relieve or lessen Concessionaire's indemnification of City, except to the extent of payment under policies of such insurance.
5. Such work shall be performed in compliance with the provisions for small business enterprise, equal employment opportunity, and minority and women business enterprise participation that are contained in sections 28-31 through 28-90, DRMC, as the same may be amended or recodified from time to time.
6. Such work shall be performed in a first-class workmanlike manner and in accordance with the plans and specifications approved for the same and by contractors satisfactory to the Director. Concessionaire shall redo or replace, at its sole cost and expense, prior to or after completion of such work, any work as determined by the Director which is not done in accordance with such plans and specifications as approved by the Director.
7. Concessionaire shall, at its sole cost and expense, submit to the Director as soon as practicable following final completion of such work as described hereinabove, the following in separate submissions for each Location and for each category of investment: (i) written notice of completion indicating the effective date of completion of said work; (ii) an itemized statement of the costs incurred by Concessionaire for such work with invoices attached and showing a breakdown of costs in fixed or movable improvements and/or equipment; (iii) one set of as built plans showing the improvements as constructed; and; (iv) a schedule of equipment listing serial numbers and location of each item.

8. Unless otherwise approved in writing by the Director, no fixtures, equipment or other personal property shall be purchased, leased, hired under any purchase agreement, bailment lease, conditional sale or other agreement unless such lease, conditional sale or other agreement provides for a waiver of exemption of distraint or other proceeding which may be available to City against such fixtures, equipment, or other personal property.
9. The risk of loss or damage to all such required or permitted repairs, alterations, modifications or installations prior to completion thereof shall be upon Concessionaire and Concessionaire shall, at its own cost and expense, replace and repair any and all such damage in accordance with the provisions of this Section

Notwithstanding anything to the contrary contained in this Section 16, Concessionaire may not undertake the construction, reconstruction, or remodeling of general public improvements. Furthermore, City shall retain the discretion to determine whether and to what level to fund the work contemplated by this Section 16.

- B. Concessionaire's Property** - All moveable equipment and furnishings purchased by Concessionaire shall remain the property of Concessionaire.
- C. Lien Waivers** - Concessionaire shall cause each contractor with whom it contracts for construction of fixed improvements to execute and file with the Director, a waiver of the right to file a mechanics' lien which shall be effective against claims by contractor and all subcontractors, materialsmen and workmen arising out of any work done by Concessionaire or by Concessionaire's contractors. Concessionaire will indemnify, hold harmless and defend City from any and all claims, liens or charges of any nature whatsoever relating to defects in the work done by Concessionaire or its contractors.
- D. Landlord's Lien** - It is understood and agreed that, notwithstanding any other provisions of this Agreement, City shall at all times have the right to assert a landlord's lien on any and all property of Concessionaire or any other person or entity, in or around the Facilities.
- E. Cost and Expenses.** In the event Concessionaire is required or permitted by the Director to alter, modify, or make non-routine repairs at or to the Locations as provided in this Section 16, the cost and expenses incurred by Concessionaire therefor shall not be considered a Cost of Sales but shall remain fully reimbursable by City to Concessionaire upon provision to City of an invoice in format and with a level of detail reasonably acceptable to City and including reasonable supporting documentation as may be requested by City. Payment by the City for such work shall be subject to Section 4.H of this Agreement and the City's Prompt Payment Ordinance.

All risk of loss from damage to or destruction of the Locations shall be upon Concessionaire and the Concessionaire shall not have any cause of action against the City for consequential damages. Concessionaire shall, at its own cost and expense (which shall not be treated as a Cost of Sales), replace and repair any and all damage or destruction to the Locations which is the result of Concessionaire's negligence or willful misconduct, such replacement and repair to be performed in accordance with the provisions of Section 16, hereof; provided, however, that said duty to replace and repair shall not apply to the extent of damage caused by the negligence or willful misconduct of employees of City.

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*18 Insurance, Liability and Bonds*

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**A. Performance Bond** - Concessionaire shall provide upon execution of this Agreement and keep in effect during the term of the Agreement, a performance bond with corporate surety in the amount of Two Million (\$2,000,000) dollars, guaranteeing the faithful performance of all conditions contained herein. The form and content of the bond as well as the identity of the surety are subject to the approval of City. In lieu of a bond, City may, in its sole discretion, accept as security an irrevocable letter of credit in a form and with a bank satisfactory to City.

**B. Insurance Requirements**

1. General Conditions: Concessionaire agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Concessionaire shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies are canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Concessionaire shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in Section 34 by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Concessionaire. Concessionaire shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Concessionaire. The Concessionaire shall maintain, at its own expense, any additional kinds or

amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

2. **Proof of Insurance:** Concessionaire shall provide a copy of this Agreement to its insurance agent or broker. Concessionaire may not commence services or work relating to the Agreement prior to placement of coverage. Concessionaire certifies that the certificate of insurance, preferably an ACORD certificate, shall be delivered to AVD within 3 business days after the execution of this Agreement and that it complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Concessionaire's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.
3. **Additional Insureds:** For Commercial General Liability and Auto Liability, Concessionaire and subcontractors' insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.
4. **Waiver of Subrogation:** For all coverages, Concessionaire's insurer shall waive subrogation rights against the City.
5. **Subcontractors and Subconsultants:** All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Concessionaire. Concessionaire shall include all such subcontractors and subconsultants as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Concessionaire agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.
6. **Workers' Compensation/Employer's Liability Insurance:** 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. Concessionaire expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Concessionaire's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such

rejections previously effected, have been revoked as of the date Concessionaire executes this Agreement.

7. Commercial General Liability: 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, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.
8. Liquor Legal Liability: Concessionaire shall maintain limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit.
9. Business Automobile Liability: 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 services under this Agreement
10. Property Insurance: Concessionaire shall maintain All-Risk/Special Cause of Loss Form Property Insurance on a replacement cost basis including coverage for tenant improvements, betterments and contents. The City and County of Denver shall be named Loss Payee as its interest may appear
11. Additional Provisions:
  - (a) For Commercial General Liability, the policies must provide the following:
    - (i) That this Agreement is an Insured Contract under the policy;
    - (ii) Defense costs are in excess of policy limits;
    - (iii) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
    - (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.
  - (b) For claims-made coverage:
    - (i) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier
  - (c) Concessionaire shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Concessionaire will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

**C. Indemnification** - Concessionaire shall indemnify and hold harmless and defend City, its officers, agents and employees from any and all claims, liability or loss of any nature

whatsoever arising out of or relating to the Concessionaire's occupancy of the premises and operation of the Services. This indemnity shall be interpreted to indemnify City for any acts or omissions of Concessionaire, its agents, employees, contractors, invitees, or licensees, whether passive or active, irrespective of fault, including City's concurrent negligence, whether active or passive; provided however, that the Concessionaire shall not be required to indemnify or save harmless the City, its officers, agents and employees, from liability or damages to the extent arising from the negligence or willful misconduct of the City's officers, agents and employees. Defense costs coverage must be included in the liability coverage provided for the City and County of Denver, its officers, officials and employees as additional insureds.

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*19 Termination by City*

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**A. Grounds for Termination** - If any one or more of the following shall occur, then, City may at its option terminate this Agreement by sending written notice of termination, by registered or certified mail, to Concessionaire at its address set forth herein, which notice shall be deemed given when received.

1. Concessionaire shall become insolvent, or shall take the benefit of any present or future insolvency statute; or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property; or
2. By order or decree of the court Concessionaire shall be adjudged bankrupt or an order shall be 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 shall be filed against Concessionaire and shall not be dismissed or stayed within thirty (30) calendar 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 of governmental board, agency or officer, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of Concessionaire and such possession or control shall continue in effect for a period of thirty (30) calendar days; or
5. Concessionaire shall become a corporation in dissolution; or

6. Interests of or rights of Concessionaire hereunder shall be 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 preceding or occurrence described in Subsection 1, 2, 3, 4, or 5 of this Section; or
  7. Concessionaire shall voluntarily discontinue its operation at the City Venues; or
  8. Any lien is filed against the Facilities or any portion thereof because of any act or omission of Concessionaire and is not discharged within twenty (20) calendar days, unless Concessionaire shall within the aforesaid twenty (20) calendar days furnish to City such bond as the Director in his/her discretion determines to be adequate to protect the interests of City; or
  9. City shall determine in its sole and absolute discretion that the City Venues shall be closed, abandoned, or razed; or
  10. Concessionaire loses its liquor license.
- B.** If Concessionaire is a privately owned corporation, and any of the events enumerated in Subsection 1, 2, 3, 4, 5 or 6 of this Section 19.A. occur with respect to the principle shareholder or his or her estate, then upon the occurrence of any such event or at any time thereafter during the continuance thereof, City may, at its option terminate this Agreement by sending written notice of termination, by registered or certified mail, to Concessionaire at its address set forth herein, which notice shall be deemed given when mailed.
- C.** If Concessionaire shall become a successor or merged corporation in a merger, or a constituent corporation in a consolidation, then such merger or consolidation shall not be grounds for termination of the Agreement and of Concessionaire's rights hereunder if the successor corporation shall have and shall acknowledge in writing to the Director that it has assumed all of the obligations of Concessionaire under this Agreement, and shall provide written notice to the parties set forth in Section 34 of this Agreement. If the successor corporation shall not have, or shall fail to give written acknowledgment to the Director that it has assumed all of the obligations of Concessionaire, then City may, at its sole option, terminate this Agreement by sending written notice of the termination, by registered or certified mail, to Concessionaire at its address set forth herein, which notice shall be deemed given when mailed.
- D.** In the event Concessionaire shall fail to perform or, improperly performs any of its obligations hereunder ("**Non-performance**"), then City shall have the right to provide Concessionaire with a notice of default which shall set forth specifically the Non-performance. Concessionaire shall have thirty (30) calendar days from the date of receipt of such notice, except as provided below, within which to correct the Non-performance. Should Concessionaire cure the Non-performance within the thirty (30) calendar day period, it shall notify City in writing of such cure. In the event the Non-performance is not cured within such thirty (30) calendar day period, City may then terminate this



Agreement by giving Concessionaire fifteen (15) calendar days' written notice of its decision to do so which notice shall specify the exact date of termination. Such termination notice shall not extend further the cure period afforded to Concessionaire. 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 shall 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. Concessionaire shall, if the Non-performance cannot be cured within the thirty (30) day time period through the exercise of reasonable diligence so advise City in writing and also provide its best estimate of when such Non-performance will be cured and shall further advise City of such cure when accomplished. The foregoing period to cure shall not apply if Concessionaire fails to timely pay the Minimum Guaranteed Payment for any Accounting Period or any other payment owed to City ("**Payment Non-performance**"); the cure period for Payment Non-Performance shall be five (5) calendar days following receipt of notice of such Payment Non-performance. Notwithstanding the foregoing thirty (30) day and five (5) day cure periods set forth above, Concessionaire agrees that it will cure defaults as promptly as commercially practicable and Concessionaire will not take the full cure period to cure defaults if such defaults can be cured in a shorter period.

- E. Right of Re-entry** - City shall, as an additional remedy upon the giving of notice of termination, have the right to re-enter the Locations upon the effective date of termination 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 this Agreement, and shall in no event constitute an acceptance of surrender.

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*20 Non-Waiver by City*

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A failure by City to take any action with respect to any default or violation by Concessionaire of any of the terms, covenants, or conditions of this Agreement shall not in any respect limit, prejudice, diminish, or constitute a waiver of any rights of City to act with respect to any prior, contemporaneous, or subsequent violation or default or with respect to any continuation or repetition of the original violation or default. The acceptance by City of payment for any period or periods after a default or violation of any of the terms, conditions, and covenants of this Agreement shall not constitute a waiver or diminution of, nor create any limitation upon any right of City pursuant to this Agreement to terminate this Agreement for such violation or default or for continuation or repetition of the original violation or default.

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*21 Agreement Not Assignable*

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This Agreement shall not be assigned, transferred, sublet or otherwise disposed of by either party hereto without the express written approval of the other party, provided no such approval shall be required in the event of an assignment by Concessionaire to an affiliate of Concessionaire controlled by, or under common control with, Concessionaire. Notwithstanding the foregoing,

any assignment by Concessionaire to an affiliate of Concessionaire that is controlled by, or under common control with, Concessionaire shall not be effective until written notice of such assignment is received by City and the City Attorney in accordance with Section 34 below. In addition, no assignment by Concessionaire shall release Concessionaire of its obligations hereunder unless expressly released in writing by City.

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*22 Concessionaire Independent Contractor*

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It is understood and agreed that nothing herein contained is intended or shall be construed to in any way create or establish the relationship of co-partners between City and Concessionaire or as constituting Concessionaire, as a representative or agent of City for any purpose whatsoever.

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*23 Surrender of Premises*

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Concessionaire covenants and agrees to yield and deliver peaceably to City possession of the Locations occupied herein and alteration, additions, or improvements thereof upon the termination or expiration of this Agreement promptly and in good condition, order and repair, except for reasonable wear and tear from the last necessary repair, replacement, restoration or renewal of such locations made by Concessionaire pursuant to Concessionaire's obligations under this Agreement.

If Concessionaire fails or neglects to remove all or any portion of its movable furniture, movable personal property and/or removable trade fixtures within thirty (30) calendar days after the termination or expiration of this Agreement or expiration of any renewal thereof, such items shall, at the sole option of City, become the property of City and if such option is exercised by City, Concessionaire shall have no further or equitable right, title or interest therein.

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*24 No Personal Liability*

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No elected official, director, officer, agent or employee of City nor any director, officer, or employee of Concessionaire, shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.

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*25 Representations, Warranties, Damages*

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No representations or warranties, whether oral or written, express or implied, made prior to the execution of this Agreement shall be part of this Agreement. Under no circumstances whatsoever shall either party be liable for any incidental or consequential damages (except for any failure to pay any sum due under this Agreement) arising out of this Agreement or any other transaction(s) between the parties hereto. Each party shall use commercially reasonable efforts to mitigate losses resulting from a breach or early termination of this Agreement.

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*26 Operating Standards*

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All of Concessionaire's activities hereunder shall be subject to the policies and standards of City, as the same may be amended from time to time by the City.

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*27 Conflict of Interest*

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No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement. The Concessionaire shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

The Concessionaire shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Concessionaire represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Concessionaire by placing the Concessionaire's own interests, or the interests of any party with whom the Concessionaire has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement if it determines a conflict exists, after it has given the Concessionaire written notice describing the conflict.

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*28 Force Majeure*

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- A.** Subject to Section 28.E., neither party hereto shall be liable to the other for any failure, delay, or interruption in performing its obligations hereunder due to causes or conditions beyond its control, including without limitation acts of God; provided, that nothing in this Section is intended or shall be construed to abate, postpone, or in any respect diminish Concessionaire's obligations to make any payments due to City pursuant to this Agreement.
- B.** Neither party hereto shall be under any obligation to supply any service or services if and to the extent and during any period that the supplying of any such service or services or the use of any component necessary therefore shall be prohibited by any Federal, State, County or municipal law, rule, regulation, order or directive.
- C.** Except as otherwise expressly provided in this Agreement, no abatement, diminution or reduction of the Minimum Guaranteed Payment or other payments or charges payable by Concessionaire shall be claimed by or allowed to Concessionaire for any inconvenience, interruption, cessation, or loss of business or other loss caused, directly or indirectly, by any present or future laws, rules, requirements, orders, directives, ordinances or regulations of the United States of America, or of the State, or City, or any other lawful authority whatsoever, or by priorities, rationing, or curtailment of labor or materials, or by war or any matter or thing resulting therefrom, or by any other cause or causes beyond the control of City, nor shall this Agreement be affected by any such causes.
- D.** In the event of the destruction of a City Venue by reason of fire, storm or other casualty or occurrence of any nature, Concessionaire may suspend services to be performed under

this Agreement with respect to such City Venue or terminate this Agreement with respect to such City Venue. In the event Concessionaire elects not to terminate this Agreement, Concessionaire may suspend its service with respect to such City Venue until such time, not to exceed twelve (12) months, as City shall have substantially completed the reconstruction of the City Venue.

- E.** Concessionaire may suspend services to be performed under this Agreement or terminate this Agreement with respect to a City Venue in the event any act or occurrence, including without limiting the generality of the foregoing, acts of God or other occurrences beyond Concessionaire's control, which act or occurrence is of such effect and duration as to effectively curtail the use of the subject City Venue for its intended purposes so as to effect a substantial reduction in the need for the services provided by Concessionaire for a period in excess of ninety (90) calendar days; provided, however, for the purposes of this Section 28.E., Concessionaire shall have the right terminate this Agreement with respect to the subject City Venue on a retroactive basis effective as of the date the use of the subject City Venue was effectively curtailed.

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*29 Patents, Trademarks and Copyrighted Products*

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If Concessionaire requires the use of or desires to use any patented design, device, material, process, mark, copyright, trademark, name, slogan, or other legally protected property right, or to sell, vend or distribute any item or product which is subject to a copyright, patent, trademark, license, or other form of legal protection, it shall provide for such use, sale or distribution in an approved legal manner by making a proper agreement with the patentee, owner or lessee or such design, device, material, process, mark, copyright, trademark, name, slogan, or other legally protected property right, for such use. Concessionaire shall protect, defend and save harmless City, its officers, agents, and employees, against any and all claims for damages or otherwise by reason of infringement of such design, device, material, process, mark, copyright, trademark, name, slogan, or other legally protected property right, and shall indemnify City, its officers, agents, and employees for any loss it or they may sustain due to such infringement. Concessionaire shall not sell, vend or distribute items or products deceptively similar to those subject to copyright, patent, trademark, or license to avoid payment of appropriate royalties or fees.

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*30 No Liability for Water Damage*

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City shall not be liable to Concessionaire for any damage to property of Concessionaire at any time due to water, rain, snow, or any other substance which may leak into, issue, or flow from any part of the City Venues or from the pipes or plumbing works of same or from any other place.

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*31 Interpretation*

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- A. In General** - It is the intention of the parties hereto that the language hereof, and in all parts of this Agreement shall be in all cases construed simply according to their fair meaning and not strictly for or against either City or Concessionaire.

**B. Law Governing Interpretation** - Concessionaire and City agree that any litigation filed by either as a result of any breach of contract or other matter arising out of this Agreement shall be filed exclusively in the Denver District State Court or in the United States District Court for the District of Colorado and that the interpretation of this Agreement shall be in all respects governed by the laws of the State of Colorado, without regard to any statute or rule of law purporting to provide for a different choice of law.

**C. Section and Paragraph Headings** - The Section and/or Paragraph headings herein and through this Agreement are for the convenience of City and Concessionaire in reference only, and are not intended and shall not be used to construe the intent of this Agreement or any part thereof, or to modify, amplify, or aid in the interpretation or construction of the provisions thereof.

**D. Gender and Number** - The use of any gender herein shall include any or all genders, and use of any number shall be construed as the singular and/or the plural, all as the context may require.

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*32 Severability*

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City and Concessionaire agree that, except for the provisions of this Agreement requiring appropriation of funds and limiting the total amount payable by the City, if any section or provision of this Agreement, or any portion of any Section or provision, shall for any reason be held to be void, illegal or otherwise enforceable, all other portions of this Agreement shall nevertheless remain in full force and effect.

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*33 Quiet Enjoyment*

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Except for such rights and acts of City authorized by this Agreement, City covenants that Concessionaire, upon paying all payments, fees, and other charges due hereunder and performing and complying with all covenants, agreements, provisions, obligations and duties incumbent upon Concessionaire under this Agreement, shall and may peaceably have, hold and enjoy the Locations in the manner described herein during the term of this Agreement. In the event that City shall in any manner convey the premises or assign this Agreement, with the consent of Concessionaire, or if the operations of the City Venues shall pass from City by operation of law or otherwise, then City shall have no personal obligation to Concessionaire with respect to the foregoing covenant after such conveyance, assignment, or passing.

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*34 Notices*

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**A. Notices to City** - All notices required to be given by Concessionaire to City pursuant to this Agreement shall be in writing and sent by overnight, registered or certified mail, to:

Mayor of the City of Denver  
Room 350, City and County Building  
Denver, Colorado 80202-5375

and:

Director, Arts & Venues Denver Division  
1345 Champa Street, First Floor  
Denver, Colorado 80204

With copies to:

City Attorney  
City and County of Denver  
Room 353, City and County Building  
Denver, Colorado 80202-5375

and

Venue Director, Red Rocks Amphitheatre  
Denver Arts and Venues  
City and County of Denver  
4600 Humboldt Street  
Denver, CO 80216

or to such other place as City may from time to time designate in writing.

- B. Notices to Concessionaire** - Except as otherwise provided in this Section with regard to day to day operational and management matters, all notices required to be given by City to Concessionaire pursuant to this Agreement shall be directed in writing and sent by overnight, registered or certified mail to:

ARAMARK Sports and Entertainment Services, LLC  
ARAMARK Tower  
1101 Market Street  
Philadelphia, PA 19107  
Attn: President – Sports and  
Entertainment

with a required copy to:

ARAMARK Sports and Entertainment Services, LLC  
ARAMARK Tower  
1101 Market Street  
Philadelphia, PA 19107  
Attn: Vice President and Associate  
General Counsel – Sports and  
Entertainment

or to such other place as Concessionaire may from time to time designate in writing. Notwithstanding the foregoing, notice provided by the City to Concessionaire at the following address shall be sufficient for matters involving day to day operational and management issues (including by way of example, the matters and notice addressed in Sections 4.G, 6.D, 7.K, 7.L, 7.O, 8.B, and 15.E):

ARAMARK Sports and Entertainment Services, LLC  
6595 South Dayton, Suite 2200  
Greenwood Village, CO 80111  
Attn: Regional Director – Central Region

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*35. No Employment of Illegal Aliens to Perform Work Under the Agreement*

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**A.** The Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, as may be amended hereafter (the “**Certification Ordinance**”) and Concessionaire is liable for any violations as provided in the Certification Ordinance.

**B.** Concessionaire certifies that:

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

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

**C.** Concessionaire also agrees and represents that:

1. It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

2. It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to Concessionaire that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

3. It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.

4. It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the 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 the Agreement knowingly employs or contracts with an illegal alien, it will notify

such subconsultant or subcontractor and the City within three (3) days. Concessionaire will also then 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 illegal alien, unless during such three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.

6. It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S., or the City Auditor, under authority of D.R.M.C. 20-90.3.

7. Concessionaire is liable for any violations as provided in the Certification Ordinance. If Concessionaire violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of this Agreement. If the Agreement is so terminated, Concessionaire shall be liable for actual and consequential damages to the City. Any such 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 Concessionaire from submitting bids or proposals for future contracts with the City.

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### *36 Environmental Requirements*

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As used in this Agreement, the following terms shall have the following definitions: (a) “**Environmental Laws**” means any federal, state, and local statute, law, ordinance, regulation, rule, resolution, order, determination, writ, injunction, common law ruling, award, judgments and decrees, relating to the remediation, generation, production, installation, use, storage, treatment, transportation, Release, threatened Release, or disposal of Hazardous Materials, or the protection of human health, safety, natural resources, animal health or welfare, or the environment; (b) “**Hazardous Materials**” means any substance, chemical, compound, product, solid, gas, liquid, waste, byproduct, pollutant, contaminant or material that is listed, classified or regulated pursuant to any Environmental Law; and (c) “**Release**” means any presence, emission, spill, seepage, leak, escape, leaching, discharge, injection, pumping, pouring, emptying, dumping, disposal, migration, or release of Hazardous Materials from any source into or upon the environment, including the air, soil, improvements, surface water, groundwater, the sewer, septic system, storm drain, publicly owned treatment works, or waste treatment, storage, or disposal systems. Contractor, in performing the Services and its associated rights and obligations under this Agreement, shall comply with all Environmental Laws, including but not limited to Environmental Laws regarding the storage, use, and disposal of Hazardous Materials and regarding Releases or threatened Releases of Hazardous Materials into the environment.

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### *37 Entire Agreement*

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This Agreement, including the Exhibits hereto, supersedes any prior Agreement on the subject of the operation of the Services at the City Venues. This Agreement constitutes the entire Agreement of the parties in the subject matter thereof, and may not be changed, modified,



discharged or extended by oral agreement or representation or otherwise except by written amendment duly executed by an authorized representative of Concessionaire and City.

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*38 Exhibits*

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The following Exhibits and Attachments are attached hereto and incorporated herein by reference and the rights and obligations contained therein are hereby incorporated into and shall be a part of this Agreement as if contained in the main body of this Agreement:

Exhibit A	-	Spaces / Locations
Exhibit B	-	Incentive Criteria
Exhibit C	-	Sample Monthly Financial Report, including a Statement of Receipts and Expenses
Exhibit D	-	Sample Daily Report
Exhibit E	-	Reserved
Exhibit F	-	City-Provided Equipment
Exhibit G	-	Services Description

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*39 Legal Authority*

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Concessionaire represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement. Each person signing and executing this Agreement on behalf of Concessionaire represents and warrants that he or she has been fully authorized by Concessionaire to execute this Agreement on behalf of Concessionaire and to validly and legally bind Concessionaire to all the terms, performances and provisions of this Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate this Agreement if there is a dispute as to the legal authority of either Concessionaire or the person signing this Agreement to enter into this Agreement.

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*40 Use, Possession, or Sale of Alcohol or Drugs*

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Concessionaire, its officers, agents, contractors, subcontractors, and employees shall cooperate and comply with the provisions of Executive Order 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City's barring Concessionaire, its officers, agents, contractors, subcontractors, and employees from City facilities or participating in City operations.

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*41 No Sale or Advertising of Tobacco Products; No Smoking*

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Concessionaire shall cooperate and comply with the provisions of Executive Order No. 13, which prohibits the sale or advertisement of tobacco products on City owned property and in facilities owned or operated or controlled by the City. "Sale" includes promotional distribution, whether for consideration or not, as well as commercial transactions for consideration.

“Advertising” includes the display of commercial and noncommercial promotion of the purchase or use of tobacco products through any medium whatsoever, but does not include any advertising and sponsoring which is a part of a performance or show or any event displayed or held in City facilities.

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*42 Colorado Governmental Immunity Act*

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In relation to this Agreement, 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, C.R.S. § 24-10-101, et seq.

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*43 Electronic Signatures and Electronic Records*

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

**The remainder of this page left blank intentionally.**

**Contract Control Number:**

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:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



**Contract Control Number:** THTRS-201737254-00

**Contractor Name:** Aramark Sports and Entertainment Services, LLC

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

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

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

**ATTEST: [if required]**

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

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

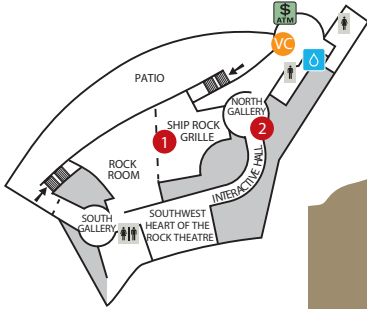
Title: \_\_\_\_\_  
(please print)



# EXHIBIT A-1

## AMPHITHEATRE

### Lower Level Visitor Center



Restrooms

Restrooms are located in the lower level of the Visitor Center at both the North and South ends. Two accessible family restrooms are located on the plaza at the North and South ends, plus one at the North Concession Stand. More restrooms are located to the left and right of the stage on the South Ramp and at the North Stairs. See map.



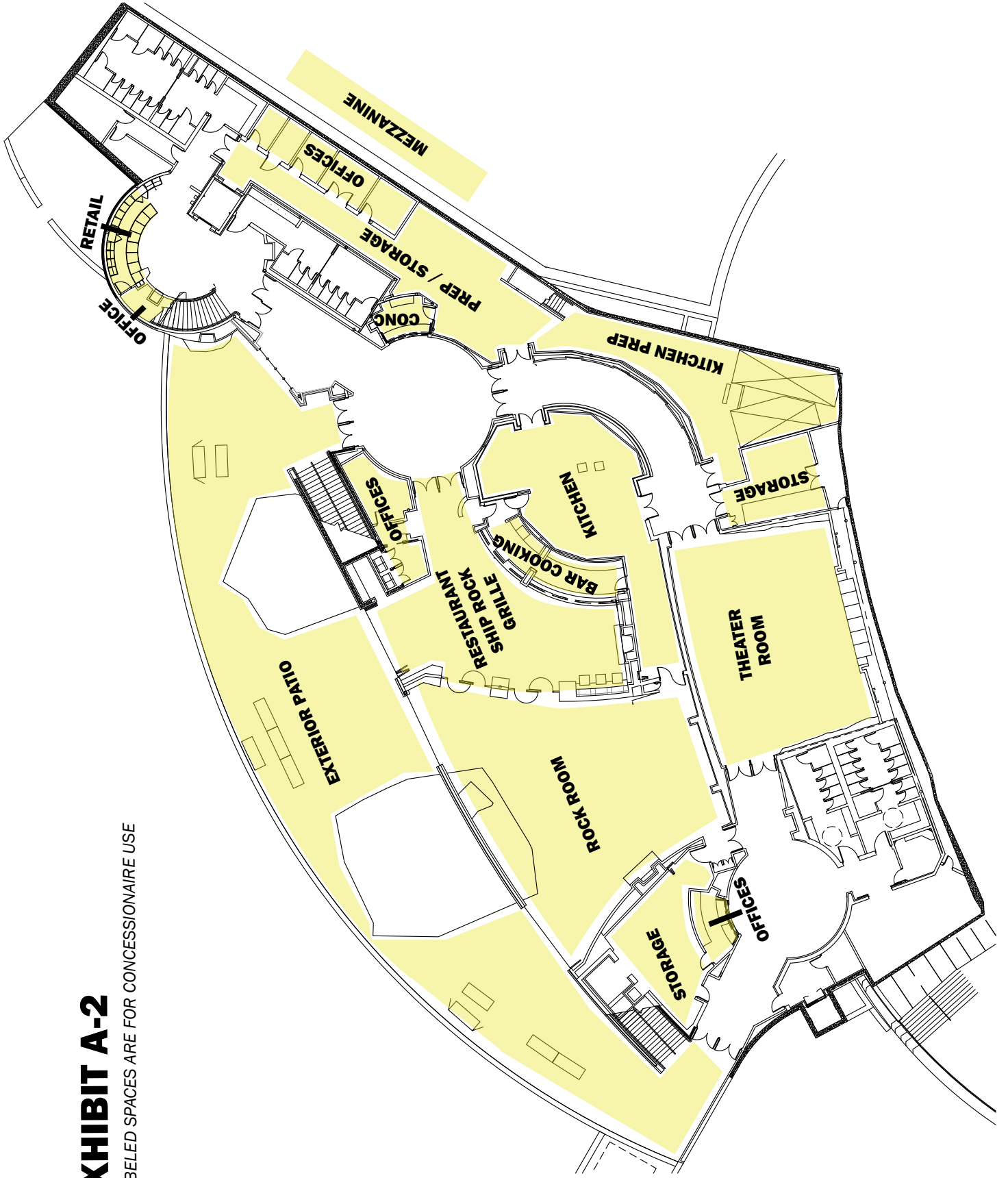
- Visitor Center  
Check out the Visitor Center Merchandise Counter for custom Red Rocks seat cushions, clothing and other concert essentials.
- Drinking Fountain
- ATM
- Accessible seating/restrooms
- Restrooms
- Concert Merchandise
- First Aid
- Designated Driver Booth  
\*Sign up to be a designated driver and receive (1) free non-alcoholic beverage

- 1 Ship Rock Grille – Full Service Restaurant**  
Extensive menu, outdoor terrace, pre-show dinners
- 2 North Gallery Concessions**  
Hot dogs, polish sausage, pretzels, nachos, desserts, candy, ice cream, draft beer, Red Bull, Coke products, ice tea, coffee, hot chocolate, coffee
- 3 Plaza Bar**  
Full bar, draft and canned beer, cider, margaritas, wine, water
- 4 Plaza Taco / Concept**  
Tacos, beer, Coke products, water and rotating food specials
- 5 Maui Wowi**  
Alcoholic and non-alcoholic coffee and smoothies
- 6 Lemonade Stand**  
Fresh squeezed lemonade, vodka optional
- 7 Plaza Draft South**  
Popcorn, pizza, draft beer, Coke products, water
- 8 Plaza Grill / Plaza Hot Dog**  
Philly cheese steak sandwiches, gourmet bratwursts, foot long hot dogs, chips, draft beer, Coke products
- 9 Plaza Draft North**  
Popcorn, pizza, draft beer, Coke products, water
- 10 Plaza Mix**  
Full bar, draft beer, margaritas, wine, water
- 11 South Spot Booth Beverages**  
Canned beer, margaritas, wine, Coke products, water
- 12 North Spot Booth Beverages**  
Canned beer, margaritas, wine, Coke products, water

- 13 South Bar**  
Full bar, canned beer, margaritas, wine, water
- 14 6400 Concessions**  
Hot dogs, brats, pretzels, nachos, popcorn, candy, chips, wine, draft beer, Red Bull, Coke products, ice tea, coffee, hot chocolate, water
- 15 South Concessions**  
Pizza, bratwurst, hot dogs, pretzels, nachos, chips, candy, draft beer, Red Bull, Coke products, ice tea, coffee, hot chocolate, water
- 16 South Side 55**  
Canned beer, water
- 17 North Burrito**  
Chicken/beef burritos, quesadillas, taco salads, canned beer, margaritas, Coke products, water
- 18 North Bar**  
Full bar, draft and canned beer, margaritas, wine, water
- 19 North Concessions**  
Bratwursts, hot dogs, pretzels, nachos, chips, candy, draft beer, Red Bull, Coke products, ice tea, coffee, hot chocolate, water
- 20 North Beer Wall**  
Draft beer, water
- 21 Bottle Carts**  
Canned beer, water  
*\*Available based on attendance, locations may vary*

# EXHIBIT A-2

\* LABELED SPACES ARE FOR CONCESSIONAIRE USE





Red Rocks trading post.  
For concessionaire use.



Exhibit A-4

**B** Brungardt Enterprises, L.L.C.  
2100 South Mountain Court  
Phoenix (AZ) 850-1235

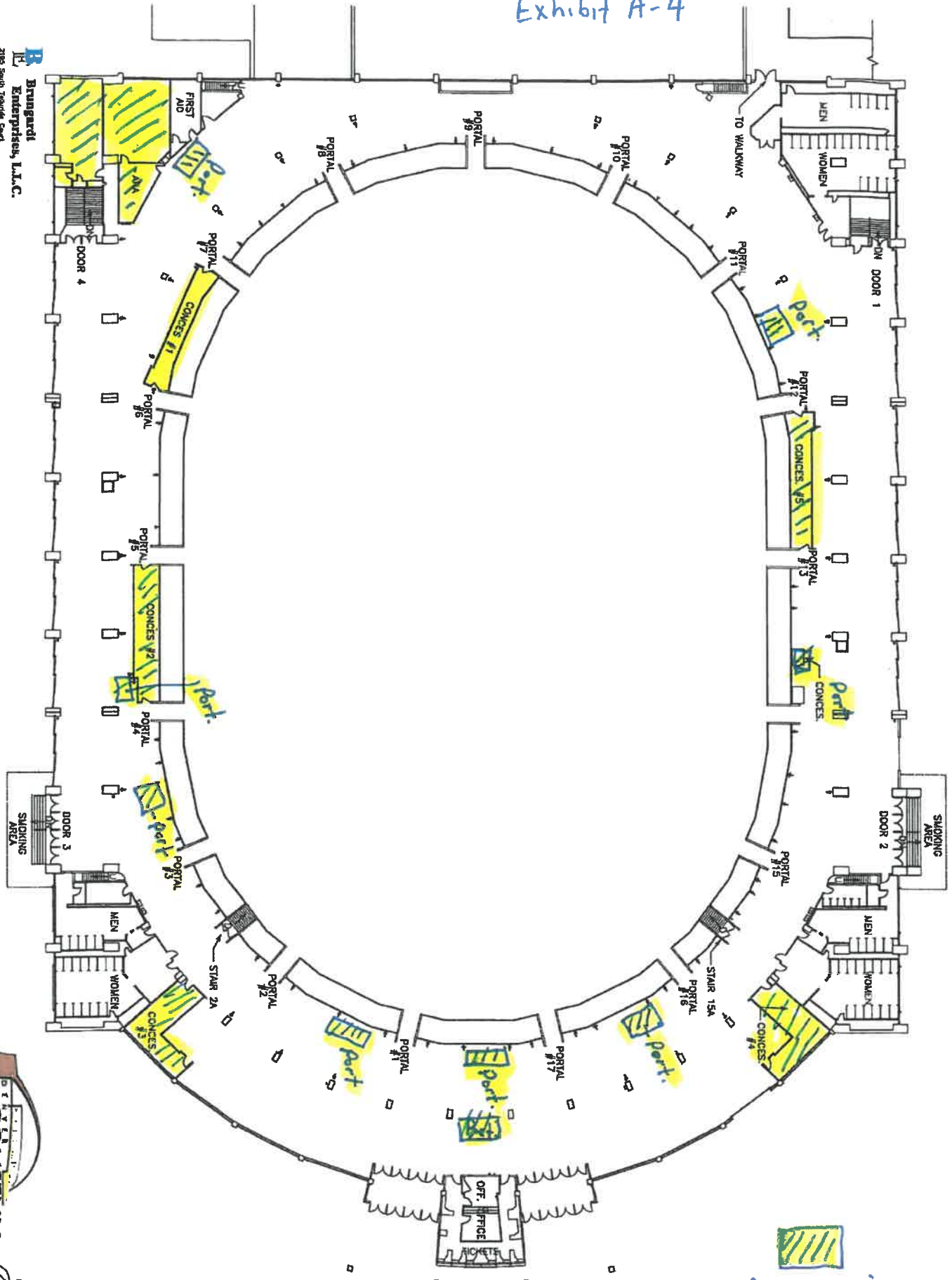
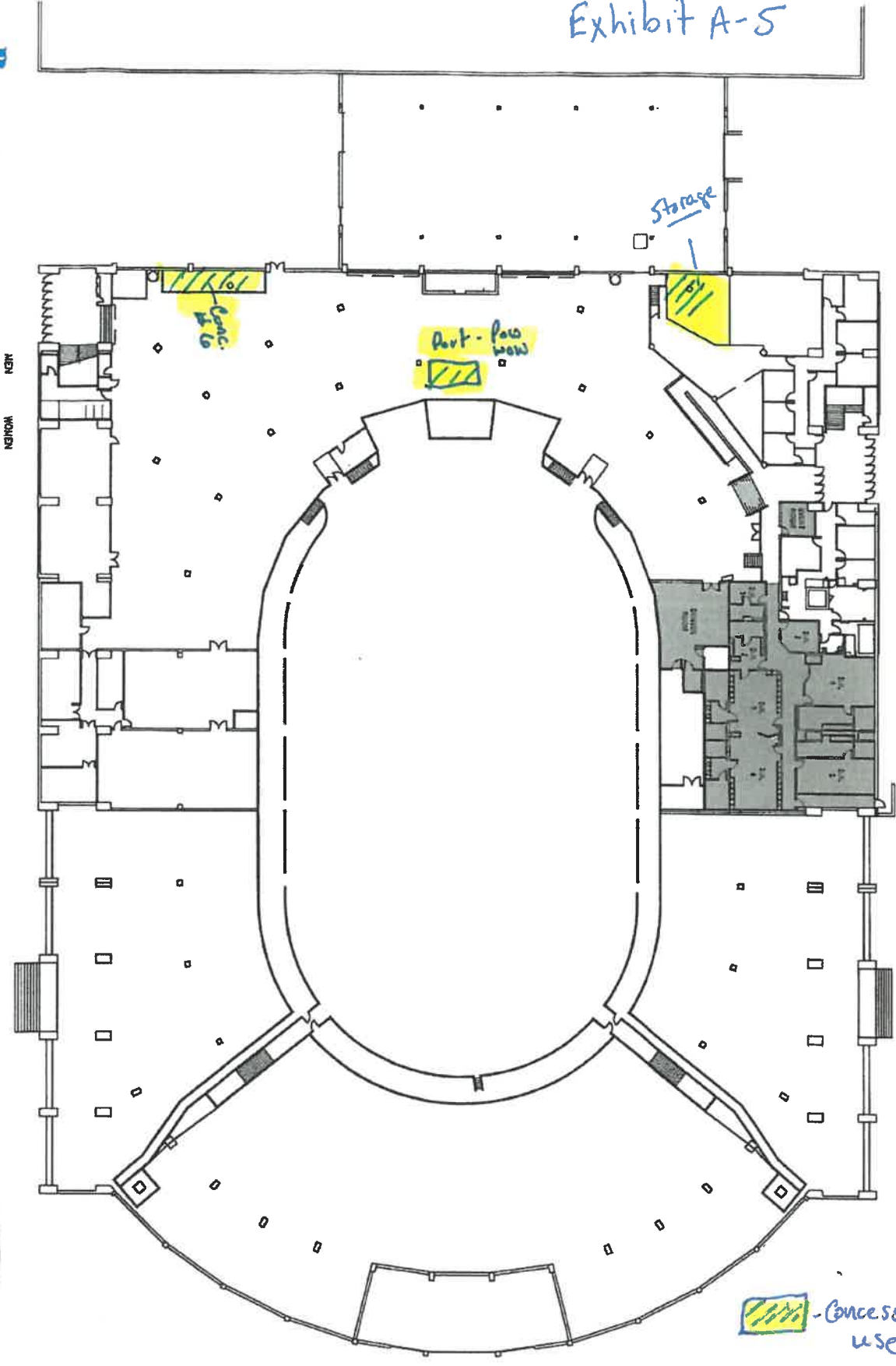




Exhibit A-5

**B** Beauregard  
**E** Enterprises, L.L.C.  
"One Stop for Games and More"  
(800) 746-555



**Arcade Level**  
REV. DATE: 11-16-11

**COLISEUM**  
Phone: (405) 281-0001



Exhibit B  
Red Rocks and Denver Coliseum Agreement  
Incentive Criteria 2018

As specified as Exhibit B in the Concession Agreement for Food and Beverage Concessions at City Venues, "City and Concessionaire shall prepare and mutually agree upon an incentive plan with measureable and auditable criteria to be used for determining the Concessionaire's Incentive Compensation for the contract year." Criteria shall be set forth and implemented to coincide with contract year ending October 31, 2018.

**Criterion 1: Develop Programs to Increase Off-Season Business- value 25%**

Concessionaire shall satisfy criterion by researching potential revenue generating public events such as house bands, beer and wine pairing dinners, and whiskey tastings. Concessionaire shall reach out to house band promoters as well as sponsors, to create a minimum of 5 of these themed events and execute them. Upon approval from the City, events will be selected, appropriately marketed, and rolled-out in the 2017/2018 off-season and during the 2018 season. At the end of the season information will be reported to demonstrate completion of this that includes total number of events, attendance, per cap and revenue generated.

**Criterion 2: Integration of additional Subcontractors in the Park – Value 25%**

To satisfy this criterion Concessionaire shall research and implement a minimum of 2 new subcontractor partnerships for concert nights in the 2018 concert season. Concessionaire will vet and choose food concepts and place them in the Amphitheatre. Upon approval from the City, Concessionaire shall work out subcontractor agreements with subcontractors to meet the City's financial goals. At the end of the season information will be reported to demonstrate completion of this that includes total number of additional subcontractors, Items sold, per cap and revenue generated.

**Criterion 3: Development of guest restaurant program- value 20%**

Concessionaire shall satisfy criterion by incorporating a minimum of 2 guest restaurants into the Ship Rock Grille and concessions in the form of Specialty Buffet, single items to be sold in concessions or subcontractor agreements. Concessionaire will vet and choose guest restaurants and place them in the Amphitheatre and restaurant. Upon approval from the City, Concessionaire shall work with the guest restaurants to meet the City's financial goals and payout the guest restaurants for their participation thru the Aramark Marketing fund. At the end of the season information will be reported to demonstrate completion of this that includes total number of guest restaurant events, Items sold, per cap and revenue generated.

**Criterion 4: Integration of Parking lot Sales program - value 15%**

Concessionaire shall satisfy criterion by developing and implementing a Parking lot program that looks at the feasibility and benefit of different options to drive sales including incorporating Food trucks, Golf Cart concessions, Vending and Retail during pre-event timeframes. . At the end of the season information will be reported to demonstrate completion of this that includes number of different options tried, revenue generated by each, and report on benefits and feasibility if any.

**Criterion 5: Support the Promotion of Red Rocks 75 anniversary album- value 15%**

Contingent on the arrival of the albums before June of the 2018 concert season. Concessionaire shall satisfy criterion by setting up promotions and events to drive sales of the 75<sup>th</sup> anniversary album. Upon approval from the City, concessionaire will sell the album at the Trading Post, and Visitor Center retail counter. If the Albums do not arrive before June of 2018 this criterion will move to 2019 and the percentage value will be equally distributed to the first 4 criterion. . At the end of the season information will be reported to demonstrate completion of this that includes number sold, promotions used and total revenue from albums.

**Criterion 6: – Develop renovation plan for Ship Rock Grille and Rock Room no value**

Concessionaire shall satisfy criterion by working with the City, architects and designers as applicable to explore the renovation of the Ship Rock Grille, Rock Room and Main Kitchen.



Date: 11/15/17

Craig Luckmann  
General Manager  
Aramark S&E



Date: 11/15/2017

Tad Bowman  
Director of Venue Operations  
*Venue Dir. Red Rocks / Coliseum*  
City and County of Denver Arts and  
Venues

### Exhibits C- Sample Monthly Financial Report, including a Statement of Receipts and Expenses

ARAMARK @ City of Denver Theaters and Arenas  
 Contract to Date

Contract Date 11/01/2017  
 Monthly Financial Report  
 Cross Roads Theater, Denver Coliseum & Red Rocks

Description	Actual		Actual		Actual		YTD - Year
	November Period 1		December Period 2		October Period 12		
<b>GROSS RECEIPTS</b>							
COLD BEVERAGE							
BEER SALES							
BEER-BTL/CANS-STANDS							
LIQUOR							
WINE							
CANDY							
FOOD SALES							
RETAIL							
ADMIN/SERVICE CHARGE FEES							
RENTAL INCOME							
TOTAL ARAMARK SALES							
<b>MISCELLANEOUS GROSS RECEIPTS</b>							
SUBS INCOME							
SUBS CONTRA							
MISC INCOME/VENDING MACHINE/ATM							
TOTAL OTHER							
<b>TOTAL GROSS RECEIPTS</b>							
<b>GROSS SALES</b>							
COLD BEVERAGE							
BEER SALES							
BEER-BTL/CANS-STANDS							
LIQUOR							
WINE							
CANDY							
FOOD SALES							
RETAIL							
SUBS INCOME							
SUBS CONTRA							
MISC INCOME/VENDING MACHINE/ATM							
<b>TOTAL GROSS SALES</b>							
<b>COST OF SALES</b>							
COLD BEVERAGE							
DRAFT BEER							
BEER-BOTTLED/CANNED							
LIQUOR							
WINE							
CANDY							
FOOD							
RETAIL							
CASH DISCOUNTS							
PAYROLL COST							
CAFETERIA/OPERATING SUPPLIES							
JANITORIAL SUPPLIES							
ICE							
SMALL WARES/REPLACEMENT COST							
PEST CONTROL							
CONTRACTED SERVICES							
OTHER SERV CONTRACTS							
REP&MAINT MATRLS-COMP							
REPAIR & MAINT-OTHER							
VEHICLE TAXES & LIC							
CO-VEH-OPR & REPAIR							
FUEL/GASOLINE							
AUTO LEASE-LONG TERM							
FLT SVCS-LEASED VEHI							
COMPUTER LEASE FEES							

**EXHIBIT D – Sample Daily Report**

<b>DAILY FLASH</b>	
Venue	Red Rocks
Date	Oct 19 2017 7:00PM
Day	Thursday
Primary Performer	Deadmau5
Secondary Performer	
Event	DEADMAU5
Outcome	N/A
Weather	Normal
<b>Actual Results</b>	
Aramark Sales	\$103,841
Attendance	6,956
Percap	\$14.93
<b>Budget</b>	
Aramark Sales	\$90,300
Attendance	6,000
Percap	\$15.05
<b>Variance</b>	
Aramark Sales	\$13,541
Attendance	956
Percap	(\$0.12)
<b>MTD Sales Variance</b>	<b>(\$9,649)</b>
<i>(Concert Tier 1)</i>	

## Exhibit E

Reserved

## EXHIBIT F – CITY-PROVIDED EQUIPMENT

### A.1 CAPITAL EQUIPMENT INVENTORY – DENVER COLISEUM

Venue: Denver Coliseum

Date: 7/15/2017

Stand / Portable	Item	Condition		
		Excellent	Good	Fair
1	Keg Cooler	X		
	Keg Power Pack			X
	3 Door Refrigerator	X		
	Roller Grill		X	
	Warmer Drawer - 1			X
	Warmer Drawer - 2			X
	5 Cash Registers		X	
	Ice Machine		X	
	1 Shelving		X	
3 Menu Screens, 1Player	X			
2	Single Door Refrigerator			X
	Single Door Freezer			X
	Pizza Oven			X
	Pizza Warmer	X		
	4 Cash Registers	X		
	Warmer Drawer			X
	Prep Table		X	
	3 Menu Screens, 1Player	X		
2B	Keg Cooler			X
	Keg Power Pack	X		
	Bartender Ice Sink-1		X	
	Bartender Ice Sink-2		X	
	4 Cash Registers		X	
	Ice Machine		X	
	2 Menu Screens, 1Player	X		
3	Grill			X
	Roller Grill		X	
	Ice Machine		X	
	Double Door Refrigerator			X
	Keg Cooler			X
	Keg Power Pack			X

***THIS PROPOSAL MUST BE RETURNED ELECTRONICALLY THROUGH THE ROCKY MOUNTAIN E-PURCHASING SYSTEM (BIDNET®).***

## EXHIBIT F – CITY PROVIDED EQUIPMENT

	4 Cash Registers		X	
	Warmer Drawer -1		X	
	Warmer Drawer -2		X	
	1 Shelving		X	
	2 Prep Tables		X	
	3 Menu Screens, 1Player	X		

4	Pizza Oven W/Stand	X		
	Fryer		X	X
	Single Door Refrigerator			X
	Single Door Freezer			X
	Keg Cooler			X
	Keg Power Pack			X
	Ice Machine		X	
	4 Cash Registers		X	
	Warmer Drawer			X
	Pizza Warmer	X		
	1 Shelving		X	
	1 Prep Table		X	
	3 Heat lamps		X	
	3 Menu Screens, 1Player	X		

5	Keg Cooler	X		
	Keg Power Pack			X
	Roller Grill		X	
	3 Door Refrigerator	X		
	Steamer W/Stand			X
	Ice Machine		X	
	4 Cash Registers	X		
	Warmer Drawer - 1		X	
	Warmer Drawer - 2		X	
	1 Shelving		X	
	3 Menu Screens, 2 Players	X		

6	Roller Grill - 1		X	
	Roller Grill - 2		X	
	Warmer Drawer -1		X	
	Warmer Drawer -2		X	
	Grill			X
	Popcorn Machine	X		
	4 Cash Registers			X



## EXHIBIT F – CITY PROVIDED EQUIPMENT

	Single Door Refrigerator			X
	Single Door Freezer			X
	1 Shelving		X	
	1 Menu Board			X

Popcorn 104	Cart		X	
	Cash Register		X	

Nacho 107	Cart		X	
	Cash Register		X	
	Support Cart		X	

Popcorn 111	Cart		X	
	Cash Register		X	

Nacho 114	Cart		X	
	Cash Register		X	
	Support Cart		X	

Portable Bar	Cart		X	
	Cash Register		X	
	1 Security Cage		X	
	1 Ice Caddy		X	

ALT	2 Carts		X	
	4 Cash Registers		X	
	2 Security Cage		X	
	2 Ice Caddy		X	

Bar 117	Cart			X
	Cash Register		X	
	1 Security Cage		X	
	1 Ice Caddy		X	

Downstairs Kitchen	4 Door Refrigerator			X
	4 Door Refrigerator			X
	Coffee Machine			X
	Ice Machine			X
	Stand-Up Freezer			X
	Convection Oven			X
	1 Shelving		X	

## EXHIBIT F – CITY PROVIDED EQUIPMENT

	Prep Table			X
Main Kitchen	Steamer W/Stand			X
	Convection Oven	X		
	Walk-In-Cooler			X
	Walk-In-Freezer			X
	6 Shelving			X
	Warming Box			X
	Warming Box			X
	2 Prep Tables			X
Vending	Walk-In-Cooler			X
	3 Shelving			X
Bottle Soda Walk-In Cooler				X
Office	Safe	X		
	Currency Counter	X		
	Coin Counter			X
Warehouse	10 Dunnage Racks	X		
	8 Shelving			X

**The remainder of this page left blank intentionally.**

## EXHIBIT F – CITY PROVIDED EQUIPMENT

### A.2 CAPITAL EQUIPMENT INVENTORY ANALYSIS – RED ROCKS AMPHITHEATRE

Venue: Red Rocks Amphitheatre

Date: 7/15/2017

Stand / Portable	Item	Condition		
		Excellent	Good	Fair
Concessions Kitchen	Meat Slicer	X		
	Popcorn Machine			X
	Oven			X
	2 Rationals			X
	7 Hot Boxes		X	
	1 Crescors		X	
	Walk-in-Cooler/Freezer		X	
	Walk-in-Cooler		X	
	Ice Machine			X
North Gallery	Ice Machine			X
	Warmer Drawer			X
	Stand Up Cooler			X
	Ice Merchendiser		X	
Main Kitchen	Dish Machine			X
	4 Convection Ovens		X	
	Electric Smoker			X
	Tilt Skillet			X
	Tilt Kettle			X
	Stand-up Freezer			X
	Hot Line Table		X	
	Oven Stovetop		X	
	Dual Fryer		X	
	2 Broilers			X
	Hobart Stand Mixer		X	
	Cold Cut Unit		X	
	Hot Box		X	
	2 Hot Box		X	
	2 Stand-up Cooler	X	X	
	Alto Sham		X	
Coffee Machine		X		
Ice Tea Brewer		X		

## EXHIBIT F – CITY PROVIDED EQUIPMENT

South Gallery	Stand-up Freezer			X
	Walk-in-Freezer		X	
	Ice Merchendiser		X	
	Ice Cream Machine		X	
Restaurant Bar	2 Stovetop Burners		X	
	Single Fryer			X
	Low Boy Freezer			X
	2 Perlick Coolers			X
	Low Boy Cooler			X
	2 Bar Ice Bins		X	
Mezzanine	Walk-in-Cooler		X	
	Power Pack			X
North Tower	2 Stand Up Coolers	X		
	Walk In Cooler		X	
South Tower	2 Stand Up Coolers	X		
	Walk In Cooler		X	
North Bar	1 Cart	X		
	Keg Cooler	X		
Plaza Taco/Concept	1 Cart	X		
	1flattop	X		
	1 cooler unit	X		
	1 hand sink	X		
	Table Top Panini Press	X		
	3 Hot Holding Wells	X		
Plaza Hotdog/Philly	1 Cart	X		
	2 Flattop	X		
	2 Lowboy Coolers	X		
	2 hand sinks	X		
	3 Hot Holding Wells	X		
North Burrito	1 Cart	X		
	Table Top Panini Press	X		

## EXHIBIT F – CITY PROVIDED EQUIPMENT

	Stand Up Cooler	X		
	2 Holding Drawers	X		
	3 Hot Holding Wells	X		
North Concessions	Hot Box			X
	Steamer			X
	Oven	X		
	Stand Up Cooler			X
	Stand Up Freezer			X
	Ice Machine			X
	2 Warmer Drawers			X
	Portable Hand Sink		X	
South Concessions	Freezer			X
	2 Warmer Drawers			X
	Stand Up Freezer		X	
	Pizza Oven		X	
	Pizza Warmer		X	
	Walk-in-Cooler		X	
South Bar	Cart	X		
6400	2 Warmer Drawers			X
Lower Keg Cooler	Cooler			X
	2 Power Packs			X
Stage Keg Cooler	Cooler			X
Vending Cooler	Cooler			X
	2 Power Packs			X
Backstage	Ice Machine		X	
	Alto Sham			X
	1 Door Cooler		X	
	2 / 2 Door Coolers		X	
	4 Door Cooler		X	
	Oven			X
	6 Eye Stove/Oven			X
	Cambro Ice Machine		X	
	Hot Box			X

## EXHIBIT F – CITY PROVIDED EQUIPMENT

Commissary	2 Stand Up Coolers		X	
	Stand Up Freezer		X	

Trading Post Kitchen	Rational		X	
	Stand up cooler		X	
	4 burner Range		X	
	Stand Up Freezer		X	
	Dish Machine		X	
	2 hot holding Wells		X	
	Outdoor Grill		X	
	Ice Well		X	
	2 Hot Boxes		X	

PDN	6 small hot boxes		X	
	2 Keg Coolers		X	

PDS	6 small hot boxes		X	
	2 Keg Coolers		X	

Plaza Bar	3 Keg Coolers		X	
	4 Carts		X	

### Trading Post

Quantity	Description
1	Polished Rock Displays
22	Apparel T-Stands
2	Impact Merchandise Unit
4	Nesting Tables
1	Large Slatwall Merchandise Unit
2	Slatwall Jewelry Displays
1	Register Counters
5	4 Way Stands for Hanging Apparel
2	Metal Plush Rack
7	T-Shirt Mannequins
1	Display Unit for Sunglasses
1	Hat rack
5	wire cube shelves-4 set
1	wire cube shelves-8 set

## EXHIBIT F – CITY PROVIDED EQUIPMENT

1	Large Cooler for Java City
2	Bench on Balcony
3	Tables on Balcony
12	Chairs for Tables
1	Penny Machine
1	Medallion Machine

### **Red Rocks Tables / Chairs Inventory**

Item	Quantity
Large Round Table (5ft.)	26
Small Round Table (4ft.)	10
Small Round Table (2ft.)	1
Serpentine Table	4 wood look/4 Gray
Large Round Table (5ft. wood)	2
8' x 30" Table (white)	14
8' x 30" Table (grey)	3
8' x 30" Table with wheels (grey)	1
8' x 15" Table (grey)	2
Ship Rock Grille Round Table (5ft.)	1
Ship Rock Grille Round Table (3ft.)	8
Ship Rock Grille Square Table	4
Ship Rock Grille Granite Table	5
Cabaret Table (Granite Top)	4
Wood Patio Chairs	54
Wood Patio Tables	15
Ship Rock Grille Coffee Table	1
Ship Rock Grille Couch	1
8' Copper tops/Bar tops	9/3
Ship Rock Grille Umbrella stands	13
Ship Rock Grille Umbrellas	12
Purple Chairs Rack	16
Black Stanchions	6
Ship Rock Grille Barstools	6
Ship Rock Grille chairs	53
Ship Rock Grille Chairs w/armrest	2
Purple Chairs	360
5' copper top/High Top Table	1/5
2 LG round copper top	2
Glass Racks' Rolling Rack	11
8' x 30" Table Rack on wheels	1

## **EXHIBIT G – Services Description**

### SCOPE OF WORK AND TECHNICAL REQUIREMENTS

#### A.1 BACKGROUND:

Denver Arts & Venues (DAV) (<http://artsandvenuesdenver.com/>) is an agency of the City whose mission is to **amplify Denver’s quality of life and economic vitality through its premier public venues, arts and entertainment opportunities.**

DAV operates some of the region’s most renowned facilities, including:

- Red Rocks Park & Amphitheatre,
- the Denver Performing Arts Complex,
- Colorado Convention Center,
- Denver Coliseum and
- McNichols Civic Center Building.

DAV also oversees:

- the Denver Public Art program,
- Create Denver economic development initiative,
- Scientific & Cultural Facilities District (SCFD) Tier III granting process,
- Arts Education Fund,
- Youth One Book, and
- One Denver literacy program

DAV also oversees entertainment and cultural events such as the Five Points Jazz Festival, and implementation of IMAGINE 2020: Denver’s Cultural Plan. DAV is committed to diversity, inclusiveness and equity in all our programs, initiatives and processes.

DAV facilities host a wide array of public and private events including:

- concerts;
- shows produced by Denver’s performing arts groups and national touring companies;
- cultural activities from films to lectures, rodeos and other sporting events;
- popular and family entertainment; and
- conventions, trade shows and consumer shows.

These high-profile venues are well known regionally, nationally and internationally, and provide a substantial, positive economic impact to the Denver metropolitan area. In hosting these events, DAV serves diverse customer groups including promoters, producers, performers, patrons, and members of the general public who attend these performances.

The scope of work of this RFP and subsequent contract provide services to DAV’s **Arenas Division** consisting of two of the largest City-owned, single unit performance spaces: Red Rocks Amphitheatre (including Visitor Center and Trading Post) and The Denver Coliseum.

***THIS PROPOSAL MUST BE RETURNED ELECTRONICALLY THROUGH THE ROCKY MOUNTAIN E-PURCHASING SYSTEM (BIDNET®).***



### A.1.a RED ROCKS AMPHITHEATRE

Red Rocks Amphitheatre is a natural, geologically formed, open-air theatre located in the 738-acre Red Rocks Park, which is set in the Rocky Mountain foothills, fifteen miles west of Denver. The majestic setting of the amphitheatre, along with the view of the Denver panorama from the top of the theater is breathtaking. The allure of the two 300-foot sandstone monoliths, Creation Rock (stage right) and Ship Rock (stage left), combined with a naturally occurring theater set on a mountain stage is not duplicated anywhere in the world. The theater provides perfect acoustics and was once listed as one of the seven natural wonders of the world. The design was done in 1936 and the amphitheatre was dedicated on June 15, 1941. Red Rocks is both a designated Denver Landmark and National Historic Landmark.

It was in 1947 that the annual Easter Sunrise Service first began. Since then, Red Rocks Amphitheatre has attracted the best of performers to the delight of the fans. The two signature monoliths have embraced artists as diverse as Jimi Hendrix, The Grateful Dead, The Beatles, U2, symphonies and opera. The Burnham Hoyt Visitor Center contains a Performers Hall of Fame that showcases many historic performances as well as a geologic history of the park. In addition, to the Visitor Center, there is the Trading Post, which has concession and retail sales and provides guided tours, all of which are included in this RFP's contract.

Red Rocks is recognized as one of the top amphitheaters in the world and has hosted over 120 concerts each of the past three years primarily during the April – October season, with over 1,000,000 ticketed patrons in 2016 alone. See <http://redrocksonline.com/concerts-events/listing/archive> for a listing of previous concerts held at Red Rocks. Many other activities, private events and tourism bring another 500,000-750,000 visitors to the park, amphitheatre, visitor center, and trading post annually.

### A.1.b DENVER COLISEUM

Opened in 1952, today The Denver Coliseum is home to the National Western Stock Show and hosts a multitude of other events including: rodeos, ice shows, motor shows, circuses, concerts, dances, exhibits and trade shows. The arena is 127' 2" wide and 233' 11" long. Installed in the concrete floor is a cooling system that can transform the arena into an ice-rink (86'x218') in a matter of hours.

In each of the past two years, the Denver Coliseum hosted over 85 events and 350,000 - 400,000 patrons.

### A.2 GENERAL INFORMATION:

The City, a municipality in the State of Colorado, is seeking a contractor to provide:

- food/beverage, retail and merchandise services, as specified herein;
- sell alcoholic beverages under certain conditions,
- operate pantry and other food production/storage areas,
- bulk storage facilities,
- operate food courts, restaurants, fixed and mobile concession stands;
- cater food and beverages to special functions, and
- vend various refreshments and other items as approved by the City.

In addition, the City will require the successful proposer to operate all dedicated lounges, mobile thematic food services, vending services, other foodservice operations that are DAV's priorities and within the scope of work defined in this RFP, and the Visitor Center and Trading Post at Red Rocks along with tour services in Red Rocks Park and Amphitheatre as required from time to time in the subject facilities under this contract for services. The facilities as defined include: the Red Rocks Amphitheatre (including Visitor Center and Trading Post) and The Denver Coliseum.

The City's Food/Beverage facilities and equipment shall be used solely for the conduct of the described contracted activities. The areas allotted to the Contractor may be subject to increase or decrease from time to time. The City will designate which space or areas the Contractor may use in the performance of the responsibilities as set forth herein to conform to DAV's priorities. These specifications will become part of the Contract Agreement and be binding upon the parties thereto.

Activities – the Facilities provide a broad range of sports, concerts, theatrical events/shows, and other related activities over the course of a normal operating year.

Proposers should be aware that the facilities noted herein enjoy a reputation for providing a high level of food/beverage, retail and merchandise quality and service to its distinguished lists of patrons and DAV expects the awarded Contractor to continue to deliver a first-rate experience to its patrons.

### A.3 DEFINITIONS:

The following capitalized terms shall have the following definitions in this document as well as in the Sample Food/Beverage Operations Contract attached:

**Automated Vending** – foodservice vending from automatic machines.

**Accounting Period** – are the Contractor's individual financial periods during the Contract Year.

**DAV - Arts & Venues** - is defined as an agency for the City and County of Denver that manages or oversees the City-owned or managed facilities of the Denver Coliseum, Red Rocks Amphitheatre, Denver Performing Arts Complex, McNichols Building and Colorado Convention Center. The facilities managed by Denver Arts and Venues may be modified from time to time either adding or deleting property.

**Backstage Catering** – is City approved Catering Services (defined below) for performers and crew at the Facilities.

**Bootleg Security** - is defined as security hired specifically to monitor the Facilities and adjacent property for unlicensed or unauthorized merchandise and to prevent its sale. Personnel hired to perform Bootleg Security shall be off-duty police officers.

**Branded Products** – shall refer to those Food and Beverage items (i) that are advertised, marketed and sold outside the Facilities to the general public under the same brand name in which the Food and Beverage is offered for sale inside the Facilities and (ii) as to which the wholesale purchase price to

Contractor (including royalty payments or similar fees) exceeds the wholesale purchase price of other similar products of comparable quality. Branded Products shall not include soft drinks or beer products.

**Catering Sales** – shall refer to the preparation and sale of all Food and Beverage by Contractor, including, but not limited to, table and banquet type meal service for conventions, assemblies, meetings, groups, public shows and/or receptions held at any location in the Facilities.

**Catering Services** – food and beverage functions at all facilities where payment is received for pre-arranged food/beverage services i.e. pre-arranged functions, etc.

**City** – The City and County of Denver, Colorado.

**City's Fiscal Calendar** – Shall mean the City's financial reporting calendar which is month end and the year period from January 1 to December 31 in any calendar year of the contract.

**Coliseum** - shall mean the structure known as the Denver Coliseum in the City and County of Denver and may sometimes be referred to as the "Facility".

**Concession Services** – over-the-counter cash sales at fixed and mobile food and beverage concession units at the Facilities.

**Contract Agreement/Contract** – shall mean a binding agreement to provide the Food/Beverage service for the City as provided herein.

**Contract Year** – shall be November 1, or the date of the City contract, whichever is later, for the first year to October 31 of each year of the term of this contract.

**Contractor** – shall mean the corporation, company, partnership, firm or individual named and designated in the Contract Agreement as the "Food Service Operations Contractor(s)," and its, his, or their employees, agents, and legal representatives.

**Contractor Fee** – shall mean the amount of money paid to the Contractor for services performed at City Venues.

**Controllable Expenses** – certain out-of-pocket expenses associated with the daily food and beverage operations including payroll, payroll taxes, administrative and general costs, and other daily operating costs, as defined in the financial schedules set out herein.

**Cost of Sales** – shall mean the direct cost for all goods and services sold.

**Director** - shall mean the Director of Denver Arts & Venues, as from time to time appointed by the Mayor of Denver, and shall include his or her designee(s) and such person or persons as may from time to time be authorized to represent the City with respect to any or all matters pertaining to this Agreement. Except as otherwise required by law or rules of the City, any matter under this Contract that requires or permits the action of approval of the City may be acted upon or approved by the Director.

**The Facilities** - Red Rocks Amphitheatre, The Denver Coliseum.

**Food Service Equipment** – all equipment used in the storage, preparation, cooking, serving, holding, and warewashing areas of the food/beverage service operations throughout the Facilities and their grounds, defined as Section 11400 Equipment by the Construction Specification Institute.

**F&B Manager** - shall refer to Contractor’s on-site, local representative, empowered by Contractor to act for and honor commitments on Contractor’s behalf.

**GAAP** - generally (industry wide) accepted accounting procedures

**Gross Food Service Sales** – the total amount of money, gratuities and service charges received or charged by the Contractor, his agents, subcontractors or employees of the Contractor for all food and beverage service sales, excluding applicable taxes, made under this agreement.

**Gross Receipts** – shall refer to the total amount of money, service and rental charges (less any gratuities received or ordinary and customary credit card fees paid) received or charged by the Contractor, or any agent, or employee of the Contractor for all sales, cash or credit, whether collected or not, derived at the Facilities as a result of the service rights granted under the Agreement, excluding applicable sales taxes. Gross Receipts shall also include one hundred per cent (100%) of any commissions paid by subcontractors to Contractor. Gross Receipts shall not include gratuities to the extent that those gratuities are paid by Contractor directly to its employees.

**Gross Profit** – all Gross Receipts less the Cost of Goods Sold.

**HACCP** – Federal guideline program entitled “Hazard Analysis Critical Control Point” dealing with correct holding temperatures and handling methodologies required for various food products.

**Hazardous Substance** – shall mean substances that are defined or listed in, or otherwise classified pursuant to, any applicable law (or other enforceable criteria and guidelines promulgated pursuant thereto) as “hazardous substances,” “hazardous Materials,” “hazardous wastes,” “toxic substances,” “pollutants,” “contaminants,” “radioactive material,” petroleum or any fraction thereof” or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosively, reactivity, radioactivity, carcinogenicity, reproductive toxicity or “EP toxicity,” and petroleum and drilling fluid, produced waters and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.

**Incentive Compensation** – shall mean the amount of net profit paid to Contractor for successfully achieving certain mutually agreed upon goals and objectives in the contract.

**Inventory Method** – shall mean the system used to count product before and after a sales period to determine the sold units of each product. The sold units, exclusive of any spoilage (as defined in this Agreement including employee meals), is multiplied by the unit pricing to determine the total sales for a location.

**Location, Locations, Space or Spaces** - shall mean the area or areas of the DAV/City Venues designated by this Agreement and its exhibits as the place or places where the business of Contractor may be conducted. Areas may change periodically as directed by the Manager.

**Manager (or General Manager or Venue Director)** - shall mean such person or persons employed by the City and authorized by the Director as the Manager of the Denver City Venues to act for him/her with respect to any or all matters pertaining to this Agreement.

**Minimum Guarantee Payment** – shall mean the minimum amount of money paid to the City by the Contractor as called for in this contract.

**Miscellaneous Gross Receipts** – shall mean the monies retained by Contractor from the provision of automated teller machine (“ATM”) and vending machine services, less any direct costs incurred by Contractor.

**Net Profit** – gross profit less expenses (including fees).

**Novelties** - shall mean any merchandise, programs, souvenir books, CD’s, t-shirts, etc. that are made available for sale at the Facilities.

**Performance Bond** – the bond provided by the Contractor to guarantee the successful performance of the contract over the life of the agreement. See Section A.6 of this document.

**Pre-opening Expense** – shall refer to the costs incurred by the Contractor between the Effective Date and the first day of the Accounting Period in which the first event is held.

**Proposal** – the document or documents submitted by proposers in response to the RFP package questions and information requested by the City relative to the Food/Beverage operational management Contract Agreement at the facilities.

**Proposer** – party or parties responding to the City’s RFP, in written form, regarding the above-referenced Contract Agreement.

**RFP** – the formal Request for Proposal document provided to proposers for this Contract Agreement.

**Senior Management** – personnel from the Contractor’s firm assigned to this project and relating to the following positions.

- General and Assistant Managers
- Corporate, District and Regional Management Personnel
- Corporate, Marketing and Financial Liaison Personnel

**NOTE:** The term Corporate shall mean any person(s) located at the Contractor’s Corporate Headquarters or reporting directly to Corporate Headquarters personnel.

**Sponsors** – shall refer to all entities that have entered into or will be entering into an agreement with City for some consideration in return for sponsorship of their product. Where a Sponsor’s product is

related to food and beverage, Contractor will be obligated to provide that Sponsor's product to the extent permitted by applicable law and provided that such products are available to Contractor at equivalent prices, terms, quality and quantity as are generally available to Contractor from its major supplier of similar products.

**Subcontractor** – shall refer to a food and beverage or merchandise purveyor contracted by Contractor to provide a unique and specialized product for sale to the general public attending events at the City Venues. Use of any Subcontractors by Contractor must be preapproved by Manager. Any commissions paid to Contractor by its Subcontractors shall be included in Concessions Gross Receipts.

**Tenant** – refers to any person or entity that may from time to time enter into any agreement with City for the use of the City Venues for a particular purpose.

**Term** – shall refer to, and this Agreement shall be effective during the period commencing on the Effective Date and terminating on the final contract date, unless earlier terminated or extended as provided in the final contract.

**Third Party Sales** – subcontracted source sales provided from vendors other than subcontractor to the Contractor.

**TIPS, TEAM** – programs related to alcoholic beverage management control systems and certain procedures to be implemented by the Contractor when serving guests.

**Vending Equipment** – all automatic vending machine equipment that serves canned, cartoned, and/or pre-packaged foods in an automated manner.

#### **A.4 EQUIPMENT AND CONTRACTOR'S CAPITAL INVESTMENT:**

The equipment and fixtures available for use are outlined in Sections B.54 and B.55. If the successful Contractor wishes to add equipment beyond that which is provided by the City, any items purchased and installed shall be of a type and class approved by the City and in sufficient quantities to provide proper service to the patrons of the Facilities.

All Contractor purchased equipment and furnishing shall be new, of modern design, and of first-class material and construction. The furnishings and equipment shall be of such quality, design, and finish as will be in keeping, in the opinion of the Director, with the general décor of the Facilities. Contractor must be approved in writing by the City before purchase and installation.

#### **A.5 RIGHTS AND OPTIONS OF THE FACILITIES:**

The City has the right to provide food, beverage, retail/merchandise and related services to patrons attending events at the Facilities.

A Contract Agreement will be drawn for the provision of all food and beverage service operations at the identified Facilities.



The City and its Director retain the sole and exclusive right to negotiate sponsorships, advertising agreements and all pouring rights for all food and beverages sold in the contracted facilities.

#### **A.6 LICENSES AND OTHER AUTHORIZATIONS:**

The Contractor shall secure and maintain in full force and effect during the term of this Contract, all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof for the life of this contract.

#### **A.7 RECYCLING AND COMPOSTING OF WASTE MATERIALS:**

The Contractor shall collect, sort, and separate into such categories as may be legally required, all solid waste products on the Facilities, and recycle all such products that are locally accepted for recycling. Each separately sorted category of waste products shall be placed in separate receptacles reasonably approved by the City, which receptacles shall be dumped or removed from the Facilities, at such minimum frequency as is specified by the City.

The City reserves the right to refuse to collect or accept from the Contractor any waste product that is not sorted and separated as required by law, ordinance, rule or regulation, and to require the Contractor to arrange for the collection of the same at the Contractor's sole cost and expense using a contractor satisfactory to the City. The Contractor shall pay all costs, fines, penalties, and damages that may be imposed on City or the Contractor as a consequence of the Contractor's failure to comply with the provisions of this subsection.

#### **A.8 SPECIAL SERVICES AT FACILITIES SUBJECT TO PRIOR CITY APPROVAL AND AT CONTRACTOR'S COST:**

The Contractor, directly or through a third party, shall consult with the City about the installation, maintenance and repair of any utility service related to the Contractor's operations and its use of the Facilities not provided or maintained by the City. Any special utility or waste disposal facility, item of equipment, or service beyond that provided to the Facilities by the City, must be installed only in accordance with plans and specifications approved by the Director and other appropriate City officials, in writing, in advance of such installation. The Contractor shall not install on the Facilities any fixture, furnishing, or trade equipment that exceeds the capacity of any utility or waste facility for such location. The Contractor shall pay, before delinquency, all fees and charges for the installation, change, and relocation of any point or means of service by any utility or waste line or system.

#### **A.9 COOPERATIVE PARKING:**

As of the commencement date of the resulting Contract, the Facilities have very limited close-in parking. Accordingly, unless otherwise specifically provided herein, the City will provide a "to be determined" number of spots at each facility, for the contractor's full-time employees only.

**A.10 SPACE AVAILABLE FOR CONTRACTOR USE:**

The City will furnish to the Contractor, where applicable for the period of the Contract Agreement office and storage spaces, concession areas, certain buffet and /or banquet seating areas, kitchens, food/beverage areas, pantry spaces, fixed bar/lounge areas, and foodservice equipment.

The City will also furnish spaces for office, money counting, and record keeping purposes of the Contractor for the Contract Agreement period. Use of these office spaces for purposes other than operation of this Contract Agreement, without prior written approval of the Director shall result in grounds for termination of the Contract Agreement.

Location of any and all mobile concession stands and auxiliary storage spaces required by the Contractor shall be approved by the Director. The Contractor shall acquire no rights to such locations once assigned, and the City reserves the right to require the Contractor to move mobile stands and equipment and to relocate items from any auxiliary storage spaces when needs of other events require the use of them.

**A.11 SERVICES PROVIDED BY THE CITY:**

The City shall provide gas, electricity, garbage, recycling, and water services for use by the Contractor for the City's facilities.

Anything herein to the contrary notwithstanding, the City shall not be liable or responsible for any failure to furnish the services set forth above occasioned by strike or other work stoppage, federal, state, or local government action, breakdown, or failure of apparatus, equipment, or machinery employed in supplying said services, and temporary stoppage for repair, improvement, or enlargement thereof, or any act or condition beyond its reasonable control.

**A.12 ADDITIONAL LABOR PROVIDED AT CONTRACTOR EXPENSE:**

The Contractor shall furnish all common and skilled labor for the setting up and dismantling or moving of all food and beverage facilities including related furniture and related equipment in such locations as may be agreed upon between the Contractor and the City.

**A.13 CONTRACTOR ACCESS TO FACILITIES:**

The Contractor and its employees shall be entitled to enter upon and remain in the premises with access at designated areas for work purposes only during event or functions at the Facilities; and for a reasonable time prior to and subsequent to events; and non-event days for administrative or non-event functions; and only for the purpose of exercising the rights and privileges required to fulfill the duties of the resulting contract. This paragraph shall not exclude the Contractor reasonable access to office areas for the conduct of normal business activities associated with the resulting contract. The Contractor shall comply with any security measures implemented by the City including but not limited the use of access badges or other means of identifying credentialed staff.



**A.14 VENDING MACHINES:**

The Director may require the Contractor, either directly or by subcontract, to provide vending machines. Vending machines shall not be used, except with the prior written approval by the City. The Contractor shall submit his Proposals concerning items to be sold, suggested prices, type and style of machines and recommended locations in writing, for the consideration and approval by the City.

The Contractor must submit an explanation of vending control methods. Contractor may subcontract coin-operated vending with the written approval of the Director. Such approval shall not be unreasonably withheld. In the event the Contractor subcontracts the vending concession, the Contractor shall supply the following information:

- The name and address of the subcontractor;
- The subcontractor's reputation and industry experience.
- In the event that vending is subcontracted, the City will consider the prime Contractor to be the sole contract responsible for the services it or its agents provide.

**A.15 MERCHANDISING AND SAMPLES:**

Nothing in the resulting Contract shall be construed to prohibit a tenant of the Facilities from exhibiting any merchandise or article in connection with the exhibit or other type of event, or from dispensing free samples of merchandise. Such sampling is subject to approval by the City but normally will be restricted to the following:

- Food – 2 oz. Portion
- Beverage – 4 oz. Cup

At certain special shows that occur annually, Contractor shall offer menu items generic to the show type in consultation with the show manager and Director.

**A.16 OPERATION OF FOOD/BEVERAGE SERVICES:**

The Contractor shall have the food/beverage services open and in operation a reasonable time before, during, and after all events or operating days as may be requested or approved by the Director. These services may be in operation when there are no events, upon approval by the Director. The staffing levels and operation times of food service at each location must be approved by the Director.

The public's right shall not be infringed upon by any activity of the Contractor or any of its employees. The activities of the Contractor shall be such as to render service to the public in a dignified manner and no pressure, coercion, or persuasion shall be used by the Contractor in an attempt to influence the public to use the services or product of the Contractor. All concession sales shall be conducted and operated under the supervision of the Contractor, but shall in no way interfere with the orderly operation of any event. The Contractor shall conduct all sales at such times and at locations, for such purpose as designated by the Director. The Contractor will not circulate throughout the premises for the sale of any merchandise, except with the permission of the Director. Neither the Contractor nor his employees shall

distribute campaign or political literature or any commercial solicitation literature of any kind at any time in or on the premises of the Facilities.

The City reserves the right to direct the Contractor to partially or completely suspend service during those events with which the contractor's operation may be incompatible in the opinion of the Director, such suspension to be judged prudent and responsible.

#### **A.17 SPECIALIZED SERVICES TO BE PROVIDED BY CONTRACTOR:**

In addition to the normal concessions, and catering functions the Contractor will provide in the Facilities, the Contractor will be required to provide specialized services normally associated with recreational facility activities. These specialized services may include, but are not limited to, the following:

- Mobile and fixed thematic concession facilities service.
- Main Kitchen storage/preparation.
- Special meeting and buffet/banquet/catering services.
- Water, tablecloth, and table skirting service.
- Backstage Catering is non-exclusive and non-commissionable provided that Backstage Catering is provided at cost plus ten percent (10%). Cost includes cost of product and any direct cost associated with delivery of product. Notwithstanding the foregoing to the contrary, Contractor shall exclusively provide alcoholic beverages for Backstage Catering events at cost plus 10%. The City will determine what events constitute Backstage Catering.

#### **A.18 CATERING REQUIREMENTS:**

When catering, and/or other special i.e., mobile "special emphasis" food service areas are in operation, food served must be cooked and prepared by the chef on the premises with the exception of baked goods and standard canned and packaged items. Deviation from this requirement must be approved in advance in writing by the Director.

#### **A.19 EXCLUSIVE RIGHTS:**

The Contractor shall have the exclusive right to operate foodservice areas, bars, restaurants, retail and merchandise areas, fixed and mobile concession stands, banquet/catering areas, and vending operations selling food and beverages (alcoholic and non-alcoholic), except as otherwise provided. Failure to provide any food/beverage and retail/merchandise services as required under the terms of this Contract Agreement will be considered a breach of contract and the Contractor will be considered in default of the Contract Agreement.

Contractor shall acknowledge that (i) certain agreements have been made in the past at the Facilities, granting rights to certain tenants such as the National Western Stock Show to sell special products; and (ii) it is common industry practice to permit on a limited basis the sales of particular concession items by a tenant. In those two cases, where there is historic precedent at the Facilities or where special sales arrangements would be common and accepted industry practice, the City may permit a tenant or user of

the Facilities a limited exemption for the rights granted Contractor herein. The City, from time to time, may request other service providers at the Facilities.

The amount of any outside concession fee shall be included in Concession Gross Receipts.

#### **A.20 USE OF FACILITIES BY OTHERS:**

Contractor shall not permit the private use of any part of the premises without, in each case, the prior written approval of the Director.

The Director shall give the Contractor advance notice of the nature of scheduled events and such information as is available regarding the probable attendance at each event. Every effort will be made by the Director to notify the Contractor of cancellation of previously scheduled events to which due notice has been given the City, but no liability shall evolve upon the City for failure to deliver notice of cancellation. The Contractor on the other hand shall be held accountable for furnishing full and adequate service, as determined by the City, for the full period of time required for any event of which the Contractor has had notice. Further, nothing contained herein shall be interpreted to limit the Contractor in taking the initiative to obtain event information from the Facilities in a timely manner.

#### **A.21 USE OF FACILITIES FOR OFFSITE FOOD FUNCTIONS:**

Should the Contractor utilize foodservice facilities for off-site food functions, the Contractor must obtain written approval of the Director at least two working days before the function. All such services are to be considered part of gross sales and expenses and as such, are fee approved operations.

#### **A.22 PROCUREMENT POLICY:**

The Contractor shall purchase food, beverages, and operational supplies, such as uniforms, laundry service, paper goods, and detergents needed for the foodservices and related operating supports to be supplied hereunder from whatever source or sources that will establish and effect procedures which assure the quality and quantity required at the most economical prices, it being understood that the Contractor shall avail itself of all lawful trade, cash, quantity discounts, and rebates and all such discounts and rebates both local and national shall inure to the benefit of the foodservice operations herein. All such purchases shall be in the Contractor's name and payment shall be made directly to the supplier.

The City reserves the right to sell advertising and sponsorship packages at the Facilities. The City maintains the final right of approval of Contractor supplies however all approved suppliers must provide competitive produce quality, service, and prices. The Contractor retains no advertising rights or approvals within this Contract Agreement.

#### **A.23 MENUS:**

The Contractor shall plan and prepare imaginative menus in the Facilities in consultation and coordination with the Director and in accordance with its specifications. Quantities, portions, prices of banquet/meeting and concession snack items for all food and beverages shall be subject to approval by the City according to its requirements. Only foods and beverages that are wholesome and of the best quality, in the opinion of the City or its Director, shall be purchased (and served). Any changes to the menu or pricing are subject to approval by the City.

The Contractor shall first submit for the City's approval and shall keep posted in places conspicuous to users of the Facilities, a full list of all items, with their prices offered for consumption on a given day.

The Contractor, shall prepare approved, printed catering and other menus utilizing the Facilities' logos and used exclusively for the Facilities, in sufficient quantities to insure clean, neat menus are available at all times to guests. All menus shall include the courses available, prices, date of distribution, and location. All menus shall be subject to the approval of the City prior to distribution and shall be used by the City and the Contractor's marketing department for sales purposes.

Should the Contractor or its representative directly contract with a tenant for a meal function, buffet and/or cocktail party, or for providing any services in the Facilities, Contractor shall forward or have available at request by the city within two (2) business days one (1) copy of the completed Agreement for Services to the Director. Such Contract Agreement shall list the various dishes to be served, the approximate number of people involved, the services to be provided, the prices of the various services and the total charges to be collected for the function by the Contractor.

#### **A.24 FOOD HANDLING:**

Contractor shall adhere to all HACCP rules, regulations, and operating requirements.

The Contractor shall inspect all merchandise upon delivery for quality and quantity compliance with the original order and shall store all food and beverage merchandise in proper areas in sanitary containers which are dated for effective rotation of stock on a first-in, first-out basis. The Contractor shall cover all refreshments and food exhibited for sale in showcases or other suitable containers. The Contractor shall wrap all pre-packaged sandwiches, cakes, and other similar products in cellophane or similar transparent wrapping appropriate to the food service industry.

The Contractor agrees to operate the foodservice facilities and perform all work in connection therewith in a professional and resourceful manner, complying with all public health regulations including a Grade "A" sanitation rating to the satisfaction of all authorized local Health Department officers and the City.

#### **A.25 FOOD QUALITY:**

The Contractor shall sell only foods that comply with all applicable federal, state, and local laws, acts, orders, or regulations including, without limitation on the generality of the foregoing, the applicable sections of the following laws, acts, and regulations:

- The Food and Drug Act.
- Applicable Meat Inspection Regulations.
- The Humane Slaughter of Animals and Humane Slaughter Regulations.

- The Official Methods of Analysis and Association of Official Analytical Chemists.
- The Federal Department of Agriculture – Products Regulations.
- The Fish Inspection Act and Regulations.
- Meat and Canned Foods Act.
- Fresh and Processed Fruit and Vegetable Regulations.
- The U.S. Grain Act and Grain Regulations

#### **A.26 ITEMS TO BE SOLD:**

The Contractor shall sell those products, commodities, and articles normally found in operations of this type, subject to the approval of the City, which approval may be granted or denied, in City's sole discretion. The City may require the Contractor to sell items, which, in the City's sole discretion, are necessary for the Operation of the foodservice facilities and may limit, prohibit, or require discontinuance of the sale of any products, commodities, or articles.

As a matter of general policy, prices shall not be higher than those charged at comparable arenas, amphitheaters, theaters, bars, snack facilities, hotels, convention centers, restaurants, etc., for the same quality merchandise and services within the Western Region of the United States of America. Prices must be posted in displays on all stands and vendor equipment. Within thirty (30) calendar days after execution of the Contract Agreement, the Contractor shall submit a Proposal for price signs to be provided by the Contractor for the written approval of the Director. The Director shall be the sole and final judge of prices, sign quality, size of letters, and propriety of any advertising proposed.

The Contractor shall submit a detailed price schedule based on current market conditions for all items it proposes to sell showing size, weight, quantity, and prices of items. This includes items sold in retail and merchandise areas, the bars, concession stands, in lounge areas, mobile "special emphasis" food services areas, in vending machines, etc., meeting rooms, for all catered services and special service requests, etc. All prices finally adopted will require approval of the Director.

The Director and the Contractor shall, on an annual basis for the upcoming year, or as deemed necessary by the City or the Contractor, review the general price structure of all commodities sold and may, in writing increase or decrease the maximum price or size of any article or articles offered for sale. The Contractor shall provide pricing recommendations to the City with comparable pricing from other comparable venues as determined by the City.

If the Contractor desires to offer for sale any article not included in the approved price schedule, menu, or alcoholic beverage list, then the Contractor may be allowed to do so after first obtaining written approval of the Director to sell such articles. If the Contractor desires to substitute an article listed in the approved price schedule, prior written approval must be obtained from the Director as to the quality, size, weight, quantity, brand, and price of such substitute article.

The Contractor will not sell any products of inferior quality. All items to be sold require the approval of the Director. This requirement shall not require the Contractor to rely exclusively on one seller's or manufacturer's item(s), but several manufacturers or sellers may be used or the Contractor's original source may be changed in the interest of quality, competition, and public appeal, as required by the Director.

All merchandise kept for sale shall be subject to inspection and approval or rejection by the Director during the term of the Contract Agreement. The Contractor shall immediately remove from the Facilities all rejected merchandise and it shall not be returned for sale. Notwithstanding the above, Contractor shall have sole and final responsibility to comply with the Contract Agreement, perform all of its obligations under the Contract Agreement, and to comply with all governmental codes, regulations, and laws.

The Contractor shall purchase, sell, and feature locally (Colorado) produced products, as long as said wholesale prices are competitive with similar products available on the open market. Upon request, the Contractor shall provide an annual report that outlines the amount of locally produced products purchased.

The City grants to Contractor the right to negotiate a split of Novelties receipts with the consignor of each exclusive event, except for those pre-existing events that have historically maintained their own Novelties rights. The Contractor will negotiate for the most favorable return and the City will support Contractor's efforts to secure a favorable split. The City will retain the right of final decision if an impasse occurs. Contractor and the City acknowledge and agree certain shows are designed to have booths displaying merchandise for sale similar to a public show at a convention center, which examples include the National Western Stock Show, the March Pow Wow and The Super Sale, and for such shows or events, Contractor shall not have rights to sales from the booths at these events, but shall retain rights to sales of merchandise related to the event such as t-shirts and CD's, except when exempted under terms of this Agreement.

From time to time, in the best interests of City, the City will direct the Contractor to adopt special promotional pricing for sales of food, beverage or other services. When these promotional efforts occur, Contractor and City shall in writing mutually agree on terms and document the effort with the details including description, pricing etc.

#### **A.27 SALE OF ALCOHOLIC BEVERAGES:**

The Contractor shall not sell or allow the sale or consumption of any intoxicating or alcoholic beverages or any fermented ale, wine, liquor, or spirits in any part of the food and beverage service facilities, at any event, unless the Contractor is licensed by the State of Colorado and its local Liquor Control/Licensing Boards and the sales or consumption of such beverages is approved by the City.

In the event that Contractor is at fault for the loss or suspension of necessary and applicable liquor licenses, and as a result is prevented from selling alcoholic beverages at the Facilities under the terms of this allowed by law, and Contractor agrees to yield the occupancy of those portions of the Locations that the Manager shall determine as necessary for the substitute liquor provider to adequately provide such service. Further, under conditions herein, Contractor shall pay the City liquidated damages. (The amount of liquidated damages will be negotiated based upon historical sales data; i.e., Contractor will pay an amount equal to the amount of alcohol sales from comparable past events in type and size for each day of such suspension or loss on which Contractor would have had an opportunity to sell any alcoholic beverage), which amount may be reduced in the sole discretion of the City, but which shall be reduced by the City's net receipts in the event the City provides a substitute provider. Further, the



suspension of Contractor's license on three (3) separate occasions or any other license necessary for the full performance of its obligations hereunder for a total period in excess of thirty (30) days during the Contract Year, or the loss of any such license shall specifically be cause for default hereunder, without limitation.

The City shall designate the type of activity at which liquor and/or beer and/or wine may be sold. The final decision as to when, where, if and which types of alcoholic beverages may be sold rests within the sole discretion of the City to the extent permitted by applicable law. It is agreed and understood that there shall be no adjustment of the Percentage Payment to be paid by Contractor should the City restrict or prohibit the sale of alcoholic beverage at events, such as, but not limited to concerts, religious based activities, high school and college events. If any license with the prior approval of the Director, requires that its patrons be allowed to bring alcoholic beverages upon the premises, then the Contractor shall have the exclusive right to sell ice, cups, and beverages, commonly referred to as set-ups, and to levy corkage charge during such functions at a price approved by the City.

The Contractor must provide all licenses and permits required for the legal sale of alcoholic beverages

Contractor must provide at its expense an Alcohol Awareness Training Program for its staff, for all alcohol service and monitoring staff, i.e. TIPS, TEAMS, etc. at least once a year and provide a complete record of training to the Director. Contractor must provide the same training for new employees at the employees' orientation.

The Contractor shall abide by all applicable liquor laws.

## **A.28 DELIVERIES**

The Contractor shall monitor the movement of products in and out of all foodservice and retail areas to avoid all conflicts with other Facilities functions. The Contractor shall cover or otherwise protect all food, beverages, food handling and merchandise equipment being moved through public areas. The Contractor will adhere to all relevant Facility policies and procedures.

## **A.29 RESTRICTIONS ON SALES:**

The City's contracts with tenants for specific functions identified by the Director, may stipulate reasonable restrictions on the sale of food, beverages, concession items and retail/merchandise items, where necessary, to protect the goods on display or where necessary because of the nature of the function. For example, without limiting the generality of the foregoing; such items as certain specialty foods or the sale of alcoholic beverages (at specific performance/event times as determined by the Director) may not be permitted.

Chewing gum, sunflower seeds, and stickers may not be sold in the Facilities by Contractor or its subcontractors whether from vending machines or otherwise.

The City reserves the right to add items to this list throughout the life of the contract. Such additions will be made known to the Contractor in writing.

**A.30 ADVERTISING & MARKETING:**

The Contractor shall not advertise in any manner other than as approved by the Director and the Contractor shall have no right to use the trademarks, symbols, or trade name or name of the Facilities, directly or indirectly, in connection with any production, promotion, service, or publication not located in the Facilities, without the prior written approval of the Director.

The City and the Contractor will coordinate the Marketing of all Food and Beverage Services, Retail and Merchandising Services at all Facilities.

**A.31 TRAINING REQUIREMENTS:**

The Contractor must conduct regularly scheduled training classes for all employees and management throughout the term of the Contract Agreement. This schedule and its content shall be approved by the City in writing. At a minimum, such training will consist of Customer Service (including training on the Americans with Disabilities Act (ADA), and service for people with disabilities, Alcohol Awareness, Positional Skills Training including banquet service training, buffet set up, bartending, and serving techniques and food/wine service techniques, food handling and other facility operations. A detailed record of the training will be provided to the Director annually and upon request.

**A.32 PERSONNEL:**

The Contractor shall be responsible for selecting, employing, training, furnishing, and deploying employees who are proficient, productive, and courteous to patrons. They shall also be responsible for their employee's discipline, and if necessary, discharge. The Contractor shall also provide adequately-trained relief personnel in the event of absences by primary staff. Whenever possible, Contractor shall hire its personnel from within the greater Denver area.

The Contractor shall furnish all necessary qualified supervision for the performance of the food/beverage and retail/merchandise service and agrees to assign to these operations highly competent, full-time resident managers who shall have no duties other than direction of these operations. The Contractor shall secure the City's approval in advance of the manager for this assignment and, once assigned to this operation, such manager shall not be replaced without approval of the City.

The Contractor's general or assistant managers shall be available at all food/beverage and retail sale functions.

If at any time the City finds that the Contractor's managers or his/her alternates are unsatisfactory, and such causes and reasons are duly reported in writing by the City to the Contractor, the Contractor shall, within ten (10) calendar days, unless specifically extended in writing by the Director, replace him/her with one who is satisfactory to the City. At any time, Contractor's management desires to leave the Facilities, Contractor's current management staff will provide to the replacement management such detailed training as necessary and required before changing his/her position.

Contractor's full-time management shall provide a management staffing plan. Such management team shall have no other duties other than those specifically dedicated to the Facilities on a full-time basis.



Personnel supplied by the Contractor will be deemed employees of the Contractor and will not for any purpose be considered employees or agents of the City.

The Contractor assumes full responsibility for the actions of such personnel while performing services pursuant to this Contract Agreement, and shall be solely responsible for their supervision, daily direction and control, payment of salary (including withholding and income taxes, unemployment insurance, workers' compensation, and Social Security) and the like, as required by applicable federal, state, and local laws.

The City shall have the right to refuse access to its facilities at any time to any employee of the Contractor, its agents, sub-contractors, or suppliers' employees. The exercise of its right shall not diminish the Contractor's obligation of performance arising under this Contract Agreement, provided that the City shall allow the Contractor to have access to said facilities at times sufficient to fulfill said obligation. The right of access for personnel shall be limited to those parts of the City's premises available for common use (e.g., entrances, hallways, stairways, concession areas, lounges, kitchens, and other food preparation areas), but shall not include a right of access to other parts of the Facilities unless specifically otherwise requested by the City. The Contractor will be responsible for requiring employees to abide by all instructions, regulations, and codes as specified by the City.

The City requires that all Contractor's full-time employees engage in the preparing, handling, serving, and storing food, meet State and Local Health Department requirements including a Health Card and Food Handlers Permit. The minimum health requirement for full-time Contractor food and beverage service employees at the Facilities will consist of satisfactory results of:

- Chest X-ray (14" x 17");
- Serological tests for venereal diseases;
- Stool examination for ova and parasites;
- Examination of the skin for lesions or rashes; and
- Appropriate alcohol and drug testing.

Examinations are to be conducted and satisfactory results reported by a competent physician or clinic, approved in advance by the City, and all records related to such examinations are to be maintained by the Contractor for review upon request. These tests are to be repeated on an annual basis. All foodservice employees' medical reports shall be kept on confidential file at the Facilities and kept up to date.

In the event that any employee refuses health inspections, the Director shall request that the Contractor remove the employee from the foodservice operations.

The Contractor shall remove from the foodservice and/or retail operations any employee whom the Director considers detrimental to the best interests of the Facilities.

### **A.33 SPECIAL PERSONNEL SERVICES:**

On various occasions, the Contractor may be called upon to provide personnel for special purposes such as bartending, waiter/waitress, host/hostess, or other activities. The special personnel services are not to be confused with the normal personnel required by the Contractor to meet the Contractor's responsibilities to provide service to the Facilities in fulfillment of the obligations set out within this document.

#### **A.34 TIPPING POLICY:**

Contractor's employees at the Facilities will not solicit or accept tips or other gratuities.

- Exception: Employees may accept, but not solicit tips in any cash bar environment.

#### **A.35 UNIFORMS:**

The Contractor or its agent will provide and maintain uniforms for all employees. Selection type, color, style, and dress code of uniforms, including specialty uniforms designated to fit the exact nature of the various operations at the Facilities, shall be at the discretion and approval of the City. The Contractor must provide written and graphic presentation of a choice of uniform styles and availability to and at the City's request. The City will provide the graphic standards to be followed in this design.

The City will consider the Contractor to be the sole contact and responsible for the services it or its agents provide. Additionally, the condition of the hygiene and appearance of employees is the Contractor's sole responsibility notwithstanding the fact the Director or his/her Director shall have the right to comment on and where necessary, cause Contractor to ensure that all employees meet minimum hygiene and appearance standards.

#### **A.36 BOOKS, RECORDS, AUDITS, AND TAXES/FEES**

The Contractor shall keep an accurate and complete set of books and records of the operation of the food/beverage and retail/merchandise facilities on the premises in accordance with generally accepted accounting principles. The Contractor agrees that the City and any of its 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 Contractor with City's Manager of Finance and any related reports, documents, data or other information generated by the City's Manager of Finance or employees under the control of such Manager of Finance in connection with any investigation or audit of the Contractor by the City's Department of Finance. The Contractor authorizes and permits the inspection of such documents, data returns, reports and information by the City and any of its agents including the City's auditor, or an authorized representative of the Auditor, and, further, waives any claim of confidentiality that it may have in connection with such documents, returns, data, reports and information

The Contractor shall pay, before delinquency, all taxes, levies, and assessments arising from its activities on or occupancy of the Facilities, including but not limited to taxes arising out of the activity or business conducted on the Facilities; taxes levied on its property, equipment, and improvements on the Facilities; and taxes on the Contractor's interest in this Contract and any leasehold interest deemed to have been created thereby; and in the event the State of Colorado makes any demand upon the City for payment of

leasehold excise taxes and/or taxes based upon any possessory interest resulting from the Contractor's occupancy of the Facilities to enforce collections of leasehold excise taxes, the Contractor shall remit the taxes demanded together with any interest and penalties associated therewith or, at no expense to the City, contest such collection action and indemnify the City for all sums expended by, or withheld by the State of Colorado from the City in connection with such taxation.

#### **A.37 PAYMENTS BY CITY AND CONTRACTOR:**

Contractor shall pay monthly to the City an amount equal to \_\_\_\_\_% of the Gross Sales for each Accounting Period. The Minimum Guaranteed Payment shall be paid to the City at the same time Contractor provides the City with its Monthly Financial Report for the subject Accounting Period regardless of whether there is a Gross Profit or Operating Loss for the subject Accounting Period. If the Gross Profit for a given Accounting Period, after payment of any accrued Operating Loss, is not sufficient to cover the Minimum Guaranteed Payment for the subject Accounting Period, then Contractor shall be responsible for paying the difference (the "**Contractor Out-of-Pocket Costs**") so that the City receives the full Minimum Guaranteed Payment for the subject Accounting Period. Contractor may recoup the Contractor Out-of-Pocket Costs over the course of the subject Contract Year whenever Gross Receipts in an Accounting Period exceed the aggregate of Cost of Sales and accrued Operating Loss (i.e., when there remains a Gross Profit after deduction of any accrued Operating Loss). If at the end of a Contract Year, Contractor has not recouped all of the Contractor Out-of-Pocket Costs, Contractor shall bear such loss. Contractor Out-of-Pocket Costs shall be reported as a separate line item in the Monthly Financial Reports."

**Monthly Report** - On or before the close of business on the seventh (7th) business days after the end of each Accounting Period during the term of this Agreement, Contractor shall deliver to the authorized officer of City, as determined by City, a summary statement of Contractor's operations at the City Venues for the Accounting Period (the "**Monthly Financial Report**"). Notwithstanding the foregoing, Contractor acknowledges and understands that City's reporting processes operate on a calendar month basis; as such, if requested by City, Contractor shall include in the Monthly Financial Report(s) estimates with respect to the days of the subject calendar month that are not included in the subject Accounting Period. The Monthly Financial Report shall be signed by an authorized representative of Contractor and shall include, among other things as specified by City: all total receipts, Gross Receipts, Gross Sales, Cost of Sales (including Contractor Fee), Gross Profit margin, Minimum Guaranteed Payment and Incentive Compensation.

Each year's fees shall be treated as isolated events and as a separate charge for accounting purposes. No previous payments or credits from any prior or past years shall be credited or subtracted from the amount of the annual fees due and payable as required herein.

#### **A.38 CERTIFIED AUDIT REQUIREMENTS:**

Throughout the term of the resulting contract, Contractor shall submit to the City, within forty-five (45) calendar days of the close of the Calendar Year, a certified audit from a certified public accountant covering the Contractor's financial statements for its operations at the Facilities. In the event that the City is not satisfied with the statements on a generally accepted accounting principles basis (GAAP)

presented herein, the City shall have the right to conduct a special audit of the Contractor's books and records, by auditors selected by the City.

If the City determines after an audit for any year that the Minimum Payments or other business transacted shown by Contractor's statement for such year were materially misstated as indicated by a qualified audit opinion, Contractor shall pay the amount of the deficiency plus interest as the Past Due Interest Rate (**2% per month compounded daily computed from the date due until the date paid**). In addition, the Contractor shall pay to the City the cost of the audit, plus the deficiency and interest.

The City's right to perform such and audit shall expire three years after Contractor's statement for that year has been delivered to the City. The Contractor shall permit the City, from time to time, as its Auditor deems necessary, to inspect and audit at any and all reasonable times, all books and records pertaining to the Contractor's gross receipts to verify the amount of gross receipts generated by the Contractor on or from the Facilities, and shall supply the City with, or shall permit the City to make, a copy of any such books and records and any portion thereof, upon the request of the City. The Director shall notify the Contractor of the amount of any over or underpayment found. The City shall have the option to either credit an overpayment against a subsequent amount due or request a refund during the end of year reconciliation period.

Failure to comply with the aforementioned clause shall result in the Contractor paying to the City as a penalty, the amount of Three Hundred and Fifty Dollars (\$350.00) for each and every day exceeding the 45-calendar day deadline. Such penalty shall apply after the City has given notice in writing to the Contractor of non-receipt of such certified audit.

#### **A.39 CONTRACTOR REPORTING REQUIREMENTS:**

By noon following the close of event, estimated Gross Receipts must be reported by event, people served and per caps allocated, in a form approved by the City.

The Contractor must submit monthly reports by the 3<sup>rd</sup> business day after month end that must include a complete, detailed Statement of Gross Receipts and Expense for the previous month in a form approved by the City. This report must also include accumulated daily sales for the month with event revenue segmented from non-event revenue.

The Contractor must report on the Contract Year in a form acceptable to the City detailing the total gross receipts, expenses and payments as detailed in the final contract.

#### **A.40 CASH CONTROL AND INVENTORY SYSTEMS:**

The Contractor, except upon prior written approval, shall use in all permanent and portable concession stands, special function areas, retail and merchandise areas et. al. a cash control system of a type provided by the Contractor and approved by the Director.

Inventory systems to determine sales and product usage must be industry standard approved by the City. The Contractor will not permit any of his/her employees to make change from boxes, container, or from pockets of clothing in the above establishments.

Contractor shall utilize industry standard computerized sales, control, and point-of-sale locations including but not limited to fixed and mobile concession and retail/merchandise stands, vending rooms, mobile thematic carts, lounges, and the like. All products must be able to be tracked from purchase order through delivery, warehouse stocking, inventory depletion, and final sales transaction and reduction from par or other stock inventories. The City shall have complete and open access to this system and its reports at all times. Contractor shall provide City with a preliminary sales/expense report by noon on the day following an event.

The Contractor will provide credit card payment solutions approved by the City at all retail outlets.

Contractor shall only utilize City- approved computer hardware and account software for all records, proposals, contracts, invoices, letters, and all accounting functions related to the operations of this contract.

#### **A.41 SEPARATE BANK ACCOUNT REQUIREMENT:**

A separate bank account at a bank approved by the City and showing proof of Public Depository Protection Act (PDPA) depository coverage under the State of Colorado shall be maintained for all sales deposits. Cash shortages, in excess of inventory sales, may not be deducted from Gross Receipts.

#### **A.42 REQUIRED ONSITE RECORDS:**

Contractor will keep within the Facilities proper, adequate, and accurate accounting books and records prepared in accordance with an accounting system approved by the City, of all business and transactions engaged in under the resulting Contract, for all periods included within the term of the Contract, said records to include without limitation the daily receipts and expenses, the daily bank deposits, the daily sales, and business done by the Contractor and shall preserve and make available for audit and examination by the City as hereinafter provided, such books and records as well as a copy of all business tax returns to the State of Colorado and of all federal income tax returns.

#### **A.43 ANNUAL INVENTORIES:**

By May 31st of each year, the Contractor and the City shall conduct annual inventories of all food/beverage equipment, leasehold improvements, uniforms, and small wares to determine required replacements, repairs, and adjustments to any depreciation schedules in force pertaining to such items.

#### **A.44 EQUIPMENT AND SMALLWARES:**

The City will provide for the use of the Contractor certain fixed equipment listed in Sections B.54 and B.55. All equipment listed shall be the property of the Facilities.

The Contractor shall maintain and repair of the Facilities' Food and Beverage equipment during the term of the resulting Contract. The Contractor will cooperate with the City's maintenance personnel to develop and institute of a comprehensive preventative maintenance program and shall organize and institute maintenance contracts on all major pieces of foodservice and retail/merchandise equipment to ensure continuous, high-quality, long-term maintenance and upkeep on this important equipment.

Other equipment such as office equipment, safe, and generally non-foodservice specific equipment etc., that is not provided by the City, is to be provided by the Contractor so as to ensure a full and complete operating system.

The Contractor will acknowledge that City's equipment has been inspected prior to its use and agree to accept the food, beverage and retail equipment, in the condition in which it is found by the Contractor, at the commencement of the resulting Contract. The Contractor shall maintain the foodservice and retail/merchandise facilities in first-class condition and shall maintain its equipment and smallwares in operable and presentable condition (except ordinary wear and tear) and conduct the business generally at a high level of cleanliness and neat appearance at all times. Contractor shall be fully responsible for anything other than normal repair and maintenance as determined by the City in its reasonable/sole discretion. The Director shall be sole judge as to the sufficiency of the cleanliness and neatness of appearance of the premises and equipment with the power to order any changes or alterations thereto that it may deem desirable. The Contractor shall return to the City the facilities and equipment in a neat and tidy condition and in good operating order (less normal wear and tear) at the expiration or other termination of the resulting Contract.

The Contractor shall perform a physical inventory of small wares at least on a quarterly basis. Contractor shall provide the Director with the written results of the physical inventory within five (5) business days of the inventory and shall replace all missing or damaged smallwares within thirty (30) calendar days of the physical inventory, such replacement being deemed a Controllable Operating Expense.

Contractor shall notify the Director of the need and reason for replacement of the City's equipment and Contractor's utensils and/or fixtures used in the handling, preparation and service of all foods and beverages for written approval before replacing any equipment.

The Contractor shall, from time to time and with the prior written approval of the City, furnish additional equipment and small wares as required for the proper operation of the foodservice program.

Upon commencement of Contractor's operations, the parties shall conduct a joint inventory and condition survey of the equipment, furnishings, and fixtures included with the premises occupied and used by the Contractor and make a written record thereof, with each party indicating by authorized signature its acceptance of said written record. Any additional equipment for use in the food/beverage service areas added by the Contractor must be approved in advance in writing by the Director.

The City shall provide any additional small wares adequate to provide service in the facilities for special function areas, in dining areas as well as equipment to service all of the Facilities food/beverage service facilities as set out herein etc. as specified and purchased by the Contractor with assistance and final



written approval by the City. Such equipment provided by the City, shall include but may not be limited to the following:

- Adequate supply of china, including but not limited to plates, bowls, cups, saucers, water pitchers, and related items. Unless otherwise directed by the City the china may have the logo of the Facilities imprinted thereon.
- Beverage glassware.
- Adequate supply of trays (both service and cafeteria style).
- Supply of stainless steel and/or silver plated dining utensils, including but not limited to: knives, forks, spoons, and soup spoons.
- Ample supplies of back-of-the-house servicewares, including but not limited to: Kitchen utensils, equipment cleaning aids, and related items.
- Buffet and catering equipment, i.e.: chafing dishes, mobile carts, servicewares, and related items.
- Salt and pepper shakers.
- Specialty mobile foodservice equipment/carts.
- Other miscellaneous tabletop smallwares as required.
- Electronic, computerized point-of-sale cash/inventory control system with all tie in equipment necessary to operate fully with City and the Facilities computer systems.
- Food service related furniture including but not limited to tables, chairs, and interior furniture primarily for use in the areas serving catered events.

#### **A.45 CLEANING, INSPECTION AND SANITATION:**

The Contractor will maintain, at all times, all kitchens, food preparation and serving areas, retail areas and all equipment, fixtures, paraphernalia, material, utensils, and other items therein, in a clean and sanitary condition and comply with all applicable health and sanitation laws and regulations in effect where the areas are located. The Contractor shall, at all times, permit and facilitate inspection of the foodservice operation by the City and its representatives and by authorized public authorities.

The Contractor shall provide the City with the following:

- A description of the Contractor's approach to sanitation practices.
- A description of the Contractor's program used to train employees in proper sanitation procedures.
- The Contractor shall comply with all Sanitation Regulations and Job Inspection requirements.

#### **A.46 SANITATION REGULATIONS:**

The following shall establish the minimum sanitation guidelines to be followed by the Contactor:

- The Sanitation Code of the U.S. Food Service Industry as published by the National Restaurant Association.
- All State of Colorado Acts and Regulations governing foodservice operations sanitation.
- All applicable Regulations of the City and County of Denver and its Health Department (or other governing Health Department).
- All applicable Federal Government Acts and Regulations.

- Appropriate voluntary codes and guidelines established by trade associations and other groups operating within the food industry.
- Any specific guidelines established by the City and set out herein or from time to time through memoranda from the City or its Director to the Contractor.

**A.47 OPERATIONS WAREWASHING:**

The Contractor will wash after each use, all non-disposable service ware, flatware, glassware, and cutlery to achieve maximum cleanliness and sanitation. The Contractor's washing of glassware and cutlery must produce spotless drying.

All concession/cash business operations will utilize high-quality disposable plates, cutlery, and cups. The City reserves the right however to require permanent small wares, dishes, silverware, glassware, and place settings to be provided in these and other operations when requested in writing to the Contractor.

All catering operations shall utilize permanent small wares, dishes, silverware, glassware, and place settings in service to their guests unless specified, modified, or altered in writing to the Contractor by the City.

**A.48 GARBAGE:**

The Contractor shall transport all waste materials, including grease, from foodservice locations, including the areas within a twenty-five (25) foot radius of all fixed and mobile concession stands, to the dumpster or compactor area, as well as transporting recycling materials to recycling area in a manner and by a route designated by the Director. Such removal shall be made after each event.

Cost of repair of damage done to floors, walls, windows, or other property in said radius and other foodservice areas by reason of operation of said stand and other foodservice areas, will be the responsibility of the Contractor and not a cost assignable to the City. The Contractor must maintain a clean workspace subject to the approval of the Director. The City shall provide sufficient waste receptacles at each location.

**A.49 GREASE:**

The Contractor must not discharge any grease into floor drains and must keep grease in containers for disposal by the Contractor. If the Contractor fails to comply with this provision, any cost, charge, or expense involved in opening, cleaning, or repairing of drains shall be paid by the Contractor and not as a cost of doing business.

Contractor expressly agrees to comply with all codes, ordinances, regulations, and laws regarding environmental health and safety matters, including the use and disposal of chemical or caustic cleaning agents and the like.

**A.50 PEST CONTROL:**



The Contractor shall coordinate with the City for exterminators to control rodents and other vermin and pests as is necessary, but at least monthly. Such extermination services shall be supplied in all areas where food and/or merchandise are prepared, stored, or dispensed. Documentation of such services shall be retained and provided to the City upon request.

**A.51 FACILITY INSPECTIONS:**

Formal inspections of the foodservice facilities may be conducted a minimum of four (4) times a year (January, April, July, October) by the Director, accompanied by the Contractor.

Semi-formal inspections of the foodservice facilities are to be conducted at selected intervals by the Contractor and the Director. A formal inspection checklist is to be prepared and completed by the Contractor and submitted to the City not later than three (3) working days following the inspection. A complete report of corrective measures taken or to be taken for any deficiencies noted should accompany the inspection report.

Informal inspections of the foodservice facilities are to be conducted daily by the Contractor with immediate corrective measures taken for any deficiencies noted.

**A.52 JANITORIAL AND MAINTENANCE SERVICES:**

It shall be the Contractor's responsibility to maintain the foodservice and retail/merchandise facilities at a high level of neatness and cleanliness as determined by prevailing health codes and/or the City. Should these services be deemed unsatisfactory by the City, the City reserves the right to contract for or to directly provide such service and duly charge the Contractor for same.